



# Regional summary: Mainstreaming the UNGP BHR in Asia<sup>\*</sup>

By Joel Pagsanghan

## Overview of the Study

About 75 percent of the world's farming households are in Asia, and about 80 percent of these are small scale farmers and producers (ANGOC, 2012). For them, land is the key to livelihood, and control over their own destiny. For many, it is even part of their identity. However, recent years have witnessed an increased demand for land, as governments and big business have pursued an export-oriented strategy founded in large measure on agricultural investments and natural resource exploitation. The result has been a marked increase in the number and intensity of land conflicts, with the rural poor often becoming victims of human rights violations.

On 16 June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights (UNGPs BHR) as part of implementing the UN "Protect, Respect, and Remedy" Framework. This was brought about by the realization that – at the peak of globalization – delineation of clear roles and responsibilities of business enterprises at the local, national, and international level are very important to ensuring human rights practice (OHCHR, 2011).

The UNGP BHR standards are relevant because the business sector has a wide range of impacts – both positive and negative – on human rights, including: 1) adequate standard of living; 2) just and favorable conditions of work; 3) water and sanitation; 4) education; 5) access to information; and, 6) non-discrimination (Gotzmann and O'Brien, 2013).

---

<sup>\*</sup> Prepared by Joel Pagsanghan, with inputs from the Asian NGO Coalition (ANGOC) and Land Watch Asia (LWA), for the regional initiative "Defending Land Rights and Human Rights Defenders." The document summarizes the major issues and recommendations from the papers on UNGP BHR in six countries in Asia, and the results of the discussions during the regional workshop "Engaging National Human Rights Institutions Toward the Promotion of Land Rights as Human Rights" (15-16 November 2018; Bangkok, Thailand).

### Citation:

Pagsanghan, J. (2018). Regional summary, Mainstreaming the UNGP BHR in Asia. In ANGOC (Ed.) *Upholding Land Rights Amidst the Land Rush: A situationer on the United Nations Guiding Principles on Business and Human Rights in selected countries in Asia* (pp. 11-30). Quezon City: ANGOC and KPA.



As a contribution to mainstreaming the UNGP BHR, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), in partnership with Land Watch Asia (LWA) members and International Land Coalition (ILC) members in Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines, are implementing the program **“Defending Land Rights and Human Rights Defenders.”** This initiative aims to contribute to the goal of reducing land rights violations and ensuring that the right to land is recognized as a human right – as land right organizations and communities become part of the regional and country dialogues.


At the country level, CSO partners engage NHRIs, the broader CSO community, and the government in the dialogue process in relation to the formulation and monitoring of UNGP BHR. Six country papers were prepared and discussed in five countries in order to: a) provide an overview of the relevance of the UNGP BHR in the context of land and agricultural investments, b) identify the challenges faced in mainstreaming the UNGP BHR, and c) formulate key recommendations from the consultation processes.

This study has the following objectives:

- ❑ provide an overview of the UN Guiding Principles for Business and Human Rights;
- ❑ describe the current status and process of adoption and implementation of the UNGP BHR in selected Asian countries; and,
- ❑ recommend ways to mainstream the UNGP BHR in these countries and in Asia in general.

## Methodology

This study was spearheaded by Land Watch Asia and the Asian NGO Coalition (ANGOC) as part of the advocacy campaign to have land rights recognized as human rights by the international community. This study covers six countries in Asia: Bangladesh, Cambodia, India, Indonesia, Nepal, and Philippines. For each country, experienced land rights advocacy NGOs conducted desk reviews, undertook field research, and drafted policy briefs on the status of UNGP BHR implementation. They also conducted country workshops in order to validate the research findings. Importantly, the CSOs also engaged their country’s national human rights institution (NHRI) – the independent human rights constitutional body. These conversations included



briefings on the UNGP BHR and joint planning on how these guidelines can be further advanced through policy and action. In some cases, the CSOs also succeeded in engaging the national human rights commission (NHRC) - the human rights instrumentality of the executive branch of government. Engagement with the NHRC is important, as it is the executive branch that implements law and policy.

In order to formalize and consolidate the advocacy partnership with NHRIs, the policy briefs were then presented at the *“Regional Workshop on Engaging National Human Rights Institutions Towards the Promotion of Land Rights as Human Rights”* held last 15-16 November 2018 in Bangkok, Thailand.

This paper summarizes the key findings and perspectives of the six country papers.

While much effort was exerted to obtain comprehensive information on the subject matter, the country papers reflect essentially a civil society perspective, specifically the perspectives of the CSO partners that conducted the studies. Finally, to some extent, the research process was constrained by limited financial resources, and occasionally, the inadequacy of government data on land conflict.

## Overview of UNGP BHR

In some instances, the impacts of business enterprises may be positive, such as increasing access to employment or improving public services. Or they can be negative, such as polluting the environment, underpaying workers, or forcibly evicting communities.

