

Upholding Land Rights amidst the Land Rush



A situationer on the United Nations Guiding Principles on Business and Human Rights in selected countries in Asia

2018





ANGOC

Founded in 1979, the **Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)** is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in 10 Asian countries together with some 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and diversity of CSOs highlight the need for a development leadership to service the poor of Asia—providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives.

ANGOC is a member of the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium and the International Land Coalition (ILC).



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 agendas. The campaign involves

civil society organizations in Bangladesh, Cambodia, India, Indonesia, Kyrgyzstan, Nepal, Pakistan and the Philippines. LWA aims to take stock of significant changes in the policy and legal environments; undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences on coalition-building and actions on land rights issues. ANGOC is the regional convenor of LWA.

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Established in 1994 as the **Consortium for Agrarian Reform (KPA)**, the coalition currently consists of 153 people's organizations (peasants, indigenous peoples, rural women, fisherfolk, urban poor) and NGOs

in 23 provinces in Indonesia. KPA fights for agrarian reform in Indonesia through advocacy and the strengthening of people's organizations. KPA's focus on land reform and tenurial security, and policy advocacy on these issues has put the coalition at the forefront of the land rights struggles of Indonesia's landless rural poor, especially with indigenous peoples in several areas in Outer Java. KPA encourages a participatory and pluralistic approach which recognizes the development of different systems of land use and tenure to ensure land rights. KPA is a people's movement that has an open and independent character.

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Scorecard on Assessing Private Investments in Land and Agriculture:

- Roel Ravanera and Denise Hyacinth Joy Musni
- National Engagement Strategy Platforms in Bangladesh, Cambodia, India, Indonesia, Nepal, and Philippines



List of Acronyms

AICHR	ASEAN Intergovernmental Commission on Human Rights
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ASEAN	Association of Southeast Asian Nations
BHR	Business and Human Rights
CDA	Community Development Association
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CHR	Commission on Human Rights (Philippines)
CSRC	Community Self-Reliance Centre
CSO	civil society organization
EIA	Environmental Impact Assessment
ELC	economic land concession
FPIC	Free, Prior, and Informed Consent
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ILC	International Land Coalition
Komnas HAM	National Commission on Human Rights of Indonesia
KPA	Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform)
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
NAP	National Action Plan
NES	National Engagement Strategy
NGO	non-governmental organization
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
rai	responsible agricultural investments
RGC	Royal Government of Cambodia
SAARC	South Asia Association for Regional Cooperation
SEANF	Southeast Asian National Human Rights Institution Forum
SEZ	special economic zone
SIA	Social Impact Assessment
UDHR	Universal Declaration on Human Rights
UNGP BHR	UN Guiding Principles on Business and Human Rights



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Foreword

In 2008, the United Nations endorsed the ‘Protect, Respect, and Remedy Framework’ for business and human rights. This 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. 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. In other words, companies must know—and show—that they respect human rights in all their operations.

More importantly, the UN Framework clarifies that the corporate responsibility to respect human rights exists independently of the States’ ability or willingness to fulfil 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.

On 16 June 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), 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. Henceforth, the Working Group on Business and Human Rights (UNWG) was mandated by the United Nations Human Rights Council (UNHRC) to promote the effective and comprehensive implementation of the UNGPs. The UNWG likewise noted in its 2016 Guidance on Business and Human Rights that National Action Plans (NAPs) can be an important means to promote the implementation of the UNGPs (DIHR, n.d.).



Seven years have passed since the endorsement of the UNGP BHR. Among the questions to ask are:

- ❑ What is the current status of the national action plans on the UNGP BHR?
- ❑ To what extent have the UNGP BHR been popularized among various stakeholders?
- ❑ To what extent have communities and land rights defenders used the UNGP BHR as a tool to defend and to protect their rights to land?

Given the increasing pressures on land due to investments, CSOs working on land rights have an important role in mainstreaming and monitoring the implementation of the UNGP BHR.

Given the increasing pressures on land due to investments, CSOs working on land rights have an important role in mainstreaming and monitoring the implementation of the UNGP BHR. ANGOC and Land Watch Asia through the initiative *“Defending Land Rights and Human Rights Defenders”* embarked on engaging National Human Rights Institutions (NHRIs) to mainstream the UNGP BHR in Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines. Through the support of the International Land Coalition (ILC), six country papers were prepared and discussed in order to provide an overview of the relevance of the UNGP BHR in the context of land and agribusiness investments, identify challenges faced in mainstreaming the UNGP BHR, and formulate key recommendations based on the consultation processes.

The papers from Cambodia, Indonesia, and Philippines build on the findings of the earlier baseline studies prepared for the Consortium for Agrarian Reform (KPA) through the OXFAM-Indonesia supported project *“Promoting the National Action Plans on the implementation of the UNGP on Business and Human Rights in relation to land rights issues.”*

A regional summary of all six country papers was then drafted and discussed at the regional workshop *“Engaging National Human Rights Institutions Toward the Promotion of Land Rights as Human Rights”* (held on 15-16 November 2018 in Bangkok, Thailand).

As public watchdogs, CSOs have been monitoring the impacts of land and agribusiness investments on local communities. As part of this regional initiative, CSOs also initiated the development of a *Scorecard* as a tool to be used by



communities to assess *private* investments in land and agriculture at their initial exploratory stage or during their initial phases of operations. The tool may not yet apply to all types of investments – it would have to be revised and refined for it to make it applicable to concessions, State-owned companies, and investments that have been operating for longer periods. Noting that developing an effective scorecard system requires a long and thorough consultative process, this tool is not to be seen as a finished product but rather, as a work-in-progress.

ANGOC and KPA acknowledge the significant contribution of the partner CSOs in the preparation of the studies.

We thank the editorial and production team members for their efforts in preparing this publication.

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Regional summary: Mainstreaming the UNGP BHR in Asia*

By Joel Pagsanghan

Overview of the Study

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

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

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

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

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


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

This study has the following objectives:

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

Methodology

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



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

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

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

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

Overview of UNGP BHR

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

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

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

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



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


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

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

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

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

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



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

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

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

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

Land, Agriculture, and Conflict

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

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



Box 1: The main principles of UNGP BHR

THE STATE DUTY TO PROTECT HUMAN RIGHTS:

Foundational Principles

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

Operational Principles: General State regulatory and policy functions

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

The State-Business Nexus

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

Supporting business respect for human rights in conflict-affected areas

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

Ensuring policy coherence

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

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

THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS:

Foundational principles

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

Operational principles: Policy commitment

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

Human rights due diligence

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



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

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

Remediation

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

Issues of context

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

ACCESS TO REMEDY:

Foundational principle

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

Operational principles

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

Effectiveness criteria for non-judicial grievance mechanisms

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

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

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



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

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

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

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

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

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

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

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

Table 1: Country Context and Human Rights Issues

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



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

Efforts undertaken to mainstream UNGP BHR

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

Table 2: Efforts to mainstream UNGP BHR

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

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



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

Status of the UNGP BHR

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

Table 3: Status of UNGP BHR in Six Asian Countries

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



Challenges in Mainstreaming UNGP BHR

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

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

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

Recommendations

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

At the regional level, the following actions are suggested:

Table 4: Recommendations for mainstreaming UNGP BHR in Asia

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

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

Table 5: Recommendations for mainstreaming UNGP BHR at national level

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

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



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



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

Conclusion

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

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

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

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



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

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UN Guiding Principles on Business and Human Rights: A policy brief toward a Bangladesh action plan^{*}

By *Community Development Association (CDA)*

Land, Law and Conflict in Bangladesh

With globalization and the growth of multinational businesses, the adverse impact of corporate actors on human rights has been the subject of increasing attention. The deaths of over 1,100 Bangladeshi workers making Joe Fresh garments in a horrific factory collapse in 2013 brought these concerns to the forefront (Kim, 2018).

The UNGP BHR is especially relevant in Bangladesh where over 70 percent of the total land area is agricultural. Some 2,096 *bighas* (530 hectares) of farmland and water bodies are lost per day to non-agricultural uses in the decades since 2003, according to a study conducted by Barkat et al. (2014). Small, medium, and large business enterprises are gradually becoming involved in agricultural investments.

Land Law and Land Rights

Most of the cases pending at the courts of Bangladesh involve land disputes either directly or indirectly. However, the country's land system is largely based on the old laws enacted during the British and Pakistan period. The land administration, land management and land dispute settlement system have not developed in Bangladesh in the spirit of land governance and amicable dispute settlement. Land can be owned by an individual, a cooperative, and the State under various legislations in Bangladesh.

^{*} This is an abridged version of the policy paper prepared by Community Development Association (CDA) for the regional initiative "*Defending Land Rights and Human Rights Defenders.*" The document summarizes the major issues and recommendations emanating from the workshops organized by CDA in partnership with the members of the National Engagement Strategy-Bangladesh and National Human Rights Commission of Bangladesh (NHRCB). For more details, contact edcda08@gmail.com.

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Successive governments have passed many land-related laws over the years but these have failed to establish people's land rights. Barkat (2015) analyzed 146 land-related laws that are causing endless sufferings to people, because these are either too complex or contradictory to one another. Some land related laws and ordinances include:

- ❑ The Land Survey Act 1875;
- ❑ The Transfer of Property Act 1882;
- ❑ The Bengal Tenancy Act 1885;
- ❑ The Public Demands Recovery Act 1913;
- ❑ The Survey and Settlement Manual 1935;
- ❑ The Non-agricultural Tenancy Act 1949;
- ❑ The State Acquisition and Tenancy Act 1950;
- ❑ The Land Development Tax Ordinance 1976;
- ❑ The Acquisition and Requisition of Immovable Property Ordinance 1982;
- ❑ The Land Reforms Ordinance 1984;
- ❑ The Land Reform Board Ordinance 1989;
- ❑ The Land Appeal Board Ordinance 1989;
- ❑ The Land Management Manual 1990 (Islam, Moula and Islam, 2015).


Land Administration

Land administration deals with the creation, transfer, and extinguishment of land rights. However, land administration in Bangladesh includes the administration of land revenues, surveys, and certificates. The land administration system is outdated and characterized by inefficiencies and corruption.

Land Governance

Bangladesh is one of the world's most densely populated countries, and recently, competition for land and resources has made it a hotspot for land conflicts.

The country's weak system of land governance, rooted in the British colonial administration, contributes to these conflicts through its inefficiency. Three-quarters of all pending court cases in Bangladesh are related to land, costing an estimated 10 percent of the country's GDP. The conversion and transfer of agricultural land, often through forged documents is a major concern, with one



percent of farming land being lost each year (Land Portal and Uttaran, 2017).

Consequently, the existing land governance system is unable to protect the rights of women and the poor under the current land market dynamics.

Challenges in the land governance of Bangladesh include industrialization, economic growth, and establishment of export processing zones, power plants and infrastructures. Government's unwillingness to fulfil its commitments under international conventions and treaties (i.e., CEDAW, ICESCR, and ICCPR) is also a problem. This is compounded by the lack of coordination among ministries.

Lastly, the shrinking democratic space for CSOs is an additional constraint.

It is imperative to implement the UNGP BHR in the country, with emphasis on agricultural investment, so that business enterprises can be made more accountable in respecting human rights.

Pertinent Business and Land Rights Issues

Very often, people are evicted and even displaced forcefully. Indigenous people are often forced to migrate from their ancestral lands. Land rights defenders are killed and women are raped by land grabbers. For its part, the State neither protects victims nor formulates mechanisms to do so, due to the lack of legislative measures.

Vested groups have grabbed lands of thousands of Hindu families, taking advantage of the Vested Property Act (Barkat, 2015). The reality on the ground is that many poor citizens and ethnic people had been evicted from their land by continuous land grabbing.

Landlessness and lack of access to land are among the major problems in Bangladesh. The government also acquires its owned fallow land (*khas* land) for establishing export processing zones. The number of landless people is increasing due to continuous land acquisition by the government on the pretext of industrialization or so-called "public interest."

UNGP BHR in Bangladesh

Status of UNGP BHR Implementation

It is imperative to implement the UNGP BHR in the country, with emphasis on agricultural investment, so that business enterprises can be made more



Bangladesh is yet to formulate the National Action Plan on UNGP BHR because the policymakers in government are not aware of the issue.


accountable in respecting human rights. Implementation of the UNGP BHR, formulation of the National Action Plan, publication of annual state reports, and multi-sectoral monitoring are imperative. Unfortunately, the Bangladesh government is yet to be

aware of the Guiding Principles and its implementation in the country.

Bangladesh is a signatory to eight out of nine main human rights treaties (except the International Convention for the Protection of All Persons from Enforced Disappearance). The Constitution guarantees fundamental rights. Article 42 of the Constitution also guarantees rights to property for all citizens. Bangladesh has many laws and ordinances related to land but no specific reference to land as human rights and specifically to Business and Human Rights. The National Human Rights Commission Act 2009 under which the National Human Rights Commission (NHRC) performs its functions does not incorporate land rights as human rights. NHRC functions include investigation, monitoring and cooperation with CSOs and national and international agencies for the protection and promotion of human rights. However, section 4 of the NHRC's strategic plan (2016-2020) mentions some issues related to land rights, which include:

- ❑ Full and prompt implementation of the CHT Accord focusing on land rights.
- ❑ Violence against indigenous, ethnic and religious minorities with special focus on land rights of indigenous and other marginalized and excluded communities in plain lands.
- ❑ Rights of the *Char* people and newly acquired territories (former enclave).

Bangladesh is yet to formulate the National Action Plan on UNGP BHR because the policymakers in government are not aware of the issue. Several government bodies and ministries are basically responsible for formulating the National Action Plan along with the plan for implementation. The Land Ministry, Law Ministry, Commerce Ministry, NHRCB, and other ministries and bodies concerned together can formulate the National Action Plan and send it to the cabinet for approval.



However, some civil society organisations have started initiatives recently to promote the UNGP BHR.

- ❑ On 8 July 2018, the first meeting on **“Land Rights as Human Rights: UNGP BHR”** was held at the National Human Rights Commission of Bangladesh (NHRCB) office in Dhaka. National Engagement Strategy (NES) members – CDA, ALRD, ARBAN, Nagorik Uddyag (NU) and Kapaeeng Foundation - in association with NHRCB organized the event. The NHRCB Chairperson acknowledged the issue very positively and expressed the intention of NHRCB to work together with the organizers through partnership.
- ❑ In August to September 2018, the above organizations convened three other consultation workshops with national human rights institutions to promote the UNGP BHR and make an advocacy plan to formulate the National Action Plan. One of the workshops tried to develop a scorecard to assess responsible agricultural investments based on the UN Guiding Principles on Business and Human Rights. These workshops are the first efforts in a broader initiative to engage government policymakers and other stakeholders to formulate the National Action Plan in Bangladesh.

