

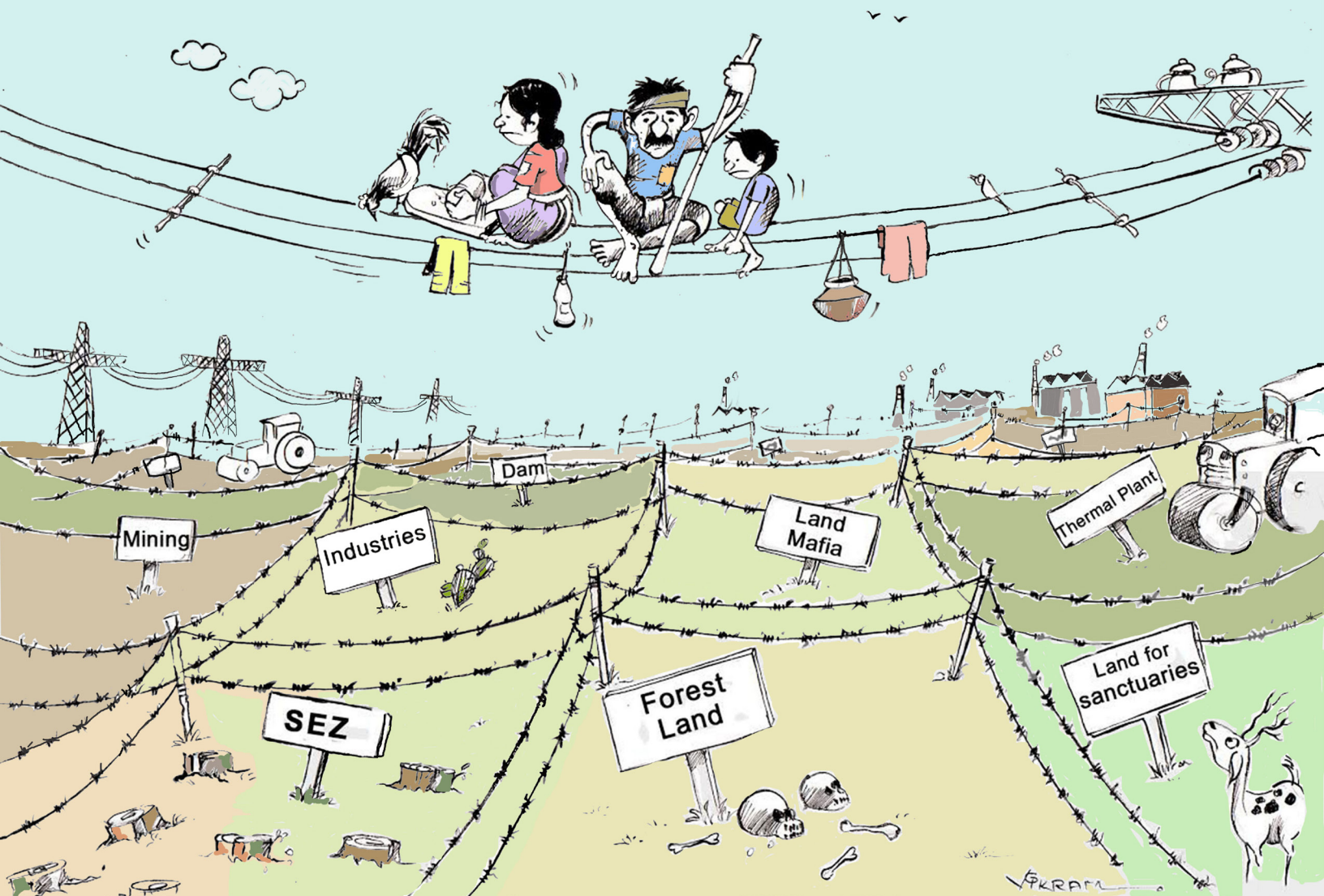


LOK NITI

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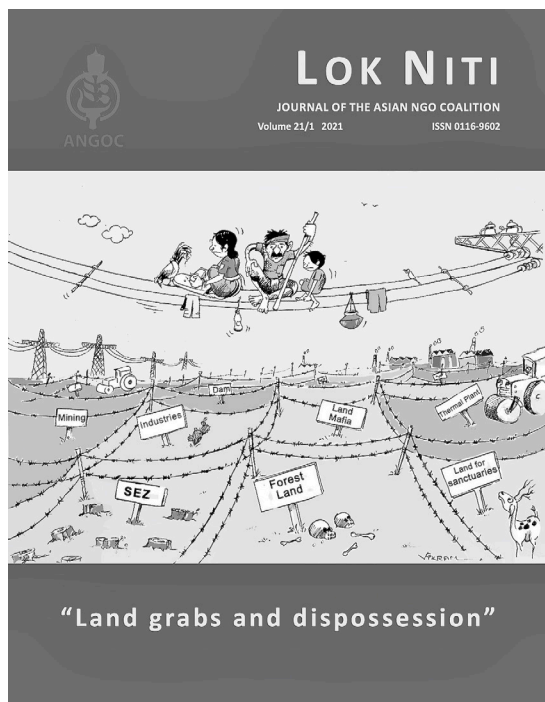
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“Land grabs and dispossession”



What is Lok Niti?



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

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

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

Lok Niti is the journal of the Asian NGO Coalition.

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



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editorial

There was never a time in Asia when there was no competition over such a finite and valuable resource as land, upon which the majority of its people depend for their lives and their livelihood. But a deeply disturbing trend reared its ugly head several years ago that had altered the rules of the game: land grabbing, defined as large-scale land acquisition through any means necessary by individuals or entities for interests such as speculation or resource control, often at the expense of the environment and human rights.

Driven by the desire for profit and investments, the rich and powerful were able to tilt the playing field firmly toward their side. As a result, ordinary citizens, especially the poor and marginalized including indigenous peoples, are being systematically dispossessed of coveted precious land that is theirs by right.

This growing phenomenon and the conflicts that it has inevitably spawned are seen across the region and detailed in this edition of *Lok Niti*, which aims to provide key perspectives on how and why land grabbing is happening in Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines.

The methods employed to grab huge tracts of land as well as the contexts and policies that have

made this possible vary across the six countries covered here. But a recurring theme is that national governments and both national and local laws have encouraged land grabbing and even legitimized it despite the adverse effects on the people and the environment.

The case studies here also show that while there are differences in methods and approaches employed by perpetrators, there are common features that define land grabbing.

The land involved, for example, is usually larger than what is usually involved in ordinary buy-and-sell transactions. Fraud or force is often used to acquire the land and is resorted to by those in superior positions of money, power, knowledge, and privilege. Land grabbers may be individuals or companies, both private or State-owned, local or foreign. And what is also significant is that land acquisition can be executed through legal means as the elite and powerful use their positions to use laws or bend the laws to their advantage.

In Cambodia, Indonesia, and the Philippines, government policies encouraging investments in rapidly expanding plantations – sugarcane for Cambodia and oil palm for the Philippines and Indonesia – have consequently fostered land grabbing.



Government land concessions are often justified on the basis of false claims that the lands being taken are “idle,” “marginal,” or “marginally-productive.” Yet in reality, indigenous communities and small farmers are often deprived of and evicted from the lands they once held and cultivated.

There are also cases where it is the national government itself that is primarily involved in land grabbing.

In Bangladesh, the national government adopted the policy of establishing economic zones to attract foreign investments to shore up the national accounts. Unfortunately, these economic zones have been carved out of prime agricultural lands, thus depriving too many of its citizens of their right over the land. Then in Nepal, public land that could have also gone to its own citizens who have long been waiting to take control of land they can call their own have been instead leased to private firms that promise to bring in tax revenue and also provide jobs.

In these cases, the government and State-run companies themselves have used their powers of eminent domain to acquire and transfer lands to the corporate sector to the gross disadvantage of their own citizens.

Finally, the examples in India show how indigenous peoples are being dispossessed over their land, bowing under the pressure exerted by the national government to use the land they have traditionally used, such as forests, for leasing, or use by the private sector that dangle incentives such as investments.

What is alarming about the land grabbing trend in these countries is that it is being increasingly

pursued through legal instruments such as leases, concessions, agribusiness ventures, State-led expropriations, joint ventures and growership, and marketing agreements. These, in turn, make it appear that land grabs are in fact welcome and acceptable when they are not since they have a patina of legality.

Left suffering the permanent consequences are the poor and the marginalized who have lost either their access to or ownership over their land in the name of so-called progress. Never mind if these deals resulted to conflicts that sometimes lead to the death of those fighting for their rights or to the government not getting what it thought it would get in terms of revenues from the private corporations whose operations were left unmonitored or checked against their concession agreements.

And the devastating COVID-19 pandemic did not slow down the pace of land grabbing but it did stifle mass actions and monitoring of these large-scale land projects due to restrictions over movement and entry into these project sites.

The unprecedented and still-raging health and economic crises have in fact been used to justify repression of public protests, with government representatives saying that these could not be allowed because of the overriding need for social distancing to stem the spread of the disease.

The six detailed cases here show four basic failures in land governance: a) the lack of transparency, accountability and popular empowerment that has caused elite capture of land and resources; b) faulty national legal systems that have failed to legally recognize the land rights of local users; c) the bias toward the protection of the needs of investors rather than the rights of the rural poor;



and, d) the sidelining of smallholder production that is practiced by the majority of the region's agricultural workers.

Given these dire conditions, it is imperative that land grabbing be brought under a harsh light so that both the citizens and the governments that are supposed to represent them modify or recommend policies that will protect the people against the unabated grabbing of land.

Governments and State agencies should, first of all, protect the poor against all forms of arbitrary eviction and forced displacement, particularly indigenous peoples, ethnic minorities and forest dwellers who have long been victimized by those in superior positions of power.

They should also review and monitor agribusiness deals, fully adhere to international human rights laws, and protect agriculture areas and small producers against indiscriminate conversion of valuable agricultural land that will in turn lead to commercial developments.

The corporate sector, meanwhile, is enjoined to adhere to the highest standards of environmental

and social safeguards and publicly disclose with full transparency their master plans and contracts for the public to see if their projects are indeed above-board.

Finally, civil society organizations are called on to continue to closely monitor and document land grab cases across the region in the name of the poor and marginalized who are under constant threat of losing their land.

They should also continue to collaborate with National Human Rights Institutions/Commissions whenever possible to enlighten them on land grab cases and their adverse effect on the citizens, and engage with the United Nations and multilateral institutions for the passage of a legally binding treaty on transnational companies and human rights.

With profit-seeking commercial interests continuing to flex their muscles to influence national and local governments to do their bidding, civil society organizations and activist groups have their work cut out for them, but it must be taken up as there are no signs that land grabbing will otherwise stop anytime soon.



Land grabs and dispossession: A review of six land grab cases in Asia

Antonio B. Quizon
ANGOC

WHAT ARE LAND GRABS?

While the term land grabbing has been used broadly throughout history, it is now often used to refer to “large-scale land acquisitions, following the 2007-2008 world food crisis.” A more contemporary definition of land grabbing is provided by Eco Ruralis (2016), i.e.: “the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally typical amounts of land by any persons or entities (public or private, foreign or domestic) via any means (‘legal’ or ‘illegal’) for purposes of speculation, extraction, resource control or commodification. This is often at the expense of agroecology, land stewardship, food sovereignty and human rights.”

Land grabbers may be individuals, groups, or companies; private, public, or governmental; domestic or foreign. The land involved in land grabbing is usually larger than typical size, or is higher in value. In Philippine agriculture, for

example, only 1.8 percent of all farm holdings are above seven (7) hectares. And in Bangladesh and Nepal, where average farm sizes are about one-half hectare, farms above two hectares could be considered as “larger than typical.”

Lands that are taken often have higher value than those of adjacent plots or areas. The lands may be located by the roadside, near a tourist area or commercial zone, or may be rich in natural resources (trees, minerals, water). Oftentimes, land grabbed areas are converted to other uses – to increase the value of the property, or to extract resources.

Land grabs are not defined solely by their size or value, but by a combination of factors. Land grabbing is all about gaining overall control. Land grabbers get control over land in several ways, including through long-term lease arrangements or government concessions, by having tenant farmers or sharecroppers, or by actually owning the land. Land can also be controlled through



Box 1: Defining features of land grabs

- Land grabbers may be individuals or companies; private, public or governmental; domestic or foreign
- Land involved is usually larger than typical size, or higher in value
- Involves elite capture (using superior positions of money, power, knowledge and privilege)
- Involves seizure of control (through ownership, possession, lease, supply contracts, etc.)
- Uses fraud or force
- Acquires land by dispossession
- May occur legally or illegally; or is tolerated by existing laws

quota and supply contracts that force people to use the land in a specific way (Eco Ruralis, 2016).

Land grabbing involves the use of superior positions of money, power, knowledge, and influence to gain rights to land. Land is captured by the elite, often with the use of fraud or force. Fraud comes in different forms, such as in falsification of public documents, bribery, spreading rumors and fake news, and making false promises. The use of force is similarly expressed in several ways, such as with threats, intimidation, legal cases, evictions, and physical harm. In human terms, all these mean that poorer and less influential people and families are dispossessed or encroached upon. And when people lose access to their land, they also lose their means to obtain food, their communities, their cultures, their livelihoods, and their way of life.

Land grabbing may occur both legally and illegally within current laws. In fact, most land grabs are actually legal, meaning that the land deals are tolerated or even assisted by existing laws (Eco Ruralis, 2016). In such cases, laws are seen to be

illegitimate, unjust, and immoral when they allow land grabbing and the abuse of human rights.

LAND GRAB CASES UNDER REVIEW

This collection examines aspects of land grabs in six Asian countries, as seen and written by civil society organizations working on land rights. It provides perspectives on how and why land grabbing is practiced in Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines. Although the six cases differ widely in their specific narratives and contexts, they emphasize the role that national governments and domestic policies play in facilitating and legitimizing land grabs in each country. The cases within this publication also explore how the legislative and governance systems in each respective country responds to threats to land rights, and highlight how communities are resisting land grabs. They emphasize the need for States in Asia to move from existing land and governance regimes towards a new order that encourages more equitable land rights allocation and the protection of stakeholders' rights.

The studies are undertaken with the following stated objectives:

- to describe and discuss the processes (stakeholders, forms of control processes, drivers) and impacts of land grabbing in a particular sector;
- to describe and identify issues and challenges of policies and mechanisms of the State in relation to the sector; and,
- to formulate recommendations to protect and uphold the tenure rights of individuals and communities in the sector.

The three cases of land grabbing from Cambodia, Indonesia and the Philippines are somewhat similar. They focus on long-term land leases or concessions (25 to 99 years) taken from the public



Photo from *Konsorsium Pembaruan Agraria (KPA)*

domain or from customary lands of indigenous communities – in order to set-up large-scale monoculture plantations geared for the export market. The two crops of choice – *sugarcane* and *palm oil* – are both cultivated not just for food, but also for the growing biofuel industry.

The investors are all transnational companies from Asia; they expand business operations vertically, usually controlling the full process of production all the way to export. Government land concessions are often justified on the basis of false claims that the lands being taken are “idle,” “marginal,” or “marginally-productive.” Yet in reality, indigenous communities and small farmers are often deprived of and evicted from the lands they once held and cultivated.

Meanwhile, the cases from Nepal and Bangladesh focus on the role of the government and State-owned corporations in the leasing of forest areas and agricultural lands to the private sector – for use and conversion to other purposes – i.e., infrastructure, commercial centers, urban uses, tourism, export processing zones (EPZs) and special economic zones (SEZs). In these cases, the government acts as the lessor, agent or the broker, using the State’s coercive powers of *eminent domain* in order to acquire and to transfer lands to the corporate sector. And while the process of compulsory acquisition displaces poor families from their homes, fields and livelihoods, the land in question is often leased out at very low rents, sold below-market prices, or even given away to the private sector against



Box 2: Cases and contexts

PLANTATIONS

- *Cambodia*: “Blood Sugar” Business in Preah Vihear, Cambodia
- *Indonesia*: Land grabbing in the Palm Oil Plantation Sector
- *Philippines*: Oil Palm Plantations Encroach on Indigenous People’s Lands

PUBLIC LANDS

- *Bangladesh*: Building Commercial Establishments (EPZs and SEZs) in Agricultural Lands
- *Nepal*: Leasing Public Land to the Private Sector

SECTORAL FOCUS

- *India*: Land Grabbing and its Effects on *Adivasis*

promises of employment creation or transfers of technology (CSRC, 2020).

Finally, the case study from India focuses on the impacts of land grabbing on indigenous peoples (*adivasis*) in the country, especially in the past three decades under a post-liberalized economy. Two caselets – on Sonbhadra District in Eastern Uttar Pradesh, and on the Polavaram Dam Project in Andhra Pradesh – both illustrate how the *adivasis* have been deceived by State agencies, and how the government has failed in the proper implementation of the law (Rawat, 2021).

The case studies are based mainly on desk research and analyses of secondary data. These were supplemented with field visits and interviews with affected communities and civil society organizations. However, such interactions were limited due to the COVID-19 pandemic in 2020 when the writing of the case studies was carried out. In some instances, authorities used the pandemic restrictions to deny “outsiders” the right to visit land conflict areas. Thus, some face-to-face meetings were replaced by virtual meetings.

The case studies were discussed and validated in online consultative meetings organized in each country. At the regional level, a series of online discussions laid the basis for the section on “Recommendations,” as well as for the added section on “Land grabs at a time of the COVID-19 Pandemic” – that form part of this paper.

LAND GRABS IN ASIA: A REVIEW OF THE DIFFERENT CONTEXTS

Although the exact extent of land grabbing in South and Southeast Asia is unknown, it is important to understand the contexts in which they occur and are discussed in the different cases.

Global land acquisitions and expansion of plantations in Southeast Asia

Back in 2008, a global food crisis fueled land speculations and massive land grabs on an unprecedented scale not seen in modern history. In the wake of that crisis, many food-producing countries stopped exporting certain food supplies. Countries that relied on food imports sought to secure their food needs by gaining control of agricultural lands and farms in countries primarily located in Africa and Asia. The food crisis at that time was fueled by the collapse of international financial markets in 2008, which also led to market players, including domestic urban elites, looking for a quick financial turnover to choose land investment as a new strategy for growth, food and fuel production. The intense competition for land that followed the 2008 food crisis – for plantation agriculture, mining, infrastructure, and other uses – left countless communities reeling from dispossession, loss of livelihoods, increased food insecurity, violence, and political instability.



BOX 3: Legal designs of land grabs

- Increasingly, land grabs are pursued through *legal instruments* – leases, concessions, agribusiness ventures, growership & marketing agreements, State-led expropriations & joint ventures.
- Some land grabs are pushed under broader *legal frameworks* – e.g., Medium-Term Development Plans, Economic Land Concessions, State Acquisition Acts, Land Procurement for the Development of Public Interest, Export Processing Zones, and Public Land Trusts.
- Others are pursued under *international agreements*, such as “Comprehensive Cooperation between the PRC and ASEAN.”
- In some cases, land deals are merely tolerated under the law. In such cases, the laws are seen to be illegitimate, unjust and immoral when they allow land grabbing and the abuse of human rights.

In 2008, land acquisitions in Asia were led by capital-rich Arab Gulf States and the prosperous countries of East Asia. By the end of 2008, an estimated 7.6 million hectares of land overseas were controlled by China, South Korea, United Arab Emirates, Japan, and Saudi Arabia (Quizon, 2012). Most of the lands acquired were used for agricultural production, although lands were also used for other purposes, including logging, mining, livestock production, and tourism.

Within the region, many of these large-scale land acquisitions took place particularly in Southeast Asian countries (Cambodia, Indonesia) – taking advantage of the availability of land and the willingness of these governments to issue long-term land concessions in the public domain. In many cases, the sudden surge in external investments exacerbated existing land conflicts.

Indonesia. Former colonial Dutch plantations continue to be managed under State-owned plantation companies by virtue of Presidential Decree 32/1979, as colonial lands seized from the local people were never restituted. Moreover, the government had long been granting large-scale concessions over forestlands under State control since the 1990s. Under Law 41/1999, the Ministry of Forestry was granted the authority to unilaterally designate forest areas in the country. This eventually placed some 137 million hectares or 69 percent of the country’s territory as the

designated “forest area.” Today, there are at least 30,000 definitive villages living in the forest area, where the villagers have been vulnerable to daily criminalization and forced evictions (Luthfi and Fauzi, 2018).

As of 2017, the Ministry of Environment and Forestry has issued land concessions to 499 enterprises covering a total of 68.7 million hectares, or 38 percent of the country’s total land area (KPA, 2018). Most of these concession areas have been converted into plantations, primarily for palm oil, coconut, rubber, coffee, tea, and tobacco as well as paper pulp.

Meanwhile, for the whole of 2020, the Consortium for Agrarian Reform (KPA) recorded 241 land conflicts involving 359 villages and spanning a combined area of 624,272 hectares in the country. Of the total conflicts, 69 percent occurred in two sectors, namely plantations (primarily palm oil) and forestry (pulpwood production and logging) (KPA, 2020). As reported by KPA Executive Director Dewi Kartika, “The plantation sector is very land-hungry, and it often clashes with people’s settlements, agricultural lands and locals’ plantations” (Jong, 2021).

Cambodia. The State currently controls some 14.5 million hectares or about 80 percent of the country’s territory. The Land Law of 2001 granted the government the right to issue Economic Land



"The prevalence of one-sided negotiations, unfair contracts and cases of forcible entry have brought about land conflicts between companies and local communities."

Concession (ELC) leases of up to 99 years – in order to attract private investors and to establish agro-industries. But where property rights are weak and many rural people lack the needed land certificates, the land concessions have triggered conflicts between companies with State backing and local communities.

Since 1993, over 2.1 million hectares have been leased under ELCs to private entities. And since 2003, an estimated 400,000 people have been affected by land disputes, with cases of company and State-led violence against land-grabbing victims being reported.

Amid growing criticism, the government in 2016 announced that more than one million hectares (2.5 million acres) of ELC land had been revoked by the State, reducing the amount of ELC land to around 1.1 million hectares. But according to figures compiled by local rights group Licadho, the government has so far granted 297 concessions – equivalent to 2.1 million hectares, or about 12 percent of the country's total land area. Of these concessions, Chinese firms controlled the largest total area at nearly 400,000 hectares, followed by those from Vietnam at more than 360,000 hectares.¹ Licadho said that at least 15 companies, all of which are owned by tycoons

¹ In 2008, the Chinese State-owned Union Development Group (UDG) was granted 36,000 hectares (89,000 acres) of land inside a national park for 99 years. The concession was three times the legal limit and included 20 percent of Cambodia's coastline.

² Cambodian People's Party

and CPP² senators, were granted more than 10,000 hectares (25,000 acres) of ELC – exceeding the amount permitted by the 2001 Land Law. The companies claim to have invested in rubber, sugar, paper pulp, cassava, and palm oil plantations³ (Radio Free Asia, 2020).

Among these concessions is the "blood sugar" case focusing on five Chinese-owned companies under a single conglomerate that has been granted five ELCs covering 42,000 hectares.⁴ The ELCs affect more than 1,000 families comprised of both indigenous peoples (IPs) and non-IPs in 10 communes of three districts in Preah Vihear Province (Nhek and Heng, 2021).

Philippines. The country provides a different context for large-scale land acquisitions – due to the institution of the 1987 Comprehensive Agrarian Reform Law (CARP) and the 1997 Indigenous People's Rights Act (IPRA). Since much of private agricultural lands have been redistributed under agrarian reform, agribusiness companies resorted to 25-year leaseback arrangements, contract growing, or supply and marketing agreements with small producers and cooperatives. However, disputes often arose between farmer cooperatives and investors on matters of labor, pricing, management practices, and others – due to unfavorable contracts, weak monitoring by the government, and weak governance within cooperatives (Quizon, 2016).

In recent years, palm oil plantation companies have expanded into forest areas – through Forest Management Agreements with government, or

³ The ELC figures exclude other concessions granted by the State, such as those for mining, seaports, airports, industrial zones, and fishing lots, as well as some 38 special economic zones created by the government in 2016.

⁴ The term "blood sugar" describes the conflict that ensued between the community and investor company. The community explains that the brown sugarcane juice could not be refined into "white" sugar as the company expected. Thus, the color of sugar is brown like "blood" because the company is cursed (Nhek and Heng, 2021).



through agribusiness venture agreements with Community-Based Forest Management groups or with indigenous communities (Ravanera, Musni, and Naungayan, 2021). However, the prevalence of one-sided negotiations, unfair contracts and cases of forcible entry have brought about land conflicts between companies and local communities.

In the 2018 Philippine Land Conflict Monitoring study of ANGOC, plantations accounted for 101 out of the 352 cases of land conflict recorded over an 18-month period in 2017 to 2018. Some 47 of these conflicts were in palm oil plantations (Salomon, 2018). Yet, based on a 2014 government roadmap, there are plans to expand the oil palm industry. The government estimates that areas suited for oil palm plantations in the country reach around one million hectares.

Expansion of EPZs and SEZs for export industries in Bangladesh

The hunger for land is inevitable in Bangladesh, one of the world's most densely populated nations with over 160 million people living in 147,570 square kilometers. With its outdated land record system, forgery and corruption are blamed for many of the land disputes. With the legal system too expensive and with little government incentive, the poor and marginalized are often denied justice. Cases linger for years and families are often forced to spend huge sums just to recover property.

There are several types of land grabbing in Bangladesh that often cause displacement and land encroachment. The first occurs in the *char* riverine and coastal sediment regions that are in a constant state of formation and erosion. In these areas, there are power plays for land that uproot small producers from their rich alluvial soils.

The second type involves land capture by elites who engage gangs, corrupted public servants and the military to coerce small producers into relinquishing titles. Fraud and forgery of official documents are often involved. A third type occurs “legally” such as when the government leases out large tracts of *khas* land in the Chittagong Hill Tracts (CHT) for private commercial plantations and enterprises.

Over the past few decades, there has been a growth in large-scale land acquisition by the government for building export processing zones (EPZs) and special economic zones (SEZs) in different parts of the country. As of 2020, over 2,000 hectares of peri-urban agricultural lands have been acquired by government for the building of some 10 EPZs for the export industry. The government has also given the private sector permission to build and operate competing EPZs, and the initial construction on a Korean EPZ started in 1999. In addition, under the government's Industrial Policy of 2016, some 100 new EPZs and SEZs are planned to be established in the next 15 years.

Critics claim that this will contribute to the further loss of agricultural land – as industrialization, along with their attendant expansion of commercial and residential areas – rapidly encroach on local farming areas. Already, the shifting rate of agricultural land to non-agricultural use is about one percent per year, and the availability of agricultural land is gradually declining. Meanwhile, about 60 percent of farmers are functionally landless and depend on sharecropping on land owned by others. Some 70 percent of all farm holdings are up to three *bighas* of land (up to 0.4 of a hectare) but constitute only 20 percent of the total land (Hossain, Bayes, and Islam, 2018).



The leasing of public lands to the private sector in Nepal

In May 2008, the monarchy in Nepal was abolished after two centuries of royal rule. This followed a prolonged period of civil war and Maoist insurgency in the 1990s and 2000s, and an UN-brokered Peace Accord in 2006.

With the abolition of the monarchy, private investors and the government gained interest in the acquisition of large portions of royal family lands that then became public lands. The Nepal Trust Act of 2008 passed by Parliament provided for the establishment of a Trust to manage and utilize the properties that remained in the name of King Birendra, Queen Aishwarya, and their family members.

While the Act provided for possible lease arrangements, it did not provide for clear criteria on by which to lease the land to individuals or companies. Among the main beneficiaries was Yeti Holdings, the largest travel and tourism group in Nepal, which gained 148 hectares of prime properties through six lease agreements from 2006 to 2019. There was a lack of transparency in the negotiation process and in the issuance of notices for competitive bidding. From media and other sources, there were claims that the owners of Yeti Holdings had close ties with the Communist Party of Nepal, which was the party in power. Among the prime properties leased out was the Gokarna Forest Resort, a 142-hectare area in Kathmandu which historically was part of the private royal hunting ground of the erstwhile Kings of Nepal.


The case stands out, as land is transferred from the Monarchy to a Public Trust, then to an elite business group in the context of a country undergoing political change.

Continuing dispossession of *adivasis* in India

Asia is home to 70 percent of the world's indigenous peoples. Historically displaced by colonialism, indigenous communities continue to be dispossessed of their lands due to the entry of mining, plantations, tourism, urban expansion, and government-led "development" projects. Many indigenous communities are aware that they are in possession, yet have no legal tenure, over lands, territory and forest resources that outsiders covet.

In India, indigenous people are known as *adivasis* (or original inhabitants). They constitute some 8.6 percent (104 million people) of the Indian population, based on the 2011 Census. Some 705 groups have been bestowed official recognition of "scheduled tribes" (ST) – a legal term used for administering specific Constitutional privileges, protection, and benefits for specific sections of people historically considered disadvantaged and backward. These scheduled tribes are concentrated in the northeast and central regions of the country.

Studies suggest that over 10 million *adivasis* in India have been displaced without proper rehabilitation in the last 70 years in the name of "development." Since the 1990s, India has embraced market liberalization as State policy, leading to an acceleration in land acquisitions, and an escalation in displacement and destruction. With their twin goals of national security and investment for economic development, State governments and authorities have been the primary "brokers" in transferring *adivasis* lands to commercial interests. These have caused widespread displacement and dispossession among *adivasis* communities, despite their rights being guaranteed under various aspects of Indian jurisprudence (Rawat, 2021).



The two caselets provide some examples of how *adivasis* are dispossessed. The first is from the District of Sonbhadra, Uttar Pradesh involving 34 hectares of land that used to belong to the local monarch, the Rajah of Badhar. After the zamindari abolition in 1952, the land was classified as “barren” land and transferred to the Gram Sabha, even though it was tilled by *Gond* farmers. Through a potentially illegal transfer, the land later ended up in the possession of a Trust, and then the land was illegally sold to a feudal lord.

