



# Asian People's Land Rights Tribunal

## “Land Rights are Human Rights”



16-17 January 2014  
Malcolm Theater  
College of Law  
University of the Philippines  
Diliman, Quezon City  
Philippines



## About the Tribunal Logo



**The Rooster.** According to the book, “Everyday Life in SouthEast Asia,” the rooster is a symbol of law and justice in traditional Toraja iconography, according to Ambena Landang, a well-known Toraja wood carver in Indonesia. The rooster is also embodied in the sarimanok, the Maranao symbol of a giant cock in Mindanao, Philippines. One of the myths associated with this symbol, which is believed to have

originated from Islam, is used in this logo. “According to the legend, Muhammad found a giant rooster in the first of the seven heavens... judgement day would come once this celestial rooster ceased to crow.” It is a well-known symbol that has become universal, and is indigenized here through the rooster or sarimanok. It holds in its beak a rice stalk to symbolize prosperity.

**The Lotus.** The rooster is shown standing on a stylized lotus. One of the symbolisms of the lotus motif is commonly associated with Hindu iconography. In this logo, it is used as a representation of eternal order and the union of earth, water and, sky, reminiscent of the cycles in farming and its reliance on the sun and water. “The lotus represents the life-giving power of water, and is also associated with the sun for the opening and closing of the petals...With the drying up of water, the lotus dies and with the rain it springs to life again.” “The lotus is” also “associated with purity and the goddess Laksmi, the goddess of good fortune and abundance.”

In Jainism and Buddhism, the lotus is a symbol of “perfection and purity, because its flowers grow in long stalks, high above the water, while its roots remain in the mud.” “With its roots in the mud, its stalk traversing the entire depth of the waters on which it rests its leaves, its flowers open to the light of the heaven, the lotus belongs to this world and to those above and below, to light, earth and water.” This singular property of the lotus makes it a transition symbol.”

The lotus here can depict a sounding block for rulings and proclamations guided by the principles of social equity and ecological sustainability, for the lotus symbolizes “eternal order” and “the union of earth, water and, sky.”

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*The logo of this Tribuna has been designed by Katti Sta. Ana .*



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This publication is a collaboration among the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Land Watch Asia Campaign, OXFAM East Asia GROW Campaign, University of the Philippines, UP College of Law, and the Pimentel Institute for Leadership and Governance (PILG). The publishers acknowledge the financial assistance of OXFAM and MISEREOR in the conduct of the Tribunal and for this publication.

The views expressed in this information product are those of the Tribunal Members and participants and do not necessarily reflect the views of the publishers.

ISBN 987-971-8632-45-1

ANGOC 2014

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ANGOC extends our sincere gratitude to the following individuals who helped us successfully organize the Asian People's Land Rights Tribunal:

#### **Cambodia**

- Mr. An Haiya, Sre Ambel - Koh Kong
- Mr. Am Sokha and Ms. Ny Sorphoneary - Cambodia Legal Education Center

#### **Indonesia**

- Mr. FK Irwan - Banggai Community
- Mr. Iwan Nurdin and Ms. Dewi Kartika - Konsorsium Pembaruan Agraria

#### **Philippines**

- Mr. Randy Catarman - Dinarawan Indigenous Peoples Organization
- Mr. Jaybee Garganera and Mr. Daniel Arias - Alyansa Tigil Mina (Alliance Against Mining)
- Members of SAMACA Fisherfolk in Aurora
- Fr. Joefran Talaban
- Mr. Soc Banzuela, Mr. Boy Riddao and Mr. Sam Fuellas - Pambansang Kilusan ng mga Samahang Magsasaka (PAKISAMA)

#### **University of the Philippines**

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- Atty. Gina Basilio-Resultay, Law Reform Specialist, UP Law Center
- Atty. Dante B. Gatmaytan, Professor, UP College of Law

- Ms. Elisa Ochoa, Head, Administrative Division, UP College of Law
- Prof. Oscar Ferrer, National College for Public Administration and Governance (NCPAG)
- Ms. Amor B. Manalang, Office of the Vice President for Public Affairs
- Mr. Kim Quilingquiling, University of the Philippines System Information Office
- Ms. Celeste Llaneta, University of the Philippines System Information Office

#### **Pimentel Institute for Leadership and Governance**

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Mr. Filomeno Sta. Ana III, Action for Economic Reforms, Philippines

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## Table of Contents

Introduction	6
Keynote Address	8
Message	11
Overview	13
The New Rush for Asia's Farmlands: Issues of Land Rights Security for the Rural Poor	16
Report of the Tribunal Panel	24
The Diliman Declaration	57
Tribunal Panel Members	59



## Introduction

The Asian People's Land Rights Tribunal was conducted last 16-17 January, 2014 at the Malcolm Theater of the University of the Philippines College of Law, Diliman, Quezon City, Philippines.

The Tribunal is composed of 133 participants representing communities, CSO partners of ANGOC, OXFAM's East Asia Grow campaign and Land Watch Asia, the academic community, and media.

As land grabs are increasing in Asia due largely to the growth in private sector investments in agriculture in the region, the Asian People's Land Rights Tribunal was organized to:

- a. provide a venue for land grab victims in Asia to present and discuss their grievances and expose accountability of institutions responsible for the land grab cases;
- b. gather eminent persons from around the region for an experts' discourse on violations of people's rights in land investment cases and develop recommendations to appropriate decision-making bodies at different levels;
- c. contribute to building community capacities on effective strategies in upholding rights vis-à-vis land investments in the region; and,
- d. raise public awareness on violation of smallholder rights within land investments happening in various Asian countries.

This initiative is a joint endeavour of the following: Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Land Watch Asia Campaign, OXFAM East Asia GROW Campaign, University of the Philippines Office of the Vice President for Public Affairs, UP College of Law, and the Pimentel Institute for Leadership and Governance (PILG).

The Panel/Tribunal members are:

- Senator Aquilino Pimentel, Jr., Tribunal Chair, former Philippine Senate President
- Prof. Sadeka Halim, Commissioner on the Right to Information, Bangladesh

- Vice-Chairperson Mr. Dianto Bachriadi, Commission on Human Rights, Indonesia
- Archbishop Antonio Ledesma, S.J., Archdiocese of Cagayan de Oro, Philippines
- Chancellor Michael Tan, University of the Philippines-Diliman
- Chancellor Ray Rovillos, University of the Philippines-Baguio
- Mr. Filomeno Sta. Ana, Executive Director, Action for Economic Reforms
- Prof. Dante Gatmaytan, College of Law, University of the Philippines-Diliman





## Keynote Address

Dr. Alfredo Pascual  
President  
University of the Philippines (U.P.)



Let me start by saying that UP is honored and privileged to be hosting the first ever tribunal on land rights. A tribunal that will focus attention on experiences with and violations on small holder rights brought about by the increasing land use practices and poorly regulated land investments in the various countries of the Asian region.

