



# Mainstreaming Land Rights as a ‘Human Right’ in South East Asia

Condensed from *Mainstreaming Land Rights as a ‘Human Right’* by Dr. Dianto Bachradi of Komnas Ham (National Commission on Human Rights of Indonesia).

**T**he right to land is significant with regard to respecting, protecting and fulfilling human rights.

Right to suitable shelter, adequate food, clean water, a safe and sustainable environment, and other basic human rights are strongly dependent on access and control over land.

Freedom of opinion and expression, peaceful assembly and association, and political rights are also affected by land tenure systems. In communities with unequal land distribution, landlords can control politics and harm civil and political rights of the people, especially the landless.

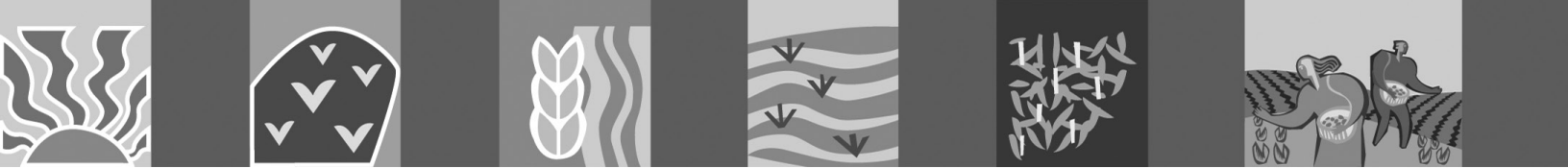
Armed conflicts cause displacement and destruction of land and other land-related

resources and facilities, including water sources, housing, livestock and crops. Occupying powers often restrict land tenure of residents in occupied areas.

In order to promote economic, social and cultural rights, it is the State’s obligation not only to respect and protect individual or collective rights over their territory, but also provide sufficient land for people who need it as their primary source of livelihood.

## **Land Rights in the Context of Human Rights**

While the right to land is not explicitly a human right, the 1948 Universal Declaration of Human Rights (UDHR) pointed the need to respect property. It states that “everyone has the right to own property alone as well as in association



with others” (Article 17:1) and “no one shall be arbitrary deprived of his property” (Article 17:2).

In the United Nations International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified in 1966, right to property is only taken as a part of non-discrimination clauses.

Article 1:2 of the ICESCR states that “All people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations.... In no case may people be deprived of its own means of subsistence”. Article 11:2 states that “the State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed: ... by developing

or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources ...”.

Regardless of the absence of a stand-alone human right to land, existing international human rights standards and other relevant international statutes address a wide range of land issues. References to land are made in relation to the right to food, equality between women and men, protection of internally displaced persons, and the rights of indigenous peoples and their relationship with their ancestral lands.

In many ways United Nations human rights treaty monitoring bodies and special rapporteurs have addressed land issues. They relate land issues to various rights, including non-discrimination and the rights to adequate housing, food, water, health, work, freedom of opinion and expression, and self-determination, as well as the right



***“Rights of indigenous people to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”***

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to participate in public affairs and cultural life (OHCHR 2015a: 4).<sup>1</sup>

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has a detailed property clause, and includes conditions for permissible State interference (Article 15).

Protection of rights to land in relation to conflicts and natural disasters was taken into account in international humanitarian laws. The UN Convention and Protocol Relating to the Status of Refugees, Guiding Principles on Internal Displacement, and Principles on Housing and Property Restitution for Refugees and Displaced Persons includes provisions on the rights of refugees to residence, property, housing and freedom of movement that are applicable to land. (UN-OCHA 2004, UN-Habitat 2009).

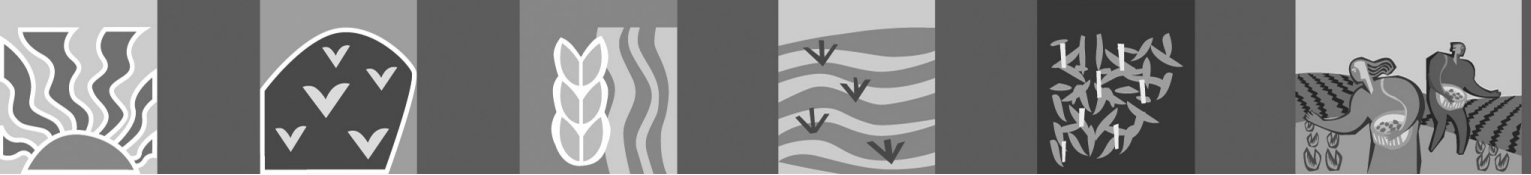
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<sup>1</sup> In one important publication on land and human rights, Office of the UN High Commissioner for Human Rights (OHCHR) considered 20 short illustrations about links between some legally binding and non-binding human rights instruments and land issues, along with examples of the concrete application of such standards to land issues. See OHCHR 2015a.