The second case is related to a government project – the building of the Polavaram Dam across the Godavari River in Andhra Pradesh that would potentially inundate some 300 villages and affect some 200,000 to 300,000 people in three Indian States. The affected area includes 3,428 hectares of forest land which is home to *dalit adivasis* and forest communities who have not been properly compensated or rehabilitated.

DRIVERS AND ACTORS

The external “push” by investors

Following the frenzy of global land acquisitions in 2008 to 2010, land-based investments in Asia continue to expand with the growth of agricultural plantations, extractive industries such as logging and mining, and the creation of industrial parks and processing zones. Investors continue to seek out enclaves where land, water, and natural resources are abundant and cheap, labor is cheap and docile, taxes are low, environmental and social regulations are minimal, and the State protects corporate interests (Quizon, 2013).

A major driver of land investments has been the growing global demand for cheap consumer goods. However, there are other driving forces as well.

“Many indigenous communities are aware that they are in possession, yet have no legal tenure, over lands, territory and forest resources that outsiders covet.”

The *first driver* is food production, as food import-dependent countries seek to produce their own food abroad. In Asia, these include the Arab Gulf States that look to invest surplus oil revenue for establishing food production centers abroad. Japan is heavily import-dependent with its food; domestic agriculture is heavily subsidized, and historically the country had a long-time practice of creating food bases abroad. Also, China has been shifting some of its food production abroad, as the country emphasizes industrialization and the production of high-value crops.

The *second driver* is the growing demand of the biofuel industry. This has two related factors. One is market pressure: rising oil prices, increasing energy consumption, conflicts in the Middle East, and the industrial growth of China and East Asia. The other is energy policies in the effort to combat climate change. These include the European Union targets in sourcing transport fuels from renewable fuels, as well as the US Energy Independence Act. Thus, biofuel production has contributed to the growth of plantations especially in Southeast Asia. The common crops are palm oil, sugarcane, maize, soybean, and jathropa.

The *third driver* is capital accumulation and industrial expansion especially in East Asia and Southeast Asia that have experienced high economic growth rates over the past two decades. Major investors have come from China. Beginning in 2012, China initiated a “Going Global” strategy



“While many cases of land grabbing are due to illegal land transactions involving corrupt public officials, most of the cases described here stem from the governments’ own efforts to push for private investments...”

that encouraged Chinese enterprises to invest overseas, with a great amount of investment going to South East Asia. The 10-country Association of Southeast Asian Nations (ASEAN), with a combined population of some 650 million, is collectively the world’s fifth-largest economy and is home to a number of potential new supply chain bases.

Similarly, Indonesian and Malaysian companies which are the world’s top producers of palm oil, rubber and other industrial crops, are now seeking to expand their production areas abroad. Along with regional investments has been the growth of regional tourism and the real estate industry.

A *fourth driver* are the policies of importing countries, especially under the European Union. One of these is the 2001 Everything But Arms (EBA) policy which is an initiative of the European Union. Under EBA, all imports to the EU from the Least Developed Countries (LDCs) are duty-free and quota-free, with the exception of armaments. The list of LDC countries in Asia that are given preferential access include Laos, Cambodia, and Bangladesh. The aim of the scheme is to encourage the development of the world’s poorest countries. This has encouraged exporters to the EU to establish their production bases, from sugarcane to garments, in these LDCs.

However, EBA preferences can be removed if beneficiary countries fail to respect core human rights and labor rights. In February 2020, the European Commission decided to withdraw part of the tariff preferences granted to Cambodia under the EBA’s trade scheme due to the serious and systematic violations of the human rights principles.⁵

The “pull” for investments and the brokering role by host governments

While many cases of land grabbing are due to illegal land transactions involving corrupt public officials, most of the cases described here stem from the governments’ own efforts to push for private investments in large-scale land acquisitions. The case studies here serve to illustrate the role that national governments and domestic policies play in facilitating and legitimizing land grabs in each country. What are the drivers of land grabs in each case?

Plantations. The cases from Cambodia, Indonesia and the Philippines illustrate how governments actively promote agribusiness investments, by identifying potential lands for prospective investors, by facilitating large-scale land acquisitions and transfers, and by providing fiscal incentives and tax holidays. Government efforts are driven by several underlying objectives:

- *First* is the need to offset declining public investments in agriculture and the dwindling of Official Development Assistance (ODA) worldwide. Given the decline in public spending for agriculture, in terms of its share of national budgets, governments now increasingly rely on the “private sector” and on foreign direct investments (FDIs).

⁵ Niem Chheng (2020). "EU Partially Withdraw EBA." The Phnom Penh Post. 13 February 2020. <https://www.phnompenhpost.com/national-politics/eu-partially-withdraws-eba>. It should be noted that the affected products are garments and footwear products, all travel goods, and sugar.



- *Second* are the stated twin goals of alleviating rural poverty and of quelling armed conflict. In the Philippines, oil palm plantations have expanded into forest areas and into the customary lands of indigenous peoples, often pictured as bases of insurgency. In the broader view of governments, the expansion of plantations into the hinterlands, forest areas, and islands also helps to bring remote areas and communities under their purview and control.
- *Third* are the promises that foreign investments will create rural employment opportunities, build rural infrastructure, improve access to research and technology, and increase State revenues through the collection of taxes and concession fees. However, there remains little evidence of these being fulfilled.

Given that most Asian countries limit foreign ownership of land, long-term leases have been the most common form of land investment in Asia. This is done several ways: a) Asian governments directly lease public lands to corporations; b) Asian governments entrust ownership of large tracts of public land to special State agencies which in turn lease them to foreign corporations; c) foreign entities enter into a joint venture or partnership with a domestic corporation or landowner, which then “fronts” as the lessee; and, d) the government acts as a broker to facilitate private contracts between investor companies and smallholders and their cooperatives. In all these cases, the government acts as the broker and promoter between investors and local communities.

EPZs. A second approach employed by governments to lure private investments has been the creation of special enclaves for industries and commerce. The stated goals are economic growth, to create employment, earn foreign exchange,

compete with the global market, to improve the balance of trade, to develop local skills, and to induce the transfer of technology. The archetype of this approach are EPZs and SEZs.

In Bangladesh, EPZs cater directly to international market demands for cheaper goods. All the production is geared for the export market. The main attraction offered to foreign investors is the abundance of cheap and skilled labor, support for export industries, and minimal regulations in the country. Thus, out of the 476 products currently produced in Bangladesh’s EPZs, 276 products (58 percent) consist of ready-made garments, knitwear, and footwear and leather products – industries that are highly labor-intensive.

In building EPZs, government acts as land broker, investor and land developer – acquiring agricultural lands in peri-urban areas for conversion into EPZ estates. Lands are acquired from local farmers at less-than-market price and in the name of “public interest.” These acquired lands are then transferred to a legal public authority for sub-leasing to private corporations. Government incentives include 10-year tax holidays, customs bonded warehousing, duty-free importation of construction materials, machinery and raw materials; certain tax exemptions; accelerated depreciation on machinery and plants; and the banning of labor unions within EPZs.

In addition to the 10 EPZs that have been built, 100 EPZs are being planned for different areas of Bangladesh by 2031. Similarly, in India, government data shows that some 500 Special Economic Zones (SEZs) have been approved and close to 60,000 hectares of land have been set aside for these SEZs, in the name of “public purpose” and “development.” These cover mostly agricultural lands that will be transferred to the private sector (ANGOC, 2019).




Photo by Vidya Bhushan Rawat

Tourism and commerce. A third approach is the case from Nepal, where prime lands were leased out by a government Trust to a leading tourism company. However, this case differs entirely from the other cases. Here, it is the investor company that proposes to lease out government property; it is opportunistic. Negotiations are held in secret, and there is no open public bidding or discourse. The act of leasing out State property in this particular case does not appear to be part of a government development plan. Instead, the arrangement is later justified in the name of “public interest” – i.e., as an effort “to promote tourism, create jobs, and earn revenue for the government” – by productively utilizing what would otherwise have been “idle” lands.

Development infrastructure projects. A fourth approach for inviting land-based investments is the development of infrastructure and public utilities such as for power, water, transport and communication. Aside from the need to keep up with rising domestic demand, they also form an integral part of government economic development plans.

The issue is that large public infrastructure projects such as dams, roads and power plants themselves require large-scale land acquisitions. Development decisions become political when planners decide which lands are taken away, and which areas and sectors of society will benefit most from the changes that a project bring. A road-building project, for instance, might require



using the State's coercive power of eminent domain to acquire lands even if affected families are unwilling to sell. Meanwhile, adjacent property owners reap a windfall with rising land valuation prices once the new road is built.

The political decisions are magnified in the case of dam and power projects such as the Polavaram Dam in India, that will inundate entire villages and directly displace 200 to 300 thousand people, yet will benefit most the communities and businesses elsewhere. In such situation, the areas and sectors of the poor and powerless are made to suffer the most in the name of "development." As in other countries, they consist of indigenous peoples, upland farmers and forest dwellers, smallholders, agricultural workers, and rural families. In many cases, the lands of the rural poor are under customary use, and not titled or registered in their name.

LEGAL DESIGNS OF LAND GRABS

As shown by the case studies, what we call today as "land grabs" are actually pursued through various legal instruments – public and private contracts, lease and *leaseback* agreements, agribusiness venture agreements, supply and out-growership contracts, marketing agreements, concessions on "public" lands, State-led land acquisitions, co-management agreements and joint ventures. These arrangements are pursued under broader legal frameworks in each country – e.g., Medium-Term National Development Plans, Economic Land Concessions, State Acquisition Acts, Land Procurement for the Development of Public Interest, Export Processing Zones, Special Economic Zones, and Public Land Trusts. These are further facilitated by international agreements, such as accession laws to the World Trade Organization and by bilateral agreements, such as the Framework Agreement on Comprehensive Cooperation between the People's Republic of

China and the Association of Southeast Asian Nations.

In the case of land acquisitions, resistance builds up because from planning to the takeover of lands, people are not involved, the process is not transparent, and often manipulative and corrupt. Much of the development planning and land transactions which could potentially displace families and communities are done outside of public purview and scrutiny. In some cases, public officials are interested parties directly involved in land deals; in others, companies strike deals with corrupt State officials without the knowledge or consent of people who live on the land. When fraud is committed, resistance and violence can erupt as lands are taken away from families and communities. Contending parties then get locked in land conflicts that may last many years if left unresolved.

Many of the land deals are conducted in secrecy, without disclosure and public bidding, because sometimes they are treated as private investments. In the Nepal case, seven prime properties that formerly belonged to the monarchy and held under a Trust were leased to a single company without transparency in the negotiation process and in the issuance of notices for competitive bidding.

In the Cambodia case, five Chinese companies under a single parent company were granted five separate ELCs concessions covering 42,000 hectares in a clear bid to circumvent the law that stipulated a limit of 10,000 hectares for ELCs.⁶

All five companies shared a single office in Phnom Penh, and three of the ELCs were issued on the very same date in 2011.

⁶ Sub-decree 146 on Economic Land Concessions established a ceiling of 10,000 hectares and requires the concessionaire to conduct prior consultation with the community (as cited in Nhek and Heng, 2021).



Meanwhile, local people were caught unaware when the company took over 42,000 hectares in Preah Vihear province. Some 10,000 people were affected when 20,000 hectares of residents' farmlands and forests were cleared. These included communal lands, ancestral and spirit forests, and ancient temple ruins revered by the Kuy peoples. Families were dispossessed and received inadequate or no compensation. Over the years, the villagers have resisted through protests, land occupation, seizure of company machinery, and filing of administrative complaints. However, their protests have been met by death threats, arrests, detention, harassment, and court cases filed by provincial authorities. In some instances, protests were met with armed police and military personnel at the site, as the villagers were arrested for "trespassing on private property."

As the land conflict drags on, villagers work in fear and lose their livelihoods. As much as 90 percent of the people are now in debt, based on field interviews (Nhek and Heng, 2021). Only an estimated 25 percent of the villagers held official land titles. Even so, many families were forced to sell their titled plots to the company under cheap prices, while some portions of their titled lands were reportedly simply taken over by the company without compensation.

It may be noted that, because many land grabs are done under a "legal" framework, or else are tolerated by existing laws and authorities, these acts are given a sense of "legitimacy." Meanwhile, any resistance by peasants and indigenous peoples is viewed as "public disturbance." Communities in conflict with business groups are often treated as "nuisances, illegal loggers, trespassers, and criminals" – regardless of the historical background and causes of the agrarian conflict (Kartika and Wijaya, 2021).

Also, there is often a lack of fair and effective grievance mechanisms especially when government itself or large corporations are involved. Affected communities rarely, if ever, go to courts to settle their claims, as it is costly, time-consuming and the cases may take years to resolve. Meanwhile, protests are not heard, or are stifled through threats, arrests, detention, harassment, and court cases.

Meanwhile, governments and State agencies often fail to undertake due diligence in monitoring investments and in implementing regulations. For example, if a venture folds up, no compensation is paid to the local community or those who were offered jobs.

In the Cambodian case, the sugarcane company in Preah Vihear province went bankrupt and completely stopped its operations in 2017. The company then started growing rice on parts of the plantation, in violation of its contract agreement with government. Worse, the company sub-leased the lands to outsiders, rather than returning the land to local villagers.

Similar cases of protest and violence have been seen with the expansion of oil palm plantations in Mindanao, Southern Philippines that have been opposed by indigenous peoples. In several documented cases, companies have hired private armies, vigilante groups to drive indigenous peoples off their lands. The State military has also been involved amidst accusations that community members are supporters of insurgent groups, a claim disputed by civil society organizations. Over the years, there have been forced displacements, illegal arrests, death threats, and actual killings against indigenous communities.

In the case of the Polavaram Dam in India, less than 20 public hearings may have been conducted before 2006 when the project was started, despite



its potential effects on people living in some 300 villages and surrounding forest areas. Reports also suggest that the *adivasis* are being displaced despite the resettlement process not having been completed – in violation of the Forest Rights Act of 2006. Yet the majority of *adivasis* do not even know that such a law exists (Rawat, 2021). Nor do they know where they will be relocated.

In the Uttar Pradesh case, a top district official illegally grabbed lands that had belonged to the Gram Sabha, and managed the land under a Cooperative or Trust. For many years, this land was tilled by *adivasis* who paid some amount to the “Trust” under a kind of sharecropping arrangement. The *adivasis* felt that the land belonged to them, but were unaware that the land was illegally being sold to a local feudal lord. In 2019, the feudal lord forcibly took control of the land with his personal militia, killing 10 *Gond adivasis*, including three women. About 30 people were arrested due to the case (Rawat, 2021). Nevertheless, the *adivasis* community continue to live with uncertainty, fear, and under a persistent threat of eviction.

As in most countries, indigenous peoples often fall prey to land grabs. Most of their land is collectively held and is unregistered. Forest departments, revenue officials and local politicians use their “ignorance” to deceive and exploit them. It should be noted that many indigenous peoples live in forests and areas that they have managed sustainably for generations, and which outside interests now covet. Thus, some of the most fertile lands are leased out, despite the official rhetoric in many countries that only marginal lands are used. Yet these same lands are often labelled as “under-utilized,” “un-productive,” and “barren” when they are seized and given as concession areas to outside commercial interests by State agencies and officials.

Land grabs also come in other forms such as through unfair and one-sided contracts. In the Philippines, where the government has played an active role in promoting foreign investments in oil palm plantations, private companies take over tenured lands of indigenous peoples and farmers through 25-year lease agreements. However, many villagers report being deceived into renting out their land for low costs, often enticed by upfront cash payments and promises of employment. Smallholders later become workers on their own land, but are exploited through heavy workloads, low wages, daily wage arrangements, and insufficient employment benefits (Ravanera, Musni, and Naungayan, 2021). And while the company pays a fixed annual rental, the actual value of the money received by smallholders diminishes in true value over time.

In other arrangements such as growership contracts, smallholders and farmer cooperatives take on the responsibility for growing the oil palm to be sold to a company. There are one-sided contracts where smallholders assume the full risks of the farming business. They take on loans at high interest rates that they are later unable to pay. In some cases, titles to the leased lands were used as loan collateral to the bank. With the company’s low buying prices, market fluctuations and risks, many farmers and cooperatives find themselves deeper into debt and in danger of losing their lands altogether.

Meanwhile, there is another aspect of land conflict when land is grabbed for “development” or commercial purposes – as new divisions may arise between competing sectors of the poor. In some cases, local leaders are bribed or enticed by investors, leading to divisions within the local cooperative or community. In other cases, there are deemed “winners” and “losers” under the land deals. In the Cambodia case, the local farmers refused to work on the sugarcane lands



that had been seized from them, and so workers from other provinces had to be employed by the company, even though they were not properly compensated. In the Polavaram Dam in India, the *adivasis* were caught in the politics between two States. Under the scheme, the *adivasis* of Telangana State would be submerged, while the dam would fetch water for use downstream in Andhra Pradesh State. While protests and opposition to the dam in Telangana have been crushed by authorities, there are scant voices in Andhra Pradesh where the dam's benefits are expected to flow (Rawat, 2021).

IMPACTS ON FAMILIES AND COMMUNITIES

Social impacts

There are overstated promises, limited job generations, the questions of actual investment, technology transfer, and no compensation for displaced communities.

In Cambodia, families have lost their access to forests on which they depend for resin tapping.

When entire communities are displaced, a culture is also lost. In Preah Vihear, Cambodia, at least 19 ancient temples and a sacred forest lie within the concession area. Worse, the concessions have destroyed a way of life, of livelihoods and ecosystems of people both indigenous and non-indigenous.

Within communities, women are the most affected. Work opportunities in plantations are limited for women, given the physical nature of the work involved. Only 15 percent of oil palm plantations workers in the Philippines are women. Moreover, the loss of customary tenure deprives women of home gardens, access to water, firewood, and open spaces. When there


are increased tensions, women suffer increasing violence within the household.

In the Philippines, plantations were found to thrive on child labor. A 2012 study showed that 24 percent of palm oil plantation workers in the CARAGA region were children below 18 years old. In Cambodia, children as young as 12 years old were forced to work and help their families subsist, as they had been evicted from their homes and farmlands.

Environmental impacts

The oil palm and sugarcane industries require large tracts of land, as several thousand hectares are required to sustain the operation of an oil palm or sugar mill. While some smaller mills enter into contract growing arrangements with smallholders, large investors often deem this approach to be inefficient, as it requires hauling the heavy nuts and canes over long distances. Also, there has been a growing vertical integration and control over these industries. Thus, there has been a continuous expansion of monocrop plantations, with a growing encroachment into forest areas. In Indonesia, the expansion of palm oil plantations accounted for 16 percent of the country's total deforestation in 2011.

With deforestation comes the loss of plants and animal species, and biodiversity. Also lost are access to important non-timber forest products, such as rattan, bamboo, fibers, resin, and honey on which indigenous peoples and forest dwellers depend for their needs and livelihoods. There is also increased water runoffs and soil erosion, as watersheds are destroyed. Studies have shown that streams flowing through oil palm plantations bring with it sediments, waste matter, and residues of chemical fertilizers and pesticides, causing the degradation of the soil and contamination of water used by villagers downstream.



The clear-cutting of forests contributes to greenhouse gas emissions. Even though oil palm trees may offer carbon sequestration services, they cannot compensate for the net carbon loss due to deforestation (as cited in Ravanera, Musni, and Naungayan, 2021).

Meanwhile, there is another feature of land grabs in the case of plantations, as “alien” crops or crop varieties are often introduced, which can be invasive and can disrupt the local economy and ecosystem. Oil palm, for instance, is a plant originating in Africa, and brought to North Sumatra, Indonesia by Dutch colonialists. These crops can prove to be resilient on foreign soils probably because they lack specialized natural enemies and pests of their area of origin – a phenomenon known as “ecological release.” This happens when a species from a competitive environment invades a less competitive habitat, allowing it to grow in a population (as cited in Quizon, 2013).

In the Bangladesh case study, the conversion of fringe flood flow zones and of high value agricultural lands into EPZs in peri-urban areas can bring about rapid urban expansion into these areas. Without proper urban planning and zoning, and where building codes are not strictly enforced, these may result in flooding, waterlogging in the inner city and the filling of lakes and canals, and illegal land grabbing. Furthermore, the operation of industries within EPZs have adversely affected the environment of surrounding areas. Industrial effluents have contaminated the surface and groundwater, and the pollution of rivers. These result in the destruction of aquatic habitats and in making the groundwater unfit for drinking purposes.

While all countries have requirements for environmental impact assessments (EIAs) prior to the approval of large-scale projects or

investments, these are not uniformly applied or followed properly. In most cases, the required EIAs are often conducted by the investor company, without consultations or public hearings with families or communities potentially to be affected, and with the findings not made public. Furthermore, there is no systematic public monitoring of the environmental impacts that an investment brings once a project is approved.

LAND GRABS AT A TIME OF THE COVID-19 PANDEMIC⁷

The COVID-19 pandemic has caused severe disruptions in food supply chains, undermining the ability of small food producers to access their land and the natural resources they need, thereby rendering them more vulnerable to encroachment on their tenure rights.

Throughout Asia today, small food producers are finding their movements severely restricted, leaving them more vulnerable to encroachment on their tenure rights. On the other hand, certain large-scale land-based investments, such as mining, have been declared as essential services, thus benefiting from expedited administrative decisions and some de-regulation. There are already documented cases of deals on contested lands, increasing conflicts, evictions, and other land rights-related violations in the wake of the COVID-19 pandemic. Yet, government measures to protect vulnerable populations, including from evictions, have been ignored in certain places. Women and youth have been particularly exposed to internal pressures to relinquish their rights to more powerful family or community members.

⁷ Quizon, Antonio. (2020). Ensuring Land and Food Rights: Reflections at a Time of COVID-19 (and Beyond). Keynote paper for the Video Conference on "Land and Food Rights at a Time of COVID-19 and Beyond" organized by the Association for Land Reform and Development (ALRD) and The Daily Star. 18 December 2020.



Compounding this situation, vulnerable groups are experiencing less access to mediation and judicial systems for recourse.

Across Asia, lockdowns to contain the spread of COVID-19 have made farmers and indigenous people more vulnerable to losing their land. Farmers have been unable to tend to their fields, and some indigenous people kept from forests because of restrictions on movement, making it easier for illegal loggers and companies to encroach their land.

Weak tenure rights and poor forest governance have been exacerbated by the pandemic situation, and private companies are said to be moving ahead with their controversial operations. In Indonesia and the Philippines, some farmers were killed in long-standing land disputes with companies. In India, authorities have relaxed environmental norms for mining and industrial projects, with the lockdown making it impossible for people “even to resist” the threats to their land. Elsewhere in the Asian region, with police and security forces engaged in enforcing lockdowns, cases of illegal logging has been reported in Nepal, Myanmar, Cambodia, and Indonesia.⁸

In Cambodia, news reports say that an illegally cleared swathes of land in Rattanakiri Province that belonged to indigenous farming communities. Despite pledges to return the land to local farmers (under a mediated agreement back in 2015), the company bulldozed sacred sites, burial grounds, traditional hunting areas, farmlands, wetlands, and old-growth forests, while local residents sheltered at their home due to COVID-19.⁹ This case has been a decade-

long dispute between the company and 12 ethnic minority communities in Rattanakiri Province.

Governments are likewise pushing through with controversial projects like dams that seek to displace indigenous communities from their lands. In the Philippines, communities near the site of a planned dam on the Kaliwa River have reported an increased military presence as the government attempts to push the project through during the pandemic amidst quarantine restrictions. The Alyansa Tigil Mina (Alliance to Stop Mining) reported that the country is seeing a move to ramp up new mining permits as well as illegal mining during the pandemic.


The pandemic has also increased rural indebtedness, forcing small farmers to pawn or sell off their lands. In poor countries like Cambodia with little regulatory oversight, moneylenders have targeted rural villages where residents have limited financial acumen. Defaulting borrowers are often forced to take on new loans to pay old debts. With a lack of enforcement, illegal lenders have been offering high interest rates of up to 30 percent over a year, according to the human rights group Licadho. With the loss of jobs and incomes, many rural villagers are forced to sell off their homes and farmlands.¹⁰ More than one million land titles are currently held by banks as loan collateral.

The pandemic has reportedly accelerated the processes against indigenous communities that were already threatening their resources and survival — from the criminalization of their livelihoods to land grabs and their further marginalization from governance. Worldwide, land rights activists found themselves at heightened risk, with their

⁸ Chandran, Rina. "Land conflicts flare across Asia during coronavirus lockdowns". 15 May 2020. <https://www.reuters.com/article/us-health-coronavirus-landrights-trfn-idUSKBN22R0U9>.

⁹ East-West Center (2020). "Impact of COVID-19 on Rice Farmers in Southeast Asia", 03 July 2020. <https://www.eastwestcenter.org/system/tdf/private/ewwire052foxetal.pdf?file=1&type=node&id=37821>

¹⁰ Channel News Asia. "Strangled by debt: COVID-19 deepens Cambodia's loan crisis." 15 November 2020. <https://www.channelnewsasia.com/news/asia/microfinance-debt-covid-19-deepens-cambodia-loan-crisis-13553126>



access to justice also stymied because of the lockdowns, according to the former United Nations Special Rapporteur for Human Rights Defenders.

During the COVID-19 crisis, rural women have become more vulnerable to gender-based violence. The complexities of government administrative procedures and discriminatory customary and social norms can put women at risk, especially in places where birth certificates, land titles and other legal documents are entrusted to male family members. Given the social and customary barriers, as well as the difficulties in navigating these administrative requirements, it can be particularly difficult for women to secure their land rights. Women often face greater economic losses as a result of such crises (including the COVID-19 pandemic) due to their greater vulnerabilities and lack of tenure security. Indeed, there are reports of women being forced to cede their land after losing their husbands to COVID-19.

Pastoralist and IP communities have also been notably impacted, as national borders have closed, and movements have been restricted within national territories.

COVID-19 has also heavily affected indigenous peoples and forest-dependent communities, as many have been prevented from going out to continue the gathering of non-timber forest products. The loss of livelihoods will most likely lead to increased over-exploitation of already scarce natural resources, as well as increased food insecurity and poverty. At the same time, illegal mining, timber extraction and poaching have reportedly increased, due to reduced enforcement capacities and the diversion of political attention towards COVID-19 and economic recovery.

BRIEF ANALYSIS OF ISSUES

Land grabs are inherently rooted in the inequitable free market forces, attributable to our flawed economic and developmental systems. Therefore, there is a need to understand how legislative and governance systems of countries respond to such land rights threats and the extent to which they are able to protect community land rights from land grabbing and the violations of community land rights.

“As globalization demands more and more resources, land has emerged as a key source of conflict. The hunger of global capital must be fed by *commodifying* everything - land and water, plants and genetic material, and even “clean air” in the form of “carbon emission quotas.” It is this *commodification* that fuels the rush for Asia’s lands (Quizon, 2013).

Thus, land grabbing often occurs as a result of pressures from national and global capital investments. The demands of global markets changes the landscape of local food and agriculture, forests and natural resources, as well as the living environments of communities and peoples.

Host governments often entice private investments as a cure all for many economic ills. And for capital investments to enter, one can either negotiate, buy, lease through the market, or use force. However, negotiation through markets is sometimes difficult, such as in the case of indigenous peoples or customary lands, or when there are State regulations restricting the foreign ownership of land. Thus, there has been a “modern role” of the State – whether in facilitating commerce, “green grabs,” or the use of force. In many cases, businesses work closely with government officials.



“Land is no longer just a factor of production, but a 'property value' which pushes the prices of land to sky-high.”

Neo-liberal globalization has introduced commodification where everything is seen in terms of their financial value. Land used to be seen as a “means of production” (as in “land, labor & capital”), but increasingly today, land is also seen as a “store of value.” Land is no longer just a factor of production, but a “property value” which pushes the prices of land to sky-high.

Financialization of land is the emerging new driver that pushes land grabs today, which are different from what they used to be 30 years ago. Under the financialization of land (including property development), farmland is treated simply as investment. The value of land, with speculation, becomes higher than using land as a form of direct capital. From financialization, there is today a “securitization” of land. Incomes are consolidated into one security which can be divided into thousands of “shares” then be sold and resold in the market.

Failures in governance. With the new land grabs, we see four basic failures in land governance:

First is the failure in democratic governance: of transparency, accountability, and popular empowerment that lead to the elite capture of land and resources.

Second is land governance that fails the poor: national legal systems that centralize control over lands with lack of legal recognition of land rights of local users.

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

Fourth is the sidelining of smallholder production on which majority of people depend for their livelihoods (as cited in Quizon, 2013).

RECOMMENDATIONS AND THE WAY FORWARD¹¹

For governments and State agencies


Protect poor and marginalized communities from all forms of arbitrary eviction and forced displacement. Respect the guidelines issued by the UN Rapporteur on Housing Rights in April 2020 that all kinds of evictions and displacement be stopped anywhere and under any circumstances.

Respect, recognize and protect the land rights of indigenous peoples, cultural communities, and ethnic minorities in accordance with ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Protect especially those who lack formal recognition and safeguards for their customary rights in their countries. Recognize customary practices, including shifting cultivation and governance of communal spaces.

Adopt and implement the UN Guiding Principles on Business and Human Rights (UNGPs) especially for land and resource governance. As an initial effort, governments should immediately implement the UNGPs in all State-owned enterprises.

Ensure full adherence to international human right instruments, including the International

¹¹ This section includes recommendations raised at the special session on “Understanding the new wave of land grabbing in Asia and its impacts on securing land rights for smallholder farmers” held on 8 October 2020 organized by ANGO and LWA in conjunction with the Asia Land Forum. The special session was attended by 166 participants.



Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

Protect agricultural areas, farming communities and small agricultural producers against indiscriminate land use conversion. Ensure sustainable use of natural resources to meet the challenges of food security and climate change.