We have with us the distinguished members of the tribunal seated in front, led by esteemed former Senate President Aquilino Pimentel Jr., Indonesian Commission on Human Rights Vice Chairperson Dianto Bactriadi, Cagayan de Oro Archbishop Antonio Ledesma, UP's very own Dean Michael Tan<sup>1</sup> of the College of Social Sciences and Philosophy, Bangladesh Commission on the Right to Information Prof. Sadeka Halim, Chancellor Ray Rovillos of the University of the Philippines-Baguio, Mr. Filomeno Sta. Ana of the Action for Economic Reforms, and Prof. Dante Gatmaytan of the UP College of Law.

With your presence I am confident that this two-day event would be truly a great learning experience. But why should we be concerned with land rights, and the related human rights of farmers, fisherfolk and indigenous communities in the region?

Let me tell you a story. In Sarawak, Malaysia, a man named Sumen Bin Gasan, a community leader in Melanao indigenous tribe of Kibua village is waging a struggle to reclaim the land of his village. Sumen's tribe has lived in the same community for over a hundred years. And under adat, or their native customary laws, the indigenous peoples of Sarawak have customary rights to their land. So clearly there were rules to protect land rights.

But despite these rules it is reported that large palm oil companies have taken over thousands of hectares of their land. There is no question that competition for land is a reality in developing

<sup>1</sup> Dean Michael Tan was elected as Chancellor of the University of the Philippines-Diliman last February 27, 2014. He was still Dean at the time of the Tribunal.



countries, and even elsewhere. What is ironic is that there are cases where the institutions that are tasked in safeguarding the rights of indigenous peoples are the very same institutions that tend to violate the rules they are supposed to implement.

Does the story of Sumen sound familiar? For many of us, the answer is yes. But many in the international community are not always aware that the struggles faced by indigenous peoples are not being fully heard and protected.

Similar stories are at the heart of this two-day Asian People's Land Rights Tribunal. Some of these stories will be presented here and heard by the Tribunal. The affected people themselves - the indigenous groups, the small farmers, the fisherfolk, and local communities, as well as the organizations helping them - will tell these stories.

Theirs are the stories that are lost in the negotiations between governments and corporations over large upscale farmland acquisitions. Theirs are the interests that are set-aside in the face of rising food prices, the increasing demand for biofuels and the desires of countries for rapid economic growth.

In many cases in the developing world, too often the lives of smallholders as well as the preservation of the environment fall by the wayside with tragic and far-reaching results. It is time that their stories are heard. The Asian People's Land Rights Tribunal aims to do just that.

To our friends from the communities and partners in civil society, this Tribunal will serve as a venue for you to air your grievances and demand accountability from institutions. Our panel of experts will listen, discuss and identify possible remedies for the communities, and strategies to hold accountable responsible institutions to address the violations of rights.

We look forward to your sober, educated and balanced assessment. We value your insights and sound judgment to guide our appreciation of the issues presented. And for our participants, through this tribunal, we can discuss alternative negotiation strategies that will benefit all, not just the powerful few.

We can also provide input for future legislation, as well as amendment to existing laws at the country and international levels.



There is urgency in the task before us. Regional economic integration in 2015 can be a boon or bane for our respective countries in the Association for Southeast Asian Nations (ASEAN). We must ensure that our economic development strategies serve not only to facilitate investment in agriculture and industry, but also protect the land rights of our smallholders as well as their livelihoods.

We must ensure that the system we put in place will improve rather than marginalize the poor. I am confident that through the efforts of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), the Land Watch Asia Campaign, the OXFAM through its East Asian GROW campaign, the Pimentel Institute of Leadership and Governance and the concerned constituent units of the University of the Philippines, we will succeed in this important endeavor.

As the country's national university, UP offers its expertise, the expertise of its faculty, and the facilities of the university in our common effort to promote discourse on issues that face our nation and the region.

I hope that our activity today will start the continuing dialogue on land use and land rights. As we listen to the case presentations, I ask that we keep in mind the words of Mary Brave Bird, a Chicago Lakota writer and activist who was a member of the American-Indian movement during the 1970s and who participated in many dramatic events, such as the wounded knee incident, when she was 20 years old.

She said, and I quote: "Maka le waka", the land is sacred". These words are at the core of our being. The land is our mother, the rivers our blood. Take away the land and we die."

When land is in question, lives are at stake. On that note, I wish you all a productive and enlightening exchange of ideas.

Thank you and Mabuhay!

## Message

Ms. Riza Bernabe  
 Regional Policy and Research Coordinator  
 OXFAM East Asia GROW Campaign



After the 2008 world food financial and energy crisis, the influx of private agricultural investments really happened worldwide. At present, according to the International Land Coalition, there are 1,054 agricultural land deals around the world, of which 807 deals are currently being implemented. Almost one-third of these deals are happening here in Asia (254). These deals cover an estimated 15 million hectares of agricultural lands.

But what is ironic about this is that 587 million Asians are going to bed hungry every night. So, why is this happening? We think that the world food system is broken. And this is actually why Oxfam launched the GROW Campaign. The Asian People’s Land Rights Tribunal is actually part of the GROW Campaign’s commitment to contribute to the transformation of the global food system by pushing for sustainable and ecologically sound agricultural production, addressing inequalities in the ownership and access to land and water resources, technology and investments.

The Campaign also wants to help empower small-scale producers, who comprise the majority of the world’s food producers, so that we can address this particular problem.

OXFAM partnered with the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Land Watch Asia, the Pimentel Institute for Leadership and Management, and the University of the Philippines for this initiative because we hope that through the Asian People’s Land Rights Tribunal, rural communities can voice out their issues and concerns about these private agricultural land investments. We hope that this Tribunal can help amplify these concerns so that governments and private sector investors would be compelled to ensure that their policies have adequate safeguards and that their operations do not harm communities, and instead harness the potential within these rural communities for a genuine rural development.



OXFAM would like to thank everybody for participating in this initiative, and we hope that by learning about these experiences around Asia, you could also help us amplify these concerns and be part of the movement that pushes for the rights of small producers around the world.

Thank you very much!

## Overview

Fr. Francis Lucas  
 Chairman Emeritus  
 Asian NGO Coalition for Agrarian Reform  
 and Rural Development (ANGOC)



**L**and is life and life is land.

I would like to start off with an expression of gratitude, in behalf of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). We convey our special thanks to the University of the Philippines – to UP President Alfredo Pascual, UP Vice President Prospero “Popoy” de Vera and Dean Danilo Concepcion of the UP College of Law - for graciously hosting the Asian People’s Land Rights Tribunal.

Our gratitude goes out as well to the staff of the various UP offices, the OXFAM East Asia GROW campaign and the Pimentel Center for Local Governance, for assisting ANGOC in the organization of this event.

The roots of civilization have been founded on agriculture and other activities that nurtured the land. But as civilizations thrived, land has become more and more a tool of power, rather than a life source. We need land to grow our food and our forests, to make our homes and forge our communities.

This regard for land is still strongly held by small farmers and fisherfolk, indigenous peoples and rural women, as they coax life from it. And yet they compete with the desire of the more powerful and wealthy to use the land as an economic tool; to extract what they can without giving back to the land or its people.