Recommendations to Mainstream UNGP BHR

Mainstreaming of the UNGP BHR in Bangladesh requires the following: (a) recognition of UNGP BHR by NHRC and other government and human rights bodies, (b) formulation of the national action plan/policy, (c) publication of annual state reports, and (d) monitoring of UNGP BHR involving State, private sector, and civil society organizations.

The NHRC should monitor implementation of UNGP BHR in the country, assist the government in formulating the National Action Plan, conduct an advocacy and awareness building campaign with CSOs, and monitor business agreements, laws, and policies relating to business and human rights.

A people-centered land governance is needed immediately to stop land grabbing, as well as land-related violence and harassments. Upholding traditional land use rights is also essential. The government should compel business enterprises to ensure their corporate social responsibility for rehabilitating landowners whose lands are used for industrialization.




CSOs in Bangladesh have also proposed a comprehensive advocacy action plan to promote the UNGP BHR in the country. The plan includes detailed activities in networking, policy advocacy, training, research and awareness building through a strategic communication campaign. The objective is to create greater knowledge and capacity within civil society in order to engage government more effectively and to create widespread awareness and action.

Furthermore, the government and civil society organizations should also work towards the following:

- ❑ generating commitment from political parties;
- ❑ lobbying for recognition of land-human rights;
- ❑ with the NHRCB as lead, identify inactive laws and policy gaps, for amending or enacting new legislations;
- ❑ drafting of policies/laws/legislations as per international and national instruments;
- ❑ formation of a national committee with the representation of NHRCB/ NGOs/NHRIs and other stakeholders;
- ❑ solidarity to protect land rights defenders; and,
- ❑ translation of UNGP BHR and other related documents into the national language (Bangla) and publication of communication materials and books to help stakeholders internalize and popularize the guidelines and land-human rights issues in the country. ■

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Cambodia: Business and human rights principles*

Prepared by Sek Sophorn

Relevance of BHR in Cambodia

Economic growth in Cambodia has reached between six to seven percent over the last decade (Adler and Hwang, 2013).¹ This has become the enabling environment for the alleviation of poverty among the population. The growth has apparently been fueled in large part by the government's liberal national economic policies. While business activity in Cambodia has provided significant social benefits—including job production, economic growth, poverty reduction, and improved standards of living—many corporate actors have also been reported as responsible for widespread human rights abuses. Government-sponsored Special Economic Zones (SEZs) and Economic Land Concessions (ELCs) have created jobs, but have also adversely affected roughly half a million Cambodians (LICADHO, 2014) causing the forced evictions of entire families, communities, and vulnerable populations.

Clearly, there is a need for further oversight action from the government before the approval of land development projects. This includes recognition and protection of legitimate rights to land, as well as use rights to forest or non-timber forest products. If the resettlement or displacement cannot be avoided, effective remedy is required.

* This is an abridged version of the paper prepared by Sek Sophorn for STAR Kampuchea for the regional initiative *“Defending Land Rights and Human Rights Defenders.”* This document summarizes the major issues and recommendations emanating from the workshops organized by STAR Kampuchea in partnership with the members of the National Engagement Strategy-Cambodia (NES Cambodia) and Cambodian Human Rights Committee (CHRC). It builds on the findings and recommendations of the baseline study prepared by the same author for Konsorsium Pembaruan Agraria (KPA) for the project *“Promoting the National Action Plans on the implementation of the UNGP on Business and Human Rights in relation to land rights issue”* with support from OXFAM Indonesia. For more details, contact: star-director@starkampuchea.org.kh

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¹ “From 2000 through 2006 the average compound economic growth was 9.4 percent a year; in 2007 growth reached 10.2 percent... Garments, tourism, construction and agriculture have been the primary drivers of the economy. In 1996, there were only 32 garment factories, employing an estimated 20,000 workers; by 1998, there were over 100 garment factories, employing 72,000 workers... By mid-2008, the figures had increased to over 300 active factories employing around 340,000 workers, 90 percent of whom were women” (Adler and Hwang, 2013).



The UN Guiding Principles on Business and Human Rights (UNGPs BHR) outline how States and business can protect and promote human rights through three central pillars:

1. the State duty to *protect* against human rights abuses;
2. the corporate responsibility to *respect* human rights; and,
3. access to *remedy*, which requires States and businesses to provide access for victims of business-related human rights abuses to effective judicial and non-judicial remedies (CCHR, 2016).

Knowledge of these three pillars of the BHR framework is crucial in Cambodia today, as corporate actors continue to violate the rights of thousands of Cambodians in different forms. The most vulnerable in society, including the poor, women, and indigenous peoples and their communities, are most often the primary victims of business-related human rights abuses, for they are often uneducated about their legal rights and have fewer resources to contest and seek remedy for these violations.

Even if the BHR principles are not yet on the agenda of the Cambodian Human Rights Committee (CHRC) as well as the Government,² the Constitution of Cambodia already provides a legal framework for the protection of BHR-related rights of all Cambodians. The Constitution states that citizens have the right to form and join trade unions and stipulates that the organization and operation of trade unions shall be determined by law (Article 36). It also protects workers' right to strike and to engage in non-violent demonstrations (Article 37). In addition, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) are all enshrined in the Constitution.

The Constitution also protects individual and communal rights to property. The law also provides that any person who possesses the land peacefully, known by the public, with no claim or contest from any other person, for up to or more than five (5) years enjoys rights to land ownership as such (Article 30 and 31, Land Law 2001). Since the Land Law was promulgated in 2001, the titling process has been applied to 4,881,582 out of an estimated seven million land plots (Ministry of Land Management, Urban Planning, and Construction Website,

² Response from the Department Director of CHRC, he said the CHRC does not cover this topic today



n.d.) in the whole country, while 24 of 455 villages³ of indigenous communities have received communal land title (CLT).

In May 2012, the government reformed the implementation of ELCs in Cambodia. The intervention sought to address conflict between the local land possessors/holders and the companies implementing the projects on the ELC approved areas.⁴

An expropriation law in Cambodia gives the State the right to take land from citizens with appropriate compensation.

In general, the poor have difficulty in accessing remedies and government authorities. This places greater responsibility on government to ensure that the human rights of those impacted by business activity are protected.

The UNGP BHR also requires States to ensure that people have access to alternative dispute resolution or an independent judiciary for remedy if their human rights are adversely affected by business activity. The State has the obligation not only under the UDHR and ICCPR but also to the Constitution to ensure the access of every Cambodian to an independent and impartial judiciary.

The judiciary of Cambodia had been functioning without a basic law on its establishment and operations until 2015. In 2015, three laws – (a) the Law on Judges and Prosecutors, (b) Law on Supreme Council of Magistracy and (c) Law on Organization and Functioning of the Court - were passed. These laws were criticized as having put the judiciary fully under the control of the Ministry of Justice, which is under the executive branch.

The judiciary has yet to gain the trust and confidence of the Cambodian people. Corruption, the lack of legal aid for the poor, and convictions based on testimonies under police coercion are some of the major issues that cause distrust. In addition, human rights defenders (HRD) who provide service to the needy are often sentenced to jail for their work.

With regard to indigenous peoples (IPs), the land legislation recognizes their rights to land and customary practice. IPs constitute approximately 1.7 percent of the population, and inhabit areas that are rich in resources, including forest and mining land. Some have suffered from forced eviction, others from land grabbing or systematic discrimination.

Traditionally, IPs in Cambodia practice shifting cultivation and place no value on formal land administration. In this context the land legislation recognizes

³ List of community/villages of indigenous community defined by the Government in 2009 as affected by the Economic Development.

⁴ See detailed procedure in manual for PM Directive No.001 implementation in May 2012.



customary practice within the community while the community registration takes time, and requires technical support and resources. However, economic land concessions (ELC) and other development projects have been undertaken without free, prior, and informed consent (FPIC) from the IPs concerned. Predictably, many protests from the IP community have ensued. Some IP groups have resorted to international institutions for remedy, which has highlighted the lack of effective processes in the country.

Initiatives to Promote the BHR Principles in Cambodia

The Cambodian Human Rights Committee (CHRC) is a governmental organization tasked to promote and protect human rights in Cambodia. CSOs have already commenced discussions with the CHRC on the establishment of a National Human Rights Institution (NHRI) which is independent from government. In fact, CSOs have already prepared a draft law for the establishment of such an institution, and it is now in the hands of government for further input and action.

Academics also play a crucial role in promoting BHR. For example, academics working for Bridges Across Borders Southeast Asia, the Centre on Housing Rights and Evictions, and the International Accountability Project put together a publication called ***“A Cambodian Guide To Defending Land and Housing Rights”*** that aims to help communities host their own training sessions related to BHR. The guide seeks to empower local communities by providing knowledge about their legal rights as well as the Cambodian Government’s responsibilities to prevent forced evictions. The guide demonstrates how academics play a central role in the human rights movement by providing objective information about legal rights, duties, and procedures related to BHR and by lending legitimacy to activism on many politically-contentious BHR-related issues.

The efforts of academics and CSOs to work together and raise awareness on BHR, and to encourage business actors and Cambodian authorities to adopt and abide by the principles are vital.

Conclusion

The UNGP BHR is a UN instrument that is complementary to the other human rights laws. So far there is not enough initiative to create dialogue



between the RGC and the UN agencies as well as CSOs on this subject. There is no clarity between the UNGP BHR and other UN human rights instruments that relate to obligations of the Cambodian government through its legal instruments including the Constitution, legislation, the judiciary, and executive regulation. The Government is pushing for a seven (7) percent economic growth, while land and natural resource rights holders do not have sufficient protection under the legal system. Thus, there is a need for clearly defined, common efforts between the CHRC and CSOs in order to move forward.

The UNGP BHR call for the government to respect, protect, and ensure effective remedies for those affected by business activity. The question is how? And if there is no respect, no protection, and no satisfactory remedy, what is going to happen?

The status of the UNGP BHR in Cambodia is quite vague. There are no new pronouncements coming from CSOs or from the Cambodian Human Rights Committee.

Recommendations by CSOs

- ❑ There is a need for awareness raising activities on BHR for government officials, NGO staff, and other actors who are working on protection and promotion of human rights in Cambodia. The awareness raising campaign was endorsed by a workshop last 20 November 2018 that included participants from the CHRC, NGOs, and communities.
- ❑ There should be a comprehensive, independent study on Cambodia's obligations under the UNGP BHR. The study should also develop an implementation framework on how the RGC should fulfill these obligations. The study may solicit more information from consultation processes among actors in the RGC and CSOs as well as UN agencies.
- ❑ There should be a structure or body at the national level for coordinating the conversation and all work related to forming an independent NHRI in Cambodia. ■



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The United Nations Guiding Principles and Business and Human Rights in India*

By Centre for Legislative Research and Advocacy (CLRA)

Background

Land in India is a scarce resource, but a source of livelihood for over half of its population. Agriculture is not a productive contributor to the economy, accounting for only 17.9 percent of the Gross Domestic Product (GDP), but half of the country depends on agricultural activity for their means of livelihood. Therefore, agriculture either needs to be more efficient or land made more productive by utilizing it for other purposes.

A large-scale governmental effort to modernize agriculture, combined with a massive drive to urbanize, was the prescription for India's growth and development. Both cases require massive land acquisition.

The Land Acquisition Law from 1894 dealt with fragmentation of land holdings to remove the problem of land-holdouts and disputed land-titles. Affecting almost 50 million people, more than six (6) percent of India's total land has been acquired since 1947. Landowners were poorly paid, interests of farmers and peasants hurt. Very little rehabilitation was organized, and tribals were the most affected. The acquisition law failed to recognize the country's geographical and economic diversity and specific local land cultures and histories.

Overview of Land and Resource Conflicts in the Country

Nature of the Conflicts

Land acquisition in India is mainly done by government and the private sector to build public infrastructure or establish industries. But under the garb

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Gaps in land policies and administrative hindrances have increased with more agricultural investment for corporate benefits. This has resulted in human rights abuses among agricultural farmers and indigenous communities.

of public purpose, human rights are often violated. Unfair compensation, threat to life, and use of force to push people out of the area to be acquired are some of the instances of human rights violations. The arbitrary manner of land acquisition leads to land conflict.

There are 660 land conflicts currently ongoing in India (Land Conflict Watch, n.d.). Most land acquisition schemes are carried out in common lands, which affects a large number of people. The area of lands

acquired varies from five to fifty *lakhs* (500 thousand to 5 million hectares).


The Land Acquisition Act of 1894 is in place, but it is full of loopholes and has undergone many amendments. The National Human Rights Commission's stakeholders' report for India's Second Universal Periodic Review (UPR) states that "usually those displaced are given neither adequate relief nor the proper means of rehabilitation" (Chodavadiya, n.d.).

Even the Constitution of India, under Article 46, provides that the State shall promote with special care the education and economic interest of the disadvantaged members of the population, and in particular the *Scheduled Castes* and *Scheduled Tribes*, and shall protect them from social injustice and all forms of exploitation. In almost all land acquisition cases, the victims of land acquisition are the marginalized. Hence, if they get evicted from their land, there would be great social injustice towards them (Debbarma, 2015).

Rise of Business and Human Rights Violations in the Agricultural Sector

Gaps in land policies and administrative hindrances have increased with more agricultural investment for corporate benefits. This has resulted in human rights abuses among agricultural farmers and indigenous communities.

Various basic and heavy industries were created in order to boost India's economic growth. While these projects boosted productivity, they gave rise to a spate of violations of human rights of farmers and tribal communities as their lands were converted for industrial purposes. These projects no doubt helped a lot in achieving the goals of the State like power generation, flood control, and irrigation. However, these projects physically uprooted a sizable number of



people from their lands – causing them not only to lose their homes and sources of livelihood but also shattering their culture and kinship linkages built over several generations.

Businesses undertake large-scale displacement of rural families without rehabilitation owing to their interests in Special Economic Zones (SEZs). For large infrastructure projects, including dams, ports, mines, and environmental conservation projects, large and tax-free areas are designated as such. Majority of resource-rich areas are inhabited by indigenous peoples who face the onslaught of natural resource extraction projects. States like Chhatisgarh, Jharkhand, Andhra Pradesh, Odisha, and the north-eastern States of Manipur, Meghalaya, Sikkim, Arunachal Pradesh, Mizoram, and Tripura, in particular, face acute threats of displacement due to such projects. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, aimed at recognizing rights of forest dwellers, is not being adequately implemented and many tribals are being denied their right to forest resources.