Strictly implement the requirement of social (SIAs) and environmental impact assessments (EIAs), and adherence to free, prior and informed consent (FPIC) of affected communities – as preconditions for all land transactions and investments. Conduct public hearings and ensure full transparency in reporting of SIAs and EIAs. In the implementation of FPIC, ensure the right of communities to say “no” to any transactions and interventions that affect them.

Ensure integrity, transparency and public access in land administration, and the management of land records. Check corruption, bribery, and fraud in land administration.

In cases involving land transactions and agribusiness arrangements, government should review and ensure that contract arrangements such as leases, joint ventures, management contracts, and marketing agreements, among others are fair and legal; environmental risks are avoided and minimized; communities are not exposed to undue economic risks, and benefits are equitably shared among the investors and related communities.

Protect land rights and human rights defenders. Protect indigenous leaders and peasant activists.

Ensure proper remedies where human rights violations have occurred, including the prosecution of human rights violators,

cancellation of concessions, appropriate, and fair compensation for victims and those whose rights have been violated, and corrective actions in cases where the environment has been contaminated or destroyed. In cases where communities have been displaced and the lands cannot be restituted, ensure the provision of safe and proper relocation, just compensation, and rehabilitation.

For business and the private sector

Adhere to the highest standards of environmental and social safeguards. Strictly apply the UNGP-BHR standards and implement contractual obligations and government regulations at all stage of investment. Ensure that sub-contractors act with due diligence to avoid adverse impacts on communities and the environment.

Publicly share and ensure full disclosure of master plans, as well as EIAs and SIAs, true risk-benefit analyses, contracts and relevant documents with communities. These should be shared in a timely manner, and disclosed in ways and in a language that affected communities fully understand.

Conduct regular consultation, communication, and feedback with affected communities on the progress and conduct of business operations.

For CSOs

At the national level, continue to work with communities and other groups to pursue policy dialogues with governments, business sector, and intergovernmental organizations to influence policies in favor of stricter investment regulations and providing tenure security.

Conduct advocacy and monitoring work on land grabs and land conflict. Where feasible, collaborate with National Human

Rights Institutions/Commissions (NHRIs/Cs)

particularly for the enforcement of the *UN Guiding Principles on Business and Human Rights* (UNGP-BHR), *Principles for Responsible Investment in Agriculture and Food Systems* (RAI), and the promotion of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (VGGT).

Broaden capacity-building initiatives through joint training, module development, and internship programs on understanding business contracts, development of alternative business plans and community negotiations.

Engage UN and multilateral institutions in pursuit of a Legally-Binding Treaty on Transnational Companies and Human Rights.

At the Asian regional level, organize a broader platform that connects people's advocacies against systematic land grabbing – expanding links with networks and groups focused on issues of community rights, indigenous peoples' rights, and human rights.

Conduct a fuller documentation of land grab cases, while examining the “money trail of investments” as an added dimension, as this can enhance public advocacy efforts.

Establish independent people's commissions and Land Rights Tribunals¹² to investigate serious cases of land grabbing and land conflicts including the conduct of businesses and the role of the State, to seek the truth, protect local community

rights, find lasting solutions, as well as to broaden public awareness and discourse.

Strengthen regional networking, including Land Watch Asia (LWA), as regional platforms for: (a) conducting regional campaigns and documentation; (b) solidarity building and collective action to address field issues on land rights; and, (c) fostering critical dialogues with governments, inter-governmental organizations and the business sector. ■

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When agricultural land is plundered for investments: A sectoral study on land grabbing in Bangladesh

Community Development Association

INTRODUCTION

“Land grabbing can be defined as control whether through ownership, lease, concession, contracts, quotas, or private of larger than locally–typical amounts of land by any persons or entities - public or private, foreign or domestic - via any means- ‘legal’ or ‘illegal’ – for purposes of speculation, extraction, environmental destruction, commercial resource control or commodification at the cost of peasant farmers, women, IPs and minorities, agroecology, land stewardship, food sovereignty and human rights, including invasion and expansion of highly unchallenged political biotechnology.” (Eco Ruralis)

Context of the study

Land grabbing is one of the major problems in Asia including Bangladesh, affecting the lives, livelihoods and rights of people. Based on any criteria, land grabbing is generally illegal, unethical, and immoral.

Bangladesh is one of the world’s most densely populated countries, and it continues to rapidly lose its agricultural land due to unplanned industrialization and rapid encroachment of human habitation on local farming areas.

Every year, 8,000 hectares of agricultural land are lost from the original 13 million hectares of cropland because of urbanization, industrialization, unplanned rural housing, and infrastructure development (Khan, 2019).

Today, the country’s fast-growing population is looking for new land to build homes while the entrepreneurs are moving to remote areas in the countryside to set up industries and factories.

As a result, the share of agriculture in the gross domestic product (GDP) has been declining over the last decade. The agricultural sector accounted for 20.80 percent of total GDP in 2000. By 2019, it was down to 13.35 percent (BBS, 2020). If



Table 1. Names and locations of EPZs

Name of the EPZ	Location
Chattogram Export Processing Zone	South Hallishahar, Chattogram
Dhaka Export Processing Zone	Savar, Dhaka City
Adamjee Export Processing Zone	Siddhirganj, Narayanganj
Cumilla Export Processing Zone	Ola Airport area Cumilla
Karnaphuli Export Processing Zone	North Patenga Chattogram
Ishwardi Export Processing Zone	Pakshey, Pabna
Mongla Export Processing Zone	Mongla Port Area, Bagerhat
Uttara Export Processing Zone	Shangalshi, Nilphamari
Korean Export Processing Zone (Private)	Opposite to the Chittagong International Airport, Chattogram
Rangunia Export processing Zone(Private)	Rangunia, Chattogram

Source: BEPZA Brochure, 2019

the trend is not reversed soon, the country will permanently lose its food security.

Posing a significant threat to food security are Export Processing Zones, which are being set up in the name of economic development.

According to World Bank (1992) and UNIDO (1995), an Export Processing Zone (EPZ) “is an industrial area that constitutes an enclave with regard to customs’ tariffs and the commercial code in force in the host country” (Aggarwal, 2005).

There are 10 EPZs in the country, of which eight are owned by the Government of Bangladesh. The first EPZ, Chattogram EPZ, was established in 1983. Since then, nine EPZs were established all over Bangladesh. The government announced in 2016 that in the next 15 years, 100 new EPZs and SEZs will be established under the government’s Industrial Policy of 2016.

Bangladesh established in 1980 the Bangladesh Export Processing Zone Authority (BEPZA) that oversees the operations of eight EPZs. On the other hand, the Board of Governors of the

Bangladesh Private Export Processing Zone (BPEPZ) monitors the private EPZs.

According to the website of the National Board of Revenue, EPZ, a company is allowed to import machinery, equipment, and raw-materials for the manufacture of export goods without tariff. Investors in these zones are granted perks such as a 10-year tax holiday, exemption from dividend tax, and accelerated depreciation on the machinery or plant.

The Bangladesh government has itself been securing most of the agricultural land, both State-owned and private, in favor of EPZs. It believes that these zones will lead to fast economic growth, more foreign exchange, employment opportunities and the chance to compete in the global free trade economy.

Objectives of the Study

This study was undertaken to:

- describe and discuss the process (stakeholders, forms of control process, drivers), and impacts of land grabbing in EPZs;

- describe and identify issues and challenges presented by State policies and mechanisms on EPZs; and,
- Formulate recommendations to protect and uphold the tenure rights of individuals and communities affected by EPZs.

Methodology

This study is based on both primary and secondary data.

Primary data were collected through online in-depth analytical discussions among the CSOs and land defenders from the grassroots while secondary data were gathered from various sources such as research articles, official documents, national and international journals, working papers, newspapers, online publications, and related books as well as stakeholders' information.

Scope and Limitations

This study focused on the grabbing of agricultural land for the establishment of EPZs all over Bangladesh.

The researchers wanted to collect more primary data but movement restrictions due to COVID-19 prevented face-to-face discussion and dialogue that would have enriched this study. Adding to the constraints are irregular electricity supply and unreliable or weak internet connection that likewise made data gathering challenging.

SECTORAL OVERVIEW

Description of the sector

Bangladesh is the least developed country in South Asia with its economy heavily dependent on agriculture, therefore on land.

There are interests competing over the land, however, as Bangladesh also has to find land to house its huge population and land for industries and infrastructure development as well as tourism.

Encroachment on agriculture land is a particularly pressing problem in rapidly growing areas, one of the reasons why cultivable land has been reduced from 9.72 million hectares (1991) to 8.52 million hectares (2011).

This is alarming for an overpopulated country like Bangladesh. The threat to the country's food security grows as land and soil resources are degraded and cultivated areas are further reduced to make way, for example, to EPZs.

EPZs or industrial parks are being developed to respond to international market demand for cheaper goods.

"The manifest objectives of EPZs are to attract foreign capital investment and mobilize investment for capital formation for rapid industrialization, to create employment opportunities for the country's manpower, to induce transfer of technology, and to earn foreign exchange by boosting exports. Formation of EPZs in Bangladesh also addresses problems like growing trade gap, high unemployment, and dearth of capital investment, shortage of foreign currency and lack of technical know-how" (Hasan and Ali Md, 2019).

The government supports these investors with big facilities including land to ensure smooth manufacturing and financial operations. It also extends other benefits such as loans.

The majority of the EPZs are State-owned while the two private EPZs are the Korean EPZ (KEPZ) established by Youngone Corporation, and the



Rangunia EPZ put up by Chittagong Industrial Park Limited, a local company.

Significance of the sector

Bangladesh’s total land area is about 14.8 million hectares, of which net crop land accounts for 7.8 million hectares (59 percent). Out of this, 24 percent is not available for cultivation while 17 percent is forest area.

Bangladesh has about 160 million people today and by 2050, this is expected to reach 250 million. With such a huge population, there will be increased pressure to cultivate land to feed the people. Agriculture indeed plays a major role in the livelihood of rural households, in securing national food self-sufficiency and in the country’s overall economic development. (Hossain, Bayes, and Islam, 2018).

However, over the past 30 to 40 years, agriculture land has been declining at one percent a year, which means that over that time, at least a quarter of the country’s agricultural land has already been lost to non-agriculture uses including EPZs.

Bangladesh is losing around 79,000 hectares of fertile agricultural land every due to urbanization, building of new infrastructure such as roads, and implementation of other development projects (Hossain, Bayes, and Islam, 2018).

And even more land may be lost to EPZs given the government’s announced plans to establish more EPZs in the name of faster economic growth, thus threatening the country’s food security.

It is difficult to assess the actual situation of the status of human rights, particularly workers of factories within the EPZs, as information on working conditions and rights is not readily available.

Table 2. Land area covered by EPZs

Name of the EPZ	Area Quantity in acres (hectares)
Chittagong EPZ	453.00 (183.33)
Dhaka EPZ	361.22 (146.19)
Adamjee EPZ	345.12 (139.67)
Comilla EPZ	267.46 (108.24)
Karnafuli EPZ	209.06 (84.61)
Ishwardi EPZ	308.97 (125.04)
Mongla EPZ	289.42 (117.12)
Uttara EPZ	212.00 (85.79)
Korean EPZ	2,500.00 (1,011.72)
Rangunia EPZ	171.00 (69.20)
Total	5,117.25 (2,070.91)

Source: BEPZA Brochure, 2019

More than 30 countries including South Korea, China, Hong Kong, Taiwan, Japan, Thailand, Sri Lanka, Malaysia, Indonesia, Singapore, USA, UK, Australia, Canada, Germany, France, Italy, Sweden, Netherlands, Switzerland, India, and Pakistan have so far invested in different projects in the EPZs in Bangladesh.

Ready-made garments manufacturing accounts for the bulk of the production centers in the country’s EPZs (119 out of 476 total products). These are followed by products manufacturing-garments accessories (93); knitwear (32); footwear and leather products (32); electric and electronic goods (19); plastic goods (14); and, metal products (12). Other goods produced in EPZs are caps, tents, packaging goods and rope.

About 58 percent of the investments in the government-run EPZs come from outside Bangladesh, while 28 percent are local and 14 percent came from joint ventures between local and foreign companies.



Scope of land grabbing

In Bangladesh, some 5117.25 acres (approximately 2,070.91 hectares) of land are owned by the government to establish State-run EPZs.

And it is not just the land that could have gone to crop production to feed the people that has been sacrificed. Natural water bodies such as lakes and canals are being destroyed to give way to the building of commercial establishments all over the country. Environmental degradation and carbon emissions have increased and many of the youth have shifted away from the farm.

Trends in the sector

The government has committed to develop more infrastructure, including EPZs and SEZs, all over Bangladesh to spur faster economic growth.

However, the price the government is willing to pay may be too steep as it is neglecting other needs, such as maintaining environmental biodiversity, and agricultural productivity. The investors also cannot be relied upon to protect the environment and agricultural production as they have other priorities.

Thus, rampant lowland conversion has a direct adverse impact on the environment and livelihood of those in suburban areas.

Entities involved in land grabbing

EPZs are set up by the BEPZA, which has a Board of Governors led by the Prime Minister.

Where and how the EPZ will be set up – from land acquisition to structural development – all take place under the direct supervision and management of BEPZA, which is under the direct

“Because more land is being converted for industrial use, the agriculture-based economic structure of Bangladesh is weakening.”

supervision of the Prime Minister. BEPZA sets all the policies and enforces the law.

Forms of Control

When the government through BEPZA decides to secure agricultural lands for conversion into EPZs, the community has little option but to give in. There is no specific information available on the matter, but observations indicate that the government does seize land for this purpose and hardly any compensation is given. The government of Bangladesh prefers to call this process *land acquisition with free, prior, and informed consent*, and not land grabbing.

But it can indeed be called land grabbing because when a place is identified for use as an EPZ, no discussion is held with the people in the area. The government does not even bother to secure an environmental exemption, and it does not make an honest environmental impact assessment of the conversion of agriculture land into EPZs.

The government just goes ahead and decides on the use of the land without looking more closely at the advantages and disadvantages of using the land for agriculture. When the land is secured, the government merely assures the people of rapid economic growth and that they will have jobs. Often, this turns out to be a false assurance, an empty promise.

Because more land is being converted for industrial use, the agriculture-based economic structure of Bangladesh is weakening. Thus, even though



Table 3. Roles and brief assessment of institutions engaged in investments

Institution	Authority	Assessment
BEPZA	Authority of EPZs, selection of place, policy formulation, and monitoring	<ul style="list-style-type: none"> No interest to reform existing laws
Ministry of Land	Land acquisition, land registration, policy, and legislation	<ul style="list-style-type: none"> No updated database, no specific information on <i>khas</i> land, agricultural land Even what amount of land has been acquired, the amount of land grabbed is unknown
Ministry of Industries	Policy formulation	<ul style="list-style-type: none"> Just thinking about economic growth, the tendency is to stay away from agriculture and farmers
Ministry of Finance	Ensuring financial facilities, provide bank loans	<ul style="list-style-type: none"> Caters only to powerful people
Ministry of Law, Justice and Parliamentary Affairs	Policy formulation	<ul style="list-style-type: none"> Not active enough in finding weaknesses in the laws and reasons for land grabbing; Lack of enforcement of existing laws
Government management bodies	Decision making	<ul style="list-style-type: none"> Failure to legislate on specific issues
More powerful people of the society	Yield influence to government bodies	<ul style="list-style-type: none"> Use influence to capture all the facilities legally and illegally; Assist local administration to forcibly evict community people from the land
Ministry of Agriculture	Policy on agriculture	<ul style="list-style-type: none"> Unable to protect agricultural land; Activities are not visible; there is no clear national food security and agriculture policy; Not identifying the source of agricultural land properly
Ministry of Planning	Policy direction	<ul style="list-style-type: none"> Lack of skills and long-term planning; Lack of foresight in decision making
Rajdhani Unnayan Kartripokkha (RAJUK)	Initiating and implementing of Dhaka metropolitan city's development plans. RAJUK is directed by a board which consist of chairman and not more than five members	<ul style="list-style-type: none"> Corrupted organizations approve any file in exchange for money; Lack of monitoring and evaluation; Builds infrastructure in the name of development
Bangladesh Forestry and Environmental Board	Environmental Impact Assessment	<ul style="list-style-type: none"> EIA is not followed properly; Gives legitimacy to organizations that harm the environment
Local Government Rural Development (LGRD)	Decides on infrastructure projects	<ul style="list-style-type: none"> Lack of transparency, lack of responsibility
Real Estate and Housing Association of Bangladesh (REHAB)	It arranges housing fair among the developers, financial institutions and building material providers. The objectives of REHAB is to promote development projects in housing sector (private & national).	<ul style="list-style-type: none"> Ignorance about infrastructure and weak planning



Box 1: Farmers might lose their livelihood to make way for the establishment of a Special Economic Zone in the Chandpur tea estate

More than 1,200 families (6,000 persons) of the Chandpur tea estate (Deorgachh, Chunarughat Upazila, Habiganj, Sylhet Division, Bangladesh) may lose their farmlands and be displaced by the establishment of a proposed Special Economic Zone (SEZ). Workers of the tea estate, run by Duncan Brothers Bangladesh Ltd., have been farming in the area since 1890. In 2015, the Government of Bangladesh cancelled the Duncan Brother's lease and acquired 512 acres (207 hectares) for an SEZ.

Upon finding out about the planned SEZ, tea workers, started protesting the establishment of the SEZ. Farmers began to guard their ricelands and conducted demonstrations, yet the plans of the Bangladesh Economic Zones Authority (BEZA) remain unswayed.

The concern of the tea workers is also an issue of insecure land tenure. These workers, who belong to various tribes, do not have any legal entitlements to the land, despite their groups having occupied the tea estate for hundreds of years. The tea workers are descendants of bonded laborers brought in by the British from various parts of the Indian subcontinent to work on the tea estate some 200 years ago. According to Jotirmoy Barua, coordinator of Life and Nature Safeguard Platform (LNSP), the Bangladesh government must recognize the rights of tea workers to the land, since the country has ratified the International Labor Organization Convention 107. Article 11 of the Convention calls for recognition of ownership rights to lands that are traditionally occupied by tribals. At present however, Bangladesh has not enacted any law in line with the convention.

Further, Jotirmoy states that the BEZA is violating Prime Minister Sheikh Hasina's stance on not allowing the establishment of industries on arable land.

Begum Khan tea garden Panchayat Committee President Chandra Karmakar however mentioned that in the requisition document, the district administration had already classified the 512 acres as "barren land" despite the presence of workers growing crops in the area for over a century.

Moreover, activists fear that the proposed Chandpur tea estate SEZ may lead to adverse environmental impacts, being only four kilometers away from the Satchhari National Forest, and 19 kilometers away from the Rema-Kalenga Wildlife Sanctuary.

A Right to Information (RTI) request in 2019 revealed that the BEZA has not yet conducted any feasibility study or Environmental Impact Assessment (EIA) on the establishment of an SEZ in Chandpur tea estate.

Source: Deshwara, M. (2019, December 23). Special Economic Zone in Tea Estate: 6,000 to lose means for survival. The Daily Star. <https://www.thedailystar.net/backpage/tea-workers-lose-jobs-proposed-special-economic-zone-1843876>

temporary economic development has taken place as a result of unplanned industrialization, sustainable development is not happening.

Purposes

The main purpose of the BEPZA is to entice foreign investments, for which liberal facilities and incentives are offered. In exchange, these investors are expected to promote exports,

provide jobs, upgrade technology, and raise the skill level of the workers.

Knowing that the Bangladesh government is keen on developing more EPZs, private developers have been buying cheap agricultural land and land in flood zones in anticipation of the building of commercial establishments. They are also enticed by the lack of land ceiling provisions and price control mechanisms.



Families and communities affected

Disproportionately affected by the government's policy of aggressively developing EPZs are the poor and indigenous people who stand to lose their livelihood due to displacement from the land they depend on. Their food security is likewise gravely threatened as without the land, they will have to buy food and prices constantly increase.

And even if the EPZs are developed just outside their communities, they are still adversely affected as the EPZs have been found to reduce soil fertility and productivity, water supply and the biodiversity of the environment.

Also, since many of the workers of EPZs come from far away, there is pressure to provide housing facilities and that means a further reduction in agriculture land.

In places, where an EPZ has been established, residents had to move to other places. Some had to give up their homes and agricultural land, especially for Uttora EPZ.

The Bangladesh government has no inventory of the land it has so far "acquired" from the communities. Neither does it have data on the number of people who have been displaced and the communities affected by land grabbing for EPZs.

CASE STUDY: DHAKA EPZ

The Dhaka EPZ was established in 1993. There are about 105 investors here, of which only 24 are Bangladeshi. It is located at Ganakbari, Savar, Dhaka, 35 kilometers from Dhaka City Centre, 25 kilometers from Hazrat Shahjalal (R) Airport and 304 kilometers from Chattogram Sea Port.

Environmental Pollution around Dhaka EPZ and its impact on surface and ground water

Since its establishment, the Dhaka EPZ has been blamed for altering the fragile environment of the surrounding areas. Surface water has been contaminated by industrial effluents released from the Dhaka EPZ and the flow of groundwater has been disrupted.



Dhaka Export Processing Zone front gate. Photo by The Daily Star (7 May 2009).



Water pollution caused by industrial waste dumping near the Dhaka EPZ killed rice paddies.
Photo by The Daily Star (7 May 2009).

Almost all tributaries of major systems have already been saturated with pollution with a number already practically dead. The stench can be unbearable and groundwater is no longer safe to drink.

The Dhaka EPZ has 92 industrial units that have been determined to be the leading polluters. In many cases, toxic wastewater is used for irrigation, thus contaminating the agricultural land as well. The reddish-brown color of Modhupur/Barind Tract formation, for example, is clearly related to the iron compounds. The sewerage system of the EPZ areas has been completely damaged.

CASE STUDY- UTTARA EPZ

The Uttara EPZ was established in 2001. Half of the 18 investors are Bangladeshi and the other half are foreigners. It is at Shongalshi, Nilphamari, about 409 kilometers from Dhaka Airport.

Water and soil pollution due to Uttara EPZ

The Uttara Export Processing Zone (UEPZ) is considered the industrial belt of the northern region of the country. Because of the heavy industrial activity at the site, it is vital to consider the impact on the environment, particularly on the water.

Industrial activities are a threat to the quality and quantity of surface and groundwater resources in many parts of the world (Allen et al., 1996). These activities, by their nature, consume, divert, and can seriously pollute water resources. There, it may pollute the natural surface drainage and other water resources (Singh et al., 2007).

STATE POLICIES AND MECHANISM

The Constitution of Bangladesh protects the land rights of all classes of citizens. As such, policies and laws are in place protecting agricultural land and people's access to the resource.



“The Constitution of Bangladesh protects the land rights of all classes of citizens. As such, policies and laws are in place protecting agricultural land and people’s access to the resource.”

However, land grabbing is still happening through various means, and not just by individuals but also by the government in the name of development, such as what is happening with the grabbing of agricultural land for EPZs.

The Constitution of the Peoples’ Republic of Bangladesh. The Constitution of the Peoples’ Republic of Bangladesh (Article 42 of the Constitution) ensures the right to land as a fundamental right: Every citizen shall have the right to hold, acquire, transfer and dispose of property.

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The Bangladesh Export Processing Zones Authority Act of 1980. Different industries in Bangladesh are regulated by the Bangladesh Labour Act 2006. But the EPZs are regulated by a different law. The Bangladesh Export Processing Zones Authority (BEPZA) issues directives on

service matters concerning workers and officers employed in companies operating within the export processing zones of Bangladesh in exercise of the powers conferred by the Bangladesh Export Processing Zones Authority Act 1980.

This Act states that: “Power to create zones - The Government may, by notification in the official Gazette, declare any place or places to be specified in the notification to be an Export Processing Zone for the purposes of this Act. Acquisition of land for a zone - Where any land or any interest in any land is required by the Authority for any of its purposes under this Act that land or the interest therein may be acquired by the Government under the Land Acquisition Act of 1894, for the Authority and the land or interest therein so acquired shall be deemed to be required for a public purpose.”

Other related Land laws and land policies of Bangladesh

- The Stamp Act, 1899 (II of 1899);
- The Companies Act, 1913 (VII of 1913);
- The Excises and Salt Act, 1944 (I of 1944);
- The Foreign Exchange Regulation Act, 1947 (VII of 1947);
- The Employment of Labour (Standing Orders) Act, 1965 (VIII of 1965);
- The Industrial Relations Ordinance, 1969 (XXIII of 1969);
- The Land Development Tax Ordinance, 1976 (XLII of 1976);
- The Income-tax Ordinance, 1984 (XXXVI of 1984);
- The Municipality Taxation Act, 1881 (Ben. Act IX of 1881);
- The Explosives Act, 1884 (IV of 1884);
- The Electricity Act, 1910 (IX of 1910);
- The Boilers Act, 1923 (V of 1923);
- The Building Construction Act, 1952 (E.B. Act II of 1953);

- The Fire Service Ordinance, 1959 (E.P. Ord. XVII of 1959);
- The Factories Act, 1965 (E.P. Act IV of 1965);
- The Chittagong Municipal Corporation Ordinance, 1982 (xxv of 1982);
- Transfer of Property Act, 1882;
- Khas Land Settlement Policy for Hotel Motel, 1998;
- Balu Mohal and Sand Management Rules, 2011;
- Charing Mohal Management Policy, 1998;
- Jal Mahal Management Policy, 2009;
- Vested Property Amendment Law 2011;
- The Acquisition and Requisition of Immovable Properties Ordinance, 1982;
- Registration Act of 1908; and,
- The Development Tax Ordinance, 1976.

In terms of mechanism, BEPZA is a government body that is mandated to promote, attract and facilitate a wide range of foreign investments in EPZs. Its vision is to become a significant contributor to the economic development of Bangladesh.

Its mission is to strengthen the economic base of Bangladesh through industrialization, promotion of investment, increased exports and employment generation in the EPZs, which are export-oriented industrial enclaves that provide the infrastructure, facilities, administrative and support services for enterprises.

BEPZA, along with the Bangladesh Investment Development Authority (BIDA), jointly control and manage EPZs.

RECOMMENDATIONS

The following recommendations are based on focus group discussions with CSOs as well as the author's personal observations, review of

relevant articles online, study papers, research papers, and published stories in newspapers, etc.

Research reveals that the Government of Bangladesh itself is the main aggressor behind the grabbing of agricultural land to establish EPZs.

However, it is duty bound to follow and maintain inclusive tenure rights, land governance and environmental policy with the aim of achieving the UN Sustainable Development Goals.

The government is likewise mandated to follow the United Nations Guiding Principles on Business and Human Rights (UNGP-BHR) as part of implementing the UN "Protect, Respect, Remedy" Framework approved in 2011.

Protect

The government should ensure that joint ventures, management contracts, and marketing agreements, among others, are fair and legal. Economic and environmental risks and benefits must be equitably shared among the investors, companies and the related communities.

BEPZA should set up inspection and grievance handling mechanisms. Punishment for non-compliance with BEPZA directives should be detailed in BEPZA directives.

Regarding land grabbing, the extent of agricultural land lost to industrialization should be determined. There should be updated information compiled in a database.

There should also be clear rules and regulations governing land acquisition; how much land the government can acquire, keeping in mind that agricultural land is necessary to ensure food security.



Respect

Engage CSOs/NGOs, the National Human Rights Commission (NHRC) and land rights defenders to raise their voice against land grabbing, thereby raising awareness of the related issues. Victims or affected communities should be properly identified to better understand their circumstances.

The government should provide ample space for CSOs to engage or participate in the formulation of the government's National Action Plan on Business and Human Rights, and for them to help ensure the proper application of existing or amended/reformulated policies and laws against land grabbing.

And just as importantly, the government should ensure that food sovereignty, nutrition, or livelihood of the communities, especially of vulnerable groups such as women, farmers, fisherfolk, forest dwellers, informal settlers, and PWDs, whose rights to the land and resources may be affected, are not threatened by the investors or companies.

Remedy

Destructive strategies by companies and authorities behind land grabbing should be prohibited.

The government should protect agricultural land for the sake of food security. It should control through legislation the building of commercial establishments. Plus, it should ensure that the principles of the UNGPs are followed.

Representatives from the Ministry of Labour should sit on the Board of Governors of BEPZA, the Executive Board, and the Consultative Committee

of the Executive Board. Worker representatives should sit on the Consultative Committee so that their issues will be heard.

Documents, articles, leaflets, posters and journals documenting land grabbing should be drawn up and disseminated to create more awareness among the general public on the dangers of the practice.

Communities displaced by the government in the establishment of the EPZs must be safely relocated and provided just compensation and restitution. ■

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DISCLAIMER

The views of this study do not necessarily reflect of those of ILC.



ACRONYMS

ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BEPZA	Bangladesh Export Processing Zones Authority
BEZA	Bangladesh Economic Zones Authority
BIDA	Bangladesh Investment Development Authority
CEPZ	Chittagong Export Processing Zone
CSO	Civil Society Organization
DEPZ	Dhaka Export Processing Zone
EIA	Environmental Impact Assessment
EPZ	Export Processing Zone
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
RAJUK	Rajdhani Unnayan Katripakka
SEZ	Special Economic Zone
UNIDO	United Nations Industrial Development Organization
UNGPs	United Nations Guiding Principles on Business and Human Rights

The bitter truth behind the sugar industry in Preah Vihear Province: Land grabbing sectoral study in Cambodia

Nhek Sarin and Heng Hak
STAR Kampuchea

INTRODUCTION

Cambodia has become known as a hotspot for land grabbing in Southeast Asia (Park, 2019).

And one of the main reasons is the aggressive granting by the Royal Government of Cambodia of Economic Land Concessions (ELCs) to attract investors (Titthara, 2018).

The Cambodian government believes that these ELCs will bring national development.

In reality, however, it destroys the livelihoods and culture of the indigenous Kuy people as well other indigenous people (IP) and non-IPs. These have encroached on indigenous peoples' traditional domains, extracting minerals and timber, and building dams and roads.