We tackle the issues of land rights of small holders and land grabbing in this two-day People’s Tribunal. As such, four cases will be presented by the affected community members and their support groups, from Cambodia, Indonesia and the Philippines.

The first case features a claim of Filipino farmers, who are beneficiaries under the country’s Comprehensive Agrarian Reform



Program, over the unused portion of the Aurora State College of Agriculture (ASCOT) within the Aurora Pacific Economic Zone or APECO. This is in southern Luzon. The farmers are up against a powerful political clan in this country who wishes to establish Casiguran, Aurora province as a special economic zone.

The second case is the granting of economic land concession to a Cambodian senator and his Thai and United Kingdom investors in the Koh Kong province. Massive land grabbing happened here - up to 40,000 hectares of land - for planting to sugarcane which is sold to one of the most famous cola drinks in the world, among others, when people are displaced from their own lands.

The third case presents a palm oil plantation encroaching into the lands of indigenous peoples and farmers in the Bengay District of Central Sulawesi, Indonesia. Again, this involves a huge area, around 17,000 hectares, with countless lives affected, not to mention the destruction of the forest conservation area at Bangay.

Lastly, we will hear from the Mamanwa tribe of Dinarawan, Agusan del Norte in southern Philippines (Mindanao), and their complaints against the mining firm Mindoro Resources Limited, which has the International Finance Corporation (IFC) as an investor. The affected area covers 8,000 hectares around Lake Mainit, a key biodiversity area in the Agusan del Norte province.

These cases have all but exhausted various grievance mechanisms, both at the country and international levels; seeking justice for the violations committed on the peoples' land and human rights. Their cases did not reach a favorable resolution in their countries, thus they come before us, this very Tribunal, to seek new venues to highlight how growing land investment in Asia today are affecting their lives and livelihoods, as well as the environment that sustains the planet.

I would like to introduce again our distinguished tribunal panel members. First is former Senate of the Philippines President Aquilino Pimentel Jr., the father of the country's Local Government Code. Senator Pimentel will be the overall chairperson for the whole process and the chairperson of the Tribunal itself.

The other distinguished members of the Tribunal include: Prof. Sadeka Halim, Commissioner of Rights to Information Commission, Government of Bangladesh; Vice Chairperson Dianto Bachriadi, Commission on Human Rights of the Republic of Indonesia;

Archbishop Antonio Ledesma of Cagayan de Oro City, Philippines, a long-time advocate of social justice and agrarian reform in the country; Filomeno Sta. Ana of the Action for Economic Reforms (AER); Chancellor Ray Rovillos, University of the Philippines Baguio; Dean Michael Tan of the College of Social Sciences and Philosophy, University of the Philippines Diliman, who is also a columnist in the Philippine Daily Inquirer; and Professor Dan Gatmaytan, College of Law, University of the Philippines Diliman.

The Tribunal panel and participants will finally agree on a common Declaration which contains the following key points:

- A set of recommendations for the communities and their respective support groups on how they could further defend and protect their rights over their resources; and
- Key principles and proposed mechanisms and strategies for policy intervention at the national and international levels, especially with the ASEAN, as we move towards the ASEAN Economic Community (AEC) by 2015.

Land is a most basic right, and should in fact be a human right, because from nurturing land, other fundamental rights are fulfilled. As the Southeast Asian region enters further economic integration towards a caring and sharing community, we need to ask if we are truly caring for the wrong people, and sharing the wrong things.

And as our governments attempt to forge closer economic ties, so should we help our ASEAN communities whose lives are tied to the land itself to deal with these new things and new challenges.





## The New Rush for Asia's Farmlands: Land Rights and Security for the Rural Poor



Mr. Antonio B. Quizon  
Chairperson  
Asian NGO Coalition for Agrarian Reform  
and Rural Development (ANGOC)

**T**he new land grabs are quite different. By definition, land grabs are large-scale transnational land sales or leases of unprecedented sizes. Before, when you talk about land grabs it was maybe a hundred hectares, a thousand hectares. Here in the new land grabs over the past 10 years, it has run to as much as hundreds of thousands of hectares.

The dynamic behind land grabs is that often an entity from a richer country is an investor and the poorer country is the host. Investors are domestic and transnational companies, governments and individuals.

According to an OXFAM study, over 80 million hectares worldwide are under these land deals (about two and two-thirds the size of the entire Philippines).

Lands have been taken mostly for agricultural production (78%) and for other purposes (22%). Most of the land grabs worldwide have happened in Africa. But in Asia, the verified number is about 29 million hectares. The land area of the Philippines is 30 million hectares, so it's almost the size of the Philippines that has been land grabbed in Asia since the year 2000.

### Why is this a concern?

First, these are secret deals. Most of the land deals are done outside of the public's



knowledge and scrutiny, and there are no central bases or statistics. And this is why the World Bank and some other international agencies have tried a system of tracking this down, but it is very hard to track down.

Second, it intensifies competition for land and resources while many suffer from insecure tenure. And third, maybe for Asia, it assaults the very system of smallholder farming, from which Asia has depended for its food and food security and livelihoods.

So the new land deals are very different from the past. They are unprecedented in scale and pace; second the production is for repatriation rather than for commercial export; and the third it involves actual production, not joint ventures or contract farming.

It has long-term implications and impacts on the poor because land is given as lease for as much as 99 years. But the peculiar thing about land grabs in Asia is that most of the big investors are also from the Asian region, and therefore it will be significant when we talk about ASEAN integration in 2015.

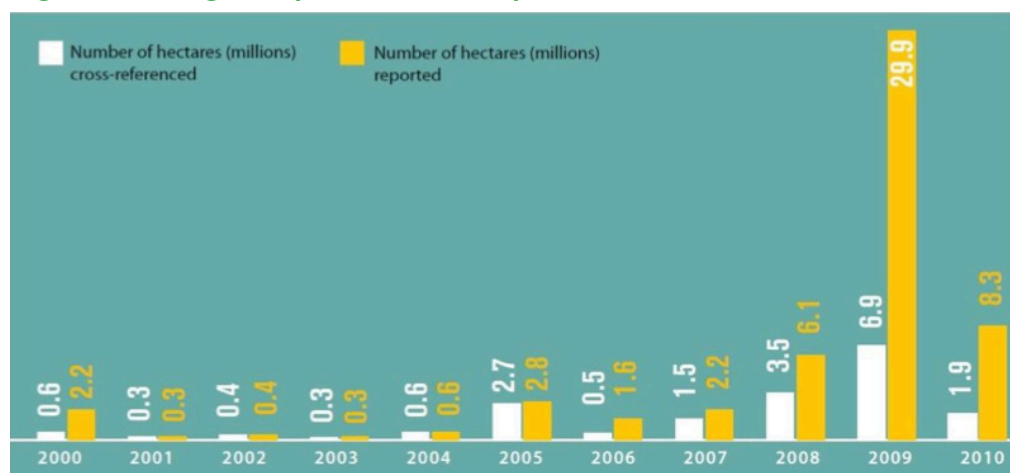
**LAND GRABS are:**

- ❑ large-scale, transnational land leases or sales
- ❑ secret deals outside of public scrutiny and knowledge
- ❑ promoting competition for land and resources
- ❑ assaulting smallholder farming and tenure security
- ❑ long-term leases for as much as 99 years

**What is driving this new rush for land?**

Identified are three drivers. The first is the food price crisis. From 2006 to 2008, prices rose worldwide because of many events: conflict, climate, and supplies. The net effect is that the food exporting nations withdrew their food exports from the world market and therefore the cash heavy countries and import

**Figure 1: The global pace of land acquisitions**



Source: <http://landmatrix.org/en>



## DRIVERS of the NEW RUSH FOR LAND:

- 1 food price crisis
- 2 growing demand of the biofuel industry
- 3 conservation efforts that can displace communities
- 4 extractive industries (i.e. mining, logging, tourism)

dependent countries decided to produce their own food. So if you look into the global land acquisitions you will find that in 2009, land acquisition reached its peak because of the food crisis that started in 2006.