Rehabilitation measures extended to affected communities have been unsatisfactory and inadequate. The living conditions of those displaced remain deplorable, characterized even by lack of basic facilities.

Since the early 2000s India has witnessed an alarming number of farmer suicides with a baseline of 15,000 each year primarily due to indebtedness and agrarian distress. Hunger among the producers of food is a reality in a country that ranks second worldwide in farm production. Liberalized trade, patenting of agricultural products, and the introduction of Genetically Modified Organisms (GMOs) under the draft Biotechnology Regulatory Authority of India Bill, could further aggravate India's food crisis.

It is because of these factors weighing heavy upon the basic human rights of the farmers that a comprehensive Business and Human Rights (BHR) framework is required in India's agricultural sector. In keeping with the context of the three pillars of UNGP BHR:

1. There is an urgent need for the State to take responsibility to protect the human rights of the marginalized farmers and tribals against abuse by third parties. As there is a lack of a legal framework and zero accountability, business enterprises continue with the rampant exploitation. There is a need for the State to have a framework wherein it can prevent, investigate, punish, and redress the abuse by private actors.



2. The multipurpose projects set up by the multinational corporations acquire the land of the farmers and displace them arbitrarily. A comprehensive legislation formulated under the BHR framework must be enacted, mandating the business sector to respect human rights.
3. The State should have a comprehensive mechanism wherein all the grievances of farmers can be addressed easily. Due to lack of education and resources, farmers are not able to reach out to the available judicial mechanism to defend their rights. This leaves them helpless and at the mercy of exploitative moneylenders and private actors.
4. It is important for States to periodically review laws governing access to land, credit facilities, insurance, and entitlements in relation to ownership of land, given the evolving trends in business and economics.
5. There is a lack of a body that acts as an interface between the State and business enterprises to ensure best policies are formulated to promote respect of human rights. The exploitation of farmers can be checked if the BHR framework is adopted, under which not only the business enterprises are guided as to what kind of policies they should incorporate in their business modules, but there is also a regular communication from their side where they convey the manner and efficacy with which they implement them in their projects.
6. A framework is required wherein the business enterprises are able to meet their responsibility to respect human rights through policies and processes appropriate to their size and circumstances. Human rights due diligence process to identify, prevent, mitigate, and account for how businesses address their actual or potential impacts on human rights, is urgently required in the agricultural sector.

There is a lack of a body that acts as an interface between the State and business enterprises to ensure best policies are formulated to promote respect of human rights.

Recent Developments/Emerging Issues

It remains a fact that the government has a responsibility and has to take initiatives to protect the people against human rights violations. At the same time, businesses need to hold themselves accountable with respect to their share of human rights abuses in order to maximize private gains. It is crucial that the



conduct and operation of businesses should respect the human rights culture of the country.

The National Human Rights Commission of India (NHRCI) plays an important role insofar as BHR is concerned. It has been nominated by the Commonwealth Forum of National Human Rights Institutions (CFNHRI) to be the focal point for the subject. The Commission therefore organized a meeting with trade and industry associations to discuss and prepare a roadmap of engagements with business enterprises.

On 2 June 2017, the NHRCI, in collaboration with the Confederation of Indian Industry (CII), organized the *East Regional Conference on Business and Human Rights* in Kolkata. The main objective of the conference was to share the developments of the region in business and human rights. The pertinence of universal availability and accessibility of human rights was discussed.

More recently, the NHRCI organized a *National Conference on Business and Human Rights* along with Bharat Heavy Electricals Limited (BHEL). The conference delved into concerns for State duty to protect human rights and upholding corporate responsibility.

This was followed by a series of meetings with industry federations to encourage voluntary compliance to human rights principles by business enterprises. This gave birth to the draft self-assessment tool that was to be voluntarily used by the private sector. Regional conferences throughout Kolkata, Chennai, and Mumbai were held thereafter.

While the UNGP BHR are not still fully in place in India, many organizations, such as the Ethical Trade Initiative (ETI), have been actively working to start a conversation on the implementation and operation of a binding framework. The idea is to raise awareness and development of indicators towards monitoring the conformance of business enterprises to the UNGP BHR and other international covenants.

The Dialogue for Change Conference by the ETI collated perspectives from different stakeholders -- government, civil society, and businesses. These dialogues led to a need to raise awareness on the BHR through:

- ❑ Educating stakeholders about the UNGP BHR;
- ❑ Comprehensively discussing human rights and their abuses;
- ❑ Impactful business decisions and their financial repercussions due to human rights considerations; and,



- ❑ Gauging the enterprises towards an innovative framework harmonizing business and human rights.

Land Conflict Resolution Mechanisms

A number of remedial institutions are already existent in India (Deva, 2016). These almost match the range of remedial recommendatory mechanisms that the Guiding Principles mandate. Apart from the NHRCI, there are special commissions for marginalized classes, women and children. Certain non-State mechanisms are also present that are not as well organized as the State mechanisms are. Owing to the myriad limitations and administrative hindrances in State-run mechanisms, however, the situation might change for the non-State mechanisms in the near future.


BHR National Action Plan (NAP) in India

The NHRCI unfortunately lacks the capacity to provide technical and objective inputs on business and human rights (FORUM-ASIA, 2016) as it is only a recommendatory body. The auxiliary mechanisms present are not as well-endowed to compensate for the NHRCI's shortcomings. This forms the primary rationale behind establishing a framework dedicated only to monitor business regulations respecting human rights in India.

India has ratified several international laws that seek protection of human rights – the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR). Developing a BHR framework secures consistency of Article 51 of the Constitution stating that the State *“shall endeavour to foster respect for international law.”* Additionally, establishing a Business and Human Rights framework within the purview of the Government of India, is imperative as it can leverage and claim its position in the business and human rights governance.

Key benefits of formulating a NAP/BHR framework:

- ❑ It ensures that business enterprises operating within Indian Territory or jurisdiction do not commit human rights abuses.

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- ❑ It will allow the government to draw a holistic assessment of the current legal framework in order to identify the pros and cons of business regulations and prospects respecting human rights.
 - ❑ It could be responsive to a range of contexts like violations of human rights by Indian corporations and their subsidiaries, foreign companies, and the informal sector.
 - ❑ It will enable the conduct of informed discussions on how the companies in a mixed economy like India can do good business without violating labor laws and exploiting administrative loopholes.
 - ❑ Corporate Social Responsibilities (CSRs) like the National Voluntary Guidelines, Environmental and Economic Responsibilities of Business, the Companies Act of 2013, and the Bilateral Investment Treaty 2015 will be overseen and encouraged.
 - ❑ Development of projects will not be slowed down due to resistance from affected communities if the framework is allowed to properly function.
 - ❑ It empowers all sectors of the economy by avoiding social conflicts and equitably sharing the gains from growth.
 - ❑ It will create an environment conducive to private investment and growth-led development, at the same time being inclusive and sustainable.

Recommendations

There is a need for a fuller adoption of the UNGP on Business and Human Rights in India. While laws are in place to address human rights and their violations regarding businesses and private welfare (Smith, 2014), their practical contributions are rather underwhelming. It gives rise to the need to undertake more studies to make laws realistically effective, founded on the guiding principles as a harmonious framework.

According to Surya Deva, Professor at City University of Hong Kong, the necessity of a BHR framework depends on how effective the current mechanisms are. On one hand, it is ideal for the business sector and the legal regulators to host only one framework at the national and international level. On the other hand, however, a multitude of frameworks might be necessary since no single framework could capture all issues related to human rights and its interactions



with business expansion. The very idea behind establishing a new framework is the need for an update in the future to respond effectively to newer challenges. It becomes imperative to establish guiding regulations which are systematic and more binding to foster agreements and check violations of fundamental rights.

Thus, there is a need to:


- ❑ Initiate dialogues with the business sector on better application of the concordant corporate responsibilities, and on improved documentation and accountability;
- ❑ Conduct studies to simplify the adoption of the guiding principles, analyze loopholes in the Indian legal framework on BHR, and to infer how compliance to human rights measures improves ease of doing business in the country; and,
- ❑ Establish regular consultations with stakeholders on how to develop a national action plan on incorporating the UNGP BHR more holistically.

The implementation of the UNGP BHR in India is important for two main reasons:

First, it will serve as a responsible government body dedicated to rectifying business-oriented human rights violations. This even serves to fight future injustices related to land rights and illegal labor practices that are still prevalent in the country. *Second*, it will answer the call for immediate response to the adverse impact of mining and corporate businesses in ancestral lands that affect indigenous communities.

There is also a need to start a debate on the recognition of land rights as human rights. The goal of the BHR framework is to mediate such dialogues in a more transparent environment. A framework can assist the NHRCI and complement additional mechanisms to understand the complex nature of human rights. A scrutiny into land rights and draconian agricultural practices holds importance in terms of deliverance of justice and upholding law and order. This is a democratic need, rather than an institutional mandate, in the sense that India is a labour intensive economy.

Structural reforms such as commissioning a BHR framework will create a favorable environment for investment and employment (The Times of India, 2017). Information symmetry plays a crucial role in investing such cases with business activities. However, the governance in States and at the national level suffer deeply from information asymmetry and incomplete knowledge of



undercurrents in exploitative measures. This deems the government agencies structurally ineffective in fulfilling oversight functions. As a body dedicated to just one of the many human rights affairs in India, the BHR framework can help improve the business regulations and industrial policies by providing educative insight and focused approach. ■

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Translating the BHR National Action Plan into practice in Indonesia^{*}

By Consortium for Agrarian Reform (KPA)

Country trends and impact of agricultural investment and business on land rights

Land conflicts

The United Nations Guiding Principles on Business and Human Rights (UNGP BHR), endorsed by the UN Human Rights Council in 2011, consist of 31 principles implementing the United Nations *'Protect, Respect, and Remedy'* framework on the issue of human rights and transnational corporations and other business enterprises. These Guiding Principles provided the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. The UNGP BHR is especially relevant in Indonesia, as agricultural investments by transnational and State companies have become pervasive in the country.

Land conflicts,¹ mainly between small farming communities and corporations, have become widespread across Indonesia. This escalated during the *reformasi* era, due to the opening up of political space and the growth of social movements on land issues (Susan, 2015). KPA notes that during the last 11 years since 2004 to 2015, there have been 1,770 agrarian conflicts with a conflict area of 6,942,381 hectares, involving 1,085,751 households. Given this data, it can be stated that on average, an agrarian conflict erupts in Indonesia once every two days.

^{*} This is an abridged version of the paper prepared by the Konsorsium Pembaruan Agraria (KPA) for the regional initiative *"Defending Land Rights and Human Rights Defenders."* This document summarizes the major issues and recommendations emanating from the workshops organized by KPA and Komnas HAM in partnership with members of the National Engagement Strategy-Indonesia (NES Indonesia). It builds on the findings and recommendations of the baseline study prepared by KPA for the project *"Promoting the National Action Plans on the implementation of the UNGP on Business and Human Rights in relation to land rights issue"* with support from OXFAM Indonesia. For more details, contact kpa.seknas@gmail.com

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¹ Land conflict is different with land dispute. Land conflict refers to the land dispute with a massive impact to social and political life of a community. See Head of the National Land Agency Decree No. 3 of 2011 about Assessment and Land Cases Management.



Many land disputes start even before company operations begin. Corruption issues arise during the process of license and permit distribution.

Land conflicts bring different forms of human rights violations. Regarding civil and political rights, the rights to freedom of expression, security, access to information and freedom of movement are often violated. State violence related to land conflicts has been described in the form of

intimidation, harassment, criminalization, arbitrary arrests, torture, and shooting. A number of the reports show that human rights defenders face criminalization, including arbitrary arrests, terrorism, and violence.

Meanwhile, the economic, socio-cultural rights that are violated include the right to land, water, environment, labor, social security, health, education, housing and cultural heritage. The forms of infringement include land grabs, forced evictions, environmental pollution, discrimination, and corruption.

Palm oil plantations


In recent years, palm oil has drawn increased attention due to the environmental impacts caused by forest and peat land conversion, as well as the social impacts linked to land disputes and conflict. In 2012, out of 232 agrarian conflicts reported, more than half (119) were related to the palm oil industry. In 2014, a total of 591 land conflicts in 22 provinces and 143 districts were associated with oil palm plantations (Sawit Watch, 2014). The conflicts were commonly between local communities/indigenous peoples and plantation companies.

Industrial forests

A KPA scoping study shows that many cases of land conflict also occur in the industrial forest sector. A typical conflict between communities and companies manifests a similar pattern with the land conflict in palm oil industries. Currently, there are hundreds of HTI companies that have been involved in land conflict with communities, mainly peasants and indigenous peoples.

Corruption and lack of Free, Prior, and Informed Consent (FPIC)

Many land disputes start even before company operations begin. Corruption issues arise during the process of license and permit distribution. WALHI, an environmental advocacy NGO, revealed that many large-scale



plantation companies engage in land clearing without a release permit from forest areas, with altered Environmental Impact Assessment (EIA) documents, or with permits stating a different purpose than what is actually being undertaken in the field. In addition, many plantation companies also operate in areas outside their Land Use Rights Area or operate without Land Use Right. The acquisition of customary lands is often facilitated by corrupt practices such as bribing or coercion of village heads and community leaders.

Police and military involvement

A number of reports also found that many plantation companies have been engaging military and police personnel to secure their businesses. The justification for this involvement is Presidential Decree No. 63/2004 or the Security Measure for National Vital Objects. However, this decree lacks clarity, especially in terms of its source of its funding, how it will be monitored, and what standard operational procedures are involved. In addition, in some cases, the involvement of police and military is not clearly justified. As reported by media, there are a number of cases related to the lack of accountability in cases of police and military involvement in providing security to plantations companies (West Papua Daily, 2017; WALHI, 2018).

Banks and financial institution involvement

A growing concern over the impact of agribusiness activities led to the finding of indirect involvement of banks and financial institutions in the violation of human rights in the field. In 2017, Rainforest Foundation Norway (RFN) released a report on the complicity of Nordic financial institutions in the devastating environmental and rainforest destruction in Indonesia. The RFN revealed that about US \$1.3 billion was invested by Norway's largest banks in four Indonesian banks that finance palm oil companies allegedly involved in human rights violations, land conflicts, and environmental destruction (Rainforest Foundation Norway, 2017).

