Report of the Tribunal Panel

I. Preliminary Statement

The Asian People's Land Rights Tribunal was organized through the joint efforts of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Land Watch Asia Campaign and the Oxfam East Asia GROW Campaign, together with the University of the Philippines Office for Public Affairs, the UP Law Center and the Pimentel Institute for Leadership and Governance.

It had the following objectives:

1. Provide a venue for "land grab victims" in Asia where they could present and discuss their grievances and expose the accountability of institutions responsible for the land grab cases;

2. Enable eminent persons from around the region to discourse on the violations of people's rights in land investment cases and develop recommendations to appropriate decision-making bodies at different levels (i.e., global, regional, or national);

3. Contribute to the building of community capacities on effective strategies to uphold rights, vis-à-vis, land investments in Asia; and

4. Raise public awareness on the violation of smallholder rights within land investments happening in various Asian countries.

The following personalities, upon invitation, now compose the Membership of the Tribunal:

- Dr. Sadeka Halim, Professor and Commissioner of Right to Information Commissions, Government of Bangladesh;

- Dianto Bachriadi, Vice Chair, Commission on Human Rights, Indonesia;

- Archbishop Antonio Ledesma, S.J. of Cagayan de Oro, a long-time advocate of social justice and agrarian reform in the Philippines;
- Professor Filomeno Sta. Ana of Action for Economic Reforms (AER)
- Chancellor Ray Rovillos, University of the Philippines Baguio, Philippines;
- Dean Michael Tan, College of Social Sciences and Philosophy, University of the Philippines Diliman, Philippines, who is also a columnist of a leading Philippine national newspaper, the Philippine Daily Inquirer;
- Prof. Dan Gatmaytan, College of Law, University of the Philippines at Diliman, and
- Former Senate President Aquilino Pimentel, Jr., the principal author of the Local Government Code of the Philippines.

On 16-17 January, 2014, the Tribunal held its first session on at the UP Law Malcolm Center in Diliman, Quezon City, Philippines. The event tackled issues of land grabbing by certain corporate interests in Cambodia, Indonesia, and the Philippines.

The Tribunal heard the testimonies of witnesses of the complaining sectors, coming from the countries above-mentioned, and it received numerous documents upon which this Report is based.

II. Background

Private sector investments in agriculture are increasing in Asia. This is evident in the growth of Foreign Direct Investments in South, East and Southeast Asia, and the steady rise of trade within Asia's borders. (Ravanera, 2012).

The investments, in general, are converting large tracts of agricultural, forest and foreshore lands into plantations, economic zones, tourist parks and industrial centers in the countries subject of the Tribunal's scrutiny.

In the process, the original and traditional ownership, possession, and utilization of those lands, particularly by small-scale land cultivators are being prejudiced.

Obviously, the governments concerned must be held partly responsible for this development. After all, the said governments enacted the official policies and fiscal incentives that opened the doors of their respective countries to the entries and subsequent operations of the questioned investments there.

It now also appears that the governments concerned naïvely accepted, and, then, blatantly endorsed the propaganda line that the investments were necessary to improve the local agriculture-economy and reduce poverty.

The fatuous argument fell in the face of the worsening economic status of the traditional tillers of the soil subject of this Report, as further detailed below.

There is another baseless assumption that underlines the seemingly free-wheeling conversion of lands previously tilled by traditional farmers into plantations or cattle ranches. It is the basis of the proposition that land is so abundant that no injustice is caused to

the displaced farmers because they could readily be accommodated elsewhere to do their old methods of farming.

The evidence drawn from the cases under consideration, and plain common sense, however, show the fallacy of the premise. Land is by its very nature limited. And the rapid rise in the world's population exacerbates the situation as the demand for land is ever expanding, making it more and more difficult especially for the least connected to have access to it.

Hence, unregulated, the agricultural investments indicated above, and as discussed more fully below, wrought havoc on the ways traditional land occupants owned, possessed and tilled their lands.

Not only were they excluded from the negotiations that led to the contracts that provided the 'legal basis' for the intrusion of the neo hacenderos and cattle ranchers into their traditional farmlands, but they were also left out of the decision-making processes as to the type of agricultural production methods and the technologies that were subsequently adopted and employed therein.

Consequently, the struggle for a more equitable distribution of land in the countries subject of the Report is being slowed down, if not actually reversed. And worse, violent conflicts have sometimes erupted, causing injuries and even fatalities.

III. The 'Land Grab' Cases

The Tribunal heard four specific 'land-grab' cases involving aggrieved communities from Cambodia, Indonesia and the Philippines, namely:

The "Blood Sugar Case in Koh Kong, Cambodia"

There, the livelihoods of approximately 2,879 people were adversely affected.

And 200 families, have in fact, filed complaints against the involved corporations (partly-owned by a prominent politician). The corporations were granted Economic Land Concessions (ELCs) for sugar plantations that encroached on their farmlands. The ELCs, according to the complainants, among other things, destroyed their crops, caused damage to their cattle and buffalo, and effectively seized their farmlands.

"Land Grab Case vs. Indigenous Peoples in Banggai, Central Sulawesi, Indonesia for Palm Oil Plantation"

There, some 460 farmer households accuse P.T. Sawindo Cemerlang of forcibly taking over a 17,800-hectare land for the development of a palm oil plantation.

The corporation's act, the complainants aver, displaced indigenous communities in 32 villages as it encroached on a conservation area and threatened to displace more families in the locality.

"APECO Aurora State College of Technology (ASCOT) Case in Casiguran, Aurora, Philippines"

There, 56 farmer-beneficiaries of the Comprehensive Agrarian Reform Program of the Philippines are being prevented by the agricultural

state college from cultivating the 105-hectares within its educational reserve.