The second area is the growing demand of the biofuel industry. And it's due to two related drivers. The first is market pressure: rising oil prices, increasing energy consumption, rising conflicts in the Middle East, and the industrial growth of China and East Asia. It is also driven by energy policies, like the EU targets as a policy of sourcing 10% of all transport fuels from renewable fuels by year 2020 as well as the US Energy Independence Act. So your sugarcane is now used to produce fuel, and so with other crops.

Biofuel production has been growing in the region. The common crops are: palm oil, sugarcane, maize, soybean and jathropa. And for many of these crops, the end use is determined only after it has been harvested and sold. And so this leads to actual displacement of potential food.

The production of biofuels also displaces small farmers because it is based on large-scale production.

The third is a threat, which is the Reducing Emissions from Deforestation and Forest Degradation (REDD) Program. Under the new REDD negotiations, each country is given a quota in terms of carbon sequestration. And you can buy that quota. So in effect it is an opportunity and a threat. It can reward communities for forest protection, but it can also displace forest dwellers.

The rights that may be affected by REDD are: first only those with tenure rights are paid, and yet many of the poor people have no tenure rights. Many of the lands under customary rights may be lost. And States are also likely to restrict local access to forests to meet carbon quotas.

The others are in mining, logging and tourism. Twenty-two percent of land acquisitions are in extractive industries, and a case from Mindanao is presented in this forum.

### What is the push from investing countries? And what is the source of the new land acquisitions?

In Asia, the Arab Gulf States and the prosperous countries of East Asia have done the main acquisitions. So in China for example, the

conversion of land to industry, the shift to high-value crops, and the “going out” policy of 2004 is pushing the acquisition of lands from the investing countries.

In Arab Gulf States, they are looking for investment of surplus oil revenue and also establishing food production centers abroad.

Japan is heavily import-dependent with its food, agriculture is heavily subsidized, and even before World War II, had a long-time practice of creating food bases abroad. The estimates now are that Japanese corporations and individuals control 12 million hectares abroad.

### Why are host countries interested?

First, they need to address declining public investments in agriculture and the dwindling of Official Development Assistance (ODA) worldwide. And then there are promises of financial investment, infrastructure, research, technology and employment.

A World Bank study of 2008 divided the world into three agricultural sectors: agriculture-based countries, transforming countries and urbanized countries (see Table 1 on page 20). Asian countries are mostly under transforming countries moving from agricultural or rural to urban, and there has been a shift in public spending – from 14 percent in 1980 to only seven percent in 2004, which can even be lower by now.

So with that lack of investments in agriculture, governments are looking for corporations to provide that kind of investment.

From host countries, there’s a lot of different incentives. An example is the Pakistan Corporate Agricultural Farming policy of 2002 – 100 percent foreign equity investment, full remittance, no upper limit on landholdings, exemption from labor laws, etc.

In Cambodia, about 4 million hectares have been granted in Economic Land Concessions as of 2013. About half of these concessions are in plantations and the other half for extractive industries. The UN Special Rapporteur on the situation of Human Rights in Cambodia noted this down in its report in 2012.

In Indonesia, the State is the biggest landowner. It controls 120 million hectares or two-thirds of the country’s total land area. Over



**Table 1: Decline in public spending in agriculture, 1980-2004**

	Agriculture-based countries		Transforming Countries		Urbanized Countries	
	1980	2004	1980	2004	1980	2004
Public spending on agriculture as a share of total public spending (%)	6.9	4.0	14.3	7.0	8.1	2.7
Share of Agriculture in GDP (%)	28.8	28.9	24.4	15.6	14.4	10.2

Source: World Bank Development Report 2008, as cited in Ravanera, et al, Commercial Pressures on Land in Asia (2010)

the past three decades, the government has promoted intensive commercial use of State-owned forests as the main driver for economic growth.

In sharp contrast, only about a quarter of a million hectares were legally-recognized, community-administered forest areas.

### What are the issues and impacts?

There has been large-scale displacement even when public, or so-called surplus unused lands are leased out. The reality in Asia is that there are no empty forests. Asia has a very high population density, in fact the highest population density in the world. In Indonesia for instance, 50 million or one-fourth of the Indonesian population live in designated forest areas without any tenure security.

The second is the reversion of land reforms. Land given is taken back.

The third is that the increasing land values keep people outside of the land market.

The reality is that the most fertile lands are leased out, despite the official rhetoric in many countries that only marginal lands are used. In many cases, some of these lands are held as communal lands of indigenous peoples.

The other thing is the question of water rights. In effect, when Middle East countries invest in a country like Pakistan, the ground

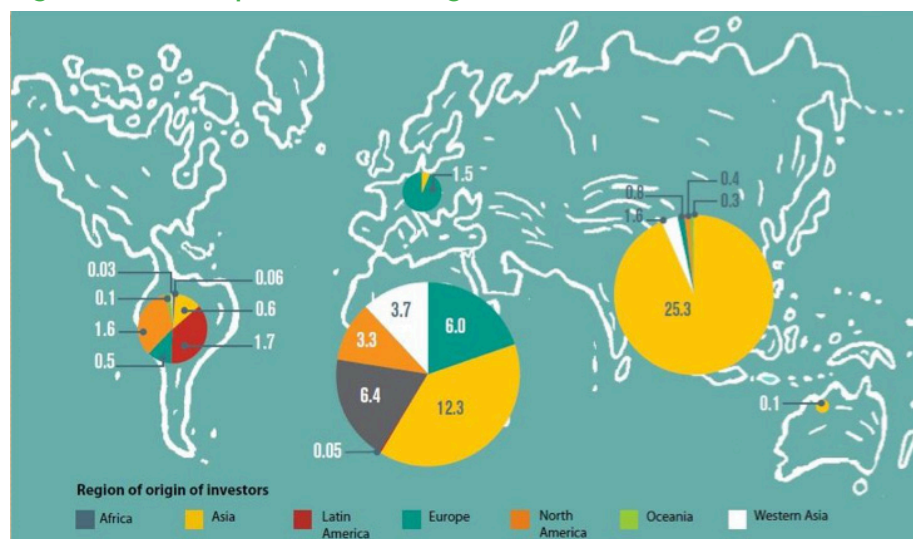
water is effectively locked up within the country’s agricultural belt. Hence, there is control over drawing rights.