In 2008, the United Nations endorsed the *‘Protect, Respect, and Remedy Framework’* for business and human rights,<sup>1</sup> which recognizes unequivocally that States have the *duty* under international human rights law to *protect* everyone within their territory and *jurisdiction* over human rights abuses committed by business enterprises. This duty means that States must have effective laws and regulations to prevent and address business-related human rights abuses and ensure access to effective remedy for those whose rights have been abused.

The UN Framework also addresses the *responsibility* of businesses to respect human rights wherever they operate and whatever their size or industry.

---

<sup>1</sup> This framework was developed by then-Special Representative of the UN Secretary General, Professor John Ruggie, following three years of research and worldwide consultations with businesses, civil society, governments and victims of corporate human rights abuses.



Companies need to be aware of their actual or potential impacts, prevent and mitigate abuses, and address adverse impacts where they are involved. The UN Framework also makes the important clarification that the responsibility of businesses exists independently of the duty of State to protect human rights.


Finally, the UN Framework recognizes the fundamental right of individuals and communities to *access effective remedy* when their rights have been adversely impacted by business activities. States must ensure that the people affected have effective access to remedy with the court system or other legitimate non-judicial process. For their part, business companies should establish or participate in grievance mechanisms for these adversely affected individuals or communities.

In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, a set of guidelines to operationalize the UN Framework. Following the endorsement, the UN Working Group on Business and Human Rights, consisting of five independent experts, was assigned to guide the implementation of the UNGP BHR.

The UNGP BHR contain three pillars: **protect**, **respect**, and **remedy**. Each defines concrete, actionable steps for governments and companies to meet their respective responsibilities to prevent human rights abuses in company operations and provide remedies for such abuses.

**The State Duty to Protect.** States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations. States should set clear expectations that companies respect human rights in every country and context in which they operate. State actions shall include: (1) enacting and enforcing laws to require businesses to respect human rights; (2) creating a regulatory environment that facilitates business to respect human rights; and, (3) providing guidance to companies on their responsibilities. States should ensure that policies are coherent across its departments.

**The Corporate Responsibility to Respect.** The UNGP BHR affirm that business enterprises – regardless of size, sector, or location – must prevent, mitigate and, where appropriate, remedy human rights abuses that they are involved with, including those abuses that may have been carried out by their suppliers or partners. This requires that business enterprises have the necessary policies and processes in place to meet this responsibility. First, companies must institute a policy commitment to meet the responsibility to respect human rights. Second, they must implement human rights due diligence across their



operations, products and partners.<sup>2</sup> Third, they must have processes in place to enable remediation for any adverse human rights impacts they may have caused. Where businesses identify that they have caused or contributed to adverse impacts, they should cooperate in remediation through legitimate processes.

**Access to Remedy.** When a right is violated, victims must have access to an effective remedy. It is the duty of the State to ensure that domestic judicial mechanisms are able to address business-related human rights abuses effectively *and* do not erect barriers (such as, administrative fees or lack of language interpreters) that prevent victims from presenting their cases. A comprehensive State-based remedy system should also provide non-judicial grievance mechanisms to adjudicate business-related human rights complaints. Business enterprises should also provide for, or participate in, effective mechanisms to address grievances from individuals and communities who may be impacted adversely by the company's operations.

The UNGP BHR set out a list of effectiveness criteria for State- or business-based non-judicial grievance mechanisms. These criteria stipulate that effective grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, and rights-compatible. Simply put, they must provide genuine remedies for the victims of human rights violations by companies and must not amount to communications or political exercises.

The UNGP BHR provide a framework to protect the rights of peasants, indigenous peoples and other rural poor communities against the onslaught of agricultural land investments occurring in much of Asia today. It is in this context that ANGOC is advocating that land rights be considered as human rights.

## Land, Agriculture, and Conflict

Over the past decade or so, there has been an unprecedented large-scale acquisition of lands across the world, led by developed countries and transnational corporations. In 2016, Land Matrix documented 1,004 transnational land acquisitions covering 26.7 million hectares, of which 4.9 million hectares are in Asia.

---

<sup>2</sup> *Human rights due diligence* refers to the process of identifying and addressing the human rights impacts of a business enterprise across its operations and products, and throughout its supplier and business partner networks. Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations.