The farmer-beneficiaries, however, have been farming the 105-hectares for over 50 years, and the government, itself, had provided them with irrigation facilities.

The land in question has recently been declared as a part of the APECO economic zone. APECO plans to reclassify the area from its agricultural category to industrial; and

"Mamanwa Indigenous Peoples against Mindoro Resources Limited (MRL), a Mining Exploration Case in Agusan del Norte, also in the Philippines"

There, the communities concerned oppose the nickel, gold and copper-gold exploration permit granted to MRL.

The communities claim that the corporation is causing division and conflicts among the members of their (Mamanwa) tribe.

They also assert that the corporation threatens the biodiversity character of Lake Mainit, and encroaches on a part of their ancestral domain.

IV. Tribunal Findings & Recommendations

In discussing the above-mentioned cases, the Tribunal worked under certain constraints beyond its control. An example was the absence of the adverse parties from the proceedings.

Nonetheless, the Tribunal places on record that it has tried its best to be guided by the values of truth, fairness and social justice in the formulation of its findings, and in the crafting of its recommendations.

Based, therefore, on the testimonies of available witnesses, and the documents that were submitted to it, the Tribunal finds and recommends that these cases be re-examined especially from the perspective of human rights.

The Tribunal relies on human rights as the principal basis for its Findings and Recommendations not only because violations of human rights cannot—and should not—be ignored, but also for the reason that - as enumerated below - there are numerous extant human rights enactments by UN agencies, and by domestic governments that are applicable to the cases at bar.

Moreover, the cases do paint an alarming situation of human rights abuses in the Southeast Asian region. Those transgressions involve corporations and other business enterprises in which powerful local and foreign interests have intertwined in such a manner that the activities complained against need to be exposed, denounced and corrected as violations of the human rights. Otherwise, disregarding human rights could very well become the new normal in welcoming investments indiscriminately in developing countries.

Let it be noted that in discussing the perceived violations of the rights of the traditional tillers of the soil in the countries above-mentioned, the Tribunal wishes to highlight the problem, encourage the holding of dialogues among the parties concerned, and the sending of fact-finding missions to places where the human rights violations occur.

If the government authorities and the international agencies concerned do so, the Tribunal believes, they would get first-hand information about the circumstances that caused the violations, and, then, provide reasonable solutions thereto.

The Tribunal underscores the fact that these abuses are taking place even as a set of Guiding Principles on Business and Human Rights had been adopted by the United Nations. The principles mandate corporations and other business enterprises to respect human rights.

To state the obvious, States are tasked with the primary duty to ensure that whenever those rights and their corresponding obligations are breached, effective and appropriate remedies should be made available to the aggrieved parties.

The Tribunal holds that the four cases under consideration are cautionary tales of what lies ahead in terms of the urgent need to adopt social safeguards in the face of the so-called modern economic integration mechanisms that are advanced in many nooks and corners of the globe. Land rights of smallholder producers, especially, should have adequate protections amidst the growing land investments in the region.

The Tribunal submits that discussing these problems and presenting the issues in public are initial steps towards ensuring that effective and appropriate remedies would eventually be put in place.

In deliberating on the cases, the Tribunal not only relied on the Guiding Principles of the United Nations but also on the following international agreements:

- The International Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement;
- The Voluntary Guidelines on the Responsible Governance of Tenure Land, Fisheries and Forests in the context of National Food Security;
- The UN Declaration on the Rights of Indigenous Peoples;
- The UN Basic Principles and Guidelines on Development-based Evictions and the Displacements (2007);
- The ASEAN Declaration on Human Rights; and,
- The Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements developed by Special Rapporteur on the Right to Food.

Summary of Case-specific Recommendations

Case	Within the Country	Vis-à-vis Company	International
ASCOT/ APECO in Casiguran	Document how the pre-APECO livelihoods of farmers, fisherfolk and IPs were sustained and compare with how they are being affected by APECO (i.e. a sort of community-based cost-benefit analysis). Advocate for Right to Information Act in the Philippines and proactive disclosure of relevant policies and project information. Raise awareness about the role of the political elite.	Submit comprehensive complaints to the relevant agencies and call for coordinated approach to address perceived conflicts in laws and jurisdictions (particular DAR and Ombudsman). Consider challenging APECO in court.	Seek nomination of the area for the UNESCO List of Intangible Cultural Heritage in Need of Urgent Safeguarding (particularly vis-à-vis IPs and place-based traditional knowledge and cultural practices). Seek support of scientific community (e.g. IUCN) and organisations that promote Indigenous peoples' and community conservation (e.g. ICCA Consortium).
Sugar Plantations in Koh Kong, Cambodia	Garner more active and explicit support from civil society organisations and faith groups and leaders. Further document and disseminate detailed information about human rights and environmental impacts.	Build public campaigns targeting UK and European consumers to pressure companies (Coca Cola and PepsiCo.) and supplier (Tate & Lyle) to ensure the full supply chain is free of violations of human rights and the degradation of the environment.	Submit a joint complaint to UN Special Rapporteurs and Special Representatives and seek a joint country visit to investigate the issues. Call upon international donors to support related community and civil society actions and refrain from supporting political and economic interests. Identify whether it would be possible to file a case with the European Court of Human Rights. File a complaint with the UK National Contact Point for OECD (if mediation is desired).