In the guise of development, indigenous people are displaced, losing their livelihoods, and find their identities diminished.

Worse, biodiversity and natural ecosystems are being destroyed. The landscape in the concession areas is being permanently altered as the companies convert rice fields, forests, and streams into vast seas of sugarcane.

“It is estimated that 3.9 million hectares of arable land in Cambodia (equivalent to 22.1 percent of the country’s total land area) have been handed over to private investment (Chao, 2013 in Banks, Sloth, Garcia, and Ra, 2014), but data is scattered and unofficial” (Banks, et al., 2014).

As sugarcane land grab is common in Cambodia, the study focuses on so-called *Blood Sugar* in the province of Preah Vihear where thousands of people have been adversely affected by the controversial ELCs granted to five Chinese-owned companies.

The objectives of the study are:

- to provide an overview of the land grabbing conflict as a result of ELCs in Preah Vihear province by describing the: a) people/entities



involved in land grabbing; b) forms and means to control the conflicts; c) purpose of speculation, extraction, resource control or commodification on land; and, d) people affected by the land conflict and State policies and mechanism that address land grabbing conflict; and,

- to formulate concrete recommendations for an improvement of the land situation in Cambodia.

The study will be used as an advocacy tool to engage Cambodian people, government, national and international organizations, donors, and embassies to address the festering land grab issue.

Methodology

Existing literature and related materials from the government, NGOs, private sector, and UN agencies such as books, research papers, study reports, case studies, newspapers as well as online publications were scanned and reviewed.

To gather primary data, focus group discussions and virtual meetings with NGO staff, local authorities, and other relevant stakeholders and community members in Preah Vihear province as well as Phnom Penh were conducted.

To confirm the report, a consultation and validation workshop was conducted with the participation of community representatives, and representatives from NGOs and affected communities.

The workshop gathered inputs from them on how they engaged and dealt with land grabs in Preah Vihear province and their recommendations to improve the situation in alignment with UN Guiding Principles on Business and Human Rights' *Protect, Respect, and Remedy* framework.

Scope and Limitations

There are numerous incidents of land grabbing in Cambodia, and this study focuses on land grabs caused by the granting by the Cambodian government of ELCs to five Chinese companies for a sugarcane plantation in Preah Vihear Province.

The ongoing conflict between these companies and the communities brought forth the term “blood sugar” as the community members believe that the color of sugar is brown like “blood” because the companies are cursed by the spirit.¹

The five Chinese-owned companies occupy more than 40,000 hectares in the province, affecting more than 1,000 families, who are IPs and non-IPs in 10 communes of three districts of the Preah Vihear province.

The study also looks into the people/entities involved in land grabbing, forms and means to control the conflicts, and the purpose of speculation, extraction, resource control or commodification on land.

The study also takes a look at the people affected by the land conflict as well as State policies and mechanisms that are used to address land grabbing.

The study has two limitations. First is that the actual size of the ELC that each company holds varies from one report to another. Second is that resource and time constraints as well as the COVID-19 pandemic have prevented SK from meeting and interviewing more people for information and data collection. Some face-to-face meetings, however, were replaced by virtual meetings.

¹ The community members were interviewed in July 2020 in Preah Vihear province.



SECTORAL OVERVIEW

Description of sector

In Cambodia, the surge in land grabs in recent years has been largely associated with the increasing numbers of ELCs – a mechanism that allows investors to lease State land for economic development – and aggressive urban expansion, both of which are facilitated by the government agenda of economic growth and development.

Encouraged by Cambodia’s policy to establish large-scale agriculture under the ELCs scheme, and incentivized by the European agreement “Everything But Arms (EBAs)” with Least Developed Countries (LDCs), Cambodia attracted large amounts of investment, especially Chinese companies, into sugar production, allowing the country to export their products at a fixed minimum price and without tariffs to the European Union (EU).

In 2017, human rights group Cambodian League for the Promotion and Defense of Human Rights (LICADHO), estimated that “two million hectares of land in the country are currently under 274 ELCs — 114 of which were granted to locals and 136 to foreigners (12 are categorized as “others”; 12 as “unknown”).”

Of 136 ELCs, Chinese firms hold 42 ELCs (over 356,560 hectares of land), while Vietnamese and Malaysian firms hold 55 (369,107 hectares) and 12 (90,844 hectares) ELCs, respectively (IPHRDN, 2017). In 2018, 229 companies were reportedly given ELCs, which now cover 1.178 million hectares of land in 19 provinces.

This study focuses on five Chinese companies granted ELCs for sugarcane plantations.

These five Chinese companies (Heng Nong, Heng Rui, Land Feng, Heng You, and Rui Feng) appear to be subsidiaries of Heng Fu that opened its US\$360-million mill and refinery in 2016 with the aim to supply to the EU, India, and China. The new sugar mill is among the biggest in Asia.

“The facilities were pegged to process 20,000 tons of sugarcane and produce 2,000 tons of refined sugar, though the firm never released figures for its output” (Narin, 2020) and these large sugar facilities export raw and refined sugar mainly to Europe, but also to India and China.

The Cambodia and Chinese governments have attempted to regulate the environmental and social impacts of Chinese business operations, but those efforts do not seem to have a significant effect in this case, reinforcing the conclusion that the so-called “responsible agriculture investment approach” is not stopping land grabbing.

In response, the communities in Preah Vihear put pressure on the companies through petitions, media work, direct action, and other means to slow the land grab, and eventually drive the investors out. They have succeeded in exposing land grabs for what they really are: violent, devastating, and unlawful (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

Scope of land grabbing

While the economic impact of the shuttered plantation is being felt by villagers, the bigger pain comes from the prevailing land conflict with Cambodians, many from indigenous communities (Narin, 2020).

The companies have already cleared their land, an estimated 20,000 hectares of forests and local farmland (Moniroth, 2019). Much of these



Table 1. Subsidiaries of Heng Fu Group Sugar Industry granted with ELCs in Cambodia

Name of Company	Size of Land	Location (districts)	Type of Crops	Situation
Heng Nong	6,488 hectares	Chey sen	Sugarcane & Rice	Pending
Heng Rui	9,119 hectares	Chaeb	Sugarcane & Rice	Pending
Land Feng	8,015 hectares	Tbeng Meanchey	Sugarcane & Rice	Pending
Heng You	8,959 hectares	Chaeb & Cheysen	Sugarcane & Rice	Pending
Rui Feng	8,841 hectares	Tbeng Meanchey & Chaeb	Sugarcane & Rice	Pending

Sources: Adhoc Provincial Office Manager, 2020 and ODC, 2016

were ancestral and spirit forests and communal landholdings within 25 villages in these communes (Narin, 2020).

The total population of these 25 villages was 22,934 in 2012. It is reported that almost all the inhabitants of the areas covered by these concessions were Kuy, one of Cambodia’s most populous indigenous peoples.

As this conflict dragged on, thousands of indigenous Kuy people in Preah Vihear province lost their livelihood – with almost entire villages falling into debt. It is estimated that as much as 90 percent of the village is currently in debt.²

Trends in the sector

“In Cambodia, the surge in land grabs in recent years has been largely associated with the increasing numbers of ELCs” (Park, 2019).

Since the early 2000s, large tracts of land have been allocated by the government under the framework of ELCs to national and international investors, the majority of whom are Chinese.

It has been observed that over the past decade, millions of people have been displaced from their

homes and farmland, often violently, and pushed deeper into poverty.

To maximize their benefits, these investors all too often strike deals with corrupt State officials without the consent of the people who live on it. There has been little study on the role corruption plays in the transfer of land and natural resources from local communities to political and business elites (De Schutter, ICAR, and Global Witness, 2016).

In its review of the country’s EBA compliance, the EU has noted that while Cambodia has made progress in terms of land dispute resolutions, “shortcoming still exists in the areas of land registration, titling provisions and the lack of appropriate and impartial review as well addressing issues regarding the rights of the indigenous population.”

The review added that “further efforts are needed in order to establish an appropriate legal framework to ensure transparent and inclusive mechanisms for the resolutions of land [disputes]” (Moniroth, 2019).

In the specific case of sugar ELCs, large numbers of “families were dispossessed and received inadequate or no compensation. Despite requests over a number of years by EU, there was

² From the interview with the community members in Preah Vihear province.

little action taken for a considerable period by the authorities towards a comprehensive solution” (Moniroth, 2019).

“On 12 February 2020, the European Commission adopted a delegated regulation to partially withdraw trade preferences for some products imported from the Kingdom of Cambodia. If implemented, the delegated regulation will impact the duty-free exemption currently enjoyed by Cambodia on certain exports” (DFDL, 2020).

Likewise, the conflict in “Preah Vihear province’s sugarcane plantation has been strongly criticized by the European Commission’s investigation into Cambodia’s human rights record, which could see the potential suspension of the trade privilege” (Narin, 2020). The companies in “Preah Vihear and other three provinces were included in the European Commission’s EBA rights compliance review” (Moniroth, 2019). “Chinese sugarcane

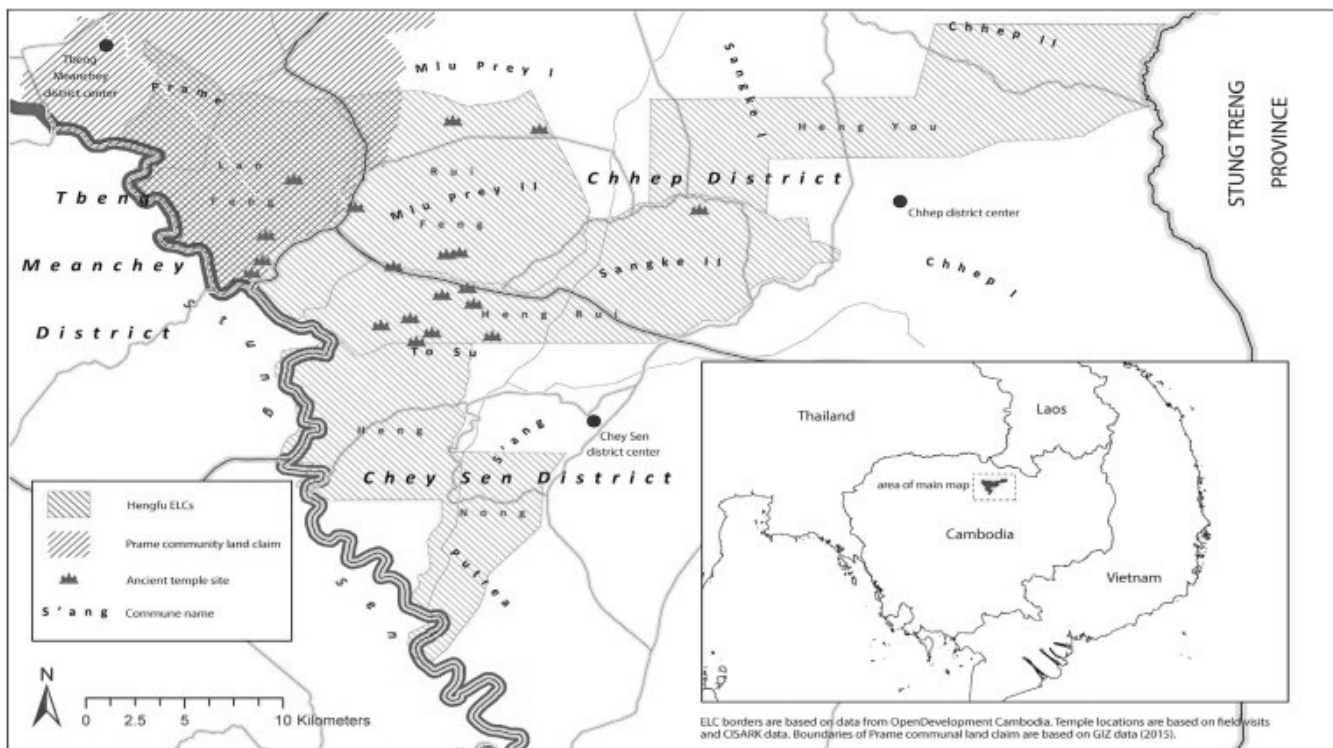
concession Rui and four linked firms seemed to have shut down their operations in the combined 42,000-hectare sugarcane plantation, with little public notice of the closure.”

Mr. Lor Chan, ADHOC Preah Vihear Provincial Coordinator, in July 2020, said in an interview that the company started going bankrupt in 2017 and completely stopped operations in 2019.

He added that apart from land conflicts, the company had started growing rice on a part of the plantation, in violation of their agreement with the government. A breach of contract was committed by the company because the ELC was allowed to grow sugarcane, rubber, and eucalyptus (Narin, 2020).

The company also rented out the land to the villagers to cultivate rice. The local villagers denied renting the land as they perceived that they own

Map showing the three districts involved in land grab activities





A refined sugar factory on one of the ELCs
Photo by Nhek Sarin

the land. So, the villagers who rented the land were actually not local villagers, but mainly from Kompong Thom province. The company charged rent of 200,000 Riels (\$50) per year, he said.

Persons/entities involved in land grabbing of the sector

As mentioned earlier, the five companies, Heng Nong, Heng Rui, Lan Feng, Heng You, and Rui Feng, appear to be subsidiaries of a single company, Hengfu Group Sugar Industry (Hengfu), in partnership with Zhanjiang Huada Trading Company Limited Huada.

The five companies share a single office in Phnom Penh, and the contracts for three companies were all granted on the same date, 9 November 2011 (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

Table 1 shows the subsidiaries of Heng Fu Group Sugar Industry that received ELCs from the Cambodian Government. Both Heng Hengfu and Huada are primarily owned by and received financing from Chinese entities, both State-owned and private. But they have also received

loans from foreign banks, including BNP Paribas (France) and Korea Development Bank (South Korea). In addition, Overseas-Chinese Banking Corporation (OCBC), a high-profile bank in Singapore, winner of multiple enterprise awards and member of the UN Global Compact, owns shares in a company named Avic Trust, which in turn owns shares of Huada (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

“In 2012, the companies started clearing the forests and farm land with the help of uniformed personnel and bulldozers. Rice fields, sugarcane fields, resin trees, fallow fields, and spirit forests were destroyed. Ancient temple ruins are also unearthed which form a part of the sacred sites of the Kuy” (AIPP, 2015). The serious violations of the companies’ contracts were identified (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

So, Kuy villages began an aggressive campaign to halt the progress. Their strategies have included squatting on farmland, putting themselves in the way of bulldozers and confiscating the company’s machinery (Phnom Penh Post, 2017).

The villagers demanded the companies to stop their activities on land concession overlapping with the villagers’ land. To address the conflicts, the local authorities agreed to identify the villagers’ land by mapping and demarcating boundaries (EJ Atlas, 2015).

The communities that protested against the company have been met with intimidation and judicial harassment. Company representatives and local authorities have threatened to shoot and arrest community members during their protests.

The Asian Peasant Coalition (APC) strongly condemned the intense repression and land grabbing carried out by the Chinese company

Hengfu Group Sugar Industry Co. Ltd against the indigenous Kuy People of Preah Vihear, Cambodia (APC, 2018).

Similarly, a land concession was granted to Metrei Pheap Kase-Ousamhakam Co. Ltd linked to tycoon An Mady. Two Preah Vihear representatives disappeared after being beaten and illegally arrested by armed military officials. The disappearance was part of a massive arrests of villagers entangled in a conflict with land concessions (LICDHO, 2019).

Forms of control

The 2001 Cambodian Land Law limits the area of ELCs that can be granted to a single entity to 10,000 hectares (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

However, Hengfu Director told the China Daily in 2016, without mentioning the five subsidiaries, that his company had been granted 42,422 hectares for its development plans. Heng Fu added that the company hoped to expand to 180,000 hectares (Moniroth, 2019).

It is clear then that the five subsidiary companies were registered in order to flout this limitation (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017). The firm cleared lands, much of which were ancestral and spirits forests, and communal landholdings (Narin, 2020).

Some residents were compensated only after the company enriched their land with sugarcane. Some evictees reportedly received as little as \$250 per hectare while others did not receive any, according to NGOs and residents.

The people also reported that the company seized some titled land without paying anything



Signboard of a refined sugar factory
Photo by Nhek Sarin

(Moniroth, 2019). The members of the community said that they received the compensation \$250 per hectare, but through the local authorities.³

In addition to lack of compensation, the companies also failed to come up with policies to address the social and environmental impacts until long after the clearings began. By the time they produced their environmental impact assessment, prepared by the Green Environment Group in July 2016, the conflicts were already underway for five years (Moniroth, 2019).

Agriculture projects of 10,000 hectares or more are required to submit an environmental impact assessment before their approval, according to a 1999 sub decree. Yet, the company has not followed even these belatedly produced social and environmental policies.

H.E. Sokhon, the Minister of Agriculture, acknowledged that the companies had violated the terms of their concessions on some occasions, including clearing land before fulfilling some

³ The community members who attended the focus group discussion (FGD) in Preah Vihear in July 2020.



Communities in protected areas struggle against Chinese sugar companies' land grabbing activities
Photo by STAR Kampuchea

requirements. He added that the procedure was good, but there were some shortcomings.

Families and communities affected

An estimated 15,000 people had been displaced due to sugar-related ELCs across the country, with the disposition of land felt by families in Preah Vihear, Kampong Speu, Koh Kong and Oddar Meanchey (Narin, 2020).

The land rights NGO estimated that only 25 percent of about 20,000 affected families – some 10,000 people – held official land titles, despite their claims of having lived on the land since 1980 – a situation common in rural areas, which

puts poor villagers at a disadvantage in case of disputes (Moniroth, 2019).

Since 2012, about 1,000 families from 20 villages in Tbeng Meanchey, Chheb, and Chey Sen districts had been directly impacted by the Preah Vihear sugarcane project (RFA, 2015).

This exposed the devastating consequences of land grabs resulting from the granting by the government of ELCs that consequently impact the indigenous community life in Preah Vihear, in Northern Cambodia.

In most of the villages overlapped by the concessions, both indigenous and non-indigenous families have lost land they had cultivated as well

“All persons, individually or collectively, shall have the rights to own property. Only natural persons or legal entities of Khmer nationality shall have the rights to own land.”
(Article 44 of the Cambodia Constitution)

as land set aside for future cultivation and other purposes.

What usually happens is that the company plants the family’s land to sugarcane, leaving the family with no access to the land and threatening them with fines or arrest if the sugarcane was burned. Next, the company offers a small compensation for the land that the family usually has no other option but to accept and give up their land. Families ended up receiving as little as the equivalent of US\$250 per hectare.

Even the individual family plots titled under the government’s leopard skin strategy were not safe from the companies (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017). This has violated the fundamental rights of communities and destroyed livelihoods as well as the ecosystems of both indigenous and non-indigenous peoples. Families have lost their means to produce food and earn a living as the companies have converted rice fields, forests, pasture lands, and streams into sugarcane fields.⁴

Waste and harmful chemicals flow into streams that communities rely on for water or to support their livelihoods. And since the concessions

also cover sites of at least 19 ancient temples, Cambodia has also lost part of its cultural heritage (Park, 2018).

Field observations revealed that companies planted sugarcane around at least 15 of them. Furthermore, at least one sacred forest has disappeared, to be replaced by sugarcane. In most cases, they left just one or two hectares for each temple. At one site, there was evidence that the company had plowed over the main temple and planted sugarcane in the area (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

Even worse, the concessions hinder priceless culture, harmonization, and solidarity among the local and indigenous people. Ang Cheatlom, ED of Ponlok Khmer, said that “It is painfully evident to me that sustainable development supposedly brought by ELCs is nothing more than rhetoric” (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017). In four villages, people with titles reported being forced to sell their land to the companies, with some not receiving any payment for them (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

Many families in these areas covered by the concessions used to earn from tapping resin from *Dipterocarpus alatus* trees that grow wild in the forest. That revenue stream is gone now as the companies have cut thousands of resin trees, telling people they would cut the trees whether or not they accept the minimal compensation offered (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

As ponds and streams have disappeared, so have aquatic animals which people relied on for food. Most families used to raise cattle or buffalos, letting them graze in collectively used spaces. Much of the land used for grazing cattle and buffaloes is gone now. In Chey Sen, community members even reported that a Chinese company

⁴ Interview with the members of community in July 2020 in Preah Vihear province



foreman shot and killed a resident's buffalos for food (ultimately paying compensation for it).⁵

The community members have also complained that fish began to die in large numbers in the downstream Stung Sen River once the factory began processing sugar. This is believed to be caused by chemicals, fertilizers, and herbicides, used on the sugarcane fields which flow into streams (Chhorn, CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

O Peal, a stream into which waste from the factory flows directly and which in turn flows to Stung Seng, has no more aquatic life. It is considered essentially dead (CNA, Ponlok Khmer, GRAIN, CIYA and AIPP, 2017).

STATE POLICIES AND MECHANISMS THAT ADDRESS LAND GRABS

Cambodia has policies and mechanisms that address land grabs related ELCs. These include:

1993 Cambodia Constitution. Article 44 of the Cambodia Constitution reads that "All persons, individually or collectively, shall have the rights to own property. Only natural persons or legal entities of Khmer nationality shall have the rights to own land. Legal private ownership shall be protected by law. Expropriation of ownership from any person shall be exercised only in the public interest as provided for by law and shall require fair and just compensation in advance. It is prohibited for any foreigner, either a natural person or legal entity, to own land.

2001 Cambodia Land Law. The law aims to improve tenure security and access to land through a market-based land reform including land titling, cadastral commission, and liberalized

land market. Article 5 of 2001 Cambodia Land Law stipulates that "No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance."

Article 8 reads that "Only natural persons or legal entities of Khmer nationality have the right to ownership of land in the Kingdom of Cambodia." Also, the Land Law says "All Cambodians were entitled to occupy, use, and sell land and land property," but property rights that existed before 1979 were not recognized (Theng, 2016).


Article 25 of Land Law specifies that indigenous people and communities can exercise collective ownership over land where they have established residence and carry out traditional agriculture there.

Article 33 also states that if the immovable property is taken violently or by abuse of power of the authorities, the property shall revert to the State and could not be the subject of any new possession if there is no claim from the lawful possessor of the immovable property of which he was dispossessed.

Directive 01. Directive 01 was issued by the Prime Minister of Cambodia as a moratorium on the granting of new ELCs. It also called for a review of all existing ELCs to check their compliance with existing regulations.

Based on Directive 01, land titles have been provided to existing land occupants through the "leopard-skin" policy which aims to allow communities to live side by side with the

⁵ Ibid



concession land and protected areas (The NGO Forum on Cambodia, 2017). It was also issued to reinforce and increase the efficiency of the management of ELCs (LICHADO, 2014).

Under the order, the Prime Minister launched a year-long land registration and titling campaign supposedly to improve people's land tenure security and resolve conflicts between communities and companies.

Between June 2012 and December 2014, more than 600 thousand individual titles which included indigenous lands for communal titling, were issued at no cost. However, the titling program avoided areas awarded for ELCs (Schoenberger, 2015, Milne, 2013, in Park, 2019).

Sub-Decree No. 146 on Economic Land Concessions. Article 1 of this Sub-Decree aims to determine the criteria, procedures, mechanisms, and institutional arrangements for initiating and granting new ELCs; by monitoring the performance of all ELC contracts; and by reviewing ELCs prior to the effective date of this sub decree for compliance with the Land Law of 2001. This Sub Decree also outlines the scope and criteria of economic land concessions, establishing a ceiling of 10,000 hectares, and requires the concessionaire to conduct prior public consultation with the local community and comply with safety measures.

COVID-19 IMPACTS ON LAND GRAB IN PREAH VIHEAR PROVINCE

COVID-19 has spawned economic and health crisis across the globe.

It also had an effect on the resolution of land grabbing cases, as the pandemic response had led to cases being stuck in court. For those charged

in court because of land conflicts, they could not meet with the community members because of pandemic-related restrictions.

The community members, meanwhile, also cannot follow up their cases with the relevant local authorities as they are restricted from meeting them in-person, thus, the resolution of the cases is further delayed. Even worse, they are also prohibited from assembling to demand the court to drop the cases against them.

In addition, COVID-19 has threatened their livelihoods. Their agricultural products could not sell well as there is no overseas market. Also, they could not sell their labor as the factories and companies are closed. This heavily impacts on their daily life.

At the same time, their children are restricted from attending school, further weakening their children's education. Online studies is not a viable option in the rural areas where there is little to no access to the internet.

RECOMMENDATIONS

The following recommendations were gleaned from the Data Collection and Validation Workshop conducted in July 2020 in Preah Vihear province.

Protect

- The State should ensure that the assembly, the peaceful protests, and expression of opinion on the social matters are well protected;
- The State should enhance the knowledge of the sub-national officers about human rights principles as well as national and international laws;
- The State should recognize the shifting cultivation, customary rights, and culture of IPs;



- The relevant ministries should speed up the registration of the Community Land Titling (CLT) for IPs;
- The State should protect the residential, agricultural, spirit, burial, and shifting agricultural lands of IPs in regard to 2001 Land Law, Sub-decree on Communal Land Titling (CLT); and,
- The State should protect rights of IPs to establish IP communities or links to their forest, land, and culture.

Respect

- The company should conduct public consultation (Free, Prior, Informed Consent) with citizens, and an Environment Impact Assessment (EIA) before starting their operations;
- The company should inform the people well about their business before operating the project to avoid conflict and negative impact on economic rights and cultural rights;
- The company should respect the rights of the IP communities and their customary and cultural rights;
- The company should respect the agreement that they signed with the government;
- The government should conduct regular monitoring on the daily operations of the company with the participation of the concerned community and civil society; and,
- The development partners should urge the government to respect the principle of the ELCs or cancel ELCs that affect the lives of the community.

Remedy

- As Heng Fu in Preah Vihea is in bankruptcy now, the government should take over the land and give it back to the villagers whose land was illegally taken;

- The company should pay appropriate and fair compensation to those whose lands were grabbed. It should be based on the market price and arrived at without intimidation;
- The company or the government should restore the environment contaminated by the sugarcane industry;
- Conflict resolution should involve different parties including local authorities, civil society, and media;
- The State should cancel the ELC involving sugar in Preah Vihear to end all the conflicts and return the land to the people, who can then restart their farming activities;
- The local authorities and court should drop unconditionally all cases against land and human right activists;
- The compensation shall be paid directly to the people involved in the conflict, not through the local authorities; and,
- The community should have rights to access legal support and relevant institutions when they are accused. ■

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DISCLAIMER

The views of this study do not necessarily reflect of those of ILC.

ACRONYMS

ADHOC	Cambodia Human Rights and Development Association
ADIC	Analyzing Development Issues Center
AIPP	Asia Indigenous Peoples Pact
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
APC	Asian Peasant Coalition
CHRAC	Cambodian Human Rights Action Committee
CIPO	Cambodia Indigenous People Organization
CIYA	Cambodian Indigenous Youth Association
CLEC	Community Legal Education Center
CAN	Community Network in Action
CPN	Community Peace-Building Networking
CPP	Cambodian Peoples’ Party
EBA	Everything But Arms
EC	European Commission
EIA	Environment Impact Assessment
EJA	Environment Justice Atlas
ELC	Economic Land Concession
FPIC	Free, Prior, Informed Consent
ICSO	Indigenous Community Support Organization



IPHRD/s	Indigenous Peoples Human Rights Defender/s
LICHADO	Cambodian League for the Promotion and Defense of Human Rights
MAFF	Ministry of Agriculture, Forestry, and Fisheries
MEF	Ministry of Economy and Finance
MLMUPC	Ministry of Land Management, Urban Planning, and Construction
Mol	Ministry of Interior
MRD	Ministry of Rural Development
NGO F	NGO Forum on Cambodia
RFA	Radio Free Asia
RGC	Royal Government of Cambodia
VOA	Voice of America

When laws are bent to grab land from the poor and marginalized in India

Vidya Bhushan Rawat
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INTRODUCTION¹

In recent years, wealthy food-importing countries and private investors have begun acquiring farmlands overseas for the large-scale production of food, biofuel, livestock and other products.

In Asia, these land acquisitions have been primarily led by rich Arab Gulf States and East Asian countries.

While there are no central databases or detailed statistics to gauge exactly how big the problem is, a World Bank report in 2011 found land demand to be “enormous” and identified large-scale

farmland deals covering 56 million hectares in less than a year.

This new wave of land investments has two new features: one, they are much larger in scale, and two, they are spearheaded by more government-led investments.

The combination of agrarian and financial crises in 2007 to 2008 triggered this large wave, particularly with investors requiring new avenues of asset acquisitions.

This new wave is also argued to be different from past foreign and domestic investment waves in that it seeks resources (land, water) rather than commodities and markets; it seeks production for repatriation rather than for commercial export; and it involves actual production rather than joint ventures or contract farming.

What we call **land grabbing** has been pursued through very legal and legitimate appellations – Special Economic Zones (SEZs), Food and Barn

¹ Mainly lifted from “The rush for Asia’s farmland and its impact on land rights and tenure security for the rural poor” written by Antonio “Tony” Quizon. It is based on a reflection paper of Tony which was edited for the “South Asia Regional Workshop on Human Rights, People’s Right to Land and Food” held on 4-5 April 2012 in Dhaka, Bangladesh. The original reflection paper was written following an earlier regional workshop on the theme of “Public-Private Partnerships for Land Investments” held on 6-7 June 2011 in Bangkok, Thailand. Published by ANGO in *Lok Niti*, April 2012. See <https://angoc.org/portal/lokniti-on-land-grabbing-changing-the-terrain-of-land-tenure/>



"Indigenous peoples (including local communities, fishing communities, pastoralists, among others) are particularly vulnerable because of their lack of access to formal titling..."

Energy Projects, Projects under the Framework Agreement on Comprehensive Cooperation between the People's Republic of China and the Association of Southeast Asian Nations, Joint Venture Corporations, and the like.

