



ANGOC

# LOK NITI

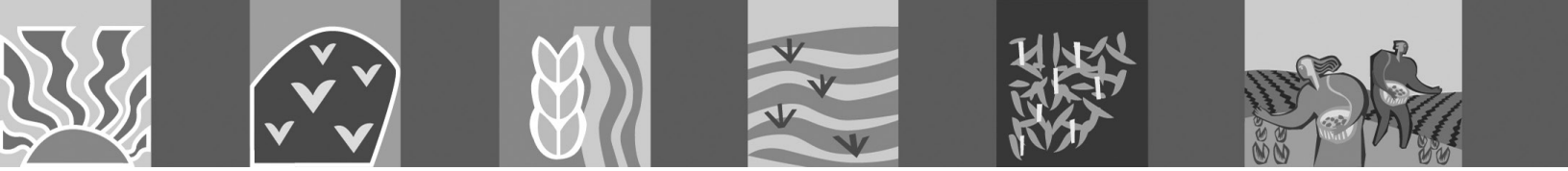
JOURNAL OF THE ASIAN NGO COALITION

Volume 20/1.2 2017

ISSN 0116-9602



**“Land as Human Rights: An Imperative towards the Realization of the Sustainable Development Goals”**



## What is Lok Niti?

Lok Niti and Raj Niti are terms coined from the Sanskrit by Mahatma Gandhi. Lok Niti signifies people's politics—the people in command and direct governance by the sovereign people, as opposed to Raj Niti—the politics of the nation state or indirect rule by a centralized government leadership based on current “democratic” forms of party and representative political institutions.

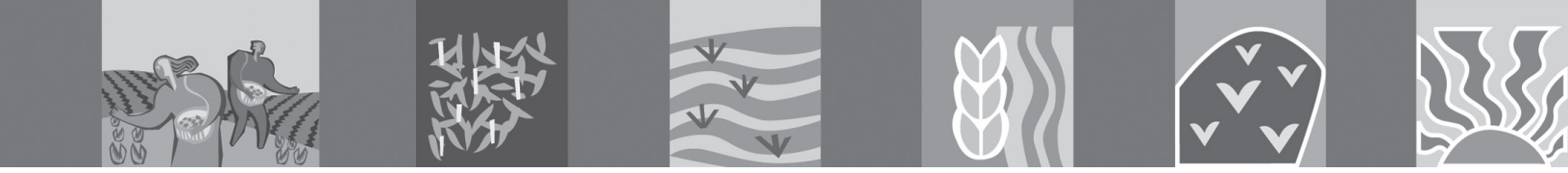
This concept of Lok Niti was the political basis of Gandhi's socio-economic “Construction Programme”, which is now known in India as Sarvodaya.

An increasing number of us who are associated with the Asian NGO Coalition (ANGOC) feel that we have begun to find our bearings in the tangled terrain of “development” through commitment to the “gentle anarchism” of Mahatma Gandhi—a body of principles for both personal and social transformation through work in support of decentralized, village community oriented, rural development, guided by the ideals of satyagraha and non-violence and harmonization with both nature and tradition.

Lok Niti is the journal of the Asian NGO Coalition.

— Chandra de Fonseka  
former Lok Niti editor-in-chief





# CONTENTS

Editorial	4
Mainstreaming Land Rights as a 'Human Right' in South East Asia	7
Mainstreaming Land Rights as a Human Rights in South Asia	26
The Customary Land Rights of Indigenous Peoples in Asia	42
2016 Cambodia Land Disputes Monitoring	55
2016 Land Conflict Monitoring in Indonesia	74
2016 Philippine Land Monitoring Report on Land and Resource Conflict	82
The UN Guiding Principles on Business and Human Rights	92

ANGOC and Land Watch Asia express our gratitude to the contributing authors of the studies (as well as the photographs used in their presentation materials) included in this journal.

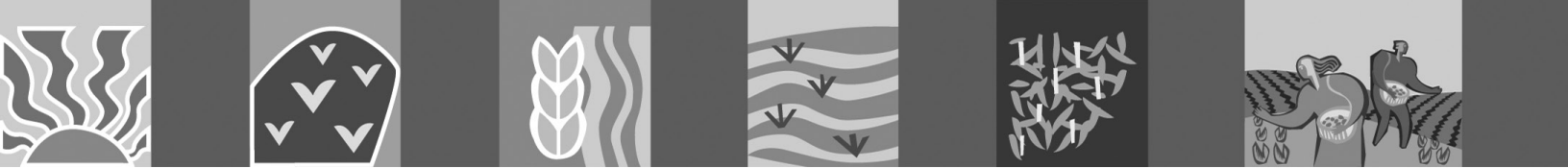
This journal was made possible with the support of the International Land Coalition (ILC). ANGOC likewise acknowledges the contribution of Forum Syd and HEKS/EPER-Cambodia. The views and information provided in this journal do not necessarily reflect the views or policies of ILC, Forum Syd and HEKS/EPER-Cambodia.

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**Cover Photo:**

Photos courtesy of STAR-Kampuchea.



# EDITORIAL

**F**rom 24-25 November 2016, a regional workshop, “Land as Human Rights: An Imperative towards the Realization of the Sustainable Development Goals” was held in Phnom Penh, Cambodia. Organized jointly by ANGOC, LWA, ILC-Asia and STAR Kampuchea in partnership with Forum Syd, HEKS/EPER-Cambodia and the United Nations Cambodia Office of the High Commissioner for Human Rights (UNCOHCHR), the workshop:

- provided a status of the implementation of SDG goals 1, 2 and 16 in Asia;
- presented and discussed the land governance challenges in Asia;
- presented and discussed the two sub-regional approach papers on linking land as human rights; and,
- formulated policy recommendations to regional bodies and national institutions in pursuing responsible land governance and recognizing land as human rights towards contributing to the achievement of SDGs.

Around 65 participants from CSOs (from Bangladesh, India, Indonesia, Lao PDR, Nepal, Philippines and Vietnam), national human rights institutions and regional institutions, as well as representatives from 25 CSOs and communities, government agencies, media and international organizations based in Cambodia attended the two-day workshop.

This publication is the second of two Lok Niti editions dedicated to the two-day workshop. The first edition contains the major papers and presentation on the Global Land Indicators Initiative, as well as the action plan developed by the workshop groups.

For this edition, it highlights the issues, challenges and recommendations of mainstreaming land as human rights.

Land has always been a source of conflict. Not only is the number of land conflicts rising, but also the degree is intensifying. Land conflicts may result from overlapping land laws and policies, which are not resolved overnight. Land grabbing is almost always done to gain more profit for governments and for companies alike. Thus, governments actively encourage agricultural investments. Displacements are a necessary development cost, and communities are the collateral damage.

Interventions are needed to stop this trend, and the recognition that land rights are human rights is an excellent way to start. More than safeguarding human rights – the right to life, economic, social, cultural, civil and political rights, this also includes the right to food and the right to adequate shelter, which are inextricably connected to the land. Communities working on the land have a right to that land.





Governments have the responsibility to protect their people's rights. Thus, if governments were to acknowledge this responsibility, then lands would not be so easily awarded to rich and powerful economic concerns, but maintained and taken care of by the people who truly have the better claim.

The contents of this edition of Lok Niti includes the two sub-regional papers (one for Southeast Asia and another for South Asia) that outline how rights to land are related to various international human rights agreements and framework, and pinpoint on some of the major mechanisms and processes at regional and national levels where such advocacy on realizing land as human rights. Among the recommendations of the papers are: (1) bringing land rights issues to both ASEAN and SAARC; (2) encouraging these sub-regional groupings to create or strengthen bodies and mechanisms for investigation and monitoring of land rights cases; and (3) intensifying regional campaign on land issues.

A number of country presentations were also given. In Cambodia, Economic Land Concessions (ELCs) are on the rise, resulting to displacement of farmers. The lack of property rights, absence of strong CSOs, and traditional property patterns are the root causes of poor land management in the country, resulting to fragmented land regulation/administration systems.

In the Philippines, the strong resistance from former landlords and corporations claiming ownership of farmer and IP lands weaken Philippines' asset reform programs (i.e., CARPER and IPRA). Some of the hindrances to land rights initiatives include: threat of ejection for farmers who participate in AR program, land grabbing by mining and agro-industrial firms, harassment and violence, agrarian reform beneficiaries vs.

indigenous peoples, and private agri-lands still without notice of coverage.

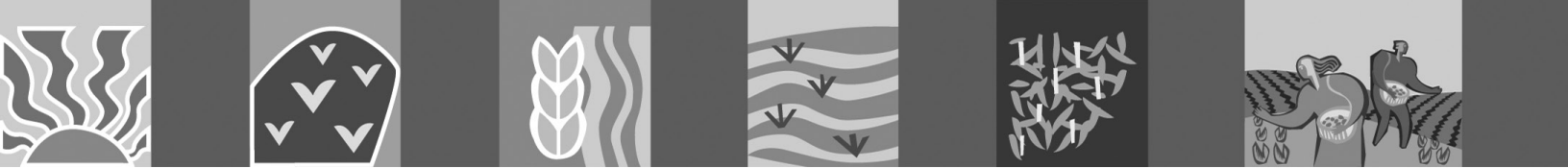
As far as Indonesia is concerned, the country is undergoing rapid and rampant "depeasantization": a quarter of a hectare is lost every minute, resulting in escalating violence and land conflicts. Thus there is a need for multi-stakeholder partnership strategies (e.g. media) to promote land as a human right.

On the other hand, India has lost 100,000 villages since 1921, and that there is increasing outmigration (90 million people now live in slums) due to development projects, extractive industries and reforestation programs lead to displacement.

In Nepal, the country has virtually a high functional landlessness, with 29 percent of rural population having no land to call their own, 30 percent of rural households being unregistered tenants and given that 5 percent of the population owning 42 percent of arable land. Among the factors include: government's seeming lack of political will for land reform, inheritance laws, feudal structure of the landholding system and tenancy/dual-ownership as contributory to such dismal state.

In Bangladesh, one in five households is embroiled in land disputes. The rampant bribery of arbitrators, land grabbing of IP lands and settlement of *khas* land not supervised by the government --- as contributing to land alienation contrary to national, regional land laws and international conventions.

All is not lost as communities, peoples movements and support groups (CSOs, alternative law groups, human rights defenders) have committed to push for the initiative to include land rights



as a human right. International agreements (such as Universal Declaration of Human Rights, Sustainable Development Goals, New Urban Agenda, UNDRIP, CEDAW, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries) at the same time can be optimized to support these actions. Another tool that CSOs and communities can use in the strategy for addressing land conflicts is the UN Guiding Principles on Business and Human Rights (UNGP on BHR). A basic primer of the UNGP on BHR is likewise included in this edition of Lok Niti.

Towards this end, the CSO participants agreed to pursue the goal of “empowering communities to protect and defend their rights to land” through policy, capacity building and networking. For its part, the representatives of the National Human Rights Institutions in Indonesia and the Philippines vowed to push land rights as a human right in the Southeast Asia National Human Rights Institutions Forum (SEANF). On a similar vein, the representative of the South Asia Association for Regional Cooperation (SAARC) committed to continue the dialogue process with CSOs in pursuing land rights in the region. ■



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

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

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

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

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

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

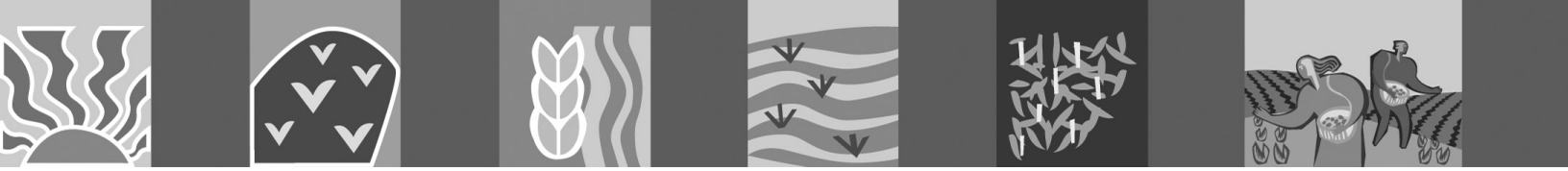
resources and facilities, including water sources, housing, livestock and crops. Occupying powers often restrict land tenure of residents in occupied areas.

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

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

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





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

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

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

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

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

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



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

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

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

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

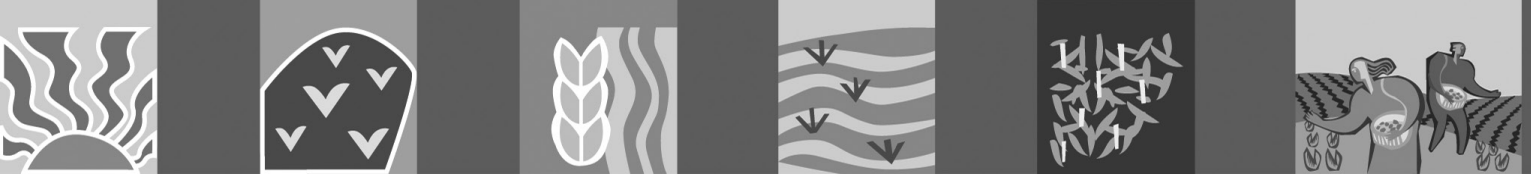
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<sup>1</sup> In one important publication on land and human rights, Office of the UN High Commissioner for Human Rights (OHCHR) considered 20 short illustrations about links between some legally binding and non-binding human rights instruments and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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

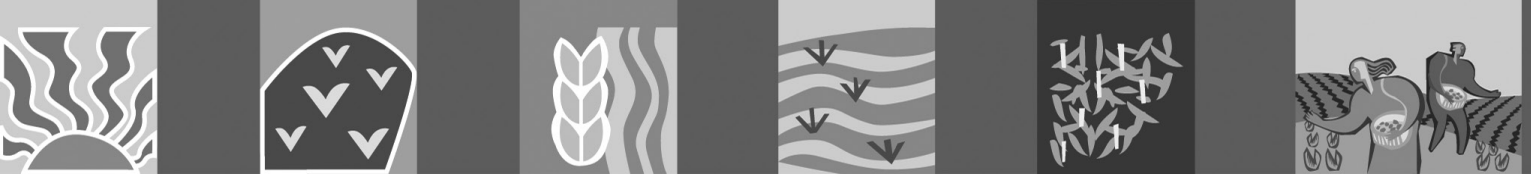


respecting, promoting and protecting access to land is vital to fulfill the right to food. “The progressive realization of the right to adequate food requires States to fulfill relevant human rights obligations under international law” (FAO 2005:5), and “where poverty and hunger are predominantly rural,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

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

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Session of the FAO Council, November 2004.



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

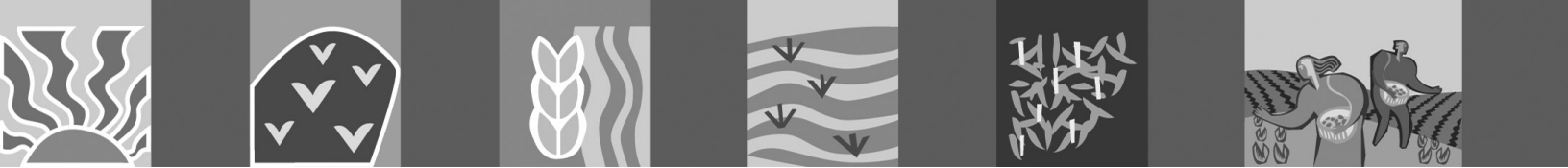
### **Human Rights Mechanisms in Southeast Asia**

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

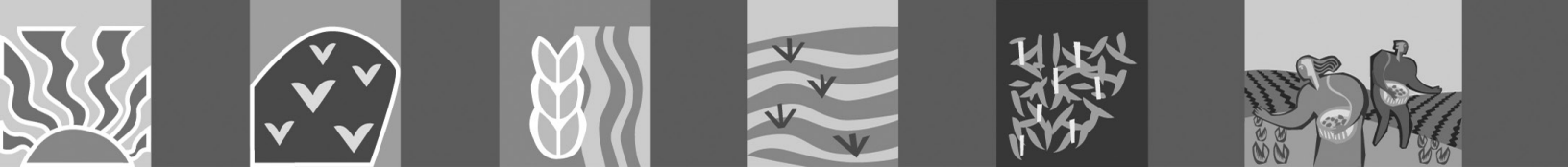
As a non-binding declaration, the AHRD does not legally undermine obligation of the ASEAN Member States under UN and other international treaties”. It “does not create enforceable rights or protections for people within ASEAN, and does not create a body to interpret and apply the Declaration progressively”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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

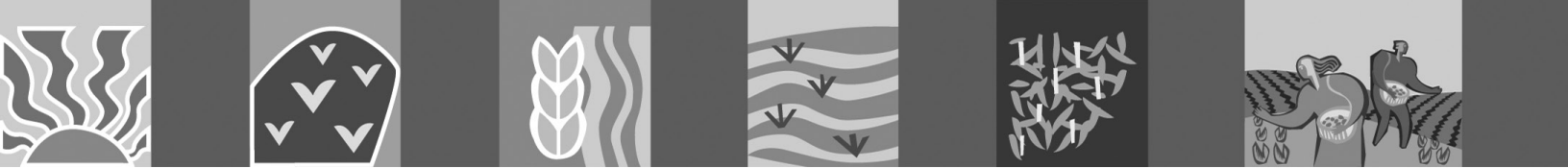
<sup>26</sup> They are 11 experts on law, politics, human rights, public information, environment, agriculture, philosophy, economics, and religious leader from Bangladesh, the Philippines, and Indonesia.

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

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

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

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



## Conclusion

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

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

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

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

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

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



human rights.

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

## Recommendations

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

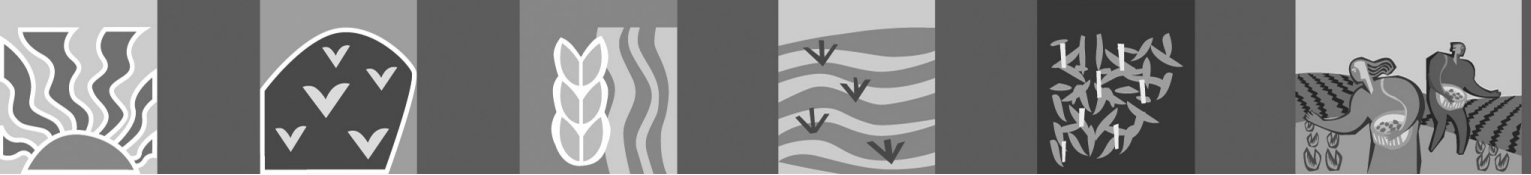
1. Strengthening advocacy and lobbying to ASEAN country-members with no NHRIs;



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

## References

- Acciaioli, G. (2009) "Conservation and Community in the Lore Lindu National Park (Sulawesi): Customary Custodianship, Multi-ethnic Participation, and Resource Entitlement, in *Community Environment and Local Governance in Indonesia: Locating the Commonwealth*, C. Warren and J. McCarthy (eds.), pp. 89-120. London: Routledge.
- ADB (2014) *Key Indicators for Asia and the Pacific 2014*, 45<sup>th</sup> edition, Special Chapter Poverty in Asia: A Deeper Look. Mandaluyong City: Asian Development Bank.
- ADHOC (2014) *Land Situation in Cambodia 2013*. Phnom Penh: Cambodian Human Rights and Development Association.
- ADHOC (2015) "Cambodia: Symbolic Institutions are No Substitute", in *2015 ANNI Report on the Secretariat and Establishment of National Human Rights Institutions in Asia*, The Asian NGO Network on National Human Rights Institutions (ANNI), pp. 29-39. Bangkok: Forum Asia and ANNI.
- Agarwal, B. (2003) "Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market", *Journal of Agrarian Change* 3(1-2): 184-224.
- AICHR (2010) *Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2010-2015)*, available at <https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEWj3t6mRwLLRAhUKqI8KHx-UDDEQFggBMAA&url=http%3A%2F%2Faichr.kln.gov.my%2Findex.php%2Fdocuments%3Fdownload%3D2%3Aaichr-five-year-work-plan-2012-2015&usq=AFQjCNHyyN3ie7h1uNjZleWBrvO1ZxCKsQ>
- AIPO (1993) *Kuala Lumpur Declaration on Human Rights*, ASEAN Inter-Parliamentary Organization (AIPO), available at [http://www.hurights.or.jp/archives/other\\_documents/section1/2010/03/kuala-lumpur-declaration-on-human-rights1993.html](http://www.hurights.or.jp/archives/other_documents/section1/2010/03/kuala-lumpur-declaration-on-human-rights1993.html)
- ANGOC (2012) *Securing the Right to Land: An Overview on Access to Land in Asia*, 2<sup>nd</sup> edition. Quezon City: ANGOC.
- ANGOC (2014) *The Diliman Declaration to the Asian People's Land Rights Tribunal Forum*, available at <http://www.angoc.org/wp-content/uploads/2015/07/APLRT-layout-for-printing-June-23.pdf>
- ANGOC (2015) "2014 Philippine Land Reform Monitoring Report", in *A Regional Workshop on Land Monitoring Initiatives: Proceedings*, Land Watch Asia (LWA) Regional Workshop on Land Monitoring Initiatives: "Toward an Accountable Governance on Land", Quizon City 21-22 April 2015, pp. 34-43.
- American Bar Association (2014) *The ASEAN Human Rights Declaration: A Legal Analysis*, ABA Rule of Law Initiative, available at <http://www.americanbar.org/content/dam/aba/directories/roli/asean/asean-human-rights-declaration-legal-analysis-2014.authcheckdam.pdf>
- Arief, S. (1977) *Indonesia: Growth, Income Disparity and Mass Poverty*, Jakarta: SAA.
- ASEAN Secretariat (1967) *1967 ASEAN Declaration*, Adopted by the Foreign Ministers at the 1st ASEAN Ministerial Meeting in Bangkok, Thailand on 8 August 1967, [www.aseansec.org/1212.htm](http://www.aseansec.org/1212.htm).
- ASEAN Secretariat (2008) *The ASEAN Charter*. Jakarta: ASEAN Secretariat.
- ASEAN Secretariat (2009a) *ASEAN Political-Security Blueprint*. Jakarta: ASEAN Secretariat.

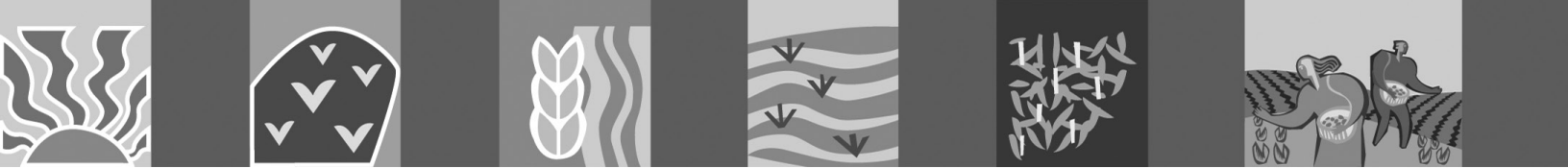


- ASEAN Secretariat (2009b) *Terms of Reference of ASEAN Intergovernmental Commission on Human Rights*. Jakarta: ASEAN Secretariat.
- ASEAN Secretariat (2013) *ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD and Its Translation*. Jakarta: ASEAN Secretariat.
- ASEAN Secretariat (2014) *AICHR: What You Need to Know*, 2<sup>nd</sup> edition. Jakarta: ASEAN Secretariat.
- ASEAN Secretariat (2015a) *Report of the ASEAN Regional Assessment of MDG Achievement and Post-2015 Development*. Jakarta: ASEAN Secretariat.
- ASEAN Secretariat (2015b) *ASEAN Statistical Yearbook 2014*. Jakarta: ASEAN Secretariat.
- Bachriadi, D. (2004) "Tendensi dalam Penyelesaian Konflik Agraria di Indonesia: Menunggu Lahirnya Komisi Nasional untuk Penyelesaian Konflik Agraria (KNUP-KA)", *Jurnal Dinamika Masyarakat* 3(3): 497-521.
- Bachriadi, D. (2010) *Between Discourse and Action: Agrarian Reform and Rural Social Movements in Indonesia post 1965*, Ph.D dissertation at Flinders University, Australia.
- Bachriadi, D. (2012) *Development of Agrofuel Industry in Southeast Asia*, unpublished research report of the Nippon Foundation's Asian Public Intellectuals Fellowship 2010-2011.
- Bachriadi, D. (2014) *Masalah Agraria dan Penegakan/ Pemajuan HAM di Indonesia*, position paper of Komnas HAM Special Rapporteur on Agrarian Issue No. 001/2014. Jakarta: Komnas HAM RI.
- Bachriadi, D. and A. Lucas (2002) "Hutan Milik Siapa? Upaya-upaya Mewujudkan Forestry Landreform di Kabupaten Wonosobo, Jawa Tengah", in *Berebut Tanah: Beberapa Kajian Berperspektif Kampus dan Kampung*, A. Lounela and R. Y. Zakaria (eds.), pp. 79-158. Yogyakarta: Insist Press.
- Bachriadi, D. and G. Wiradi (2011) *Six Decades of Inequality: Land Tenure Problems in Indonesia*. Bandung: ARC Books.
- Bachriadi, D. and G. Wiradi (2013) "Land Concentration and Land Reform in Indonesia: Interpreting Agricultural Census Data, 196-2003", in *Land for the People: The State and Agrarian Conflict in Indonesia*, A. Lucas and C. Warren (eds.), pp. 42-92. Athens: Ohio University Press.
- Barraclough, S. L. and K. B. Ghimire (1995) *Forests and Livelihoods: The Social Dynamic of Deforestation in Developing Countries*. New York: St. Martin's Press.
- Barraclough, S. L. and K. B. Ghimire (2000) *Agricultural Expansion and Tropical Deforestation*. London: Earthscan.
- Billah, M.M., L. Widjajanto and A. Kristyanto (1984) 'Segi Penguasaan Tanah dan Dinamika Sosial di Pedesaan Jawa (Tengah)', in *Dua Abad Penguasaan Tanah: Pola Penguasaan Tanah Pertanian di Jawa dari Masa ke Masa*, S.M.P. Tjondronegoro and G. Wiradi (eds.), pp. 250-285. Jakarta: PT Gramedia.
- Boreak, S. (2000) *A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys*, Cambodian Development Resource Institute, Working Paper 16. Phnom Penh: CDRI.
- Borras Jr., S. (2007a) *Pro-poor Land Reform: A Critique*. Ottawa: The University of Ottawa Press.
- Borras Jr., S. (2007b) "'Free Market', Export-Led Development Strategy and Its Impact on Rural Livelihoods, Poverty, and Inequality: The Philippines Experience Seen from a Southeast Asian Perspective", *Review of International Political Economy* 14(1): 143-175.
- BPS (2011) *Data Strategis BPS*. Jakarta: Badan Pusat Statistik.
- BPS (2014) *Statistik Indonesia 2014*, Jakarta: Badan Pusat Statistik.
- Brockett, C.D. (1992) "Measuring Political Violence and Land Inequality in Central America", *The American Political Science Review* 86(1): 169-176.
- Büchi, S. et al. (eds.) (1997) *Indigenous Peoples, Environment and Development*, proceedings of the conference, IWGIA Document No. 85. Copenhagen: IWGIA and Dept. of Social Anthropology, University of Zurich.
- CCHR (2013) *Cambodia: Land in Conflict – An Overview of the Land Situation*. Phnom Penh: Cambodian Center for Human Rights.
- Chamroeun, CHL (2012) "Introduction to the Land Law of Cambodia", in *Introduction to Cambodian Law*, H. Peng, K. Phalack and J. Menzel (eds.), pp. 313-335. Phnom Penh: Konrad-Adenauer-Stiftung, Cambodia.
- Chao, S. and M. Colchester (2012) *Human Rights and Agribusiness: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform*, a proceeding of workshop, Bali of Indonesia, 28 November – 1 December 2011. Bogor: Forest Peoples Program (FPP) and Sawit Watch.
- Chongvilaivan, A. (2014) "Inequality in Southeast Asia", in *Inequality in Asia and the Pacific: Trends, Drivers, and Policy Implications*, Kanbur, R., C. Rhee and J. Zhuang (eds.), pp. 303-328. London: Routledge and ADB.





- Christodoulou, D. (1990) *The Unpromised Land: Agrarian Reform and Conflict Worldwide*. London: Zed Books.
- Clarke, G. (2012) "The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012", *Northwestern Journal of International Human Rights* 11(1): 1-27.
- COHRE (2002) *Forced Evictions: Violations of Human Rights*, Global Survey on Forced Evictions No. 8. Geneva: Centre on Housing Rights and Evictions (COHRE).
- Commission on Global Poverty (2017) *Monitoring Global Poverty: Report of the Commission on Global Poverty*. Washington DC.: World Bank Group.
- Contreras-Hermosilla, A. and C. Fay (2005) *Strengthening Forest Management in Indonesia Through Land Tenure Reform: Issues and Framework for Action*. Washington DC.: Forest Trends and World Agroforestry Centre, available at [http://www.forest-trends.org/documents/files/doc\\_107.pdf](http://www.forest-trends.org/documents/files/doc_107.pdf)
- Cook, S. and J. Pincus (2014) "Poverty, Inequality and Social Protection in Southeast Asia: An Introduction", *Journal of Southeast Asian Economies* 31(1): 1-17.
- Cordes, K.Y. and J.D. Sachs (2015) *Measuring Land Rights for a Sustainable Future*, <http://unsdsn.org/news/2015/09/22/measuring-land-rights-for-a-sustainable-future/>
- Corpuz, O.D. (1975) *An Economic History of the Philippines*. Quezon City: University of the Philippines Press.
- Cushner, N.P. (1976) *Landed Estates in the Colonial Philippines*, Monograph Series No. 20 Southeast Asia Studies of Yale University. New Haven: Yale University Southeast Asia Studies.
- Davidson, J.S. and D. Henley (eds.) (2007) *Revival of Tradition in Indonesian Politics: The Development of Adat from Colonialism to Indegenism*. London: Routledge.
- de Leon, T. O. and G.M.O. Escobido (2004) *The Banana Export Industry and Agrarian Reform*. Davao City: AFRIM.
- Departemen Kehutanan, Pusat Rencana dan Statistik and Direktorat Statistik Pertanian Badan Pusat Statistik (2007) *Identifikasi Desa Dalam Kawasan Hutan 2007*, Jakarta: Badan Planologi Departemen Kehutanan.
- Durbach, A., C. Renshaw and A. Byrnes (2009) "'A Tounge but No Teeth'": The Emergence of a Regional Human Rights Mechanism in the Asia Pacific Region", *Sydney Law Review* 31(211): 211-238.
- Ehrentraut, S. (2011) "Decentralization and the Promise of Indigenous Peoples' Empowerment: The Case of the World Bank in Cambodia, 2009", *The Pacific Review* 24(1): 89-113.
- Eldridge, P.J. (2002) *The Politics of Human Rights in Southeast Asia*. London: Routledge.
- FAO (2005) *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*. Rome: Food and Agriculture Organization of the United Nations.
- FAO (2014) *Cambodia – Country Fact Sheet on Food and Agriculture Policy Trends*, April 2014, FAO Policy Decision Analysis (FAPDA), available at <http://www.fao.org/in-action/fapda/outputs/country-fact-sheets/en/>
- Farha, L. (2012) *Forced Evictions: Global Crisis, Global Solutions*. Nairobi: UN-Habitat.
- Fay, C. and G. Michon (2003) *Redressing Forestry Hegemony – Where a Forestry Regulatory Framework is Best Replaced by an Agrarian One*, paper presented at the International Conference on "Rural Livelihoods, Forests and Biodiversity", Bonn 19-23 May 2003.
- Ferreira, H.G.F. et al. (2015) A Global Count of the Extreme Poor in 2012: Data Issues, Methodology and Initial Results, World Bank Policy Research Working Paper 7432, <http://documents.worldbank.org/curated/en/360021468187787070/pdf/WPS7432.pdf>
- Fitzpatrick, D. (1997) 'Disputes and Pluralism in Modern Indonesian Land Law', *Yale Journal of International Law* 22(1), pp. 171-212.
- Franco, J.C. and S.M. Borrás Jr (2005) *On Just Grounds: Struggling for Agrarian justice and Citizenship Rights in the Rural Philippines*. Quezon City: Institute for Popular Democracy.
- Golay, C. and I. Cismas (2007) *Legal Opinion: The Right to Property from a Human Rights Perspective*. Geneva: Geneva Academy of International Humanitarian Law and Human Rights and International Center for Human Rights and Democratic Development.
- Gomez, J. and R. Ramcharan (2016) *The "Protection" Capacity of National Human Rights Institutions in Southeast Asia*, Southeast Asia Research Center (SEARC) Working Paper Series No. 172, February 2016. Hongkong: City University of Hong Kong.
- GRAIN (2016) "The Global Farmland Grab in 2016: How Big, How Bad?", *Against the Grain* June 2016, Annex 1. Land Deals 2016. Barcelona: Grain. Available at [www.grain.org/article/categories/13-against-the-grain](http://www.grain.org/article/categories/13-against-the-grain)
- Griffin, K., A. R. Khan, A. Ickowitz (2001) *Poverty and Distribution of Land*. Riverside: Department of Economics, University of California at Riverside.