## Box 1: The main principles of UNGP BHR

### THE STATE DUTY TO PROTECT HUMAN RIGHTS:

#### Foundational Principles

- ❑ States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
- ❑ States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

#### Operational Principles: General State regulatory and policy functions

- ❑ In meeting their duty to protect, States should: (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; and, (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

#### The State-Business Nexus

- ❑ States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.
- ❑ States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.
- ❑ States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

#### Supporting business respect for human rights in conflict-affected areas

- ❑ Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; and (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

#### Ensuring policy coherence

- ❑ States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

- ❑ States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.
- ❑ States, when acting as members of multilateral institutions that deal with business-related issues, should: (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

## **THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS:**

### **Foundational principles**

- ❑ Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- ❑ The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.
- ❑ The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
- ❑ The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership, and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.
- ❑ In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

### **Operational principles: Policy commitment**

- ❑ As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that: (a) Is approved at the most senior level of the business enterprise; (b) Is informed by relevant internal and/or external expertise; (c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

### **Human rights due diligence**

- ❑ In order to identify, prevent, mitigate, and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence.



The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

- ❑ In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.
- ❑ In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action. (a) Effective integration requires that: (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise; and (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts. (b) Appropriate action will vary according to: (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; and (ii) The extent of its leverage in addressing the adverse impact.
- ❑ In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should: (a) be based on appropriate qualitative and quantitative indicators; (b) draw on feedback from both internal and external sources, including affected stakeholders.
- ❑ In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

### **Remediation**

- ❑ Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

### **Issues of context**

- ❑ In all contexts, business enterprises should: (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate; (b) Seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements; (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.
- ❑ Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.



## ACCESS TO REMEDY:

### Foundational principle

- ❑ As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

### Operational principles

- ❑ *State-based judicial mechanisms:* States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.
- ❑ *State-based non-judicial grievance mechanisms:* States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.
- ❑ *Non-State-based grievance mechanisms:* States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.
- ❑ To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.
- ❑ Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

### Effectiveness criteria for non-judicial grievance mechanisms

- ❑ In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be: (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights; and, (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Operational-level mechanisms should also be: (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

**Source:** *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy Framework"* (Read more at: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf))



According to Quizon and Ravanera (2017), there are three major factors driving this global rush for land. The first is the rise in world food prices that started in the 1990s and reached its peak in 2006-2008, triggering a global food crisis. In 2008, the food insecurity of food-importing countries intensified as the top food-exporting nations halted their exports from the world market in order to protect their own consumers. In response, wealthy import-dependent countries (such as Japan and Middle East countries) began acquiring farmlands overseas to directly produce their own food and reduce dependence on world markets. This land acquisition drive continues even after the food crisis had abated.

The second driver is the growth of the biofuel industry, which became attractive because of the sudden rise in oil prices and western governments' increasing support for renewable fuels. Rising world energy consumption, continuing instability in the Middle East, and China's rapid industrial growth have all contributed to rising oil prices.

Lastly, "large-scale land acquisition is also driven by logging, mining, real estate tourism and the creation of special economic zones and enclaves" (Quizon and Ravanera, 2017). Quizon and Ravanera (2017) assert that "host governments have welcomed these new land investments as a means to offset declining public investments in agriculture and a reduction in official development assistance for agriculture." In order to attract these foreign investments, cash-strapped governments offer tax holidays, subsidies, exemptions, repatriation of profits and other incentives.

"While foreign investors are typically large, wealthy transnational firms or rich governments, host countries are usually poor or embroiled in political conflict" (*Ibid*). A 2010 World Bank report noted that "investors are targeting countries with weak laws, buying arable land on the cheap, and failing to deliver promises on jobs and investments..."

It is in this context that human rights abuses also occur. Quizon and Ravanera (2017) aver that "many of these land deals are consummated outside of public knowledge and scrutiny. With little prior information or consultation, local communities are caught unaware until the moment when they are evicted or land clearing operations begin." It is also not uncommon for harassment or intimidation to be involved in getting communities to vacate lands. In various situations, military personnel, paramilitary units and private security forces have

been deployed to intimidate and coerce peasants, indigenous peoples (IPs), and other rural folk.

Another complicating factor is the poor over-all land administration prevailing in many Asian countries. This includes inefficient or corrupt bureaucracies, complicated and time-consuming procedures for land titling and dispute resolution, and outdated or conflicting land laws and policies.

The table below summarizes the various country contexts and describes the various situations where human rights abuses occur.