While this phenomenon of resource grabbing is not new for indigenous peoples, and deprivation and violation of their land rights has remained a reality for the last few decades, this latest global rush towards land has had a particularly intensified negative impact on rights of communities, given the scale of appropriation and displacement.

Indigenous peoples (including local communities, fishing communities, pastoralists, among others) are particularly vulnerable because of their lack of access to formal titling and also the arbitrary descriptions of their land as "unproductive" and of "marginal use," thus more easily expropriated.

Methodology, scope, and limitations of this study

The analysis is mainly presented through secondary data and reports, but we highlight key trends through two cases that illustrate land grab and the resulting dislocation of indigenous people - one is in district Sonbhadra, State of Uttar Pradesh while the second is from Telangana in the Southern part of India.

The biggest limitation of this study is the inability to directly reach out to the affected groups because of COVID-19 restrictions. Despite this situation, discussions with activists in the field were held to corroborate the major findings.

SECTORAL OVERVIEW: LEGISLATION PROTECTING RIGHTS OF ADIVASIS

The Indian Constitution provides several protective frameworks for the *Dalits* and the *Adivasis* (in legal terms, referred to as the Scheduled Castes/SCs and Scheduled Tribes/STs).

As per the 2011 Census of India, 8.6 percent of the Indian population are *adivasis*. Around 705 groups are bestowed with the official recognition of ST; however, there are several other groups who do not get covered under its ambit. These groups are concentrated in the north-eastern States as well as central parts of India (IWGIA, 2020).

In particular, the Constitution made provisions for the protection of *adivasis* in forest areas. Such areas are termed as Scheduled Areas, where any work in the pursuit of "development" must have the consent of the *Adivasi Panchayat* (The Constitution of India, Part X, Article 244).

In addition, the Zamindari Abolition Act in 1956 (The Constitution of India, Articles 23, 38, and 39) sought to eliminate big landholdings and distribute them to the poor, particularly the SC-ST communities.

The Constitution has many such provisions to empower groups who have been historically denied justice. For example, land reforms and provisions for forest rights have been enacted for those who live in the forest and rural areas (RRI, 2015).

"Both international corporations and national companies have been competing to acquire land, mostly located in the adivasi zones."

India has also signed most of the United Nations conventions related to human rights, such as the International Covenant on Civil and Political Rights, Universal Declaration of Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women, among others, but India still has **not** ratified the International Covenant on Economic, Social and Cultural Rights as well as the UN Declaration on the Rights of Indigenous Peoples.

The main reason is that Indian jurisprudence does not accept the concept of "indigenous peoples" as defined internationally. India finds the concept of "right to self-determination" problematic and a "challenge" to the eminent domain of the State. While India has provided various instruments for autonomy of tribal groups, many of them are now under attack as business and commercial pressure on the government increases.

Commercial pressures on land and forests, stemming from the twin goals of national security and investment for economic development has had a significant negative impact on these communities.

Studies suggest that more than 10 million *adivasis* have been displaced without proper rehabilitation in the last 70 years in India.

Both international corporations and national companies have been competing to acquire land, mostly located in the *adivasi* zones. Thus, despite

the rights guaranteed under various areas of Indian jurisprudence, the government has become an agent for corporate interests, wielding its exceptional power to broker favorable deals for commercial interests.

MECHANISMS OF LAND GRABBING AND ITS IMPACT

The "Land Conflict Watch" report released in 2020 outlined the scale of land conflicts in India (Worsdell and Sambhay, 2020).

Here are some of the key findings:

- On average, at least 10,600 people are affected by an ongoing land conflicts.
- In conflicts involving mining projects, the average number of affected people is higher at 21,300 each.
- The investments in 335 of 703 reported ongoing land conflicts were estimated to be worth Indian Rupees 13.7 trillion (approximately \$185 billion), equivalent to 7.2 percent of India's GDP from 2018 to 2019.
- 2.1 million hectares of land are affected by reported land conflicts, primarily across six sectors (infrastructure, power, conservation and forestry, land use, mining, and industry).
- Infrastructure development and mining projects triggered more than half of the total reported land conflicts in India.
- An estimated 6.5 million people are negatively impacted by the 703 cases covered in the report.
- 27 percent of the cases involve private companies or businesses and 23 percent cases involved inter-community conflicts.
- The majority of conflicts involved "common lands" and are particularly prevalent in tribal-dominated areas.

Ownership of land among *dalits* is low as land ownership rules put them at a disadvantage.



As per the India Land and Livestock Holding Survey, 60 percent of *dalit* households did not own any farmland in 2013, and was particularly low compared to scheduled tribes, other backward classes and general category (Ministry of Statistics and Programme Implementation, 2013).

This is an important issue as landlessness among *dalits* is linked to practices generating from the caste order, reducing their upward mobility by being relegated to jobs earmarked by caste status. Reforms initiated since independence have not reduced this gap because of the lack of political will, thus land conflicts hit them particularly hard.

Simplification of legal procedures in favor of industries

One of the ways that corporations have been able to acquire land legally is through the amendment of land acquisition rules and labor laws.

For example, in 2020, the Government of Karnataka moved to dilute the Land Reforms Act 1961 through the Karnataka Land Reforms (Amendment) Act 2020, to allow industries to directly buy farm land from farmers.

Other State governments have likewise tried to come up with similar legislation that will scale back the reforms brought about by Land Acquisition Act (LAA) of 2013.

Proposed creation of land banks as a threat to poor communities

The land banks concept has become popular again in India as the government scrambles for ways to attract fresh investments to cope with the shocks of the COVID-19 pandemic.

In April 2020, Indian authorities sought to put together a pool of land to woo companies that were exiting China. These were concentrated in the States of Gujarat, Maharashtra, Tamil Nadu, Andhra Pradesh, and later, Uttar Pradesh.

The plan is deemed problematic, as governments seeking to attract domestic or international capital may use land banks to sidestep institutional protections for those owning or occupying the land.

Changes in environmental laws and their effects on *adivasis*


Another way by which land acquisition can be made easier is through the revision of environmental impact assessment (EIA) rules, which are supposed to regulate the use of or protect natural resources.

EIA rules have been revised through the years, most recently in 2020.

The 2020 EIA rules, unfortunately, bolster government discretionary powers and reduce public involvement in the approval process.

Projects meant for “national security” were given “strategic” importance and new provisions allow for full clearance of such projects. Waterway and national highway projects have also been exempted from requiring clearance.

The big change is in the provisions for clearance of projects after execution (post-facto clearance) which dilute the “public trust doctrine” (Mazoomdaar, 2020). This will mean fast clearances and the doing away of consultations with people affected by these big projects.



Similarly, the Indian government announced that it would fully open up the commercial coal mining sector to the private sector, and has started this through the auction of 41 coal mines, located in Madhya Pradesh, Chhattisgarh, Odisha, Jharkhand and Maharashtra.

Concerns have been raised that this may lead to loss of forest cover and negative effects on public health due to reduced air quality.

These legal changes show various ways that the State acts to further the interest of the private sector by making it easier to take over land, with little regard for the principles carefully considered while crafting the Constitution and other relevant laws.

CASE STUDIES

Case Study 1: Sonbhadra

The main case is from Uttar Pradesh State and involves the abuse of land laws by the top officer of the district to illegally transfer land occupied by *adivasis* into a cooperative owned by his father-in-law.

Later, the top district official illegally sold this same piece of land to a local politician who also happened to be the head of the *panchayat*.

On 17 July 2019, the *Panchayat* chief came along with his goons to take control of the approximately 36.4 hectares of disputed land.

The *adivasis* who had been tilling the land for years valiantly resisted. However, they proved to be no match for the personal militia and gunmen who ended up killing 11 Gond *adivasis* and injuring nearly two dozen others.

Such harassment and intimidation of *adivasis*, however, is not an isolated case. Those in power who covet their land take advantage of their “ignorance” of the law to wrest them away from their land.

Sonbhadra is deemed valuable as it is a mineral rich district in Uttar Pradesh State with a big forest cover. It is strategically located, bordering the Indian States of Bihar, Chhattisgarh, Jharkhand and Madhya Pradesh. The district has a substantial *adivasi* presence and has a population of over 1.8 million people.



Justice eludes Sonbhadra *Adivasi* massacre victims and their relatives as the judicial process has yet to start.
Photos by VB Rawat.



Sonbhadra: Background of dispute and politician-bureaucrat nexus

The land in village Umbha that triggered the killings belonged to erstwhile king of Badhar, Anand Brahm Sahoo. After independence and the Zamindari abolition in 1952, the land was transferred to the *Gram Sabha*.

Throughout these transfers, the *adivasis* carried on tilling the land and nobody questioned their authority or the legitimacy of their occupation over the years. Then in 1955, Maheshwari Prasad Sinha, a resident of Bihar's Patna, formed the Adarsh Cooperative Society in Sonbhadra (then a part of Mirjapur district) and connived with the then-Tehsildar to have approximately 160 hectares of land transferred to Adarsh society.

The 1955 file that spells out the details of the land transfer to the Society, however, has gone missing, thus it is impossible to know now how the *panchayat* land ended up with the Adarsh society.

Later, Sinha used the influence of his son-in-law, Prabhat Kumar Mishra, an Indian Administrative Service (IAS) officer, to transfer 148 *bighas* (approximately 37 hectares) of the land in the name of his daughter, i.e. Mishra's wife, Asha Mishra. It is this same land that Yagya Dutt later bought.

However, even as supposed ownership changed hands, the *adivasis* continued to cultivate the land and claimed to have been paying a land tax. They had protested the land ownership transfers but were not heeded.

What happened to the *adivasis* in Sonbhadra is but another example of how the *adivasis* have been betrayed and marginalized since Independence.

It is the narrative of how the elite usurp the lands of the *dalits* and *adivasis* who have been telling them for decades.

This is done by circumventing laws, particularly the Land Ceiling Law.


While the law sought to put a cap on the amount of land that an individual can register or own under his name, the powerful and the elite went against its intentions by registered land in the names of bonded laborers, family members and distant relatives. Others resorted to registering land under fake names, even names of cats and dogs.

But the biggest failure of the Land Ceiling Act was to allow landholdings in the name of "religious trusts", temples, mutts, *gaushalas* (protective shelters of cows), "educational institutions," agricultural institutions as these are exempt from the ownership ceilings.

In Uttar Pradesh, these trusts that come in all forms are led and controlled by those from dominant castes who lead various political camps and religious institutions.

The cumbersome legal processes end up being in the landlords' advantage as they can afford to wait it out, unlike the *adivasis*. Since the courts do not feel compelled to review cases involving violations of the land ceilings act, the cases are almost never resolved.

Moreover, it is not as if Sonbhadra witnessed unrest for the first time in 2019. On the contrary, the *adivasis* are easily targeted whenever they protest to protect their land. Often, the mining and timber forest mafia in the district tend to operate freely with the support of the local and even national authorities.



Adivasis do have rights over land and forests but thanks to the cooperation among the local politicians and the dominant castes, the provisions remain only in paper and not implemented to protect their rights.

Because of this, many of the *adivasis* that used to inhabit vast forest land in regions such as Kaimur, Bundelkhand, and Tarai of Uttarakh have been driven out. Authorities and politicians have been able to grab vast tracts of fertile land away from them, taking advantage of the fact that these communities were not given scheduled tribe status.

Thus, the Kols and many other communities of Uttar Pradesh who were a majority in Bundelkhand, Mirjapur as well as in Sonbhadra, lost their legal rights over the forest land.

Such a story is common everywhere including Chhattisgarh and Jharkhand. The resulting changes in the demographics are visible in that non-*adivasis* have been able to secure economic resources as well as political power.

Indeed, the majority of the violence involving *dalits*, *adivasis*, and other marginalized people in India stem from heated land disputes caused by attempts of the dominant castes to grab land belonging to these communities or land that are deemed common property resources in the villages.

Thus, land ceiling laws have to be strengthened to achieve the social justice goals enshrined in the Constitution.

The government's findings in Sonbhadra

The Uttar Pradesh government did initiate welcome moves such as the formation of a committee to look into land fraud in the region.

The Committee investigated the cases of 39 cooperative societies and found that between 1952 and 2019, 10,569 *bighas* of land (approximately 2,651 hectares) were illegally grabbed.

The report of the Committee was submitted to the Chief Minister in January 2020. To date, however, there have been no updates on whether these cases are moving in the courts or in revenue tribunals.

The *adivasi* version of the entire episode

Umbha village *adivasis* are still fighting for justice following the violence unleashed on them on 17 July 2019.

While the police have arrested a number of the accused perpetrators, the case has not progressed significantly. The contested land deal has not yet been quashed though a part of the disputed property was said to have been confiscated, a claim that the locals dispute.

The families are still living in fear as the guilty have not yet been punished. The government had promised that one person from each family who lost a member during the clash would be provided a government job, but so far, not one has been given.

Case Study 2: Dam at Polavaram

In the second case, it is the State itself that is the culprit as it has acquired land in Polavaram, a small town on the bank of the river Godavari, in the name of “national interest” without properly relocating the tribal people who were forced out to give way to the construction of a dam.

Unfortunately for these *adivasi*, the promised benefits from the massive “development” that



will come from the construction of the dam will not go to them, who have to make the biggest sacrifice, but to others.

This particular dam in Polavaram, about 40 kilometers from the historic town of Rajmundry, is aimed at providing water to the Andhra people along the coast.

There are no official estimates available at this time, but some activists believe that the number of people who will be displaced by the dam under construction across the Godavari River will hit nearly half a million.

The area that will be submerged is not just in Andhra Pradesh and Telangana but also Odisha and Chhattisgarh, thus the displacement can only be massive.

Minister for Environment Prakash Javedkar said “276 villages in Andhra Pradesh, four villages in Chhattisgarh and eight villages in Odisha are likely to be submerged.”

Other reports indicate, however, that the displacement will be much bigger.

What is clear is that the *adivasi* resettlement as required under the Forest Rights Act has not yet been completed and yet they are already being displaced from their land, which is in violation of the law.

The problem, however, is that the majority of the affected *adivasis* do not even know that they have such rights under the Act and the officials are taking advantage of their ignorance and they are also being enticed away from their land by giving them false promises.

The Indian Parliament has termed the Polavaram dam as a National Project. However, the people to be affected by it do not know about it, which is a clear violation of the Panchayat Extension to Scheduled Areas (PESA) Act.

This Act mandates the prior approval of the affected *gram sabhas* (primary unit of local government) and grants special rights to tribals under the Constitution. This was defined by the Supreme Court in the Samata Judgment that upheld the supremacy of the *gram sabhas* in making decisions when it comes to their zones.



Development or destruction: Beautiful landscape on river Godavari paving the way for the “construction” of the dam. Photos by VB Rawat.



***Adivasis* are facing an uncertain future in the submergence areas without comprehensive rehabilitation.**
Photos by VB Rawat.

It is not known how many public hearings have been conducted in these regions considering that three States will lose over 300 villages. Thus, the people continue to live in uncertainty while politicians have been taking advantage of their superior position.

Such a dam project being pursued in the name of national development is not an isolated case.

It has similarities with other massive projects such as Sardar Sarovar. Again, it is the *adivasis* in Madhya Pradesh who were adversely affected but the benefits were enjoyed by the non-*adivasis* of Gujarat.

The latest news is that despite the COVID-19 pandemic, the government has started dislocating the *adivasis* from the area. The height of the proposed dam is 43 meters and for this, about 37 villages have to be evacuated.

The government estimates that some 15,000 to 17,000 families will have to be relocated by the end of September at the latest for the project to continue.

STATE POLICIES AND MECHANISMS THAT ADDRESS LAND GRABS

For Sonbhadra

Land Holding Act 1960. Also called the Land Ceiling Act, it seeks to put a cap on the land an individual can have in his or her name at 12.5 acres (approximately five hectares) of agricultural land. The limit is higher for unirrigated land.

There are no limits on the following, however, thus providing loopholes that can be abused:

- if the land is meant for a place of worship such as temples or mosques, churches;
- if the land is used for *Gaushalas* for keeping cows; or,
- if the land is used for educational institutions.

SC-ST Prevention of Atrocities Act of 1989, and as amended in 2019. This Act is one of the most powerful acts that protect the rights of the *dalits* and *adivasis*, particularly when they face violence, as it provides for special courts as well as government financial and legal assistance to the victims, thus the elite would rather not have any cases filed under this Act.



Forest Rights Act 2005. This Act was a result of pressure from civil society and activists to prevent eviction of forest dwellers and *adivasis* from their homes in the forest. The problem lies in its implementation.

For Polavaram

Land Acquisition, Rehabilitation and Resettlement Act 2013, which has never been properly used as there has not been any satisfactory compensation, rehabilitation nor resettlement of forest dwellers who have been forced out of their homes in the name of development.

Different yardsticks have been followed for different communities seeking financial compensation, resulting in deep resentment among the *adivasi* communities who have lost everything. Their rehabilitation and resettlement should be done based on their historical cultural needs.

RECOMMENDATIONS

For Government

- Government must terminate all projects that dislocate people, particularly the *adivasis* and other forest dwellers. It must respect the guidelines issued by UN Housing Rights Rapporteur in April 2020 that all kinds of evictions and displacement must be stopped anywhere and under any circumstances.
- India should consider accepting the definition of indigenous peoples under the UN Declaration on the Rights of Indigenous Peoples. It has questioned the issue of “right to self-determination” and “sovereignty” issues, though it has been made very clear that self-determination is mostly related to issues of autonomy within the nation-States

and not really related to ceding from the country.

- India must ratify Convention 169 of International Labour Organization (ILO), which is exclusively related to the rights of the indigenous people. Once ratified, India will be duty-bound to report to ILO about the measures taken towards protection of the indigenous people’s rights. The convention seeks to prohibit land acquisition and displacement of the *adivasis* or tribals without their consent.
- The Forest Rights Act must be fairly implemented and an autonomous body headed by a former judge of the Supreme Court must be formed for its monitoring and proper implementation.
- The principle of consent is the most important in all developmental projects. For private projects, the consent of 80 percent of those affected is required, based on the 2013 Act. The private sector and the government have tried to have this requirement changed, but have so far failed. However, for projects deemed in the “national” interest, consent is not required. The government must thus ensure that the requirement to first get the free and informed consent of those affected before projects push through is strengthened.
- The government should fend off consistent attacks on the laws that protect the rights of *adivasis*, particularly Panchayat Extension of Scheduled Areas Act, which gives *Panchayats* in *Adivasi* areas the right to manage natural resources.
- The government should review the Environmental Impact Assessment process to ensure that the rights of *adivasis* are protected. The pending EIA draft must be reviewed for it is currently tilted in favor of private enterprises who want to shortcut the approval process to get their hands on land.

- The government should revisit the Scheduled Castes, Scheduled Tribe Prevention of Atrocities Act, so that it can cover issues related to displacement, land grabbing and land acquisition involving the *adivasis* as well as the private sector. A specific committee must be formed to review the Act to ensure that it benefits *adivasis*.
- Organizing peaceful democratic protests against any project is part of democracy and must be allowed. Intimidation of *adivasi* rights activists, human rights defenders, land rights and environmental rights activists and organizations must not be tolerated. Authorities should not try to bully them and criminalize them just because they protest against certain policies. It is time for government to listen to them and act.

Sonbhadra, Uttar Pradesh

- The promises made by the Uttar Pradesh government to the people of Umbha village should be immediately fulfilled, particularly to those who either lost their family members in the conflict or got injured.
- Immediate withdrawal of First Information Report filed by the police against *adivasis* who were fighting for their rights.
- So far, the special court that will hear the case has not yet been formed. It is time that the government fast track the case and punish the guilty.
- The Uttar Pradesh government should form a Special Commission to look into land ceiling laws and how they are being abused by high-ranking officers and politicians. All cases pending in the courts must be expedited.
- All applications filed under the Forest Rights Act must be approved immediately. A high-level committee must be formed to look into matters involving the Forest Rights Act.

- *Dalits* and *adivasis* in Uttar Pradesh face the biggest eviction threat from powerful feudal lords, particularly in areas termed as “common properties” or village properties. The State government must ensure that access and usage of these resources be allowed to those communities who have long been tilling and using them. They should not be removed or evicted unless they are properly relocated.

Polavaram

- It is important that *adivasis* be relocated according to their cultural preferences and not imposed from above.
- No eviction should be allowed in the time of COVID-19 pandemic and without prior relocation of the communities.
- Relocation is incomplete if the communities will not have access to the forest, water and land. The State government must ensure that *adivasis* get these in the places where they are being relocated.
- The government must ensure minimum basic facilities (health, education, public distribution system) for the *adivasis* and other forest dwelling people in the new locations.
- The pandemic has already created a food crisis among the forest dwelling communities, particularly those who were evicted. Government must ensure the equal distribution of complete and adequate financial compensation to those affected.
- The government must ensure that forest and police officials will not intimidate tribals and other forest dwellers if they raise their voice against injustice or demand action from the State.
- The Andhra Pradesh and Telangana governments must come up with a status report on the latest situation in the region arising out of the dam project. This must



have complete information on the number of displaced villages, number of communities evicted and relocation programs. It is important for the States to describe in detail the kind of rehabilitation or relocation that was done and when it actually took place. ■

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DISCLAIMER

The views of this study do not necessarily reflect of those of ILC.

ACRONYMS

EIA	Environmental Impact Analysis
FPIC	Free, Prior and Informed Consent
IAS	Indian Administrative Service
LAA	Land Acquisition Act of 2013
PESA	Panchayat Extension to Scheduled Areas Act of 1996
SC	Scheduled Castes (a constitutional term used for <i>dalits</i>)
SEZ	Special Economic Zone
ST	Scheduled Tribes (a constitutional term used for tribals or indigenous people)
UDHR	Universal Declaration of Human Rights
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UPZALRA	Uttar Pradesh Zamindari Abolition and Land Reforms Act



Appetite for destruction: Rising global demand for palm oil spurs land grabbing in Indonesia

Dewi Kartika and Benni Wijaya
Consortium for Agrarian Reform

INTRODUCTION

Palm oil, extracted from the oil palm, is one of Indonesia's top exports. Because of the high global demand for this versatile product used in cooking and manufacturing, large-scale plantations have been developed across Indonesia.

The expansive plantations have generated much controversy because these have boosted monoculture systems. Moreover, it has led to land grabbing as more land is being devoted to meet continuously rising product demand.

Agrarian conflicts that have arisen due to palm oil related operations have caused villages, peasants, and indigenous peoples to suffer.

The government and private companies have tried to minimize these conflicts and the impact of oil palm activities on local communities through corporate social responsibility projects. However, it cannot be denied that the palm oil sector has spurred land grabbing and eviction across Indonesia.

The insatiable demand for palm oil in the global market has indeed changed the landscape of food agriculture, land, and forests in Indonesia into centers of oil palm plantations, now spanning more than 16 million hectares.

Methodology, Objectives, and Limitations of the Study

This paper aims to provide an overview and brief analysis of the practice of land grabbing in Indonesia as a result of large-scale palm oil plantation operations, and how global capital pressures are closely linked to land grabbing processes at the site level, thus adversely affecting farmers' and indigenous peoples' rights to their land.

This paper also recommends solutions to protect local community land rights from the negative impact of large-scale oil palm plantations.

This study was conducted through *desk review* and analysis of secondary data. The data complemented information gathered from the

Table 1. Projection of world vegetable oil demand and new area addition towards 2050

Scenario 2050 Consumption (kg/capita)	World Vegetable Oil Needs 2050 (million tons)	Additional Vegetable Oil Production 2014 to 2050 (million tons)	Area Expansion to Meet Additional World Vegetable Oil Production 2050	
			If Only From Soybean Oil (million hectares)	If Only From Palm Oil (million hectares)
21	194	24	48	4.8
25	230	60	120	12
37	340	170	340	34

Source: PASPI (2016)

fact-finding missions in areas where agrarian conflicts related to the oil palm plantation sector is present - Seruyan in Central Kalimantan and Tebo in Jambi Province.

To guide the analysis in this paper, land grabbing is referred to as *“the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally-typical amounts of land by any persons or entities (public or private, foreign or domestic) via any means (‘legal’ or ‘illegal’) for purposes of speculation, extraction, resource control or commodification at the expense of agroecology, land stewardship, food sovereignty and human rights.”* (Baker-Smith and Attila/EcoRuralis, 2016).

This paper aims to show how a global economy orientation adversely affects the local communities. By serving the world market demand for palm oil, this trend has changed the land and forest landscapes and deprived too many locals of their rights to land.

Description, significance, scope, and trends of the sector

Global vegetable oil consumption has increased in step with the growth in global population, making palm oil a valuable commodity.

There are other vegetable oils such as that extracted from sunflowers, corn and coconuts, but palm oil is deemed superior because it can be efficiently and consistently produced the whole year through.

This is why demand will likely continue to increase, which will mean more production of palm oil from Indonesia. In turn, this will mean extra pressure to devote more land to grow oil palm.

Indonesia’s palm oil industry has indeed grown significantly from 1970 to 2019.

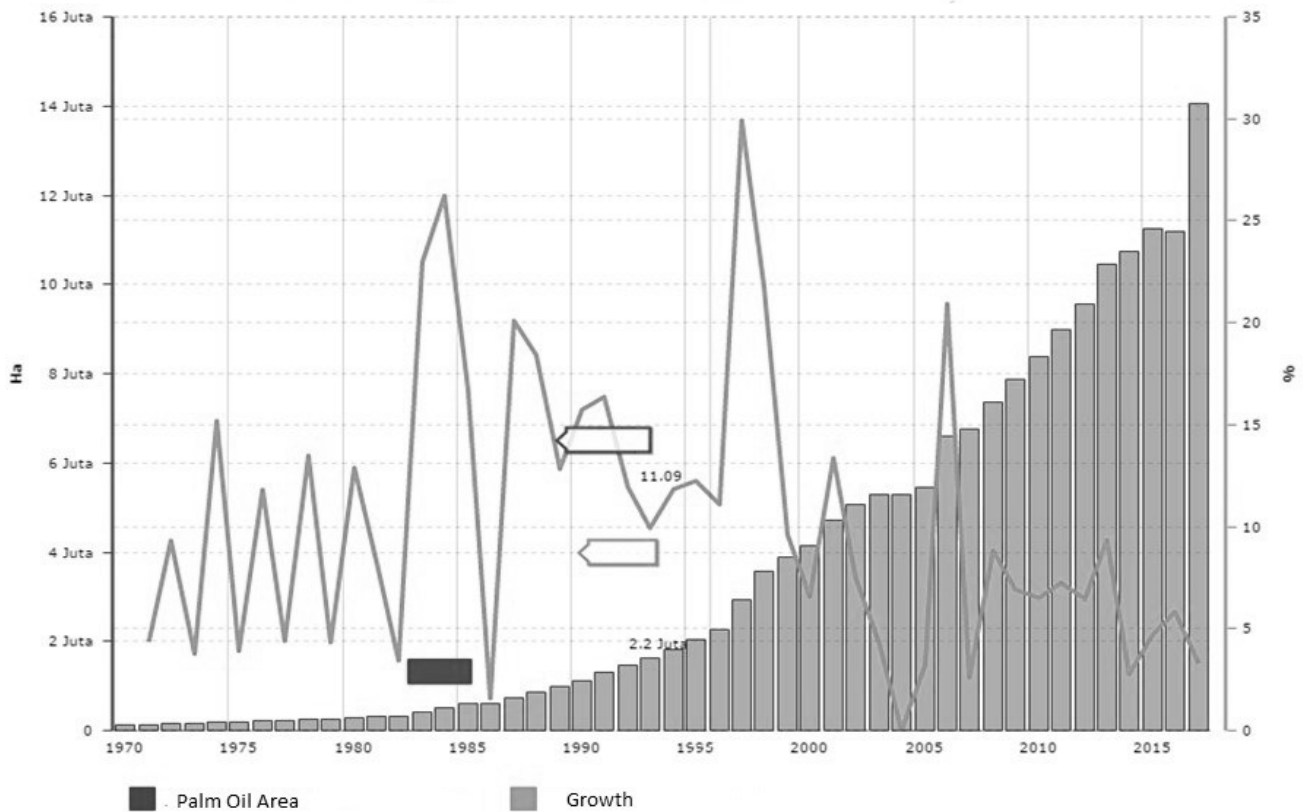
Figure 1 shows the growth trend that continues to increase dramatically year after year.

Indonesia is already the world’s largest producer of palm oil. But even then, the Indonesian Chamber of Commerce and Industry (Kadin) wants Indonesia’s crude palm oil to be the main raw material in the global food supply chain under a plan called *“feed the world.”*

This desire has made the government plan to further expand oil palm estates to a whopping 22 million hectares in the next 10 years. So far, Indonesia is short of this target by six million hectares.



Figure 1. Indonesia’s palm oil area and growth, 1970 to 2018 (in hectares)



Source: Ministry of Agriculture

Government data show that as of December 2019, the area covered by “new” oil palm estates is 16.381 million hectares – see Figure 2.

According to the KPA year-end report, almost every year, the plantation sector has the most number of cases of agrarian conflicts in Indonesia. Most of these conflicts involve the oil palm sector. The massive expansion of plantations devoted to oil palm is directly linked to the expropriation of people’s land to benefit the oil palm sector.

By area distribution, the rapid expansion has taken place in five main provinces, namely Riau, North Sumatra, West Kalimantan, Central Kalimantan and South Sumatra.

Not surprisingly, Riau Province consistently saw the most number of agrarian conflicts due to the dominance of the oil palm sector.


This shows that the expansion of oil palm plantations is very much related to increasing cases of land grabbing and evictions leading to agrarian conflicts.

Global impact at site level: Land grabbing and agrarian conflict situations in the oil palm sector

In 2019, there were 279 agrarian conflicts involving 734,239.3 hectares that affected almost 110,000 families spread over 420 villages in all provinces in Indonesia. Like in 2018, the plantation sector saw the most cases of conflicts at 87.