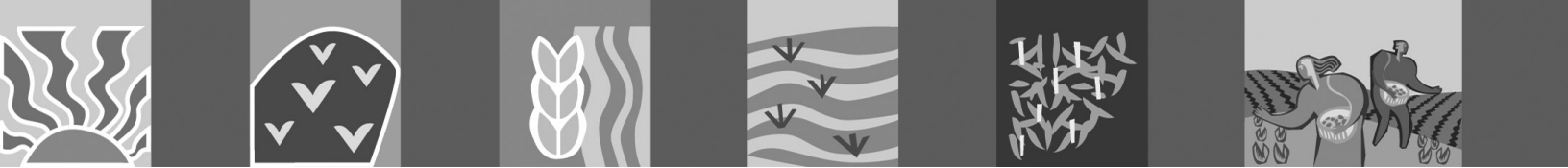


- Harsono, B. (1997) *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Vol. 1, revised edition. Jakarta: Penerbit Djambatan.
- Hayami, Y., Ma. A.R. Quisumbing, and L.S. Adriano (1990) *Toward an Alternative Land Reform Paradigm: A Philippines Perspective*. Manila: Ateneo de Manila University Press.
- Huizer, G. (1980) *Peasant Movements and Their Counterforces in South-East Asia*. New Delhi: Marwah Publications.
- IBON (1996) *The Comprehensive Agrarian Reform Program: More Misery for the Philippine Peasantry*. Manila: IBON Books.
- IFAD (2010) *Rural Poverty Report 2011, New Realities, New Challenges: New Opportunities for Tomorrow's Generation*. Rome: International Fund for Agricultural Development (UN-IFAD).
- Jacoby, E.H. (1971) *Man and Land: The Essential Revolution*. New York: Alfred A. Knopf.
- Januardy, A. F. (2015) *Kami Terusir: Laporan Penggusuran Paksa di Wilayah DKI Jakarta, Januari-Agustus 2015*. Jakarta: LBH Jakarta.
- Jones, G.W. (2013) *The Population of Southeast Asia*, Asia Research Institute Working Paper Series No. 196. Singapore: Asia Research Center, National University of Singapore.
- Kanmony, J. C. (2010) *Human Rights Violation*. New Delhi: Mittal Publications.
- Kano, H. (1990) *Pagelaran: Anatomi Sosial Ekonomi Pelapisan Masyarakat Tani di Sebuah Desa di Jawa Timur*. Yogyakarta: Gadjah Mada University Press.
- Kementerian Lingkungan Hidup dan Kehutanan, Direktorat Inventarasi dan Pemantaua Sumber Daya Hutan dan Direktorat Jenderal Planologi Kehutanan dan Tata Lingkungan (2015) *Rekalkulasi Penutupan Lahan Indonesia Tahun 2014*. Jakarta: Kementerian Lingkungan Hidup dan Kehutanan Republik Indonesia.
- Klatt, W. (1972) "Agrarian Issues in Asia: I. Land As a Source of Conflict", *International Affairs* 84(2): 226-241.
- Koch, I. E. (2009) *Human Rights as Indivisible Rights: The Protection of Socio-Economic Demands under the European Convention on Human Rights*. Leiden: Martinus Nijhoff Publisher.
- Land Watch Asia (2014) *Reclaiming Our Rights to Land: 2013 CSO Land Reform Monitoring in Asia*. Quezon City: ANGOC and Land Watch Asia (LWA).
- Lehmann, D. (ed.) (1974) *Peasants, Landlords and Governments: Agrarian Reform in the Third World*. New York: Holmes & Meier Pub. Inc.
- LICADHO (2014) *2014 Brings a New Wave of Cambodian Land Conflicts*. Phnom Penh: Cambodian League for the Promotion and Defense of Human Rights (LICADHO).
- Llanto, G.M. and M.M. Ballesteros (2003) *Land Issues in Poverty Reduction Strategies and the Development Agenda: Philippines*, PIDS Discussion Paper Series No. 2003-03. Makati City: Philippines Institute for Development Studies.
- Lucas, A. dan C. Warren (2013) "The Land, the Law, and the People", in *Land for the People: The State and Agrarian Conflict in Indonesia*, A. Lucas and C. Warren (eds.). Athens: Ohio University Press, pp. 1-39.
- Mennen, T. (2015) *Know Your SDGs: Land Matters for Sustainable Development*, <http://blog.chemonics.com/know-your-sdgs:-land-matters-for-sustainable-development>
- Miggiano, L. (2015) *Are the Sustainable Development Goals Matching International Standards on Land Rights?*, <http://www.landrightsnow.org/en/news/2015/09/08/are-sustainable-development-goals-matching-international-standards-land-rights/>
- Ministry of Forestry (2014) *Ministry of Forestry Statistics 2013*. Jakarta: Ministry of Forestry of Indonesia.
- Moyo, S. and P. Yeros (eds.) (2005) *Reclaiming the Land: The Resurgence of Rural Movements in Africa, Asia and Latin America*. London: Zed Books.
- Narula, S. (2013) *The Global Land Rush: Markets, Rights, and the Politics of Food*, public law and legal theory research paper series, working paper No. 13-42, July 2013. New York: New York University School of Law.
- NHRC (2012) *Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand on the Koh Kong Sugar Cane Plantation case in Cambodia*, an investigation report, dated 25 July 2012, available at <https://www.earthrights.org/sites/default/files/NHRC-Findings-on-Koh-Kong-25-July.pdf>
- NHRC (2015) *Investigation Report No. 1003/2015*, unofficial translation. Bangkok: National Commission on Human Rights of Thailand.
- Nurjaya, I.N. (2005) "Sejarah Hukum Pengelolaan Hutan di Indonesia", *Jurisprudence* 2(1): 35-55.
- OHCHR (1993) *Forced Eviction*, Commission on Human Rights resolution 1993/77, 67<sup>th</sup> meeting 10 March 1993.
- OHCHR (2004) *Prohibition of Forced Evictions*, Commission on Human Rights Resolution 2004/28, 52<sup>nd</sup> meeting 16 April 2004.



- OHCHR (2010) *National Human Rights Institutions: History, Principles, Roles and Responsibility*, PTS No. 4 (Rev. 1). New York and Geneva: Office of the United Nations High Commissioner for Human Rights.
- OHCHR (2014) *Forced Evictions*, Fact Sheet No. 25/Rev.1. New York and Geneva: Office of the United Nations High Commissioner for Human Rights and UN-Habitat.
- OHCHR (2015a) *Land and Human Rights: Standards and Applications*. Geneva: Office of the United Nations High Commissioner for Human Rights.
- OHCHR (2015b) *Land and Human Rights: Annotated Compilation of Case Law*. Geneva: Office of the United Nations High Commissioner for Human Rights.
- Olano, J.N.D. (2002) "Land Conflict Resolution: Case Studies in the Philippines", *Land Reform, Land Settlement and Cooperative 2002/2*, Bulletin of the FAO, pp. 84-97.
- Peluso, N.L. (1990) "A History of State Forest Management in Java", in *Keepers of the Forest: Land Management Alternatives in Southeast Asia*, M. Poffenberger (ed.), pp. 27-55. Quezon City: Ateneo de Manila University Press.
- Peluso, N.L. (1992) *Rich Forest, Poor People: Resource Control and Resistance in Java*. Berkeley: University of California Press.
- Persson, Å., N. Weitz, and M. Nilson (2016) "Follow-up and Review of the Sustainable Development Goals: Alignment vs. Internalization", *Review of European Community & International Environmental Law* 25(1): 59-68.
- Presiden RI (2010) *Lampiran Peraturan Presiden Republik Indonesia Nomor 5 Tahun 2010 tentang Rencana Pembangunan Jangka Menengah Nasional (RPJMN) Tahun 2010-2014*, book II Memperkuat Sinergi Antarbidang Pembangunan Bab IX Wilayah dan Tata Ruang, reproduced by Ministry of National Development Planning/National Development Planning Agency (BAPPENAS).
- Prosterman, R.L. and J.M. Riedinger (1987) *Land Reform and Democratic Development*. Baltimore: The John Hopkins University Press.
- Prosterman, R. L., M. N. Temple, and T. M. Hanstad (1990) *Agrarian Reform and Grassroots Development: Ten Case Studies*. Boulder: Lynne Rienner.
- PSA (2015) *Special Report – Highlights of the 2012 Census of Agriculture (2012 CA)*, Philippines Statistical Authority, available at <https://psa.gov.ph/content/special-report-highlights-2012-census-agriculture-2012-ca>
- Pung, K. (2011) *Land Issues in Cambodia*, LICADHO's slides presentation, November 2011, available at [http://www.nachdenkenseiten.de/upload/pdf/2011-LICADHO\\_Land\\_Dispute\\_Presentation.pdf](http://www.nachdenkenseiten.de/upload/pdf/2011-LICADHO_Land_Dispute_Presentation.pdf)
- Putzel, J. (1992) *A Captive Land: The Politics of Agrarian Reform in the Philippines*. New York: Monthly Review Press.
- Putzel, J. (2002) "The Politics of Partial Reform in the Philippines", in *Agrarian Studies: Essays on Agrarian Relations in Less-Developed Countries*, V.K. Ramachandran and M. Swaminathan (eds.). New Delhi: Tulika Books, pp. 213-229.
- Quane, H. (2012) "Further Dimension to the Interdependence and Indivisibility of Human Rights?: Recent Developments Concerning the Rights of Indigenous Peoples", *Harvard Human Rights Journal* 25(1): 49-83.
- Ramcharan, R. (2010) "ASEAN's Human Rights Commission: Policy Considerations for Enhancing Its Capacity to Protect Human Rights", *UCL Human Rights Review* Vol. 3: 199-235.
- Research Advocacy and Communication Center (RACC) (2015) *Statistical Analysis of Land Disputes in Cambodia, 2014*. Phnom Penh: The NGO Forum of Cambodia.
- Rosset, P., R. Patel and M. Courville (eds.) (2006) *Promised Land: Competing Visions of Agrarian Reform*. Oakland: Food First Books.
- Russett, B.M. (1964) "Inequality and Instability: The Relation of Land Tenure to Politics", *World Politics* 16(3): 442-454.
- Ruwiastuti, M. R. (1998) *Menuju Pluralisme Hukum Agraria: Analisa dan Kritik terhadap Marginalisasi Posisi Hukum-hukum dan Hak-hak Adat Penduduk Asli atas Tanah dan Sumber-sumber Agraria oleh Pembuat Undang-undang Pokok Agraria (UUPA 1960)*, Position Paper KPA No. 006/1998, Bandung: Konsorsium Pembaruan Agraria.
- Ruwiastuti, M. R. (2000) *"Sesat Pikir" Politik Hukum Agraria: Membongkar Alas Penguasaan Negara atas Hak-hak Adat*, Yogyakarta: Insist Press, KPA and Pustaka Pelajar.
- Ruwiastuti, M. R., N. Fauzi and D. Bachriadi (1998) *Penghancuran Hak Masyarakat Adat atas Tanah: Sistem Penguasaan Tanah Masyarakat Adat dan Hukum Agraria*, Bandung: Konsorsium Pembaruan Agraria.
- Safitri, M. A. (2000) *Desa, Institusi Lokal dan Pengelolaan Hutan: Refleksi Kebijakan dan Praktik*. Jakarta: ELSAM.



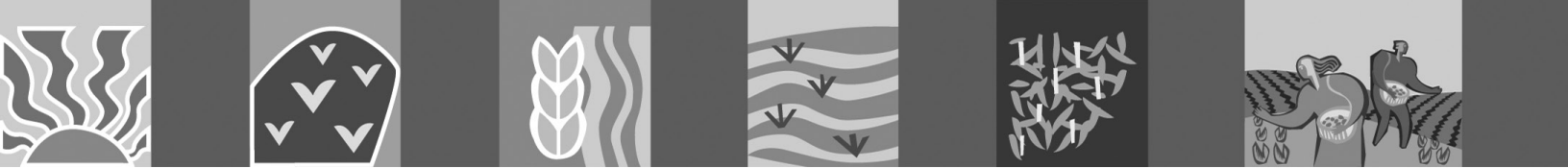


- Sajogyo and G. Wiradi (1985) *Rural Poverty and Efforts for Its Alleviation in Indonesia*, FAO in-depth studies series No. 18, Rome: Food and Agriculture Organization.
- Sangaji, A. (2005) *National Park versus farmers: The Experience of Conflict between Dongi-dongi Farmers and the Managers of Lore Lindu National Park*, paper presented to the symposium panel 'Conservation for/by Whom? Social Controversies and Cultural Contestations Regarding National Parks and Reserves in the Malay Archipelago', the 4<sup>th</sup> International Symposium of Journal Antropologi Indonesia, University of Indonesia, Depok, 16-18 May 2005.
- Sasongko, D. T. and U. Setiawan (eds.) (2005) *Tanah Masih di Langit: Penyelesaian Masalah Penguasaan Tanah dan Kekayaan Alam di Indonesia yang Tak Kunjung Tuntas di Era Reformasi*, proceeding International Conference on "Penguasaan Tanah dan Kekayaan Alam di Indonesia yang Sedang Berubah: Mempertanyakan Kembali Berbagai Jawaban", Jakarta 11-13 October 2004. Jakarta: Kemala Foundation.
- Schanbacher, W. D. (2010) *The Politics of Food: The Global Conflict between Food Security and Food Sovereignty*. Santa Barbara: Praeger.
- Schutter, O. D. (2009) *Large-scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, Report of Special Rapporteurs on the Right to Food presented to the UN Human Rights Council, 11 June 2009.
- Securing and Equitable Land Rights in the Post-2015 Agenda: A Key Issue In the Future We Want*, Technical Briefing, January 2015, available at <http://pubs.iied.org/pdfs/G03892.pdf> or [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/land-rights-post-2015-joint-agency-briefing-140115-en\\_1\\_0.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/land-rights-post-2015-joint-agency-briefing-140115-en_1_0.pdf)
- Selby, D. (1987) *Human Rights*. Cambridge: Cambridge University Press.
- Sidoti, C. (2012) *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*. Sydney and Lund: the Asia Pacific Forum of NHRI (APF) and the Roul Wallenberg Institute for Human Rights and Humanitarian Law (RWI).
- SNEC (2007) *The Report of Land and Human Development in Cambodia*. Phnom Penh: Supreme National Economic Council.
- Soeun, C. (2016) *Cambodia: 2016 Land Disputes and Land Grabbing Monitoring*. Phnom Penh: Analyzing Development Issue Centre (ADIC).
- Sontheary, S. (2015) "Process, Challenges and Prospects in Land Registration in Cambodia", in *2014 CSO Land Reform Monitoring: Towards an Accountable Governance of Land in Asia*, ANGOC, pp. 59-78. Quezon City: ANGOC.
- SUHAKAM (2013) *Report of the National Inquiry into the Land Rights of Indigenous Peoples*. Kuala Lumpur: Human Rights Commission of Malaysia.
- Sunchindah, A. (2015) *Transboundary Haze Pollution Problem in Southeast Asia: Reframing ASEAN's Response*, ERIA Discussion Paper Series 2015-82, available at [http://www.eria.org/publications/discussion\\_papers/FY2015/](http://www.eria.org/publications/discussion_papers/FY2015/)
- Suryaalam, M.R.R. (ed.) (2003) *Menguak Rahasia di Balik Merebaknya Konflik-konflik Agraria di Flores dan Timor*. Denpasar: Veco Indonesia and KPA.
- Taylor, M. (2016) Making SDGs Count for Land Rights", *Rural* 21 50(3): 34-36.
- Thiel, F. (2000) "Donor-driven Land Reform in Cambodia – Property Rights, Planning, and Land Value Taxation", *Erdkunde* 64(3): 227-239.
- Thompson, E.P. (1975) *Whigs and Hunters: The Origins of the Black Act*. London: Allen Lane.
- Turner, S. and D. Caouette (2006) "Agrarian Angst: Rural Resistance in Asia", *Geography Compass* 3(3): 950-975.
- United Nations (1955) *Annotation on the Text of the Draft International Covenants on Human Rights*, Document A/2929, United Nations General Assembly Official Records, Annexes Tenth Session, New York 1955.
- United Nations (2000) *United Nations Millenium Declaration*, Resolution 55/2 adopted by the General Assembly, 8 September 2000.
- United Nations (2001) *Road Map Towards the Implementation of the United Nations Millenium Declaration: Report of the Secretary-General*, document A/56/326, 6 September 2001.
- United Nations (2008) *Promotion and Protection of All Human Rights, Civil, Political, Economic Social and Cultural Rights, Including the Right to Development*, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Khotari, Document A/HRC/7/16, 13 February 2008, Human Rights Council 7<sup>th</sup> Session, United Nations General Assembly Official Records, 2008.
- United Nations (2009) *Technical Assistance and Capacity Building: Advisory Service and Technical Assistance for Cambodia*, report of the Special representative of the Secretary-General for Human Rights in





- Cambodia, Surya Subedi, document A/HRC/12/40, 31 August 2009, Human Rights Council twelfth session, United Nations General Assembly.
- United Nations (2010a) *The Right to Food*, Document A/65/281, United Nations General Assembly Official Records, Sixty-fifth Session, 2010.
- United Nations (2010b) *The Human Right to Water and Sanitation*, resolution adopted by General Assembly on sixty-four session, 28 July 2010, document A/Res/64/292, United Nations General Assembly Official Records.
- United Nations (2015a) *The Millenium Development Goals Report 2015*. New York: United Nations.
- United Nations (2015b) *Report of Special Rapporteur on Extreme Poverty and Human Rights*, Philip Alston, document A/HRC/29/31, 27 May 2015, Human Rights Council twenty-ninth session, United Nations General Assembly.
- United Nations (2016) *Transforming Our World: the 2030 Agenda for Sustainable Development*, Resolution 70/1 adopted by the General Assembly, 25 September 2016.
- UNCED (1992) *Earth Summit, Agenda 21, the United Nations Programme of Action from Rio*. New York: UN Department of Public Information.
- UN Economic and Social Council (1998) *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2 (11 February 1998), Commission on Human Rights Fifty-fourth session 1998.
- UN Economic and Social Council (2005) *Economic, Social and Cultural Rights*, E/CN.4/Sub.2/2005/17 (28 June 2005), Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights Fifty-sixth session 2005.
- UN Economic and Social Council (2014) *Report of the United Nations High Commissioner for Human Rights*, Substantive Session of 2014, New York 23 June – 18 July 2014.
- UN-Habitat (2008) *Secure Land Rights for All*. Nairobi: United Nations Human Settlements Programme (UN-Habitat).
- UN-Habitat (2009) *Land and Property: UN-Habitat in Disaster and Conflict Contexts*. Nairobi: United Nations Human Settlements Programme (UN-Habitat).
- UN-OCHA (2004) *Humanitarian Update 6(5)*, Uganda (May 2004). UN Office for the Coordination of Humanitarian Affairs (UN-OCHA), available at <http://reliefweb.int/report/democratic-republic-congo/humanitarian-update-uganda-may-2004-volume-vi-issue-v>.
- UN-Women and UN-HCHR (2013) *Realizing Women's Rights to Land and Other Productive Resources*. New York and Geneva: Office of UN High Commissioner for Human Rights.
- Vargas, A. (2003) *The Philippines Country Brief: Property Rights and Land Markets*. Madison: Land Tenure Center, University of Wisconsin.
- Vera, de V. and S. Libre (2015) "Indigenous Peoples in the Philippines: A Background", *Lok Niti* 19(3): 96-110.
- Vize, J. and M. Hornung (2013) *Indigenous People and Land Titling in Cambodia*, paper presented at the Annual World Bank Conference on Land and Poverty 2013, Washington D.C. 8-11 April 2013.
- Wan, G. and I. Sebastian (2011) *Poverty in Asia and the Pacific: An Update*, ADB Economics Working Paper Series No. 267, August 2011. Mandaluyong City: Asian Development Bank.
- Whelan, D. J. (2010) *Indivisible Human Rights: A History*. Philadelphia: University of Pennsylvania Press.
- White, B. and G. Wiradi (1989) 'Agrarian and Non Agrarian Bases of Inequality in Nine Javanese Villages', in *Agrarian Transformations: Local Processes and the State in Southeast Asia*, G. Hart, A. Turton and B. White (eds.), pp.266-302. Berkeley: University of California Press.
- Wickham, C. (1990) *European Forests in the Early Middle Ages: Landscapes and Land Clearance*, paper presented at the XXXVII Settimana di Studio del Centro Italiano sull'Alto Medioevo on "L'ambiente vegetale nell'Alto Medioevo", Spoleto 30 March – 5 April 1989.
- World Bank (2016a) *Development Goals in an Era of Demographic Change, Global Monitoring Report 2015/2016*, advance edition. Washington DC.: World Bank and IMF.
- World Bank (2016b) *Taking on Inequality: Poverty and Shared Prosperity 2016*. Washington DC.: the World Bank Group.
- Wurfel, D. A. (1989) "Land Reform: Context, Accomplishments and Prospects Under Marcos and Aquino", *Pilipinas – Journal of Philippine Studies* No. 12, Spring 1989, pp. 35-54.



# Mainstreaming Land Rights as Human Rights in South Asia

Condensed from *Mainstreaming Land Rights as Human Rights in South Asia: An Approach Paper* by Prof. Laya Prasad Uprety (Ph.D), Head, Central Department of Anthropology, Tribhuvan University, Kathmandu, Nepal

**H**uman rights are the rights that humans have and are entitled to simply by virtue of being human. They are inherent and inalienable rights that human beings require to live a dignified life (PWESCR, 2015). Collectively, they are comprehensive and holistic statements (PWESCR, 2015) elaborated and codified in the United Nations (UN) Declaration of Human Rights (as adopted and proclaimed by the General Assembly resolution 217 A-111 on 10 December, 1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by General Assembly Resolution 2200A (XXI) on 16 December, 1966 and has been in enforcement since 3 January 1976.

The preamble of the resolution of the UN Declaration of Human Rights clearly states, “the recognition of dignity and of equal and

inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Of the 30 Articles pertaining to civil and political rights, Article 17 is exclusive on right to property (under which people must not be arbitrarily deprived of it). Article 25 is on right to a standard of living (under which the well-being of the family includes food) (UN General Assembly, 1948).

Economic, social and cultural (ESC) rights mainly include the right to self-determination, equality, non-discrimination, gainful work, just conditions at work, social security, health, education, food, water and sanitation, housing and cultural rights—all essential for one to live a life both with dignity and freedom. People have the freedom to dispose their wealth and resources. They cannot be deprived of their means of subsistence



under no circumstance and the state parties are required to promote the realization of the right of self-determination. Efforts to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights have been prioritized (UN General Assembly, 1948).

Access to land is important for development and poverty reduction, but also often necessary for access to numerous economic, social and cultural rights, and as a gateway for many civil and political rights. However, there is no right to land codified in international human rights law. Land is a cross-cutting issue, and is not simply a resource for one human right in the international legal framework (Wickeri, and Kalhan, 2010).

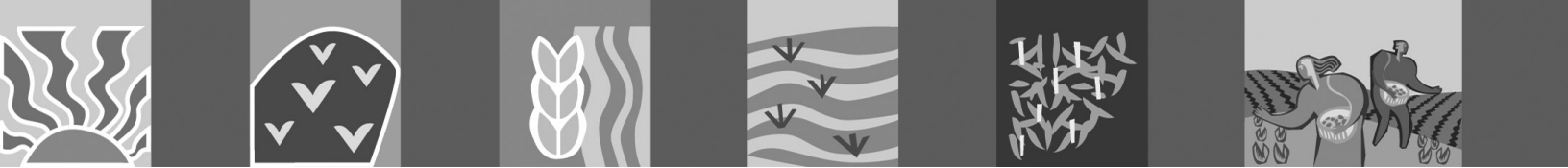
Land rights can be seen from human rights perspective by analyzing their relationships. Land rights are the significant factors to respect, promote, and promote the human rights.

Various legal frameworks and international agreements and conventions have mentioned the importance of protection, maintenance, and respect to people's land rights in order to achieve sustainability and prosperity of the people, both at local and global levels. Experts, including the Special Rapporteurs of the UN Commission on Human Rights, pointed out that "land rights is a gate to maintain certain human rights such as the right to water, the right to adequate housing, the right to health, the right to adequate standard of living, the right to food, and other rights."

### **The Right to Land within the Main Human Rights Standard Mechanisms**

Given the fact that the right to land cannot be examined and analyzed in isolation, there is the need to consider it in the context of UN enforcement mechanisms of Economic, Social and Cultural Rights (ESCR). Contextually, literature





***“A limited number of efforts have been made in the past to analyze the land rights problems in South Asia region as a whole.”***

shows that there are basically four main human rights standard mechanisms responsible for the enforcement of ESCR: (i) Committee on Economic, Social and Cultural Rights (CESCR); (ii) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR); (iii) Special Procedures (SPs), and (iii) Civil Society Monitors (CSMs).

The CESCR is the body of experts that monitors the implementation of ICESCR by State parties. These state parties are expected to submit regular reports to the Committee on the implementation of ESC rights domestically. They have to report initially within two years of ratifying the Covenant and thereafter every five years. The Committee examines the reports and addresses its concerns and recommendations to the state party in the ‘form of concluding observations’.

The OP-ICESCR was ratified on 5 May 2013 and allows the CESCR to receive and consider communications from individuals or groups who are victims of violations of any ESC rights of ICESCR under the jurisdiction of state party to the covenant. The Committee will only consider a communication after all domestic remedies have been exhausted, unless domestic remedies are unreasonably prolonged.

Under SPs, the Human Rights Council appoints Special Rapporteurs, or independent experts, to

address specific country situations or thematic issues. There are several thematic mandates which focus on ESC rights such as right to food, adequate standard of living, non-discrimination, access to resources, etc.

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

The Special Rapporteur is an independent expert appointed by the Human Rights Council to examine and report back on a country situation or a specific human rights theme. This position is honorary and the expert is not a staff of the United Nations nor paid for his/her work. Since 1979, special mechanisms have been created by the United Nations to examine specific country situations or themes from a human rights perspective. The United Nations Commission on Human Rights, replaced by the Human Rights Council in June 2006, has mandated experts to study particular human rights issues. These experts constitute what are known as the United Nations human rights mechanisms or mandates, or the system of special procedures ([www.org/EN/Issues/Food/Pages/FoodIndex.aspx](http://www.org/EN/Issues/Food/Pages/FoodIndex.aspx) downloaded on 7/27/2016).

Literature search from early 2000 shows that instead of directly dwelling on land rights, UN Special Rapporteurs have been appointed on ‘housing’ (including adequate housing), ‘right to food’ and ‘rights of indigenous peoples’ (which have direct implications on land because of their inextricable link to land rights).

**Land Rights Problems in South Asia**

A limited number of efforts have been made in the past to analyze the land rights problems in South Asia region as a whole. Contextually, ANGOC seems to be in the lead in this regard since 2008.





Assessing the land issues in South Asia in the context of the role of South Asian Association for Regional Cooperation (SAARC), it notes:

“SAARC’s policy documents are replete with pronouncements on poverty alleviation, improving agricultural production and attaining food security. Poverty has been put at the centre and pro-poor strategies have been adopted pursuant to the call of independent South Asian Commission on Poverty Alleviation. In particular, SAARC’s regional goal on livelihood.... defines the distribution of land to the landless in the region. SAARC’s development goal on livelihood aimed to reduce by half the number of poor people by 2010. Two of the indicators under this target were the following: (i) proportion of population below the calorie-based food plus non-food poverty line, and (ii) distribution of state land to the landless tenants...” (ANGOC, 2008:1).

However, ANGOC has critically assessed that this regional organizational mechanism fell short of providing the benchmarks and targets for land distribution. While suggestions were made by the technical group working on livelihood to create assets for sustainable livelihood including natural capital (land and water), there is ambiguity in SAARC’s position on the importance of land rights, as well as to the absence of an official declaration on land rights and issues as they relate to the farmers in the region. Critically speaking, SAARC has not recognized the interrelatedness of poverty alleviation, agricultural production, food security and land rights/access to land even at the minimum (ibid,2).

SAARC’s social charter has failed to include the land rights issues confronted by a generality of poor rural farmers. Apparently, SAARC seems to consider the rationale of land distribution to the sheer size of the landless people in the region

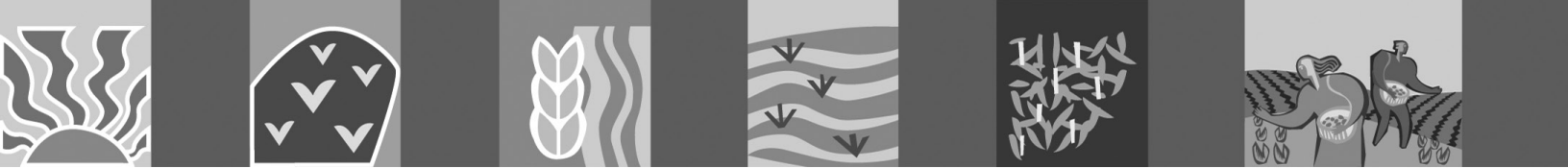
***“Conclusively, realization of equitable economic growth is impossible without the institutional effort for facilitating and ensuring that land-poor farmers have access to land and have tenurial security.”***

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with an embedded objective of accomplishing its development goal on livelihood (despite the recognition of fact that there is the continual decline in the availability of land).

However, food security has been mentioned in the SAARC’s charter. The issue of food security can be linked to the land rights issues and ANGOC believes that this may serve as a powerful tool for advocacy on land rights and issues. There has been an awareness of land as a basic problem in South Asia but ambiguity reigns in this regard. Hence, ANGOC asks four fundamental questions: (i) whether access to land and land rights per se are considered as main issue by the SAARC and its members?; (ii) how SAARC defines or perceives land issues?; (iii) what priority is given by the SAARC officials to the land issues?; and (iv) whether SAARC officials view land rights as an interrelated or separate issue, inter alia (ibid,3). It is also conspicuous from the SAARC charter that the countries of the region are concerned with the poor without explicitly mentioning the poor farmers or land-based rural workers.

Conclusively, realization of equitable economic growth is impossible without the institutional



effort for facilitating and ensuring that land-poor farmers have access to land and have tenurial security. Couched in other words, the SAARC goal of distributing land as poverty-alleviation target, and addressing food security remains unaccomplished.

### **Land Rights Movements in South Asia: A Brief Analysis**

The Land rights movements of Nepal, Bangladesh and India are largely led by CSOs, with the participation of land-poor farmers. CSOs have organized land-poor farmers, built their own community-based organizations (CBOs), trained the activists, developed the leadership capacities, and provided the overall leadership for the movements in the mobilization of land-poor farmers and lobbying, as well as influencing the policy-making and implementing processes at the macro, meso and micro levels.

**Land rights movement in Nepal:** Role of CSRC and NLRF as leading organizations. The Community Self-Reliance Centre (CSRC), a membership-based non-governmental organization (NGO), was founded in 1993 through the registration at the District Administration Office of Sindupalanchowk in central Nepal. It was initiated by the collective effort of a group of young and energetic school teachers with unwavering commitment of changing the existing pattern of elite-dominated and inequitable power relationships through the organization and mobilization of marginalized groups of people, especially tenants and landless farmers. It has been engaged in conscientizing and organizing land-poor farmers (agricultural laborers, tenants and marginalized farmers) who are deprived of their basic rights to land so that they can claim and exercise their rights over land resources in a peaceful way. The CSRC has

adopted the human rights-based approach of development and its vision is ‘a Nepali society where people have self-reliance and dignity’. Its mission is ‘to enhance the power of land-poor farmers for leading land and agrarian reforms’. Its goal is ‘to ensure land for land-poor farmers and their secure livelihood’.