The Guiding Principles on Internal Displacement (UN Economic and Social Council 1998) and the Principles on Housing and Property Restitution for Refugees and Displaced Persons (UN Economic and Social Council 2005) offer guidance on measures to be taken to comply with the rights of displaced persons and refugees to the restitution of their housing, property and land.

International human rights law provides specific standards on the rights of indigenous peoples and their relationship with their ancestral lands or territories. Some articles in the 1989 Indigenous and Tribal Peoples Convention of the International Labor Organization (ILO Convention No. 169) strongly articulate rights of indigenous peoples to control, manage and use their customary land, and the State obligation to respect it (Article 16:1). In addition, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them “directly” (Article 7:1).

Rights of indigenous people to “the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources” (Article 15:1 of the ILO Convention No. 169). “In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any program for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall, wherever possible, participate in the benefits of such activities, and



shall receive fair compensation for any damages, which they may sustain as a result of such activities” (Article 15:2 of the ILO Convention No. 169).<sup>2</sup>

“Lands” in this ILO Convention No. 169 includes the concept of territories, which covers the total environment of the areas which the people concerned occupy or otherwise use (Article 13:2), and the Government shall respect the collective aspect of this relationship, between culture and spiritual values and their lands or territories (Article 13: 1).

In order to respect the right to food, the FAO in 1994 mentioned that the “State should take measures to promote and protect the security of land tenure, ... (and) special consideration should be given to the situation of indigenous communities” (FAO 2005: 18).

The newest instrument covering the rights of indigenous people on land and their territories and all related individual and collective rights as well as cultural rights and identity is the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration acknowledges rights of indigenous people over lands, territories and resources they have traditionally owned, occupied or otherwise used (Article 26:1), including those they possess by reason of traditional ownership or other traditional occupation or use (Article 26:2).<sup>3</sup> This Declaration requires States parties to give legal recognition and protection to these lands, territories and resources (Article 26:3), and require the State to establish and implement mechanisms recognizing and adjudicating indigenous peoples’ rights in relation to their lands, territories and resources (Article 27).

<sup>2</sup> See also article 19 of this Convention.

<sup>3</sup> See also article 25.

In case of any actions that will deprive indigenous people from their lands, territories or resources for any reasons, including military activities<sup>4</sup>, the UNDRIP requires the State to provide effective mechanisms for prevention (Article 8:2b). The Declaration also said that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (Article 19).<sup>5</sup>

Prior to UNDRIP, the importance to recognize IP rights on land had been mentioned in the 1992 UN Convention on Biological Diversity (UN-CBD)<sup>6</sup> and in the 1992 Rio Declaration.<sup>7</sup>

<sup>4</sup> Article 30:1 strongly mentioned, “Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.”

<sup>5</sup> See also article 32.

<sup>6</sup> The 1992 UN-CBD is an international legally binding treaty with three main goals: conservation of biodiversity; sustainable use of biodiversity; and the fair and equitable sharing of the benefits arising from the use of genetic resources. Its overall objective is to encourage actions that will lead to a sustainable future. Nowadays 193 countries are state-parties of the 1992 CBD, including 10 ASEAN countries. Indonesia and the Philippines ratified this Convention on 1994, while Cambodia has been in accession status since 1995 (<https://www.cbd.int/information/parties.shtml>). For short but compact brief on this Convention see the UN Environment Programme (UNEP) Factsheet on CBD available at <https://www.cbd.int/undb/media/factsheets/undb-factsheets-en-web.pdf>.

<sup>7</sup> The 1992 Rio Declaration on Environment and Development was a document signed by 170 countries as result of the UN Conference on Environment and Development held in Rio de Janeiro of Brazil, 3-14 June 1992. This Declaration was formulated succinctly an interdependency of human nature and environment including an agreement to respect and protect environment in development process, which rights of the IPs is recognized. Details of this Declaration can be seen at UNCED 1992 or <http://www.unep.org/documents.multilingual/default.asp?documentid=78&articleid=1163>.





Within 27 principles of the Rio Declaration, recognition of IP knowledge and traditional practices on environmental management are recognized, specifically in Principle 22: “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and fully support their identity, culture and interests and enable their effective participation in the achievement of sustainable development”.

The 1992 UN-CBD, the 1992 Rio Declaration, and the Agenda 21<sup>8</sup> are the first international legal standards to protect IP rights on their traditional knowledge and practices on environmental management and conservation, which cannot be

implemented without recognition of their rights over their lands and territories. In fact, various indigenous peoples live in many of the areas of highest biological diversity. It is widely accepted that biological diversity cannot be conserved without cultural diversity.