Figure 2. Land use control for oil palm plantation business per December 2029 based on Agriculture Minister's Decree Letter

LUAS SAWIT HINGGA 2019 MENCAPAI 16,3 JUTA HA



**MENTERI PERTANIAN
REPUBLIK INDONESIA**

**KEPUTUSAN MENTERI PERTANIAN
NOMOR 833/KP/SP/SR.020/M/12/2019**

**TENTANG
PENETAPAN LUAS TUTUPAN KELAPA SAWIT INDONESIA
TAHUN 2019**

DENGAN RAHMAT TUHAN YANG MAHA ESA

MENTERI PERTANIAN,

Menimbang :

- a. bahwa dalam rangka melakukan pembabaran data-data perkebunan kelapa sawit Indonesia;
- b. bahwa hasil rekonsiliasi data tutupan sawit oleh tim yang diinisiasi oleh Kementerian Koordinator Bidang Perekonomian telah memperoleh luasan kelapa sawit Indonesia;
- c. bahwa dalam rangka sinkronisasi kebijakan satu peta yang berkaitan dengan kesesuaian perizinan kelapa sawit yang dikeluarkan oleh kementerian/lembaga
- d. bahwa berdasarkan hal tersebut di atas perlu ditetapkan Keputusan Menteri Pertanian tentang Penetapan Luas Tutupan Kelapa Sawit Indonesia Tahun 2019;

MEMUTUSKAN:

Menetapkan :


KESATU : Menetapkan Luas Tutupan Kelapa Sawit Indonesia Tahun 2019 seluas 16.381.959 ha (enam belas juta tiga ratus delapan puluh satu ribu sembilan ratus lima puluh sembilan hektar), dengan sebaran lokasi spasial sebagaimana tercantum pada Lampiran yang tidak terpisahkan dari Keputusan ini.

KEDUA : Informasi Geospasial Lahan Luas Tutupan Kelapa Sawit Indonesia sebagaimana dimaksud pada Diktum KESATU dikelola dan disebarluaskan oleh Pusat Data dan Informasi Kementerian Pertanian.

KETIGA : Keputusan ini mulai berlaku sejak tanggal ditetapkan.

Ditetapkan di Jakarta
pada tanggal, 17 Desember 2019

MENTERI PERTANIAN



SYAHRUL YASIN LIMPO

Expansion and conflict in the plantation sector continue to rise, even amid the COVID-19 pandemic.

While all economic and industrial activities saw significant declines because of the pandemic, agrarian conflicts in oil palm plantations continued to escalate.

KPA noted that in 2020, there were 122 conflicts in the plantation sector with the oil palm sector accounting for 101 cases (refer to Table 6).

Table 2. Agrarian conflict in oil palm commodity sector (2018 to 2020)

Year	Number of Conflicts	Plantation Sector	Palm Commodity
2018	410	144 [ranked 1]	83 [ranked 1]
2019	279	87 [ranked 1]	69 [ranked 1]
2020	241	122 [ranked 1]	101 [ranked 1]

Source: KPA End Year Reports

Monopoly of economy and land in the palm oil sector: Main players

The economic viability of oil palm plantations due to the ease of acquiring large tracts of land, cheap labor and large global demand has accelerated the expansion of the oil palm sector in Indonesia.

Crude Palm Oil (CPO) is Indonesia's main non-oil export commodity. Data from the Indonesian Palm Oil Association (*Gapki*) shows that the value of palm oil exports in 2016 reached Rp 240 trillion.

As these areas expanded, so did land conflicts. Based on data from 2020 showing 122 conflicts, 106 can be traced to private plantation companies.

Based on the data from the Ministry of Trade, 16 private firms are the main exporters of palm oil in Indonesia, led by

Wilmar. The Wilmar palm oil plantation group's main expansion areas are in Seruyan, Central Kalimantan and is among the private firms involved in agrarian conflicts in the plantation sector.

Table 3. Area of palm oil plantation coverage in Indonesia in 2019

Rank	Province	Area (Hectares)	Percentage (%)
1	Riau	3,387,206	20.68
2	North Sumatra	2,079,027	12.69
3	West Kalimantan	1.807.643	11.03
4	Central Kalimantan	1.778.702	10.86
5	South Sumatra	1.468.468	8.96
6	East Kalimantan	1.287.449	7.86
7	Jambi	1.134.640	6.93
8	West Sumatra	558.683	3.41
9	South Borneo	549.953	3.36
10	Aceh	535.002	3.27
11	Bengkulu	426.508	2.60
12	Bangka Belitung Islands	273.842	1.67
13	Lampung	268.061	1.64
14	North Kalimantan	234.535	1.43
15	West Sulawesi	155.958	0.95
16	Central Sulawesi	110.901	0.68
17	Papua	110.496	0.67
18	West Papua	58.656	0.36
19	Southeast Sulawesi	55.786	0.34
20	South Sulawesi	31.980	0.20
21	Banten	18.365	0.11
22	West Java	14.997	0.09
23	Maluku	14.966	0.09
24	Gorontalo	11.257	0.07
25	Riau islands	4.926	0.03
26	North Maluku	3.950	0.02

Source: Ministry of Agriculture, 2020

Table 4. Trend of the eruption of agrarian conflicts in Riau Province (2014 to 2018)

Year	Number of Conflicts	Ranking (Per-Province)
2014	52	1
2015	36	1
2016	44	1
2017	47	4
2018	42	1

Source: KPA Year-End Report, 2018

FORMS OF CONTROL

Land conflicts arise mainly because of the ease with which the government grants Cultivation Rights (HGU) to plantation companies, without first looking at the situation on the ground, on whether these will result in the displacement of communities.

This situation is exacerbated by the lack of information regarding HGUs, especially HGUs that have problems with local residents. To make matters worse, many site permits and HGUs cover forest areas released by the Ministry of Environment and Forestry.

The central and local governments often view the resistance of peasants and indigenous peoples, as well as the emerging agrarian conflicts, as a mere "plantation business disturbance." This perspective stems from the legitimacy of these plantations' operations provided by the Plantation Law.

The Plantation Law has positioned communities in conflict with private companies as business nuisances, illegal loggers, and even criminals, without taking into consideration the root cause of the agrarian conflicts: that these began with the expropriation of land occupied by farmers, indigenous peoples, and villages.

FAMILIES AND COMMUNITIES AFFECTED

Land grabbing on oil palm sector in Seruyan, Central Kalimantan Province

In Central Kalimantan, the Seruyan District Government has issued 43 oil palm plantation permits, totaling 598,815.491 hectares, since 2008.

The high number of oil palm plantation permits for giant corporations in Seruyan illustrates the phenomenon of land grabbing due to global and national capital pressures. As a result, oil palm plantations now dominate the landscape.

Land grabbing in the oil palm plantation sector is also closely related to decentralization and regional autonomy policies. The creation of new districts and autonomous regions provides additional avenues for plantation companies to secure permits.

The Seruyan District Government, for example, was created in 2002. The capital city of Seruyan

Table 5. Number of agrarian conflicts in the plantation sector, 2020

Plantation	No. of Conflicts
Palm	101
Clove	5
Sugarcane	5
Rubber	3
Coffee	2
Coconut	2
Gumlac	2
Tea	2
Horticulture	2
Nutmeg	1
Orange	1
Total	126

Source: KPA Year-End Report, 2020

Table 6. Agrarian conflicts according to sector (number and hectares), 2020

Sector	No. of Conflicts	Hectares
Plantation	122	230,878.78
Forestry	41	312,158.16
Infrastructure	30	57,185.20
Estate	20	6,019.013
Mining	12	12,792.76
Military Facility	11	4,741.40
Sea Shore	3	243.30
Agro Business	2	391.50
Total	241	624,416.113

Source: KPA Year-End Report, 2020

District is Kuala Pembuang, Seruyan Hilir Sub-District.

In the 1990s, the local economy of this area, like in most Kalimantan regions at that time, relied heavily on logging. The precious hardwoods were extracted from the dense forests that once covered the entire island and logs were transported downstream by rivers to Sampit, where they then were shipped to different wealthy countries around the world.

After the fall of Suharto, the logging industry collapsed and the local government used the economic devastation as justification for establishing oil palm plantations. As a result, forest areas permits were granted to oil palm plantation companies. Many large private companies involved in oil palm plantations now operate in Seruyan District and have converted existing forests into plantation land.

According to the Guidelines for Plantation Business Licensing, the coverage of principle permits ranges from 100,000 to 120,000 hectares per company or group. However, in the



Seruyan Regional Government, the coverage was expanded to 120,000 hectares.

Based on rules regarding designation of forest areas in the province of Central Kalimantan, the total forest area in Seruyan is 1.113 million hectares, which is divided into 464,673 hectares for Limited Production Forest (HPT), 388,266 hectares for Production Forest (HP), and 260,123 hectares for convertible Production Forest area. For Forest Concession Rights (HPH) and Industrial Plantation Forests (HTI) in Seruyan, the area is 501,950 hectares.

The early drivers of the licensing boom in Seruyan included the wealthiest families in Indonesia and Malaysia. When Darwan took office in 2003, Robert Kuok, who was once Malaysia’s second richest man, was probably the largest landowner in Seruyan. His Seruyan plantation portfolio was merged with other plantation companies, which are part of the Kuok family business, to form Wilmar International, reputedly the world’s largest oil palm company.

Land grabbing involved the issuance of permits to cronies of the District Head (Regent) at that time, namely Darwan. Then, these permits were resold to the Wilmar Group, thereby creating a vast oil palm plantation in Seruyan that feeds the global market.

Because of *land grabbing*, plantation estate permits were granted covering approximately 27 villages, including houses, agricultural land and other public facilities, creating tension and conflict.

Towards the end of July 2011, tensions in Seruyan escalated. Thousands of villagers across the district came to Kuala Pembuang, setting up tents outside the DPRD (local parliament) building and

asked for an audience with the regent (district head).

The unrest also prompted other political uprisings. In the 2018 local election, Darwan Ali’s son, Ahmad Ruswandi, was defeated by an independent candidate, Sudarsono, an ethnic Javanese who was supported by peasant victims of land grabbing in Seruyan.

Land grabbing on oil palm in Tebo, Jambi

According to 2019 data from the Ministry of Agriculture, the area of palm oil land in Jambi

Table 7. Top 16 Exporters of oil palm in Indonesia (March 2016)

Rank	Name of Company (Country of Origin)	Exported Value (in US\$ million)
1	Wilmar (Singapore)	2,092
2	Sinar Mas (Indonesia)	1,860
3	Musim Mas (Singapore)	1,817
4	Asian Agri (Indonesia)	987
5	Permata Hijau (Indonesia)	497
6	Astra (Indonesia)	325
7	LDC Group (Netherlands)	311
8	Salim (Indonesia)	278
9	Golden Hope (Malaysia)	278
10	HAS Group (Kuwait)	209
11	FELDA (Malaysia)	171.1
12	WINGS Group (Indonesia)	171
13	First Resources (Singapore)	102
14	Best Group (Indonesia)	100
15	Tunas Baru Lampung (Indonesia)	92
16	Godwen Austen (Indonesia)	89

Source: Ministry of Trade



Palm Oil Expansion in Seruyan, 2017. Photo by Mongabay Indonesia

Province reached 1.134 million hectares or around 6.93 percent of the total national oil palm land area.

KPA reported that in 2020, there were 21 incidents of agrarian conflict in Jambi Province, the second highest after Riau Province with 29 conflict eruptions. Close to half of these incidents involved oil palm plantations.

Year after year, Jambi is listed as one of the epicenters of agrarian conflict in Indonesia, due mainly to the control and monopoly of oil palm plantation companies and the forestry industry.

One of the palm oil companies causing agrarian conflicts is PT. Erasakti Wira Forestama (EFW). In Jambi Province, PT. EWF was involved in conflicts in several districts, including one with the people of Merbau Village, Mendahara Sub-district,

Tanjung Jabung Timur. PT. EWF is also listed as one of the suppliers of the Wilmar Group. (KPA, End Year Report 2020).

The agrarian conflict between PT, EWF and the community has been going on since 2006. This conflict also involved several palm oil companies due to the practice of buying and selling HGU on community land, which was unilaterally acquired by the company.

In 2006, PT. Sawit Mas Perkasa (SMP) entered Merbau Village. At that time, the District Head of East Tanjung Jabung appointed PT. SMP as a partner of smallholder oil palm plantations based on Decree No. 389/2006.

The partnership was executed on 1,200 hectares of land cultivated by the Merbau Village community. The company offered to plant oil



palm on community land, on condition that the wood on the land would become the property of the company.

Eventually the company broke its promise. It only planted on 150 hectares and no partnership was forged.

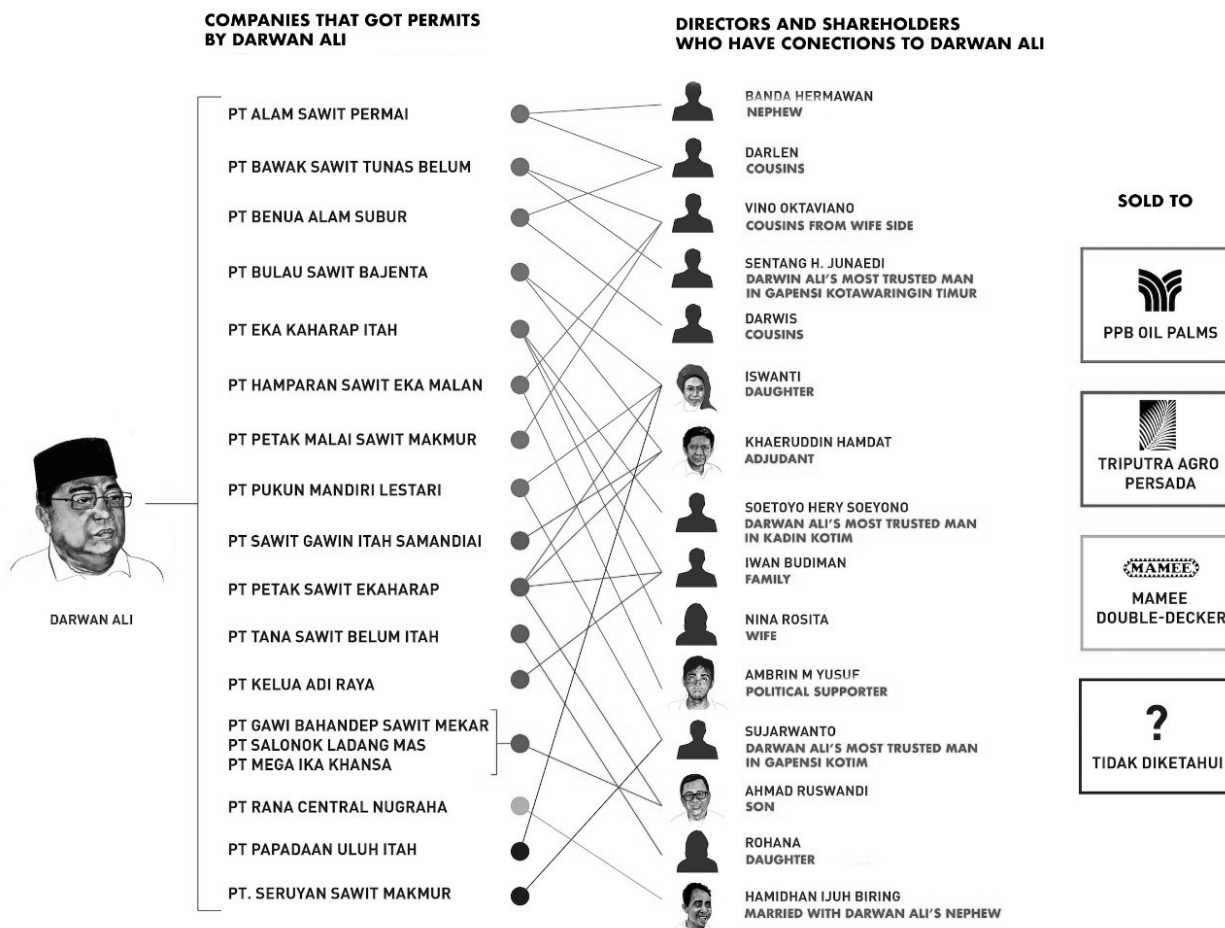
In 2012, the land that was supposed to be subject to a partnership with the community was sold by PT. SMP to PT. Indonusa Agromulia. The 406-hectare land was sold by manipulating the data regarding who owned the land. Those who said they had never sold their land sued against

this action, so at that time, a nine-member Conflict Resolution Team (CRT) was formed by the East Tanjung Jabung District Government.

The decision of the CRT indicated that the land purchase by PT. SMP was full of fabrications and falsification of land sales and purchase certificates, and the company does not legally own land rights in the village.

After the people's victory, PT. Indonusa sold the land again to PT. Kurnia Tunggal, which later changed its name to PT. EWF. The company received a site permit from the Regent (district

Figure 3. The Palm oil industry oligarchy in Central Kalimantan



Source: Environmental news site mongabay.co.id, Local Oil Palm Actors and Oligarchs



The Women of Tebo Peasants Union block the land clearing operations by PT. WKS. *Photo by KPA.*

head) of Tanjung Jabung Timur and claimed to have purchased the community lands at the agreed price.

KPA's field investigations found that the communities were forced to sell their lands due to intimidation from the company and former village head. Of the total residents, 47 of them refused to sell their land covering 72 hectares.

The conflict continued on 9 May 2018, when residents sent a letter of complaint to the Land Office of Tanjabtim to seek mediation with PT. EWF and requested that the cultivation rights certificate of PT. EWF be suspended until their 72-hectare land dispute is resolved.

Mediation between the residents and PT. EWF took place from July to August 2018 but was not resolved. The Agrarian Ministry/National Land Agency (BPN) advised the parties to take legal action.

In mid-August 2019, PT. EWF charged Thawaf Aly of violating the Plantation Law. Thawaf Aly is an advocate who has received power of attorney from the 47 resisting residents. The incident occurred three months after the residents wrote to the East Tanjung Jabung Land Office (requesting not to issue the company's cultivation rights during the settlement process). A month before the incident, BPN issued a cultivation rights certificate for PT. EWF.

This case illustrates the escalation of land grabbing incidents in Indonesia as a result of the continuing expansion of the oil palm plantation industry.

STATE POLICIES AND MECHANISMS THAT ADDRESS LAND GRABS IN OIL PALM PLANTATION

Such was the adverse impact of the unabated expansion of oil palm plantations that the



Indonesian government was compelled to step in and issue Presidential Instruction No. 8 of 2018 or the Palm Oil Moratorium Instruction to put some semblance of control to the granting of permits. Unfortunately, while the intention may be good, the implementation has been wanting and conflicts have continued to erupt.

Agrarian conflicts in the plantation sector continue to increase every year in Indonesia because of several factors, including:

First, the granting of new permits without first resolving past plantation conflicts.

Second, the very liberal agrarian political-economic development paradigm that looks at land as a mere commodity that can be traded for investment and business purposes. This development model restricts community rights/ access to land and other agrarian resources.

Third, failure to impose sanctions on corrupt practices that led to the granting of permits or concessions to private and State companies. So far, corporations and State officials who commit violence against communities in areas of agrarian conflict have yet to be punished.

Fourth, the growing market demand for palm oil that Indonesia wants to supply. Thus, Indonesia today relies heavily on palm oil to boost its revenues.

Fifth, legal discrimination against farmers, indigenous peoples, or other marginalized groups/entities occupying land, causing evictions, sweeping changes in the landscape, and elimination of local wisdom.

Sixth, the lack of political will to carry out the conflict resolution agenda through agrarian reform and implementation in the field.

Seventh, lack of coordination among agencies and the differing regulations depending on the State agency or institution, thus making it difficult to resolve plantation agrarian conflicts. This situation is exacerbated by the lack of understanding in government of the agrarian perspective.

Eighth, there is no real resolution of pending agrarian conflicts, which then allowed conflicts to fester.

RECOMMENDATIONS

The demand for the President of the Republic of Indonesia to intervene in resolving agrarian conflicts has long been raised.

In 2003, the Indonesian National Human Rights Commission in collaboration with civil society formally asked the former President, Megawati Soekarno Putri, to form the National Committee for Agrarian Conflict Resolution (KNUPKA). However, the proposal was rejected, and the President's only response was to strengthen the National Land Agency by establishing a deputy for agrarian conflict resolution.

The facts show that the deputy at the National Land Agency, until the establishment of the Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency as it is today, could not do anything to resolve agrarian structural conflicts. It is inconceivable to think how an institution that is the cause of the eruption of agrarian conflicts through the practice of granting permits is tasked to resolve the agrarian conflict itself.

On 28 January 2015, the National Committee for Agrarian Reform (KNPA)¹ demanded

¹ A network consisting of the Consortium for Agrarian Reform (KPA), the Alliance of Indigenous Peoples of the Archipelago (AMAN), the Indonesian Peasant Union (SPI), the Forum for the Environment (WALHI), KontraS, the Sajogyo Institute, among others.



President Joko Widodo for the establishment of a Presidential Task Force for Agrarian Conflict Resolution (UKP2KA).

The proposal was submitted to the cabinet secretary, but there has been no official response from the government. Instead, the government formed other institutions such as the Peatland Registration Agency (BRG) and the Presidential Working Unit for the Improvement of Pancasila Ideology (UKPIP).

One of the main prerequisites for resolving agrarian conflicts is the government's political will. The current government has demonstrated at times that it does have the will to do what it should, but it has not been as firm and consistent as communities would like it to be.

As a result, the approval of investments and land acquisition of business entities, which then give birth to new agrarian conflicts, has moved at a faster pace than the resolution of pending agrarian conflicts.

Not surprisingly, since 2014, KPA Year End Report has noted a significant increase in eruptions of agrarian conflicts in various regions in Indonesia.

The situation is getting worse with the repressive actions of the security forces that victimize members of the community. Many residents who reject land grabbing and evictions have been subjected to intimidation and persecution.

Conflicts have continued to erupt due to the fundamental problem of them not being resolved under the paradigm of social justice through agrarian reform. After all, such reform is a way to unravel agrarian inequality and conflict, including conflicts that occur in plantation areas.

As a result, the majority of the citizens could not enjoy the little justice from the implementation of agrarian reform.

Given the complexity of and intertwined problems, it is thus necessary for the government to take bold and wise steps to address these agrarian conflicts arising from oil palm plantations. The following actions are thus proposed.

First, at the political level, the President should directly lead the implementation of agrarian reform while resolving pending structural agrarian conflicts.

Second, at the regulatory level, the government should immediately ratify the revision of the Presidential Regulation on Agrarian Reform in line with the aspirations and demands for improvement from the affected citizens.

Third, foster the wide and active participation of civil society and the agrarian reform movement in registering priority sites/locations, organizing beneficiaries, and building a sustainable development model that is just and transformative in areas where agrarian reform is implemented.

In the medium and long term, the Agrarian Reform Bill as mandated by MPR (People's Assembly) Decree No. IX of 2001, in line with the 1960 LoGA, should be put in place to provide a legal basis or framework for implementing agrarian reform that is stronger and in line with the ideals of the Constitution.

In this way, agrarian reform as the basis for national development will be genuinely implemented. ■



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DISCLAIMER

The views of this study do not necessarily reflect of those of ILC.

ACRONYMS

AMAN	Indigenous Peoples' Alliance of Nusantara
BPN	National Land Agency
BRG	Peatland Registration Agency
CSR	Corporate Social Responsibility
DPDR	Regional House of Representatives
HGU	Cultivation Rights
Kadin	The Indonesian Chamber of Commerce and Industry
KontraS	The Commission for Disappeared and Victims of Violence
KNPA	National Committee for Agrarian Reform
KNuPKA	National Committee for Agrarian Conflict Resolution
KPA	Consortium for Agrarian Reform
SPI	Indonesian Peasants Union
UKP2KA	Presidential Task Force for Agrarian Conflict Resolution
UKPIP	Presidential Working Unit for the Improvement of Pancasila Ideology
WALHI	The Indonesian Forum for Environment

When one private firm reigns supreme over many: State of land grabbing in Nepal

Binod Gautam
Community Self Reliance Centre

INTRODUCTION

There are many ways to define land grabbing¹. Generally, land grabbing is understood in relation to commercial pressure on land, wherein land is taken over, usually through aggressive means or force, to expand territorial holdings or broaden power, which may also include large-scale investment in agricultural land.

In Nepal, commercial pressure on land is not a big a factor as there is not much investment by multinational companies in the industrial sector.

Because of this, many civil society organizations including the Community Self Reliance Centre (CSRC) proposed to define land grabbing as *“to obtain or appropriate or the seizing of land unscrupulously or forcibly or unfairly by a nation-State, or organization, or an individual and disregarding the tenancy rights of the peasants and the farmers, including the customary rights,*

and debilitating the productivity of land and leading to violation of right to feeding oneself”².

Land grabbing can also cover the practice of leasing government or public land to the private sector for business purposes i.e. for the establishment of hotels, cable cars, national parks and so on.

Public land in Nepal is defined as the “land allocated for use not only by individual but by general public like path, pond, water-sprout, well and their banks, exit for cattle, grazing-land, graveyard, public inn, temple, place for religious practice, memorials, court-yard, sewerage, market-place, public entertainment and sports ground and other lands specifically denoted so by Government of Nepal (GoN) through publication in the Nepal Gazette” (Acharya, 2008).

In November 2019, the GoN agreed to extend for another 25 years the lease contract of Yeti

¹ Action Aid (2011), Peoples Action in Practice, p. 113

² CSRC (2005), Land Grabbing in Nepal’s Context: Searching for a politico-economically informed definition of land grabbing in Nepal (proposed paper for discussion)



Mass gathering against land grabbing in Kalikasthan Rasuwa on 17 May 2019. Photo by CSRC.

Holdings, a private company, covering the Gokarna Forest Resort, even before the expiry of the current lease period.

This despite criticisms from different CSOs, media, and other private companies. Various sources claimed that the lease was extended because the owner of Yeti Holdings has strong ties with some of Nepal's highest government officials.

It is important to note that the 30-year lease contract forged in 1996 between the then Royal Palace and Yeti Holdings covering 142.09 hectares of forest land clearly states that "the lease period cannot be extended before the expiry of the current lease period" (Sapkota, 2019).

The Supreme Court of Nepal later summoned government officials to explain the decision to extend the lease. Lawmakers also sought clarification. However, Prime Minister KP Sharma Oli brushed off criticisms and said the government made the right decision.

The GoN claims that the move will create more job opportunities, has a positive long-term impact on national development, and it has the authority to lease out public land as past administrations had done. It likewise reported that it had earned 6.45 billion Nepali Rupees (approximately US\$55.3 million) by providing land to the private company.

The case of Yeti Holdings is but one example of questionable moves by the government to lease land to the private sector, even if it means taking land away from citizens who continue to wait for their chance to own their own land and possibly damaging natural resources available in these public or government land.

Objectives of this Study

The general objective of this study is to conduct a sectoral study of the seeming preference of the GoN to lease land to the private sector. In particular, the study aims:

- to analyze a representative case of a private company, which has been repeatedly awarded contracts by the GoN;
- to publicize the cases of how the GoN has been leasing public land to a single private company; and,
- to recommend to the government necessary measures for the prevention of land leasing trend in Nepal.

Methodology

This study is mostly guided by qualitative data, and therefore, qualitative methodologies were applied for this study. Quantitative data were gathered from different media sources, different publications and key informant interviews.

Some of the tools used to put together this study are:

- **Document Review.** National and international journals, media reports, reports of government, NGOs, and the private sector were reviewed to collect information relevant to this study such as land leasing practices of Nepal and their impact on the larger community in Nepal.
- **Case Study.** Some representative cases of land leasing in Nepal were collected and analyzed. Three cases involving subsidiaries of the same company were identified and analyzed to support the study. These cases were selected because of their importance, particularly because even the Supreme Court also got involved in reviewing government tendencies to lease public land to the private sector.
- **Key Informant Interview (KII).** Some key informant interviews were also conducted with land rights activists, government stakeholders, and some representatives of the private sector. Ten persons were interviewed to collect information on land grabbing and its effect in Nepal.

Scope and limitations

This study is mostly limited to secondary data and only covered Yeti Holdings, which has been frequently awarded public land leases by the Government of Nepal, enabling it to expand its business.

Short case studies related to Yeti and its subordinate companies were used as reference for this paper. It also depended a great deal on media accounts, reports of different organizations, and interviews with some key informants.

Data on the affected communities and the community perception towards land leasing tendencies of government were not analyzed in this report.

SECTORAL OVERVIEW

Introduction of the Sector

In a democracy, it is essential that land leases or purchases be fully transparent, and that the revenues are used for the benefit of the local population.

However, it appears that in some cases, land is leased at very low rents, or sold below market prices, or even given away because of vague promises of employment creation or transfers of technology.

However, while States have a right to engage in economic affairs, it is corollary under the Declaration on the Right to Development (UN GA Resolution 41/128 of 4 December 1986) that they should “formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free, and meaningful participation in



development and in the fair distribution of the benefits resulting therefrom” (Art. 2.3.).

This requires that States ensure the adequate participation of the local communities affected by land leases or purchases, and that the decision-making process is fully transparent (Art. 6.3. and 8.2.). Participation is key to ensuring long-term sustainability and success of investments.

However, after the abolition of monarchical system in Nepal, private investors and governments have shown a growing interest in the acquisition or long-term lease of large portions of public land which government acquired from the former monarchy and his family.

The government has not been transparent about any competitive bidding process, specifically how and why it awarded numerous public land leases to the same company - Yeti Holdings.

Yeti Holdings, an influential private company established in Nepal in 1995, is reputedly the largest travel and tourism group in the country. It was established by two Sherpa brothers – Ang-Tshering and Sonam Sherpa – to promote tourism and travel.

The two brothers started small but were eventually able to grow their business and expand to airlines, resorts, and other tourism sectors. The group today has multiple companies under the brothers’ umbrella and one of these is Thamserku Trekking.