The strategic objective of the CSRC for July 2014-June 2019 as outlined in the strategy reads as follows, “The land and agrarian rights movement will strive to enable land-poor farmers (agricultural laborers, tenants, and marginalized farmers) to effectively use existing assets; maximize their potential; expand their opportunities to participate in decision-making that affects them; overcome isolating, discriminating or marginalizing; and work together to secure their land and agrarian rights”. The CSRC has been achieving this strategic objective through a slew of strategies which include: (i) strengthening organizational capacity of the National Land Rights Forum (NLRF) and its local bodies/partners/units; (ii) enhancing food security and livelihood needs of land-poor farmers; (iii) promotion of non-violent and people-led campaigns; (iv) launching focused and coordinated movements complemented by concerted advocacy efforts; (v) strengthening collaborative alliances with CSOs promoting human rights and facilitating movements for social justice; (vi) working with policy think-tanks and academicians; (vii) enhancing women’s leadership; (viii) developing women-led cooperatives and enterprises; (ix) expanding women’s land ownership campaigns with different stakeholders; (x) diversifying funds for mobilization and partnerships; (xi) standardizing policies, systems and compliance, and (xii) generating, documenting and disseminating lessons.



Consequently, a number of achievements have already been made in the past as follows: (i) strengthening the power of land-poor farmers' organization—the village land rights forums (VLRFs); (ii) policy reform ('scientific land reform' has been a major agenda of the state as incorporated in the recently promulgated constitution); (iii) government policy pronouncement for enhancing women's equal access to land (as guaranteed by the new constitution); (iv) community-led land reform; (v) promoting livelihood initiatives of rights through agriculture co-operatives, and (vi) strengthening collaborative actions through alliances and coalitions (Uprety, 2015).

NLRF is a decade-old institution of land rights holders in Nepal and an aftermath of incessant CSRC's institutional support for its strengthening. It is operational in 53 districts and has now begun functioning independently for land rights policy advocacy and campaigns.

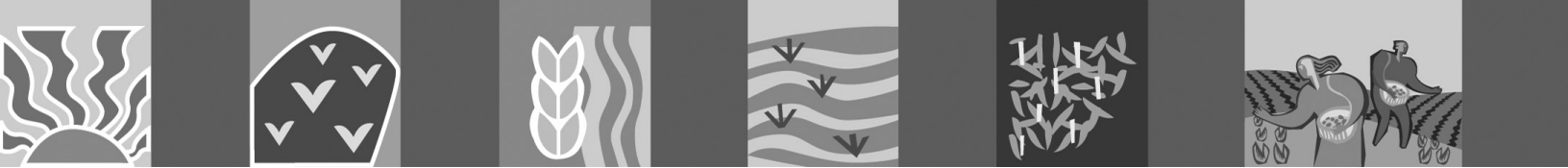
**Land rights movement in Bangladesh.** The Association for Land Reform and Development (ALRD), is the federating body of 273 NGOs, peasant and landless organizations in Bangladesh. ALRD is at the forefront of the struggle to establish land rights, rights to food, rights to livelihood, and rights of the indigenous people of minorities. It is currently the main organization in Bangladesh working exclusively on land reform issues. ALRD envisions a Bangladesh where upholding the rights of the citizen is the cornerstone of the state and where the state is pro-actively pursuing the promotion and strengthening of the rights of poor and the marginalized, including the most vulnerable of the society; landless peasants, indigenous peoples, women and religious and other minority communities. ALRD further aspires for the Bangladesh that adopts secularism as key guiding principle and gender equity and

social justice are considered as key objectives of all its undertakings ([www.landcoalition.org/en/regions/asia/member/alrd](http://www.landcoalition.org/en/regions/asia/member/alrd), downloaded on 7-29-2016).

**Land rights movement in India.** India has a long history of land rights movements. The birth of the Bhoodan Movement (land donation movement) has been associated with Vinobha Bhave, an Indian eminent social activist, in 1951 when he announced the goal of collecting 50 million acres of land for the land poor. Later, the Telengana movement engaged in armed struggle to claim land from violent and exploitative landowners.

The history of modern India is filled with the land struggles of the poor and dispossessed: from the peasant revolts of Avadh during 1919-1922 which resulted in organizing independent *kisan sabhas* (peasants' associations), to the 1967 Naxalbari movement of West Bengal. At its height, the Telengana movement succeeded in shutting down the administrative machinery of the Nizam in 4,000 villages, and in establishing *gram rajya*, or village self-rule. The institution of *vetti*, or compulsory, forced labor was abolished, and 10-12 lakh acres of land was redistributed. The Telengana movement was also notable for the widespread participation of women, though they did not receive any of the redistributed land in their names unless they were widows (Visweswaran, 2007: 5-6).

Of late, the Ekta Parishad (Unity Forum) has been the leading the movement for land rights in India for last 25 years. In 2007, with the support of several other groups (like National Association of People's Movements), it led 25,000 landless Dalits and Adivasis from twelve different states on a four-week *Padayatra* (foot march) covering 350 kilometers by foot from Gwalior in Madhya Pradesh to the Indian Parliament in Delhi. Their



purpose was to highlight the urgency of land reforms for the poor. The march, called “Janadesh,” or the “People’s Verdict,” took three years to organize and had as its objectives as follows: (i) the creation of a National Land Commission with statutory powers to direct state governments to carry out comprehensive land reforms; (ii) an end to evictions of Adivasis (indigenous) people from forest lands, and (iii) new fast track courts to resolve land disputes quickly.

As a result of the mobilization, the Indian government has set up a National Land Reforms Council headed by the Prime Minister with representation of the Ekta Parishad.

As a “new social movement,” the Ekta Parishad sees itself neither as a trade-union, a political party, or NGO, but as a mass-based social movement that works through allied networks across eight different states, many of them states where the Naxal movement is also strong. The organization is the strongest in Madhya Pradesh with 100,000 members spread out over 2,068 villages in 26 districts (ibid, 6-7).

In 2015, the government led by Prime Minister Narendra Modi introduced a Land Act Ordinance. It proposed to exempt five categories of acquisitions from the procedural requirements of the 2013 Act. These five categories were: defense, industrial corridors, rural infrastructure, affordable housing including housing from the poor, and any infrastructure including social infrastructure in public-private partnership (PPP) mode where the land is owned by the government. Basically, government would fit every acquisition under each of these five categories by annulling the previous Act itself ([https://www.reddit.com/r/india/comments/2re3r8/salient\\_features\\_of\\_land\\_act\\_ordinance-2015](https://www.reddit.com/r/india/comments/2re3r8/salient_features_of_land_act_ordinance-2015)).

In 2015, with the solidarity of Anne Hazare, an eminent anti-corruption crusader, Ekta Parishad in collaboration of other social organizations, launched a Yatra of 5,000 Adivasis, farmers and landless from 12 states (foot march of 60 kilometers by following the Mathura Road toward the parliament street in Delhi) to oppose the land acquisition ordinance. As a result, the government has agreed to reconstitute the National Land Reform Council chaired by the Prime Minister.

## **Human Rights Institutions and Mechanisms in South Asia**

### ***SAARC Charter on Human Rights***

Founded in December 1985, SAARC consists of eight countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The objectives of its charter are geared toward promoting the welfare of the people of the region; improving the quality of their life; accelerating economic growth, social progress, and cultural development; providing opportunities to their citizens to lead a life with dignity and to realize their full potential; promoting and strengthening collective self-reliance among the member-countries contributing to mutual trust and understanding among them; promoting active collaboration and assistance in the economic, social, cultural, technical and scientific fields; strengthening cooperation among themselves in international forums on matters of common interests; and cooperating with international and regional organizations with similar aims and purposes.

Indeed, literature demonstrates that there is initial focus on development initiatives. Since 2002, SAARC took steps to address human rights concerns, beginning with the ‘convention on preventing and trafficking in women and children





for prostitution’ and ‘convention on regional arrangements for the promotion of child welfare in South Asia’. There are various human rights commitments in SAARC’s broad objectives (such as providing opportunities to their citizens to lead a life with dignity and to realize their full potential which have the implications of the citizens’ right to health, education, adequate care and adequate standard of living and promoting welfare of the people of the region including improving the quality of their life).

The SAARC charter, in Article 11 states, “SAARC shall not be a substitute for bilateral and multilateral cooperation but shall complement them. SAARC cooperation shall not be inconsistent with bilateral and multilateral obligations.” All the member countries, barring an exception of Bhutan, have ratified the ICESCR, two multilateral treaties at the core of International Bill of Human Rights along with the Universal Declaration of Human Rights.

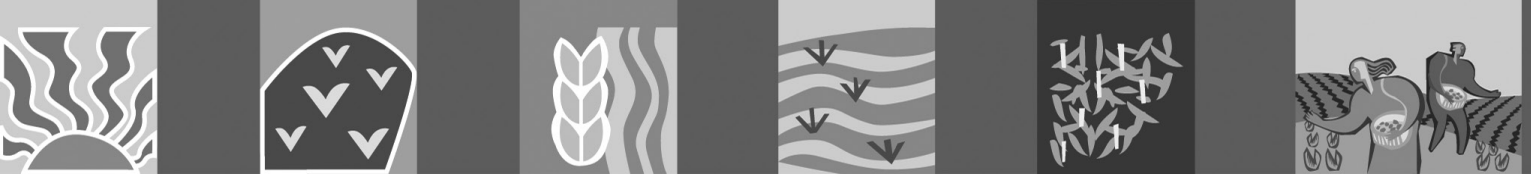
All the eight countries have agreed to comply with the responsibilities prescribed by the Convention on the Elimination of all Forms of Discrimination Against Women as well as Convention on the Rights of the Child. Contextually, these eight countries have multilateral obligations to reinforce the rights stipulated in these covenants, which are the basic human rights. Definitely, it does not have a human rights body or a treaty for cooperation of its members on issues related to the International Covenant on Civil and Political Rights (ICCPR) and ICESCR (Sattar, Seng and Muzart, 2012:24-25).

In 2004, SAARC’s social charter was signed with focus on ‘poverty eradication, population stabilization, empowerment of women, youth mobilization, human resource development, promotion of health, and protection of children’.

***“In 2004, SAARC’s social charter was signed with focus on poverty eradication, population stabilization, empowerment of women, youth mobilization, human resource development, promotion of health, and protection of children.”***

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Its preamble states, “The principal goal of SAARC is to promote the welfare of the peoples of South Asia, to improve the quality of their life, to accelerate economic growth, social progress and cultural developments, and to provide all individuals the opportunity to live all individuals to live in dignity and to realize their full potential”. Analytically speaking, SAARC’s social charter can be interpreted along the wide range of economic, social and cultural rights. One can discern the broad commitment to upholding human rights in South Asia. One of its objectives is to, “promote universal respect for the observance and protection of human rights and fundamental freedoms for all, in particular, the right to development; promote the effective exercise of rights and the discharge of responsibilities in a balanced manner at all levels of society; promote gender equality; promote the welfare of children and youth and promote social integration.” In the context of economic, social and cultural rights, Article 3.4 states, “State Parties agree that access to basic education, adequate housing, safe access to drinking water, and sanitation, and primary health care should be guaranteed in legislation, executive and administrative provision, addition to ensuring of adequate standard of living, including



adequate shelter, food and clothing”. Article 3.5 states about the imperative for providing a better habitat to the people of South Asia as part of addressing the problems of homeless. Indeed, the charter is the potential foundational tool for regional human rights initiatives. There is also mention of the ‘food security’, and establishment of ‘food bank’ in 2007 for tackling the food shortages through the ‘regional food security reserve’ and provisioning of ‘regional support to national food security efforts’ and fostering ‘inter-country partnership’ to tackle regional food shortages through the collective effort (SAARC Social Charter, 2004 and Sattar, Seng and Muzart, 2012: 36-37).

### ***SAARC and Land rights***

Policies of SAARC have underscored the issues of poverty alleviation, improvement of agricultural production and attainment of food security. In 2008, ANGOCC took an initiative to assess the land issues in South Asia in its ‘Land Watch Asia’. A concise analysis is presented underneath on the land issues of the region through the examination of its findings.

Given the fact that poverty has been put at the centre and pro-poor strategies have been adopted as per the recommendation of the Independent South Asian Commission on Poverty Alleviation, SAARC’s development goal on livelihood had also made recommendation for the distribution of land to the landless in the region. Indeed, the ambitious goal was to halve the number of poor people until 2010. Two targets were set to realize this goal which included: (i) proportion of population below the calorie based food plus non-food poverty line, and (ii) distribution of state land to landless tenants. Indeed, the possibility of realizing the target of land distribution has been

a mere ‘lip service’ in the absence of any reliable benchmarks as indicated earlier on.

The SAARC group on livelihood had underscored that targeting would require macro-economic and sectoral approaches for poor people’s sustainable livelihood which does include natural capital (such as land and water). On the one hand, there is ambiguity of SAARC’s position on the importance of land rights and absence of official declaration from SAARC on land rights and issues pertaining to the farmers in the region, and on the other hand, SAARC’s social charter ignores land issues (despite the fact that majority of the region’s citizens are rural poor farmers).

Nonetheless, SAARC appears to recognize the significance of land distribution in the context of the large number of landless people in the region for meeting its development goal on livelihood. There has been the realization among the member countries about the continuing decline in the availability of land, a critical resource for agricultural development. Indeed, the mention of the provision on food security in SAARC’s charter can indeed be linked to land issues (given the fact food security and nutritional security can be possible with the availability of land).

ANGOC’s paper shows that the dominance of growth-oriented framework fails to clarify the following issues: (i) does SAARC put a premium on land rights and issues raised by farmers when it says that it aims to “improve the quality of life in South Asia”?, and (ii) does SAARC believe that South Asia can proceed with tackling other development projects without first resolving land issues? It is also not clear on its plan of action of poverty alleviation whether SAARC regards land as one of the resources to which the poor have no access. In other words, there is no elaboration of land rights/issues in its program



in poverty alleviation. There appears a lack of awareness of land as a basic problem. This could embody a number of questions as follows: (i) whether access to land and land rights per se are considered as main issue by the SAARC?; (ii) how SAARC defines or perceives land issues?; (iii) what priority is given by the SAARC officials to land issues?, and (iv) whether they view land rights as an interrelated or separate issue, inter alia? There is no mechanism for CSO participation in such discussion in the discussion on the primacy of agricultural development and the need to ensure food security (ANGOC, 2008 :1-4).

The realization of equitable economic development is contingent only when access of landless/land-poor to land and land tenurial security is ensured (as the organization has set the goal of distributing land as a poverty alleviation target which has the potential of addressing the food security also but it suffers from the mere ‘lip service’).

### **Some Initiatives of SAARC Country Members**

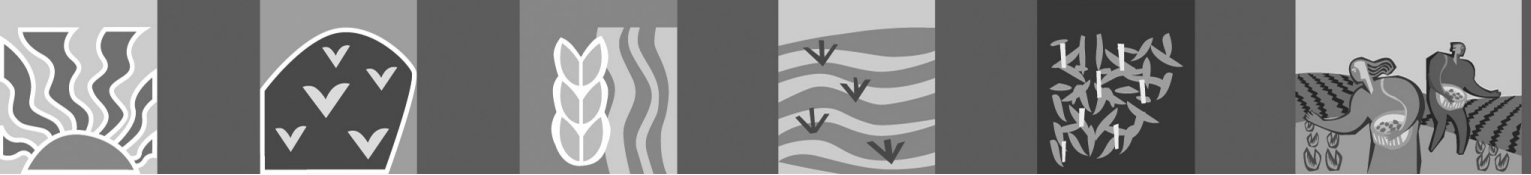
#### ***Special Rapporteurs on Agrarian Issues and National Inquiries on Indigenous People’s Rights.***

Literature shows that to date there has been no collective initiatives of SAARC country members through the appointment of Special Rapporteurs on agrarian issues and national inquiries on rights of indigenous peoples who constitute a sizable population in South Asia. For instance, indigenous peoples comprise 37 percent in Nepal, 15 percent in Pakistan, 8.6 percent in India, and 1-2 percent in Bangladesh. For these peoples as elsewhere, land is as culture and survival who have been disenfranchised by the national expansionist and colonial governments in the past. Then, the state-sponsored assimilation and state-led migration had also negative bearing on the customary practices of land use among the indigenous

peoples (i.e disappearance of such practices over time). Gradually, the national governments framed discriminatory state policies and promoted practices to implement them. Of late, there has been ‘new colonialism’ protected by the state policies for the extractive industries and plantations and national development activities (Quizon, 2015) which have negative bearing on the land and natural resources of indigenous peoples.

Contextually, the review of SAARC documents also shows that the Technical Committee on Agricultural and Rural Development (TCARD) does not have the clear stance of the organization on the panoply of land-related issues. Therefore, with the appointment of Special Rapporteur for agrarian issues and the national inquiries on the rights of indigenous peoples vis-à-vis land issues, a concerted institutional effort may be made in future to focus on the following: land rights, agrarian reform (redistributive policies), program of access to productive resources such as land, tenurial rights, sustainable use and management of common property resources (such as forests, water, genetic resources, biodiversity and land), resettlement and relocation, access to legal instruments for land disputes, women’s rights to land, customary rights of indigenous peoples, stakeholder participation in formulating agrarian reform policies, ILO 169 agreement, agrarian reform in places of conflict/war, etc (ANGOC, 2008).

In the context of South Asia, UN human rights instruments such as ICESCR provide the foundation for the recognition of customary land of the indigenous peoples. And under such condition, there is the need to undertake the common agenda and action for protecting indigenous people’s rights, providing and fulfilling the regional level UN Declaration on



***“...human rights activists/defenders have been the targets of harassment, intimidation, arbitrary detention, torture, and even extra-judicial killings. Thus, the SAARC countries have a relatively weak record of human rights promotion.”***

the Rights of Indigenous Peoples through the initiation of dialogues among the CSOs in the region to address the land and agrarian issues through concerted policy advocacy, learning and exchanging on policy development (through sharing experiences and best practices), learning from specific country experiences, working for holistic reforms on land and resource governance and recognizing the indigenous peoples as key to our collective future for conserving ecosystemic resources, maintaining biodiversity and promoting indigenous knowledge systems (Quizon, 2015).

#### ***Bringing Land Rights in HR Mechanisms in South Asia***

While dwelling on the issues to bring land rights in human rights (HR) mechanisms in South Asia, it is essential to shed light on the condition of CSOs and their human rights mechanisms in the region. Indeed, sociologically speaking, there has been a proliferation of CSOs in the last 30 years. While there exists an institutional culture of collaboration between the governments and CSOs on a panoply of development issues, government authorities and human rights activists are at

loggerheads because the latter are found to be raising the issues of human rights violations and atrocities committed by the government authorities against the people clamoring for the protection of rights (be they political, civil, social, cultural, and economic).

As a corollary of that, human rights activists/defenders have been the targets of harassment, intimidation, arbitrary detention, torture, and even extra-judicial killings. Thus, the SAARC countries have a relatively weak record of human rights promotion. However, CSOs have been seamlessly found to be involved in their activities for defending human rights. They have also the SAARC as a regional platform to make their voices heard (Sattar, Seng and Muzart, 2012).

SAARC social charter has also the regard for civil society because it reaffirms the need to develop, beyond national plan of action, a regional dimension of co-operation in the social sector. It also espouses principles that members of the civil society uphold, such as equity and social justice; respect for and protection of fundamental rights; respect for diverse cultures and people-centered development. But the official documents are silent on accreditation of CSOs (SAARC Social Charter, 2004 and ANGOC, 2008).

Since early 1990s, a number of human rights organizations have come into existence. For instance, South Asians for Human Rights (SAHR) is a membership-based regional organization working for the protection of human rights, peace building and democratic progress. Generally, human rights activists/defenders of South Asia work in the region.

There is another organization called South Asian Forum for Human Rights (SAFHR) which works as a forum for dialogue between regional and





local human rights organizations. In 1994, a new regional entity came into being called ‘People’s SAARC’— a collective movement of South Asian civil societies since 1994. It discusses ways to foster cooperation at the ‘people-to-people’ level in South Asia when the official SAARC process fails to address the issues (ibid).

The process of People’s SAARC has firmly established and a tacit consensus on its significance and collective ownership built among the South Asian activists. The changing name of the event – People’s SAARC, South Asian People’s Summit, People’s Assembly – is an indication of its organic, spontaneous and inclusive nature (PSAARC India, 2013). The first People’s SAARC meeting was held as a parallel event to the 8<sup>th</sup> SAARC summit in New Delhi in 1995 to lobby SAARC on the issue of trafficking, which led to the 9<sup>th</sup> SAARC recognizing trafficking as a grave issue in 2002 (in the form of convention).

Since then, People’s SAARC has been functioning to lobby SAARC officials on regional concerns. The 10<sup>th</sup> SAARC resolved to establish the South Asia Forum to serve as a platform for debate and exchange of ideas at the regional level between government representatives and stakeholders. In 2010, an organized institutional effort was made to establish a Working Group on South Asia Human Rights Mechanism in Kathmandu as an outcome of the regional gathering of human rights activists sponsored and organized by Forum Asia and Informal Sector Service Centre (INSEC). It produced the Kathmandu Declaration calling for the establishment of “an independent, effective and accountable human rights mechanism with an explicit mandate of promoting, protecting, and fulfilling human rights through a process of wide consultation with NGOs and people’s movements at national and regional levels.” In 2011, a working group has been established. On

***“Violation of land rights of people leads to the violation of human rights (be they civil and political or social, economic and cultural).”***

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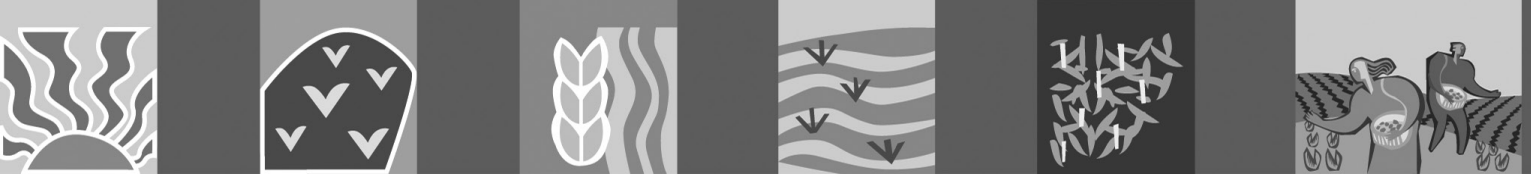
the whole, SAARC seems to be in the inchoative stage for the enforcement of human rights (Sattar, Seng and Muzart, op.cit). Nonetheless, land rights issues can be brought in these People’s SAARC, South Asia Forum and Working Group on South Asia Human Rights Mechanism for debates and discussions and the findings can be communicated to the SAARC governments through the SAARC Secretariat.

### **Major Conclusions**

Based on the analysis presented in the preceding sections, three broad conclusions have been drawn as follows:

(i) From the rights-based perspective, civil, political, economic, social and cultural rights of human beings are recognized as universal, inherent, inalienable, indivisible and interdependent body of rights. Politically, people have to have the right to self-determination, which allows them to make their own independent decisions for the free pursuit of their economic, social and cultural development. There can be no deprivation of means of subsistence for the people under any circumstance.

Institutionally, the promotion of the realization of the right of self-determination is the responsibility of the state. Therefore, there can be the progressive realization of the rights



through the adoption of legislative measures for their enjoyment without discrimination. Efforts to undertake to ensure the equality for men and women to the enjoyment of all economic, social and cultural rights must universally be the priority of the state.

Recognition of the rights by state parties to citizens' adequate standard of living (subsuming adequate food, clothing, housing and to the continuous improvement of living conditions), fundamental right of freedom from hunger and cultural rights is of paramount importance. Thus, there is the indivisibility of human rights and land rights which can be considered an 'accessory right' to the realization of other human rights.

Violation of land rights of people leads to the violation of human rights (be they civil and political or social, economic and cultural). For instance in Nepal, enjoyment of government services is contingent upon the land rights (e.g water, electricity, banking services, and citizenship certificates which are vital for the enjoyment of voting rights and also serve as the gate to acquiring passports for gainful foreign employment).

(ii) The realization of equitable economic development is contingent only when the access of landless/land-poor people to land is ensured. The interconnectedness of land rights, poverty alleviation, agricultural development and food security cannot be denied. The ambivalence of the SAARC's policy on land issues, lack of clear regional strategy for enhancing the land-poor people's access to land and other productive natural resources, culture of patriarchy and colonial and national government's discriminatory policies towards the exploitation of indigenous people's resources have triggered the perpetuation of resource inequity in the SAARC region.

(iii) Given the fact that the land issue has not been collectively addressed by member states of SAARC, through the formulation of a common regional strategy, "social justice on land" is still a far-fetched dream. Contextually, they now have state obligations, both in the capacity of members of 'community of nations' and individual independent states, to respect and protect the rights of land-poor farmers (landless and marginalized including women and indigenous peoples) on land (including homestead land) and fulfill such obligations by changing the state policies/laws for ensuring the "equitable land distribution" and implementing them responsibly (including preventing and remedying land grabbing) as specified under 'people-centered land governance' of International Land Coalition (ILC) for translating the goals of social justice into realities in foreseeable future.

## Recommendations

Based on the analysis furnished above, a litany of recommendations has been made as follows:

- Bringing land rights issues to the People's SAARC (South Asian People's Summit, People's Assembly), South Asia Forum and Working Group on South Asia Human Rights Mechanism for debates and discussions and communicating the findings to the SAARC governments through the SAARC Secretariat would be appropriate.
- Creation of permanent inter-governmental human rights mechanisms such as the Regional Committee on the Issues of Land Rights and Special Rapporteur on Agrarian Issues and Land Rights of Indigenous Peoples, for lessening the gross violation of land rights in the region and ensuring the enjoyment of civic, political, economic, social and cultural rights of the people would be equally



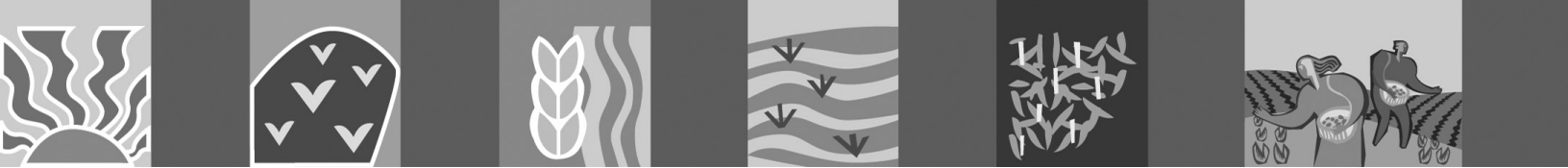
important (SAARC as a provider of enabling environment for the well-being of the land-poor people such as landless, marginalized women farmers and indigenous peoples).

- Playing of a proactive role by the regional network of CSOs to engage the Technical Committee on Agriculture and Rural Development (TCARD) created in 2006, to address the challenges for ensuring the food and nutritional security at the level of agricultural ministers in the SAARC on land-related issues.
- Collaboration between universities and national human rights organizations working on land rights in each country for conducting empirical research for: (i) national evidence-based robust advocacy, and (ii) then forming a regional entity for collaboration between these institutions to give feedback to the SAARC secretariat/governments.
- Contributions have to be made by governments, CSOs and academic institutions of the SAARC region for enabling land-poor people to ensure their land rights (as human rights) by linking their national and regional programs on land resources for the accomplishment of sustainable development goals (SDGs) such as “No poverty” (goal 1), “Zero hunger”, (goal 2), “Achieving gender equality” (goal 5), and “Life on land” (goal 15).
- Enhancement of collaborative efforts of national governments, CSOs, community-based organizations (CBOs) and research organizations in the SAARC region for “achieving gender equity” for land rights through women awareness creation and empowerment programs, holding policy dialogues with key stakeholders (responsible for decision-making) for formulating pro-women land polices/laws, conducting gender-sensitive researches vis-à-vis women’s land

rights and ensuring the policy implementation through lobbying and monitoring is also highly recommended. ■

## Bibliography

- Agrawal, B. (1996). *A Field of One’s Own: Gender and Land Rights in South Asia*. New York: Cambridge University Press.
- Agrawal, B. (1999). *Gender, Property and Land Rights: Bridging a Critical Gap in Economic Analysis and Policy*. *Out of the Margins*, 264-289.
- ANGOC (2008). *Land Issues in South Asia: Assessing SAARC*. Land Watch Asia, Issue Brief 1. Manila: The Philippines.
- ANGOC (2014). *2014 Land Reform Monitoring Report: Towards an Accountable Governance on Land in Asia*. Manila: The Philippines.
- (2015). *Women Land Rights in Asia: Land Watch Asia*. Issue Brief. Manila: The Philippines.
- Barkat, A. (2015) *Land Reform Report 2014: Bangladesh*. Association for Land Reform and Rural Development (ALRD) and Human Development Research Centre (HDRC), Unpublished.
- Barkat, A. et al. (2015). *Assessing Inheritance Laws and their Impact on Rural Women in Bangladesh*. Conducted for International Land Coalition.
- Bachriadi, D. (2014). *Land Rights as Seen from Human Rights Perspective: A Challenge for the Asian Community*. Workshop on the Theme ‘Mainstreaming Land Rights as Human Rights’ (16-17 September, 2014), Phnom Penh, Cambodia.
- Bhardwaj, S. (2014). *India Situation*. Workshop on the Theme ‘Mainstreaming Land Rights as Human Rights’ (16-17 September, 2014), Phnom Penh, Cambodia.
- Bourdreaux, K. and Sacks, D. (2009). *Land Tenure Security and Agricultural Productivity*. *Mercatus on Policy* No. 57. George Mason University.
- Committee on World Food Security (CFS) and UN Food and Agriculture Organization (FAO) (2012): *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome, Italy.
- Central Bureau of Statistics (CBS), 2011. *Nepal Living Standards Survey*. Kathmandu: Nepal -----  
----- (2011) *National Living Standards Survey 111: 2010/2011*. Kathmandu.
- (2012). *Poverty in Nepal (Brief Report Based on NLSS 111-2010/2011)*. Kathmandu.

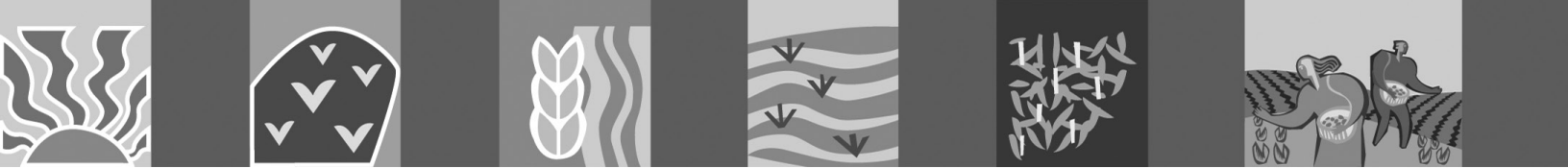


- (2012). National Population and Housing Census 2011 (National Report). Kathmandu.
- Charya, C. (2014). Welcome. Workshop on the Theme ‘Mainstreaming Land Rights as Human Rights’ (16-17 September, 2014), Phnom Penh, Cambodia.
- Chaudhary, S. n.d Land Grabbing in India for Food Security: A Microsoft Power Point Presentation, Housing and Land Rights Network and Ekta Parishad, India.
- Constituent Assembly of Nepal (2015). Constitution of the Federal Republic of Nepal. Kathmandu.
- Corpuz, V.T. 2015. UN Special Rapporteur on the Rights of Indigenous Peoples on the Impact of International Investment and Free Trade on Indigenous Peoples’ Rights, Full Report Presented to 70<sup>th</sup> Session of UN General Assembly on 7 August, 2015.
- Daily Star, May (5, 2015). [www.the-daily-star.net/package/rural-women-deprived-land-ownership-80534](http://www.the-daily-star.net/package/rural-women-deprived-land-ownership-80534). downloaded on 7/17/2016.
- Dhar, V. (2012). Agricultural Census in India. Delhi: Department of Agriculture and Cooperatives, Ministry of Agriculture, Government of India.
- Diliman Declaration of the Asian People’s Land Rights Tribunal Forum, 16-17 January, 2014, Malcom Hall Theater, University of the Philippines, Diliman, Quezon City, The Philippines.
- Gefont, (2014). Transformation: By Building Workers’ Power. 6<sup>th</sup> National Congress, March 28-31, 2014, Kathmandu.
- Ghimire, K. (1998). Forest or Farm: The Politics of Poverty and Land Hunger in Nepal. New Delhi: Manohar. <https://landwatchasia.wordpress.com/tag/land-rights-movement-in-india>, downloaded on 7/19/2016. [https://www.reddit.com/r/india/comments/2re3r8/salient\\_features\\_of\\_land\\_act\\_ordinance-2015](https://www.reddit.com/r/india/comments/2re3r8/salient_features_of_land_act_ordinance-2015), downloaded on 7/19/2016.
- His Majesty’s Government of Nepal, (2005). National Agriculture Policy. Kathmandu.
- Human Rights Office of the High Commissioner, Report.19 and 20 Info Notes (2014) Based on the Summary of the Report of the Special Rapporteur Leilani Farha on the Right to Adequate Housing
- IFAD, (2012). Land Tenure Reduction and Poverty Reduction. Retrieved from the IFAD Website: <http://www.ifad.org/pub/factsheet/land.e.pdf>.
- Jeremie, n.d. Land Rights are Human Rights: The Case for a Specific Right to Land. University of East London.
- Kardam, N. (1998). Changing Institutions in Women’s Interests in Development and Gender in Brief 5.
- Landesa. (2015). Status of Women’s Land Rights in Three Countries of South Asia (India, Nepal, and Pakistan). A Draft Consolidated Briefing Paper.
- Landesa. (2015). Status of Women’s Land Rights in Nepal. A Draft Briefing Paper.
- Integrated Food Policy Research Institute (2013). Status of Food Security in the Feed the Future Zone and Other Regions: Results from 2011-12 Bangladesh Integrated Household Survey. Report Submitted to USAID, Dhaka, Bangladesh.
- Islam, S; Moula, S; & Islam, M. (2015). Land Rights and Land Disputes and Land Administration in Bangladesh-A Critical Study. Beijing Law Review, 6, 193-198.
- Open-ended Intergovernmental Working Group of Human Rights Council on the Rights of Peasants and Other People Working in Rural Areas, 17-20 May, 2016
- Oxfam (2014). Women Farmers: Challenges and Opportunities. Lalitpur, Nepal
- Oxfam, (2014). Annapurna Gatha: Struggle Launched by Women of Different Districts for Food and Identity and Leadership in Agriculture Sector and Achievements in their Own Words. Lalitpur, Nepal.
- Oxfam (2014). Proceedings of Women Farmers’ National Assembly. Lalitpur. Oxfam.
- Phnom Penh Communiqué on Land Rights and Human Rights in ASEAN at the conclusion of the workshop on the theme ‘Mainstreaming Land Rights as Human Rights’ (16-17 September, 2014).
- Program on Covenant on Economic, Social and Cultural Rights (PWESCR), (2015): International Covenant on Economic, Social and Cultural Rights: A Handbook. Jan. P. Strijboslaan: The Netherlands Office, the Netherlands.
- PSAARC India, (2013). Evolution and History of People’s SAARC. India (Downloaded on 13 July, 2016).
- Quizon, A. B. (2013). Land Governance in Asia: Understanding Debates on Land Tenure Rights and Land Reform in Asian Context. Rome: ILC.
- Quizon, A. B. (2015) On the Customary Land Rights of Indigenous Peoples in Asia. Land Watch Asia: Issue Brief.
- Rawal, V. (2014). Changes in the Distribution of Operational Landholdings in Rural India: A Study of National Sample Survey Data. Review of Agrarian Studies. Vol.3, No.2, July, 2013- January, 2014.
- Regmi, M.C (1971). Land Ownership in Nepal. Delhi: Adroit Publishers.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living by Miloon Kothari, 25 January, 2001.





- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living by Miloon Kothari, 1 March, 2002.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living by Miloon Kothari, 3 March, 2003.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living by Miloon Kothari, 8 March, 2004.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living by Miloon Kothari, 8 March, 2005.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living by Miloon Kothari, 14 March, 2006.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living by Miloon Kothari, 7 February, 2007.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living and on the Right to Non-discrimination in this Context by Miloon Kothari, 13 February, 2008.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living and on the Right to Non-discrimination in this Context by Raquel Rolnik, 4 February, 2009.
- Reports of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living and on the Right to Non-discrimination in this Context by Raquel Rolnik, December 2010 and 26 December, 2011.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living and on the Right to Non-discrimination in this Context by Raquel Rolnik, 24 December, 2012.
- Report of the Special Rapporteur on Adequate Housing as a Component of Right to an Adequate Standard of Living and on the Right to Non-discrimination in this Context by Leilani Farha, 22 December, 2014.
- Regmi, M.C. (1999). A Study in Nepali Economic History: 1768-1846. Delhi: Second Reprint, Adroit Publishers.
- SAARC, (2004). SAARC Social Charter. Islamabad, Pakistan
- Sattar, M. Seng, Y.S. and Muzart, S. (2012). SAARC and Human Rights: Looking Back and Ways Forward. Bangkok: Asian Forum for Human Rights and Development (Forum Asia), Thailand.
- Sourav, R.I. (2015). Unjust Land Rights of Women in Bangladesh International Research Journal of Interdisciplinary and Multidisciplinary Studies .Vol.1, 5-13.
- United Nations Human Rights Office of the High Commissioner (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy”, Geneva, Switzerland.
- United Nations General Assembly (1948). United Nations Universal Declaration of Human Rights. Adopted and Proclaimed by General Assembly 217 (111) of December, 1948.
- United Nations General Assembly (1966). International Covenant on Economic, Social and Cultural Rights. Ratification and Accession by the General Assembly Resolution 2200A (XXI) of 16 December, 1966; Entry Into Force 3 January, 1976.
- United Nations General Assembly, 2015. Transforming Our World: the 2030 Agenda for Sustainable Development. New York: USA.
- Uprety, L. P. (2014). Ensuring Equitable Access to Land through Land Rights Movement. Kathmandu: Community Self-Reliance Center.
- (2015). State of Women Farmers in Nepal: A Conspectus: A Final Report Submitted to Oxfam Country Office, Kathmandu, Nepal.
- (2016) A Critical Ethnography: Empowerment of Land-Poor Farmers through the Movement for Land Rights and Agrarian Reform in Nepal. Kathmandu: Community Self-Reliance Center.
- Velayudhan, M. (2009). Women Land Rights in South Asia: Struggles and Diverse Contexts. Economic and Political Weekly, October 31. XLIV (44).
- Virak, Ou. (2014). Welcome. Workshop on the Theme ‘Mainstreaming Land Rights as Human Rights’ (16-17 September, 2014), Phnom Penh, Cambodia.
- Wickeri, E and Kalhan, A. (2010). Land Rights Issues in International Human Rights Law Malasiyan Journal of Human Rights, Vol.4, No.10.
- Wiswesworm, K. (2007). Contemporary Land Rights Movement in India Occasional Papers of the Sabalarn Popular Workshop.1-7.
- [www.ektaparishad](http://www.ektaparishad), 4 March, 2015 downloaded on 7/20/2016.
- [www.visionias.in.n.d](http://www.visionias.in.n.d). Socio-economic and Caste Census 2011 in India. Downloaded on 7/18/2016.
- [www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx). downloaded on 6/5/2016.
- [www.org/EN/Issues/Food/Pages/FoodIndex.aspx](http://www.org/EN/Issues/Food/Pages/FoodIndex.aspx) downloaded on 7/27/2016.
- [www.ochr.org/En/Issues/MDG/Pages/The2030Agenda.aspx](http://www.ochr.org/En/Issues/MDG/Pages/The2030Agenda.aspx). Human Rights and the 2030 Agenda for Sustainable Development. Downloaded on 11-8-2016.
- Zaman, M.A. (1973). Evaluation of Land Reform in Nepal. Kathmandu: Ministry of Land Reform.



# The Customary Land Rights of Indigenous Peoples in Asia

Antonio B. Quizon, ANGO C

Asia is home to 70% of the world's estimated 370 million indigenous peoples.<sup>1</sup> In Southeast Asia, indigenous peoples comprise as much as 30% of the total populations in Lao PDR and Burma, 14% to 17% in the Philippines, to 1.2% in Cambodia. Their numbers range from a high of 30 to 40 million in Indonesia, to a low of 200 thousand in Cambodia.

In South Asia, indigenous peoples comprise an estimated 37% of the population in Nepal, 15% in Pakistan, 8.6% in India, and 1-2% in Bangladesh.<sup>2</sup> India has the largest indigenous and tribal population in Asia (80 million people), comprised of over 500 distinct communities.<sup>3</sup>

Indigenous peoples across Asia are known by different names: ethnic minorities, hill people, uplanders, orang asal, masyarakat adat, tribes, scheduled tribes, adivasis, cultural communities and religious minorities.

While there is no universal legal definition of "indigenous peoples", official documents cite four defining attributes of indigenous peoples: (i) self-ascription or self-identification, (ii) a definable territory, (iii) historical resistance to colonization, and (iv) continuing cultures and traditions that have historically been differentiated from the dominant majority.<sup>4</sup> Other formal definitions

<sup>1</sup> IFAD. <http://www.ifad.org/english/indigenous/index.htm>

<sup>2</sup> As culled from various sources. See the list of references cited in this paper.

<sup>3</sup> ILO. <http://www.ilo.org/indigenous/Activitiesbyregion/Asia/SouthAsia/India/lang--en/index.htm>

<sup>4</sup> Kingsbury, Benedict (2008). "Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy" in *The Concept of Indigenous Peoples in Asia*, ed by Erni, Christian. Copenhagen and Chiang-mai: International Work Group for Indigenous Affairs and Asian Indigenous Peoples Pact Foundation. pp 126-130, 143-145. <http://iilj.org/aboutus/documents/IndigenousPeoplesinInternationalLawAConstructivistApproachtotheAsianControversy.Kingsbury.pdf>



include the presence of customary institutions, the use of indigenous language, collective attachment to a territory or habitat, and other characteristics.<sup>5</sup>

### State of indigenous communities

Globally, indigenous peoples account for less than 5 percent of the global population, yet they comprise about 15 percent of all the poor people in the world, and some one-third of the world's extremely poor people.<sup>6</sup>

Across Asia, indigenous people rank among the most deprived in terms of incomes, access to

justice, health and education. In Vietnam, despite comprising just over one-eighth of the national population, the minorities accounted for about 40 percent of Vietnam's poor in 2004.<sup>7</sup> They also suffer disproportionately from injustice, dispossession, and discrimination. In India, tribal peoples account for 40 percent of internally displaced people, although they constitute only 8 percent of the population.<sup>8</sup>

### Land as culture and survival

Land plays a central role in the culture and survival of indigenous peoples. As recognized by the UN Permanent Forum on Indigenous Peoples:

*“Land is the foundation of the lives and cultures of indigenous peoples all over the world. This is why the protection of their right to lands, territories and natural resources is a key demand of the international indigenous peoples’ movement ... Without access to and respect for their rights over their lands, territories and natural resources, the survival of indigenous peoples’ particular distinct cultures is threatened.”<sup>9</sup>*

For Asia's indigenous peoples, land is more than just an economic asset or commodity. Land is life itself, rooted to a territory and history. It provides the foundation for self-identity, personal security,

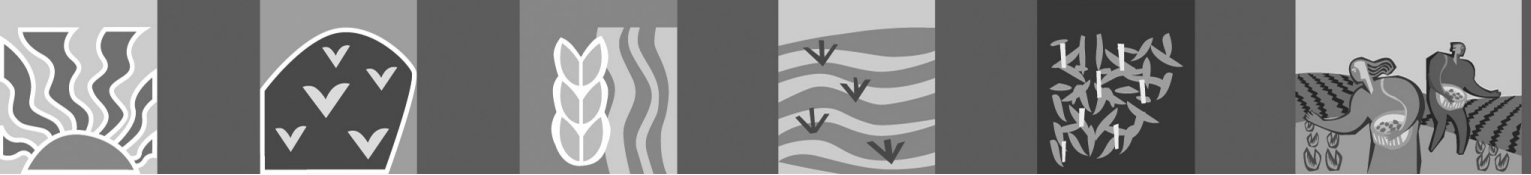
<sup>5</sup> The World Bank describes “indigenous peoples” as a distinct, vulnerable, social and cultural group having these characteristics in varying degrees: (i) self-identification; (ii) collective attachment to a distinct area and to natural resources in these habitats and territories; (iii) customary institutions that are separate from the dominant society and culture; and (iv) indigenous language. (WB Operational Procedure 4.10 of 2005).

<sup>6</sup> <http://www.un.org/esa/socdev/unpfii/documents/SOWIP/chapter%20highlights/chapter%201/sowip-ch1-en.pdf>

<sup>7</sup> Luong Thu Oanh (2012). *Country Technical Notes on Indigenous Peoples Issues*. IFAD and AIPP. <http://www.ifad.org/english/indigenous/pub/documents/tnotes/vietnam.pdf>

<sup>8</sup> Nathan, Dev, Govind Kelkar & Pierre Walter (2004). *Globalization and Indigenous Peoples in Asia: Changing the Local Global Interface*. Delhi: Sage Books. P. 17.

<sup>9</sup> United Nations Permanent Forum on Indigenous Issues (UNPFII) (2007). Report on the Sixth Session. UN Doc. E/2007/43.



faith, culture, livelihood and self-governance.<sup>10</sup> Land is where one's ancestors are buried and where sacred places are visited and revered.<sup>11</sup> Indigenous communities have evolved their own customary property regimes with multiple resource-use systems and corresponding rights and responsibilities over farming, foraging, mining and grazing.

Yet most Asian states have no legal framework for recognition of customary land rights, nor a mechanism for collective or communal land titling. Neither are indigenous communities recognized as legal entities under statutory law. Thus, the concepts of ancestral lands and customary rights continue to be highly contentious issues between indigenous peoples and State governments, as well as between indigenous and non-indigenous populations.

### Colonialism and disenfranchisement

Asia's history of colonialism and modern state-building was marked by a systematic process of disenfranchisement of indigenous peoples in many Asian countries.

Starting in the 16<sup>th</sup> century, Western powers came to Asia with a primary interest in trade, and gradually developed economic and political interest over land and territory as they imposed a commercial economy over local communities that had previously depended on local agricultural production and trade. The colonialists first introduced land administration and land-based

revenue collection to support the costs of colonial expansion, and later invaded the hinterlands to seize control over native territories. This annexation of lands reached its peak in the last 100 years of colonization (1850s to 1945) with the expansion of plantations and commercial mines in order to feed the growing industrialization of the West. Asia became not only a source of raw materials, but a growing market for manufactured Western goods.

**The creation of public domains.** Western powers brought native lands under "crown lands" or "the public domain" managed by the colonial state. These included lands outside of permanent settlements, including communal lands for grazing, hunting and shifting cultivation, burial and spiritual lands, and remote settlements. Traditional systems of communal ownership were broken up, and native inhabitants stripped of their rights to the land. Formal systems for land registration, titling, surveys and censuses further disenfranchised native peoples who lived far and remote from the centers of colonial power.

In the Philippines, the Spanish conquistadores declared all lands on the fringes of towns, which used to be communal land, as *realangas* or Crown land. Later in 1903, the Americans introduced the Torrens title and land registration system, followed by the 1905 Public Lands Act, which declared all unregistered land without Torrens titles to be "public lands" regardless of prior occupancy. And since the land titling system did not provide for customary rights, this excluded the indigenous peoples who subscribed to traditions of ancestral and communal land ownership.

In Indonesia, the Dutch Agrarian Law of 1870 declared all uncultivated lands to be state property, from which large plantations were carved out by leasing land to private and State

<sup>10</sup> Quizon, Antonio B. (2013). *Land Governance in Asia: Understanding the Debates on Land Tenure Rights and Land Reforms in the Asian Context*. Framing the Debate Series, No. 3. Rome: International Land Coalition. p 4.

<sup>11</sup> United Nations (2009). *State of the World's Indigenous Peoples*. New York: United Nations. p 53. [http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_chapter2.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_chapter2.pdf)





corporations. As the colonizers were interested primarily in production and trade, they allowed *adat* (customary) tenure and smallholder agriculture to co-exist side-by-side with a Dutch plantation sector. This dual system initially enabled the colonisers to exploit native labour without disturbing traditional community systems.

In Cambodia, Laos and parts of Vietnam, the French introduced the concept of private land ownership under the Land Act of 1884. All “unoccupied” lands became open for sale, enabling the French to build their plantations

and rubber estates. French mines were also later opened in Thakhek and Pathan Valley, in Laos.<sup>12</sup>

In Cambodia, the French imposed the Ordinance of 1897 over the Khmer king, which gave the colonial government “the right to alienate and assign all free lands of the kingdom.” The French Civil Code of 1920 later introduced formal land registries; thus, a formal land registration system existed side-by-side with traditional ownership based on customary tenure.

In Nepal, indigenous peoples lost their autonomy and self-rule with the territorial unification of Nepal in 1769 under the monarchy. The imposition of land tenure systems such as the *Birta* and *Jagir* (land grants given to favored individuals) allowed the dominant caste, i.e. the Bahun Chhetris, to own and control lands of indigenous peoples, while the *Kipat* (communal/collective land ownership tenure system) was abolished.

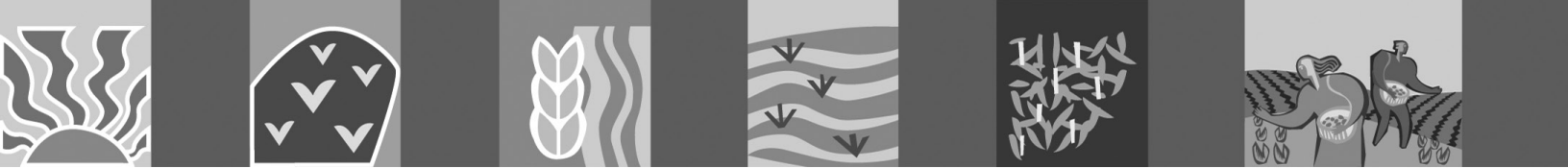
### Colonial inheritance of modern nation-states

Many independent nation-states of South and Southeast Asia emerged after World War II.<sup>13</sup> By then, colonization had delineated the territories of the new nations, and had brought most lands and resources under state ownership. The new nation-states then became the largest landowners, as the “claimant-heirs” of past colonial regimes.

While Governments began to nationalize colonial properties, they were reluctant to restore lands among the disenfranchised “minority” populations. Instead, many governments viewed self-governing peoples as a potential challenge

<sup>12</sup> Evans. Grant *A Short History of Laos: The Land In Between*. 2002. NSW, Australia: Allen and Unwin. pp. 50.

<sup>13</sup> With the exception of Thailand, as well as East Timor which gained independence in 1999.



to national unity and state sovereignty, and thus adopted policies of assimilation and integration for “minority” groups. This meant that indigenous peoples had to adopt the language, customs and ways of life of the majority.

Until today, a major barrier to the recognition of indigenous peoples’ lands is the fact that States are the main counter-claimants to customary lands.

### Assimilation and state-led migrations

After ousting the French from Cambodia in 1953, different regimes tried to assimilate highland minorities into lowland Khmer society. During the Sihanouk Regime in the late 1960s, the Royal Government promoted resettlement projects to bring highland indigenous minorities into sedentary farming.<sup>14</sup>

In Indonesia, the government initiated a massive *transmigrasi* (transmigration) program starting in the late 1950s to resettle millions of landless people from the densely-populated islands of Java and Bali, to less populated areas in Kalimantan, Papua, Sulawesi and Sumatra. During the Soeharto Regime (1967-1998), around 2.2 million hectares were redistributed to 1.1 million families in various transmigration schemes.<sup>15</sup> Indigenous communities were embroiled in territorial and cultural conflicts with the arrival of thousands of new settlements into *adat* territories.<sup>16</sup>

<sup>14</sup> Simbolon, *loc cit*, p 70.

<sup>15</sup> Bachriadi, Dianto and Gunawan Wiradi. “Land Tenure Problems in Indonesia: The Need for Reforms.” 2009. (Manuscript copy) , pp 5. The authors further note that the land allocated for transmigration is actually higher, since the figure of 2.2 million hectares does not include land allocated for other public facilities provided in each transmigration site.

<sup>16</sup> *Ibid*, p p6.

During the 1980s, the Bangladesh government settled almost half a million Bengalis from the crowded plains into the Chittagong Hill Tracts, causing displacement to many indigenous communities.<sup>17</sup>

In Cambodia, the Khmer Rouge (1974-79) caused the wholesale destruction of cadastral maps and historical land records, and wiped out the entire administrative and institutional infrastructure of the land system. This created massive confusion in the recognition and allocation of property rights, which later subjected the whole property system to massive landgrabbing and corruption.

### Customary lands

Today, the remaining land and territories under customary use and claim by indigenous peoples cover up to 20 percent of the land area in some Asian countries.

In Indonesia, *masyarakat adat* or “communities of customary law” consist of over 1,128 ethnic groups. According to the Aliansi Masyarakat Adat Nusantara (AMAN), *adat* territories cover an estimated 40 million hectares of traditional forest lands,<sup>18</sup> or a fifth of the country’s land area.

In the Philippines, indigenous cultural communities are composed of 110 major ethnolinguistic groups. As of 2015, Ancestral Domain Titles have been issued over 4.3 million

<sup>17</sup> Tripura, S., Shanjida Khan Ripa & Tamina Sumaiya (2013). “Analysis on the Situation of Indigenous Peoples’ Customary Land and Resources Rights in Bangladesh”.

<sup>18</sup> Presentation of Abdon Nabadan, Secretary-General of AMAN, at the *South-East Asia Sub-Regional Meeting on Extractive Industries and Indigenous Peoples’ Rights to Land and Natural Resources*,” 24-25 June 2013, Bangkok, Thailand. AMAN stands for *Aliansi Masyarakat Adat Nusantara* (AMAN), or the Indigenous Peoples Alliance of the Archipelago (Indonesia).





hectares, covering 14 percent of the country’s total land area. With 557 pending applications for ancestral domain titles covering 2.6 million hectares still to be processed;<sup>19</sup> a total of 6.9 million hectares, or 23 percent of the country’s total land area could potentially be under the legal control of indigenous peoples in the Philippines.

In Cambodia, there are 24 different indigenous groups spread across 455 indigenous communities in 15 provinces (according to the 2008 census). Indigenous people serve as traditional managers over an estimated 4 million hectares of Cambodia’s forest lands and ecosystems<sup>20</sup> especially along its mountainous borders in the north and northeast. Substantial areas in Laos and Myanmar remain

<sup>19</sup> The 4.3 million hectares of titled ancestral domain lands is based on reported data of the National Commission on Indigenous Peoples (NCIP). The projected 2 million hectares more that need to be processed is also based on NCIP projections. As cited in Garganera, Jaybee (2013). “Indigenous Peoples and Mining: A Contentious Relationship”. Manuscript copy.

<sup>20</sup> Quizon, Antonio B. (2014). “Issues in Protecting Land Rights of Indigenous Peoples in South-East Asia, with a focus on Extractive Industries”. Paper prepared for UNDP-UNIPP.

under customary use and management of “ethnic” and “minority groups” that comprise some 30 percent of the populations in both countries.

In Bangladesh, 45 ethnic groups with an estimated population of three million live mainly in the northern regions and in the Chittagong Hill Tracts (CHT) in the southeast of the country.

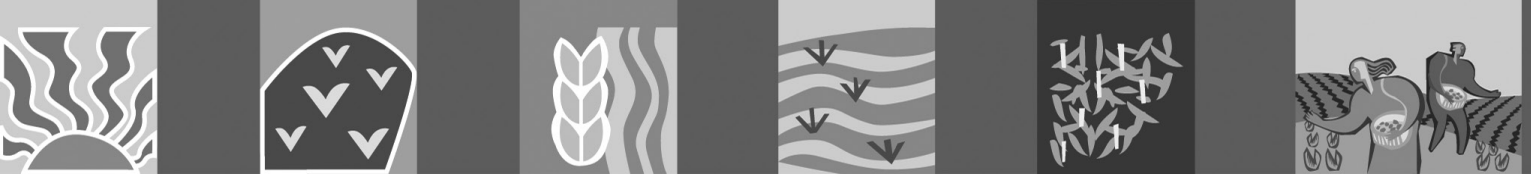
In India, the states of Chattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan account for 70 percent of the scheduled tribes population in the country.

The traditional domains of indigenous peoples include plains, coastal lands, river systems and inland waters, range lands and traditional fishing grounds. And in many Asian countries, indigenous communities live in the remaining frontiers where biodiversity and forest ecosystems have been kept intact over many decades through customary practice, traditional management and sustainable use.

### **The new colonialism of extractive industries & plantations**

Once considered as the “peripheries” of the state, the traditional territories of indigenous peoples have been increasingly targeted over the past two decades for large-scale projects and a rising wave of (domestic and foreign) corporate investments for extractive industries (timber, mining), industrial plantations, tourism and development projects.

Rising global demand for timber, minerals, metals and agricultural products, combined with the liberalization of trade and investment to facilitate



foreign direct investment in resource rich areas, has fueled a new and unprecedented expansion in mining, oil and gas projects, plantations and commercial ventures into indigenous peoples' territories. Where their customary and tenurial rights are not recognized, indigenous peoples face further marginalization by this new intrusion. Long-term land leases and concessions to private corporations over lands of the so-called public domain add a new layer to the old issues that indigenous communities already face, as they are further displaced by new commercial competition. At times, state military and private forces are used to legitimize the entry and takeover of indigenous lands.

In Indonesia, where almost 70 percent of the total land area is classified as State Forest, millions of hectares of land, forests, coastlines and natural resources have been leased out to corporations and state agencies since the New Order in 1967. For mining alone, some 10,677 licenses have been issued as of February 2013, compared to less than 1,000 just 15 years earlier in 1998<sup>21</sup>.

In Cambodia, despite protective laws, Economic Land Concessions (ELCs) continue to be granted in protected areas, on the lands of indigenous peoples and in primary forests. The OHCHR report of 2012 noted that the government granted land concessions to at least 109 companies in 16 out of the 23 protected areas established by Royal Decree. The same report noted that 98 concessions have been granted in areas inhabited and traditionally used by indigenous communities. Nearly 2 million hectares have

been transferred to the extractive industries, primarily mining, since 2000.<sup>22</sup> Much of the lands that are taken away from indigenous peoples are those used in rotational farming (i.e., fields that are allowed to lie fallow in order to allow the soil to regenerate and preserve their fertility), while other lands are in sacred forests, sacred land used for cultural purposes.<sup>23</sup> In 2012, over 70 percent of Economic Land Concessions given out by government were situated inside national parks, wildlife sanctuaries and protected forests.<sup>24</sup> This included an area of 17,856 hectares of ancestral land of the indigenous Kui community in Prame Commune, District of Tbaeng Mean Chey, the capital of Preah Vihear Province, where private concessionaires cleared 74 families off their lands, destroying their paddy fields, gardens, and resin trees, and cleared the remnants of an ancient Kui temple and an ancient Kui village.<sup>25</sup>

In Laos, the government has been engaged in large-scale mining operations through a state corporation, while small-scale mining has attracted investors from other countries (including China, Vietnam, Russia and South Korea). Artisanal mining for gold, tin and precious stones is also widespread in rural villages, and employs between 15,000-50,000 people, of which some 75 percent are women.<sup>26</sup>

<sup>21</sup> Presentation of Siti Maimunah, Indonesian Mining Advocacy Network (JATAM), at the South-East Asia Sub-Regional Meeting on Extractive Industries and Indigenous Peoples, 24-25 June 2013, Bangkok, Thailand.

<sup>22</sup> Data is from the *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia: Addendum*, 24 September 2012.

<sup>23</sup> STAR Kampuchea (2013). *Scoping Study on Access to and Control of Land by Indigenous Peoples in Cambodia*. Land Watch Asia Campaign. [Unpublished].

<sup>24</sup> Rith, S. (2009). Land deals take toll on minority groups. In *The Phnom Penh Post*. Retrieved from <http://www.phnompenhpost.com/national/land-deals-take-toll-minority-groups-study>.

<sup>25</sup> LICADHO map as cited in STAR Kampuchea. (2013). *Scoping Study on Access to and Control of Land by Indigenous Peoples in Cambodia*. Land Watch Asia Campaign. [Unpublished].

<sup>26</sup> Energy and Mines, National Economic Research Institute (NERI) and International Council on Mining and Metals (ICMM), *op cit.* pp 17.





In the Philippines, there has been a resurgence of large-scale mining operations since the enactment of the 1995 Mining Act. As of January 2013, there are 424 existing mining leases covering about 1.02 million hectares;<sup>27</sup> mining applications impact on an estimated 67% of ancestral domains.<sup>28</sup> The Commission on Human Rights has investigated mining-related atrocities committed by company security personnel, the military and the police against indigenous communities.

In Myanmar, since 1988, the military government encouraged foreign investments and joint ventures especially in mining. This has contributed to militarization, land confiscation by armies and destruction of traditional livelihoods in ethnic areas, with little benefit to local people. This has likewise exacerbated ethnic conflicts.

In Bangladesh, the issuance of land leases in the Chittagong Hill Tracts for private commercial plantations began on a large-scale in 1979. The government started to award leaseholds on large consolidated tracts to private entrepreneurs for setting up rubber, timber, fruit and other commercial plantations and enterprises. Most of these leased areas were common lands of indigenous peoples that had been used for *jhum* (swidden) cultivation, grazing and other purposes,<sup>29</sup> and awarded to the Bengali elite

consisting of political leaders, professionals, civil and military officials.

The incursion of plantations and large-scale extractive industries into “public domain” lands have led to local conflicts and rights violations of indigenous peoples. There is a serious lack of regulatory frameworks and institutional capacities to promote accountable land and resource governance in line with international human rights standards and social and environmental safeguards. In many instances, commercial ventures and development projects enter into IP traditional domains without their free, prior and informed consent (FPIC). Social and environmental impact assessments and public consultations are not undertaken as preconditions for issuing licenses and concessions. Yet even in those countries where legal safeguards exist, FPIC is treated lightly as a mere procedure, or else community “consent” is obtained through force, manipulation or deceit.<sup>30</sup> Companies and state authorities often exploit internal divisions within communities thereby exacerbating existing conflict and disrupting community life.

## State policies

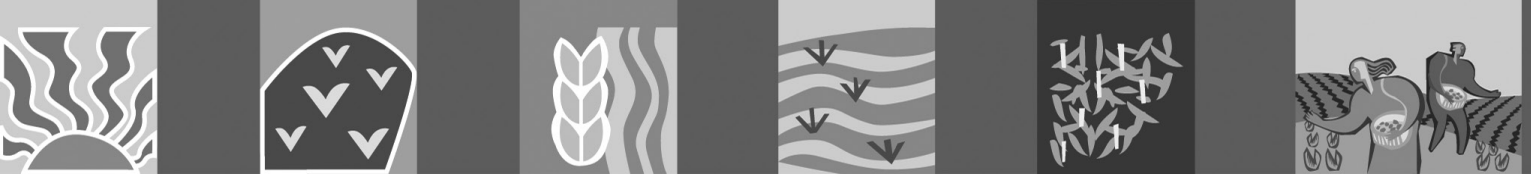
With few exceptions, such as in the Philippines and India (Constitutions and legislations) and in Cambodia (land law), the existing laws in most countries do not give special recognition to indigenous peoples’ land rights. Instead, indigenous peoples tend to be treated as part of the general “landscape” (covered under forestry laws, land laws and agriculture policies), or as “subjects of welfare programs” that further

<sup>27</sup> Based on summary data from the website of the Philippines’ Mines and Geosciences Bureau (MGB), Available from: <http://www.mgb.gov.ph> Last accessed 29 July 2013.

<sup>28</sup> This finding is based on mapping activities done by mining-affected communities and their support groups (including AnthroWatch, ESSC, HARIBON and PAFID) in order to visualize land conflicts between mining, forests, and ancestral domains in the Philippines. As cited in Garganera. *op cit*,

<sup>29</sup> Adnam, Shapan and Ranajit Dastidar (2011). *Alienation of the Lands of Indigenous Peoples in the Chittagong Hill Tracts of Bangladesh*. Published by Chittagong Hill Tracts Commission, Dhaka and International Work Group for Indigenous Affairs, Copenhagen. First edition. p. 77.

<sup>30</sup> Garganera. *Loc cit*. Also refer to Encarnacion, Andre. “The Endless Loop: Mining, the State and the indigenous peoples of the Philippines”. 2012. Available from: <http://www1.up.edu.ph/index.php/the-endless-loop-mining-the-state-and-the-indigenous-peoples-of-the-philippines/> Accessed on 15 September 2013.



marginalize them. Indigenous peoples often have to apply for access or user rights to their own traditional lands and forests.

Statutory land registration systems may recognize individual and corporate property, but may not recognize communal lands. Moreover, unlike corporations, indigenous communities are often not recognized by law as legal entities or property holders.

There is low appreciation and understanding of traditional practices. Swidden or jhum farming is considered by most states as “backward” and “destructive” of forests, and thus is prohibited and even criminalized. Traditional lands under swidden cultivation are often treated as “unused”, “barren” or “marginal lands”, which are leased to corporations, including those lands that indigenous communities cultivate and then allow to regenerate during the fallow period. Indigenous farming practices are seen as “low technology” and “unproductive”, with too much “idle time” among rural laborers. The common perception among state authorities and decision-makers is that indigenous peoples “waste” precious land that could be used to further the country’s economic development. In many countries (Vietnam, Sarawak in Malaysia) there are state programs to move indigenous peoples

into new settlements, in order to appropriate their lands for other purposes.