Indonesian laws and policies related to land and agriculture

Problems of land governance

Article 33 (3) of the Indonesian Constitution and Article 2 (1) of the Basic Agrarian Law assert that earth and airspace are controlled by the State




in the interests of the prosperity of the Indonesian people. However, sectoral arrangements on land use policy and the application of State land law often undermine people's interests in practice. Sectoral arrangements are regulated by the State through sectoral law, such as Law No.26/2006 on Spatial Planning, Law No. 41 of 1999 on Forestry, Law No. 18 of 2003 on Plantation, Law No. 7 of 2004 on Water Resources and Law No. 27 of 2007 on Management of Coastal Areas and Small Islands. In addition, there is Law No. 2 on the Land Acquisition for Public Interest and the Presidential Regulation No. 71 of 2012 that provides some clarification on land acquisition for public interest. This law lists public places which fall under the category of this law namely: roads, toll roads, railways, stations, public communication facilities, etc. Both regulations impose an obligation on all institutions that want to acquire land for public infrastructure, to formulate land-acquisition documents, which consist of planning, spatial suitability, land location, land area, land status, and land appraisal estimates.

All these sectoral laws contain problems such as unclear mechanisms for land acquisition by plantation companies, overlapping allocation of areas for different purposes, and failure to recognise the customary law. The plantation law, before being reviewed by the Constitutional Court, has been used by companies to criminalize peasants. The plantation law allows a 95-year leasing period and denies land restitution when the lease expires. In summary, overlaps and contradictions between national laws, the Constitution, and international law is one of the main sources of land conflicts in Indonesia.

Remedies for land conflicts between communities and corporations

- ❑ **Judicial mechanism.** Commonly, people use litigation to claim their rights in land disputes to seek compensation, and to challenge government policies and permits on land utilisation and rights granted to corporations.
- ❑ **Administrative court.** The administrative court is a redress mechanism frequently used by indigenous peoples, in particular, to challenge plantation business permits and land utilization rights granted by local governments to palm oil corporations.
- ❑ **Civil court.** The civil court may also serve as an avenue to access remedies, for instance by utilizing Article 1365 of the Indonesia Civil Code, which states that in any illegal action that caused damage to others, the



parties that caused the damage are obliged to pay or indemnify the damages. 'Parties' in this case refer to both individuals and corporations. Some land dispute cases between indigenous people and palm oil corporations have been settled through this mechanism.

- ❑ **Criminal process.** On the issue of plantations, Law Number 39 of 2014 criminalizes the illegal management, use, occupation, and/or holding of indigenous land for plantation purposes (Art. 55(b)). There are also more general provisions under Article 2 Law No. 51/PRP/1960 and the Indonesian Criminal Code penalizing anyone who occupies land unlawfully (Article 167, 385 Penal Code).

State-based non-judicial mechanisms

- ❑ **Alternative dispute resolution.** Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution provides an avenue for parties to settle their dispute outside the judicial system through consultation, negotiation, conciliation, or utilization of expert opinions.
- ❑ **Environmental compliance.** On environmental issues, Law No. 32 of 2009 on Management and Environmental Protection requires a number of different institutions to monitor compliance. This includes local government at the provincial and district or city levels, the Ministry of Environment and other related ministries, such as the Commission for Environmental Impact Assessment, police, prosecutors, and courts.
- ❑ **Land conflict resolution under the National Land Agency.** Decree No. 3 of 2011 on Assessment and Land Cases Management provides an avenue for parties to settle their disputes. However, in terms of effectiveness, a number of studies have shown that the National Land Agency is ineffective and unable to resolve the majority of conflicts within a reasonable time (Susan, 2015).
- ❑ **Indonesian Sustainable Palm Oil (ISPO).** Indonesian Sustainable Palm Oil (ISPO) is a governmental safeguard system and policy adopted by the Ministry of Agriculture (ISPO, 2013). The purpose of the system is to address environmental issues in the palm oil industry. So far, an area of 1.9 million hectares of oil palm plantations, which can produce up to 8.2 million tons of crude palm oil, has been certified under the ISPO



scheme (Indonesia Investments, 2017). Only 16.7 percent of Indonesia's oil palm plantations is ISPO Certified.

- ❑ **Komnas HAM.** Komnas HAM is the Indonesian Human Rights Commission. While its mandate encompasses a broad array of roles with regards to implementing the UNGP BHR, it lacks the necessary enforcement authority. Many of the Commission's recommendations have not been followed by the government or other parties. Komnas HAM acknowledges that it can only secure limited support and cooperation from the government. In order to strengthen its mandate, Komnas HAM has proposed the revision of the Human Rights Law.

Operationalization of UNGP BHR: Various Initiatives

Indonesian government

The Indonesian government launched several initiatives to implement the UNGP BHR. The Coordinating Ministry for Economic affairs has been acting as a focal point to promote, incorporate, and implement UNGP BHR in Indonesia. Their mandate is to synchronise economic policy and regulation with the UNGP BHR (Ministry of Foreign Affairs, 2018).

The Ministry of Foreign Affairs organized a national seminar on business and human rights last January 2018, and a national symposium in September 2015 (Ministry of Foreign Affairs, 2016). With ASEAN Intergovernmental Commission on Human Rights (AICHR), Indonesia maintains its position to support the ASEAN Action Plan on Business and

Komnas HAM has been playing a significant role in pushing for the adoption of the BHR framework not only in Indonesia but in Southeast Asia as well.

Human Rights. In the UN forum, Indonesia is also campaigning to change the nature of the UNGP BHR from voluntary to internationally legally binding.

For its part, the Ministry of State-Owned Enterprises convened a consultation on BHR in April 2018, inviting 27 State-owned enterprises to create adequate mechanisms to integrate human rights principles in their respective companies (JDIH, 2018).

Several local governments are also initiating the implementation of human rights principles in their regions.



Komnas HAM and National Action Plan on Business and Human Rights

Komnas HAM has been playing a significant role in pushing for the adoption of the BHR framework not only in Indonesia but in Southeast Asia as well. However, the Commission's activities in Indonesia have so far been focused on CSOs; there is a need to direct its attention to the business sector. To this end, cooperation with other institutions such as universities, State-owned corporations, the Indonesian Chamber of Commerce, and the larger business community could enhance the Commission's effectiveness.

Komnas HAM together with some CSOs, initiated the establishment of the National Action Plan on Business and Human Rights in Indonesia. This NAP on Business and Human Rights was launched under Komnas HAM Regulation No. 1 Year 2017, on Ratification of the National Plan of Action on Business and Human Rights, State News No. 856 (Sanjaya, 2017). However, Indonesian law provides that the Commission can only propose recommendations to the government.

Financial Services Authority (OJK) Roadmap on Sustainable Financing

In early 2014, the Financial Services Authority (OJK) launched a Sustainable Finance Roadmap for financial service industries aiming to develop a concrete action plan for Indonesian banks to support an environmental-friendly funding supply. In July 2017, OJK launched OJK Regulation No. 51/POJK.03/2017 on the Implementation of Sustainable Finance for Financial Services Companies, Issuers, and Public Companies. This regulation underlined the financial industry's commitment to implement the Indonesian environmental law.

Corporate initiatives to address land conflict

- ❑ ***Indonesia Business Council for Sustainable Development (IBCSD)***. IBCSD is a company-led initiative in promoting sustainable development in Indonesia. This council was established through cooperation between KADIN Indonesia and the World Business Council for Sustainable Development (WBCSD). In order to address land conflicts between companies and communities, the IBCSD established the Conflict Resolution Unit (CRU), a program which provides and facilitates mediation and long-term settlement (IBCSD, n.d.; CRU, n.d.). To date, there is no action plan released to the public on human rights related principles.




- ❑ **Indonesia Global Compact Network (GCN) and the Indonesian Working Group on Business and Human Rights.** On 8 April 2006 about twenty-two companies and organizations in Indonesia declared to support, promote, and implement the United Nations Global Compact Principles (Indonesia GCN, n.d.). They established a local network, the Indonesia Global Compact Network, which has been actively promoting business and human rights issues even beyond the UN Global Compact. On 7 April 2017, IGCN established the Business and Human Rights Working Group comprised of representatives from businesses, NGOs and universities. Together with Oxfam, INFID, and other NGOs, IGCN established multi-stakeholder collaboration and organised periodic discussions to address business and human rights issues.
- ❑ **Indonesian Sustainable Palm Oil (ISPO).** The Indonesian Sustainable Palm Oil (ISPO) is a standard palm oil system used by the Indonesian government. ISPO was established in response to the 2008 Roundtable on Sustainable Palm Oil (RSPO). Like ISPO, the RSPO is a global forum that revives BHR principles, and provides a Human Rights Working Group. ISPO and RSPO created high standards on human rights and environmental principles for their members (RSPO, 2013).

The RSPO was initiated by environmental and human rights activists concerned about the social and environmental conditions that have occurred due to oil palm expansion mainly in Indonesia and Malaysia in 2004. The ISPO adopted almost all RSPO principles and criteria, the difference being, that RSPO is voluntary in character, and ISPO is a platform with supposedly mandatory social and environmental principles to be implemented by oil palm companies in Indonesia (ISPO, n.d.).

CSO-led Initiatives

Currently, many NGOs and civil society coalitions are working on business and human rights issues. Within the land and agriculture sector, KPA, ELSAM and YLBHI have been working on the intersection of land conflicts and the violation of human rights. Others, such as Sawit Watch have been focusing on monitoring and advocacy work on the impact of palm oil industries. Sawit Watch and Forest Peoples Programme have sent a letter to the UN High Commissioner for Human Rights in response to the Ruggie Report. In their letter, they called for the UN



Secretary-General on Business and Human Rights to include in the report a discussion on human rights conditions in palm oil plantations (Forest Peoples Programme and Sawit Watch, 2012).

There is also the Indonesia Focal Point for Legally Binding Treaty Initiative, a coalition of Indonesian NGOs campaigning for a legally binding UN Business and Human Rights instrument. In July 2015, they expressed their concerns during the First Session of the Open-ended Inter-governmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (IGJ, 2016).

Recommendation: Transform National Action Plan into measurable real action

The task of protecting human rights is the main responsibility of the State, although businesses have a responsibility to uphold human rights as well. Human rights and their implementation cannot be reliant only on voluntary mechanisms, even though the availability of the venues for such efforts should be ensured.

In the current National Action Plan (NAP), the right to land is integrated in the rights to adequate food and environment. The Plan needs to be revised, to clearly establish land rights as human rights. This will enable clear follow-up actions vis-à-vis the three main actors mentioned in the NAP – local government, medium-scale businesses, and State companies.

Moreover, the Plan has to become more effective, with measurable performance targets and a budget. This should begin with the 2019 work plan and budget. The role and power of Komnas HAM also needs to be expanded, and the resources allocated to it increased to enable it to be more effective. Komnas HAM needs to position itself in the frontline of integrating land rights and human rights principles into policies and institutions.

Local governments should be encouraged to produce local regulations with human rights principles, especially because the regional government is the spearhead of the State in providing services to the rural farmers.

Civil society should continue to collect evidence and generate case studies on the implementation of UNGP BHR in the agriculture sector. It should also continue to advocate the formulation of NAPs by government while continuing to monitor the implementation of current NAPs on Business and Human Rights.



Lastly, civil society should strengthen its capacity especially in understanding the corporate actions, complex structures, and supply-chains that affect human rights. ■

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Introducing the UN Guiding Principles on Business and Human Rights in Nepal*

By **Community Self-Reliance Centre (CSRC)**

Context

Land is a vital resource and thus, also a source of conflict. The annual reports published by Supreme Court of Nepal suggest that the cases regarding property and land in particular, constitute a significant chunk of cases in the courts around the nation. These cases, along with monetary conflicts, also involve violence and oppression. Land conflicts are often the results of complicated legal procedures, loopholes, and duplications in land laws. As of today, the real estate market is one the most profitable and fastest growing markets in Nepal. However, cases abound where profits are realized at the expense of the human rights and land rights of the rural poor.

The UN Guiding Principles on Business and Human Rights (UNGP BHR), endorsed by United Nations Human Rights Council in 2011, consists of 31 principles implementing the United Nations 'Protect, Respect, and Remedy' framework on the issue of human rights and transnational corporations and other business enterprises. These Guiding Principles provide the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.


Human rights violations in business

In Nepal, various violations of human rights by business have been raised in the areas of migrant work, brick kiln operations, corporal punishment in schools,

* This is an abridged version of the paper prepared by the Community Self-Reliance Centre (CSRC) for the regional initiative "**Defending Land Rights and Human Rights Defenders.**" This document summarizes the major issues and recommendations emanating from the workshops organized by CSRC in partnership with the members of the National Engagement Strategy-Nepal and National Human Rights Commission. For more details, contact deujaj@crscnepal.org.

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undue fee structures in private schools, adulteration in commodities, workers' safety, hygiene and other rights in industries, child labor, environmental hazards, medical negligence, and undue charges for treatment, etc.

Land Encroachment in Nepal

The Nepalese Constitution protects the right to property (Art. 25). The State may only acquire the property of an individual when the public interest requires it, and only then with proper compensation. Environment Impact Assessments (EIA) and Initial Environmental Examinations (IEE) as required by the Environment Protection Act, 1996 are conducted for all business and resource development activities. However, these measures are not sufficient to protect poor and vulnerable peoples from the adverse impacts of business activities. Also, traditional land and territories are not recognized by Nepalese laws and policies. The requirement to obtain free, prior, and informed consent from local communities is largely neglected by business operators in the field.

National Human Rights Commission (NHRC) initiatives on protecting business related human rights

The Constitution of Nepal provides for the rights to a clean environment (Art. 30), education (Art. 31), employment (Art. 33), labor (Art. 34), and health (Art. 35). The Constitution also protects the rights of women (Art. 38), children (Art.39), and consumers (Art. 44). Consciousness about these rights contributes to more responsible behavior on the part of the business community. The following are some examples of the NHRC's initiatives:

Consumers' rights: The NHRC has issued monitoring 'directives' for the protection of consumer rights in 2011, which provides for monitoring of not only the supply of goods but also unfair, restrictive, or monopolistic trade practices. More importantly, the directives also provide for monitoring of grievance handling (NHRC, 2012b). In October 2014, the NHRC recommended making the function of the Food Standard Committee more effective, and inspecting whether the ratio of preservatives used in food is within the standard provided by the Food Regulation 1970 (NHRC, 2014).



Human rights in school: While conducting research, the NHRC discovered that there were not enough appropriate toilets for girl students (NHRC, 2013b). The NHRC thus made recommendations to the government to assure the provision of gender-friendly toilets in private schools (NHRC, 2014). The Commission also made recommendations to eliminate labor exploitation in private schools (NHRC, 2014).