Various sources including the leading media organization of Nepal say that the owners of Yeti have close relations with the Communist Party of Nepal (CPN), especially its Chairperson and other top leaders.

Due to the influence and close relations with those in power, the Yeti Group was able to secure a 30-year lease over a 142.09-hectare piece of public land following the decision of the Council of Ministers on 9 December 2019.

In the same way, Thamserku Trekking, one of the sister companies of Yeti Holdings, was awarded another huge piece of land at the capital city of the federal government (near Soaltee Hotel in Kalimati). According to the 30-year lease agreement with the Nepal Trust, a commercial building will be constructed on that land.

Apart from Gokarna Forest Resort, Yeti Holdings has likewise secured a huge plot of prime land at Durbarmarg, Kathmandu.

So far, the Trust has been silent about its decision to lease out land in Kalimati to Thamserku Trekking, which is owned by the family members of the Yeti Group.

Gajendra Thakur, secretary at the Nepal Trust, said that the company will pay Rs 180 million (approximately US\$1.54 million) to the Trust for using the land. “The housing design for the business complex to be built on the land will be as approved by Kathmandu Metropolitan City,” he said.

The government has been accused of misusing its power to lease out former royal family property to Yeti Holdings. The government had reshuffled the Nepal Trust Committee (NTC) and revised the Trust Act to open the way for the lease of Gokarna Forest Resort. Going against the general practice, the Trust extended the lease for the Gokarna Forest Resort for another 25 years even before the existing contract expired.

Significance of the Sector

The Nepal Trust Act of 2008 states that the GoN can indeed lease out land upon the recommendation of the NAC.

However, there is no clear criteria for deciding to whom it can lease land, whether to an individual or to a company, giving rise to the possible misinterpretation of the objectives of the existing laws in Nepal to favor leasing land to select private companies.

Private companies have been aggressively securing assets, thus the rampant land grabbing in Nepal, due in part to the easy credit access extended by the commercial banks for commercial ventures such as real estate and tourism development.

So far, the government has not objected to the practice of leasing public land to private companies. One reason is that the private sector pays the highest taxes, providing the government with much needed revenues.

Trends

The Constitution of Nepal provides that the GoN should protect, respect, and fulfil the rights of people by taking care of public properties such as land and other infrastructure.

The Directive Principles and the Policies of the State in the Constitution of Nepal said: *“The State shall pursue a policy of raising the standards of living of the general public through the development of infrastructures as health, education, housing and employment of the people.”*³

³ Article 51, The Constitution of Nepal

However, indiscriminate leasing of land to private companies goes against this responsibility to ensure the individual’s housing, health, and education rights. For example, the government always says that there is not enough land to give to landless individuals, and yet it can award hectares of land to a single company under a lease contract and at a nominal rent.

Table 1 shows how much public land the Nepalese government has awarded to the same group of companies over the years.

Persons/entities involved in land grabbing

The primary culprits behind land grabbing in Nepal are the State and State agencies, specifically the following:

Nepal Trust Committee (NTC). As mentioned earlier, the Nepal Trust Act 2008 provides for the formation of the NTC to regulate the land held in trust in Nepal. The Trust was established to take over the land of the former King Birendra and Queen Aishwarya (who were killed during the massacre of 2001).

Table 1. Public lands awarded to Yeti Holdings

Company	Award Date	Land Area (Ha)
Pasang Lyahu Foundation	May 2006	0.200
Kongde Resort	August 2017	2.540
Thamserku Trekking Ltd.	February 2018	0.050
Yeti Group	May 2018	0.050
Pathivara Cable Car Ltd.	May 2018	0.710
Yeti Group	June 2019	0.057
Gokarna Resort Pvt. Ltd.	December 2019	142.090
Total		145.687

Note: All of these companies belong to the same group i.e. Yeti Holdings



The Government of Nepal can lease out trust land to the private sector upon the recommendation of the NTC, which is led by a minister. Supposedly, the main responsibility of the committee is to protect the land. However, the provisions of the Nepal Trust Act 2008 have been misinterpreted, leading to the questionable entry into lease agreements with some private companies.

The Prime Minister of Nepal. Members of Parliament, CSOs and other stakeholders have long called on the government to investigate the indiscriminate leasing of public land to private companies, particularly to Yeti Holdings.

However, Prime Minister KP Sharma Oli has always defended Yeti Holdings, saying that the lease agreements were above board. Different media and other informants said that there is a strong connection between the owners of Yeti holdings and the Prime Minister, hence the preferential treatment.

Minister of Defense. The Prime Minister of Nepal made the Defense Minister responsible for the coordination of NTC as per the Trust Act 2008. Amid widespread criticism, Defense Minister Ishwar Pokharel accused previous governments of providing public land to private sector on lease.

Issuing a white paper on 25 February 2020, he claimed that the incumbent government did not provide any land on lease, even though it has just extended the lease contract of Yeti for the Gokarna Forest Resort for another 25 years.

Yeti Holdings. Yeti Holdings, one of the largest companies in Nepal, has influenced government agencies to lease it extensive tracts of land without any transparency. Many questions have been raised about PM's favors to Yeti Holdings, but the owners have not responded to these grave issues.

Forms of control

Many experts including lawmakers have claimed that public land has been leased to private companies due to corruption.

This happens during elections, when private firms provide support to political parties, thus helping them win. Then once elected, private companies exert influence on them, such as in voting for policies or amending laws that will benefit their interest.

The Nepal Trust Act 2008, for example, was successfully amended to advance the interest of the private sector because the court can no longer interfere with the legislative and the executive branches when implementing the said Act.

Then, short-term contracts can be renewed for longer periods. In the case of Yeti, the GoN allowed the renewal for 40 years of a lease contract and at a cheap price.

Based on the provision of Nepal Trust Act, the contract between the GoN and Yeti cannot be changed in middle without the consent of both parties.

As mentioned earlier, Yeti Holdings has forged several lease contracts covering pieces of prime public land. However, the process of awarding has not been transparent.

Informants of this study claimed that the government had unduly favored Yeti Holdings by bending the law to their advantage. Yeti took advantage of the favorable amendments to the existing laws, thus was able to secure land leases.

Lawmaker Khimlal Bhattarai, a party whip of the ruling Communist Party of Nepal (CPN), said the government's ill intention in amending the Nepal



Trust Act to favor private interests could turn out to be a serious case of policy-level corruption.

Indeed, the Prime Minister has been accused of replacing the home minister with the defense minister as Nepal Trust Board Chairman because the former refused to lease out land on private company.

Fortunately, the Public Account Committee (PAC) started investigating the cases and had asked the government agencies to submit all pertinent documents including the credentials submitted by Yeti Holdings to justify the land leases.

The PAC is rightfully concerned that the government pushed for the amendment to the Nepal Trust Act to pave the way for the awarding of the lease over the Gokarna Forest Resort to the Yeti Group, a full six years prior to the expiry of the existing lease.

It was also said that the Trust had given prime land on Durbarmag to the Yeti Group at giveaway rates and without going through any competitive bidding.

According to the Chairperson of PAC, they have asked the Nepal Trust to furnish all relevant documents for investigation as the leases involve the potential misappropriation of over Rs 6 billion (approximately US\$51.4 million).

Purposes

There are two perspectives on why land leasing is happening in Nepal.

The government, on one hand, says it leases public land to promote tourism and employment opportunities for Nepalis. However, it seems that the cost to the environment is greater than what the government claims.

“Many experts including lawmakers have claimed that public land has been leased to private companies due to corruption.”

CSO members and other concerned citizens, on the other hand, claim that land leasing is happening to benefit the interests of the same private company, thus violating existing laws and regulations in Nepal.

SOME CASE STUDIES

Kongde Resort

The Yeti Group has managed to transfer the ownership of land inside the Sagarmatha National Park to its name to establish Kongde View Resort. A total of 2.54 hectares of land located inside the UNESCO World Heritage Site, was awarded to the Group, following a Supreme Court decision issued on 21 August 2017.

On 7 July 2009, the Commission for the Investigation of Abuse of Authority (CIAA), instructed the Land Revenue Office in Solukhumbu district (where the Sagarmatha National Park is located) to bring the land under government ownership. The ownership of the disputed land was transferred to Sonam Lakpa Sherpa, the Chairman of Yeti Group, from Dadiri and Lakpa Tenzing Sherpa.

A writ petition was filed by the Sherpa family in the Supreme Court following a decision of the Solukhumbu Revenue Office to bring the land under government ownership. The Supreme Court, however, awarded the land to the Sherpa family.



Pathibhara Cable Car

On 27 February 2019, the then Minister of Culture, Tourism and Culture Aviation, Rabindra Adhikari, was killed in a helicopter crash. Minister Adhikari and the team were flown to Terhathum in a helicopter of Dynasty Airlines, a subsidiary of the Yeti Group.

Before the helicopter crash in Pathibhara (where all passengers and crew members died), Minister Adhikari had said in Chuhandanda, “I am here because the Prime Minister wanted to.”

It was reported that the Yeti Group wanted to apprise the Minister of the 2.5 kilometer-long Pathibhara Darshan Cable Car project, for which the group had secured permission. The 56th report of the Office of the Auditor General stated, however, that the 80-year lease agreement was illegal.

According to *Republica*, a national daily of Nepal, the Fungling Municipality of Taplejung granted

a permission to operate to Pathibhara Devi Darshan Cable Car Pvt Limited, owned by the Yeti Group. The project joins Pathibhara Temple, a famous religious place of Nepal from Kaflepati in Taplejung district.


The municipality gave the go-ahead to the project without publishing it first in the local gazette.

Clause 102 (3) of the Local Government Implementation Act 2017 requires that the local governments should publish locally-enacted laws in their respective gazettes. Without the publication, the laws cannot be implemented.

In August 2017, the first municipal assembly had granted the permission. However, documents show that the company registered its application only on 23 May 2018, 10 months after the assembly decision. A letter of permission was issued on 28 May 2018 for 80 years, with the current 40 years permission to be extended by another 40 years.



Mass gathering against land possession. Photo by CSRC.



Using its political influence, the Yeti Group also managed to shift the cable car project to the Ministry of Federal Affairs and General Administration (MoFAGA) from the Ministry of Physical Infrastructure and Transportation (MoPIT), according to a source at MoPIT.

The project was shifted to another ministry following an application of the company to the local government. The Nepal Gazette of 4 July 2018 has empowered the MoFAGA to manage issues related to “Rajjumarja Cable Car.”

The Saga of Gokarna Resort

The government has extended the lease of Yeti Holdings over the Gokarna Forest Resort by another 25 years, long before the current lease agreement expires in 2025. The resort has been leased at a substantially cheaper rate, depriving Nepal of revenues.

Yeti Group was able to secure the lease of Gokarna Forest from LM Suvir Brothers (Nepal). As per the agreement reached between the then Department of Crown Property, Royal Palace and LM Suvir Brother on 16 August 1996, LM Suvir Brothers was required to hold at least 51 percent of the venture throughout the lease period.

However, Yeti Holdings had managed to illegally buy 100 percent of the shares after the Executive Committee Board of Nepal Trust on 9 February 2014 decided to allow LM Suvir Brothers to sell away its entire share to Yeti Holdings against the terms and conditions of the agreement.

Advocate Kedar Karki called deal illegal.

“The agreement was made between Department of Crown Property, Royal Palace and LM Suvir Brother, which is entitled to hold its 51 percent share until the expiry of the contract,” Karki said,

adding, *“It does not allow any changes for the Yeti holdings to extend the contract.”*

(The cases were excerpted from Republica Daily – 23 December 2019.)

STATE POLICIES AND MECHANISMS THAT ADDRESS LAND GRABS

The Constitution of Nepal. For the first time in Nepal’s history, the Constitutional Assembly promulgated the Constitution of Nepal in 2015. The Constitution clearly mentioned the State’s responsibility to preserve natural resources including forest and public land for the promotion of tourism and protection of human beings.⁴ The Directive principles, policies and responsibilities of the State of the Constitution stress that it is the government’s duty to protect and preserve public or government’s land.

The Constitution of Nepal has various provisions on agriculture and land reform in the country.

Article 51 (e) of the Constitution spells out the State’s policies regarding agriculture and land.

Sub-article 4 outlines that the land will be properly used by regulating and managing it on the basis of *inter alia*, productivity, nature of land, and ecological balance.

The Constitution also guarantees people’s rights, ensuring right to equality, property, food, and housing.

Land Act 1921 (8th Amendment). This Act has several provisions on land reform. However, it does not say anything specific on leasing public land to private sector. What it does provide is a ceiling on land ownership to ensure land ownership for all people.

⁴ Article 50 (f) development policy; Constitution of Nepal




Tenancy Campaign in Sarlahi. Photo by CSRC.

Clause 21.34 of this Act covers the sale and disposal of land. According to this clause, the prescribed authority shall sell or dispose of, as prescribed, the land acquired or confiscated pursuant to this Act to a local person of that local government from which that land had been acquired or confiscated. In making such sale or disposal, priority shall be given to the freed bonded labor, downtrodden (*Dalit*), indigenous and nationalities (*Janajati*), out of the local landless people.

This clause clearly shows that the land reform agenda has yet to be achieved, and that the poor, *Dalit* and tenants and other land-poor people are still seeking justice through land reform.

Land Use Act 2019. This Act categorizes land according to nine uses: agricultural, residential, commercial, industrial, mining-mineral, forest, river-lake-wetland, public use and cultural-archeological. According to the Act, land that is categorized for one purpose shall not be used for another. The Act has also provided that the government is responsible for protecting and monitoring the best possible use of land.

The main objective of the categorization of land, according to the Act, is to conserve both public and private land. Therefore, it is unethical and perhaps even illegal to lease public forest or other land to a private company for its own commercial interests.



Nepal Trust Act 2008. After the abolition of the monarchical system in Nepal, the interim parliament endorsed this Act in 2008 to bring all the properties of the former Royal families – who were killed in the Royal Massacre in 2001 – into the government’s hands. The main objective of the Act was for the GoN to protect all of the properties of the then Royal families. However, the GoN amended the Act in 2019 and inserted a provision saying that the land under the Nepal Trust can be leased out upon the recommendation of a Nepal Trust Committee.

Many people said that the GoN amended this Act for the benefit of a specific private company.

Local Government Operation Act 2017. This Act has given local governments the authority to enact land reform measures. However, leasing or providing public land to the private sector is enshrined in the Nepal Trust Act 2008 and thus implemented at the federal level. All the roles and responsibilities of providing land on lease to private sector should be monitored by a committee i.e. Nepal Trust Executive Committee run by Defense Minister.

As per the recommendation of the Committee, the Trust can provide land on lease to the private sector. However, CSOs and land activists are against these provisions.

Land Policy 2019. This policy acknowledges the State’s duty to ensure equitable distribution of benefits from land and land resources. The general objective of this policy is to bring economic prosperity through land distribution to marginalized people, and maximum utilization and good governance of land.

The vision of the policy is “Sustainable Land Management, Development, and Prosperity.” Its specific objectives are: 1) tenure security; 2)

access to land of land-poor farmers; 3) land use; 4) land taxation, valuation, and land market; 5) land acquisition; and, 6) strengthening land administration.

Order of Court. Patan High Court on January 2020 ordered a halt to the ongoing construction of a business complex by Yeti Holdings Pvt Ltd at Durbar Marg on the land owned by Nepal Trust (myRepublica, 2020).

The court issued the order in response to a writ petition filed by an advocate challenging Nepal Trust’s decision to lease the land to Yeti Holdings at a throwaway price. However, the GoN has not withdrawn its decision to award public land to the private company.

The Supreme Court of Nepal has summoned the government to a discussion regarding this controversial decision to extend the lease of Gokarna Forest Resort (in the name of Yeti Holdings) on 26 January 2019.

RECOMMENDATIONS

Respect

- Many landless, tenants and informal settlers have been waiting for their tenure security. CSRC strongly recommends that their rights to land be ensured.
- The GoN has interpreted the existing laws according to their own interest, specifically the personal interests of political leaders. We strongly recommend that the GoN protect public land for the benefit of future generations.

Protect

- The GoN has ratified several international human rights instruments, including the



International Covenant on Civil and Political Rights (ICCPR) of 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. Current laws in Nepal should be amended as per the provisions of such instruments.

- At the rate that public land is being leased to private companies, there will soon come a time when forests and other public areas will be cleared. The government should thus strongly implement the existing laws to conserve these valuable natural resources including forests.
- The government should remove the land lease provisions from the Nepal Trust Act 2008 and instead provide for the transfer of land to the landless and the rest of the people of Nepal who have been deprived of adequate housing rights.

Remedy

- Proper compensation to the affected households i.e. around the business hub of the private company should be provided and based on consultations with affected families.
- It is the government's duty to preserve the natural surroundings of Nepal. The government should breach the contract with the private sector and penalize them to help in the promotion and protection of human rights.
- The government of Nepal should invest necessary resources to ensure land rights of landless, tenants and smallholders farmers. Adequate budget and human resources should be allocated.
- Thousands of communities have been affected by the environmental degradation and disasters due to the massive construction of infrastructure by private sector. The government should thus refrain from leasing public land to the private sector. ■

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Jagat Deuja
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DISCLAIMER

The views of this study do not necessarily reflect of those of ILC.

ACRONYMS

ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
CPN	Communist Party of Nepal
CSOs	Civil Society Organizations
CSRC	Community Self Reliance Centre
EOCN	Election Observation Committee Nepal
GoN	Government of Nepal
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KII	Key Informant Interview
MoFAGA	Ministry of Federal Affairs and General Administration
MoLMCPA	Ministry of Land Management, Cooperatives and Poverty Alleviation
MoPIT	Ministry of Physical Infrastructure and Transportation
NTC	Nepal Trust Committee
NGOs	Non-Government Organizations
NRB	Nepal Rastra Bank
PAC	Public Account Committee



GLOSSARY OF TERMS USED IN THE STUDY

Terminology	Definition
Land Conflict	A situation wherein two or more stakeholders compete for control over land and/or resources, including decision-making and truth. Such conflicts emanate from loopholes in law and weak enforcement of legal and customary tenure systems thereby generating competing interests and putting the very system into question
Land Dispute	A situation wherein two or more stakeholders with presumed equal power compete for land and/or resources, including decision-making and truth.
Land Grabbing	To obtain or appropriate or seize land unscrupulously or forcibly or unfairly by a nation-State, or organization, or an individual and disregarding the tenancy rights of the peasants and the farmers, including customary rights
Land Rights Defender/s	A person or a group of persons involved in the protection and promotion of land rights
Stakeholders	Those persons who have interest or concern in land rights especially for the rights of landless, tenants and smallholders
Trust	An organization formed for the regulation and management of properties of late King Birendra and Queen Aishwarya
Public Land	Land allocated for use not only by individual but by general public like path, pond, water-sprout, well and their banks, exit for cattle, grazing-land, graveyard, public inn, temple, place for religious practice, memorials, court-yard, sewerage, market-place, public entertainment and sports ground; and other lands specifically denoted so by Government of Nepal through publication in the Nepal Gazette

A growing concern – oil palm plantations encroach on IP lands: A sectoral study on land grabbing in the Philippines

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Reform and Rural Development)

INTRODUCTION

Indigenous peoples (IPs) exemplify how land gives life to rural communities. For members of these tribes, their ancestral land is inexorably intertwined with their livelihood, history, culture, traditions, and identity.

Not only do they rely on the resources of their ancestral lands to sustain their everyday needs for food and shelter, but their domains are also home to sacred sites, burial grounds, and other traditional uses of space. Further, ancestral lands bear testament to the resilience and strength of indigenous communities who have resisted colonial rule and have preserved their traditional ways of life.

According to a factsheet by Tebtebba (2018), IPs in the Philippines are comprised of 110 ethnolinguistic groups that form part of 12 to 17 percent of the country's population. Sixty-

one (61) percent of indigenous peoples reside in Mindanao, 33 percent in the Cordillera Administrative Region, and the rest live in the different provinces.

Ancestral domains in the Philippines cover approximately 7.7 million hectares as estimated by the National Commission on Indigenous Peoples (NCIP) – around 26 percent of the country's total land area (Tebtebba, 2018).

At present, 5.4 million hectares of ancestral domains are covered by Certificates of Ancestral Domain Title (CADT), a legally recognized tenurial instrument, benefitting over 1.2 million indigenous peoples (De Vera, 2018 in Quizon, Marzan, De Vera, and Rodriguez, 2018).

While ancestral domains may stretch to plains and seas, the majority of Philippine indigenous groups reside in upland forests in the countryside. These forests are also where many private and



State industries, such as ecotourism, mining, and agroforestry, are located. Indigenous peoples in the country often stand in defense of their ancestral land, as the continued rush for forest resources drive industries such as the palm oil corporations to encroach upon ancestral lands.

Global demand for palm oil has been on the rise. In the past 20 years, the share of palm oil grew two-fold, driven by increasing demand for food, vegetable oils, and biodiesel (PCA, 2014). Palm oil was the most consumed edible oil in the world in 2015 (Voora, et al., 2020), and each person on the planet is estimated to be consuming an average of eight kilograms of palm oil a year (Tullis, 2019). With the increasing global demand for palm oil and the scarcity of available land, ancestral domains of IPs have become the target for expansion of oil palm plantations.

Unfortunately, there are numerous reports that many oil palm plantations in the Philippines were born out of land grabbing.

As defined by EcoRuralis (2016), *“land grabbing is the control – whether through ownership, lease, concession, contracts, quotas, or general power – of larger than locally-typical amounts of land by any persons or entities – public or private, foreign or domestic – via any means – ‘legal’ or ‘illegal’ – for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights.”*

This paper aims to review and provide further information on the allegations that the growing palm oil industry has led to land grabs against indigenous communities in the country. It will analyze the present drive to expand oil palm plantations and recommend ways to protect the rights of indigenous peoples entangled in these enterprises.

This study was formed primarily through desk research and analysis of secondary data. This publication does not claim to paint a picture of the entire oil palm sector in the country. Narratives included here are limited to the experiences of smallholders and indigenous peoples with oil palm plantations in the Philippines.

The recommendations that arose from the findings were subjected to an online validation workshop via Zoom organized by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) with civil society organizations last 21 September 2020.

OVERVIEW OF OIL PALM OPERATIONS IN THE PHILIPPINES

Significance, Scope, Trends

Oil palm is seen as an efficient vegetable crop that has a high return-of-investment and is easy to maintain (Batugal, n.d.). Unlike other crops, the plant can thrive in less productive soil, and may thus be planted on idle grasslands, bushlands, logged-over secondary forests, and fallow land (Batugal, n.d.; Montefrio, 2015; Villanueva, 2011). Oil palms bear fresh fruit bunches which are used to produce crude palm oil and palm kernel oil. Both kinds of products are vegetable oils highly valued by Asian cultures for their uses in food processing and cooking (PCA, 2014).

As of 2018, there are over 98 thousand hectares where oil palm is planted in the country, most of these are located in Mindanao (DTI, 2021). As Table 1 shows, the overall area planted in the country increased by nearly 33 percent from 2015 to 2018. The increase in area planted is dramatically pronounced in Zamboanga Peninsula, Davao Region, and Bangsamoro Autonomous Region in Muslim Mindanao (BARMM).

Table 1. Oil palm area planted (hectares) by Philippine Regions, 2015 to 2018

Regions	2015	2018	Rate of Increase from 2015 to 2018
R-IVB (MIMAROPA)	5,293.61	8,546.24	61.44
R-VII (Central Visayas)	6,493.69	6,506.00	0.19
R-IX (Zamboanga Peninsula)	1,146.40	6,119.20	433.78
R-X (Northern Mindanao)	2,419.15	3,280.00	35.58
R-XI (Davao Region)	1,217.00	3,500.00	187.59
R-XII (SOCCSKSARGEN)	28,840.00	37,902.73	31.42
R-XIII (Caraga)	25,827.93	25,827.93	0.00
BARMM	2,786.44	6,500.00	133.27
TOTAL	74,024.22	98,182.10	32.64

Source: Department of Trade and Industry (2021)

Zooming into the provinces, Figure 1 represents areas harvested with oil palm fresh fruit bunches (FFB) as of 2019, by the size of harvest areas. The map (see Figure 1) shows that Agusan del Sur is a hotspot for harvesting oil palm FFB. The same figure portrays that Palawan, Bohol, North Cotabato, and Sultan Kudarat are also major harvest areas.

Many oil palm plantations involve agreements between corporations and farmers in private lands. Data from 2017 reveal that there are 44 operating Agribusiness Venture Arrangements (AVAs) between palm oil producers and agrarian reform beneficiaries (ARBs) in the country, covering 12,453.57 hectares, all of which are in Mindanao (DAR, 2017).

In 2014, the Philippine Coconut Authority (PCA), with the Department of Trade and Industry (DTI), and Philippine Palm Oil Development Council, Inc. (PPDCI), released a road map for the palm oil industry detailing the government’s plans to expand oil palm plantation areas to 353,000 hectares by 2023. The roadmap further cites that experts have estimated that the country could further utilize about one million hectares of land

deemed suitable for cultivating oil palm (PCA, 2014).

As such, indigenous peoples have been raising concerns over the expansion of oil palm plantations that encroach upon ancestral domains or affect their livelihoods.

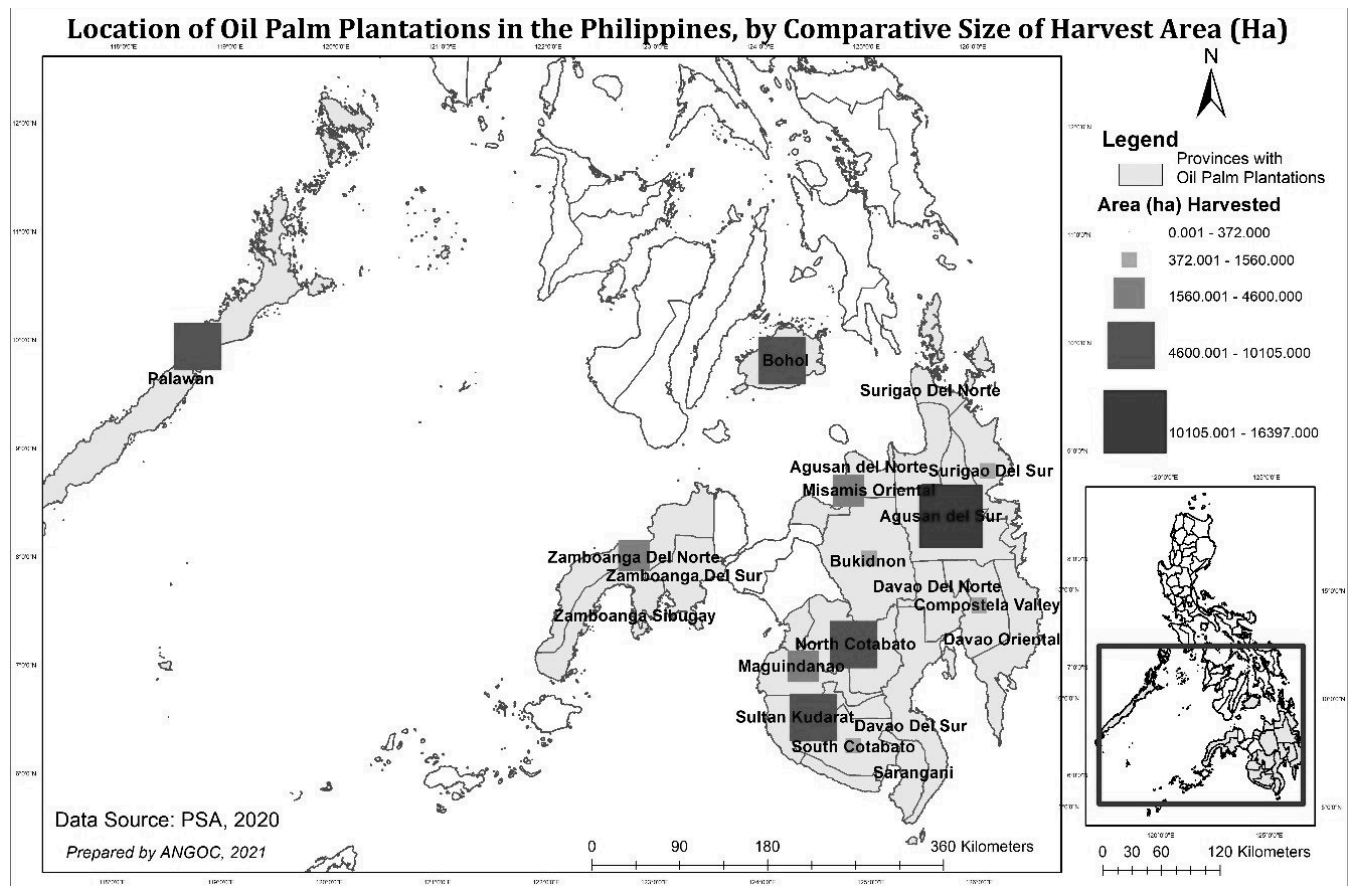
Figure 2 and Figure 3 present an attempt to show overlaps of ancestral domains in the country and the *barangays* (villages) and municipalities where oil palm plantations operate, color-coded by breadth of plantation hectares in the *barangay*/municipality.

Investors continue to actively search for viable lands for oil palm plantations, with brokers and facilitators for oil palm companies eyeing other rich ancestral lands (Villanueva, 2011). Mindanao attracts the attention of foreign firms interested in establishing plantations on the island.

In 2018, President Rodrigo Duterte himself spoke to indigenous leaders in Mindanao, saying he will personally choose investors to develop their ancestral domains (Rappler, 2018). He specifically cited that oil palm investors have long wanted to develop areas in Paquibato District, Davao City.



Figure 1. Geographic heat map of oil palm harvest areas in the provinces of the Philippines



Data source: PSA, 2020 (for the provincial-level spatial data on oil palm plantations in the Philippines)

According to Northern Mindanao *lumad* organization Kalumbay, around 20,000 hectares of agricultural land are being targeted for conversion into oil palm plantations in Northern Mindanao alone (Mandawa, 2013). In Agusan del Sur, Malaysian firm Alif-Agri Industrial Inc. invested an initial 1 billion USD to establish a 128,000-hectare oil palm plantation, refinery, and wharf (Remo, 2016).