The role of indigenous communities in protecting biodiversity and forest ecosystems is still not fully recognized. Many are evicted, denied entry, or denied grazing and harvesting rights in forests designated as national parks, protected areas and buffer zones. Protected areas are often created and delineated without the consent or knowledge of local communities.

Meanwhile, the loss of land and forced displacement has resulted in the dissolution of many indigenous communities. In Nepal, many indigenous peoples lack citizenship certificates, making it difficult for them to access basic government services such as education and health. According to the UNHCR in Nepal, some 800,000 individuals still lack citizenship registration and considered de facto stateless.<sup>31</sup>

### **Emergence and rise of indigenous peoples movements**

Starting in the 1970s, the struggle of indigenous peoples in Asia to regain control over their traditional domains and cultural spaces grew from localized, community-specific struggles into issues of wide public awareness and global debate.<sup>32</sup> This was brought about by two parallel developments.

First was the massive incursion of global capital and development investments into indigenous territories, with highly-publicized cases that disturbed the public consciousness. Perhaps the most publicized case was the Sardar Sarovar Dam in the Narmada Valley in Gujarat, India which

<sup>31</sup> NGO Federation of Nepal (2013). *Loc cit.* p 49.

<sup>32</sup> Perrera, Jayantha. *Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia.* 2009. Manila: Asian Development Bank. p 2.



was opposed by the Narmada Bachao Andolan and a transnational network of supporters in the 1980s.<sup>33</sup> In the Philippines, the Bontok and Kalinga peoples opposed government efforts to build the Chico River Hydroelectric Dam in the 1970s that threatened to displace over 100,000 people and to submerge their villages, rice fields and sacred sites.

The second development was the parallel growth of self-organized indigenous movements that began to transcend local and national boundaries, moving from local issues and protests towards proactive demands for indigenous people's rights. IP movements were forced to bring their cause into the international arena – one, in response to globalized market forces and two, to seek recognition within nation-state structures that had discriminated against them.<sup>34</sup>

### International recognition

The customary land rights of indigenous peoples have come to be recognized in several international declarations and agreements.

**ILO Convention 169** (Indigenous and Tribal Peoples Convention, 1989) is a legally binding instrument that recognized the distinctive cultural traditions of indigenous peoples and their different ways of seeing the world. It states that indigenous peoples have the right to enjoy the full measure of human rights and fundamental freedoms, and the general rights of citizenship, without hindrance or discrimination. It calls for special measures to safeguard the persons, institutions, property, labor, cultures and environment of these peoples.



Convention 169 requires that indigenous and tribal peoples are consulted on issues that affect them. It also requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them, and defines how consultations should be undertaken – i.e., through appropriate procedures, in good faith, and through the representative institutions of indigenous peoples.

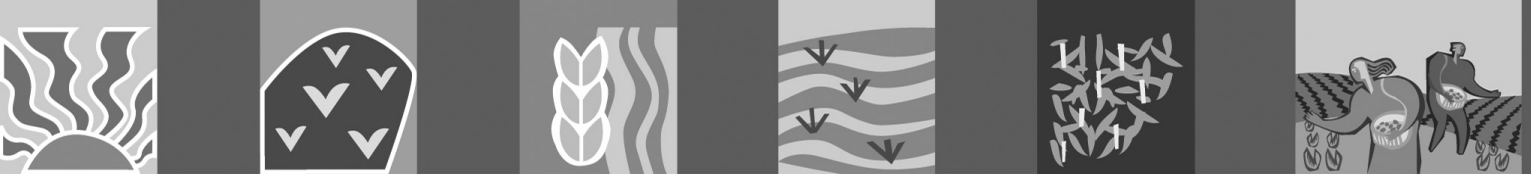
**UNDRIP** (United Nations Declaration on the Rights of Indigenous Peoples, 2007) recognizes a wide range of basic human rights and fundamental freedoms of indigenous peoples, including the right to unrestricted self-determination, and their rights to maintain and develop their own political, religious, cultural and educational institutions along with the protection of their cultural and intellectual property. Article 26 states that “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,” and directs states to give legal recognition to these territories.

The Declaration establishes “the requirement for prior and informed consultation, participation

<sup>33</sup> Kingsbury. *op cit.* p 133.

<sup>34</sup> Quizon (2013), *loc cit.* p 44.





and consent in activities of any kind that impact on indigenous peoples, their property or territories. It also establishes the requirement for fair and adequate compensation for violation of the rights recognized in the Declaration and establishes guarantees against ethnocide and genocide. The Declaration also provides for fair and mutually acceptable procedures to resolve conflicts between indigenous peoples and States, including procedures such as negotiations, mediation, arbitration, national courts and international and regional mechanisms for denouncing and examining human rights violations.”<sup>35</sup>

**The Convention on Biological Diversity (CBD, 1993)** is an international treaty that aims to preserve biological diversity around the world. Article 8 recognizes the role of indigenous peoples in the conservation and management of biodiversity through the application of indigenous knowledge. Thus, in 1996, the International Indigenous Forum on Biodiversity (IIFB) was established during the third Conference of Parties to the Convention (COP3), as the indigenous caucus in the CBD negotiations.

Several UN Human Rights instruments provide the foundation for recognition of customary land rights of indigenous peoples, i.e.:

- ICESCR (International Covenant on Economic, Social and Cultural Rights) was adopted by the UN General Assembly in 1966. It commits states parties to promote and protect a wide range of economic, social and cultural rights, including rights relating to work in just and favorable conditions, to social protection, to an adequate standard of living, to education and to enjoyment of the benefits of cultural freedom and scientific progress.

<sup>35</sup> IWGIA. <http://www.iwgia.org/human-rights/international-human-rights-instruments/undeclaration-on-the-rights-of-indigenous-peoples>

- ICCPR (International Covenant on Civil and Political Rights) is based on the Universal Declaration of Human Rights, and was adopted by the UN General Assembly in 1966.
- ICERD (International Convention on the Elimination of all Forms of Racial Discrimination) was adopted in 1963 by the UN General Assembly.

### **In search of a common agenda**

***Recognize the rights of indigenous peoples in line with international human rights norms and state obligations.*** Article 3 of UNDRIP affirms the right to self-determination under the International Covenant on Civil and Political Rights (ICCPR) and Article 15 of the International Covenant on Economic Social and Cultural Rights (ICECSR), which most Asian countries have ratified as a legally binding agreement.

***Provide legal recognition and protection for the land rights of indigenous peoples.*** States should provide legal recognition and protection for the land and territorial rights of indigenous peoples.

***Strengthen the principle and practice of FPIC.*** States should ensure the implementation of FPIC before the entry of development activities in the domains of indigenous peoples. Safeguards should include, i.e., prior impact assessments, mitigation measures to avoid/minimize impacts on the exercise of those rights, benefit-sharing, and adequate compensation for impacts in accordance with relevant international standards. FPIC processes should be conducted in accordance with customary law and local practices of decision-making.

***Recognize and promote ICCAs.*** As traditional indigenous lands and territories contain some 80 percent of the planet’s biodiversity, the role





played by indigenous peoples in managing natural resources should be recognized.<sup>36</sup> The concept and practice of Indigenous and Community Conserved Areas (ICCAs) that has gained international recognition as a legitimate conservation and protection system, should be adopted by national governments as an alternative to the current practice of state-led protected areas systems.<sup>37</sup>

**Strengthen disaggregated data on indigenous peoples.** States and indigenous peoples' organizations should jointly collect, analyze and disaggregate data on indigenous peoples, including women. This would aim to protect the rights of indigenous peoples, including their indigenous knowledge and customary lands and domains.

**Establish impartial commissions of inquiry and systems of redress for human rights violations.** Together with indigenous peoples, governments should establish independent commissions to look into the human rights concerns of indigenous peoples, and to put an end to violations of indigenous peoples' rights. Perpetrators of atrocities should be brought to justice in order to end the culture of impunity.

**Institute restitution and recovery of customary lands to address injustices against indigenous peoples.** Governments should cease the removal of indigenous peoples from their ancestral lands and territories. In cases where IPs are being, or have been removed, displaced or dispossessed, they should initiate independent inquiries and provide appropriate restitution.

<sup>36</sup> IFAD. [http://www.ifad.org/english/indigenous/index\\_full.htm](http://www.ifad.org/english/indigenous/index_full.htm)

<sup>37</sup> ICCAs are defined as "natural and/or modified ecosystems containing significant biodiversity values, ecological services and cultural values, voluntarily conserved by indigenous peoples and local communities."

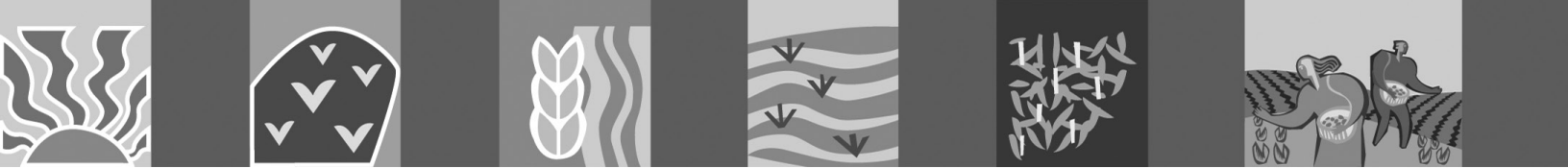
**Establish the accountability of private corporations in upholding human rights.** In line with the UN Guiding Principle on Business and Human Rights, the private sector should respect human rights of indigenous peoples regardless of the state legal framework or government actions in the countries where they operate.<sup>38</sup>

**ASEAN and SAARC programs on indigenous people's rights.** Regional associations such as ASEAN and SAARC should institute a common agenda and action program that protects indigenous people's rights, and that promotes and fulfils at the regional level the UN Declaration on the Rights of Indigenous Peoples.

**Recognize indigenous peoples as key to our collective future.** Finally, in the face of environmental destruction and climate change, we need to recognize the important roles that indigenous peoples play for our collective future:

- Conserving forests and ecosystems that are crucial, especially for the absorption of greenhouse gases, and for regulating hydrological flows;
- Providing environmental services that protect the global commons, resulting in clean and safe water, healthy soils, improved air quality, and protection from extreme weather conditions;
- Maintaining biodiversity and indigenous knowledge systems;
- Maintaining peace and social harmony;
- Providing a range of products and eco-services, and;

<sup>38</sup> The UN Guiding Principles on Business and Human Rights was adopted by the UN Human Rights Council in 2011. It affirms the duty of states and the responsibility of corporations to respect human rights, and the need to ensure access to remedies where business-related human rights abuses do occur. [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)



- Promoting cultural diversity and enlarging human options in an increasingly homogenized world. ■

## References:

- Adnam, Shapan and Ranajit Dastidar (2011). Alienation of the Lands of Indigenous Peoples in the Chittagong Hill Tracts of Bangladesh. Published by Chittagong Hill Tracts Commission, Dhaka and International Work Group for Indigenous Affairs, Copenhagen. First edition.
- Bachriadi, Dianto and Gunawan Wiradi. (2009). Land Tenure Problems in Indonesia: The Need for Reforms. Manuscript copy.
- Bachriadi, Dianto and Mustofa Agung Sardjono (2005). Local Actions to return Community Control over Forest Lands in Indonesia. Manuscript copy
- Jaringan Kerja Pemetaan Partisipatif (JKPP). (2013). Scoping Study of Indonesia Indigenous Peoples. Land Watch Asia Campaign. [Unpublished].
- Encarnacion, Andre. (2012). The Endless Loop: Mining, the State and the indigenous peoples of the Philippines. Retrieved from <http://www1.up.edu.ph/index.php/the-endless-loop-mining-the-state-and-the-indigenous-peoples-of-the-philippines/>. Last accessed on 15 September 2013.
- Evans, Grant. (2002). A Short History of Laos: The Land In Between. NSW. Australia: Allen and Unwin.
- Garganera, Jaybee (2013). Indigenous Peoples and Mining: A Contentious Relationship. Manuscript copy.
- Kingsbury, Benedict (2008). Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy. In *The Concept of Indigenous Peoples in Asia*, ed by Erni, Christian. 2008. Copenhagen and Chiangmai. International Work Group for Indigenous Affairs and Asian Indigenous Peoples Pact Foundation.
- Luong Thu Oanh. (2012). Country Technical Notes on Indigenous Peoples Issues: Socialist Republic of Vietnam. IFAD and AIPP. Retrieved from <http://www.ifad.org/english/indigenous/pub/documents/tnotes/vietnam.pdf>
- Nathan, Dev, Govind Kelkar & Pierre Walter. (2004). Globalization and Indigenous Peoples in Asia: Changing the Local-Global Interface. Delhi: Sage Books.
- NGO Federation of Nepal (2013). Study on Status of Indigenous People's Land and Resource Rights. Land Watch Asia Campaign. [Unpublished].
- Philippine Association for Intercultural Development (PAFID). (2014). The Indigenous Peoples in the Philippines: A Background. Land Watch Asia Campaign. [Unpublished].
- Quizon, Antonio B. (2013). Land Governance in Asia: Understanding the Debates on Land Tenure Rights and Land Reforms in the Asian Context. Framing the Debate Series, No. 3. Rome: International Land Coalition.
- Quizon, Antonio B. (2014). Issues in Protecting Land Rights of Indigenous Peoples in South-East Asia, with a focus on Extractive Industries. Paper prepared for UNDP-UNIPP.
- Report of the Special Rapporteur on the Situation of Human Rights in Cambodia. 24 September 2012.
- Simbolon, Indra. (2009). Law Reforms and Recognition of Indigenous Peoples' Communal Rights in Cambodia. In *Land and Cultural Survival: The Communal Land Rights of Indigenous People's in Asia*. Manila: Asian Development Bank.
- STAR Kampuchea (2013). Scoping Study on Access to and Control of Land by Indigenous Peoples in Cambodia. Land Watch Asia Campaign. [Unpublished].
- Statement of James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, at the South-East Asia Sub-Regional Meeting on Extractive Industries and Indigenous Peoples' Rights to Land and Natural Resources, Bangkok, 24 June 2014.
- Tripura, S., Shanjida Khan Ripa & Tamina Sumaiya (2013). Analysis on the Situation of Indigenous Peoples' Customary Land and Resources Rights in Bangladesh. Paper prepared in behalf of ADAB for ANGOC and AAHM.
- UNIPP and ANGOC. Indonesia-Philippines Peer-to-Peer Mentoring and Knowledge Sharing. Report of a Conference held on 4-5 February 2013, Quezon City, Philippines.
- United Nations (2009). State of the World's Indigenous Peoples. New York, USA: United Nations publication. [http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf)
- United Nations Permanent Forum on Indigenous Issues (UNPFII) (2007). Report on the Sixth Session. UN Doc. E/2007/43.



# 2016 Cambodia Land Disputes Monitoring

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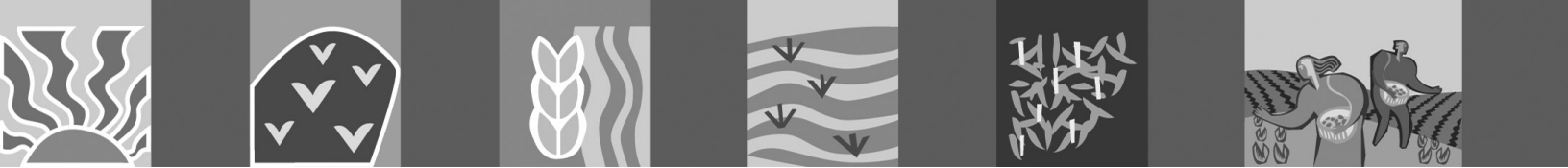
Land has played an important role for the majority of Cambodians. With approximately 80 percent of the population living in rural areas and depending on agriculture, land tenure security is critically important. The world crop boom in the late 2000s caused land values to increase rapidly, which attracted international corporations and wealthy people to invest in Cambodian land. As a result, land disputes intensified and affected the livelihood of small-scale landholders, specially those who have no land titles to maintain their resource (CCHR, 2013).

According to Thiel (2010), problems with Cambodian land management became apparent during the 1990s when free market economy was introduced after the 1993 national elections. The research found that the lack of property rights, absence of strong civil society, challenges in land reform, and property patterns were the

root causes of land management problems in the country. It recommended for improving property rights and implementing a taxation system based on land values; to generate revenue to fund titling and land management operations in the country. It further suggested building up community-based environmental governance systems to buttress future land management models.

The legal bidding related to land was set up in the late 1980s, enacted as the Land Law in 1992, and again updated and formally approved for enforcement in 2001. The Land Law 2001 stated the types of land registration, such as Sporadic Land Registration, Systematic Land Title, Social Land Concession and Communal Land Title (ADIC, 2015). Economic Land Concession (ELC) was also included in the Land Law, with procedural guidelines on how it will be granted. The government issued a sub-decree on ELC in





2005 to improve on and ensure the practice of granting such. The stated purpose of ELCs was for agro-industrial development that will improve the livelihood of local communities, as well as contribute to national economic growth. The sub-decree provided concrete information and criteria in applying for ELCs.

But ELCs were already being granted since 1995, even before specific laws and regulations were put in place. A total of six ELCs were granted before Land Law 2001 and 11 ELCs before the sub-decree of 2005; which was quite unusual and too arbitrary given that there was no legal bidding support and clear guidelines. Immediately after the sub-decree, the number of ELCs increased to 14 in 2006 then to 43 in 2011. Furthermore, ELCs were granted by various government agencies

that are not coordinating with each other; such as the Council for Development of Cambodia (CDC), the Ministry of Environment (MOE), the Ministry of Agriculture, Forestry and Fishery (MAFF), Provincial Committees and the other public bodies. It was a severely problematic process and showed the weaknesses and challenges of the system. There was no consistency of law enforcement or the application of the law. There was no systematic or unified monitoring and evaluation procedures, although the sub-decree clearly mentioned that only MAFF is authorized to grant ELCs. The result was a loss of valuable natural resources and the marginalization of vulnerable populations (RACC, 2016). That is the reason that land disputes overlapped with residential, plantation and agriculture lands of local residents. There were many complaints





***“Land disputes in Cambodia have been raised and espoused by affected communities and covered by local and international media. It has emerged as a major issue that is difficult to resolve.”***

submitted by affected people and communities to many agencies – local, international, public and non-state actors – for intervention and resolution.

Land disputes in Cambodia have been raised and espoused by affected communities and covered by local and international media. It has emerged as a major issue that is difficult to resolve. The nature of said disputes is not only between affected communities and companies that have been granted ELCs, but has expanded to communities against rich land speculators, conniving local authorities, and even between local communities. The resolution of these disputes take much time and effort, against multiple parties, and with different measures and approaches. The record of the number of land disputes in Cambodia varies since different institutions claim different figures brought about by different monitoring methods. Most disputes are solved out of the legal and juridical system set by the existing laws and regulations of Cambodia (Hean, 2015).

The objectives of this report were to follow up and monitor the land situation in Cambodia in 2016; to identify progress made, as well as challenges, and to recommend solutions specifically for the

government. As a supplement of this report, findings from previous case studies and research conducted by other parties have been highlighted.

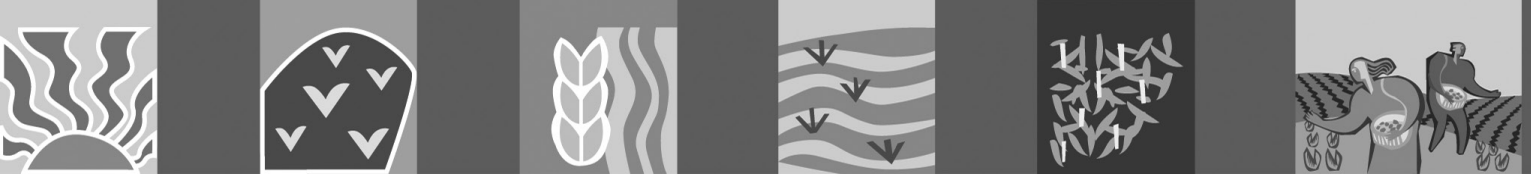
## **Land Governance and Mechanisms**

### **Land Law**

The Land Law of 2001 was enacted to determine the regime of ownership for immovable property in the Kingdom of Cambodia; for the purpose of guaranteeing ownership rights related to such, according to the provisions of Cambodia’s 1993 Constitution (RGC, 2001). Some articles in the Land Law also regulates the practice of Economic Land Concessions (ELCs). Article 59 of said law stipulates that the size of ELCs should not exceed 10,000 hectares. Article 62 requires the concessionaries to develop their economic activities on ELC land within 12 months after the grant, otherwise it will be cancelled (ADIC, 2015). Article 30 states that any person who for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property, can lawfully possess it privately and has the right to request a definitive title of ownership.

Furthermore, Article 33 states that if the immovable property is taken violently or by abuse of power of authorities, the property shall revert to the State, and cannot be the subject of any new possession if there is no claim from the dispossessed lawful owner. The claim is barred at the end of three years from the date of proclamation of dispossession by the State.

However, following the report by ADHOC in 2011, up to 81 communities in Phnom Penh have been evicted from their settlement without warning and notification from authorities, even if many of them have certificates of possession issued by



local authorities and/or were longtime residents of the land (some for more than two decades). Where the Land Law states clearly that claimants in such cases would automatically be able to claim official entitlement, their claim was repeatedly ignored and rejected by authorities. Eventually, they were forced to leave their homes without or with insufficient compensation. Furthermore, as often happens in rural areas, local people were forcibly evicted without compensation.

The judicial system was used to enforce unfair treatment of victims of eviction. Its rulings showed biased toward authorities and rich investors, rather than with the affected communities. Many land disputes raised by rich claimants to the courts resulted in local people being arrested and jailed. Worse, those arrested were even denied of bail without reasonable argument (ADHOC, 2013).

### **Economic Land Concessions (ELCs)**

The Sub-Decree on Economic Land Concession, No. 146 ANK/BK, is the basic reference for Economic Land Concessions (ELC). It sets the objectives and provides the criteria, procedures, mechanisms and institutional arrangements for initiating and granting new ELCs; monitoring the performance of all economic land concession contracts; and reviewing ELCs entered into prior to the effectivity of the sub-decree. Article 4 of the sub-decree highlights the criteria and conditions of granting ELCs, including: (i) that the land is registered and classified as State private land in accordance with the Sub-Decree on State Land Management and the Sub-Decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub-Decree on Sporadic Registration; (ii) a land-use plan of the ELCs is consistent with the plan for the land adopted by the Sub-National Level Land Management Committee and the

Land Use Committee; (iii) environmental and social impact assessments (ESIA) were completed with respect to land use and development plan for ELC projects; (iv) the ELCs should resolve any resettlement issues in accordance with the existing legal framework and procedure; and, (v) the ELCs land claim should have undergone public consultations – with regard to ELCs projects or proposals, with territorial authorities and residents of the locality (RGC, 2005). The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful landholders and that access to private land shall be respected.

In the case of ELCs in Sre Chhouk Commune, Keo Seima District of Monduliri Province, it had been found that the basic criteria and procedures were not followed. The land was not categorized as private State land; no environmental and social impact assessment was conducted; and, no public consultation was held with both local authorities and affected local people (NGO Forum on Cambodia, et al., 2015). It completely contravenes what is stated by the Land Law and Sub-decree of ELCs. There was no smooth communication between the ELC-grantee and the affected communities; individual interests and bias by local authorities for the ELC led to misinterpretation and lack of application of the binding law (NGO Forum on Cambodia, et al., 2015).

### **Social Land Concessions (SLCs)**

The law on Social Land Concession was adopted through the government's sub-decree No. 19 ANK/BK, March 19, 2003 ("Social land concession is a legal mechanism to transfer private State land for social purposes to the poor who lack land for residential and/or family farming purposes"). This sub-decree has the objective to define the criteria,



procedures and mechanism for the granting of SLCs for residential use, family farming, or both. Article 3 of the law on SLCs stipulates that “the Social Land Concessions may be granted for the following purposes: (i) provide land to poor homeless families for residential purposes; (ii) provide land to poor families for family farming; (iii) provide land to resettle families who have been displaced as a result of public infrastructure development; (iv) provide land to victims of natural disasters; (v) provide land to repatriated families; (vi) provide land to demobilized soldiers and families of soldiers who were disabled or died in the line of duty; (vii) facilitate economic development; (viii) facilitate economic land concessions by providing land to workers of large plantations (*Chamkar*) for residential purposes or family farming; and, (ix) develop areas that have not been appropriately developed” (ADIC, 2015a).

SLC was promoted through the donor supported project called Land Allocation for Social and Economic Development (LASED), from 2008 to 2013. The project received financial support from the World Bank (11.5 Million USD) and the Government of Germany (1.2 Million USD) with technical assistance from GIZ. The main purpose of this project was to provide land to landless Cambodians. The quantitative aim was to allocate 10,000 hectares of land to 3,000 poor households, accompanied by community development as well as livelihood and agricultural support services in the provinces of Kratie, Kampong Cham, and Kampong Thom.

Research conducted by LICADHO on LASED and SLCs in the four provinces show that LASED failed to improve livelihoods land tenure security. The reasons behind the failure was the: (i) inability of the responsible institutions to strictly monitor the process of the SLCs; (ii) the project was

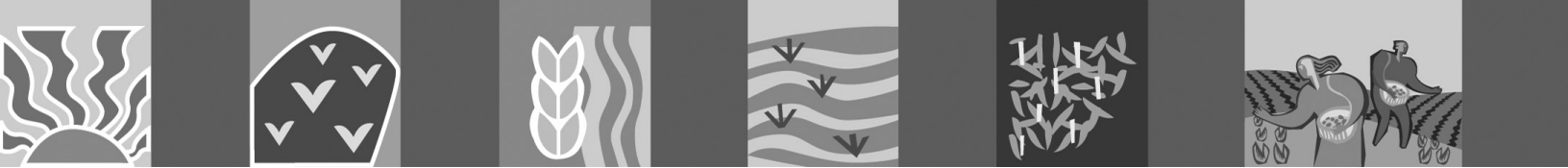
not prioritized by the government; and, (iii) government track-record in implementing SLCs, as past attempts have also met similar failures (LICADHO, 2015).

### **Sub-decree 83 on Communal Land Titling**

In the context of Indigenous Peoples (IPs), the RGC adopted sub-decree No. 83 in June 09, 2009 – “Procedures of Registration of Land of Indigenous Communities” – in order to support the rights and culture of IPs. Its objectives were to provide indigenous communities with legal rights over land, to ensure land tenure security, and to protect collective ownership by preserving the identity, culture, and customs and traditions of each indigenous community (RGC, 2009).

Within this law and sub-decree, the Communal Land Titling (CLT) process was adopted specifically for the registration of land within the IP areas. However, CLT did not apply to all IPs in Cambodia. It should be noted that some IP communities also availed of private land registration, like mainstream Khmers. Furthermore, the CLT was a voluntarily process, where the communal identity must be agreed to by all people in the community. As result, only 13 indigenous communities have been successfully granted communal land titles by the government (ADIC, 2015).

It has been argued that the CLT process was complicated and very time consuming for IPs (AUSAID, 2016). In addition, internal struggles exist within the community which led to social fragmentation and tensions. There was duplication and overlap of land granted to ELCs and communities due to the lack of proper cadastral mapping prior to the launch of D-01. In some cases where CLT has already been granted, communities remain under threat from in-migration and companies that hold ELCs.



These threats are more severe for IP areas where registration is still ongoing and where land titles have not been formally issued.

New opportunities for private land ownership were thought to have opened through D-01, thus the CLT process in some villages has been halted or abandoned (ADIC, 2015). The coverage of an ELC in Otdar Meanchey province, a joint venture for sugar production, seriously overlapped with villagers' lands and led to land grabbing and dispossession of over 9,430 hectares of agricultural, plantation (*chamkar*) and residential land in 26 villages. In O'Bat Moan/Boss Village in Koun Kriel Commune in Samrong district, 214 families were forcibly evicted and displaced. (Depika, 2015).

## Key Government Ministries

### Ministry of Land Management, Urban Planning and Construction (MLMUPC)

The MLMUPC was established by the Royal Kram No NS/RKM/0699/09 of June 23, 1999. Its main functions were guided by a sub-decree on the organization and functions of MLMUP No. 62ANKR.BK. The Ministry's functions are: (i) to carry out policies of land management to ensure the balance of urban and rural development and distribution of growth; (ii) to act as headquarters in the collection of physical, economic, social, and demographic data; (iii) to implement policies on land management which are favorable toward rural areas and prioritized areas of the RGC; (iv) to conduct research, prepare analyses and compile statistics related to the framework of land, urbanization and construction; (v) to define rules and regulations related to land tenure, urbanization, construction, expropriation, and land reserve; (vi) to set out urbanization; (vii) to manage and disseminate maps; to administer,



control, and designate technical professionals and issue business permits to persons and legal entities who do business related to housing, land use, construction, and architectural design; (viii) to direct, provide advise, monitor and control all aspects of land management, urban planning, construction, cadastre, and geography; and, (ix) to disseminate and educate on the laws, provisions, and technical skills related to land management, urban planning, construction, cadastre, and geography.

The Cambodia Land Management and Administration Project (LMAP) was approved by the World Bank Group's Board of Executive Directors on February 26, 2002. The World Bank committed \$24.3 million in loans to the project from IDA, the Bank's public sector lending arm for low-income countries. However, only \$19.23 million was disbursed before the project was cancelled in 2009. The LMAP was established with the stated aim of improving security of tenure for the poor and reducing land conflicts in





***“There are a number of NGOs existing in Cambodia that are actively working on land issues across the country. These NGOs work in coalition or partnership with local communities and regularly interact with government authorities at all levels in order to promote and improve land rights.”***

Cambodia by systematically registering land and issuing titles across the country. To pursue and address issues related to land management, the government’s Land Administration Sub-Sector Program (LASSP) was designed and implemented by MLMUPC from October 15, 2011. This expanded Cambodia’s 15-year strategy – the Land Administration, Management and Distribution Program (LAMDP).

The LASSP provided technical assistance, training, and program coordination, along with moderate project management and financial management services. The project strengthened the technical and administrative capacity of provincial and district cadastral commissions and improved provincial land registries by extending robust registration and processing systems, thereby increasing the total number of land titles issued in targeted provinces. It contributed to the creation of a framework that ensured land sales were conducted openly and transactions registered regularly, established procedures and the human resource base for land valuation, and incorporated environmental sustainability and gender sensitivity into land administration.

#### **Ministry of Environment (MOE)**

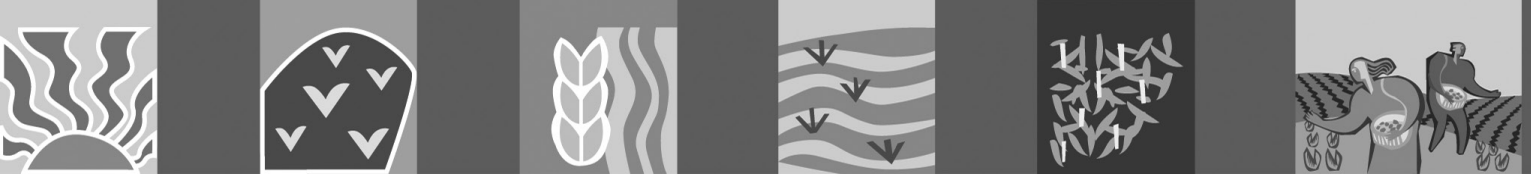
The main functions of the MOE focus on environmental protection, biodiversity

development and managing and using natural resources appropriately and in a sustainable manner (MOE, 2015). After the sub-decree No. 34 ANKR.BK on March 4, 2016 had taken effect, MOE was made to oversee all types of conservation and protected areas nationwide. Practically, the MOE had granted ELCs and took a lead role in re-evaluating all granted ELCs since it was partially managing lands in conservation areas.

The roles and responsibilities on land management and dispute resolution were made clearer after the issuance of Sub-Decree No. 34 ANKR.BK on March 4, 2016, where MOE was to take the lead in the re-evaluation of ELCs and was made responsible for the issuance of legal bidding documents, as well as coordinating with other national government institutions.

#### **Ministry of Agriculture, Forestry and Fishery (MAFF)**

The MAFF was mandated to mainly oversee agriculture, forestry and fishery areas. The Sub-Decree of ELCs in 2005 also defined that MAFF was the sole government agency to authorize the issuance of ELCs (excluding conservation areas which fell under MOE jurisdiction). Practically, the MAFF and MOE have to work together to authorize and grant ELCs. However, Sub-Decree No. 34 ANKR.BK, issued on March 4, 2016,



redefined that the MAFF was solely to manage all ELC lands across the country, specifically on the land development perspective (RGC, 2016).