**Table 1: Country Context and Human Rights Issues**

Country	Issues
Bangladesh	<ul style="list-style-type: none"> <li>• There are at least 146 land-related laws that are complicated and sometimes contradictory.</li> <li>• The land administration system is characterized by inefficiency and corruption.</li> <li>• Three-quarters of all pending court cases in the country are related to land.</li> <li>• One percent of farming land lost each year through conversion and transfer of agricultural land, often through forged documents.</li> <li>• Indigenous peoples and other disempowered people often evicted from their land; land rights defenders are killed and women frequently raped by land grabbers; government is unable to provide protection due to lack of legislative measures.</li> <li>• Multi-national companies often fail to consult communities before undertaking projects.</li> <li>• Government also acquires fallow land for export-processing zones.</li> </ul>
Cambodia	<ul style="list-style-type: none"> <li>• Government support for special economic zones and economic land concessions have negatively impacted half a million Cambodians.</li> <li>• Some IPs are evicted because of infrastructure projects or land grabbing; others suffer from violations of social, economic, and cultural rights.</li> <li>• The country has long been criticized by international organizations for its poor human rights record.</li> </ul>
India	<ul style="list-style-type: none"> <li>• Agriculture is unproductive, accounting for only 17.9 percent of Indian GDP, but it employs over half the total population.</li> <li>• In order to boost economic growth, the country embarked on urbanization, both of which require land.</li> <li>• The Land Acquisition Law of 1984, meant to deal with land fragmentation, negatively affected the peasants and indigenous peoples; very low compensation was provided for lands acquired.</li> <li>• Land acquisition by business and government for industries and infrastructure is often done through the use of force.</li> </ul>
Indonesia	<ul style="list-style-type: none"> <li>• Land conflicts, mainly between small farming communities and corporations, have become widespread across Indonesia.</li> <li>• From 2004 to 2015, there have been 1,770 agrarian conflicts with a conflict area of 6,942,381 hectares, involving 1,085,751 households.</li> <li>• In 2017, the highest number of conflicts was recorded in the plantation sector (mostly in the palm oil industry). The 208 conflicts in the sector accounted for 32 percent of the total agrarian conflicts.</li> <li>• The land conflict brought various forms of human rights violations such as violation of the rights to freedom of expression, the right to security, the right to access information, and the right to freedom of movement. State violence consists of intimidation, harassment, criminalization, arbitrary arrest, torture, and shooting.</li> </ul>
Nepal	<ul style="list-style-type: none"> <li>• Traditional land and territories are not recognized by Nepalese laws and policies.</li> <li>• Land conflicts are often the results of complicated legal procedures, lack of awareness, loopholes and duplications in land laws.</li> </ul>



Country	Issues
Nepal (cont.)	<ul style="list-style-type: none"> <li>Violations of human rights by business noted in the areas of migrant work, brick kiln operations, corporal punishment in schools, undue fee structures in private schools, adulteration in commodities, workers' safety, hygiene and other rights in industries, child labor, environmental hazards, medical negligence, and undue charges for treatment, etc.</li> </ul>
Philippines	<ul style="list-style-type: none"> <li>Policies and guidelines in the Philippines encourage direct negotiations between rights holders and investors; in most cases, however, these transactions are not always transparent.</li> <li>Ambiguous land use policies and processes in place have resulted to overlapping jurisdictions among agencies, conflicting land claims, and consequent land rights abuses.</li> <li>The Philippines has been classified as the second deadliest country for land and environmental rights defenders in 2017.</li> <li>Continuing displacement and oppression of IPs, including manipulation of free, prior, and informed consent process.</li> </ul>

## Efforts undertaken to mainstream UNGP BHR

The following table summarizes government, CSO and private sector initiatives to advance the UNGP BHR in the six countries. For government, the initiatives consist of those undertaken by the independent human rights body (NHRI) or the human rights executive instrumentality (NHRC). The list below is not exhaustive, but based on information gathered by the CSO partners that conducted the studies.

**Table 2: Efforts to mainstream UNGP BHR**

Country	NHRIs/NHRCs	CSOs
Bangladesh	<ul style="list-style-type: none"> <li>NHRC has not institutionalized land rights as human rights. However, during the first meeting on “<i>Land Rights as Human Rights</i>” in July 2018, the NHRC Chairperson acknowledged the issue very positively and expressed the intention of NHRC to work together with CSOs.</li> </ul>	<ul style="list-style-type: none"> <li>CSOs convened three consultation workshops with NHRIs to promote the UNGP BHR. An advocacy plan to formulate the National Action Plan was created during these workshops.</li> </ul>
Cambodia	<ul style="list-style-type: none"> <li>State engaged CSOs on a discussion regarding the possible establishment of an NHRI (by National Assembly, Senate, Council of Ministers).</li> </ul>	<ul style="list-style-type: none"> <li>CSOs have already commenced discussions with the Cambodia Human Rights Committee on the establishment of an NHRI.</li> <li>CSO representatives initiated the establishment of a Working Group to promote the establishment of an NHRI.</li> <li>CSOs have already prepared a draft law for the establishment of NHRI, and it is now in the hands of government for further input and action.</li> <li>CSOs conducted awareness-raising activities on the UNGP BHR with relevant stakeholders.</li> </ul>