For environmental impacts, it is unknown if proper environmental impact assessments (EIAs) are undertaken and if there is conversion of forest and pasture lands. Indonesia lost 1.9 million hectares from 2000 to 2005 based on the report of United Nations Food and Agriculture Organization (FAO).

There are impacts on the water systems, water shortages, and also pollution. There are overstated promises, limited job generations, the questions of actual investment, technology transfer, and no compensation for displaced communities. Women are the most affected, because the loss of customary tenure deprives women of home gardens, access to water, firewood and open spaces. And when there are increased tensions, women suffer increasing violence within the household.

There are transparency and governance issues. What does the host country have in terms of capacity to monitor investments and to implement regulations? Many of the deals are conducted in secrecy, without disclosure and public bidding, because sometimes they are treated as private investments even though foreign and host governments are involved, both as investors and as bridges for the transactions. There have been cases of one-sided contracts.

Figure 2: Land acquirers in each region



Source: <http://landmatrix.org/en>





*“Commodifying land and water, plants and genes, and even clean air in the form of carbon emission quotas must feed the hunger of global capital. It is this commodification that fuels the rush for the world’s land.”*

For example, if a venture folds up there is no compensation to the local community or those who were offered jobs.

### Why is this happening?

As globalization demands more and more resources, land has emerged as a key source of conflict. We are reaching the frontiers and that is why the conflict now is not only over land, but also even over water territories.

Commodifying land and water, plants and genes, and even clean air in the form of carbon emission quotas must feed the hunger of global capital. It is this commodification that fuels the rush for the world’s land.

Host governments often entice foreign investments as a cure all for many economic ills. Yet global capital is a two-headed beast. In pursuit of profit, global capital will seek out enclaves where land, water and natural resources are abundant and cheap, labor is cheap and docile, taxes are low, environmental and social regulations are minimal, and the State protects corporate interests.

The World Bank also said this in its report in 2010:

*“Investors are targeting countries with weak laws, buying arable land on the cheap, and failing to deliver promises on jobs and investments.”*

We have four cases for the Tribunal, two from the Philippines, one from Indonesia and one from Cambodia, and it is good to compare the different countries. One of the noticeable things about the recent land grabs is that it has been focused on the public domain. In the Philippines, 54 percent of the land or 16 million hectares is so-called under the public domain and there has been conflict also with indigenous people and overlaps with ancestral domain.

In Indonesia, 120 million hectares or 66 percent of the country is so-called under that public domain and controlled by the government.

In Cambodia there’s no data available, but land grabbing could run to as much as 90 to 95 percent.






We are looking here into four failures of government. First is the failure in democratic governance: questions of transparency, accountability and popular empowerment that lead to popular capture.

Second, land governance that fails the rural poor: national legal systems that centralize control over lands with lack of legal recognition of land rights of local users. This is the so-called public domain management.

Third, is economic governance. Protection is given to investors that sideline the rural poor.

And fourth is the sidelining of smallholder production. We tend to undervalue the contribution of smallholder family farming. And by the way, 2014 is the Year of Family Farming (YFF).■

**Table 2: Land & people: Philippines, Indonesia, Cambodia**

	<b>Philippines</b> 	<b>Indonesia</b> 	<b>Cambodia</b> 
<b>Terrain</b>	7,100 islands	17,508 islands	---
<b>Land area</b>	30M hectares	181M hectares	18 M hectares
• Forest	26% (7.6M ha)	51% (93.7M ha)	57%
• Agricultural	40% (12.1M ha)	30% (54.5M ha)	22%
• Arable land	18% (5.4M ha)	13% (23.5M ha)	---
<b>Public domain</b>	16M hectares/ 54%	120M hectares/ 66%	No data available
<b>Population</b>	98 M people	237M people (2010)	14 M people
• Pop'n density	329 people/ square km	131 people/ square km	78 people/ square km
• Arable land	0.06 hectare/ person	1.0 hectare/ person	0.3 hectare/ person
• Rural pop'n	34% rural	49% rural	---

Source: FAO. [http://faostat\\_fao.org/](http://faostat_fao.org/)



# Report of the Tribunal Panel

## I. Preliminary Statement

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

It had the following objectives:

1. Provide a venue for “land grab victims” in Asia where they could present and discuss their grievances and expose the accountability of institutions responsible for the land grab cases;
2. Enable eminent persons from around the region to discourse on the violations of people’s rights in land investment cases and develop recommendations to appropriate decision-making bodies at different levels (i.e., global, regional, or national);
3. Contribute to the building of community capacities on effective strategies to uphold rights, vis-à-vis, land investments in Asia; and
4. Raise public awareness on the violation of smallholder rights within land investments happening in various Asian countries.

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

- Dr. Sadeka Halim, Professor and Commissioner of Right to Information Commissions, Government of Bangladesh;
- Dianto Bachriadi, Vice Chair, Commission on Human Rights, Indonesia;



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



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

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

## II. Background

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

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

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

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

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

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

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

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

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

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



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

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

### III. The ‘Land Grab’ Cases

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





### The “Blood Sugar Case in Koh Kong, Cambodia”

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

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

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

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

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

### “APECO Aurora State College of Technology (ASCOT) Case in Casiguran, Aurora, Philippines”

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



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

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

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

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

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

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

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

#### **IV. Tribunal Findings & Recommendations**

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

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

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





The Tribunal relies on human rights as the principal basis for its Findings and Recommendations not only because violations of human rights cannot—and should not—be ignored, but also for the reason that - as enumerated below - there are numerous extant human rights

enactments by UN agencies, and by domestic governments that are applicable to the cases at bar.

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

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

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

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

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



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

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

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

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



## Summary of Case-specific Recommendations

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

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



Additionally:

- In the Cambodian Case, the EU Policies with Better than Arms Initiative, and the Cambodia Land Law of 2001 were used as legal reference.
- In the Indonesian Case, the Indonesian Laws on Law No. 5 of 1960 on Basic Provisions on the Right to Cultivate; Government Regulation No, 40 of 1996 on the Right to Cultivate, Right to Build and Right of Use Land, and the Forest Law 91 of 1999 were taken cognizance of.
- And in the two Philippine cases, the Indigenous Peoples Rights Act, the Mining Act and the Comprehensive Agrarian Reform Law served as focal points for the recommendatory actions that the authorities could take.
- This Report is divided into four Case Briefings that are followed by the corresponding recommendations on policy initiatives that the governments concerned could pursue, and the legal recourses that the aggrieved communities could utilize to recover their land rights.