### **Key non-State Actors**

There are a number of NGOs existing in Cambodia that are actively working on land issues across the country. These NGOs work in coalition or partnership with local communities and regularly interact with government authorities at all levels in order to promote and improve land rights. Among these NGOs are STAR Kampuchea (SK), Community Legal Education Centre (CLEC), NGO Forum, ADHOC, LICADHO, and Cambodian Center for Human Rights (CCHR).

The NGO Forum on Cambodia (NGO Forum) began to work on a broader range of issues, such as an international ban on land mines, the creation of a permanent tribunal for crimes against humanity, and concerns about the impact of development aid. An international Steering Committee was retained until 1996, after which a local Management Committee became the chief decision-making body. From 1997, Cambodians were actively involved in NGO Forum, with meetings held predominantly in Khmer and with Cambodians playing the dominant role in its activities. It has had full Cambodian leadership since 2006.

The NGO Forum Land Information Centre (LIC) was established in 2006 to provide evidence-based advocacy for land and livelihood programs. It was renamed the Resource and Information Centre (RIC) in 2011. The Land and Livelihoods Program was established in 2004 and mainly focused on indigenous minority land rights.

ADHOC was considered the prime advocate on human rights in Cambodia. It has worked closely

with both the public and with communities to investigate and collect related cases on human rights, including land disputes. The NGO has provided legal assistance and advice to victims, especially people who were detained and/or threatened by land disputes.

It has also been interpreting laws, regulations and the administration of the law within the juridical system and in compliance with universally accepted protocols, especially those signed by the Cambodian government, to ensure just and fair treatment of people under such laws. Furthermore, it has also provided lawyers for legal disputes and court hearings in order to ensure that the people's voice and rights are respected and for the, to get justice.

### **Key Findings and Analysis**

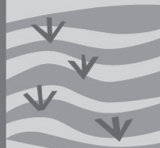
#### **Data Collection Method**

The research team conducted substantial desk research of relevant literature while designing the research methodology. Both qualitative and quantitative approaches were employed as methodology for this study through secondary data and previous research findings. The main data and information sources were from both government and NGO reports and publications.

The main findings and information in this report came from annual land dispute reports in Cambodia published by NGO Forum from 2012 to 2015<sup>1</sup> and Land Disputes in Four Provinces of Cambodia: Mapping, Impacts, and Possible Solutions<sup>2</sup>.

<sup>1</sup> For example, [http://ticambodia.org/library/wp-content/files\\_mf/1436865397statisticalanalysisoflanddisputeinCambodia2013.pdf](http://ticambodia.org/library/wp-content/files_mf/1436865397statisticalanalysisoflanddisputeinCambodia2013.pdf)

<sup>2</sup> [http://ticambodia.org/library/wp-content/files\\_mf/1448264925AStudyonLandDisputesinFourProvincesofCambodia.pdf](http://ticambodia.org/library/wp-content/files_mf/1448264925AStudyonLandDisputesinFourProvincesofCambodia.pdf)



It was supported by other reports and publications from ADIC, CCHR, ADHOC and other sources to provide more evidence and make the study more comprehensive. To ensure diversity of findings and more reflection, statistics from MLMUPC were included and put forward for comparison.

### Number of Land Disputes and Resolutions

The number of land disputes in Cambodia trended on stand-off, no improvement or tendency to improve, or significantly positively response to the existing challenges happened in communities across the country during the period 2012-2015. More specifically, in terms of cases reported and

resolved, cases that were resolved was at 51 percent (203 cases) in 2013 among a total of 405 cases reported; 53 percent (195 cases) in 2014 among a total of 352 cases; and 58 percent (92 cases) in 2015 among a total of 158 cases.

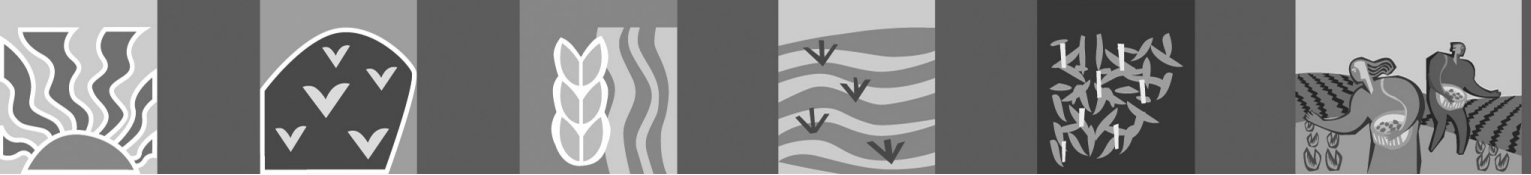
However, the trend of cases that were fully resolved positively improved during the same period, from 10 percent (38 cases) in 2013, to 17 percent in 2014 (61 cases), and 23 percent (42 cases) in 2015. Within the three-year period, the number of fully resolved cases tripled and the trend of disputes declined from year-on-year (RIC, 2014; RACC, 2015 & 2016).

The report by ADHOC (2016) also recorded a substantial increase in cases of land grabbing, or a total of 139 cases covering at least 18,793 hectares and affecting 8,745 families. Of this, 83 were disputes that erupted in 2015, covering 9,550 hectares and affecting 656 families in comparison. The year before that (2014), only a total of 75 cases were reported, covering 1,165 hectares and affecting 3,661 families. As of February 2016, ADHOC had already received 18 cases of land grabbing; thus, a decrease in this land rights violation and in land disputes in general could not be expected.

Even if the above-stated statistics look different, the trend and the reality happening in the communities are basically aligned. Since

No.	Province	# of Land Disputes	Partly Resolved	Resolved	Unresolved	Unknown
1	Bantey Meanchey	1	–	1	–	–
2	Battambang	2	2	–	–	–
3	Kampong Cham	8	3	4	1	–
4	Kampong Speu	12	6	–	6	–
5	Kampong Thom	21	–	15	2	4
6	Kampot	1	1	–	–	–
7	Koh Kong	7	4	–	2	1
8	Kratie	19	7	5	2	5
9	Monduliri	20	9	3	7	1
10	Oddar Meanchey	12	2	9	1	–
11	Preah Sihanouk	1	–	–	–	1
12	Preah Vihear	13	1	1	11	–
13	Pursat	4	4	–	–	–
14	Ratanakiri	22	3	–	19	–
15	Siem Reap	6	3	2	1	–
16	Steung Treng	4	1	1	1	1
17	Svay Rieng	4	2	1	1	–
18	Thbong Khmom	1	1	–	–	–
Total		158	49	42	54	13

*(Source: RACC, Statistical Analysis of Economic Land Concessions in Cambodia, 2015, published by the NGO Forum on Cambodia in 2016, pp. 16 & 17)*



NGO Forum records are from media articles and its field investigations for further verification, while ADHOC relied on reports by its offices across the country and its extensive network.

However, the report of the MLMUPC Annual Congress in 2015 on land dispute resolutions through three levels of the Cadastral Committee showed a dramatic achievement – ended resolutions for a total of 637 cases: successful resolutions in 376 cases, rejections in 192 cases and withdrawal in 69 cases. The majority of cases were handled by mobile teams (499 cases or about 78 percent).

In order to address and emphasize on the effect of ELCs to IPs, it was very important to see some details and trends in land disputes concerning the indigenous peoples. Specifically 49 of the total cases, or 18.14 percent, affected IPs and can be categorized as CLT cases. Most of the cases occurred in Ratanakiri (22 cases), next is Mondulkiri (12 cases), and the rest in Kampong Speu, Kampong Thom, Koh Kong, Kratie, Preah Vihear and Pursat. A total of 7,867 households (24,558 people) were affected (RACC, 2015).

It was quite a similar situation in 2015, with 51 cases or 17.8 percent of on-going disputes affecting IPs in nine provinces. Of this, 39 land disputes were caused by ELCs. Rattanakiri accounted for 23 cases, while Mondulkiri had 13 cases, of which 10 are ELCs (RACC, 2016).

Specifically on number of affected households and people by land disputes, based on data of NGO Forum, a total of 311 cases affected a total of 65,867 households. Based on the official demographic statistics for Cambodia, which pegs the average family size at 4.7 people, it can be inferred that up to 309,575 people were

affected, which is equivalent to 2.34 percent of the country's total households. Phnom Penh and Kampong Cham had the highest number of affected households, at 15,246 and 5,953 respectively in 2013 (RIC, 2014). For 2014, of the 270 land disputes that were processed, 23 cases occurred in 2014, the rest were holdovers from previous years which remain unresolved. The 270 cases affected a total of 55,795 households, or 256,657 people (equivalent to 1.74 percent of total households throughout the country). Phnom Penh and Prey Veng had the highest numbers of affected HHs in 2014, at 13,181 and 4,587 respectively (RACC, 2015).

The reasons for the stagnant or downward trend of land disputes for the last couple of years may be due to several reasons, namely: a more active intervention by the government and the decrease in the number of ELCs. Several existing ELCs were voluntarily returned to the government and the remaining ones were given a timeframe for them to apply and follow all rules and procedures. Some ELCs were downsized in terms of area of coverage and the duration of the concession was also decreased. Furthermore, both MOE and MAFF kept actively involved in their mandated roles. Government offices announced and followed through the Inter-Ministerial Proclamation/*Prakas* on Strengthening ELCs Management of MOE and MAFF on May 9, 2014. As result of these interventions, some ELCs and land concessions (LCs) were cancelled or had their land area reduced in some provinces. For example: 23 ELCs/LCs covering 90,682 hectares were fully cancelled; three ELCs/LCs covering 25,855 hectares were voluntarily given back to the State; and, two other ELCs/LCs had their land reduced by the MOE. Furthermore, 12 ELCs/LCs covering around 24,000 hectares were cancelled by the MAFF.





These positive actions resulted to a reduction of the number of land disputes caused by granted ELCs/LCs (RACC, 2016, p. 18; Ngin, 2016). Of the 162 companies placed under the inter-ministerial evaluation, 138 companies evaluated by the MOE and MAFF were allowed to continue with their activities. However, they were given a specific timeline to resume their operations based on a submitted master plan that arranged a new contract with the government. A total of 78 ELC companies in 15 provinces had their land areas decreased. Although the intervention was a bit late, at the least land was handed back to the people. In some cases, the government had authorized the provincial authorities to redistribute the returned land to local people or returned some parcels to affected households.

### **Reasons for Land Disputes**

According to RACC (2015 & 2016), there are various reasons for land disputes; but what could be emphasized was that the ELCs and authorities did not follow the law or had contravening interventions of the law. Most of the recorded disputes were due to disregard of the law: 11 percent in 2013 and 7 percent in 2014 on residential lands; 20 percent in 2013 and 11 percent in 2014 on plantation and farm lands; and 26 percent in 2013 and 32 percent in 2014 on ELCs.

The reports also mentioned the types of land impacted by land disputes, mainly agriculture land, residential and state land and community forest, which accounted for 94 percent in 2013 and 55 percent in 2014. These disputes remain a major concern and pose severe challenges to the legal system of Cambodia. It can be argued that the resolution of these disputes has not yet been very effective and that standardized practices are not yet fully applied by stakeholders nationwide.

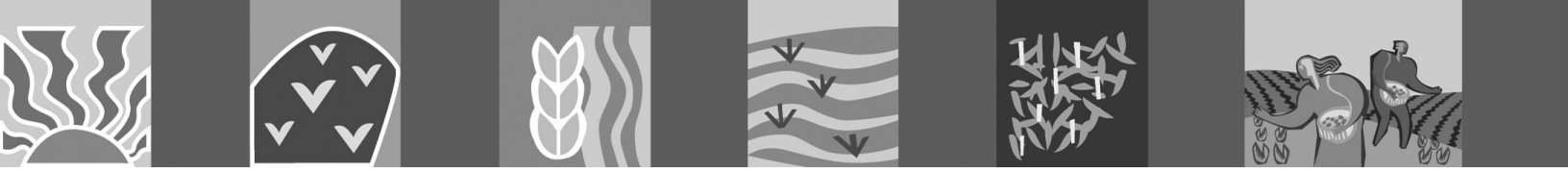
The issues of questionable implementation, lack of functional mechanisms and fragmented governmental systems that weaken the effective application of the rule of law remain.

### **Monitoring Land Policies and Advocacy**

MLMUPC and NGO Forum organized quarterly meetings related to land disputes where they share information, update each other and propose solutions. NGO Forum, with its broad network of member NGOs, gathers and updates information related to land disputes and reports this to MLMUPC for further support and endorsement. On the other hand, it maintains updated information and data related to legal bidding, actions taken, as well as providing some solutions for resolving existing land issues.

The MOE has a similar partnership with NGOs that actively update and share related information on land issues. For example, delegates from MOE share the National Policy on Green Development and the National Strategic Plan on Green Development 2013-2030, especially on relevant provisions on “access to sustainable land use.” This enables the NGO sector to understand the direction and roadmap of the MOE on its work related to the land sector. Annual and quarterly fora serve to inform NGOs about the government’s initiatives and priorities, which they can share to the people in the communities that they assist (NGO Forum on Cambodia, 2013a).

The quarterly meetings among NGOs serve to provide feedback to the RGC on land-related policies. For example, the NGOs’ channel to contribute to the National Strategic Development Plan 2014-2018 could be through development partners and/or Technical Working Group. NGO Forum organized the Development Issues Forum for collectively providing important perspectives



**Table 2. Types of Land Impacted by Land Disputes in 2014 and 2013**

Types of Land Impacted by Land Disputes	2014 (%)	2013 (%)
Agriculture Land	32	48
Forest Land (State Land and Community Forest)	17	17
Multi-Purpose Land	44	–
Residential Land	6	29
Wetland	1	–
Others and Unknown	–	6
Reasons for Land Dispute	2014 (%)	2013 (%)
Residency	7	11
Plantation/Farming	11	20
ELC	32	26
SLC	2	3
Military Purpose	5	4
State land	5	5
State development area	2	3
Other	34	26
No data	2	2

*(Sources: RIC & RACC, Statistical Analysis of Land Disputes in Cambodia, 2013 & 2014, published by The NGO Forum on Cambodia in 2014 & 2015)*

to the RGC for consideration before further decisions were made, along with some recommendations to land management. These are: (i) undertake a comprehensive and transparent demarcation of all State land; (ii) ensure effective supervision of ELCs and make information publicly available on the review of existing ELCs; (iii) ensure participative consultation and decision-making with involvement of citizens, and provision of Environmental Impact Assessment (EIA) reports two weeks in advance of hearing dates; and, (iv) adopt international best practices to compensate communities negatively affected by hydropower dams and ensure a monitoring mechanism with clear indicators for social and human development (NGO Forum on Cambodia, 2013 & 2013a).

A good example of an NGO initiative to highlight people’s land advocacy to the government and the general public was the media’s support of local people with land disputes. The Cambodian Center for Independent Media (CCIM) has a program, “Citizen Journalism Gives a Voice to Victims of Land Grab.” The CCIM conducted training to citizens for them to report about local land disputes. In one case that adversely affected 253 families in Tbeng Mean in Chey District, local media were prevented access to the area. The trained citizens videotaped and posted on social media their issue and ensured that their problems were heard. The story gained the attention of audiences nationwide and government authorities were pressed to intervene. After that, government at the sub-national level started to be involved by halting the land development and allowing the affected people to farm their land until the dispute was settled. Even if the dispute remains unsettled, it provided a reprieve for the people and made them realize their rights, their freedom of expression and the need to interact with local authorities to resolve issues (CCIM, 2014).

### Discussion on the Recent Trend of Land Disputes

The MLMUPC is responsible for governing land use, urban planning and the resolution of land use conflicts.

Directive 01 (D-01), launched on July 1, 2012 by the Prime Minister, aims to increase the efficiency of land management; with an emphasis on reducing land conflicts and providing titles to incumbent landholders. The policy aims to offer systematic issuance of private land titles for 1.2 million hectares of land, covering 350,000 families living within ELCs, forest concessions or state-owned land. To implement this initiative,



thousands of student volunteers were recruited and provided with basic training before being sent to the provinces to assist land titling offices and departments. The volunteers were tasked to assist in measuring disputed land between communities and companies and to assist in the issuance of private land titles. Eventually, students were given subsequent instructions to avoid lands under dispute, but in actuality, the instructions were not fully followed due to external influences and empowerment issues. Clearly, the MLMUPC should have given more support and clearer guidelines to the volunteer groups. The steps for applying for land titles were much the same with the existing mechanism of the MLMUPC – the Sporadic Land Registration process. Unfortunately, D-01 intensified the already contentious area of land use, especially for indigenous communities.

The general findings of an NGO Forum study on the implementation of Order 01 cited that a total of 610,000 titles were issued, a total of 1.2 million hectares of land were reclassified from June 2012 and December 2014, and a number of ELCs were cancelled outright. The survey process largely followed the main steps of the systematic land registration process but at a much faster pace, and deviations were observed. But a high number of people (75%) did not receive titles for all the land surveyed and half of household lots were not surveyed at all. The reasons given for denial of titles were applied inconsistently, including an existent dispute, overlap with ELCs and overlap with protected areas. Order 01 had mixed results in areas with a history of land conflict. The implementation of Order 01 in indigenous people's land raises significant concerns, such as requiring them to sign a declaration giving up rights to traditional lands, and the survey of land in some Community Forest areas which was not permitted under Order 01 guidelines. Satisfaction

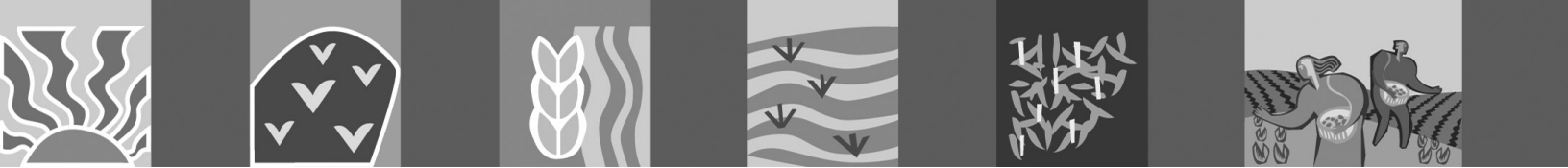
levels were relatively high, but inevitably polarized those who received titles and those who did not (Grimsditch & Schoenberger, 2015).

The national government and the MLMUPC were clearly pleased with the progress of the D-01 campaign as it aims to award large number of titles at a very short time; but it was questionable about transparency and identification of beneficiaries. Critical issues remained, especially the approach of the campaign and its transparency and fairness. The period of implementation of Order 1 was also suspect as it was shortly ahead of the general election; its pace was surprising and not well planned. Thus, the initiative may be motivated by hidden agenda rather than the purpose of resolving land disputes (Grimsditch & Schoenberger, 2015). Overall, D-01 was widely accepted as beneficial for farmers who seek tenurial security for their existing land, yet D-01 also provided the legal basis for companies to control large parcels of state and forest lands (ADIC, 2015).

The RGC gradually decreased the granting of ELCs, with only one ELC granted from 2014 to 2015, compared to a total of 43 ELCs in 2011. The lesser number was also a result of the close coordination of public and non-state actors, especially the affected people and NGOs working on land issues, which have established good connections and communications. Also, the RGC realized the challenges and issues of land disputes and is now more careful and cognizant of legal procedures. If this trend will continue, land dispute resolutions will become sustainable and disputes will eventually disappear.

NGOs are working in groups or alliances on land disputes and closely working with related public institutions to ensure that issues on land disputes are shared and discussion and resolutions are





brought about. An example of a specific case is that of CHRAC with ADHOC who closely work with the public, with the participation of the UN Office of the High Commissioner for Human Rights (OHCHR) and the Samreth Law Group. This group reports to a variety of public institutions, including the Senate, the National Assembly and the Anti-Corruption Unit (ADHOC, 2013). This initiative may have proceeded well: public institutions were willing to jointly cooperate with non-state actors on land disputes and resolutions; some resolutions were beneficial to affected local people; interaction of related actors was strong; and, participation is inclusive. However, there were a limited number of cases pursued into resolution within the timeframe. Nonetheless, it could be built into a formal system and practiced with concrete plans and directions.

ADHOC's reflection on the effectiveness of pursuing dispute resolutions through the courts was less enthusiastic and forthright:

Because of the impunity related to power abuses, lack of law enforcement and lack of independence of the judiciary, existing means of settling disputes related to land and housing is not effective. The courts are strong with the weak and weak with the strong – a situation which damages Cambodia's reputation.

The authorities should strengthen the capacity of the Cadastral Commission at all levels and exercise strict oversight of the courts. Judges and prosecutors who unduly favor powerful interests over poor and vulnerable Cambodians must be punished. To ensure independence of the judiciary, a law on the status of judges and prosecutors, as well as a law on the organization and functioning of the courts, should be adopted as a matter of priority. "Legal persecution of, and



violence against, community representatives, rights workers and activists are not only illegal and unfair; they are ineffective. The authorities cannot expect to resolve the land crisis this way" (ADHOC 2013).

However, the RGC is still preoccupied with economic development and pushing large-scale, land-based and commercial agriculture and mammoth infrastructure projects. Its grant of public areas still lacks a clear mechanism and rationale backed by requisite studies – feasibility, social-economic, social impact and environmental impact and the necessary mitigation of adverse effects to the affected local households, as well as overall benefit of the projects. Government needs to balance people's interests and needs for land against the narrower interest of commercial investors. There is clearly a public need for expanding energy sources, a lowering of tariff on imported energy and the strengthening of institutional mechanisms for effective energy management capacity. The objective of expanding energy supply and connecting all villages to the



power grid by 2020 is worthwhile. Yet, this should not be undertaken at the expense of land disputes with adverse effects on people living within the proposed energy-source (RGC, 2013; MOP, 2014).

### **Good Practices and New Initiatives**

An improvement in the initiatives for dispute resolution coincided with the new leadership in the MOE and the MLMUPC. The two ministries became more serious in ensuring that land management would be more effective and that it would benefit locally affected households. The better pace in dispute resolutions exemplifies the political will and clearer direction. The MLMUPC has a tougher policy and more appropriate actions to ensure that land disputes will be solved peacefully and comprehensively. Since May 2016, the new MLMUPC Minister, after a review of land conflict-related complaints, set up a blacklist. The Ministry will request blacklisted companies to come forward and resolve conflicts in compliance with the law. The companies under the “blacklist” were duly submitted to the RGC for further actions and interventions.

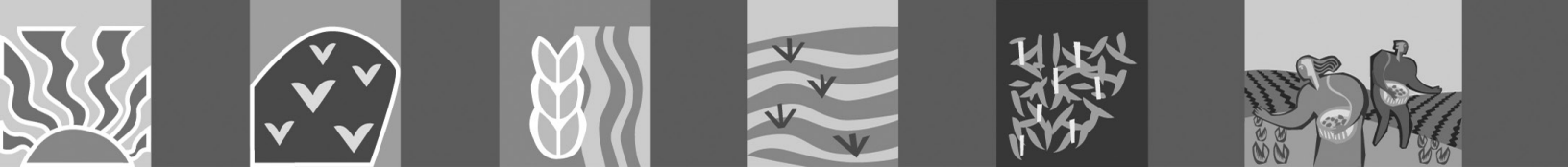
To cite an example, a tycoon in Kandal province, who was first in the blacklist and involved in many complaints by local people, was issued by the MLMUPC with a decision and instruction on three specific complaints and ordered to pursue means of resolution that is peaceful and respectful of local people and relevant authorities. The Council Ministers backed the MLMUPC position with a letter on May 27, 2016. The tycoon has to follow the procedures for peaceful resolution before he is removed from the blacklist. This may be a small step compared to the number of land dispute cases throughout Cambodia, but it projects a positive image of the government acting to benefit affected local people and put pressure on investors to respect the rule of law, to soften their

aggression and allow projects only if accepted by the local people.

In addition, the MLMUPC also created 36 groups (task-forces) to conduct investigation and produce reports for the Minister on land conflicts submitted to the Ministry. Each group is composed of four people led by a senior officer of the Ministry (secretary of state, undersecretary of state, or the advisor to the ministry). Each group receives three cases at a time to investigate and propose solutions. The Ministry also created 18 mobile teams to solve land conflicts outside the court system.

The MOE initially requested the RGC to redefine roles and responsibilities of the MOE and the MAFF. The result was a sub-decree that delineated the roles of the two agencies, to wit: the MOE will mostly handle conservation areas, while the MAFF will manage mainly lands withdrawn from ELCs and will be the principal national institution to handle upcoming ELCs and developmental land areas. This clearer division of functions among the two line ministries will largely reduce overlap and confusion of roles. ELCs already granted were subjected to re-evaluation, with possible downsizing, and have to provide a specific time line for resuming procedures based on a company master plan. In addition, they will be required to negotiate a new contract with the Government (RACC, 2016; MOE, 2015).

The MOE conducted a review and assessment of all ELCs located in Protected Areas. A number of ELCs were cancelled due to disrespecting procedures laid out by the RGC. They were given additional time to fulfill the requirements and given 12 months to prepare their plans; the duration of their concession was reduced to 50 years (Ngin, 2016).



Another good practice was a result of evidences from four case studies (Ngo & Chan, 2012). It was found out that two out of four cases saw good resolutions acceptable to local affected people: the first case was solved through mutual agreement between the company and the villagers; and, the second case was through shifting the ELC site and cash payment to the villagers. The other two ELCs acted against the interests of local residents and no agreed resolution was made between the companies and the villagers. The study found that the conflicts resulted from overlapping due to the ELC's non-compliance with the procedure outlined in the Sub-decree on ELCs, the non-participatory site identification or lack of public consultation and poor quality of the ESIA. It emphasized the willingness of all related actors, especially companies who have

been granted ELCs, to be more actively involved in order to solve existing problems and challenges with the local people for their mutual benefit and common interests.

## Conclusion and Recommendations

Up to 2015, there were 267 ELCs in 18 provinces of Cambodia covering a total land area of 1,532,782.65 hectares. Four main institutions granted ELCs, including the CDC with 2 ELCs, MAFF with 141 ELCs and MOE with 66 ELCs. Provincial committees provided 18 ELCs, while 40 other ELCs have no information on the authorizing body. There are 158 out of 267 ELCs that caused land disputes. Of these, 42 cases or 26.58 percent were completely resolved; 50 cases or 31.84 percent were partly resolved; and 54 cases or 43.39 percent have not been resolved<sup>3</sup>.

It was observed that land disputes in the first semester of 2016 were likely stable and/or on-hold due to the new initiatives on ELCs from both the MAFF and MOE. Several dozens of ELCs were cancelled and hundreds more are under review and were given time to improve their operations. However, the situation only slightly improved since there are still many cases that remains to be solved. More effort is needed from authorized agencies to speed up their efforts and find resolutions for the remaining land disputes.

However, there were some new initiatives put in place by the RGC. First, the MOE took the lead role in the re-evaluation of ELCs, resulting to dozens of ELCs to be cancelled or voluntary returned to the RGC while the remainder were downsized, reduced in duration and instructed to fulfill required documents, or else be subjected

HLH Agriculture (Cambodia) Co., Ltd. was granted a 70-year lease agreement (land concession) of 9,985 hectares by the RGC in March 2009 for the production of corn and other crops within the sustainable development zone of the Aoral wildlife sanctuary. The concession substantially affected both indigenous and non-indigenous people in 15 villages. The total affected land is about 6,500 hectares, which is approximately 65 percent of the granted ELC. The affected lands involve two Community Protected Areas and homestead lands, paddy lands, cash-crop lands, spirit forests, reserved lands, and pathways.

In response to negative reaction from the community, the company commissioned an ESIA in July 2010 and then, by accepting the fact of overlapping on the community's lands, the company together with the government authorities, tried to solve the problem peacefully with the community by shifting the area of the concession, including land exchange. The company also agreed with the MOE to use only half of the original area granted by the RGC, which did not overlap with Community Protected Areas, give cash compensation to the community, based on the Land Law of 2001; and adopt a co-existence scheme with the community – keeping the spirit forests inside the concession and allowing community people to have access to their traditions.

*(Source: Ngo & Chan, Economic Land Concessions and Local Communities, The NGO Forum on Cambodia in 2012)*

<sup>3</sup> NGO Forum on Cambodia Report Launching Workshop on Statistical Analysis of Economic Land Concession in Cambodia, 2015



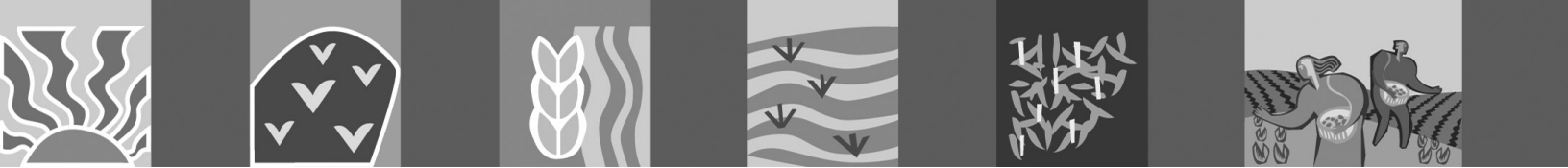
to cancellation. Second, there was a redefined division of functions between the MOE and the MAFF pertaining to land management and ELCs. Thirdly, the MLMUPC has formed 36 groups to respond to all complaints related to land disputes and propose new actions. An MLMUPC “black list” has been set for companies involved in land conflicts, which are instructed to pursue intervention through peaceful means and mutual dialogue with all stakeholders.

There was likely a right direction and on-track achievement of new initiatives. But this does not mean stable, systematic and sustainable measures as yet. There is a possibility of returning to previous ill-managed actions and wrong situations. Therefore, it would be important that both government and non-state actions support land dispute resolutions and integrate practical new initiatives and good practices into the formal system, as well as applying these systematically and promoting these nationwide.

This report proposes several recommendations, as follows:

- The current phenomenon is likely considered as weak enforcement with the powerful and powerful enforcement with the weak, and it is the State obligation to respect, protect and fulfill. Weak law enforcement is a major obstacle, thus, the RGC should provide more support to effective initiatives such as those implemented by the MOE and MLMUPC. Accessing information widely and broadly with transparency should also be strengthened and strongly considered, i.e. ESIA sharing. Furthermore, related institutions responsible for the land management sector can be made more effective, including reinforcing mechanisms in land disputes resolutions
- made more effectively and land law practices and implementation reinforced.
- The RGC should regularly conduct thorough and impartial investigations into land disputes, and allegations of land grabbing, abuse, corruption and mismanagement of land; and improve tenure security for land occupants in accordance with the Land Law of 2001. Legitimate, legal claims of ownership must be acknowledged. For more practically and for prevention, the RGC should firstly make sure that EIAs should be done appropriately and compliance to framework agreed upon.
- Investors and companies, particularly land concession companies, should be aligned to the intent and requirement of the laws and legal framework of Cambodia. Investments should be able to provide benefits to local people and communities to minimize land disputes and disagreements. There should be transparency in the process of mapping State land to reduce conflict between investors and local communities. All development projects must conduct environmental and social impact assessments with transparency and participation by local communities.
- Donors and Development Partners should work closely with the RGC, directly with communities and through NGO partners to make the process of dispute-resolution inclusive and with transparent lines of information and communication so that issues will be discussed locally at the affected households’ level. The working partnership between government and non-state actors, including affected communities, should continue to monitor and evaluate the remaining ELCs. All 162 ELCs, which have been evaluated in the year of 2015, must be monitored according to their implementation according to law and the substance demanded per their development plans.