With regards to the right to food, the UN-FAO formulated guidelines to support progressive realization of this right.<sup>9</sup> It mentions that

<sup>8</sup> Agenda 21 is a non-binding, an international blueprint voluntary implemented action plan of the UN and its country-members, other international organizations, industries and communities on sustainable development. The objective of Agenda 21 is the alleviation of poverty, hunger, sickness and illiteracy worldwide while halting the deterioration of ecosystems. Agenda 21 is another result of the 1992 UN Conference on Environment and Development held in Rio de Janeiro of Brazil, 3-14 June 1992. Other instruments produced and signed during this conference are the 1992 Rio Declaration and the 1992 UN-CBD (see notes 12 and 13 above). See UNCED 1992 for detail of the Agenda 21 and Rio Declaration documents.

<sup>9</sup> This document is Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of national Food Security, adopted by the 27<sup>th</sup>

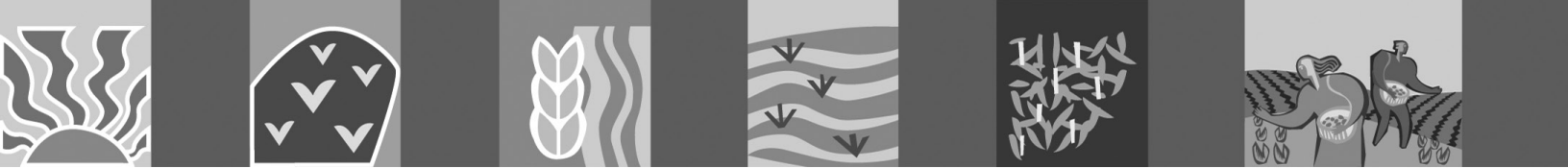


respecting, promoting and protecting access to land is vital to fulfill the right to food. “The progressive realization of the right to adequate food requires States to fulfill relevant human rights obligations under international law” (FAO 2005:5), and “where poverty and hunger are predominantly rural, States should focus on sustainable agricultural and rural development through measures to improve access to land, water, appropriate and affordable technologies, productive and financial resources, ...” (Guidelines 2.6, FAO 2005:10). States should implement inclusive, non-discriminatory economic, agriculture, fisheries, forestry and land-use policies, including a land-reform policy (Guideline 2.5, FAO 2005:10). Regarding land reform, Guideline 8.1 says: “States should carry out land reform and other policy reforms consistently with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth” (FAO 2005:16).

In case of any unavoidable eviction or relocation, human rights experts insists that “States should  

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Session of the FAO Council, November 2004.



***“The UN Special Rapporteur on the Right to Food... had emphasized that access to land and security of tenure are essential for the enjoyment of the right to food....”***

secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection against the practice of forced evictions for all persons under their jurisdiction. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups.

These obligations are of an immediate nature and are not qualified by resource-related considerations”... and “States should refrain from introducing any deliberately retrogressive measures with respect to de jure or de facto protection against forced evictions”<sup>10</sup> (COHRE 2002: 127).

### **UN Special Rapporteurs’ Highlights on Land Rights**

There are various mechanisms within the UN human rights system to review, examine, evaluate and consider the progress and/or deterioration of fulfillment and protection of human rights such

<sup>10</sup> Originally this text appeared in a document of “The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement”, adopted by expert seminar on the practice of forced evictions, held in Geneva, Switzerland, 11-13 June 1997.

as: Universal Periodic Review, advisory committee, treaty bodies, and ‘special procedures’.

‘Special procedures’ is a mechanism on specific issues/themes of human rights or on a specific country.<sup>11</sup> There are various mandate holders of this ‘special procedure’, i.e. Special Rapporteur, independent expert, and working group.<sup>12</sup> Their points of view, opinions, and suggestions form part of standpoints of the UN Human Rights Council regarding the issue attached to the Rapporteurs.

The UN Special Rapporteur on the Right to Food, in his report to the UN General Assembly, submitted in accordance with General Assembly resolution 64/159, had emphasized: “Access to land and security of tenure are essential for the enjoyment of the right to food... while security of tenure is indeed crucial, individual titling and the creation of a market for land rights may not be the most appropriate means to achieve it... (and) strengthening of customary land tenure systems and the reinforcement of tenancy laws could significantly improve the protection of land users... (and) the importance of land redistribution for the realization of the right to food” (UN 2010a, *Summary*, A/65/281).

In another report (presented to the UN Human Rights Council, document A/HRC/13/33/Add.2), the Special Rapporteur on the Right to Food stated that the State would be acting in violation

<sup>11</sup> As of 30 September 2016 there are 43 thematic and 14 country mandates. Among others themes are ‘right to food’, ‘right of adequate housing’, ‘right to safe and clean drinking water and sanitation’, ‘extreme poverty and human rights’. See <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx> and [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM).

<sup>12</sup> It is an authority of the UN Human Rights Council to form or appoint holders of ‘special procedure’.



of the human right to food by leasing or selling land to investors (whether domestic or foreign) because it would deprive local people access to productive resources fundamental for their livelihood (Schutter 2009: 2).