## V. CASE DISCUSSIONS and RECOMMENDATIONS

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

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

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



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



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

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

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

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

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

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

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

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

## CHRONOLOGY OF EVENTS

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



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

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

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

#### **RECOMMENDATIONS on the Cambodian case:**

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

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

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

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

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

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

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

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

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

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





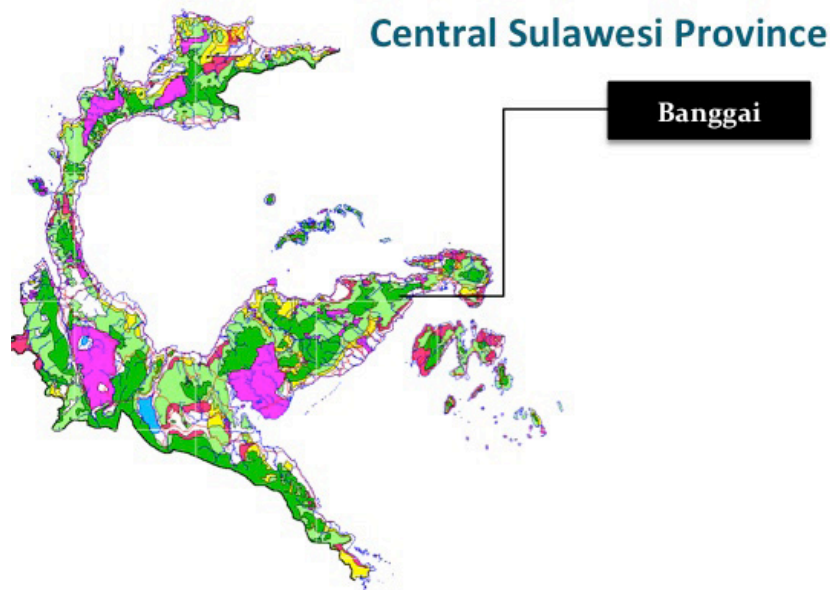
**Case 2:  
INDONESIAN CASE - PT Sawindo Cemerlang palm-oil plantation in  
Banggai, Central Sulawesi**

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

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

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

In August 2009, PT Sawindo Cemerlang, a subsidiary of PT Kencana Group of Wilmar International based in Malaysia, encroached on the land and began a palm oil plantation by virtue of a plantation certificate (HGU) issued to them by the government since the 1990s. The Norwegian government pension fund also has investments in PT Sawindo.



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

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

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

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

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

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

#### CHRONOLOGY OF EVENTS

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



## RECOMMENDATIONS on the Indonesian Case:

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

The non-implementation of the judicial decision that PT Sawindo Cemerlang did not have the right to cultivate the land in question as regulated by Indonesia's domestic laws indicate the non-effectiveness



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

of remedies for human rights violations there. While there are Indonesian laws that provide remedies for violations and abuses of human rights, access to those legal remedies is problematic due to practical and procedural barriers.

Considering those circumstances, it would be the UN Guiding Principles provide that States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including

the consideration of ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights controversies.

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

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

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



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

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

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





## PHILIPPINE CASES:

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

A disputed land in the municipality of Casiguran, province of Aurora was awarded as a reservation area for a school of fisheries under Proclamation No. 723 dated 21 August 1934. In the 1960s, farmers

were allowed to develop the reservation by the reclassification of its category from forest lowlands to agricultural land, with the consent of local authorities.



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

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

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

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

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

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

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

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

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

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

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

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

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

## CHRONOLOGY OF EVENTS

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



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

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

### RECOMMENDATIONS on the APECO Case:

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

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

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

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

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

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



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

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

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

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

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

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



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



## CHRONOLOGY OF EVENTS

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

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

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

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

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

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

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

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

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

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

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

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

**RECOMMENDATIONS on the Mamanwa vs. MRL Case:**

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

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

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



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

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

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

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

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



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

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

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

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

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

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





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

**Atty. Aquilino Pimentel, Jr.**  
Tribunal Chairperson  
former Philippine Senate President

**Mr. Dianto Bachriadi**  
Vice Chairperson  
Commission on Human Rights Indonesia

**Prof. Sadeka Halim**  
Commissioner on the Right to Information,  
Bangladesh

**Dean Michael Tan**  
College of Social Sciences  
and Philosophy  
University of the Philippines Diliman

**Archbishop Antonio Ledesma, S.J.**  
Cagayan de Oro City, Philippines

**Prof. Filomeno Sta. Ana**  
Action for Economic Reforms  
University of the Philippines Dilliman

**Chancellor Ray Rovillos**  
University of the Philippines Baguio

**Prof. Dante Gatmaytan**  
College of Law  
University of the Philippines Diliman

## The Diliman Declaration

of the Asian People's Land Rights Tribunal Forum  
 16-17 January 2014  
 Malcolm Hall Theater  
 University of the Philippines - Diliman  
 Quezon City, Philippines

**W**e, the members of the Asian People's Land Rights Tribunal Forum, representing farmers, fisherfolk, indigenous peoples, civil society organizations, the academic community, land rights advocates, from Bangladesh, Cambodia, China, India, Indonesia, Laos, Nepal, Pakistan, Philippines, and Sri Lanka, met at the Malcolm Theater, College of Law, University of the Philippines this 16-17 January 2014, in Diliman, Quezon City, Philippines to provide a venue for land grab victims in Cambodia, Indonesia and the Philippines to present and discuss their grievances and demand accountability of responsible institutions as well as to raise public awareness on the violation of smallholder rights within land investments happening in various Asian countries.

The Tribunal panel, consisting of experts from various capacities as Senator, Commissioner of Human Rights, Commissioner of Right to Information, sociologists, academic experts, church leaders, deliberated on the following four cases presented by the aggrieved communities from Cambodia, Indonesia and the Philippines:

a) "APECO Aurora State College of Technology (ASCOT) in Casiguran, Aurora, Philippines" where 56 farmer-beneficiaries of the Comprehensive Agrarian Reform Program are hindered by the agricultural state college from cultivating the 105-hectares within the educational reserve, which they have been farming for over 50 years (and had been provided irrigation facilities by the government). The land in question is also within the APECO economic zone, which plans to convert the use of the area from agricultural to industrial.

b) "Blood Sugar case in Koh Kong, Cambodia" where approximately 2,879 people whose livelihoods have been heavily affected and 200 families filed complaints against involved corporations (partly-owned by a prominent politician) which were granted economic land concessions for sugar plantations that encroached on their farmlands, and which, among other things, destroyed their crops, caused





damage to their cattle and buffalo, and effectively seized their farmlands.

c) “Land Grab Case of indigenous peoples’ land for Palm Oil Plantation in Banggai, Central Sulawesi, Indonesia” where 460 farmer households accused P.T. Sawindo Cemerlang of forcibly taking a 17,800-hectare land for the development of a palm oil plantation, thereby displacing indigenous communities in 32 villages, encroaching on a conservation area and threatening to displace more families in the locality.

d) “Mamanwa Indigenous Peoples against Mindoro Resources Limited (MRL) Mining Exploration in Agusan del Norte, Philippines” where communities oppose the nickel, gold and copper-gold exploration permit granted to MRL, which has caused division and conflicts among the members of the Mamanwa tribe and threatens the biodiversity character of Lake Mainit, and encroaches a part of their ancestral domain.

On the basis of the documents and testimonies offered during the Tribunal forum, these cases merit a re-examination from the perspective of human rights, for the charges of human rights violations cannot be ignored, particularly involving corporations and other business enterprises in which powerful local and foreign interests are involved.