Country	NHRIs/NHRCs	CSOs
Cambodia <i>(cont.)</i>		<ul style="list-style-type: none"> <li>• CSOs conducted awareness-raising activities on the UNGP BHR with relevant stakeholders.</li> <li>• CSOs such as STAR Kampuchea, CCHR, LICADHO, ADHOC, and Equitable Cambodia all promote BHR by publishing factsheets, handbooks and reports.</li> </ul>
India	<ul style="list-style-type: none"> <li>• Conducted East Regional Conference on BHR, in cooperation with the Confederation of Indian Industry in June 2017.</li> <li>• Conducted National Conference on BHR in cooperation with Bharat Heavy Electricals, Ltd.</li> <li>• NHRCI nominated by Commonwealth Forum of NHRI/Cs to be focal point for BHR.</li> <li>• Series of meetings with the industry federations.</li> <li>• NHRCI developed a Self-Assessment tool to be used by business voluntarily.</li> </ul>	<ul style="list-style-type: none"> <li>• Conducted conversations with the business sector on impact of land grabbing.</li> <li>• Organized a Change Conference dialogue, led by Ethical Trade Initiative (awareness raising on BHR).</li> <li>• Conducted awareness-raising activities on FPIC related to BHR among CSOs.</li> <li>• Media coverage of displacement.</li> </ul>
Indonesia	<ul style="list-style-type: none"> <li>• Komnas HAM advocating for BHR not only in Indonesia but in Southeast Asia.</li> <li>• Coordinating Ministry for Economic Affairs mandated to synchronize economic policy and regulation with the UNGP BHR.</li> <li>• Ministry of Foreign Affairs organized a national seminar and symposium on BHR.</li> <li>• Ministry of State-Owned Enterprises convened a consultation on BHR to create adequate mechanisms to integrate human rights principles in State-owned companies.</li> <li>• The Financial Services Authority launched a Sustainable Finance Roadmap, aiming to develop an action plan for Indonesian banks to support an environmental-friendly funding supply.</li> <li>• Komnas HAM together with CSOs initiated the establishment of the National Action Plan on Business and Human Rights. However, Indonesian law provides that the Commission can only propose recommendations to the government.</li> <li>• Indonesia Sustainable Palm Oil established as a forum for BHR promotion in the palm oil industry.</li> </ul>	<ul style="list-style-type: none"> <li>• The Indonesia Business Council for Sustainable Development (IBCSD) established a Conflict Resolution Unit (CRU), a program which provides and facilitates mediation and long-term settlement.</li> <li>• The BHR Working Group, under the Indonesia Global Compact Network (composed of 22 companies and organizations) was established. The Working Group organizes periodic multi-stakeholder discussions to address BHR issues</li> <li>• Establishment of various CSO coalitions working and campaigning for BHR issues.</li> </ul>
Nepal	<ul style="list-style-type: none"> <li>• NHRC organized a Regional Conference on BHR in February 2017. They also conducted, in collaboration with the Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), a Consultation Meeting and Multi-stakeholder Dialogue in 2018.</li> </ul>	<ul style="list-style-type: none"> <li>• LAHURNIP works to promote the UNGP BHR in Nepal and has participated in the UN Business Forum. LAHURNIP works with affected communities especially indigenous peoples and business houses/energy producers. It has also published materials related to Business and Human Rights.</li> </ul>



Country	NHRIs/NHRCs	CSOs
		<ul style="list-style-type: none"> <li>The Community Self-Reliance Centre (CSRC) educates and organizes people who are deprived of their basic rights to land, and empowers them to lead free, secure, and dignified lives. CSRC works on the UNGP BHR issue and plans to assist in developing the National Action Plan to implement the UNGP BHR in Nepal.</li> </ul>
Philippines	<ul style="list-style-type: none"> <li>Philippine Human Rights Commission (PHRC) convened a consultation on NAP (November 2016), an international workshop (March 2017), and a joint workshop with CSOs to update stakeholders (January 2018)</li> <li>CHR convened various multi-sectoral for a to discuss UNGP BHR.</li> <li>CHR proposed amendments to Corporation Code, integrating BHR principles.</li> <li>CHR developing a monitoring tool for business compliance.</li> <li>CHR filed world's first ever national investigation on human rights harms caused by climate change, involving 47 carbon producers/fossil fuel companies</li> </ul>	<ul style="list-style-type: none"> <li>Organized a multi-sectoral Forum on March 2016.</li> <li>CSOs developed monitoring tools on business and human rights.</li> </ul>

## Status of the UNGP BHR

The table below summarizes the status of the UNGP BHR in the six countries as a result of the initiatives undertaken (discussed in the previous section). It is noteworthy that only one country (Indonesia) has formulated a NAP at this point, and one country (Cambodia) has not yet established an NHRI.