It is clear as well that access to land and security of tenure is needed in order to realize the right to adequate housing for all. One of principles of the Vancouver Declaration, as produced by the 1976 UN Conference on Human Settlement clearly states “land is one of the fundamental elements in human settlements” (Principle 10).<sup>13</sup>

The UN Special Rapporteur on ‘extreme poverty and human rights’ re-articulated a strong interrelation between poverty and human rights. In its report to the UN General Assembly in 2015, the Special Rapporteur strongly mentioned the consequences of extreme inequality and the detrimental effects of economic inequalities on the enjoyment of human rights.

### **Regional Human Rights Mechanisms Dealing with Land Issues**

According to the UNHCHR, certain human rights bodies – at international, regional and national levels – have undertaken a judiciary role and its attendant functions (OHCHR 2015b).

For instance, the African Commission on Human and People’s Rights has had legal decisions over cases related to the rights of minority groups

and indigenous peoples on land in cases of the Ogoni people vs. State of Nigeria (2002), rights of minority group vs. State of Kenya (2003), and forced eviction in Darfur province of Sudan (2010). The European Committee on Social Rights has had legal decisions on cases of forced eviction of Roma communities from land used for nomadic, temporary housing, as well as the issue of inadequacy of temporary camping sites for nomadic Roma in Italy (2005) and Greece (2006).

The Inter-American Commission on Human Rights has had various legal decisions on cases of both indigenous and non-indigenous peoples against State decisions and private company operations. Examples are: the case of foreign companies encroaching on indigenous lands of the Yanomami communities of Brazil (1985) and the recognition of communal land rights of three indigenous communities in Paraguay.

These examples on judicial decisions made by regional Commissions on Human Rights have shown that even if land rights are not codified as human rights, the Commissions can make decisions based on economic, social and cultural rights, civil and political rights, the rights of indigenous and minority people, and the rights to development.

### **Human Rights Mechanisms in Southeast Asia**

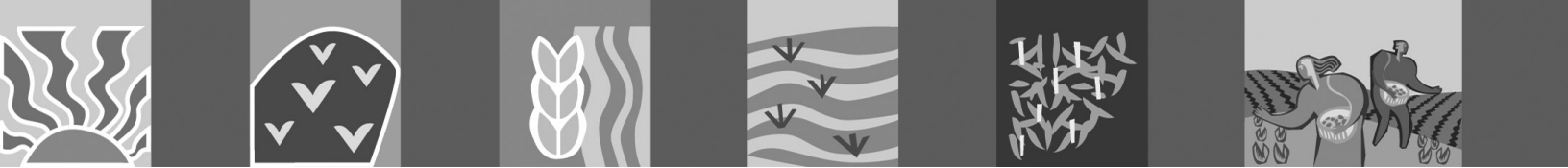
#### ***ASEAN Charter and Human Rights Declaration***

In November 2007, the ASEAN Charter was signed and turned ASEAN into a legal entity in order to create a ‘single community’<sup>14</sup> and ‘single free-trade area’ in the region. In the first article of the Charter are several purposes, which are directly and indirectly connected to human rights issues. Among these are: to alleviate poverty and narrow

<sup>13</sup> The Vancouver Declaration on Human Settlement and the Action Plan was formulated in the UN Conference on Human Settlement, held in Vancouver of Canada, 31 May – 11 June 1976. This declaration then adopted by General Assembly of the UN as Resolution 31/109, 16 December 1976. Complete document of this declaration can be found at <http://habitat.igc.org/vancouver/van-decl.htm>, while the UN-GA Resolution can be found at <http://www.un-documents.net/a31r109.htm>

<sup>14</sup> ASEAN Community was established in 2015.





***“...the issue of human rights promotion and protection was raised 10 years before the ASEAN Charter, when the Hanoi Action Plan (HPA) 1997 was drawn up....”***

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the development gap within ASEAN; to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and responsibilities of the Member States of ASEAN; among others (ASEAN Secretariat 2008).

The Charter is also the basis for the formation of an ASEAN Community based on ‘socio-cultural diversity and national sovereignty’. That is why there are two important principles in the 2007 ASEAN Charter, which are: ‘emphasize respect for independence and sovereignty’ (Article 2:2a) and ‘non-interference in the internal affairs of ASEAN Member States’ (Article 2:2e). The ‘non-interference’ principle is quite problematic in that it becomes a reason for the State to “not open the door” to other member-states or the international community when problems occur in the country, including human rights issues.

Although not specifically stated in the 2012 ASEAN Human Rights Declaration (AHRD), the ‘non-interference principle’ is reflected in paragraph 39 of the Declaration<sup>15</sup>.

The establishment of an ‘ASEAN Human Rights Body’ was stated in the 2007 ASEAN Charter

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<sup>15</sup> See also review of the American Bar Association on the AHRD (American Bar Association 2014: 4).