Case	Within the Country	Vis-à-vis Company	International
Oil Palm Plantations in Central Sulawesi, Indonesia	Further document and disseminate detailed information about human rights and environmental impacts. Build up case that massive forced evictions are tantamount to gross human rights violations. File complaints with the Indonesian Human Rights Commission and Indonesian Corruption Eradication Commission and/or call for a national inquiry on oil palm-related land and human rights violations. Use Right to Information Act.	Build a public campaign in Norway to pressure the government pensions fund to divest, and raise the issue of conflict with Norway's $1 billion grant to Indonesia for REDD+.	Identify whether the company is a member of the Roundtable on Sustainable Palm Oil; if so, consider submitting a complaint to the Complaints Panel and use the New Plantings Procedure to object to any new plantations planned by the company. Pressure parent company (RSPO Member, Wilmar) to ensure subsidiaries comply with RSPO Principles and Criteria. Submit a joint complaint to UN Special Rapporteurs and Special Representatives and seek a joint country visit to investigate the issues.
Mining in Agusan del Norte	Further document and disseminate detailed information about human rights and environmental impacts, including concerns with manipulation of "FPIC" process. Build an advocacy campaign to address legal and institutional conflicts between mining, environmental protection and IP rights (particularly DENR and NCIP). Raise environmental concerns with the Philippines' National Focal Points for the Convention on Biological Diversity and Programme of Work on Protected Areas.	Build a public campaign and/or consider legal action in Canada (host country) and/or Germany (double-listed on Frankfurt Stock Exchange) to push for accountability of foreign investments and divestment; possible supporting NGOs could include Mining Watch (Canada) and ECCHR (Germany).	Identify areas of conflict with IFC's Performance Standards and follow up with CAO and IFC to push for withdrawal of IFC investment. Seek support of scientific community (e.g. IUCN) to back up information on Lake Mainit and environs flora and fauna that are endemic and/or on IUCN Red List. File a complaint with the Canadian National Contact Point for OECD (if mediation is desired).

Additionally:

- In the Cambodian Case, the EU Policies with Better than Arms Initiative, and the Cambodia Land Law of 2001 were used as legal reference.

- In the Indonesian Case, the Indonesian Laws on Law No. 5 of 1960 on Basic Provisions on the Right to Cultivate; Government Regulation No, 40 of 1996 on the Right to Cultivate, Right to Build and Right of Use Land, and the Forest Law 91 of 1999 were taken cognizance of.

- And in the two Philippine cases, the Indigenous Peoples Rights Act, the Mining Act and the Comprehensive Agrarian Reform Law served as focal points for the recommendatory actions that the authorities could take.

- This Report is divided into four Case Briefings that are followed by the corresponding recommendations on policy initiatives that the governments concerned could pursue, and the legal recourses that the aggrieved communities could utilize to recover their land rights.

V. CASE DISCUSSIONS and RECOMMENDATIONS

Case 1:
CAMBODIAN CASE - "Bittersweet blood sugar" - Sugarcane plantation in Cambodia accused of land grabbing by farmers

More than 500 families of farmers and indigenous people were evicted from their land in the provinces of Koh Kong and Kampong Speu in Cambodia to make way for a sugarcane plantation.

Source: powerpoint presentation on the Cambodia case presented during the Tribunal by CLEC

The Complainants allege that Ly Yong Phat, a billionaire Cambodian Senator and his wife, Kim Heang, were awarded Economic Land Concessions (ELCs) for more than 23,000 hectares used for sugarcane plantation in Kampong Speu in 2010 and 2011. In amplification, they say that earlier, on August 2, 2006, the Ministry of

Agriculture, Forests and Fisheries (MAFF) granted two ELCs good for 90 years to Thai and Taiwanese companies and Ly Yong Phat as their local conduit in Cambodia for 19,100 hectares of sugarcane plantation in Butom Sakor and Sre Ambel in the Province of Koh Kong.

The sugar they produce are exported to the United Kingdom, to Tate & Lyle which is one of the two major suppliers of sugar of Coca Cola and PepsiCo.

The ELCs in Koh Kong were awarded to Koh Kong Plantation Co Ltd. (KKPC), and Koh Kong Sugar Co. Ltd. (KKSI).

The Khon Kaen Sugar Industry Limited (KSL), a Thai company holds 50% of the shares in these companies; the Taiwanese company Ve Wong Corporation has 30%; and the remaining shares are said to be held by the Cambodian Senator.

On May 19, 2006, bulldozers accompanied by the Cambodian government's Armed Forces began to clear the land to make way for the land concession projects. In the clearing up operations, it was reported that some 456 families were forcibly evicted, left homeless and landless. Majority of them faced hunger due to loss of decent and sustainable income opportunities. Some had no choice but to abandon their families and migrate, albeit illegally, to Thailand.

The adverse impact of eviction took its toll on the children's living condition and their access to education. Some were reported to have acquired physical and mental trauma. Worse, child labor cases were documented in the sugar plantation.

The rural communities with the help of the Community Legal Education Center (CLEC) filed criminal and civil cases before the Cambodian Provincial Courts in 2007. They appealed for the cancellation of the ELCs, citing violations to the 2001 Land Law, as well as theft and wrongful damage to property, battery with injury, fraud, arson, and infringement of lawful possession.

The criminal cases were dismissed in 2012 and the civil cases were referred to Cadastral Commission.

CHRONOLOGY OF EVENTS

- The villagers have been occupying their lands since after the Khmer rouge regime ended in 1979.
- They grew durian, cashew nuts, mangoes, corn, coconut, pineapples, and rice.
- In 2006, Ly Yong Phat Company workers came to destroy their lands. They used bulldozers to destroy the villagers' crops and to clear the land.
- In 2007, about 200 villagers walked to Phnom Penh (approximately 200 kms.) in protest and to claim back their lands and seek government intervention for their case against the Ly Yong Phat Company.
- When they arrived in Phnom Penh, the villagers held a press conference.
- After the villagers received no help from Phnom Penh government agencies, they held gatherings near their villages for a week. The villagers made banners and hung them up along the road to advertise their problems.
- Throughout this process, the company did not allow villagers access to their lands. The villagers continued to gather and protest until the company opened the road and allowed them to access their farms.