The Tribunal Forum upholds the values of truth, fairness and social justice. Similarly, it recognizes the tensions or conflicts which are

independent of the will of the participants of the Forum. The Forum thus encourages the conduct of dialogues and fact-finding missions.

The Forum articulates the voices of the affected marginalized communities and re-affirms the universal and customary rights, values and principles expressed in international declarations and laws ratified by the governments concerned.

The Forum asserts their determination to stand together to protect and defend land and other natural productive rights of communities in the region to ensure food security, livelihoods, human rights, dignity and peace.

The Forum strongly calls upon concerned States, institutions and corporations to respect and adhere to the following principles:

## 1. Respect and uphold human rights and environmental standards and commitments.

- Endorse international declarations and ratify multilateral conventions.
- Amend and/or develop policies and operational procedures of international, regional, national, and private financial institutions
- Immediately act upon and put an end to, condemn and address human rights violations and environmental degradation.
- Respect and uphold indigenous peoples' rights, regardless of whether they are recognized by the state, including their customary laws and rights, traditional institutions and decision-making processes, and community protocols and procedures.
- Engage with IPs and local communities as rights-holders, primary stakeholders, as equal partners in development.
- Protect human rights and environmental defenders against manipulation, intimidation, harassment and political stigmatization
- Recognize forced evictions as gross human rights violations.

## 2. Address structural injustices at national and sub-national levels

- Strengthen and promote the rule of law.
- Ensure equality before the law, fairness in its application, and



provide for accountability, legal certainty, and procedural and legal transparency and the speedy administration of justice.

- Ensure the independence and the competence of the judiciary.
- Address corruption and resist vested interests, including those of political and business elites.
- Ensure wealth is distributed fairly and equitably, not concentrated in the hands of a few.
- Decentralize decision-making processes and empower local governments to make and enforce decisions regarding investments that affect their constituencies.

### **3. Ensure coherent, consistent and harmonized legal, policy and regulatory frameworks at the regional and national levels**

- Develop common legal/policy/regulatory framework for ASEAN to level the playing field and to prevent investors from exploiting the people and natural resources of Member-states.
- Clarify and address conflicts and gaps in laws and jurisdictions, especially cases where the national laws themselves legitimize injustice.
- Where necessary, amend or reform related laws to improve land and resource governance.
- Strengthen mandates and capacities of government agencies with jurisdiction over human rights and environment-related issues.
- Prioritize and uphold community and human rights and environmental concerns over industrial interests in regard to land investments.

### **4. Ensure access to information, participation and decision-making at the national and sub-national levels.**

- Adopt Right to Information laws and measures in ASEAN and among Member States.
- Ensure freedom of information, including proactive disclosures from companies, especially foreign-funded non-government organizations and government agencies.
- Nurture vibrant civil societies and independent and responsible media.
- Strengthen communities', especially of women's bargaining power and negotiation skills.
- Support civil society engagement with legal systems and the public in the host countries of companies.

## 5. Support small-scale, sustainable, self-reliant local economies and livelihood opportunities.

- Recognize the right of local communities, especially the Indigenous Peoples, to give or withhold their free prior and informed consent to investments, and respect customary laws and rights, traditional institutions and decision-making processes, and community protocols and procedures.
- Where FPIC is secured, it should be genuine, substantive and in the spirit of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and other pertinent UN declarations.
- Protect and enhance/develop the traditional livelihoods of indigenous peoples and recognize their contributions to sustainable natural resource management and protection of the environment.
- Ensure land investments do not impair the collective and customary rights, including food security and sovereignty of the IPs and the local communities.

## 6. Ensure that the investments being secured are fair, equitable and transparent investments and fully beneficial to the interests of the people.

- Provide an investment climate that enables and encourages rather than constrain businesses to respect human rights and the environment.
- Require human rights due diligence, including assessing potential and actual human rights violations, tracking responses, penalizing those responsible for violations thereof, compensating the adversely-affected parties and informing the proper parties how their problems are addressed.
- Shift away from ‘development aggression’ to ‘development opportunities’ with social responsibility and accountability.

## 7. Ensure access to justice, appropriate remedy and redress for the people’s grievances.

- Provide proper restitution for communities that have been evicted or displaced.
- Put an end to the use of State apparatus to promote investments that-cause displacements, evictions and other violations of human rights.



- For governments to conduct speedy and impartial investigations, and fact-finding missions to restore dignity and justice to the affected communities unless the affected communities specifically request for a third party, multi-sectoral investigating body.
- Access to effective remedies through judicial, administrative, legislative or other appropriate means; remove so-called legal, practical and procedural barriers.
- Multi-sectoral, national and regional monitoring of investments and their social and environmental impacts to ensure transparency and accountability.
- Strengthen the mandates of the appropriate national human rights commissions especially regarding rights to land.
- Regional mechanism for investigating and adjudicating complaints, including transnational operations including the definition of legitimate mechanisms to implement the ASEAN Human Rights Declaration and concerned UN resolutions.
- Clarify and strengthen the role of international and transnational grievance and redress mechanisms to ensure that national or state institutions shall fulfill their mandates and ensure they are responsive and accountable to the affected communities.

***We recognize that the principles we enumerate above are broad, all-encompassing and realizing them may be difficult. We nevertheless hope that through dialogue and circumspection, we will all realize that it is in everyone's interest—the States, the regional institutions, the private sector, the bilateral and multilateral donors, civil society, peoples' organizations and communities—to uphold and flesh out these principles. ■***



## Tribunal Panel Members



**Sen. Aquilino Pimentel, Jr.**  
Tribunal Chairperson

Senator Aquilino Q. Pimentel Jr. is a prominent legislator who has served as Senate President and Minority Floor Leader. Known as the Father of the Local Government Code, he also authored and co-sponsored key legislations like the Generics Drugs Act, the Cooperative Code, the Philippine Sports Commission Act and the Autonomous Region in Muslim Mindanao Act. He has been cited annually by mass media, civic and religious organizations as Outstanding Senator when he was still in office. He holds doctoral degrees on the field of humanities, laws, philosophy and public administration.



**Dr. Dianto Bachriadi**  
Vice Chairperson

Dr. Dianto Bachriadi is the current Vice-Chairperson of the National Commission on Human Rights of Republic of Indonesia (Komisi Nasional Hak Asasi Manusia, KOMNAS HAM) and a Senior Researcher at Agrarian Resource Center (ARC). He has written extensively on the subjects of Human Rights and Business, Land Deals Politics, Agrarian Conflict, Political-economy of Rural Development, Rural Democratization and Social Movement, both in English and in Bahasa. He is a teacher and a trainer/facilitator for various universities in Indonesia including the State Islamic University Sunan Gunung Djati in Bandung; the School for Spatial Zoning Advocacy in Bogor and the Indonesian School for Democracy in South Sumatra and West Kalimantan. He is also involved as an expert to the Dewan Perwakilan Daerah (DPD)'s Special Team for Agrarian Conflict resolution, a member of the Advisory Board of Institut Keadilan Global or the Institute for Global Justice, and the Strategic Committee of Jaringan Kerja Pemetaan Partisipatif/ Indonesian Networking for Participatory Mapping (JKPP).