**Table 3: Status of UNGP BHR in Six Asian Countries**

Country	National Action Plan (NAP)	Remarks
Bangladesh	NAP formulation yet to be initiated	<ul style="list-style-type: none"> <li>Government policymakers lack awareness on the issue</li> </ul>
Cambodia	NAP formulation yet to be initiated	<ul style="list-style-type: none"> <li>Cambodia does not have an NHRI</li> </ul>
India	NAP formulation yet to be initiated	<ul style="list-style-type: none"> <li>NHRC has been criticized for lack of political independence</li> </ul>
Indonesia	NAP formulated by Komnas HAM	<ul style="list-style-type: none"> <li>Government should take the lead since Komnas HAM can only make recommendations;</li> <li>CSOs view the NAP as inadequate in terms of addressing land issues</li> </ul>
Nepal	NAP formulation yet to be initiated	<ul style="list-style-type: none"> <li>NHRC is advocating the adoption of a National Action Plan to implement the UNGP BHR</li> </ul>
Philippines	NAP formulation yet to be initiated	<ul style="list-style-type: none"> <li>PHRC stated that the country will prepare the 3<sup>rd</sup> Philippine Human Rights Action Plan 2018-2022</li> </ul>



## Challenges in Mainstreaming UNGP BHR

The first challenge in mainstreaming the UNGP BHR is insufficient knowledge and awareness on the part of government, business, and even civil society. Only a small group of stakeholders per country is active in UNGP BHR activities. In particular, business sector involvement in the conversation needs to be expanded.

In Nepal and Bangladesh, CSOs have just begun to engage their respective NHRIs on awareness building and initial planning activities. In the Philippines, CSOs and the NHRI have already done some amount of awareness-building, advocacy and even policy work, but the PHRC has yet to draft a NAP. There is also some progress in Indonesia, where the country's NHRI - Komnas HAM - has already drafted a NAP on BHR. However, Komnas HAM has only recommendatory powers, and more initiative is needed from the government. In India, the government has embarked on some BHR discussions as well, but the effectiveness and independence of the NHRC has been questioned. Perhaps Cambodia is in the most challenging situation, since the country does not even have an NHRI. All told, only one country (Indonesia), has drafted a NAP, and most of the CSO engagements with NHRIs/NHRCs are at the initial stages.

The general drift towards authoritarianism in Asia (and worldwide as well), also presents a challenging backdrop against which to promote the UNGP BHR. In Cambodia and the Philippines, democracy and human rights have taken major steps backward, and intolerance is also on the rise in India. In all of the six countries studied, repressive measures continue to be employed against rural communities and land rights defenders.

## Recommendations

The following table details the recommendations for mainstreaming the UNGP BHR at the regional (Asian) level. These recommendations were put forward during the regional workshop *“Engaging National Human Rights Institutions Toward the Promotion of Land Rights as Human Rights”* held on 15-16 November 2018 in Bangkok, Thailand.

At the regional level, the following actions are suggested:

**Table 4: Recommendations for mainstreaming UNGP BHR in Asia**

<p><b>Recommendations for the formulation of NAP by Governments</b></p>	<ul style="list-style-type: none"> <li>• Formulate and implement the NAP on BHR at the country-level, through multi-stakeholder processes.</li> <li>• Work with CSOs on BHR initiatives.</li> <li>• Engage businesses/private sector on BHR.</li> <li>• Conduct a regular review of the implementation of UNGP BHR at national and regional levels.</li> <li>• Implement and respect free, prior, and informed consent (FPIC).</li> </ul>
<p><b>Recommended code of conduct for regional/international bodies</b></p>	<ul style="list-style-type: none"> <li>• Encourage governments to sign the legally-binding instrument to regulate in international human rights law transnational corporations and business enterprises.</li> <li>• For regional bodies such as ASEAN, SAARC, SEANF, AICHR, and OHCHR to be proactive in addressing BHR issues, engaging both CSOs and the private sector in the dialogue processes.</li> </ul>
<p><b>Recommendations for joint CSO-NHRI/NHRC monitoring of BHR in land and agricultural investments</b></p>	<ul style="list-style-type: none"> <li>• Develop tools (such as the scorecard for land and agricultural investments) and indicators to monitor BHR implementation.</li> <li>• Look into the Convention on Biological Diversity (CBD) indicators on governments' compliance with its targets.</li> <li>• Continue writing case studies on business interests that affect land rights.</li> <li>• Monitor the compliance of corporate/private sector and governments to the UNGP BHR, and other international declarations (ex. Paris Accord), and international policies.</li> </ul>
<p><b>Recommendations for advocacy by CSOs</b></p>	<ul style="list-style-type: none"> <li>• Produce alternative/shadow reports on the implementation of BHR and other human rights tools/declarations.</li> <li>• Lobby national governments to protect CSOs and respect their freedom of expression.</li> <li>• Support the establishment of an independent NHRI in Cambodia.</li> <li>• Influence consumers to support and endorse businesses that abide by good business practices.</li> <li>• Begin studying and documenting China's and India's investments in the land sector in Asia.</li> </ul>

In particular, recommended actions for mainstreaming the UNGP BHR at the country level include:

**Table 5: Recommendations for mainstreaming UNGP BHR at national level**

Country	Popularization	Multi-Stakeholder Engagement	Policy Work
Bangladesh	<ul style="list-style-type: none"> <li>• NHRC to conduct an advocacy and awareness building campaign on the UNGP BHR with CSOs.</li> <li>• CSOs to promote the UNGP BHR through networking, policy advocacy, training and research.</li> <li>• Government and CSOs to publish communication materials and books; translate UNGP BHR and other related documents into the national language (Bangla).</li> </ul>	<ul style="list-style-type: none"> <li>• Government to form a national committee on UNGP BHR with representatives from NHRC/NGOs/NHRIs and other stakeholders.</li> <li>• Government and CSOs to generate commitment from political parties.</li> <li>• CSOs to build its knowledge and capacity in order to engage government more effectively and create widespread awareness and action.</li> </ul>	<ul style="list-style-type: none"> <li>• NHRC to assist the government in formulating the NAP, and monitor business agreements, laws, and policies relating to business and human rights.</li> <li>• NHRC to lead in identifying inactive laws, and to propose the amendment of laws or enactment of new laws in Parliament.</li> </ul>



Country	Popularization	Multi-Stakeholder Engagement	Policy Work
			<ul style="list-style-type: none"> <li>• State to draft policies/ laws/ legislations as per international and national instruments.</li> <li>• State to produce annual reports and develop monitoring mechanisms on the UNGP BHR.</li> </ul>
Cambodia	<ul style="list-style-type: none"> <li>• CSOs to conduct research and information dissemination on UNGP BHR.</li> </ul>	<ul style="list-style-type: none"> <li>• Government to convene a dialogue with UN &amp; CSOs on the implementation of UNGP BHR.</li> <li>• Private sector to comply with UNGP BHR.</li> </ul>	<ul style="list-style-type: none"> <li>• State to establish an independent NHRI and formulate a NAP on UNGP BHR.</li> <li>• For government to recognize the scorecard tool initiated by CSOs.</li> </ul>
India	<ul style="list-style-type: none"> <li>• Conduct studies to simplify adoption of UNGP BHR.</li> </ul>	<ul style="list-style-type: none"> <li>• NHRC to initiate dialogues with the business sector on BHR, in collaboration with CSOs working on land rights and environmental issues.</li> <li>• CSOs to engage media, policy makers, political parties, and other CSOs to build greater awareness and understanding of UNGP BHR.</li> </ul>	<ul style="list-style-type: none"> <li>• Government to fully adopt the UNGP BHR.</li> <li>• Government to conduct further consultations on the development of NAP on BHR.</li> </ul>
Indonesia	<ul style="list-style-type: none"> <li>• CSOs to continue collecting evidence and generating case studies on the implementation of UNGP BHR in the agriculture sector.</li> <li>• CSOs to continue advocating the formulation of NAPs, and monitoring the implementation of BHR.</li> <li>• CSOs to strengthen its capacity especially in understanding the corporate actions, complex structures, and supply-chains that affect human rights.</li> <li>• CSOs to monitor the implementation of the moratorium on the issuance of palm oil plantation permits.</li> <li>• CSOs to promote the creation of special institutions on conflict resolution, particularly with regard to human rights violation.</li> </ul>	<ul style="list-style-type: none"> <li>• NHRI to be at the forefront in implementing NAP in the judiciary, State corporations, regional governments and corporations.</li> </ul>	<ul style="list-style-type: none"> <li>• Revise the current NAP to clearly establish land rights as human rights.</li> <li>• Provide measurable performance targets and budget.</li> <li>• Expand the role and power of Komnas HAM, and increase its resource allocation. Komnas HAM needs to position itself in the front line of integrating land rights and human rights principles into policies and institutions.</li> <li>• Ministry of Law and Human Rights should adopt NAP on BHR into the NAP of Human Rights.</li> <li>• Local government should produce regulations with human rights perspective.</li> </ul>