In March 2013, 200 families from Sre Ambel filed a lawsuit in a UK court against Tate and Lyle Sugars and Tate and Lyle Plc, accusing the company of sourcing sugar from lands that are illegally acquired. They sought damages equivalent to the value of sugar produced on the land taken away from them.

In July 2013, the UK High Court facilitated a mediation hearing between parties but failed to come to an agreement.

The affected families also filed complaints with the grievance mechanism of Bonsucro, an industry initiative, seeking to mitigate social and environmental impacts of sugar production. To date, nearly 3 million tons of sugar or 2% of the plantation's total production have been Bonsucro-certified. Incidentally, Tate & Lyle Sugars, formerly a member of the initiative, was suspended by the Bonsucro board on 8 July 2013 for failing to demonstrate "adequate progress within a reasonable time-scale towards meeting the requirements of the Board to provide information regarding a complaint made against the company [related to the Sre Ambel case], nor adequately explaining why these requirements could not be met."

RECOMMENDATIONS on the Cambodian case:

In Cambodia, State authorities have a responsibility to protect human rights, and business enterprises have a responsibility to respect those rights.

The unresolved human rights abuses in the Koh Kong case arise from the lack of a continuing human rights due-diligence system applicable to business enterprises involved in the supply chain and the absence of an effective remedy that covers all the trans-boundary corporate actors involved regardless of their socio-economic and/or political clouts.

No mechanism exists that connects the said violations to the corporations involved and that enables affected communities to hold these business enterprises accountable to their duty to respect human rights in their business operations.

The UN Guiding Principles set out the core roles of States and business enterprises in protecting and respecting human rights, and offer a framework that recognizes the need for rules to apply to corporations wherever they operate, especially in weak governance zones like Cambodia.

This framework covers the need for business enterprises to carry out human rights due-diligence that will enable them to recognize human rights violations when they occur and require businesses to remedy the problem or act positively on the information gathered. Improved due-diligence practices could have shielded the companies involved in Koh Kong from risking their reputations because of their involvement in this case, and more importantly, could have protected the communities from human rights violations.

There is, thus, an urgent need for the Cambodian government to respect its human rights obligations, and business enterprises operating in the country to apply the UN Guiding Principles; in particular, the requirements relating to access to effective remedies must be fully implemented.

To ensure that the affected communities across ASEAN are able to access effective remedies when human rights violations occur and cases such as Koh Kong are not repeated, there is also a need for a regional mechanism that could investigate cases involving transnational business enterprises operating in weak governance zones, impose appropriate sanctions, and ensure that the UN Guiding Principles are applied in the ASEAN community of nations.

The investigation by the Thai National Human Rights Commission in this case indicates the potential and the need for such a mechanism, to examine and investigate trans-boundary cases, offer a forum for communities to voice their concerns and provide access to a remedy where other recourse is not available.

It is crucial to garner more active and explicit support from civil society organisations and faith groups and leaders, locally and internationally, and document and disseminate detailed information about human rights and environmental impacts of cases like Koh Kong.

Campaigns can include European consumers targeting companies to ensure that their supply chain does not violate human rights and degrade the environment. International engagement could include submitting a case before a UN Special Rapporteur or the European Council for Human Rights.

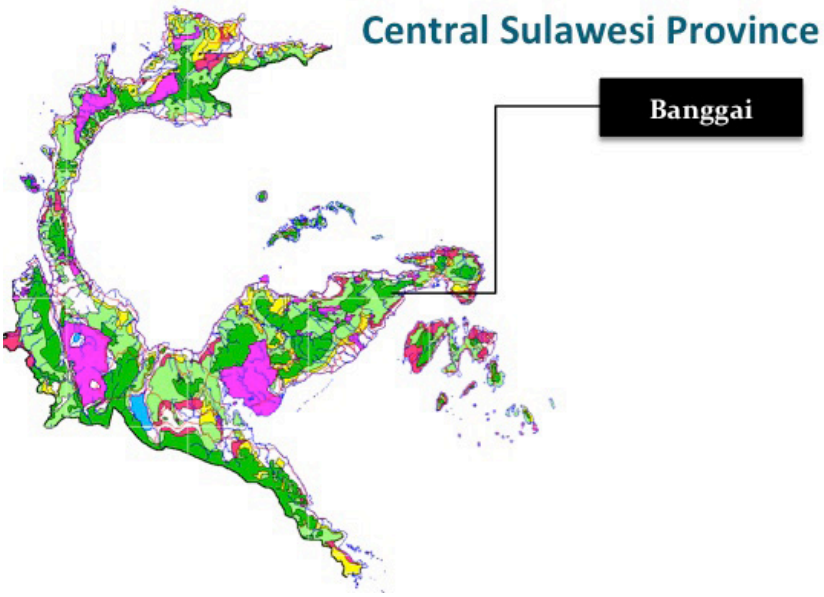
Case 2:
INDONESIAN CASE - PT Sawindo Cemerlang palm-oil plantation in Banggai, Central Sulawesi

The Banggai regency (district) in Central Sulawesi, Indonesia is still largely an agricultural economy thriving on crops, livestock, horticulture, fisheries and with additional contributions from the tourism industry.

The Batui sub-district in Banggai is known to be one of the biggest copra producers in the province with output of more than 3,000 tons of copra per month.

The land in question in Batui is the cultural heritage of local indigenous peoples and land from the Transmigration Program of the government in the 1990s. As subsistence farmers, the IPs cultivated the land with food crops such as vegetables, rice, and fruit, as well as plantation crops such as cocoa as a main commodity.