Right to health: An investigation revealed that most of the pharmacy shops in the country do not have licenses (NHRC, 2013b). It was also revealed that patients were dying because of grievous medical negligence in private hospitals. The NHRC therefore recommended that the government implement appropriate policies regarding medical negligence on the basis of national and international standards (NHRC, 2014). Similarly, the Commission, also recommended the issuance of special rules, to ensure that the culprits of medical negligence would come under legal accountability, and that the victims would get compensation (NHRC, 2014). The Commission found that corporal punishment is practiced in schools (NHRC, 2013b).


Right to food: Through a complaint, NHRC discovered that a contractor imported low-quality food for the Jajarkot district under the financial support of the World Food Programme. NHRC recommended the matter to the Commission for the Investigation of Abuse of Authority (CIAA) for investigation (NHRC, 2009).

Rights of migrant workers: The NHRC is working in cooperation with many other NHRIs for the protection of the human rights of Nepalese migrant workers (NHRC, 2012a). To protect the rights of immigrant workers, the NHRC submitted various recommendations to the government in November 2012 and September 2013 focusing on the accession to the Convention on Rights of Immigrant Workers (NHRC, 2014).

Strategic plan of NHRC (2015-2020): The NHRC has planned various activities with regards to monitoring the schools, hospitals, universities, industries and business entities. The Commission will also monitor the situation of consumer rights and migrant workers' rights (NHRC, 2015).

Consultation Meetings on Business and Human Rights (BHR) Initiatives of NHRC and other Stakeholders

The NHRC has tried to introduce 'Business and Human Rights' in Nepal. The Commission organized a Regional Conference on Business and Human Rights in



Pokhara on 3-4 February 2017. Likewise, the NHRC in collaboration with the Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), conducted a Consultation Meeting (30 March 2018) and Multi-stakeholder Dialogue (20 August 2018). These meetings were conducted with the participation of high-level officials of the government of Nepal, business houses, Federation of Nepalese Chambers of Commerce and Industry, Nepal Chamber of Commerce, and other agencies. The NHRC is advocating the adoption of a National Action Plan to implement the UNGP BHR in Nepal. However, aside from this, the Nepal government has not yet embarked on any program or initiative directly related to the UNGP BHR. UN agencies and other international agencies in Nepal are not observed to be working directly for the promotion of the UNGP BHR.

It is laudable that Nepal has ratified most of the major human rights conventions. However, implementation of the commitments lags behind.

Initiatives of Civil Society

LAHURNIP has been working to promote the UNGP BHR in Nepal for a few years now. It has also participated in the UN Business Forum. The organization is working with affected communities especially indigenous peoples and business houses/energy producers. Likewise, LAHURNIP has produced several publications related to Business and Human Rights.

Community Self-Reliance Centre (CSRC) has been at the forefront of the land and agrarian rights campaign in Nepal. CSRC educates and organizes people who are deprived of their basic rights to land, and empowers them to lead free, secure, and dignified lives. CSRC is also working on issues related to UNGP BHR, and has a plan to assist in developing the National Action Plan to implement the UNGP BHR in Nepal.

Human Rights Obligations of Nepal

It is laudable that Nepal has ratified most of the major human rights conventions. However, implementation of the commitments lags behind.



Therefore, there is a saying that “Nepal is best in commitment and has lots of challenge in implementation those international commitments.”

Nepal is a party to the Covenant on Civil and Political Rights (1966) and the Covenant on Economic, Social and Cultural Rights (1966). Likewise, United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP) of 2006 and Indigenous and Tribal Conventions (ILO Convention 169) of 1989 are also major human rights instruments. The rights enshrined in these conventions are very pertinent to business and human rights as well as land rights. The obligation of the State is to protect and promote the rights of the people recognized by these human rights principles and standards.


Nepal has made this commitment through the Constitution and various policies as well. These commitments should also be fulfilled by effective implementation of the law, through honest efforts by the State.

Mainstreaming the UNGP on Business and Human Rights in Nepal

Compliance with the principles and standards of human rights is a basic requisite for any modern State. Nepal has an obligation to protect the rights of its citizens. Likewise, the business sector should also respect the rights of the citizens. Companies should work with due diligence to eliminate or reduce adverse impacts of their business activities. In case of adverse impacts, they are also responsible for providing effective remedies to the victims.

Along this line, the following activities are recommended:

- ❑ The UN Guiding Principles on Business and Human Rights (UNGP BHR) should be widely disseminated by the government and private sector. Extensive dialogue with relevant State authorities and business groups is key to generating better understanding and more effective implementation of the UNGP BHR.
- ❑ NHRIs and civil society should play a significant role in promoting better understanding of the UNGP BHR and in preparing the National Action Plan.
- ❑ Multi-stakeholder consultation is needed in order to develop the National Action Plan. Relevant State authorities should lead the process




of developing the National Action Plan to implement UNGP BHR, with business groups joining hands with the State.

- ❑ There is a need to conduct workshops among stakeholders, particularly the vulnerable sectors, and to understand the ways in which they have been dealing with investors and business interests.
- ❑ The academe should help by conducting studies that would strengthen and simplify the adoption of the UNGP BHR such as: a) analyzing the gaps in existing Nepalese laws related to BHR and b) linking the success of businesses to its observance of human rights. ■

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Towards a Philippine National Action Plan for the UN Guiding Principles on Business and Human Rights*

By Xavier Science Foundation (XSF) and Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)

Context

Agriculture and Land Conflicts in the Philippines

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


The UNGP BHR are of particular importance to Philippine agriculture as investments, both foreign and domestic, continue to increase. These investments are driven by the growing demand for food, the incentives given to biofuel production and the opening up of the economy to agricultural trade and investments. Unfortunately, these investments have resulted to instances of physical and economic displacement of farmers by investors.

The Land Governance and Assessment Framework study of the World Bank in 2013 found that policies and guidelines in the Philippines encourage direct

* This is an abridged version of the paper prepared by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) for the regional initiative “*Defending Land Rights and Human Rights Defenders*.” This document summarizes the major issues and recommendations emanating from the workshops organized by ANGOC and the Commission on Human Rights (CHR) of the Philippines in partnership with the members of the National Engagement Strategy-Philippines (NES Philippines). It builds on the findings and recommendations of the baseline study prepared by the Xavier Science Foundation (XSF) in behalf of the Konsorsium Pembaruan Agraria (KPA), with support from OXFAM Indonesia for the project “*Promoting the National Action Plans on the implementation of the UNGP on Business and Human Rights in relation to land rights issue*.” For more details, comments, queries, and other concerns, contact angoc@angoc.org.

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negotiations between rights holders and investors; in most cases, however, these are not always transparent. Reports of improper procedures in securing free, prior and informed consent (FPIC), lack of full disclosure on the proposed investments, and misrepresentation have been documented.

These concerns are intensified by ambiguous land use policies and processes that have resulted in overlapping jurisdictions among agencies, conflicting land claims and consequent land rights abuses. They are manifested in double titling, confusing municipal land classification, discrepancies in boundary surveys, and overlapping property rights (Ravanera, 2015).

Relevant government agencies recognize these problems and have issued the Joint DAR-DENR-LRA-NCIP Administrative Order No. 1 of 2012 (JAO 1) to clarify their respective jurisdictions, policies, programs, and projects. Unfortunately, JAO 1 has been causing undue delay in the issuance and registration of ancestral land and ancestral domain titles.

Among agricultural farmers who have gone into long-term contracts (such as long-term lease, joint venture, and marketing contracts) with large agribusiness companies, many of these contractual arrangements are problematic and unfavorable to the smallholder farmers (FAO, 2013).

In the transactions between business companies and agricultural farmers and indigenous communities on their ancestral lands, the following issues have been identified:

Non-consultation of local communities: Investments in forestlands do not require consultation with local communities given that these areas are part of the public domain. As such, inhabitants of ancestral domains within forestlands are not consulted prior to investment operations. Despite policies mandating Free, Prior, and Informed Consent (FPIC), several cases of forcible entry into ancestral domains have also been documented. In some instances, FPIC processes are also manipulated in favor of investors.

Non-transparency and access to information: Important and basic documents, such as contracts between the investor and former landowner or with the farmers, have been found to be inaccessible. To make matters worse, farmers and indigenous peoples lack the technical or legal capacity to examine contracts and financial documents.

Erosion of land tenure security: Land use rights and restrictions are relatively clear and straightforward. And yet, implementation on the use of the



land with agricultural corporations has resulted in displacement from ancestral lands or farms, and loss of livelihood.

Lack of support in dispute resolution: There are avenues to lodge complaints by affected parties with responsible agencies. Yet, despite the presence of these mechanisms for lodging complaints, there is a perceived lack of support in prioritizing farmers and indigenous peoples, particularly in providing them with the much-needed legal support.

Emerging Business and Human Rights Issues in Land and Agriculture

Increasing land and agricultural investments

In light of continuing gaps in land policies and land administration – this situation has resulted in human rights abuses among agricultural farmers and indigenous communities. As part of its continuing initiative to monitor security of land rights in the country, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) prepared a research study on *Land Conflicts and Rights Defenders in the Philippines*. This study revealed that 55 percent of the 354 recorded land and resource conflicts from January 2017 to June 2018 were caused by land investments. These conflict-laden investments cover more than 847 thousand hectares of land. Majority of land investment conflicts (88 percent) are between communities and private businesses. The same study found that government agencies and LGUs have served as key facilitators of private investments on land (Salomon, 2018).

The following grievances highlight ongoing and potential abuses in the future:

Endangering IPs' ancestral lands from impacts of mining and deforestation. Cases documented reveal that several medium and large-scale mining corporations either ignore FPIC processes or manipulate the processes in their favor. The presence of military personnel protecting corporation claims limits the freedom of the IPs to work on their lands. As a result of such, they experience harassment and killings. Documented cases include 76 killings of indigenous human rights defenders from 2010 to 2016 (Tebtebba Foundation, 2016). From January 2017 to June 2018, 19 individuals have been killed, 4 have been injured, while 5 have been detained, in defense of their lands against destructive or unwelcome mining investments (Salomon, 2018).



Mining operations have also caused deterioration of the environment, resulting to worsened health conditions, affected livelihoods, degraded water quality, decreased agricultural production and fish catch, and communities' greater vulnerability to the effects of natural disasters.

On the other hand, a moratorium on mass-scale tree-cutting issued in 2011 effectively makes cases of corporate logging illegal (EJ Atlas, 2018). A log ban has also been issued in 2017. Despite this, ANGOCC has recorded six forestry investments encroaching upon ancestral domains from 2017 to June 2018. These cases are either ongoing or have been halted with potential for resurgence (Salomon, 2018).

Transgressing land rights of agricultural farmers. Of the 193 investment land conflicts that were recorded by ANGOCC from January 2017 to June 2018, 52 percent were plantation investments covering no less than 118 thousand hectares of land. These agribusiness investments were characterized by the production of a single type of crop (mono-cropping), thus crippling the food security of the community (Salomon, 2018).

Many of these investments benefit the investors more than the farmers they engage in businesses with. The unfair terms stipulated in contracts and lack of information provided to farmers lead to short-lived benefits, eventual loss of control over the land, and large sums of debt (FAO, 2016).

Many cases of lease agreements involved investors paying farmers rent lower than the amortization needed for the farmers to sustain their ownership over the land. In some instances, this has led farmers to surrender their land-ownership to the agribusiness company. In cases of growership contracts, farmers have been unable to meet production quotas that have been set too high, and are sometimes penalized for such. Furthermore, some growership agreements do not take into account costs of production and prevailing market-prices, leading to minimal gains for farmers involved in these contracts (Salomon 2018; FAO, 2016).

In 2017, the Philippines has been classified as the second deadliest country in the world and the deadliest country in Asia for environmental rights defenders (Global Witness, 2018; Cox, 2018; Watts, 2018). 41 percent of the killings that Global Witness recorded in the Philippines in 2017 were related to agribusinesses (Global Witness, 2018). Also taking into account Global Witness's data, ANGOCC recorded 431 incidents of human rights violations (including 61 killings) related to land and resource conflicts from 2017 to June 2018 (Salomon, 2018).



Corporate operations displacing communities, curtailing livelihood, and degrading the environment. Almost 17,000 households were recorded to have been evicted from their residence as a result of land and resource conflicts from 2017 to June 2018. Most of these displacements are linked to land and agricultural investments, through the entry of plantation investments and mining in ancestral domains in Mindanao, and infrastructure projects. Infrastructure projects also pose the most threat of displacement among communities (Salomon, 2018).

Irresponsible corporate and mining operations have been identified, warned, and issued closure orders by then Secretary Lopez of the Department of Environment and Natural Resources (DENR). One of these companies is the Semirara Mining and Power Corporation operating at Caluya, Antique. The company has been asked to explain why it should not be held liable for several violations due to its operations in the province (Geronimo, 2016). The information used by the DENR to demand a show cause order from the mining company has been provided by the Commission on Human Rights (CHR). The CHR used the UNGP on Business and Human Rights in conducting investigations and in convening an inter-agency working group with the Department of Environment and Natural Resources (DENR), Environmental Management Bureau (EMB), and Department of Agrarian Reform (DAR), among others.

The UNGP BHR and Land Governance in the Philippines

Introduction of UNGP BHR in the Philippines

On 25 March 2014, key stakeholders from business, civil society, and government came together in a forum titled *“Business and Human Rights: Introducing the UN Guiding Principles of the Ruggie Framework as a Tool for Risk Management.”*

The main objective was to introduce the UNGP BHR and how these can be implemented and realized in practical terms. Participants from the business sector expressed their willingness to implement and incorporate UNGP BHR in their business policies and practices and even agreed to look at the principle of extra-territoriality. More dialogues and consultations were planned towards finding a common ground on some issues, such as, the negative effects of mining or illegal logging. During this event, the German Hanns Seidel Foundation (HSF) expressed its support for the development of a Philippine National Action Plan for Business and Human Rights (HSF, 2014).



The Forum was followed by a resolution of the European Parliament to the Philippines on 8 June 2016 to ensure effective implementation of all core international conventions relating to human and labor rights. The resolution called for continuing progress in the promotion of human rights – including the publication of the National Action Plan (NAP) for Human Rights – and implementation of the UNGP on Business and Human Rights. The resolution focused attention on the repression of activists peacefully campaigning for the protection of their ancestral lands from the harmful impacts of mining and deforestation. It also concentrated on the inhuman working conditions of many Filipino seamen, calling on European Union (EU) member-States to bar vessels from European ports when working conditions contravene labor rights and the EU Charter of Fundamental Rights.

More recently, on 11 March 2017, a two-day international workshop on “Business, Human Rights and Access to Justice” was held in the Philippines. The multi-stakeholder workshop, led by the Philippine CHR, involved delegates from China, Japan, Korea, Nepal, Mongolia, Philippines, and other United Nation (UN) agencies, including representatives from National Human Rights Institutions (NHRIs), civil society organizations (CSOs), academe, and other international organizations.