**Dr. Sadeka Halim**

Dr. Sadeka Halim has served as the Commissioner of the Information Commission of Bangladesh since 2009, and has been actively involved in disseminating the importance of the Right to Information (RTI) Act of 2009 in the country. Dr. Halim is also a Professor of Sociology in the Department of Sociology of the University of Dhaka for 25 years and currently a member of the Senate of the University of Dhaka and Secretary of the Bangladesh Sociological Association.

Outside the University of Dhaka, she was guest professor at the BOKU University of Agriculture & Sciences in Vienna, and a visiting fellow at the Queens University of Belfast, Ireland. She is also an executive member of the Women for Women, a Feminist Research Organization. She has done several researches and acted as resource person at national and international activities around the issues of gender, indigenous peoples, the environment, and development.



**Chancellor Michael L. Tan, PhD**

Michael Lim Tan, DVM, PhD is a Filipino medical anthropologist, writer, and academic who is the current Chancellor of the University of the Philippines Diliman. Prior to his appointment as UP Diliman Chancellor, Tan was already well known for his work among non-governmental organizations in the Philippines, and for his column Pinoy Kasi, which appears twice a week in the Philippine Daily Inquirer.

On February 27, 2014, the University of the Philippines Board of Regents appointed Tan to serve as the next chancellor of the University of the Philippines Diliman, where he currently serves as Dean of the College of Social Sciences and Philosophy (CSSP). Tan has authored numerous books and articles, often focusing on: indigenous medical beliefs, sex and sexuality, reproductive and sexual health (particularly HIV/AIDS), pharmaceuticals, and health policy issues.





## Tribunal Panel Members



### Chancellor Raymundo Rovillos

Dr. Rovillos is a professor of history at the Department of History and Philosophy, College of Social Sciences, UP Baguio. His last administrative post before the appointment to the chancellorship was as Dean of the College of Social Sciences for two consecutive terms.

As an academic, Dr. Rovillos cites the following as his areas of specialization: Philippine history, Cordillera history, society and culture; ethnicity/indigenous peoples' studies; gender studies; and social, development. He was editor and lead author of "Our harvest in peril. A Sourcebook on Indigenous Peoples' Food Security", published by Evangelischer Entwicklungsdienst (trans. Church Development Service of Germany) EED Philippine Partners Task Force for Indigenous Peoples Rights (EEDTFIP), 2004.



### Archbishop Antonio Ledesma, S.J., D.D.

Antonio Javellana Ledesma, S.J., D.D. is the Archbishop of the Metropolitan Archdiocese of Cagayan de Oro.

Ledesma was born on March 28, 1943 in Iloilo City, and was ordained as a Jesuit priest in 1973. In 1996 Pope John Paul II appointed him Coadjutor Bishop of Ipil, Zamboanga del Sur and was later ordained Bishop on August 31, 1996. Pope Benedict XVI appointed him on March 3, 2006 as Archbishop of Cagayan de Oro.

He is currently chairman of the Catholic Bishops' Conference of the Philippines' (CBCP) Episcopal Commission on Inter-religious Dialogue and member of the Episcopal Commission on Social Action, Justice and Peace.

Archbishop Ledesma also has a long history of championing the cause of the small farmers by supporting agrarian reform as a Chair of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and as one of the founders of the Philippine Partnership for the Development of Human Resources in Rural Areas (PhilDHARRA). He has authored numerous papers on agrarian reform and sustainable agriculture as well.

### Filomeno Sta. Ana III

Filomeno S. Sta. Ana III is the coordinator of Action for Economic Reforms (AER), a policy and advocacy group, which he co-founded in late 1996. AER was the lead organization in civil society that helped the Philippines secure the difficult sin (tobacco and alcohol) tax reforms in 2012. AER is also at the forefront of the campaign for the passage of a bill on Freedom of Information.

Sta. Ana is also a board member or an executive of several national and regional non-governmental organizations, including Bantay Kita, Mama Sita Foundation, Legal Rights and Resource Center, Samdhana, and the Asian Tax Justice Advocacy Network. He is a regular columnist for BusinessWorld, the leading Philippine business newspaper. He is the editor, author, or co-author of books and papers on a wide range of development issues. The latest volume he edited is titled Philippine Institutions: Growth and Prosperity for All (2010).

### Prof. Dante Gatmaytan

Professor Dante Gatmaytan is Associate Professor in the U.P. College of Law where he teaches Constitutional Law, Legal Method, and Local Government Law. He is also head of the Publications and Information Division of the UP Law Center. Before joining the academe, he practiced law through public interest law offices working with rural poor communities involved in environment and natural resources law, indigenous peoples' rights, agrarian reform, and local governance. He graduated with a Bachelor's Degree from the Ateneo de Manila (B.S. Legal Management) in 1987 and a law degree (LL.B.) from the University of the Philippines in 1991. He holds Masters Degrees from Vermont Law School (cum laude) and the University of California, Los Angeles. He writes on a wide range of issues including the environment, gender, the judiciary, and the intersection of law and politics.





## The APLRT Organizers



**ANGOC**

Established in 1979, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) is a regional association of national and regional networks of NGOs in Asia actively engaged in food sovereignty, agrarian reform, sustainable agriculture, and rural development initiatives.

ANGOC is a founding member of the International Land Coalition (ILC), and the regional convener of the Asian Alliance Against Hunger and Malnutrition (AAHM-Asia).



LandWatch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves civil society organizations in seven (7) countries - Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, and the Philippines. LWA aims to take stock of significant changes in the policy and legal environments; undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences on coalition-building and actions on land rights issues. ANGOC is the regional convener of LWA.

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The Pimentel Institute of Leadership and Governance is a non-stock, non-profit foundation established to promote competent, ethical and innovative leadership in the public sector; advocate for political and economic reforms needed to strengthen Philippine democracy; and engage in the national discourse on key issues that affect the lives of Filipinos.

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The University of the Philippines is the Philippines' premiere State University, founded on June 18, 1908 through Act No. 1870 of the Philippine Assembly. As envisioned in its charter, the UP was to give "advanced instruction in literature, philosophy, the sciences and arts, and to give professional and technical training" to every qualified student regardless of "age, sex, nationality, religious belief and political affiliation."

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The University of the Philippines College of Law is an integrated system of national legal institutions within the University of the Philippines system and is dedicated to teaching, research, training, information, and legal extension service to ensure a just society.

It was formally established on January 12, 1911. The College, however, traces its beginnings to the law courses opened in 1910 by the Educational Department Committee of the Young Men's Christian Association (YMCA), through the efforts of George A. Malcolm who was later to become the first permanent dean of the College.

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This publication contains the struggles of four cases presented by the aggrieved communities in Cambodia, Indonesia, and the Philippines, and deliberated by an international panel of experts during the Asian People's Land Rights Tribunal. These cases have all exhausted various grievance mechanisms, seeking justice for the violations committed on people's land and human rights. A set of recommendations for the communities as well as key principles for responsible investments addressed to national government and international organizations, are addressed in this publication.



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