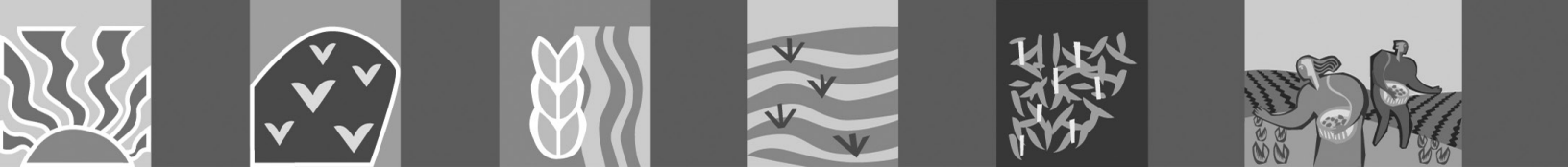
- More importantly, dispute-resolution measures should be aligned with the RGC's policies and priorities, following the Cambodia context rather than focused on international contexts and standards. This assures the balance between social protection and economic development.
- Civil society should take a clear role in helping local communities to submit their petitions to the appropriate State agencies and continue to build local capacity on land issues.
- Local communities should consolidate efforts and actively follow-up and monitor land concessions and land disputes, and take action promptly. Information and communication technologies (ICTs) should be optimized in sharing information on land conflicts and approaches in land dispute resolution to the broader public. ■

## References:

- ADHOC (2016). A Growing Divide: Disputes Without Resolutions, The Land Rights Situation in 2015, Phnom Penh.
- ADHOC (2013). A Turning Point? Land, Housing and Natural Resources Right in Cambodia in 2012, Phnom Penh.
- ADIC (2015). Processes, Challenges and Prospects in Land Registration in Cambodia, Phnom Penh.
- ADIC (2015a). Law Enforcement Related to Land Management Gaps and Key Challenges, Supported by OXFAM and STAR Kampuchea, Phnom Penh.
- CCHR (2013). Cambodia: Land in Conflict, An Overview of the Land Situation, European Union and the Interchurch Organization for Development Cooperation, Phnom Penh.
- CCIM (2014). Annual Report, Country at Grassroots, Media in the spotlight, Phnom Penh.
- Depika, S. (2015). Cambodia: The Bitter Taste of Sugar Displacement and Dispossession in Oddar Meanchey Province, ActionAid Cambodia and Oxfam GB, Phnom Penh.
- Grimsditch M. and Schoenberger L. (2015). "New Actions and Existing Policies" The Implementation and Impacts of Order 01, The NGO Forum on Cambodia, Phnom Penh.
- Hean, S. (2015). A Study on Land Disputes in Four Provinces of Cambodia: Mapping, Impacts, and Possible Solutions, NGO Forum on Cambodia, Land Security Project, Phnom Penh.
- LICADHO. (2015). On Stony Ground: A Look Into Social Land Concession, A briefing Paper Issued in June, 2015, Phnom Penh.
- MLMUPC (2016). Annual Congress in 2015 and Next Plan for 2016, Phnom Penh, March 24, 2016 (Khmer Version).
- MOE (2015). Reporting on MOE's Work: Progressing and Achievements, September 2013-April 2015, Phnom Penh (Khmer Version).
- MOP (2014). National Development Plan 2014-2018, Fifth Legislature Mandate of National Assembly, Phnom Penh.
- Ngin, C. (2016). Challenges in Managing State Land in Cambodia: Addressing Competing Interests for Lands inside Protected Areas, Discussion Note, MRLG, Phnom Penh.
- NGO Forum on Cambodia (2013). Minute of NGO Forum's Quarterly Members Meeting, October 11, 2013, Phnom Penh.
- NGO Forum on Cambodia (2013a). Minute of NGO Forum's Quarterly Members Meeting, April 26, 2013, Phnom Penh.
- NGO Forum on Cambodia, et al. (2015). Investing Report, Impact of Development Project, Benh Hoeurk Kratie Rubber 1 Company Limited, Chork Char Village, Sre Chhouk Commune, Keo Seima District, Mondulkiri Province, Phnom Penh.
- Ngo, S. & Chan, S. (2012). Economic Land Concessions and Local Communities, The NGO Forum on Cambodia, Phnom Penh.
- RACC (2016). Statistical Analysis of Land Disputes in Cambodia, 2015, NGO Forum on Cambodia, Phnom Penh.
- RACC (2015). Statistical Analysis of Land Disputes in Cambodia, 2014, NGO Forum on Cambodia, Phnom Penh.
- RACC (2016). Statistical Analysis of Economic Land Concession in Cambodia, 2015, Published by The NGO Forum on Cambodia, Phnom Penh.
- RGC (1999). Sub-Degree on Organization and Functioning of Ministry of Land Management, Urbanization and Construction, Supported by ADB TA 3577 and LMAP TA GTZ, Phnom Penh.
- RGC (2001). Land Law, Supported by ADB TA 3577 and LMAP TA GTZ, Phnom Penh.



- RGC (2005). Sub-Degree on Economic Land Concession (No. 146 ANK/BK), Phnom Penh (Unofficial Translation into English).
- RGC (2009). Procedures of Registration of Land of Indigenous Communities, No. 83 ANK/BK, Phnom Penh.
- RGC (2013). Rectangular Strategy-Phases III, Fifth Legislature Mandate of National Assembly, Phnom Penh.
- RGC (2016). Sub-Degree on Amendment of Roles and Responsibilities for MOE and MAFF Related to Its Authorization and Management on ECLs and Protection and Conservation Areas, Phnom Penh.
- RIC (2014). Statistical Analysis of Land Disputes in Cambodia, 2013, Research and Information Center (RIC), NGO Forum on Cambodia, Phnom Penh.
- Thiel, F. (2010). Donor driven land reform in Cambodia property rights, planning, and land value taxation. ERDKUNDE, vol. 64 (3): 227-239.



# 2016 Land Conflict Monitoring in Indonesia

*Iwan Nurdin, Agrarian Reform Consortium (KPA)*

According to Indonesia's Basic Agrarian Law No. 5 enacted in 1960, 'agrarian' is defined as the whole land, water and outer space, including natural resources contained therein, in the territory of Republic of Indonesia (Article 1 number 2). Thus, this definition of agrarian can also be interchangeable with 'natural resources'.

This Land Monitoring report was released in the second year of President Joko Widodo's, popularly known as Jokowi, government. After winning presidential elections in 2014, Jokowi introduced his *Nawacita*, or 'nine promises' program.

Agrarian Reform is one of Jokowi's *Nawacita* programs. *Nawacita* is interpreted by the National Development Planning Board (Bappenas) to mean land redistribution of 4.5 million hectares and legalization/certification of government land of as much as 4.5 million hectares. Due to this interpretation, civil society organizations (CSOs)

have done two things in the first two years of Jokowi's term: (1) demand for the implementation of *Nawacita*, and (2) consolidate to strengthen Jokowi's agrarian reform planning which CSOs consider antiquated.

As Jokowi's term progresses, there are not many changes that have taken place, despite promises made. One reason for this is that the previous governments' overlapping regulations on land and natural resources have not been revised much, or even reviewed. When revisions do happen, these are toward simplification of regulations to facilitate the flow of investments which Jokowi's government calls 'Economics Package'.

## Monitoring Result

This report sums up agrarian conflicts from January to September 2016. In this report, KPA focuses on agrarian conflicts which are structural. Under the



KPA model, the definition of agrarian conflict is continuous claim on government land, natural resources, and territories with big enterprises involved in infrastructure, production, extraction and conservation; and the conflicting parties make an attempt and act directly or indirectly to eliminate the other party's claim.

In Indonesia, agrarian conflict is usually initiated by the granting of permits/rights by public officials, including the Minister of Forestry, Minister of ESDM (Energy And Mineral Resources), Head of BPN (National Land Agency), Governor and Regent, who allow big enterprises control over government land, natural resources, and entire territories for infrastructure, production, extraction and conservation projects.

### Data Collection

Data produced in this report were obtained through two ways: (1) direct report from the victims to KPA's National Secretariat, Regional Secretariat or networks and alliances formed by KPA, and (2) monitoring of mass media (printed or online).

Data presented by KPA are certainly not a representation of all agrarian conflicts that take place in Indonesia. This is due to limitations of KPA and its networks, as well as limitations of mass media in covering agrarian conflicts. The data presented by KPA could be the minimum number of agrarian conflicts taking place in the country. However, KPA is confident that the aggregate

data presented in the report is a representation of the face of agrarian conflicts in Indonesia.

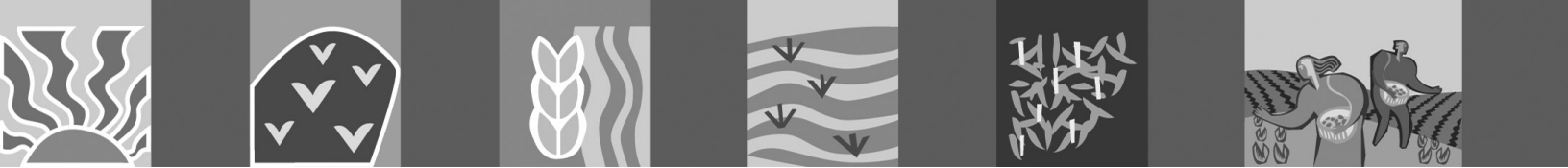
### Record of Agrarian Conflicts

Agrarian conflicts in 2016 can be categorized into: plantation, housing, public infrastructure, forestry, mining, coastal, oil and gas, and food production (agriculture). From January to September 2016, KPA recorded 401 agrarian conflicts covering 2,763,467 hectares and involving 68,012 households. Details on each category are as follows: plantation (99 conflicts), housing (79), infrastructure (61), forestry (24), mining (19), coastal (10), oil and gas (7), and agriculture (2).

With this data, it can be said that every day there were agrarian conflicts involving 225 households (744 lives) covering an area of at least 9,180 hectares.







Agrarian conflicts from January to September 2016 were dominated by plantation, housing and infrastructure sectors. In the plantation sector,

conflicts took place due to continuous expansion of land by many enterprises. Conflicts involving the housing sector are newly released data by

KPA because evictions on people due to property development have become a recent trend due to expansion of cities or development of new urban areas.

**Table 1. Distribution of agrarian conflicts in Indonesia's provinces**

Province	Month								
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.
Papua Barat									
Bali			1				1		
Gorontalo						1			
Sulawesi Tenggara									1
Sulawesi Selatan			1	1		1			3
Sulawesi Tengah		1	1						2
Sulawesi Barat		1				1		1	
Sulawesi Utara		1	1	1	1	2			2
Kalimantan Utara					1				
Kalimantan Barat				3	1		1		1
Kalimantan Selatan		2	1	1	1				1
Kalimantan Tengah		2	1		1	3		1	2
Kalimantan Timur	2	1	2	2	1	1	1	4	1
NTB			1	2			1		3
NTT	1		1		1	2			1
Maluku Utara							1		
Maluku	2					1			
Bengkulu						2		1	
Kepulauan Bangka Belitung		1				1			
Riau	2	1	3	1		6	6	1	1
Lampung	2		2		1		1	3	2
Jambi			3	2	1	3	1		
Aceh	4		4	2	4	1	1	2	
Sumatera Barat				2					
Sumatera Selatan	2		2	1	2	4	3	2	1
Kepulauan Riau	1					2		1	2
Sumatera Utara		2	2		3	7	5	7	1
Yogya	1	2			1				
Banten	2		1	2				1	2
Jawa Timur	4	3	2	3	2	7	2	3	2
Jawa Tengah		1	2	3	3	1		1	1
Jawa Barat	4	2	4	2	2	2	4	5	3
DKI Jakarta	1	1	2	2	2		1	2	1

### Distribution of Agrarian Conflicts in Indonesia

Nine provinces afflicted most by agrarian conflicts are as follows: East Java (30 cases), West Java (29), North Sumatra (28), Riau (23), Aceh (18), South Sumatra (17), East Kalimantan (15), Jakarta and Central Java (12).

For West Java, East Java, North Sumatra, Riau and Aceh, agrarian conflicts in the plantation sector dominates.

### Victims of Agrarian Conflicts

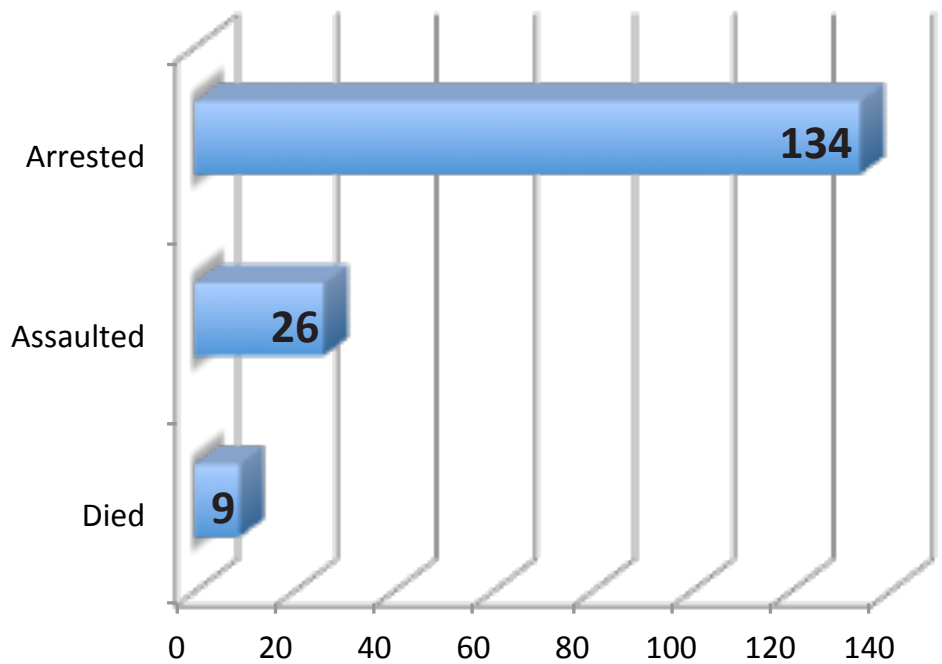
From January to September 2016, agrarian conflicts claimed 9 lives and jailed 134 agrarian fighters. In addition, 26 people were assaulted during the same period.

From the available data, there are nine groups involved in agrarian conflicts: (a) conflicts between communities and private plantation parties (118 cases); (b) conflicts between communities and central and regional governments (70); (c) conflicts between people and



State-owned enterprises (BUMN) (48); (d) conflicts among people (30); (e) conflicts between people and the military/police (22); (f) conflicts between BUMN and private parties (5); (g) conflicts between government entities (5); (h) conflicts between government and BUMN (2); and, (i) conflicts among private enterprises, From this data, we can get an illustration that the most number of conflicts took place between communities and private plantation parties. The reason for this is because permits granted to private enterprises for plantation, housing, forestry and mining are often on the communities' land (see Table 2).

**Diagram 1. Number of Victims in Agrarian Conflicts**



**Size of Land in Agrarian Conflicts**

In terms of the size of land covered by agrarian conflicts, the plantation sector was very dominant, with 41 percent or 1,137,379 hectares involved. This is followed by the agriculture sector follows with 496,805.7 hectares (18%), forestry sector with 493,861.4 hectares (18%), coastal sector with 219,397.6 hectares (8%), property sector with 195,104.3 hectares (7%), infrastructure sector with 139,190.8 hectares (5%), oil and gas sector with 43,841.4 hectares (2%), and mining sector with 37,887.12 hectares (1%). See diagram 2.

**Monitoring and Advocacy Policies in 2016**

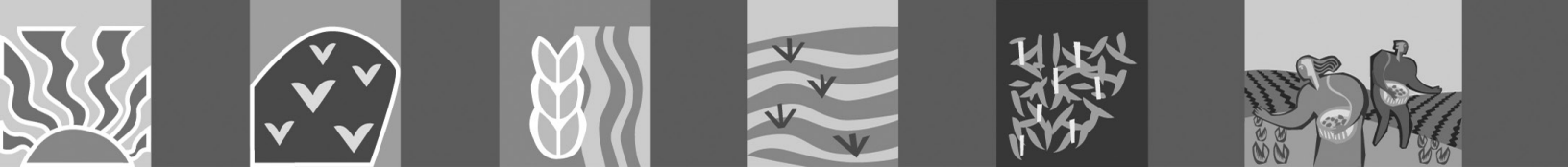
**Land Bill**

The Land Bill was announced as one of the priority laws by the Indonesian parliament since 2009. From the beginning, KPA has conducted

an advocacy campaign on the Land Bill with several principal objectives: (a) Land Bill is implementation of UUPA 1960, not a replacement; (b) Conducting agenda of Agrarian Reform; (c) Settlement of agrarian conflicts; (d) Abolishing sectionalism in land administration or promoting single administration in the land sector; (e) Strengthening recognition of indigenous people's rights; (f) Priority of right over the land for marginalized groups, especially farmers, women and indigenous people; and, (g) Conservation of nature.

This view has been expressed by KPA since the Bill's discussion in Parliament covering the period 2009 to 2014. KPA has given its official review several times to Parliament's legislative bodies, Commission II and political parties, especially the PKB Party, Gerindra's Party and PDIP Party.

A closer look at the Land Bill reveals several weaknesses. First, the Land Bill regulates



**Table 2. Actors involved in agrarian conflicts from Jan. to Sept. 2016**

Actors	Month								
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.
Police officer	3	1		2		2	4	4	5
Communities vs. gov't.	8	7	8	6	11	13	5	4	7
Communities vs. state-owned company	6	3	7	6	5	10	2	6	3
Gov't. vs. state-owned company	1		1						
Among communities	2	1	3	1		5	5	5	7
Communities vs. private company	6	9	16	12	12	17	14	14	10
State-owned company vs. private company	1		1		1			2	
Gov't. vs. gov't.	1		1	2				1	

implementation of agrarian reform as a solution to land redistribution, thus it is not a genuine nor a comprehensive agrarian reform bill.

Furthermore, the Land Bill, in its present form, is not meant to become a catalyst for the growth of businesses owned by villagers, farmers, fishermen and other marginal groups as it does not prescribe modern land management methods. Therefore, this Bill does not explain the need for an ad hoc body reporting to the President, such as BORA or the National Committee for Implementation of Agrarian Reform.

The Land Bill does not seriously abolish sectionalism in the land sector and building strong and reliable land governance institutions. Supposedly, this bill proposes the formation of a Land Ministry, which regulates all planning, administration, spatial information, registration and rights over all land under national body.

The answer for settlement of land conflicts offered in this Bill is to form a land court. However, this proposal will only be effective if the government is able to solve land issues like

partiality and establish credible land governance institutions. The land court will not work in cases of thousands of land conflicts, such as the Mesuji and Bima cases, which are categorized as 'extraordinary cases' by the transitional land institution. The government needs first to answer the clamor for justice sought by the affected communities, or else the land court will just be like the National Committee for Settlement of Agrarian Conflicts once proposed by Indonesia's National Committee for Human Rights (Komnas HAM), which would have been responsible for registering, verifying and filing cases submitted by communities collectively; facilitating settlement and giving recommendation for binding solution.

**Draft of Presidential Decree on Agrarian Reform (RA)**

In 2015, those concerned with the struggle of agrarian reform were suddenly stunned by the announcement of the winner of the bid for reviewing the draft Presidential Decree on Agrarian Reform (RA), which was PT. Mahaka. The announcement aroused widespread curiosity because a very important regulation was suddenly



conducted by third party, and a private company at that.

In addition, KPA also criticized the content of the draft Presidential Decree on RA (Ranperpres RA) designed by the government and that company, as very far from the values of agrarian reform mandated by UUPA and from the President's *Nawacita*. The KPA's critique was sent to the Ministry of ATR/BPN-RI.

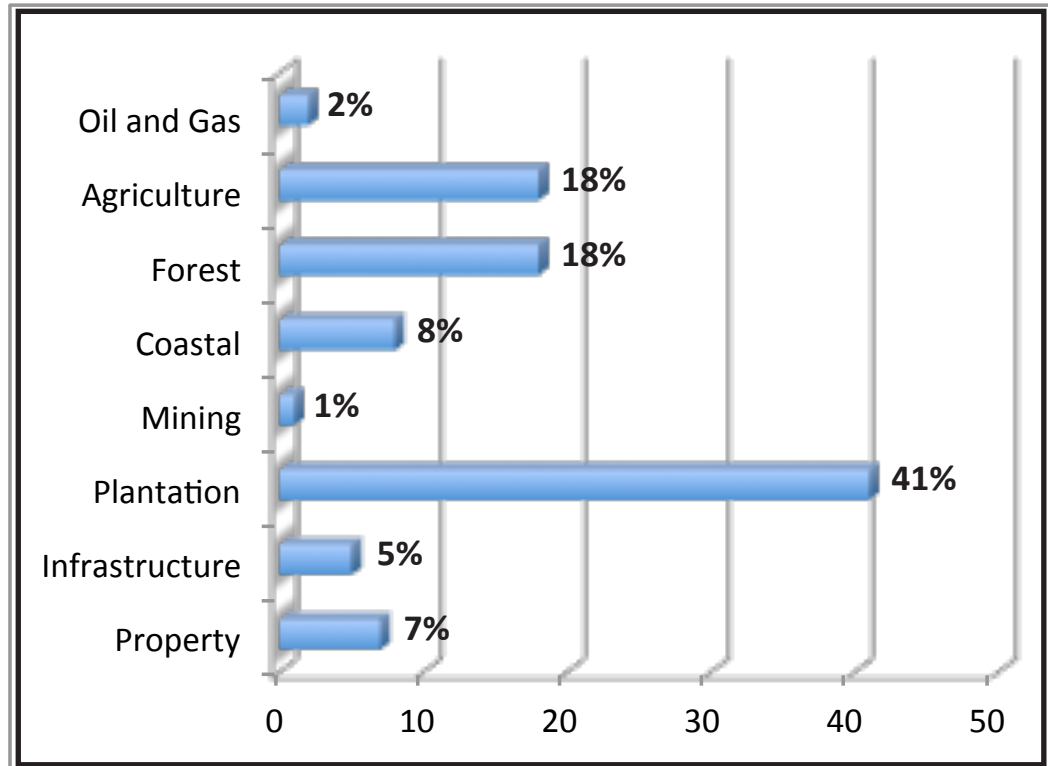
The critique was accommodated by BPN and for the past two years, KPA and then KNPA has been involved in reviewing the Ranperpres RA, as well as the Draft of Perpres produced by the previous Ministry of ATR/BPN.

After thorough review, the Ranperpres manuscript was sent to the Ministry of State Secretariat. However, as of this writing, the Ranperpres has not yet been approved.

Some of KPA's main points on this Ranperpres are as follows:

1. To correct the agrarian reform scheme in RPJMN, divided into two major jobs which are land redistribution of as much as 4.5 million hectares and legalization of land assets of as much as 4.5 million hectares. Besides lowering redistribution targets to half of what was originally set, legalization of assets or certification is not agrarian

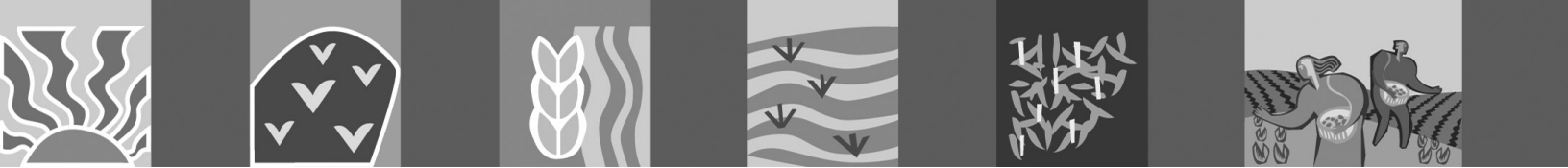
**Diagram 2. Size of Land in agrarian conflicts based on sectors**



reform because certification is aimed at reducing agrarian structure partiality. On the contrary, it could legitimize the existing partiality through a land certificate.

2. KPA promotes that agrarian reform is not a continuous program. According to KPA, agrarian reform is a program to be implemented with a clear time frame. For KPA, continuity or sustainability is the continuity of reform benefits, not just a land redistribution program.
3. As for institutions, KPA proposed that RA implementation be subsumed under an ad hoc body directly led by the President. This body should involve community organizations fighting for agrarian reform. This involvement should be from planning, execution to evaluation stage, to prevent fatal mistakes in implementation of agrarian reform – often taking the form of





wrong object (location of agrarian reform) and wrong subject (beneficiary of land redistribution) – from happening.

4. As to the beneficiaries of land redistribution, KPA suggested that community organizations of farmers, indigenous people, the youth, and women should benefit from agrarian reform. These groups can be formed into cooperatives so that RA can directly impact community economies and effect genuine social transformation.
5. KPA suggested that RA should be in line with the objectives of agrarian reform. If agrarian reform is aimed at reducing agrarian partiality and solving agrarian conflicts, agrarian reform should be prioritized in areas with high numbers of agrarian partiality and conflicts.

#### **Implementation of Joint Regulation of 4 Ministries**

At the end of SBY's era, on October 4, 2014, the government signed a regulation considered very good by KPA in promoting settlement of land issues in forest areas – called the Joint Regulation about Settlement Procedures on Land Acquisition in Forest Area.

This regulation is the result of Joint Agreement Note 12 KL, encouraged by KPK in March 2013. Though KPA was not directly involved in reviewing this joint regulation involving four Ministries, KPA viewed this regulation as important and progressive and encouraged its implementation.

Under this regulation, the community must prove that they have lived in the area for more than 20 years so that they will be granted right of ownership. Otherwise, they can still apply for right of ownership through agrarian reform and

community forestry schemes. In this regulation, disputes in release of forest area can be solved by modifying forest area borders. This solution is particularly appropriate in regions with less than 30 percent forest area such as Java, Bali and Lampung, and in regions where the forest is considered as 'state asset' because it is given to *Perhutani/Inhutani*.

Unfortunately, this regulation was abandoned, having faced stiff opposition from KLHK because it was viewed as 'not legally strong' and was not given priority by BPN and regional governments. This regulation is being revised and subject for approval by the President.

#### **Closing**

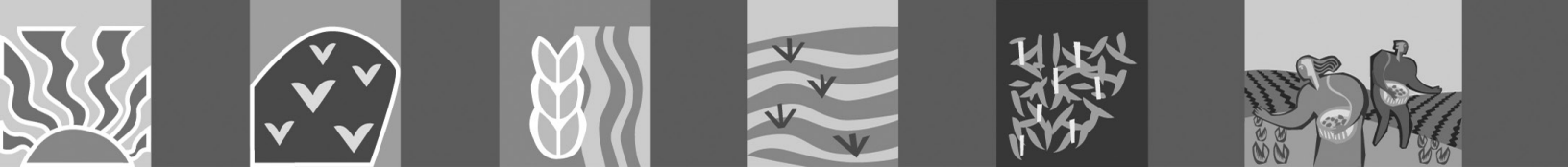
Jokowi's government has been in power for two years, but fundamental changes in the agrarian sectors have yet to take place. The land redistribution agenda by Jokowi is not agrarian reform because his administration did not make any arrangement on control, ownership and utilization of lands undergoing conflict.

So far, Jokowi's government has not shown good will to make people realize that agrarian reform is a priority. In fact, Jokowi tends to treat agrarian-related assets as commodities in the stock market. Various policies being designed by the Jokowi government have not shown any signs of being for the interest of agrarian sectors. Agrarian conflicts characterized by violence, land grabbing and environmental damage are still taking place all over the country.

The main priority that Jokowi should take concerning the agrarian sectors is law enforcement – considering that agrarian conflicts stem from overlapping government regulations. Then, the government must collect data on



land conflicts (in plantation, forestry and coastal sectors). Next, the administration of Jokowi has to set who the beneficiaries of land reform should be, and the land (area, location) to be redistributed. The Ministry of Agrarian and Spatial Management/BPN plays a very important role in this undertaking. ■



# 2016 Philippines Land Monitoring Report on Land and Resource Conflicts

*Prepared by Asian NGO Coalition (ANGOC) with inputs from AR Now! (The People's Campaign for Agrarian Reform Network, Inc.), KAISAHAN (Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan), NFR (NGOs for Fisheries Reform) and PAFID (Philippine Association for Intercultural Development)*

In the Philippines, human rights violations can be both a cause and an effect of resource conflicts. The 2014 Philippine Land Monitoring Report has shown us that land conflicts can escalate into violent stages due to overlapping land claims and weak land governance. In fact, the country has ranked third with the highest number of deaths among land and environmental defenders from 2012 to 2013 globally (Global Witness, 2014).

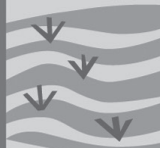
Oftentimes, killings and harassments involving land and resources are seen as an effect of a conflict. However, other human rights violations such as uneven access to resources and non-inclusive participation in public affairs are the actual causes of conflict.

The people's right to land is enshrined in the 1987 Philippine Constitution and lays down the general

principles of access to land. Article II defines the current legal framework for access to land:

- Protection of Property (Section 5);
- Promotion of Social Justice and Human Rights (Sections 10 and 11);
- Promotion of rural development and agrarian reform (Section 21);
- Promotion of the rights of indigenous communities (Section 22); and,
- Protection of the right of the people to a balanced and healthful ecology. (ANGOC, 2013)

Articles 12 and 13 further stress that the use of property must be regulated in the interest of social justice. Therefore, the State must undertake an agrarian reform program founded on the right of farmers and regular farm workers who are



landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of its fruits. The State is also required to protect the rights of indigenous cultural communities to their ancestral lands.

Finally, the Constitution also restricts the foreign ownership of lands and requires the protection of Filipino enterprises against unfair foreign competition and trade practices. (1987 Philippine Constitution)

Thus, the Comprehensive Agrarian Reform Law (passed in 1988) and the Indigenous People's Rights Act (passed in 1997) sought to redistribute some 9 million hectares of agricultural land to landless farmers and to issue titles to around 5 million hectares of ancestral domains to

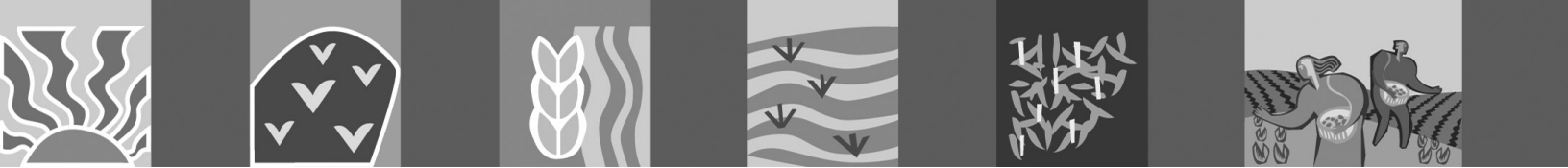
indigenous peoples, respectively. On a similar vein, Republic Act 8550 or the Philippine Fisheries Code of 1998, amended by RA 10654, was passed to safeguard the rights of small-scale fishers.

However, these programs have not been completed decades later due to implementation issues and heavy resistance from private owners given growing business opportunities with land and resources. The basic right to property, secure livelihoods and improved quality of life for millions of Filipino farmers and indigenous peoples have still not been realized.

### **Agrarian Reform**

As of June 2016, the Department of Agrarian Reform (DAR) reports an accomplishment of





4.72 million hectares distributed to 2.79 million agrarian reform beneficiaries. There is still a balance of 621,085 hectares undistributed for 568,575 agrarian reform beneficiaries (ARBs).

According to the DAR, as of September 30, 2016, the Western Visayas region has the highest number of uninstalled farmer-beneficiaries at 13,776, with 9,588 in Negros Occidental. Leyte province is second with 8,495 uninstalled beneficiaries.

Various issues have hindered the fast accomplishment of these targets, including the following:

#### **Strong landowner resistance**

In Ormoc, KAISAHAN took note of some 9 landowners who threatened or hindered the installation of 127 ARBs in 213 hectares of land. Among those areas that continually face threats are owned by Ormoc's elite families such as the Larrazabals, Tans and the Torreses. The son-in-law of Torres is the current mayor of Ormoc while the Larrazabals own the major commercial establishments in the city. A number of landowners have also resorted to filing cases against DAR personnel or the beneficiaries themselves to stall the complete transfer of ownership.

#### **Physical threat to lives and property of the farmers**

In Negros Occidental, four of KAISAHAN's farmer paralegals shared that they received death threats from people or armed goons allegedly connected to the landowners. Other farmers are threatened by farmers supported by armed groups.

#### **Circumvention of LAD (Land Acquisition and Distribution) processes**

Qualified farmer beneficiaries are excluded in the master list of agrarian reform beneficiaries. Agrarian reform beneficiaries are not yet in possession of the land they already owned since the 1990s due to different delays in the LAD process. As of February 2014, the Department of Agrarian Reform (DAR) reported to the Philippine House of Representatives (Congress) Committee on Agrarian Reform that 790,671 hectares of agricultural lands remain to be covered under CARP. Additionally, there are still approximately 287,473 hectares of agricultural lands without Notices of Coverage as of January 2014 (from House Bill 114 Explanatory Note). The issuance of NOCs is an important step towards the acquisition and eventually installation of ARBs.

#### ***Some NOCs issued before the deadline were declared "erroneous"***

DAR classified some Notices of Coverage (NOC) issued to the targeted landholdings as "erroneous" for different reasons. For instance, some of the "erroneous" NOCs (as submitted by KAISAHAN) according to DAR were due to differences between the technical descriptions indicated in the NOCs and in the land title. Other cases were caused by illegal transactions that allowed subdivision of big landholdings covered by CARP.

#### ***Lack of post-land distribution support***

- ***Farmers are leasing the land awarded to them to individuals or corporations.*** Willingly or not, farmers are leasing their lands to "aryendadors" (lessors) who offer farmers P15,000 to P20,000 on the average (depending on the crop) per hectare per year.