As a follow-up to the international workshop, a “*National Dialogue on the United Nations Guiding Principles on Business and Human Rights*” was convened on 10 January 2018 in the Philippines. The conference sought to update country stakeholders on the activities of the CHR to build awareness on the UNGP BHR and identify mechanisms to address business-related human rights issues. The struggle of underprivileged communities to retain control of their land in the face of expanding business interests was also highlighted, and the conference participants emphasized the need for multi-stakeholder consultation in the development of the NAP on Business and Human Rights.

During the “*Stakeholders’ Consultation on the Philippine Action Plan on Business and Human Rights*” held on 11 May 2018, the discussion on the UNGP BHR was expanded to a wider range of government and civil society organizations. The CHR also solicited feedback from the stakeholders on how the UNGP BHR can be further actualized in specific contexts. One major concern raised by the consultation participants was the inadequate involvement of the business sector in the conversations thus far.



Operationalization of the UNGP BHR in the Philippines

The Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights/UNWBG), mandated by the United Nations Human Rights Council (UNHRC) to promote the effective and comprehensive implementation of the UNGP BHR, noted in its 2016 Guidance on Business and Human Rights that National Action Plans (NAPs) can be an important means to promote the implementation of the UNGP BHR (DIHR, n.d.). In the Philippines, the Presidential Human Rights Committee (PHRC), the primary advisory body to the Office of the President in effectively addressing all human rights concerns/issues in the country, is tasked to initiate the formulation of the NAP of the UNGP BHR.


In November 2016, the PHRC held a government consultation on a National Action Plan for Business and Human Rights. PHRC subsequently informed representatives participating in the dissemination forum on concluding observations of the United Nations Committee on Economic, Social, and Cultural Rights (UNCESCR), that the country will be embarking on the formulation of the 3rd Philippine National Human Rights Action Plan, 2018-2022. The said plan will set out the activities and targets, including monitoring and reporting activities, covering the eight core human rights treaties to the Philippines has committed to (NEDA, 2017).

To date, the country has yet to produce a NAP on the UNGP BHR. It remains uncertain whether the Philippine National Human Rights Action Pan will include a section on business and human rights, or whether a separate NAP is to be developed (DIHR, n.d.).

However, while the UNGP BHR is still not fully in place in the country, these have started to be implemented and operationalized. A key step is the building of awareness among relevant constituencies and development of indicators towards monitoring business corporations' observance of UNGP BHR and other international covenants.

Building Awareness on the UNGP BHR

The UNGP on Business and Human Rights was activated by the CHR during the leadership of former Executive Director Jacqueline Mejia and then Chairperson Etta Rosales. The latter started popularizing the UNGP BHR by facilitating forums with the sectors interested in mining, land rights, and agrarian



reform. These fora included a UNDP-assisted event where government officials and top managers from the business community were called upon to clarify issues and align their understanding of the UNGP BHR.

In an interview, Jesus Torres, Division Chief of the Economic, Social, and Cultural Rights (ESCR) Center of the CHR, emphasized that even before the UNGP BHR were identified, monitoring matters related to Business and Human Rights (BHR) is embedded in the CHR's mandate to keep an eye on human rights issues. The CHR conducts data gathering and research before engaging, requesting, or recommending to government agencies on legal issues.

CHR has also been exploring similar existing initiatives that complement their goal to mainstream the UNGP on Business and Human Rights (Torres, personal interview, 9 March 2017). Early this year, CHR submitted a position paper to the 17th Congress of the House of Representatives, on the proposed amendments to the Corporation Code of the Philippines (Batas Pambansa Bilang 68). The Commission proposes to mainstream the UNGP BHR in the amendment of the Code, drawing upon the second pillar of UNGP BHR: the corporate responsibility to respect human rights (CHR, 2018).

Establishing Mechanisms and Developing BHR Monitoring Tool

Aside from building awareness on the UNGP BHR, the CHR has sought to identify the mechanisms needed to effectively address issues on BHR. One such mechanism is the establishment of indicators that are needed to monitor businesses and their adherence to human rights. Using pre-tested indicators, CHR intends to: (a) review related literature on the International Covenant on Economic, Social, and Cultural Rights;¹ (b) engage rights holders; and (c) encourage participation of duty-bearers, including businesses. Along this objective, the CHR is in the process of developing a guidebook for monitoring and reporting purposes.

Providing Access to Remedy

One of the many roles of CHR is to ensure “access to remedy.” In December 2016, the CHR filed the “world’s first ever national investigation into human rights harms resulting from climate change, despite apparent opposition from some fossil fuel companies” (Fidh, 2016). This petition was submitted by 18 individuals

¹ The International Covenant on ESCR is a UN human rights treaty that gives legal force to the Universal Declaration of Human Rights. This treaty covers important areas of public policy, such as the rights to: work, fair and just conditions of work, social security, adequate food, clothing and housing, health, and education.



and 14 organizations, implicating 47 carbon producers/fossil fuel companies, such as, Chevron, ExxonMobil, Total, BHP Billiton, Suncor, and Conoco Philips (Greenpeace, 2016).

According to the CHR, from 21 of the 47 participants who have responded, only six have essentially admitted their contribution to increasing fossil fuel emission and cited programs they have initiated to mitigate the negative effects of their business operations. The other 15 companies have questioned CHR's jurisdiction, saying that the Commission is encroaching on the sovereignty of their mother State; this is because most of these companies do not have local registration or counterparts in the Philippines (Canlas, personal interview, 10 March 2017). The issue of jurisdiction states that a country may apply criminal law to domestic companies for conduct abroad – that is, the principle of extraterritoriality (Global Witness, 2011).

Recommendations to Further Mainstream the UNGP BHR in the Philippines


The CHR has acknowledged that much is needed to fully adopt the UNGP on BHR in the Philippines. The many existing and overlapping laws related to business and human rights have caused more chaos than order. Thus, there is a need to undertake more studies to make these laws complementary, using the UNGP BHR as a synchronizing framework.

According to Jesus Torres of the CHR, the Commission, alongside other stakeholders, should come together and develop a collaborative platform to minimize the adversarial handling of cases (Torres, personal interview, 9 March 2017).

Also, it is important to establish the indicators that will be used in monitoring BHR to foster agreements and understanding in observing these guidelines.

Along this direction, the following activities are recommended:

- ❑ Convene a multi-stakeholder consultation upon the development of the National Action Plan for Business and Human Rights led by the Presidential Human Rights Committee;
- ❑ Conduct workshops among stakeholders, particularly the vulnerable sectors to help them better understand their rights, the mechanisms, and options they have in dealing with investors/businesses; and,

- 
- ❑ For the academe to help in conducting studies that would strengthen and simplify the adoption of UNGP BHR such as a) analyzing the gaps in existing Philippine laws related to BHR; and b) linking the success of businesses to their observance of human rights.

The implementation of the UNGP BHR in the Philippines is important not only for rectifying business-related human rights violations, but also in preventing future injustices, given the increasing investments in agriculture. Complementary policy guidelines should also be promoted such as the recognition of land rights as human rights.

On a more urgent note, there is need for immediate response to the adverse impacts of mining and corporate business operations in ancestral lands that are affecting indigenous communities. ■

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Developing a Scorecard for private business investors in land and agriculture in Asia^{*}

By **Roel R. Ravanera, Xavier Science Foundation (XSF)**
and **Denise Hyacinth Joy Musni, ANGOC**

Rationale

Increasing investments across Asia and their impacts on rural communities

The Global Land Rush during the 2008 financial crisis propelled the rise of large-scale land acquisitions and cross-border land investments in Asia due to international demand for the production of cheaper commodities. Several years since, the rush persists.

Public investments on agriculture in Asia have declined in the last two decades as demand for affordable food continues to grow. Furthermore, the biofuel industry has been growing. Governments are encouraging decreased consumption of fossil fuels and greater use of agrofuels as an alternative source. This scenario made agricultural land in Asia attractive prospects for foreign investors. To fill the gap that decreased public investments created, governments have been easing regulations and encouraging foreign direct investments (FDI) (Ravanera and Gorra, 2011).

Commercial pressures on land do not manifest solely in the rise of plantations. Over the past decades, lands have also been utilized and developed by private investors as well as governments for infrastructure, tourism, special economic zones (SEZs), human settlements, and mining. Many of these investments involved the conversion of agricultural lands into other purposes.

^{*} ANGOC acknowledges the organizations that were involved in the development of this scorecard: Bangladesh: ALRD, ARBAN, CDA; Cambodia: STAR Kampuchea; India: Ekta Parishad, SDF; Indonesia: KPA; Nepal: CSRC; Philippines: AR Now!, CARRD, Kaisahan, NFR, PAFID, PAKISAMA, PhilDHRRA, TFM, We Effect, XSF; and the various NES Platforms. ANGOC also extends its appreciation to the communities that provided inputs in the initial pilot-testing of this tool.

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There is also a growing trend of investments in Asia originating from other Asian countries, possibly facilitated by trade liberalization policies. Since 2015, member-States of the Association of Southeast Asian Nations (ASEAN) have begun to open up their economies to other ASEAN countries with freer flows of goods, services, labor, capital, and investments, as was envisaged in the ASEAN Economic Integration. The ASEAN Economic Community Blueprint also specifies the region's aim to amplify intra- and extra-ASEAN trade of food, agriculture, and forestry products under a Single Market and Production Base (ASEAN Economic Community Blueprint, 2008; Ravanera and Quitangon, 2013).

In 2017, around one-third of the global FDI poured into Asia. The most recent report of the United Nations Conference on Trade and Development (UNCTAD) revealed that with over 475 billion USD worth of FDI inflows, Asia received the most FDI in 2017. Investments in the wider Asian region are expected to remain high in 2018 (UNCTAD, 2018).

The UNCTAD report also revealed that a quarter of the total investments in Southeast Asia were from other ASEAN countries. In a separate report by the Asian Development Bank (ADB), it was documented that the intraregional trade share of Asia rose from an average of 55.9 percent from 2010 to 2015, to a record-high of 57.3 percent in 2016 (ADB, 2017).

Increasing conflicts and violence

While investments are generally regarded to have positive effects on a country's economic growth, some business ventures may have undesirable effects on rural communities and natural resources. These investments are often in low- and middle-income countries, where resources are controlled by local elites, dated or conflicting land policies are in place, agrarian reforms are either faultily implemented or not instituted, and where land governance is weak. This environment has resulted in the increasing frequency and intensity of land

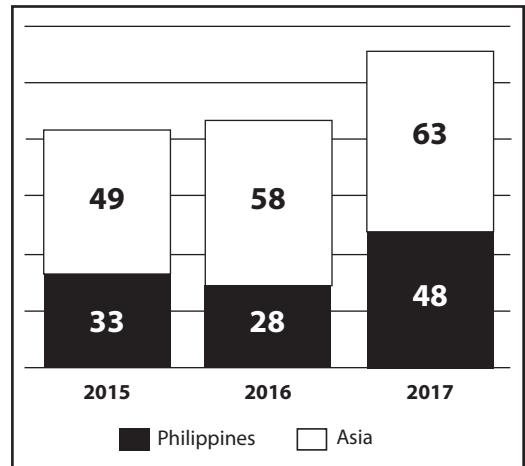


Figure 1. Environmental Defenders Slain from 2015 to 2017
(Global Witness, 2016-18)



conflicts, as well as rights violations against farmers, indigenous peoples (IPs), and other rural stakeholders.

Farmers are engaging in unfair business contracts, and ancestral domains of IPs are endangered by operations of extractive industries such as mining and quarrying. Such conflict-laden investments in rural Asia are often characterized by non-transparency and stakeholders' lack of access to vital investment information.

The reported number of land and resource conflicts in Asia has increased through the years, with communities and land rights defenders bearing most of the damage. State and private armed forces have physically and psychologically harmed rights defenders who have dared to voice opposition to unwanted or unfair investments. Numerous rights defenders have been killed, imprisoned, and harassed in the course of conflicts over land investments. As Figure 1 shows, data from Global Witness reveals the increasing trend of violence towards environmental rights defenders. In 2017, 63 defenders in Asia were slain. In the same year, 41 land and environmental defenders were killed in the Philippines, making the country the 2nd deadliest place for environmental activists next only to Brazil (Cox, 2018).¹

“Land Rights as Human Rights,” a CSO-led initiative


Taking into consideration the above-stated shared experiences of Asian countries, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), and the Land Watch Asia (LWA) Campaign, with the support of the International Land Coalition (ILC), convened a six-country working group to implement the initiative entitled *“Defending Land Rights and Human Rights Defenders.”* This project, jointly undertaken by CSO partners from Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines,² aims to contribute to the realization of ILC’s People-Centered Land Governance Commitments 9 and 10, on effective actions against land grabbing, and on protecting land rights defenders.³

Through the endeavor, CSOs from the six countries aim to: a) popularize of the concept of *land rights as human rights* through engagement with National Human Rights Institutions (NHRIs), b) equip CSO partners in land-human rights

¹ For a comprehensive discussion on the nature and prevalence of land conflicts in Asia, refer to the ANGOC paper: In defense of land rights: a monitoring report on land conflicts in six Asian countries (Quizon, 2018).

² CDA, ARBAN (Bangladesh); STAR Kampuchea (Cambodia); Ekta Parishad, SDF (India); KPA (Indonesia); CSRC (Nepal); and, ANGOC, AR Now!, XSF (Philippines)

³ For more information, visit the ILC website at: <http://www.landcoalition.org/en/people-centred-land-governance>



monitoring, and c) mainstream land rights as human rights by engaging NHRIs and regional bodies in policy discussions.

In pursuit of these objectives, partners in each country have conducted multi-stakeholder policy dialogues tackling land rights and human rights. National and regional scorecards have been developed and pilot-tested. Country papers and regional summaries have also been produced on the adoption of the UN Guiding Principles for Business and Human Rights (UNGPs BHR) in Asia, and on the monitoring of the prevalence, causes, and impacts of land conflicts.

Objectives of the Scorecard Initiative

The Working Group introduced this *Scorecard for Private Business Investors in Land and Agriculture in Asia*, to assess investments' sensitivity to the land rights and human rights of the communities affected by their projects. As public watchdogs, CSOs have been monitoring the impacts of business investors on communities and in particular, on their tenurial security. The development of this scorecard would enhance CSOs' and communities' capacity to objectively monitor the impacts of business operations, and to pursue evidence-based advocacies. Rural communities may also make use of such a tool to deliberate on the acceptability of an investment in its initial stages of operation.