(Article 14:2). In addition, an action plan to form an ASEAN human rights institution was outlined in the ‘ASEAN Political-Security Community Blueprint’, under the section of Cooperation in Political Development – Protection and Promotion Human Rights (Section A.1.5) (ASEAN Secretariat 2009a: 1 and 5).<sup>16</sup>

In fact, the issue of human rights promotion and protection was raised 10 years before the ASEAN Charter, when the Hanoi Action Plan (HPA) 1997 was drawn up in order to implement ‘ASEAN Vision 2020’. Yet the HPA only mentioned about exchange of information in the field of human rights among ASEAN Countries (ASEAN Secretariat 2014: 7).

The High Level Panel on an ASEAN Human Rights Body then drafted the Terms of Reference (TORs) of ASEAN Intergovernmental Commission on Human Rights (AICHR), which was adopted during the ASEAN Ministerial Meeting in 2009 (ASEAN Secretariat 2014: 10). However, the TORs were heavily criticized for adhering to the ‘non-interference principle’ (Ramcharan 2010: 204).

Eventually established in 2009, the AICHR acts as the overarching human rights institution in ASEAN, with “the overall responsibility to promote and protect human rights and fundamental freedoms, and also deals with all categories of human rights such as political, civil, economic, social, and cultural rights, including rights of different groups” (ASEAN Secretariat 2014: 24).

One of mandates and functions of AICHR is to develop a draft of the ASEAN Human Rights

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<sup>16</sup> ASEAN Political-Security Community (APSC) is one of the three pillars of the ‘ASEAN Community’. Two others are ASEAN Economic Community (AEC) and ASEAN Socio-Cultural Community (ASCC). See ASEAN Secretariat 2009a: 1 and 2014: 3-4).





Declaration (AHDR) (ASEAN Secretariat 2009b: 6), which was adopted on 18 November 2012. There was nothing groundbreaking in the Declaration, as it mostly covered rights as indicated in the International Bill of Human Rights, minus the right to self-determination and right to freedom of association,<sup>17</sup> plus two accentuations on right to development and right to peace.

In practice, the AICHR is basically a consultative body (ASEAN Secretariat 2009b: 6), and “members of the AICHR are Representatives of the Member States of ASEAN, accountable to their respective Governments...”; they are “referred to as Representatives and not Commissioners.” (ASEAN Secretariat 2014: 23). Decision-making in the AICHR is based on consultation and consensus (ASEAN Secretariat 2014: 10).

As a consultative body, it has no formal compliance or enforcement procedures. It has no mechanism through which ASEAN people may submit complaints in order to seek justice and remedies for human rights violations.

Based on its TORs and two five-year plans, AICHR activities focuses only on strengthening internal aspects of the organization, preparing drafts of human rights documents, consulting with various stakeholders,<sup>18</sup> conducting training activities, and developing thematic studies. There are 11 themes within AICHR’s concern, and land rights never appeared in both of its five-year plans.<sup>19</sup>

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<sup>17</sup> According to American Bar Association that conducted a research to analyze ASEAN Human Rights Declaration, “both rights were included in initial drafts of the AHRD but failed to make it through negotiations between the ASEAN member state representatives ...” (American Bar Association 2014: 120).

<sup>18</sup> In the first five-year activities, consultation with NGOs and civil society organizations is not included. It has been started in the second five-year plan of activities.

<sup>19</sup> In the first five years, these themes are: corporate social responsibility, migration, human trafficking, child soldiers,

In 2010, another commission within ASEAN was formed, namely the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). However, both AHRD and AICHR have no strong impact on human rights promotion and protection within the region. The main criticism to these regional mechanisms are their role in protection – a critical function of human rights mechanisms (Eldridge 2002; Durbach, Renshaw and Byrnes 2009; Ramcharan 2010, American Bar Association 2014, and Gomez and Ramcharan 2016).

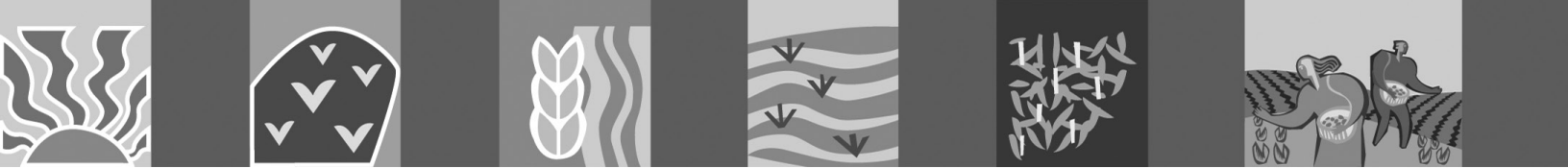
As a non-binding declaration, the AHRD does not legally undermine obligation of the ASEAN Member States under UN and other international treaties”. It “does not create enforceable rights or protections for people within ASEAN, and does not create a body to interpret and apply the Declaration progressively” (American Bar Association 2014: 1).