In August 2009, PT Sawindo Cemerlang, a subsidiary of PT Kencana Group of Wilmar International based in Malaysia, encroached on the land and began a palm oil plantation by virtue of a plantation certificate (HGU) issued to them by the government since the1990s. The Norwegian government pension fund also has investments in PT Sawindo.



Source: powerpoint presentation on the Banggai case presented during the Tribunal by KPA

The community tried to resist the plantation but the company employed the support of army and police forces to counter any resistance and continue with operations. The plantation was eventually expanded to around 17,500 hectares of palm oil within four years.

To survive, the community had to surrender their land to the palm oil plantation and follow the plasma plantation scheme (PIR) of dividing the plantation into the nucleus plantation operated by the company and the plasma plantation for the small-scale farmers.

Consequently, the community members lost their original income from their own crops as most of them now work for the plantation as laborers earning 7,000 to 25,000 rupiah (RP) per day (Rp 9,000= $1). Meanwhile, the other community members who refused to join the PIR scheme often had no other option but to sell their land to the company with an imposed price. The others left their villages to look for more irregular jobs in the city or in mining sites which offer better income than the oil palm plantation.

However, the people's resistance against the plantation company continued. In 2011, 24 people were caught by the police destroying the plantation's crops but the local court found them not guilty of the charges. The court also declared that PT Sawindo did not have a valid certificate to cultivate the land as a plantation (HGU) as required by government policies and laws related to land and agrarian matters. Apparently, in order to secure an HGU from government, companies manipulate requirements such as faking the signatures of farmers or local authorities.

Aside from the displacement of the Batui IPs and their crops from their lands, the ecological damage to the area is likewise huge as floods have affected residential areas more regularly. Moreover, the expansion of the palm oil plantations are forcing people to switch from being owner-cultivators to becoming laborers on their own land and causing conflict with other community members and traditional leaders. The IP community wants their heritage lands back and opposes the company's questionable land certificate to further cultivate and expand their expansion activities.

CHRONOLOGY OF EVENTS

- According to CSO data, PT. Sawindo Kencana (or Cemerlang) is owned by the Wilmar Group and the Norwegian Government.
- PT. DSP, who works on 4.080 ha. had a certificate of plantation land (HGU) since 1997 for cacao, but changed it to oil palm in 2011. They came and grabbed the land belonging to the IPs and still have land conflicts with the people. This company was later bought by PT. Sawindo Kencana.
- PT. Indo Toili, which operated on 2.500 ha., also grabbed the IP lands and planted it with cassava. This company was bought by PT. Sawindo Kencana in 2011.
- PT. Sawindo expanded their land up to 17.500 ha.
- The communities want their land back, which they lost through oppression since the Suharto era when the land was expropriated by the government for plantation purposes.
- The communities do not want the company to get the certificate of HGU for expansion.
- The communities protested with the local parliament, which recommended to stop plantation operations. However, this recommendation was not implemented.
- In 2012, 24 people from the community were arrested by the police. Two of them were jailed for three months.
- The community sought a dialogue with the National Land Agency (provincial and sub provincial levels) to stop the HGU process, but until now there has been no response.

RECOMMENDATIONS on the Indonesian Case:

Indonesia has the responsibility to protect human rights and as a part of its duty to protect against business-related human rights abuse, it must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within its jurisdiction those affected should have access to effective remedy.

The non-implementation of the judicial decision that PT Sawindo Cemerlang did not have the right to cultivate the land in question as regulated by Indonesia's domestic laws indicate the non-effectiveness of remedies for human rights violations there. While there are Indonesian laws that provide remedies for violations and abuses of human rights, access to those legal remedies is problematic due to practical and procedural barriers.

Source: powerpoint presentation on the Banggai case presented during the Tribunal by KPA

Considering those circumstances, it would be the UN Guiding Principles provide that States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including the consideration of ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights controversies.

In this case, for instance, it was the farmers who were charged with criminal offenses, and although, they won the case in court, their legal victory did not necessarily lead to their availment of the fruits of such a judicial triumph.

Hence, particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process. They should be, guaranteed ready access to fair procedures and reasonable expectations in the outcome of such remedies. The Indonesian government is tasked to perform its human rights

obligations specifically to ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or when alternative sources of effective remedy are unavailable. They should also ensure that the delivery of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed.

Source: powerpoint presentation on the Banggai case presented during the Tribunal by KPA

There is need though to further document and disseminate detailed information about human rights and environmental impacts on this issue, and build up a case that massive forced evictions are tantamount to gross human rights violations. With proper documentation, complaints with the Indonesian Human Rights Commission and Indonesian Corruption Eradication Commission and/or call for a national inquiry on oil palm-related land and human rights violations should follow. The Right to Information Act to secure the necessary documents should be resorted to.

On the matter of investments, perhaps a public campaign should be mounted in Norway to pressure the government pensions fund to divest, and raise the issue of conflict with Norway's $1 billion grant to Indonesia for REDD+, and engage the company (PT Sawindo Camerlang) to adhere to the standards set by the Roundtable on Sustainable Palm Oil.

PHILIPPINE CASES:
Case 3 - Government educational institution vs. agrarian reform beneficiaries - a land use conflict case

A disputed land in the municipality of Casiguran, province of Aurora was awarded as a reservation area for a school of fisheries under Proclamation No. 723 dated 21 August 1934. In the 1960s, farmers were allowed to develop the reservation by the reclassification of its category from forest lowlands to agricultural land, with the consent of local authorities.

Source: powerpoint presentation on the APECO case presented during the Tribunal by PAKISAMA

The area developed by the farmers covered some 90 hectares, and came to be known as a part of the rice granary and primary food source of northern Aurora.