This report summarizes the attempt of the working group to *initiate* the development of a scorecard tool for private investments in land and agriculture.

Methodology

Scorecard refinement process

An initial list of 25 indicators were developed by ANGO. These indicators were subjected to discussion during a planning meeting participated by the Land Watch Asia Working Group on Land Rights as Human Rights held in Bangkok, Thailand in February 2018.

From the original set of 25, partners from six countries identified a shortlist of 13 indicators. After local country consultations, partners met in Bangkok once more to discuss the indicators and scoring system for the regional scorecard. In October of the same year, partners agreed on a set of 20 indicators and a rating of system with a maximum of 100 points.

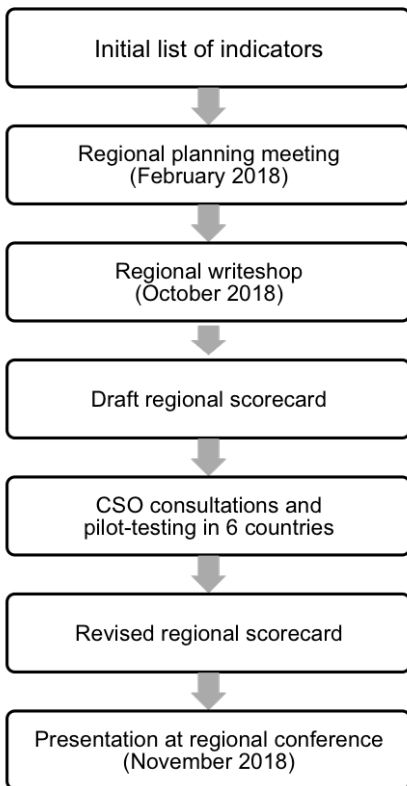


Figure 2. Process for the drafting and finalization of scorecard indicators

CSO partners agreed to discuss the regional tool with other organizations within their respective countries, and to pilot-test the tool on cases of investments in rural communities. Through such processes, and taking into consideration the local country contexts, several country scorecard tools were developed. Partners from the six countries also provided their inputs to refine the regional tool, for the scorecard to be generally applicable to varied settings in the wider Asian region.


The results of this initiative were presented to CSOs, officials from NHRIs, and intergovernmental organizations, during a regional conference in Bangkok co-organized by ANGOC, LWA, ILC Asia, United Nations Development Programme, and the UN Office of the High Commissioner on Human Rights, on 15-16 November 2018.

The drafting and consultation process are mapped out in Figure 2.

Scope and limitations

The scorecard assesses investments' basic respect for human rights but provides particular focus on evaluating whether these investments are able to respect concerned communities' land and resource tenure rights. In its present formulation, the tool developed may only be applied to *private rural investments*. The scorecard might have to be modified to be applicable to investments in urban areas. A separate or expanded version of the present scorecard would have to be developed if it is to cover State projects or investments.

Moreover, the tool may only be used to assess investors conducting exploration activities, or investments that have just begun operations. During these initial stages, potential long-term damage may still be avoided. Applying this scorecard may help communities to decide whether the investment is beneficial for them, or whether it is a bane that should no longer be allowed to remain.



Because the current tool assumes that an investment has already begun, it may not be used to assess an investment's acceptability to communities during the pre-negotiation or negotiation stages. This tool also does not include indicators on project closure, abandonment, and rehabilitation. Alterations to the tool may be incorporated during the succeeding phases of this initiative.

Noting that developing an effective scorecard system requires a long and thorough consultative process, this scorecard is not to be seen as a finished product but rather, a work-in-progress. The tool may be further refined in partnership with CSOs, the academe, communities, NHRIs, governments, and the private sector.

Conceptual Framework

Principles of responsible agricultural investments (*rai*)

To assess investments objectively, evaluators ought to be guided by a set of principles accepted both by the international community and by stakeholders at the grassroots level. Hence in 2013, ANGOC developed a set of seven *Principles of Responsible Agricultural Investments (rai)* in the Philippines, derived from the inputs of grassroots organizations, CSOs, and government agencies. The *rai* principles were also anchored on globally-recognized standards for investments enshrined in the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT),⁴ Principles for Responsible Agricultural Investments (PRAI),⁵ and the Basic Principles on the Purchase and Leasing of Large Areas of Land.⁶

These seven *rai* principles are:

Principle 1. Responsible agricultural investment has FPIC of communities that will be affected by the investments.

Principle 2. Responsible Agricultural Investment upholds land tenure security and respects human rights.

⁴ Developed by the Committee on World Food Security. The VGGT may be accessed online through this link: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

⁵ The PRAI is not to be confused with the *rai* principles initiated by CSOs. The PRAI were developed by FAO, World Bank, International Fund for Agricultural Development, and UNCTAD, building on the VGGT and the Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food. Peruse through the PRAI online through this link: http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf

⁶ Developed by the Federal Ministry of Economic Cooperation and Development (BMZ), Germany. See this link for more information: https://www.bmz.de/en/publications/archiv/type_of_publication/strategies/diskurs015en.pdf



- Principle 3.** Responsible Agricultural Investment settles disputes in a fair, effective and timely manner.
- Principle 4.** Responsible Agricultural Investment uses natural resources sustainably contributing to climate change mitigation and adaptation.
- Principle 5.** Responsible Agricultural Investment respects women, cultural heritage, landscapes, traditional knowledge and customary laws.
- Principle 6.** Responsible Agricultural Investment improves the livelihood of men and women, people's food security and nutrition.
- Principle 7.** Complementary policies and programs support Responsible Agricultural Investment.

These principles have been recommended to the Committee on World Food Security (CFS) and were endorsed by the CFS in 2014.⁷

The UN Guiding Principles on Business and Human Rights (UNGPs BHR)

In 2008, the UN endorsed the “Protect, Respect, and Remedy Framework” for business and human rights, developed by then-Special Representative of the UN Secretary General John Ruggie. The UN Framework came about after a series of global consultations with governments, civil society organizations, businesses, victims of corporate human rights abuses, and three years of research (ANGOC, 2017; UN Working Group on Business and Human Rights, n.d.).

In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs BHR) to operationalize the UN Framework. The UNGPs BHR consist of three pillars: **protect, respect, and remedy** (*Ibid*).

The UNGPs BHR emphasize that States have the duty to *protect* everyone in its territory from human rights abuses by businesses and all other actors in society. Thus, States must prevent, investigate, punish, and redress human rights abuses in business operations within their country (*Ibid*).

The UNGPs BHR also underline that businesses have a *responsibility to respect* human rights, which exists independently of the State's duty to *protect* human rights. Business enterprises must then prevent, mitigate, and remedy human

⁷ For further reading on the rai, see Principles of responsible agricultural investments: Philippines' Multi-stakeholders Input to Committee on World Food Security (Ravanera and Quitangon, 2013) here: http://www.angoc.org/wp-content/uploads/2014/10/VGGT-and-RAI.pdf_web.pdf

rights violations which they have caused or contributed to, even if these impacts were the result of actions by their suppliers or business partners (*Ibid*).

Finally, in case of human rights violations, those affected should be provided with a robust and appropriate *remedy*. The UNGP BHR maintain that the both States and businesses should contribute to providing remedy through judicial and non-judicial means (*Ibid*).⁸

An integrated framework for responsible land and agricultural investments

While the UNGP BHR prescribe a set of general standards for governments and businesses involved in a vast array of enterprises, the *rai* principles propose ideal characteristics specific to investments in agriculture. The *rai* and the UNGP BHR complement one another, in such that they have similar goals and underlying principles. Both sets of standards may be interfaced with one another to produce an integrated framework for assessing investments in land and agriculture in relation to land rights and human rights. The *rai* principles may be seen in connection with the three pillars identified in the UNGP BHR although the *rai* principles focus specifically on companies’ role in ensuring that investments do not undermine human rights. While it is the State that has the primary duty to *protect* human rights under the UNGP BHR, investors must also comply with State policies enacted for the protection of rights. These interrelations are illustrated in Figure 3 below.

Principles 2 and 4 of the *rai* are related to the **protect** pillar of the UNGP BHR. Principles 1, 5, and 6, may be subsumed under the **respect** pillar of UNGP BHR. Principle 3 on fair dispute resolution may fall under the **remedy** pillar of the UNGP BHR. Lastly, the *rai*’s 7th principle calls for complementary policies and programs which may apply to all the previous principles in the three pillars of the UNGP BHR.

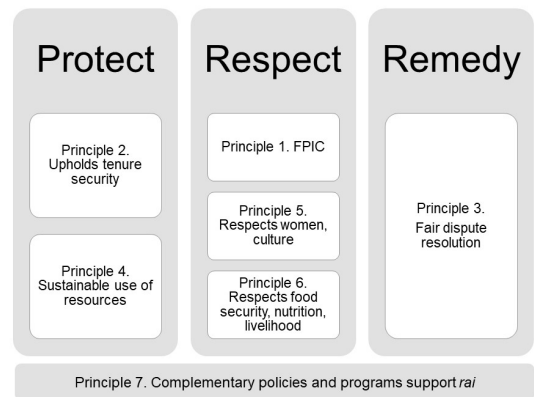


Figure 3. Integrated framework for responsible land and agricultural investments (Ravanera, 2018)

⁸ For further reading on the UNGP BHR, refer to this link: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf



The Scorecard: Structure, Indicators, and Scoring System

The tool is divided into three major sections, representing the *Protect*, *Respect*, and *Remedy* pillars of the UNGP BHR. Each major section contains a set of indicators anchored on the *rai* principles. There are 20 indicators overall. Scoring for each sub-indicator will follow the *all-or-nothing* method – i.e., companies which meet the criteria will be rated with the corresponding full score for the indicator, while those who do not satisfy the criteria will be provided with a score of zero *for that indicator only*. Investments will be scored based on a 100-point system.


Indicators in the *Protect* section accrue to a total of 45 points. This section contains indicators on the security of rural communities' rights to land and tenure. It covers basic requirements for initiating and operating responsible investments, and assesses provisions in contracts entered into by investors and rural stakeholders. Finally, the *Protect* section also probes into investors' sustainable use of resources.

The *Respect* section is composed of indicators that measure investors' recognition of the rights of people in the community. Sub-indicators look into whether negotiations and consultations were transparent and non-coercive. The section also inspects whether investors respect customary/indigenous practices, sites that are important to the communities, livelihood security, and community cohesion. Maximum scores under this section add up to another 45 points.

Lastly, the *Remedy* section equivalent to 10 points, is composed of an indicator on accessible grievance mechanisms and on adequate compensation. While no less important, this section is equivalent to the least points. This was a deliberate decision on the part of CSO partners, for it is recognized that sufficient protection and respect for human and land rights would lessen or eliminate complaints, violations, and the need for corresponding remedies.

The tool also contains a column on *remarks* for assessors, for short, qualitative statements on the justification for the points they have awarded to the company, per indicator.

Indicators per major section and the identified sources of data to objectively assess the criteria are listed below. For each indicator, communities would also be consulted for their testimonies on whether the safeguards enshrined in the companies' policies are manifested on the ground, or whether the investors



truly complied with the necessary procedures before and during project implementation. The equivalent scores for each indicator are also noted below.

The scorecard tool is further described below.

PROTECT

Indicator 1. *The communities' right to use the land (access, withdraw, and exploit resources) is not diminished.* Limits to the use rights of communities, should there be any, should be compromises which have gone through appropriate channels of consultation and consensus-building with the community. Limits on the community's use of and access to land may be reflected in the company's investment policy, management plan, and from testimonies of community members. **(5 points)**

Indicator 2. *The communities' control and decision-making rights (management and exclusion) over the land are not diminished.* The affected stakeholders must be able to directly exercise management and exclusion rights over the land in the presence of investors and during any of the project operations. Should there be shared management responsibilities, these should be outlined in the company's investment policy and management plan. More so, deviations from the community's preformed management arrangements should be institutionalized only with permission from, and after consensus-building with affected stakeholders. **(5 points)**

Indicator 3. *There is no threat of involuntary eviction of rights holders and communities.* The present and future operations of the investor must not instill in stakeholders a sense of uncertainty about their tenorial status. The basis for scoring this indicator may be official investment documents, and the community's general perception on the investment. **(5 points)**

Indicator 4. *Proposed and actual arrangements and mechanisms such as joint ventures, management contracts, and marketing agreements, among others are fair and legal. Economic risks and benefits are shared between the investor/company and the concerned communities.* For an investor to receive the full score, contracts and other relevant documents must transparently detail the socioeconomic benefits and risks to the community. Moreover, community members must attest that they are aware of these provisions and that they are being implemented truthfully. **(5 points)**




Indicator 5. *Lands allocated by the community for livelihood, community space, residence, and other needs as may be identified by the community, are not curtailed by the investor/company.* Investor operations should not be present on portions of land vital for sustaining the everyday lives of community members. These lands may include areas for subsistence and livelihood, cultural and traditional practices, and settlements, among others. Reserved lands should also be identified in consultation with the community members themselves. Both company documents and community testimonies may be sources for this indicator. **(5 points)**

Indicator 6. *Full and truthful information on the investment, including contracts and relevant documents are transparent, accessible, and are in a language understood by the communities, including women and other most marginalized groups.* Access to information is a human right in itself. Contents of contracts and investment documents must have been made known to the community. These documents must also be accessible, should stakeholders request for them. Such documents must be easily and correctly interpretable by communities affected by their operations. They must have accurate counterparts written in the national language or the community's local parlance. **(5 points)**

Indicator 7. *The investor/enterprise is compliant with national laws and internationally-accepted standards for responsible investments.* This indicator requires that an investor operates within the confines of national laws (ex. is legally registered, has necessary permits to operate, pays taxes on time, etc.). Investment operations must be compliant with both national and international human rights, labor, and environmental standards. Data needed for this indicator may be gathered from company documents and government records. **(3 points)**

Indicator 8. *The investor/company utilizes and manages natural resources sustainably.* Aside from accomplishing an Environmental Impact Assessment (EIA) and a Social Impact Assessment (SIA), the company must continually ensure that the investment's negative effects on the environment are kept at a minimum. Organic and chemical wastes should be disposed of properly and kept away from ecologically important bodies of water, forests, and agricultural lands. Extraction or exploitation of resources must not go beyond the permitted limit. Companies must also include provisions on environmental protection, sustainable resource use, and even ecological/environmental restoration in their investment policies and management plans. **(4 points)**



Indicator 9. *Minors (younger than 18) are not employed/exploited by the company for labor. As much as possible, companies must avoid hiring children to be part of their workforce. In situations where it is culturally acceptable for minors to assist their family financially through engaging in informal work, the community must set the threshold for appropriate terms of children's engagement with the company. Testaments from members of the community or from company employees, and complaints filed in courts may be sources of information on child labor. (4 points)*