### ***SEANF and Land Rights Issues***

Five of 10 State Members of ASEAN have established independent National Human Rights Institutions (NHRI): the National Commission on Human Rights of Indonesia (KOMNAS HAM), the Commission on Human Rights of the Philippines (CHRP), the National Human Rights Commission of Thailand (NHRCT), the Human Rights Commission of Malaysia (SUHAKAM), and the Myanmar National Human Rights Commission (MNHRC).

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vulnerable groups in conflicts and disasters, juvenile justice, right to information in criminal justice, right to health, right to education, right to life and right to peace. While for the 2<sup>nd</sup> five years, themes of corporate social responsibility and child soldiers are gone and replace by themes of legal aid and freedom of religion and belief. Of these study themes, only few themes has done and produced kind of reports.



In June 2007, four NHRIs<sup>20</sup> signed the ‘ASEAN NHRI Forum Declaration of Cooperation’ (Bali Declaration) in which they agreed to “carry out jointly or bilaterally, programs and activities in areas of human rights of common concern” (*para* 1, Preamble of Rules of Procedure for the SEANF<sup>21</sup>). This forum was expanded when the Provedoria for Human Rights and Justice (PDHJ) of Timor Leste and the Myanmar National Human Rights Commission (MNHRC) joined in 2009 and 2012, respectively.

As a sub-regional network, SEANF seeks to promote and protect human rights in South East Asia through collaborative framework and undertaking joint projects or activities to address issues of common concern, such as: suppression of terrorism while respecting human rights and human trafficking, among others.

### ***Some Regional and NHRI Initiatives***

Some initiatives at national and regional levels were undertaken by civil society organizations, groups of victims and survivors, and National Human Rights Institutions in an attempt to highlight security of land rights as human rights problems, to wit:

***Special Rapporteur on Agrarian Issues in Indonesia.*** KOMNAS HAM has developed a human rights mechanism called ‘special reporting’, which in practice is replicating the UN special procedure mechanism.<sup>22</sup> Mandate-holders of this procedure

<sup>20</sup> They are Komnas HAM of Indonesia, CHR of the Philippines, SUHAKAM of Malaysia, and NHRC of Thailand.

<sup>21</sup> During the 5<sup>th</sup> Annual Meeting in Manila on 2008, they adopt ASEAN NHRI Forum (ANF) as the official name and at the 6<sup>th</sup> Annual Meeting in 2009 its name was change to Southeast Asia NHRI Forum (SEANF) to give emphasize to the geographical sub-region.

<sup>22</sup> On ‘special procedures’ in the UN human rights system, see again page 12.

are also called Special Rapporteur (*Pelapor Khusus*). They have the authority to evaluate a human rights related situation in a certain area, or related to a certain issue prioritized by the Commission, and make a recommendation to the government in order to change related policies.

***National Inquiries on Indigenous People’s Rights on Land in Malaysia and Indonesia.*** A National Inquiry is “an investigation into a systemic human rights problem in which the general public is invited to participate” (Sidoti 2012: 5). This method has been developed within human rights mechanisms. As a method of investigation, a National Inquiry is quite effective (in theory) to support the role of the NHRI to perform its functions to protect and fulfill the rights of the people in certain issues. The National Commissions on Human Rights of Indonesia and Malaysia have implemented this method to inquire into justice for indigenous peoples in both countries. The National Commission on Human Rights of Malaysia (SUHAKAM) conducted a national inquiry on the rights of indigenous people (December 2010 to June 2012), while KOMNAS HAM conducted a similar inquiry in 2014-2015.<sup>23</sup>

***Bali Declaration on Human Rights and Agribusiness in Southeast Asia.*** From November 28 to December 1, 2011, CSOs and NHRIs from Southeast Asia gathered and shared their

<sup>23</sup> Both inquiries produced voluminous reports: “Report of the National Inquiry Into the Land Rights of Indigenous Peoples”, 174 pages + annexes, for the Malaysian initiative (see Suhakam 2013); while Indonesian initiative produced 4 books of report, titled “Inkuiiri Nasional Komnas HAM, Hak Masyarakat Hukum Adat atas Wilayahnya di Kawasan Hutan” (Komnas HAM National Inquiry on Indigenous Peoples’ Territories in Forestry Area), 1,290 pages in total (see Komnas HAM 2016). Komnas HAM’s report includes a report made by the National Commission on Women Rights (National Commission on Anti-Violence Against Women) on “Violation of the Rights of Indigenous Women to Manage the Forest”.