Country	Popularization	Multi-Stakeholder Engagement	Policy Work
			<ul style="list-style-type: none"> <li>National and local government should implement the President's regulations pertaining to the moratorium on the issuance of permits for palm oil plantations.</li> <li>Encourage local governments to produce local regulations with human rights principles, especially because the regional government is the spearhead of the State in providing services to the rural farmers.</li> </ul>
Nepal	<ul style="list-style-type: none"> <li>The UNGP BHR should be widely disseminated by the government and private sector.</li> <li>NHRIs and civil society should play a significant role in promoting better understanding of the UNGP BHR and in preparation of the National Action Plan.</li> <li>Academe to conduct studies that would strengthen and simplify the adoption of the UNGP BHR such as: a) analyzing the gaps in existing Nepalese laws related to BHR and b) linking success of businesses to its observance of human rights.</li> <li>NHRC and CSOs to be active in promoting better understanding of UNGP BHR and in drafting the NAP.</li> </ul>	<ul style="list-style-type: none"> <li>Conduct extensive dialogue with relevant State authorities and business entities to generate better understanding and more effective implementation of the UNGP BHR.</li> <li>Conduct multi-stakeholder consultations to develop the National Action Plan.</li> <li>Conduct workshops among stakeholders, particularly the vulnerable sectors, and understand the ways in which they have been dealing with investors and business interests.</li> </ul>	<ul style="list-style-type: none"> <li>Relevant State authorities should lead the process of developing the National Action Plan to implement UNGP BHR, with business houses participating in the efforts of the State.</li> </ul>
Philippines	<ul style="list-style-type: none"> <li>Conduct workshops among vulnerable sectors on how they deal with investors/ business interests.</li> <li>Academe to analyze gaps in laws related to BHR; study how to link success of business to observance of human rights.</li> </ul>	<ul style="list-style-type: none"> <li>NHRI to develop collaborative platform to minimize adversarial handling of cases.</li> <li>CSOs to be involved in the discussions on the legally-binding instrument to regulate international human rights law for transnational corporations and business enterprises – sponsored by Department of Foreign Affairs.</li> </ul>	<ul style="list-style-type: none"> <li>NAP to be developed by PHRC.</li> <li>Government to issue guidelines promoting land rights as human rights.</li> <li>Immediate response to harm caused by mining and agri-business operations on IP lands.</li> </ul>



Country	Popularization	Multi-Stakeholder Engagement	Policy Work
			<ul style="list-style-type: none"> <li>• Government to sign the legally-binding instrument to regulate in international human rights law transnational corporations and business enterprises.</li> <li>• NHRI to harmonize various overlapping laws on BHR, using UNGP BHR as framework.</li> </ul>

## Conclusion

The UNGP-BHR, approved by the UN in 2011, provides a responsive framework to address the human rights violations occurring in the rural areas of Asia today. These violations are committed against peasants and indigenous peoples as they struggle to defend their land rights against the encroachments of big business and even government. This is why civil society, under the leadership of the LWA and ANGOC, are advocating that land rights be considered as human rights, and that all countries adopt the UNGP BHR.

At the country level, UNGP BHR adoption can be catalyzed and institutionalized through the drafting and implementation of NAPs. Though NHRIs are crucial in terms of advocacy and technical support, NAPs can only be implemented by governments, under the leadership of their respective NHRCs. It is the executive branch that has the mandate and power to execute law and policy. In addition, joint CSO-NHRI/NHRC monitoring of BHR in land and agricultural investments has also been proposed by the civil society sector.

At the regional (Asian) level, it is important for regional bodies such as ASEAN, SAARC, SEANF, AICHR, and OHCHR to be proactive in addressing BHR issues, engaging both CSOs and private sector in the dialogue processes. CSOs should also produce alternative/shadow reports on the implementation of BHR and other human rights tools/declarations.

There is much work to be done, as government-business-CSO engagement on the UNGP BHR is only at its initial stages. However, the activism of a lead group of CSOs, as well as the receptiveness of the NHRIs is a positive sign. Hopefully, sometime in the future, conflict in the countryside can be resolved and



economic prosperity can be attained by those who need it most – the rural poor rooted in the land. ■

## References:

- Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). (2012). *Securing the Right to Land: An overview on access to land in Asia*. Quezon City: ANGOC.
- Centre for Legislative Research and Advocacy (CLRA) and Ekta Parishad. (2018). *The United Nations Guiding Principles and the Business and Human Rights in India*. [Manuscript copy].
- Community Development Association (CDA). (2018). *UN Guiding Principles on Business and Human Rights: A Policy Brief Toward a Bangladesh Action Plan*. [Manuscript copy].
- Community Self-Reliance Centre (CSRC). (2018). *Introducing the UN Guiding Principles on Business and Human Rights in Nepal*. [Manuscript copy].
- Consortium for Agrarian Reform (KPA). (2018). *Transforming BHR National Action Plan into Practice in Indonesia*. [Manuscript copy].
- Gotzmann, N. and O'Brien, C. (2013). *Business and Human Rights: A Guidebook for National Human Rights Institutions*. International Coordinating Committee of National Human Rights Institutions (ICC) and Danish Institute for Human Rights (DIHR).
- Office of the United Nations High Commissioner for Human Rights (OHCHR). (2011). *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy Framework."* Geneva: United Nations.
- Quizon, A. and Ravanera, R. (2017). Land Governance and the Challenge of Inclusive Development in Asia In *Lok Niti, Journal of the Asian NGO Coalition*, Vol 20, No.1 (pp. 26-50). Quezon City: ANGOC.
- Sek, S. (2018). *Business and Human Rights Principles – Cambodia*. STAR Kampuchea. [Manuscript copy].
- Xavier Science Foundation (XSF) and ANGOC. (2018). *Towards a Philippine National Action Plan for the UN Guiding Principles on Business and Human Rights*. [Manuscript copy].