As early as 1963, the farmers submitted a petition to the Bureau of Lands to grant them titles as the legitimate owners.

Ten years later, in 1973, the Secretary of Education endorsed to the Department of Natural Resources (DNR) an amendment of Proclamation No. 723 that excluded Lot B, a portion of the school reservation and categorized the farmers who tilled the as actual occupants.

The farmers submitted another petition in 1992 for the implementation of a Memorandum of Agreement (MOA) and proposed the distribution of a designated portion of the school reservation as falling within the coverage of CARP.

Earlier, that is in 1984, a small portion of the total area was utilized for the Aurora National High School of Fisheries. In 1993, the High School of Fisheries was converted into the Aurora State College of Technology (ASCOT) by Republic Act No. 7664.

Recently, Republic Act 10083 was passed. It established the Aurora Pacific Economic Zone and Freeport Authority (APECO), and the property in question was placed under its jurisdiction.

The farmers, however, resolutely continue to this day to assert their claim to the land. With the help of the other farmers and civil society members of the Task Force Anti-APECO, they are keeping their rights to the land alive.

Among other things, they cite Republic Act 6657, the Comprehensive Agrarian Reform Law (CARP), as amended by Republic Act 9700 (CARP Extension with Reforms) as one of the legal bases of their claim.

The law and its amendments, indeed, ordain that all public and private agricultural lands including other lands of the public domain suitable for agriculture are covered by the CARP.

The claim of the farmer tillers in this case is anchored on solid grounds for the reason that where public lands of the State are reserved for other public uses such as school reservations but are no longer needed for such purposes, Executive Order No. 407, Series of 1990 as amended by Executive Order No. 448, Series of 1990 places such lands under the coverage of the agrarian reform program.

Using Executive Order No. 407, as amended, the farmer group argue that all lands, reserved by virtue of Presidential Proclamations for specific public uses by the government, its agencies, and government-owned-or-controlled corporations that are suitable for agriculture and are no longer used for the purpose for which it was reserved shall be segregated from the reservation and transferred to the jurisdiction of the Department of Agrarian Reform. The DAR would, then, acquire the power to distribute the land to qualified agrarian reform beneficiaries.

Thus, the farmers want the DAR to proceed and implement the law accordingly.
ASCOT, however, still refuses to transfer the land to DAR for distribution to the farmers, in violation of E.O. No.

CHRONOLOGY OF EVENTS

- In 1934, a 110-hectare agricultural land located in Barangay Esteves, Casiguran, Aurora, was reserved for a school of fisheries by virtue of Proclamation No. 723.
- A group of 55 families began tilling the 110-hectare property in Barangay Esteves, Casiguran in the 1960's. They developed the area into irrigated prime agricultural land, which later became known as part of the rice granary and primary food source of northern Aurora.
- In 1963, these families petitioned the government for the distribution of the lands to them.
- In 1984, a five-hectare area of the property was utilized for the Aurora National High School of Fisheries.
- In 1993, Republic Act No. 7664 was enacted, creating the Aurora State College of Technology (ASCOT) and integrating the school of fisheries.
- In 2003, the Department of Agrarian Reform (DAR) determined that the greater portion of the area (105 ha.) are irrigated rice lands, and not used for school purposes.
- ASCOT refused to transfer the land in favor of the State citing the need for the land for school purposes in the future.
- The DAR has not yet issued a Notice of Coverage (NOC) to the unused 105-hectare property.
- In 2007, Congress legislated RA 9490 or the Aurora Special Economic Zone (ASEZA) on 500 hectares of public agricultural lands covering 3 barangays in the municipality of Casiguran, Aurora.
- RA 9490 was approved and enacted without the knowledge and required public consultations of the affected barangays and municipality in violation of Local Government Code (RA 7160), absence of feasibility study, development plans, and the required Master Plan.

- This sparked protests from CARP Benefeciaries, fisherfolks and Agta-Dumagat communities.
- In 2010, Congress enacted Republic Act 10083 or the Aurora Pacific Economic Zone and Freeport Authority (APECO).
- The new law renamed the ASEZA to APECO and expanded the coverage to 12,923 hectares covering 3 more barangays of Casiguran. DOJ Opinion 3, Series of 2012 was issued stating that the DAR can formally adopt the position it takes on the issue as the agency is primarily responsible for the implementation and administration of the Comprehensive Agrarian Reform Law (CARL).
- In December 2012, at least 120 marchers, most of whom were farmers, fisherfolks and members of the *Agta* Indigenous Communities, walked on foot from Casiguran to Manila to protest the implementation of the APECO.
- In December 11, 2012, President Aquino met with the marchers and tasked the Department of Justice (DOJ) to review the legal implications of the APECO project and the National Economic Development Authority (NEDA) to review the economic viability of the APECO Project.
- On 18 April 2013, DOJ Secretary Leila de Lima issued the following: "if the subject property in the present case, which is located in Barangay Esteves, Casiguran, Aurora, is found to be suitable for agriculture and is neither actually, directly and exclusively used for a school of fisheries, nor necessary therefore, then its segregation and transfer for distribution to qualified beneficiaries is mandatory or compulsory, xxx".
- Over a year has passed since the meeting with President Aquino, but the farmers and indigenous peoples in the affected area of Casiguran are still waiting for a favorable resolution to their plight.

407, as amended by E.O. No. 448, and other pertinent legislations.

RECOMMENDATIONS on the APECO Case:

The Philippine government has committed to ensure that human rights are respected, protected and fulfilled, and that business enterprises including government economic zones and educational institutions should respect human rights.

The situation in APECO is rather awkward in that a Philippine law appears to legitimize a land grab (R.A. 10083), and sanction the violation of the rights of the indigenous peoples, farmers and local communities to their ancestral domain and farmlands. Legal instruments and government institutions also appear to have been used to promote business and proprietary interests, to the detriment of the communities.