experiences, knowledge and analysis about human rights and agribusiness expansion in the region.<sup>24</sup> Participants of the Bali workshop work with the UN Human Rights Council to continue its engagement in the business and human rights agenda and pursue “appropriate roles and responsibilities of States and businesses with regards to human rights and the rights of victims to access remedies emanating from the ‘Protect, Respect, Remedy’ Framework.”<sup>25</sup>

**Asian Peoples Land Rights Tribunal.** The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Land Watch Asia (LWA) and OXFAM GROW campaign, in collaboration with the University of the Philippines conducted the ‘Asian People’s Land Rights Tribunal’ from January 16-17, 2014. With its theme “Land Rights are Human Rights”, the Tribunal, with the help of a ‘Panel of Experts’ examined four cases from Indonesia, the Philippines and Cambodia.<sup>26</sup> The Panel of Experts then concluded that the cases examined represented “a picture of alarming situation of human rights in the three ASEAN countries, particularly involving corporations and other business enterprises in which powerful local and foreign interests are involved.” The Tribunal encouraged dialogues and fact-finding missions, articulated the voices of the marginalized

and affirmed universal and customary rights, values and principles expressed in international declarations and laws ratified by governments.<sup>27</sup>

**2014 Regional Workshop on Mainstreaming Land Rights as Human Rights.** ANGOC, SEANF, and the International Land Coalition (ILC), together with CSOs from Indonesia and Cambodia, conducted a regional workshop to highlight the relationship between land rights and human rights.<sup>28</sup> This workshop produced a political communiqué formally delivered to all governments of ASEAN country members and the ASEAN Secretariat. In addition to that communiqué, all Commissioners and representatives of the Human Rights Commissions who attended the workshop agreed to bring the land issue to SEANF’s work plan and to continue efforts to encourage the Cambodian government and civil society to establish an independent national human rights institution in Cambodia that complies with the Paris Principle.<sup>29</sup>

**Land Watch Asia (LWA) and Land Reform Monitoring (LRM).** LWA and LRM are other civil society initiatives organized by ANGOC to monitor land problems, land-based advocacy and campaigns, and agrarian-related policy changes in Asia. With the involvement of organizations from seven countries, including three from Southeast Asia (Cambodia, the Philippines and Indonesia), these initiatives meet regularly to discuss various issues related to land problems in Asia and develop toolkits and manuals for CSO monitoring and investigations.<sup>30</sup>

<sup>24</sup> This meeting is Workshop on “Human Rights and Agribusiness: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform”, held in Bali of Indonesia, from 28 November to 1 December 2011. Workshop convenors are Komnas HAM, Sawit Watch, and Forest People Programme with partnership of Rights and Resources Initiative, Samdhana Institute, and RECOFT – the Center for People and Forests.

<sup>25</sup> Complete text of the Declaration is attached in the proceeding of the workshop (Chao and Colchester 2012: 318-330).

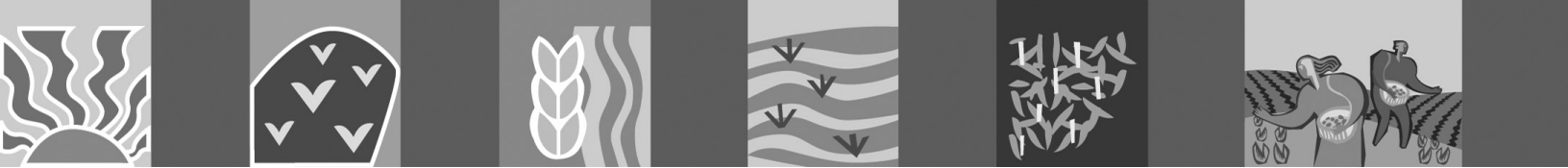
<sup>26</sup> They are 11 experts on law, politics, human rights, public information, environment, agriculture, philosophy, economics, and religious leader from Bangladesh, the Philippines, and Indonesia.

<sup>27</sup> The Tribunal also produced ‘The Diliman Declaration to Asian Peoples’ Land Rights’. See ANGOC 2014.

<sup>28</sup> The workshop title is “Mainstreaming Land Rights as Human Rights in ASEAN”, held in Phnom Penh, 16-17 September 2014.

<sup>29</sup> About the Paris Principles of the National Human Rights Institution, see again notes in the part 4.2. above.

<sup>30</sup> Some publications produced by these initiatives include biennial reports of the CSO Land Reform Monitoring. For more about these initiatives, see <http://angoc.org>



## Conclusion

The establishment of an ASEAN Community and integration of the Southeast Asia region as a free trade and investment area will not only lead to increase in capital flows and economic growth, flow and traffic of goods and services, as well as movement of population within the region, it also has the potential to increase human rights violations and abuses, human trafficking, discrimination, and environmental degradation.

Existing human rights mechanisms both at national and regional levels are still limited, apart from the reality that half of ASEAN country members do not have independent human rights institutions that comply with Paris Principles.