Sometimes these farmers are also employed as farmworkers; hence, they only receive a monthly allowance. Negros sugarcane farmers who were awarded their lands were coerced into a lease agreement facilitated by a DAR official.

- **Farmers are exposed to unfair joint venture agreements.** ARBs and indigenous peoples in banana plantations, especially in Mindanao, are victims of scrupulous Joint Venture Agreements (JVAs). In Davao Oriental for instance, the Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) transferred its rights over to Lapanday Foods, Inc. In 2008, Lapanday took over the operations of HARBCO due to the debts incurred by the cooperative. At that time, HARBCO had debts of Php 115 million with Lapanday which eventually ballooned to Php 290.8 million in 2012. The case of HARBCO reveals the plight of many ARBs who may still own the land awarded to them on paper, but in actual practice, have lost control and access to it by the takeover of their land's management by supposed partner agribusiness corporation.
- **Lack of support services for agrarian reform beneficiaries.** Many ARB organizations have failed in keeping ownership of their lands due largely to the lack of adequate credit and support services to sustain their farming activities. Agricultural capital was mostly provided for by the former landowners, support which was ceased when the farmers were identified as ARBs.

Land rights are human rights since depriving poor farmers of access to land can deny them and their families food, shelter, livelihoods and dignity. It is thus necessary to promote land rights as human rights at different levels and strategies:

### Calls to CSOs

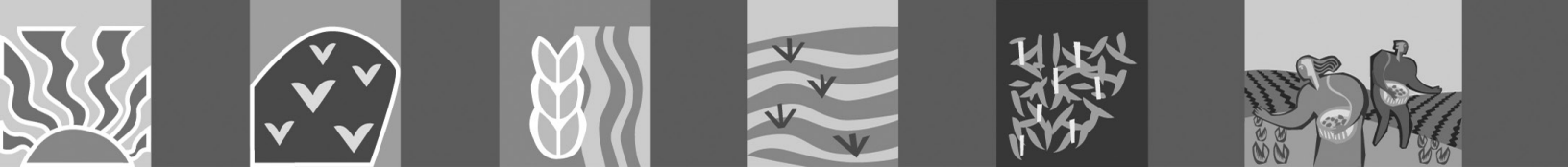
- Formation of local, national and regional support mechanism/s for land rights defenders especially in the fields of community organizing and legal empowerment; and,
- Enhance the capacities of communities in documenting human rights and land rights related cases for case build up.

### Calls to Philippine Government

- Work for the immediate distribution of remaining agricultural lands to qualified farmer beneficiaries;
- Streamline the existing rules and procedure in securing the assistance of the security sector (e.g., police) in the implementation of agrarian reform;
- Implement CARPER provision on initial capitalization and opening of more accessible socialized credit windows for ARBs; and,
- Mandate the Department of Agriculture to prioritize support to ARBs.

### Ancestral Domains

Over 14 million of the Philippine population are indigenous peoples (IPs). The country is home to 110 indigenous tribes, most of whom live in the upland areas, forests and coastlines. Most of the IPs depend on traditional swidden agriculture utilizing available upland areas. However, most of these traditional cultivation sites and fallow areas have now been degraded and are further threatened by the influx of migrant farmers who have introduced unsustainable lowland-commercial farming practices. Furthermore, most indigenous communities do not have legal recognition over their traditional lands, thus limiting their ability to freely conduct their



livelihood activities and are denied access to other natural resources in their communities.

Under Republic Act 8371 or The Indigenous Peoples Rights Act (IPRA), indigenous communities can secure titles or Certificates of Ancestral Domain Titles (CADT) for their traditional lands or ancestral domains.

### **Policy Conflicts**

Incoherent national policies undermine the rights of indigenous communities to have “control” and “access” to their ancestral domains and resources.

The Department of Agrarian Reform, for instance, issues Certificates of Land Ownership Awards (CLOA) to farmer-beneficiaries. A substantial

number of these CLOAs issued to farmers come from public lands, which are also part of ancestral domain claims of indigenous peoples.

Presidential Proclamation 2282, Series of 1983, a Marcos-era Proclamation which reclassified as ‘agricultural land’ certain parcels of the public domain located in the twelve regions of the country (containing approximately a total area of 1,502.246 hectares) and declared the same as ‘alienable and disposable’ for agricultural and resettlement purposes, also conflicts with IP land rights.

Five ancestral domain claims are affected by Presidential Proclamation (PP) 2282 in Mindoro province which include the Certificate of Ancestral Domain Title (CADT) in Sta. Cruz, Occidental





***“Intrusion of unregulated development projects and other interests continue to marginalize the access to and control of indigenous cultural communities’ of the resources of the uplands.”***

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Mindoro of the Iraya Mangyan, and the Certificate of Ancestral Domain Claims (CADCs) of Naujan Alangan Mangyan and Buhid Mangyan Baco Sablayan.

On the other hand, the Joint Administrative Order #1 (JAO 1) on *“Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of DAR, DENR, LRA and NCIP in order to address Jurisdictional and Operational Issues between and among the Agencies”* was signed on 25 January 2012 by the Department of Environment and Natural Resources (DENR), DAR, Land Registration Authority (LRA) and the National Commission for Indigenous Peoples (NCIP). JAO 1 aims to address issues of overlapping jurisdiction, operational issues and conflicting claims by and among the aforementioned agencies. Furthermore, the JAO shall apply to the coverage of lands and/or processing by DAR, DENR and NCIP and registration with LRA of land titles embracing lands or areas which are contentious or potentially contentious. A Joint National Committee on DAR, DENR, LRA and NCIP has been created to address or resolve such issues. On a similar vein, regional committees of the same nature have been established.

Unfortunately, five years have passed but the incidence of land conflicts due to overlapping claims persist. This situation has led to violence (at times death) among the rural poor. In fact, JAO 1 of 2012 totally undermines the rights of IP to their lands, territories and resources as it allows for conflicting claims over IP lands. There is a need to assess the implementation of JAO 1, whether it has been an effective mechanism to manage or resolve conflicts, particularly at the local level.

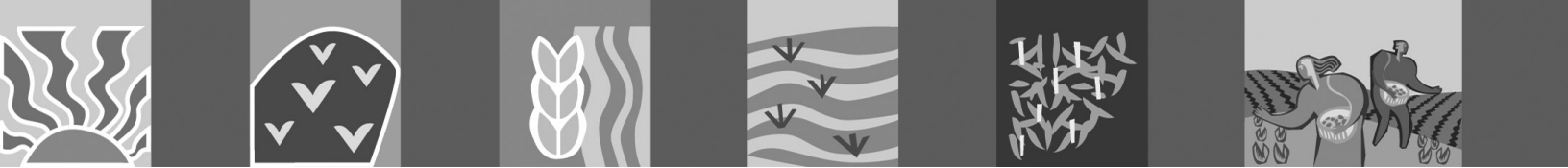
### **Development Aggression**

Intrusion of unregulated development projects and other interests continue to marginalize the access to and control of indigenous cultural communities’ of the resources of the uplands. Most of these initiatives bring alien value-systems with regards to the use of natural resources. Mining tenements overlap with almost all IP ancestral domains, another detriment to their tenurial security.

### **Calls to Philippine Government**

- Full implementation of IPRA Law;
- Review the implementation of JAO 1 of 2012
- Practice responsible land governance through proper enforcement of Free Prior and Informed Consent (FPIC);
- Implementation of mandatory representatives for genuine community consultations with IPs; and,
- Visible presence of NCIP representatives for the strict implementation of IPRA to stop mining operations within the IP areas/ ancestral domains.





## Aquatic Resources

The Philippines is an archipelagic country composed of over 7,100 islands and islets. Three large bodies of water bound it: the West Philippine Sea, Pacific Ocean and Celebes Sea. Having a long coastline, it is only but natural for majority of the population to be involved in fishing. However, the fisheries sector has long been neglected. This phenomenon holds in particular for the municipal fisherfolk or small fishers.

Most, if not all, of the fisherfolk families residing in the foreshore and the salvage/easement zones just settled into the land they are now occupying, given the open access nature of public domain, with minimal or no document securing their residence. However, they are not the only ones facing the threat of displacement and relocation. Even those who are settling in coastal lands beyond the salvage/easement zones are also facing these threats. Many of them had been residing in their communities for years, others for decades, some for generations, without any threat to the security of tenure.

The Fisheries Code of 1998 (RA 8550) provides for fisherfolk settlement but these have remained ambiguous provisions. Issues on the foreshore land regarding classification, access, resource use, public safety, shoreline management, and regulatory processes compound this. With the national and local governments promoting tourism and countryside industrialization as development strategies, establishment of industrial estates, power plants, ports, as well as beach resorts and other tourist destinations affect many coastal areas.

According to Sec. 4 of RA 8550, as amended by RA 10654 (Fisheries Code of 1998), **municipal fisherfolk** are persons who are directly or

indirectly engaged in municipal fishing and other related fishing activities.

**Municipal fishing** refers to fishing within municipal waters using fishing vessels of three gross tons or less, or fishing not requiring the use of fishing vessels.

**Municipal waters** include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The National Integrated Protected Areas Systems/NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore inlands and 15 kilometers from such coastline. Where two municipalities are so situated on opposite shores that there is less than 30 kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

Municipal fisherfolk directly depend on marine resources for food and income, and are more inclined to protect the marine resources, as their capacity to ensure sustenance of the family depend on it.

Among the factors that threaten the tenurial security of municipal fishers in their coastal settlements are the following: (1) private land claims over public areas where fishers have settled and lived in; (2) private land claims over foreshore land and salvage/easement zones; (3) selling of municipal fishers of their lands or rights for their land to private investors and resort/real estate developers; (4) establishment



of resorts and other tourism facilities; (5) coastal real estate development [vacation houses, retirement villages, beach-front residential areas]; 6) port development and other public coastal infrastructure; and, (7) entry of factories, industrial estates, export processing zones and other industrial facilities<sup>1</sup>.

The absence or lack of tenurial security among the fishers in the use of foreshore and the savage/easement zone including the settlement of their families affect their family income as well as their food security. The constant threat of being ejected to be relocated far from the fishing grounds and the gradual denial of access to the sea by reason of growing “private ownership” affects their normal routine of productive enterprise. There are no sustained government efforts to provide safe and decent settlement and re-settlement for fisherfolk despite mandate under R.A. 8550 or the Philippine Fisheries Code of 1998, which is amended by R.A. 10654. Likewise, local government units and communities receiving displaced families of fishers are burdened as to the quantity and quality of basic services to be delivered to these new constituents.

Women fishers bear the brunt of displacement. Womenfolk are usually occupied with livelihood activities like the harvesting of aquatic resources and their subsequent processing and marketing. The gleaning of shells and mollusks and gathering of sea urchins, starfishes, seaweeds and corals are productive occupations that women fishers perform, as are fish drying and fish paste making. They likewise engage in near shore fishing activities such as fry gathering, subsistence aquaculture and the operation of fishing gears that are managed on or from the shore (e.g. beach seine).

The threat of displacement and relocation also affects relationships within organizations and communities. If the claimants are all from the community, competing claims and interests within the community threatens inter-personal/household relationships and community dynamics. Even if the threat is external, differences in strategies and responses can affect organizations and community relationships.<sup>2</sup>

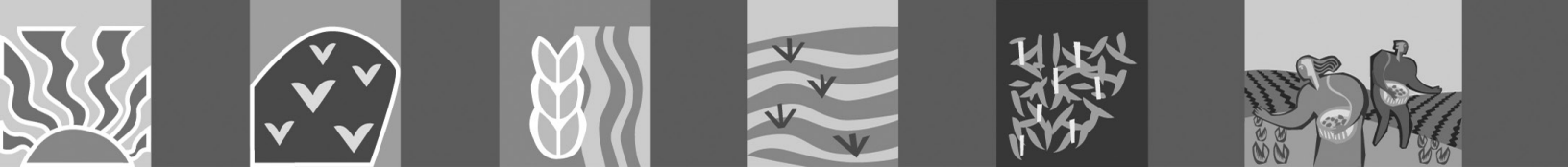
The threat also becomes a distraction, sometimes even a disincentive, from household and community asset build-up in all aspects: financial, human, social, financial and physical. Financial and physical assets get destroyed or lost in cases of demolitions, especially if it is involuntary and at times, violent. Resettlement often affects the education of children, and also participation in trainings and other non-formal education venues. Participation in resource management, especially area-based and site-focused initiatives, are definitely affected by relocation.

### **Calls to Philippine Government**

- On Municipal Water Delineation
  - For the Department of Agriculture through the Bureau of Fisheries and Aquatic Resources (DA-BFAR) to develop a program for municipal water delineation and see to it that the provisions under the Comprehensive National Fisheries Industry Development Plan (CNFIDP) related to the municipal water delineation are implemented;
  - For the Department of the Interior and Local Government (DILG) to issue a memorandum circular for all local government units (LGUs) without offshore islands to fast track the

<sup>1</sup> Balderrama, BANAAG Bahay at Buhay Primer 1: *Pagtingin sa Paninirahan ng mga Mangangisda.*

<sup>2</sup> Balderrama, Policy Paper on Fisherfolk Settlement, 2006.



process of verification and enactment of ordinance for the 15-kilometer municipal water delineation, with emphasis on bay-wide management and preferential use of municipal waters by small fisherfolk. Also for DILG to provide incentives to LGUs that sustainably manage their municipal waters and uphold the preferential rights of small fisherfolk over the use of municipal waters.

- For DA-BFAR to re-convene the inter-agency task force for fisherfolk settlement, which it formed in 2012. The task force shall supervise the implementation of the Fisherfolk Shelter for Stewards Program (FSSP), which was implemented initially by the National Anti-Poverty Commission in Yolanda-affected communities.
- For DA-BFAR to allocate and spend around Php1,200,000,000, starting 2017 until 2020, for the establishment of fisherfolk settlement as indicated in the updated Comprehensive National Fisheries Industry Development Plan.
- For the DILG to issue a supplemental guideline to Joint Memorandum Circular 01 series of 2014 that emphasizes the need for LGUs to use geo hazard maps in determining safe zones, unsafe zones and no dwelling zones to ensure rights of displaced fisherfolk.

## Overall Recommendations

Although international human rights instruments do not necessarily include a **human right to land** (except for indigenous people's right to land and territory as articulated in the UNDRIP<sup>3</sup> & ILO Convention 169), security of access to and control over land and its resources is a key

to people's survival. Given the overlapping land claims and weak governance in all lands, the consensus is that land conflicts would progress from latent to manifest and become violent. Thus, it is imperative that the Philippine Government officially recognize land rights as human rights. Specifically, government should:

- establish a Human Rights Desk in all government agencies concerned with land and resource access rights;
- assign a Human Rights Commissioner to focus on issues related to land and resource access rights;
- establish mechanisms to monitor and resolve conflict at the local level that are accessible and affordable; and,
- recognize and optimize alternative and traditional dispute management mechanisms.

## Calls to the Philippine Government

Immediately pass the following bills into law:

- **National Land Use Act (NLUA)**, which seeks to institutionalize a national land use policy aimed at ending the destruction of the country's land resources and promoting balanced development. It mandates the standardization and classification of land use for the purposes of planning and implementation into protection, land use, production, settlements development, and infrastructure development. It also seeks to address the long-overdue task of determining and delineating the country's permanent forest line. Moreover, it establishes the National Land Use Policy Council (NLUPC) as the highest policy-making body on all matters pertaining to land use and management.

<sup>3</sup> UNDRIP-United Nations Declaration on the Rights of Indigenous Peoples (2007)

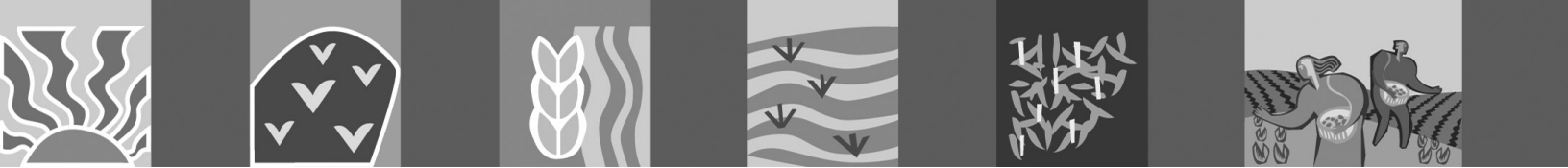


- **Indigenous and Community Conserved Areas (ICCA) Bill**, which provides for a system of recognition, registration, protection, and promotion of indigenous peoples' lands, and providing penalties to any act of desecration of these lands. The Bill also seeks to provide the necessary government mandate, especially the annual budget and people needed to manage the ICCAs.
- **Notice of Coverage (NOC) Bill**, which is a key component for the continuation of the Comprehensive Agrarian Reform Program (CARP) in that it allows the Department of Agrarian Reform (DAR) to continue issuing notices of coverage, accepting voluntary offers to sell and the resolution of CARP-related cases. ■

## References

- ANGOC, LWA, CHR, ILC-Asia, and PAFID. (2016). *Mainstreaming land as human rights: towards addressing land and resource conflicts in the Philippines*. 19-20 September, Multipurpose Hall, Commission on Human Rights. [Unpublished Proceedings].
- Powerpoint presentations of NFR, AR Now!, PAFID (September 2016/ANGOC-CHR/Quezon City).





# The UN Guiding Principles on Business and Human Rights

*Prepared by ANGOC based on the presentation of Gallianne Palayret, Human Rights Officer, Office of the UN High Commissioner on Human Rights for Cambodia*

In 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), a set of guidelines for States and companies to prevent and address human rights abuses committed in business operations.

## Background

Business enterprises can profoundly impact the human rights of employees, consumers, and communities wherever they operate. These impacts may be positive, such as increasing access to employment or improving public services, or negative, such as polluting the environment, underpaying workers, or forcibly evicting communities.

For decades, local communities, national governments and international institutions

have debated the responsibility of companies in managing these adverse impacts and the role of governments in preventing them.

In 2008, the United Nations endorsed the ‘Protect, Respect and Remedy Framework’ for business and human rights. This framework was developed by the then-Special Representative of the UN Secretary General, Professor John Ruggie, following three years of research and worldwide consultations with businesses, civil society, governments and victims of corporate human rights abuses.

The UN Framework unequivocally recognizes that States have the *duty* under international human rights law to *protect* everyone within their territory and/or jurisdiction from human rights abuses committed by business enterprises. This duty means that States must have effective laws



## Where can HUMAN RIGHTS BE FOUND?

### UNIVERSAL DECLARATION OF HUMAN RIGHTS – 1948

INTERNATIONAL CONVENTION  
ON THE ELIMINATION OF  
ALL FORMS OF RACIAL  
DISCRIMINATION

1955

INTERNATIONAL COVENANT  
ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS

1966

INTERNATIONAL COVENANT  
ON CIVIL AND POLITICAL  
RIGHTS

1966

CONVENTION ON THE  
ELIMINATION OF ALL FORMS  
OF DISCRIMINATION AGAINST  
WOMEN

1978

CONVENTION AGAINST  
TORTURE AND OTHER CRUEL,  
INHUMAN AND DEGRADING  
TREATMENT OR PUNISHMENT

1984

CONVENTION ON THE RIGHTS  
OF THE CHILD

1989

INTERNATIONAL CONVENTION  
ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT  
WORKERS AND MEMBERS OF  
THEIR FAMILIES

1990

INTERNATIONAL CONVENTION  
FOR THE PROTECTION OF ALL  
PERSONS FROM ENFORCED  
DISAPPEARANCE

2006

CONVENTION ON THE RIGHTS  
OF PERSONS WITH  
DISABILITIES

2006

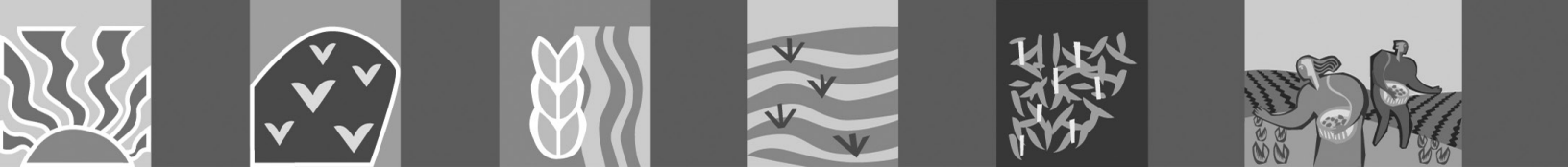
and regulations in place to prevent and address business-related human rights abuses and ensure access to effective remedy for those whose rights have been abused.

The UN Framework also addresses the human rights responsibilities of businesses. Business enterprises have the *responsibility to respect* human rights wherever they operate and whatever their size or industry. This responsibility means companies must know their actual or potential impacts, prevent and mitigate abuses, and address adverse impacts with which they are involved. In other words, companies must know—

and show—that they respect human rights in all their operations.

Importantly, the UN Framework clarifies that the corporate *responsibility to respect* human rights exists independently of States' ability or willingness to fulfill their duty to protect human rights. No matter the context, States and businesses retain these distinct but complementary responsibilities.

The UN Framework also recognizes the fundamental right of individuals and communities to *access effective remedy* when their rights



have been adversely impacted by business activities. When a business enterprise abuses human rights, States must ensure that the people affected can access an effective remedy through the court system or other legitimate non-judicial process. Companies, for their part, are expected to establish or participate in effective grievance mechanisms for any individuals or communities adversely impacted by their operations.

*Protect, respect, remedy.* Each of these simple terms hides a complicated reality. In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, a set of guidelines that operationalize the UN Framework and further define the key duties and responsibilities of States and business enterprises with regard to business-related human rights abuses.

Following the endorsement, the UN Working Group on Business and Human Rights, consisting of five independent experts, was appointed to guide the dissemination and implementation of the UN Guiding Principles.

### **Making Rights a Reality**

The Guiding Principles contain three chapters, or pillars: protect, respect and remedy. Each defines concrete, actionable steps for governments and companies to meet their respective duties and responsibilities to prevent human rights abuses in company operations and provide remedies if such abuses take place.

#### **The State Duty to Protect**

The Guiding Principles affirm that under existing international human rights law, States have the duty to protect against human rights abuses by all actors in society, including businesses. This

means States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations. Furthermore, the Guiding Principles recommend that States set clear expectations that companies domiciled in their territory/jurisdiction respect human rights in every country and context in which they operate.

The Guiding Principles include operational provisions that recommend concrete actions for States to meet their duty to protect human rights in the context of business operations. This includes enacting and enforcing laws that require businesses to respect human rights; creating a regulatory environment that facilitates business respect for human rights; and providing guidance to companies on their responsibilities. The Guiding Principles also stipulate that States should ensure that policies are coherent across departments and functions, and that their participation in multilateral institutions is aligned with their human rights obligations.

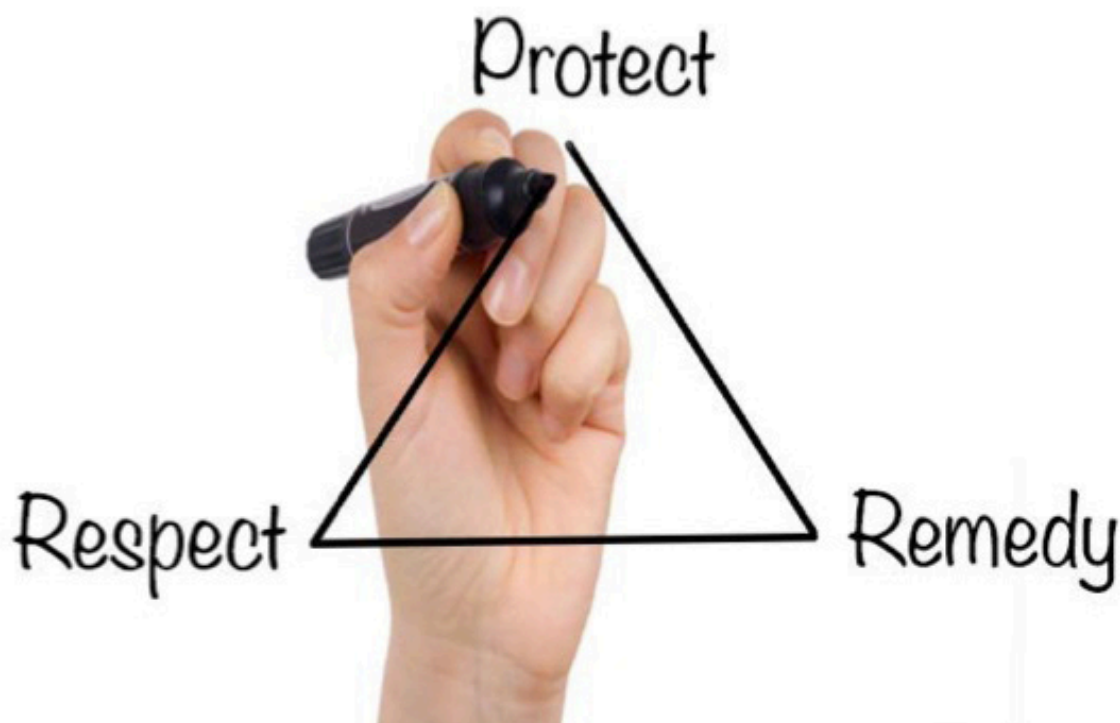
The human rights obligations of States, from providing security to delivering utilities, are not voided when such functions are carried out by state-owned or private business enterprises. As conflict-affected areas pose a heightened risk of gross human rights abuses, including by businesses, the Guiding Principles stipulate that States (home and host) should provide guidance, assistance and enforcement mechanisms to ensure that business enterprises are not involved with such abuses in conflict-affected areas.

#### **The Corporate Responsibility to Respect**

The Guiding Principles clarify what is expected of business enterprises with regard to human rights and outline the process through which companies can identify their negative human



## The 3 pillars of the UN Guiding Principles



rights impacts and demonstrate that their policies and procedures are adequate to address them.

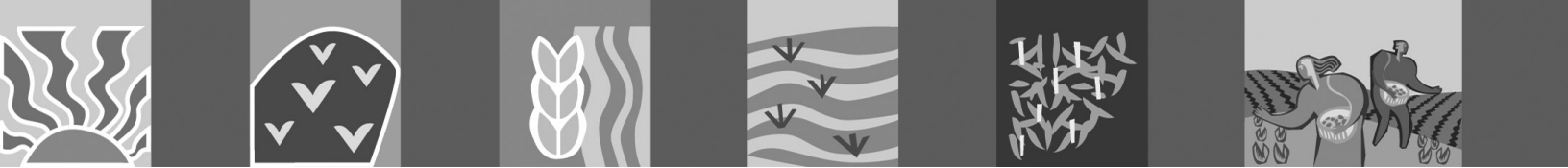
The Guiding Principles affirm that business enterprises must prevent, mitigate and, where appropriate, remedy human rights abuses that they cause or contribute to. Businesses must seek to prevent or mitigate any adverse impacts related to their operations, products or services, even if suppliers or business partners have carried out these impacts.

The responsibility to respect applies to all internationally recognized human rights expressed in the International Bill of Human Rights and the

International Labor Organization Declaration on Fundamental Principles and Rights at Work. Though the actions businesses need to take to meet the responsibility to respect will depend on their scale or complexity, the responsibility itself applies to all businesses regardless of size, sector or location.

To meet the responsibility to respect, business enterprises must have the necessary policies and processes in place. The Guiding Principles identify three components of this responsibility. First, companies must institute a policy commitment to meet the responsibility to respect human rights. Second, they must undertake ongoing human





rights due diligence to identify, prevent, mitigate and account for their human rights impacts. Third, they must have processes in place to enable remediation for any adverse human rights impacts they cause or contribute to.

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

The Guiding Principles state that companies should integrate the findings of their human rights due diligence processes into policies and procedures at the appropriate level, with resources and authority assigned accordingly. Companies should verify that this objective is achieved by constantly monitoring and evaluating their efforts. Companies should be prepared to communicate how they address their human rights impacts, including to those groups most likely to be affected.

Where businesses identify that they have caused or contributed to adverse impacts, they should cooperate in remediation through legitimate processes.

### **Access to Remedy**

One of the fundamental principles of the international human rights system is that when a right is violated, victims must have access to an effective remedy. The Guiding Principles affirm that the State duty to protect rights includes ensuring that when companies within their

territory and/or jurisdiction violate human rights, the State must ensure access to an effective remedy for those affected.

The State duty to provide access to effective remedy includes taking appropriate steps to ensure that State-based domestic judicial mechanisms are able to effectively address business-related human rights abuses, and do not erect barriers (such as administrative fees or lack of language interpreters) that prevent victims from presenting their cases. It does not simply mean that countries should fortify their court systems. States should also provide effective and appropriate non-judicial grievance mechanisms with the capacity to hear and adjudicate business-related human rights complaints as part of a comprehensive State-based system for remedy.

The access to remedy principles does not only apply to States. They also stipulate that business enterprises should provide for, or participate in, effective mechanisms for fielding and addressing grievances from individuals and communities who may be adversely impacted by the company's operations. They further maintain that multi-stakeholder and other collaborative initiatives based on human rights-related standards can also contribute to providing effective access to remedy.

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



be based on engagement and dialogue with the stakeholder groups whose rights they seek to remedy.

## Implementation

The UN Working Group on Business and Human Rights consists of five independent experts, appointed for a three-year term. The Working Group is mandated by the UN Human Rights Council to ensure that the Guiding Principles described above are widely disseminated, robustly implemented and firmly embedded in international governance.

The Working Group is mandated to consult with all relevant stakeholders, identify best practices in ongoing implementation efforts, promote capacity-building, issue recommendations on legislation and policies related to businesses, and conduct country visits. The Working Group is also mandated to integrate a gender perspective and pay special attention to vulnerable groups such as indigenous people and children.

The Working Group holds an Annual Forum on Business and Human Rights every December. The purpose of the Forum is to allow representatives of States, businesses and civil society to discuss trends and challenges in the implementation of the Guiding Principles and to promote dialogue, cooperation and sharing of good practices. The Working Group reports its activities to the UN Human Rights Council and the General Assembly every year. ■

## References:

The UN Working Group on Business and Human Rights. *The UN Guiding Principles on Business and Human Rights: An Introduction*.

Powerpoint presentation by Ms. Galliane Palayret, OHRHC-Cambodia.





**SUSTAINABLE DEVELOPMENT GOALS**

<b>1 NO POVERTY</b> 	<b>2 ZERO HUNGER</b> 	<b>3 GOOD HEALTH AND WELL-BEING</b> 	<b>4 QUALITY EDUCATION</b> 	<b>5 GENDER EQUALITY</b> 	<b>6 CLEAN WATER AND SANITATION</b> 
<b>7 AFFORDABLE AND CLEAN ENERGY</b> 	<b>8 DECENT WORK AND ECONOMIC GROWTH</b> 	<b>9 INDUSTRY, INNOVATION AND INFRASTRUCTURE</b> 	<b>10 REDUCED INEQUALITIES</b> 	<b>11 SUSTAINABLE CITIES AND COMMUNITIES</b> 	<b>12 RESPONSIBLE CONSUMPTION AND PRODUCTION</b> 
<b>13 CLIMATE ACTION</b> 	<b>14 LIFE BELOW WATER</b> 	<b>15 LIFE ON LAND</b> 	<b>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</b> 	<b>17 PARTNERSHIPS FOR THE GOALS</b> 	<b>SUSTAINABLE DEVELOPMENT GOALS</b> 





This publication contains papers presented or used as reference materials during the regional workshop “Land as Human Rights: An Imperative towards the Realization of the Sustainable Development Goals (Khmer Surin, Phnom Penh, Cambodia)” jointly organized by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), International Land Coalition (ILC-Asia), Land Watch Asia (LWA) and STAR Kampuchea (SK) in partnership with Forum Syd, HEKS/EPER-Cambodia and United Nations Cambodia Office of the High Commissioner for Human Rights (UNCOHCHR).



Founded in 1979, ANGOC is a regional association of national and regional networks of non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development. ANGOC network

members and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

ANGOC is the convenor of the Land Watch Asia (LWA) campaign and the Asian Alliance Against Hunger and Malnutrition (AAHM-Asia). ANGOC is also a member of the International Land Coalition (ILC), the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), and the Indigenous Peoples’ and Community Conserved Territories (ICCA) Consortium.

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The International Land Coalition (ILC) is a global alliance of civil society organizations and intergovernmental organizations working together with the rural poor to increase their secure access to natural resources, especially land.



Land Watch 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.



STAR Kampuchea is a Cambodian non-profit and non-partisan organization. It was established in

August 1997 and is dedicated to building democracy by strengthening civil society. The organization’s mission is to promote and strengthen Cambodian civil society actors by initiating action, by cooperating with and supporting them, and by providing means for a common voice for those groups so that they may advocate for democracy.





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