As a signatory of the UN Guiding Principles, the Philippine State is required to ensure that laws and policies governing the creation and the operation of business enterprises do not constrain but enable businesses to respect human rights.

Laws and policies affecting business should, therefore, provide clear guidance to compel enterprises to respect human rights, with due regard to the role of corporate boards, and of the local government units within whose territorial jurisdiction human rights violations occur.

The Philippines needs to review existing laws vis-à-vis their compliance with the UN Guiding Principles. While States generally have discretion to decide what steps they should take when the rights of Indigenous Peoples are trampled upon, they should nonetheless consider the full range of permissible preventive and remedial measures, including policies, legislation, regulations and adjudication.

It goes without saying that States also have the duty to protect and promote the rule of law, including the taking up of measures to ensure equality before the law, fairness in its application, and adequate accountability, legal certainty, and procedural and legal transparency.

Now, in the context of ASEAN, it is vital that the laws of its Member States should ensure business compliance with human rights standards, and in that sense, provide a common ASEAN-wide legal framework for respect for human rights by business entities.

Moreover, it is important to document how the pre-APECO livelihoods of farmers, fisherfolk and the indigenous peoples were sustained in terms of productivity and to see how these would now compare with their lives dominated as it were by APECO, in some sort of community-based cost-benefit analysis. Having a law like the Right to Information Act in the Philippines is urgent as it aims to have proactive disclosure of relevant policies and project data. Part of raising awareness on APECO case concerns the role of the political elite.

Support from international organizations such as UNESCO (United Nations Educational, Scientific and Cultural Organization) and IUCN (International Union for Conservation of Nature) to declare the area as a cultural heritage, and to target different strategies to highlight the issue should be sought by the parties concerned.

Case 4 – Complaint of the Mamanwa Indigenous People against Mindoro Resources Limited Mining Exploration, Agusan Del Norte.

The Mamanwa indigenous people in Sitio Dinarawan and Barangay Bunga in Jabonga, Agusan del Norte oppose the nickel, gold and copper-gold exploration of the Mindoro Resources Limited (MRL). The MRL Exploration Permit (EP) has expired on November 4, 2012. However, Mamanwas are apprehensive that mining operations may be resumed, and that would threaten Lake Mainit, a sacred site to them, and a government-declared a key biodiversity area.

The Mamanwas consider Lake Mainit as a part of their ancestral domain, a most valuable resource, handed down to them by their forefathers. Its destruction would be a grave violation of their customary laws, culture and traditions.

Source: http://taomunahindimina.files.wordpress.com/2013/04/dinarawan-tmhm-2.jpg

CHRONOLOGY OF EVENTS

- May 1999: MRL was granted its first tenement for mining exploration covering the Agata Mineral Production Sharing Agreement (MPSA) site
- October 2000: MRL applied for an additional Exploration Permit (EP) that covers several areas north of the Agata MPSA and west and southeast of Lake Mainit. This was named as the Tapian Extension. At the time of the application, the area was divided in five (5) parcels, and each underwent its local process for FPIC.
- July 2008: In July 2008, the residents of Dinarawan conducted a General Assembly (GA) to discuss their response to the reported entry of MRL into their domain. It was agreed that they will sign a petition opposing the entry of MRL into their territory.
- October 2008: the Mamanwa in Dinarawan filed an application for a Certificate of Ancestral Domain Title (CADT) with NCIP.
- By 2010, tension between the Mamanwa, MRL, and the various clans and families was at a very serious level in Sitio Bunga. To break the tension, the barangay LGU of Bunga (BLGU) initiated a dialogue in May 2010 in order to forge an agreement that will (i) end the discrimination of the Mamanwa in Sitio Bunga; (ii) end the non-recognition by the BLGU of the Mamanwa Tribal Council of Bunga; and (iii) recognize Jenoviva Culangan as a leader of the Mamanwa in the said sitio.
- November 2010: MGB issued an EP for the Tapian Extension, which covers a total area of 6,842.28 hectares. The communities of Dinarawan and Bunga are located north of the Agata MPSA and their concerns relate to areas covered by the Tapian Extension tenement.
- February 2011: another GA was convened. The assembly was brought about by news that MRL employees went to their sacred mountain in Anahawan to conduct mineral exploration without getting their free, prior and informed consent.
- During the gathering, the members of Dinarawan Indigenous People's Organization (DIPO) prepared a petition expressing their strong opposition to the mineral exploration being conducted by MRL.

They have been living and dependent on the lake for livelihood even prior to the creation of the Republic of the Philippines. They now assert that under the Indigenous Peoples Rights Act (RA 8371), they have the right to use and protect their ancestral domain.

On September 16, 2011, the Mamanwa tribe in Sitio Dinarawan filed a formal complaint before the Compliance Advisor/Ombudsman (CAO) of the International Finance Corporation, one of MRL's major shareholders that holds the equivalent of 9% of MRL's total equity. CAO is an independent redress mechanism that is mandated to address complaints from people affected by IFC (International Finance Corporation) supported projects.

The entry of MRL's employees into the sacred grounds of Mamanwa's ancestral domain without their 'Free, Prior and Informed Consent' (FPIC) triggered the instant complaint. The indigenous group charges that MRL violated Sections 10, 16 and 59 of IPRA. The law provides that indigenous peoples have the right to be informed of any projects/ programs or activities that are done within the ancestral domain, and to participate in any decision on activities that take place within the said domain.

The Mamanwas assert that consultations should have been conducted prior to MRL operations. Where consultations did take place, the negative impacts of the project, they complain, were not explained thoroughly.