Indicator 10. *Workers of the company and concerned communities are not exposed to occupational hazards (ex. Health and geophysical hazards). The company must ensure the wellbeing of the concerned communities and of its workers. Investment's operations should not cause damages to health or place lives at risk. Company policies must include mitigating measures to minimize health risks. (4 points)*

RESPECT

Indicator 11. *Rights holders and communities confirm that they were involved in the consultation and negotiation processes. Proper dialogues with stakeholders and affected communities must have been conducted prior to the implementation of the project. Through such, rights holders may be able to understand the implications of the project to their communities, voice out their concerns, and have these addressed by investors. Community members and company representatives may confirm if consultations have been conducted. (6 points)*

Indicator 12. *Rights holders and communities were given adequate time to make an informed decision regarding their stake in the investment. Communities must have been given ample time to weigh the risks and costs against the benefits of the proposed investment before they provide free, prior, and informed consent. Although there are no recommendations as to how long the discernment period should be, sufficient time must be provided for communities to discuss among themselves, build consensus, and produce a consolidated stand on the project. (6 points)*

Indicator 13. *Coercive and deceptive acts were not or are not being committed by the investor/company. Community leaders and members must not be forced into accepting the investor's proposals through verbal threats, physical assault, or*




psychological abuse. Moreover, community approval must be acquired through processes deemed transparent by concerned communities. Rights holders must also confirm that they have not been deceived into providing signatures or fingerprints on documents with false or omitted information, or documents not stating the intended purpose of the signatures. **(5 points)**

Indicator 14. *Sacred sites, and sites of religious, cultural, or educational significance, are respected and not desecrated by the investor/company.* An investor must comply with the limits and zoning set by communities when operating in or around areas that are sacred, of religious, cultural, or educational importance. Measures to protect these sites must also be instituted in investment documents and implemented by the company. This will ensure that the cultural integrity of communities is preserved during the investments' operations. **(5 points)**

Indicator 15. *Customary and indigenous knowledge, systems, and practices, are acknowledged and respected by the investor/company.* The investor must have due respect for the set of customary and indigenous knowledge, systems, and practices (IKSPs) of the community. Modern technologies and practices must be introduced with the free, prior, and informed consent (FPIC) of local communities. Changes in technology and practices that did not undergo FPIC might lead to the loss of balance in how the local community relates with their environment. The protection of IKSPs also ensures the preservation of the intangible cultural heritage of local communities. For companies coordinating with non-indigenous communities, investors must remain respectful of the local authority and regulations of the involved party. Communication with legitimate community leaders and authorized community representatives must neither be bypassed nor foregone. **(5 points)**

Indicator 16. *Food sovereignty, nutrition, or livelihoods of the community, especially of vulnerable groups such as women, farmers, fisherfolk, forest dwellers, informal settlers, PWDs, whose rights to the land and resources may be affected, are not threatened by the investor/company.* The company's operations ought to stimulate livelihoods through the creation of employment opportunities, rather than degrade livelihoods through limiting access to nutritious food sources and other resources. Investments in land and agriculture should also enhance the productive capacity of smallholders and improve their access to markets. **(5 points)**

Indicator 17. *The unity of the concerned communities, and cohesion of members of the communities, are not divided or challenged by the investor/company.*



The presence of the investment should not have caused the strife between community members, or among communities in the same locality. Groups must not have been pitted against one another during the company's attempt to win over more influential decision-makers. Decisions of one or several subgroups should not be considered as definitive, if these run contrary to considerations of other equally-affected clusters. There should be no preferential treatment over some groups in the community over others during consultations, in workers and employees, in benefit-sharing, and in providing apt protections and remedial measures to grievances. **(6 points)**

Indicator 18. *No community leader or member was physically and psychologically harmed, or harassed legally/criminalized by the investor/company.* Investors should engage peacefully and constructively with community members or leaders who may strongly oppose the investment during the negotiation stage and as the company proceeds with its operations. Companies must offer options for resolve and/or compromise, instead of resorting to the use of intimidation, force and violence to rid the community of opposing opinions. **(6 points)**

REMEDY

Indicator 19. *The investing company has available, accessible, and user-friendly grievance mechanisms.* Should conflicts arise, companies must have institutionalized means of addressing them in a swift, transparent, and just manner. Localized and affordable grievance mechanisms must be available to all stakeholders who may be affected by the investments. Responding to conflicts and concerns should begin with an accessible complaints desk, and must continue on to systematic monitoring of complaints until the enforcement and observance of resolutions reached by conflicting parties. Rights holders ought to be able to understand and follow the processes involved in these mechanisms easily. Grievance mechanisms must be reflected in companies' investment and management policies and contracts. **(5 points)**

Indicator 20. *Communities displaced by the investor/company were provided with safe relocation, just compensation, restitution, and/or rehabilitation.* Appropriate remedies must be implemented to address negative effects of the investment. In cases where families or communities had to vacate the area in question because of the investment, the company must provide compensation and relocation, if it can no longer facilitate the return of the families into their



residences of origin. Companies that have not caused any displacement may receive the full corresponding score. **(5 points)**

Moving Forward

While the tool has gone through a series of consultations, it does not claim to be complete or faultless. Despite the limitations, the use of the scorecard in its current form is still encouraged. This tool is envisaged to help communities assess private investments objectively. It may capacitate communities to effectively monitor investments, document conflicts, and may help them reinforce their rights to land.

For effective community utilization of the tool, it must be translated into local languages. User manuals in English and in local parlances also ought to be developed. The manuals are to include instructions on how to use the tool, operational definitions of terms and indicators, data sources, and validation techniques.

Applying the tool to various community cases may bring to light other limitations of the present formulation, which may then provide opportunities for the future improvement of the tool. At the same time, multi-stakeholder consultations at national and regional levels, involving CSOs, communities, government, and the private sector must continually be conducted to refine the scorecard.

This scorecard may later be presented to NHRIs, government agencies, and the private/business sector for them to recognize the tool and contribute to its refinement. ■

The Scorecard for Private Business Investors in Land and Agriculture in Asia

What is this tool about?

This tool is the contribution of CSOs to communities in assessing an investment's respect for the land rights and human rights of communities. It aims to provide an empirical basis for investments' impacts on communities, and in particular, on stakeholders' tenurial security.



For whom is this tool for?

This scorecard tool in its present form, is to be used by communities to evaluate private investments in land and agriculture in its initial exploratory stages or those that have just begun operations. The tool may not yet apply to all types of investments – it would have to be revised and refined for it to apply to concessions, investments that have been operating for longer periods, and State-owned companies.

How to use the scorecard

With thoughtful consultation and deliberation with members of the community, kindly fill-in the fields below as objectively as possible. The scoring system per indicator follows an all or nothing method – for each indicator, investments may only receive either the full score or zero. Please base the scores to be assigned for each indicator on facts and reliable evidence. The Remarks column may be used to provide supplemental information or to note the reason/s for the score provided. As much as possible, please fill-in all fields.

	Indicators	Points (region)	Remarks
PROTECT <i>(45 points)</i>	1) The communities' right to use (<i>access, withdraw, and exploit resources</i>) the land is not diminished.	0 or 5	
	2) The communities' control/decision-making rights (<i>management and exclusion</i>) over the land are not diminished.	0 or 5	
	3) There is no threat of involuntary eviction of rights holders and communities.	0 or 5	
	4) Proposed and actual arrangements and mechanisms such as joint ventures, management contracts, and marketing agreements, among others are fair and legal. Economic risks and benefits are shared between the investor/company and the concerned communities.	0 or 5	
	5) Lands allocated by the community for livelihood, community space, residence, and other needs as may be identified by the community, are not curtailed by the investor/company.	0 or 5	
	6) Full and truthful information on the investment, including contracts and relevant documents are transparent, accessible, and are in a language understood by the communities, including women and other most marginalized groups.	0 or 5	
	7) The investor/enterprise is compliant with national laws and internationally-accepted standards for responsible investments.	0 or 3	
	8) The investor/company utilizes and manages natural resources sustainably.	0 or 4	
	9) Minors (younger than 18) are not employed/exploited by the company for labor.	0 or 4	
	10) Workers of the company and concerned communities are not exposed to occupational hazards (ex. Health and geophysical hazards)	0 or 4	



RESPECT (45 points)	11) Rights holders and communities confirm that they were involved in the consultation and negotiation processes.	0 or 6	
	12) Rights holders and communities were given adequate time to make an informed decision regarding their stake in the investment.	0 or 6	
	13) Coercive and deceptive acts were not or are not being committed by the investor/company.	0 or 5	
	14) Sacred sites, and sites of religious, cultural, or educational significance, are respected and not desecrated by the investor/company.	0 or 5	
	15) Customary and indigenous knowledge, systems, and practices, are acknowledged and respected by the investor/company.	0 or 6	
	16) Food sovereignty, nutrition, or livelihood of the community, especially of vulnerable groups such as women, farmers, fisherfolk, forest dwellers, informal settlers, PWDs, whose rights to the land and resources may be affected, are not threatened by the investor/company.	0 or 5	
	17) The unity of the concerned communities, and cohesion of members of the communities, are not divided or challenged by the investor/company.	0 or 6	
	18) No community leader or member was physically and psychologically harmed, or harassed legally/criminalized by the investor/company.	0 or 6	
REMEDY (10 points)	19) The investing company has available, accessible, and user-friendly grievance mechanisms.	0 or 5	
	20) Communities displaced by the investor/company were provided with safe relocation, just compensation, restitution, and/or rehabilitation.	0 or 5	
TOTAL		/100	

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Land Watch Asia Working Group for Mainstreaming Land Rights as Human Rights



ANGOC

Founded in 1979, the **Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)** is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development. ANGOC network members and partners work in 10 Asian countries together with 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs) and international financial institutions (IFIs).

ANGOC is a member of the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium and the International Land Coalition (ILC).

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People's Campaign for Agrarian Reform Network, Inc. (AR Now!) is an advocacy and campaign center for the promotion of agrarian reform and sustainable development. Its vision is to achieve peasant empowerment, agrarian and aquatic reform, sustainable agriculture and rural development.

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Association for Realisation of Basic Needs (ARBAN), a non-government development organization concerned with the fundamental rights and the basic needs of landless agricultural laborers, sharecroppers and marginalized people, was founded on 18 February 1984. It works with the rural-urban poor and powerless and indigenous people for their socio-economic, cultural, and political empowerment and emancipation from all forms of bondages including injustices, inequalities and dispossession by promoting and practicing democratic values and participatory development processes at all levels through implementing various projects and programs.

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Community Development Association (CDA) is a non-government development organization that has been facilitating the rural poor, landless and marginal farmers, the plain land Indigenous people (IP) including differently able men, women, and rural youth with a view to empower, ensure access to land rights and mobilize the people-centered land governance and agrarian reform upon the contextual needs and demands led by 700 village-based peoples organizations in the north-western part of Bangladesh.

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Community Self Reliance Centre (CSRC) has been at the forefront of land and agrarian rights campaign in Nepal. CSRC educates, organizes, and empowers people deprived of their basic rights to land to lead free, secure, and dignified lives. The organization's programs focus on strengthening community organizations, developing human rights defenders, improving livelihoods, and promoting land and agrarian reform among land-poor farmers. Since its establishment, CSRC has constantly worked to transform discriminatory and unjust social relations by organizing landless, land poor and marginalized communities to claim and exercise their rights.

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Established in 1994, the **Consortium for Agrarian Reform (KPA)** currently consists of 153 people's organizations (peasants, indigenous peoples, rural women, fisherfolk, urban poor) and NGOs in 23 provinces in Indonesia. KPA fights for agrarian reform in Indonesia through advocacy and the strengthening of people's organizations. KPA's focus on land reform and tenurial security, and policy advocacy on these issues has put the coalition at the forefront of the land rights struggles of Indonesia's landless rural poor, especially with indigenous peoples in several areas in Outer Java. KPA encourages a participatory and pluralistic approach which recognizes the development of different systems of land use and tenure to ensure land rights. KPA is a people's movement that has an open and independent character.

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Ekta Parishad is a people's movement dedicated to non-violent principles of action, which aims to see India's poorest people gain control over livelihood resources, especially land, water and forest. Ekta Parishad is a federation of approximately 11,000 community-based organizations with thousands of individual members. It is currently operating in 10 States working for the land and livelihood rights of India's most marginalized communities.

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Social Development Foundation (SDF) was founded in October 1998 with an aim to strengthen the autonomous grassroots movements, build secular democratic leadership among the most marginalized communities and develop scientific temper among people. The organization reached the most marginalized communities and started the land literacy campaign among them. SDF focuses on land reforms with right-based approach. Though the organization was constituted in Delhi, its main grassroots operations are mainly in the Uttar Pradesh and Uttarakhand States. SDF also provides necessary support to engage with policy makers, social movements, academics, lawyers, and civil society organizations.

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STAR Kampuchea (SK) is a Cambodian non-profit and non-partisan organization established in 1997 dedicated to building democracy through strengthening of civil societies. SK also provides direct support to communities suffering from resource conflicts like land-grabbing and land rights abuses through capacity building and legal services.

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Xavier Science Foundation, Inc. (XSF) is a non-political, non-stock, non-profit organization established and designed to encourage, support, assist, and finance projects and programs dedicated to the pursuit of social and educational development of the people in Mindanao. It is a legal and financial mechanism generating and managing resources to support such socially-concerned and development-oriented projects and programs.

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The International Land Coalition (ILC) is a global alliance of civil society and intergovernmental organizations working together to put people at the center of land governance. Their shared goal of ILC's over 200 members is to realize land governance for, and with people at the country level, responding to the needs and protecting the rights of women, men and communities who live on and from the land.

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“Now more than ever, we need governments and businesses to work together to ensure that those most vulnerable to negative impacts from business activities and globalized supply chains are protected and respected.”

– John Ruggie

This publication discusses the relevance to land and agriculture of the United Nations Guiding Principles on Business and Human Rights (UNGP BHR), and provides an overview of the state of the UNGP BHR’s implementation in Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines. While significant efforts were undertaken by human rights institutions and CSOs to promote UNGP BHR, this book outlines areas of action at country and regional levels to mainstream UNGP BHR. Also included in this publication is a Scorecard that communities may use in assessing private investments in land and agriculture in their initial exploratory stages or investments that have just begun operations. Noting that developing an effective scorecard system requires a long and thorough consultative process, this tool is not to be seen as a finished product but rather, a work-in-progress.