Furthermore, existing human rights mechanisms are inadequate to respond and provide protection to victims of agrarian conflicts.

The high number of human rights violations originating from agrarian injustice gives more impetus to ASEAN country members to recognize problems borne out of land conflicts as human rights problems.

While 'right to land' is not codified as an object of human rights, human rights experts, some UN Special Rapporteurs and the UN High Commissioner for Human Rights have mentioned that without clear and strong policies to protect and secure land rights, realization of various rights would be under threat. In a region like Southeast

Asia where many people still depend on land for their livelihood, security of land rights is a crucial issue. Land rights becomes a cross-cutting issue in order to protect and fulfill various human rights, and as a vessel for the implementation of interdependence and indivisibility principles of



human rights.

The ASEAN human rights system should be pushed strongly to be a system with appropriate mechanisms to respond to the region's rapid development. It should be a proper system with authoritative human rights law-making and law-enforcing bodies in order to respect, protect and fulfill the rights of people who depend on land for their very existence.

## Recommendations

Some of the following recommendations are focused on strengthening human rights mechanisms in Southeast Asia, not directly strengthening land rights. From a human rights perspective and as an institutional approach, strengthening human rights mechanisms to deal with land issues directly enhances the process to respect, protect and fulfill peoples' right to land. These are:

1. Strengthening advocacy and lobbying to ASEAN country-members with no NHRIs;

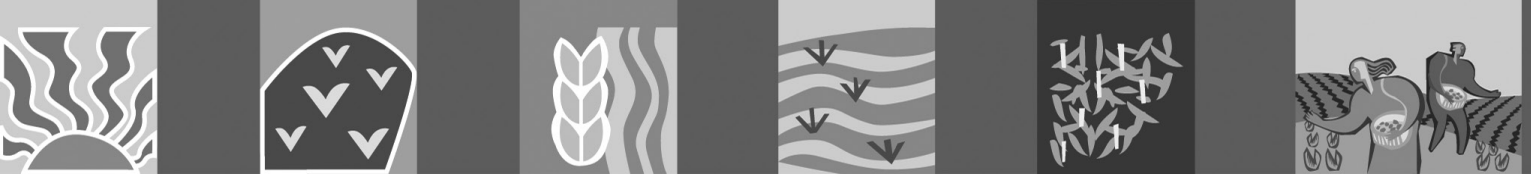




2. Bringing land issues into SEANF and AICHR regularly;
3. Encouraging SEANF to develop mechanisms for joint investigation and monitoring cases involving security of tenure, land grabbing and conflicts with transnational/trans-border dimensions; or develop regional mechanisms for land issues in the SEA region;
4. Lobbying the ASEAN governing body to revise the ASEAN Declaration on Human Rights;
5. Intensifying the regional campaign on land tenure; and,
6. For country members with established NHRIs, to: (a) come up with a special rapporteur or special unit within the Commission to conduct special procedures on issues relating to land; (b) conduct a national inquiry on IP rights and land-related problems; (c) take the lead in the formulation of a National Action Plan on Business and Human Rights that comply with the UN Guiding Principles on Business and Human Rights. ■

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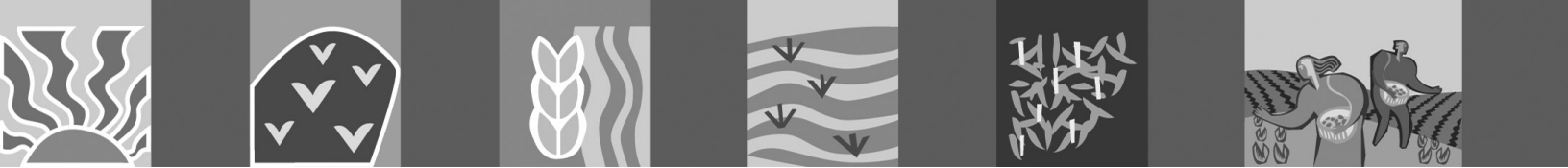


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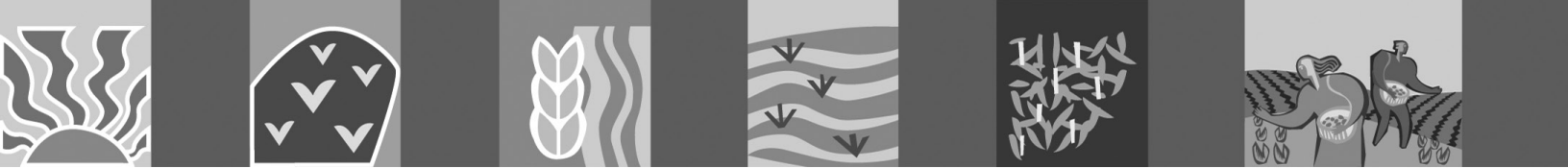


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