The Mamanwa community lament that the MRL exerted undue pressure and influence on community leaders; attempted to create parallel leadership structures; used LGU representatives to pressure the communities, and gathered fraudulent signatures to demonstrate alleged community consent, among others things.

Deep division in the tribal community and even disruption of familial relations followed as a result thereof. Some community members even went to the extent of defying the decision of tribal chieftains and community elders, a grave violation of their customs and tradition.

They also criticized as utter nonsense the 2010 Summary of Public Information and the Environmental and Social Review Summary of IFC that stated no Indigenous People's community is physically or economically displaced or otherwise directly affected by the exploration activities (of the MRL) or by land access to their community.

The IFC summary report further said the Manobo and Mamanwa are physically distinct but that they are no longer practicing their old customs and traditional religion.

Engaging the CAO mediation mechanism has worn down the Mamanwa community as they subsequently found the process unsuited to their demands, or which, in their opinion, have seemingly fallen on deaf ears.

In October 2012, CAO issued its Appraisal Report holding that the conduct of a compliance audit is unlikely at present. CAO, however, acknowledges that extractive industry projects, even at the exploration stage, can have significant social impacts on indigenous communities, particularly when sites of religious or cultural importance are involved.

The immediate risk of adverse outcomes to the complainants, however, was mitigated by MRL's decision to suspend exploration in the contested area.

RECOMMENDATIONS on the Mamanwa vs. MRL Case:

As a signatory of human rights instruments, including the UN Guiding Principles for Business and Human Rights, the Philippines adheres to the principles set forth therein particularly in binding business enterprises to respect human rights. In practical terms, this means that the Government should avoid infringing on the human rights of others and should address adverse human rights impacts with which its agencies are involved.

MRL as a corporation is charged with infringing on the human rights of the Mamanwas, including violating their right to free, prior and informed consent and their right against iniquitous sharing in the proceeds from the

- March-April 2011: the IP communities and their leaders prepared position papers, statements and petitions to oppose the entry of MRL mining and other projects that destroy their ancestral domain and lake, which effectively destroys their culture.
- 16 September 2011: Alyansa Tigil Mina filed a letter-complaint with CAO regarding an IFC investment with MRL for a mining project in the Philippines. CAO is an independent recourse mechanism that is mandated to assist in addressing complaints from people affected by IFC supported projects.
- 2 Field Visits of IFC-CAO Representative on December 2011 and February 2012
- The Mamanwas felt that the mediators were more concerned in convincing them to agree with the MRL and allow the operations of the mining company into their ancestral domain.
- As the confidence of the Mamanwa to mediation dwindled, they indicated their preference to withdraw from the process.
- In March 2012, the CAO Ombudsman concluded its process and referred the complaint to CAO Compliance for initial appraisal.
- As a result the IFC-CAO came up with the following conclusion in their report: "In the course of its assessment, the CAO understood from community members that presented the complaint that they did not wish to engage in a dispute resolution process with MRL. Given the voluntary nature of a dispute resolution process, and the lack of interest and willingness of the complainants to pursue this option, the CAO Ombudsman concludes that this complaint is not amenable to resolution through a collaborative process at this point in time."
- CAO acknowledges that extractive industry projects, even at the exploration stage, can have significant social impacts on indigenous communities, particularly when sites of religious or cultural importance are involved. Nevertheless, the immediate risk of adverse outcomes to the complainants was mitigated by MRL's decision to suspend exploration in the contested area.
- No information was provided whether the operations has resumed.

utilization of the resources of the IP's ancestral domain. The business enterprise concerned appears to be in complicity with the State agencies in that regard.

The UN Guiding Principles maintain that in order to identify, prevent, mitigate and account for how business enterprises address their adverse human rights impacts, the Government should carry out a system of human rights due-diligence, a process that should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, penalizing those responsible for human rights violations, and publicly communicating how those impacts are addressed.

In this case, the MRL appears to have taken advantage of the lack of capacity of the Mamanwas to concretely avail of the legal instruments to support their position, despite their traditional occupation of the lands in question.

The corporation has, thus, failed to abide by its responsibility to respect the human rights of Indigenous Peoples, in the case at bar, the Mamanwas.

As far as the Philippine government is concerned, it has ostensibly complied with its mandate to respect, protect and fulfill the human rights of the IP communities involved in the APECO and MRL cases as discussed in this

Report. However, its laws failed to consider the responsibility of business enterprises to respect human rights.

In fact, MRL utilized its legal mandates and institutions to support its encroachment into an ancestral domain. In fact, the law on extractives even allows the iniquitous sharing of royalties from the proceeds of businesses that exploit the resources of the ancestral domains of the indigenous people's concerned.

Thus, a comprehensive review of the laws affecting business entities, including the Corporation Code, the Mining Law and other laws governing business enterprises as they relate to their responsibility to respect human rights appears to be in order.

This conclusion also applies to the context of the ASEAN region where laws governing business enterprises have been linked inextricably with the human rights of the people of the affected communities.

An advocacy campaign should be organized to address legal and institutional conflicts between mining, environmental protection and indigenous peoples rights, particularly directed at the Department of Environment and Natural Resources (DENR) and the National Commission on Indigenous Peoples (NCIP). Further documentation particularly on the violation of the Free and Prior Information and Consent processes seems to be in order.

Canada and Germany may be considered as suitable places where international campaigns can be launched to push for corporate accountability in countries where the rights of IP communities are being sacrificed in favor of the rights of business. Soft law mechanisms such as the CAO-IFC and OECD (Organization for Economic Cooperation and Development) can be similar venues for the ventilation of the complaints of Indigenous Peoples.

Signed by the Tribunal members this 17th day of January 2014 at the Malcolm Theater, College of Law, University of the Philippines.

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