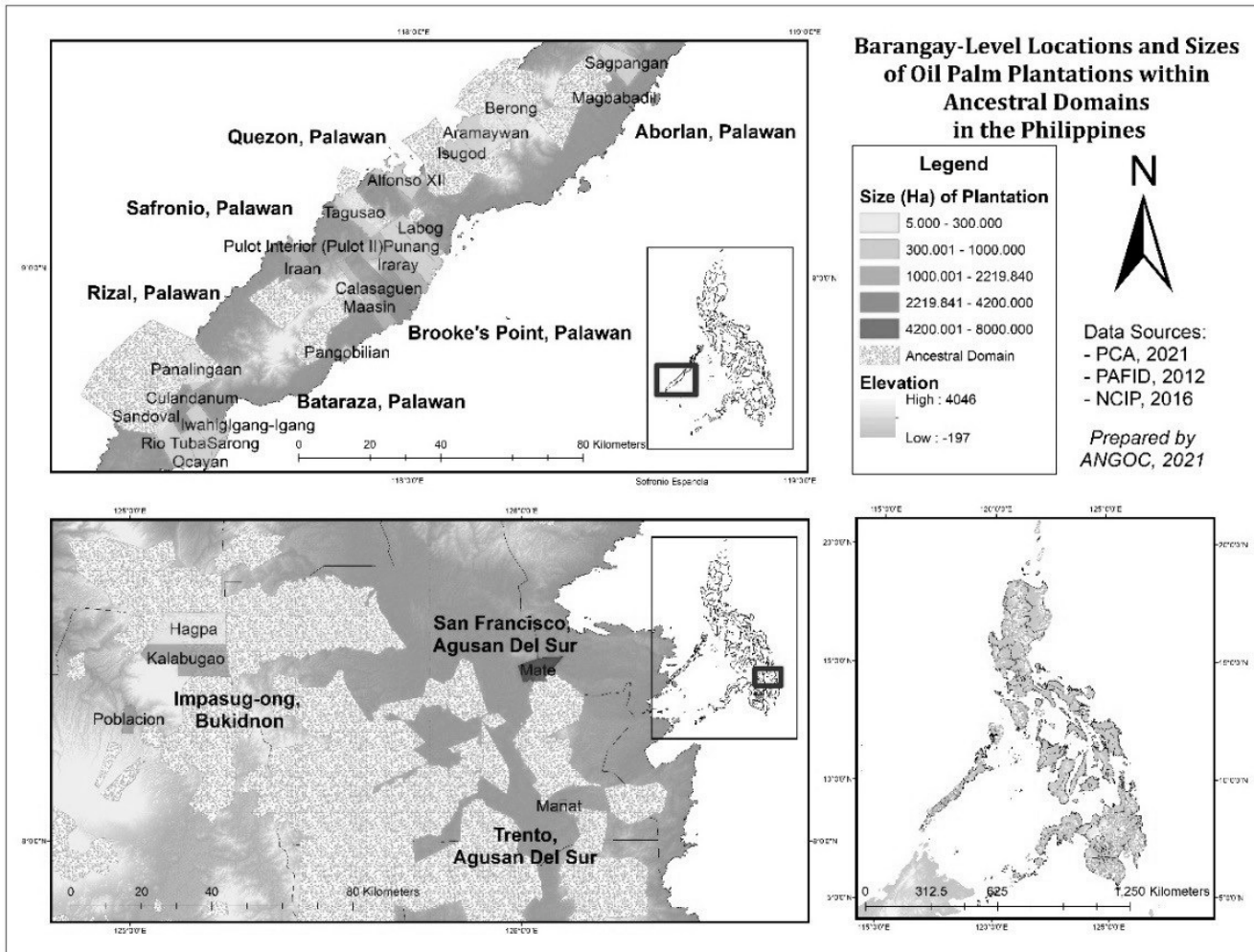
In Palawan, the Coalition Against Land-Grabbing (CALG) reports that 9,000 hectares have already been cleared to accommodate oil palm and that the government is inviting more oil palm investors in the province (Harbinson, 2019).

Entities Involved

The Philippine government and its vigorous promotion of the palm oil industry facilitated the industry's growth.

From the 1970s to the 1980s, particularly during the Martial Law years under Ferdinand Marcos, corporations were able to acquire more land for oil palm amid the tense political atmosphere, allegedly through coercion of communities and the use of armed forces (Miller, 2017a). Around the entry of the new millennium, under the Gloria Macapagal-Arroyo administration, the palm oil industry continued to grow through enacted tax holidays and fiscal incentives (Miller, 2017a).

Figure 2. Overlay of barangay-level locations of oil palm plantations and ancestral domains



Data sources: PCA, 2021 (for the barangay-level spatial data on oil-palm plantations in the Philippines); and PAFID, 2012 and NCIP, 2016 (for the spatial data on ancestral domains in the Philippines)

Various administrations from then until the present have encouraged the flourishing of the palm oil industry, calling it the “sunshine industry” and referring to the oil palm as the “tree of peace” (Miller, 2017a; Villanueva, 2011).

Through large investments from both foreign and domestic companies, the government paints the oil palm industry as a key ingredient to alleviating poverty and quelling armed conflicts (Miller, 2017b).

Various private oil palm plantations, oil palm mills and processing plants, and traders are active in

the industry. As of 2017, the Philippine Coconut Authority identified at least 14 oil palm suppliers serving different portions of the supply chain (PCA, 2017). Several of these entities are foreign or partly foreign-owned. Joint venture agreements have led to the creation of corporations such as the Singaporean-Filipino Palawan Palm & Vegetable Oil Mills Inc. (PPVOMI), and its sister company the Malaysian-Filipino Agumil Philippines, Inc. (AGPI). Both AGPI and PPVOMI are under the Malaysian-owned Agusan Plantations Group of Companies (BankTrack, 2016; EJ Atlas, n.d.).

Forms of control

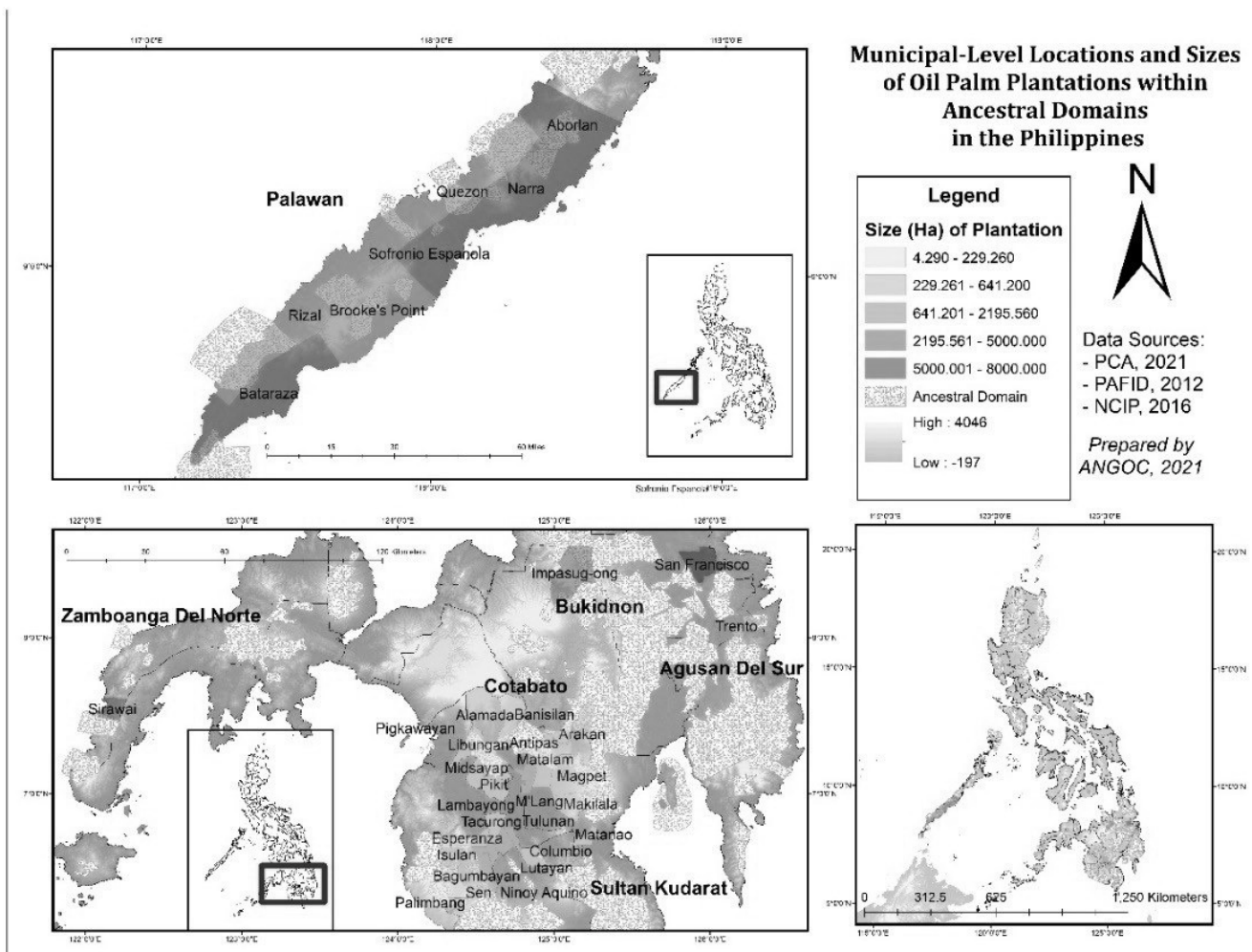
Corporations have several means to legally operate oil palm plantations in the country, most of such means involve entering into agreements with ARBs.

In the early years of the palm oil industry's expansion, *leaseback arrangements* with ARBs were the dominant mode of land acquisition (Villanueva, 2011). This arrangement was enabled by the Comprehensive Agrarian Reform Law of 1988, as Amended (RA 6657), or CARL, and covers identified areas for redistribution that are under

the control of multinational corporations (Section 8) and corporations or other business associations (Section 29) (Flores-Obanil and Manahan, 2006).

A leaseback is a form of agrarian reform modality, wherein a cooperative of agrarian reform beneficiaries in a plantation enters into renewable and long-term land-use agreements with multinational or agribusiness corporations for a defined price or number of years. In this arrangement, companies are given usufruct or management rights over the plantation, while agrarian reform beneficiaries are hired as plantation workers.

Figure 3. Overlay of municipality-level locations of oil palm plantations and ancestral domains



Data sources: PCA, 2021 (for the municipal-level spatial data on oil-palm plantations in the Philippines); and PAFID, 2012 and NCIP, 2016 (for the spatial data on ancestral domains in the Philippines)



Woman works on a pile of harvested palm oil fruit in Prosperidad town in Agusan del Sur on 25 June 2012. MindaNews photo by Erwin Mascarinas. Photo retrieved from <https://www.mindanews.com/wp-content/uploads/2012/06/29oil.jpg>

Other forms of agreements with ARBs include management contracts (wherein an individual or corporation manages the farm in exchange for a fixed wage or commission from the ARBs), marketing agreements (wherein an investor seeks out markets/buyers for the products of ARBs in exchange for a commission from sales), and service contracts (wherein ARBs outsource a contractor for performing particular farm activities for a fee) (DAR, 2006).

Plantations may also operate under an out-growership agreement or contract-growing scheme, wherein smallholders are expected to develop the land and cultivate crops using seedlings provided by or bought from the

corporation. Fresh fruit bunches (FFBs) are then delivered or sold to the company's mill. If seedlings and/or input materials were provided to farmers, their cost may be deducted from the company's payment. Under this arrangement, companies may provide technical and financial assistance to smallholders (Villanueva, 2011).

Expansion of Oil Palm Plantations in IP Lands

The country's laws allow parts of ancestral lands to be utilized as plantation sites, upon the provision of free, prior, and informed consent (FPIC) by the concerned indigenous communities, and after careful negotiations on terms, pursuant to the Indigenous People's Rights Act of 1997 (IPRA).



Corporate activities shall not limit the extent of the ancestral domain, and must not disrupt the traditional ways of indigenous communities.

However, indigenous peoples fall victim to violations of existing safeguards and protocols on the creation and operation of oil palm plantations. Most notably, in many cases, FPIC is corrupted by the corporation's deception or coercion of communities, or is secured through improper channels.

Rural communities are made to enter contracts that are beneficial for the investment, but unjust for the communities and/or the environment. In some cases, the private sector colludes with the local or national government and uses the military or private armies to strong-arm the establishment and maintenance of the plantation (Huesca, 2016).

Several cases were revisited in Mindanao and in Palawan province where expansion of palm oil plantations in ancestral land of IPs have been targeted and implemented.

Oil Palm Plantations in Ancestral Lands in Mindanao

Current oil palm production areas are said to reach 70 thousand hectares in Mindanao (Rappler, 2015), while official PSA data puts the number at a bit over 50 thousand hectares (PSA, 2020a). A few years ago, the government announced bold plans to expand oil palm plantations in the country to 500 thousand up to a million hectares (Rappler, 2015), with 98 percent of these being located in Mindanao (Miller, 2017). According to Mandawa (2013), many of the areas identified for palm oil expansion are burial, sacred, and worship sites of indigenous peoples.

Caraga Regional Director for Trade and Industry, Brielgo Pagaran even pondered upon the possibility of dedicating a million hectares of Mindanao land for oil palm development. Brielgo further mentioned that 500 thousand hectares of ancestral lands under Certificates of Ancestral Domain Title (CADTs) in the Caraga region may be utilized for cultivating oil palm (Crismundo, 2019).

In 2020, the Eastern Petroleum Group of Companies (EPGC) expressed intention to develop 50 thousand for oil palm plantations in Caraga (Crismundo, 2020).

Latest PSA data puts the number of hectares of oil palm production areas in Caraga at 17,000 hectares (PSA, 2020a), but Senior Trade and Industry Development Specialist Jorge Silaga of DTI-Caraga puts the figure at over 25,800 hectares (Crismundo, 2019).

According to a report by Center of Trade Union and Human Rights (CTUHR) and Asia Monitor Resource Centre (AMRC) in 2013, Caraga's history with oil palm dates back to the 1970s and even then, displacement of communities and violence were already in place. Indigenous and farmer groups who remained on their land became casual plantation workers for big plantation companies in Agusan del Sur: Filipinas Palm Oil Plantations Inc., Agusan Plantation Inc., and Agumil Philippines, Inc. More than 30 years later, many remain as plantation workers, owning less than minimum wage with no benefits and no security of tenure. Women in the community hardly found any employment opportunities in the industry, and children were even found to have been working on these plantations (CTUHR and AMRC, 2013).

Many indigenous groups and farmers presently working on oil palm plantations in other parts of Mindanao are thrown into similar unfortunate



A large palm oil plantation in southern Palawan. Photo by an anonymous source. Photo retrieved from <https://img.mongabay.com/wp-content/uploads/sites/20/2015/10/03142746/21.jpg>

situations. In Impasug-ong, Bukidnon alone, oil palm is planted in six of its thirteen barangays (Villanueva, 2011). The population of Impasug-ong is composed mostly of indigenous Higaonon tribe members with the rest of the residents belonging to mixed tribes.

In *Barangay* Hagpa, Nakeen Development Corporation (now merged with ABERDI) entered into an agreement with the indigenous group Agtulawon-Mintapod Higaonon Cumadon (AGMIHICU), to lease their land for *8,000 PHP¹ per hectare, annually*. Two hundred hectares of ancestral domains have been converted into oil palm plantations. Though selling of ancestral lands

to non-IPs is not allowed in law, the converted 200 hectares have reportedly been “sold” to non-indigenous peoples. The indigenous members of AGMIHICU signed the agreement with Nakeen, reportedly provided the new *owners* of their lands with the payment from the company, and are reported to be content to be hired as plantation workers (Villanueva, 2011).

These unfortunate economic conditions are among the reasons why many indigenous groups and farmers in Mindanao oppose oil palm plantations. In other instances, indigenous groups are faced with violence because of oil palm plantations.

¹ Approximately 167 USD (as of February 2021)



In Opol, Misamis Oriental, according to members of the Higaonon tribe, the local Department of Environment and Natural Resources (DENR) entered into negotiations with ABERDI/Nakeen for an oil palm plantation without seeking the Free, Prior, and Informed Consent (FPIC) of the affected community.

Those who did not give up their lands were barred by company guards from entering their farms. Those who opposed ABERDI/Nakeen's operations were branded as members of the insurgent New People's Army, harassed, had their crops destroyed, or had their houses burnt (Miller, 2017c).

In 2012, tensions escalated further when Gilbert Paborada, a Higaonon tribal leader who opposed the palm oil plantation, was killed by an unknown suspect (Albasin, 2012).

In 2016, Nakeen suspended its operations in Opol and Impasug-ong leaving workers with unfulfilled promises on work opportunities and social services, and without any benefits. Several KASAMAKA members were left in crisis, without land of their own and with no employment (Miller, 2017b).

Contrary to the government's claim that idle and unutilized lands are being targeted for oil palm plantations, the Mindanao experience shows that these plantations are being established in agricultural, ancestral, or forest lands, where prior tenurial arrangements already apply (CTUHR and AMRC, 2013).

Moreover, while palm oil production is being promoted by the government as key to poverty alleviation and to achieving peace in rural areas, the mentioned cases suggest that these investments may be unjust and may actually lead to further impoverishment and conflict.

Oil Palm Plantations in Southern Palawan


Palawan is a haven of natural resources in the Philippines and is dubbed as the country's "Last Frontier." The province is home to seven protected areas, it is a Game Refuge and Bird Sanctuary, a Mangrove Reserve, and a UNESCO-recognized Man and Biosphere Reserve (ICCA Consortium, 2014; World Rainforest Movement, 2013).

Sister companies AGPI and PPVOMI, under the Agusan Plantations Inc., were among the first to engage in the oil palm industry in the province. AGPI is the contractor for oil palm cultivation, while PPVOMI operates an oil palm mill and nursery (Salcedo, 2016). Corporations have the license to develop over 15,000 hectares of land for oil palm, the majority of which are in the towns of Aborlan, Sofronio Espanola, and Bataraza (Larsen, et al., 2014; Salcedo, 2016).

In 2012, members of indigenous groups noticed their communal forests being cleared down by AGPI without prior consultation nor permission, to plant oil palm saplings on 200 hectares of ancestral lands. Many indigenous landowners and farmers cooperatives then entered into agreements with AGPI, either as contract-growers or by leasing/selling parcels of land (Harbinson, 2019). In several cases, out-growership schemes were entered into without formal land titles.

Transactions were at times carried out by middlemen who pretended to own land, or were forced through pressure from influential people. Several instances of FPIC violations were flagged as well – either FPIC was not obtained at all or was obtained after the project began (Larsen, et al., 2014).

To jumpstart the land development and oil palm planting, AGPI lent capital for smallholders to acquire loans from the Land Bank of the



Philippines (LBP). Titles to the leased lands were used as collateral, and now remain with the LBP (Harbinson, 2019). Smallholders now are unable to pay off their growing loans to AGPI and LBP, due to the high-interest rates of LBP that reached 12 to 14 percent per annum, and the low buying rates for fresh fruit bunches (FFBs). Further, any payment supposedly received by the growers is instead sent to LBP for paying off the loans. AGPI controls the operations, bank withdrawals, and finances in these agreements (Harbinson, 2017; Salcedo, 2016).

According to Palawan-based CALG, the Indigenous People's Rights Act (IPRA) and the Strategic Environmental Plan (SEP) for Palawan Act have been bypassed. The group also claims that the DENR should never have issued environmental compliance certificates to the plantation companies (Harbinson, 2019). Residents are concerned about the environmental effects of these plantations.

Long-term impacts of the industry may include soil compaction, soil degradation, water pollution, and water contamination by fertilizers and pesticides (Larsen, et al., 2014). Indigenous communities also observe that the presence of common animals and birds have been declining in areas where oil palm is being cultivated, while a study by the Ancestral Land/Domain Watch (ALDAW) revealed a decrease in non-timber forest products and medicinal plants in these areas (ICCA Consortium, 2014).

More than 200 thousand hectares in Palawan have been identified by the government as suitable for oil palm cultivation (Barraquias-Flores 2010, in Larsen, et al., 2014). According to CALG, around 9,000 hectares in Palawan have already been cleared out for oil palm, and the government is inviting more investors to venture into the industry. AGPI also eyes the expansion

of their business in the oil palm industry but is presently focused on the consolidation of their operations in Palawan (Harbinson, 2019).

CSOs, indigenous groups, and farmers in Palawan continue to advocate for a province-wide moratorium on oil palm expansion, at least until reliable data on the actual benefits of the plantations vis-à-vis the negative externalities become available (World Rainforest Movement, 2013).

Several local governments in the province have already taken a step further. The municipalities of Rizal and Quezon have declared moratoria on oil palm plantation expansion within their jurisdictions (Harbinson, 2019), while the municipality of Brooke's Point has also disallowed the expansion of oil palm plantations in their Forest Land Use Plan (Ibañez, 2019).

Impacts of Establishing Oil Palm Plantations in Ancestral Lands

Plantation investments adversely affect communities from the negotiation to the development, operation, and closure stages of the project. In many cases, such investments inflict human rights violations and damages to the environment, livelihoods, food supply, and local culture.

Livelihood of Indigenous Peoples

Many indigenous peoples and farmers are promised employment and wealth in exchange for the use of their land for oil palm cultivation. In reality, however, many oil palm plantations operate through unfair contracts and the exploitation of laborers. Farmers and indigenous peoples report being deceived into renting out their land for low costs.



Low Wages. Smallholders become workers on their own land. Though preferential employment is promised to landowners and communities, companies operating oil palm plantations have been exploiting their workers through heavy workloads, low wages with insufficient benefits, and no-work, no-pay arrangements, among others, as was documented by the joint fact-finding mission led by PAN Philippines in 2017 (Campaign Against Agricultural Plantations, 2017). In many circumstances, palm oil plantation workers were paid less than P200 to P300 per day, some even below the regional minimum wages (Olea, 2015; Villanueva, 2011).

Unfair Agreements. In other arrangements, where the smallholders are responsible for growing the oil palm to be sold to the company, smallholders take up loans with high interest rates, which they are later unable to pay. Fresh fruit bunches are bought by the company at low prices. Unfavorable economic circumstances in oil palm plantations lead many farmers and indigenous peoples into acquiring large debts.

Impact on the Environment

Per the roadmap of the Philippine Coconut Authority (PCA) for 2014 to 2023, the biggest expansion areas will be in CARAGA (at 35 percent of production areas) and SOCKSARGEN (at 30 percent) Regions – both situated in Mindanao. Further, Palawan, a province in Luzon, is an emerging area for oil palm plantations with a prospective expansion of 100,000 hectares.

These regions are home to approximately 27 percent of ancestral domains, 13 percent of watersheds, and 22 percent of forest areas of the country (based on GIS calculations [spatial data sources: PAFID, 2017; DENR]).

While the information on the official geospatial coverage of oil palm plantations in the Philippines is still limited and generally inaccessible, the above figures may provide an overview of the level of exposure of natural resources and indigenous peoples from the long-term effects of the oil palm industry.

Deforestation. While national data on deforestation brought by oil palm plantations is still difficult to estimate, similar consequences as in Indonesia (where conversion to oil palm accounts for 16 percent of deforestation in 2011) may be felt here if oil palm plantations continue to expand at the expense of natural forest in the Philippines (Carandang, et.al. 2013).

Loss of biodiversity. Denuded forests come with loss of habitat of species. Further, oil palm plantations support much fewer species than forests do and often also fewer than other tree crops (Fitzherbert et al., 2008).

There have been a number of studies showing the detrimental effects of oil palm expansion on mammals, lizards, birds, arthropods, and insects. According to the International Union for Conservation of Nature (2018), “oil palm expansion could affect 54 percent of threatened mammals and 64 percent of threatened birds globally.”

Carbon emissions. By converting forests into plantations, intact forests are cleared releasing the carbon stock into the atmosphere contributing to greenhouse gas emissions. With the expansion of oil palm plantations in forest areas and ancestral lands – housing the last primary forests of the country – oil palm trees will not be able to sufficiently compensate the carbon stock emitted from clearing the forests.



Primary forest displaced for palm oil production on Palawan. Photo by an anonymous source. Photo retrieved from <https://imgs.mongabay.com/wp-content/uploads/sites/20/2015/10/03142754/1.jpg>

Between 2003 and 2010, rapid deforestation took place in Southern Palawan's forests, with closed forest cover declining from around 130,000 to 28,000 hectares. This has resulted in major impacts on the carbon stock in the region's forests – from 16 million tons of carbon in 2003 dropping to 9.2 million tons in 2010 (WAVES, 2016).

Water scarcity. With the loss of forest cover, rainwater is rapidly drained from the watershed. In Pulot Watershed in Southern Palawan, 1,012 hectares of oil palm trees (coming second to coconut as the most planted crop in the watershed) have been planted as of 2014. Clearing of the closed forest for these plantations reduced the water supply in the area as irrigated paddy fields have decreased from 2010 to 2014.

On Cultural Traditions

Sacred Areas. In the village of Pulot-II in the municipality of Safronio Española in Palawan – the municipality with the highest percentage of

land covered by oil palm plantations – indigenous burial and hunting grounds are impinged due to the encroachment of oil palm plantations in the ancestral domain within the municipality. The indigenous inhabitants “perceive the destruction of these historical and natural landmarks as an obliteration of their history and collective memories of the past” (ALDAW, 2014).

Traditional agricultural practices. With the expansion of oil palm plantations in forests, indigenous peoples are losing fallow lands (or second-growth forests) for swidden farming. In cases where there are available fallow lands, they are now leased out (as opposed to the traditional practice of land-borrowing) by their fellow indigenous smallholders as lands become limited and converted for planting oil palm trees (Montefrio, 2015).

Indigenous peoples who are forced to give up their lands and live in the lowlands – alienating them from their customary practices and



Philippine indigenous people driven from home. Photo by ABS-CBN News. Photo retrieved from <https://sa.kapamilya.com/absnews/abscbnnews/media/2018/news/04/19/lumad-davao.jpg>

sovereign control over their land – face unreliable sources of incomes and increased dependency on purchased food challenging the state of their food security in the household level (ALDAW, 2014; Montefrio, 2015). “Indigenous households are further marginalized as they are drawn into the local economy’s periphery due to an inability to access their surplus for food and/or profit” (Montefrio and Dressler, 2018).


Violence against Communities

Faced with opposition from indigenous peoples, conflicts over palm oil plantations have led to violence against communities and rights defenders. In many cases, corporations would hire private armies, vigilante groups, and would

seek the assistance of the military to protect the investment.

With armed support, oil palm corporations are able to drive out indigenous peoples from their land and silence opposition. In cases where the military is involved, opposition to plantations leads to *red-tagging* and accusations that community members are supporters or members of the communist rebel group, the New People’s Army (NPA).

² The international fact-finding mission was conducted from 6 to 10 May 2012, in Tingalan and Bagooboc, in Opol, Misamis Oriental. It was a joint effort by Pesticide Action Network Asia and the Pacific (PAN AP), Kilusang Magbubukid ng Pilipinas (KMP), Asian Peasant Coalition (APC), Sentro Kitanglad and the Kalumbay Regional Lumad Organization, among other organizations, to investigate complaints by indigenous peoples (Quijano, 2012). Related to this, PAN AP also investigated reports of adverse effects of chemicals used in banana and oil palm plantations in Mindanao on 15 to 18 January and 10 to 13 May 2012 (PAN AP, 2013).



A joint fact-finding mission in Northern Mindanao in 2012² documented cases of human rights violations linked to oil palm plantations, including illegal arrests, holding farmers at gunpoint, and forced displacement of indigenous peoples (Mandawa, 2013; Quijano, 2012). In the province of Misamis Oriental, members of Pangalasag, an indigenous peoples' group in opposition to the establishment of an oil palm plantation in their ancestral domain, reported receiving death threats. In October of 2012, Pangalasag's chairperson, Gilbert Paborada, was shot dead by an unidentified assailant (Albasin, 2012).

ANALYSIS

Small agricultural producers such as the indigenous communities need financial and infrastructure support to survive in a liberalized global economy. While they have the advantage of having land, they require access to financing to procure the required inputs and attain economies of scale in their production.

It would have thus been sensible for the government to invest in this much-needed assistance towards a more inclusive and sustainable development in the country. However, for various reasons, primarily because of lack of the needed funds, it opted to invite the private sector to invest in agriculture, such as in oil palm, hoping that these investments will generate jobs, augment income and provide the needed basic services of rural households.

Foreign Investments in Oil Palm. These investments are envisioned to address widespread poverty in rural areas by providing rural employment, increasing income, and ensuring food security.

The Philippine Government prioritized oil palm given the increasing demand for oil palm products

and the perceived availability of land, particularly in Mindanao and Palawan. It targeted foreign companies to invest in the country principally those large firms that are already into oil palm business in Malaysia, Indonesia, and Singapore.

In its "Philippine Palm Oil Road Map 2014 to 2023," the Philippine Coconut Authority, which is the government body overseeing palm oil production, foresees that 300,000 farmers will receive benefits like jobs, schools, health care, and housing due to the cultivation of new oil palm plantations covering 350,000 hectares by 2023.

IP Lands as Target Areas. Given this context and commodity prerequisites, the Philippine Palm Oil Road Map eyed the utilization of under-productive and idle areas. These areas would include the ancestral domain of indigenous peoples and former logging concessions areas. If existing policies preclude for such use, amendments to these policies and executive orders will be pursued to allow access of these companies to these resources.

Ancestral lands have been attracting investors, not only for oil palm but for other commodities as well, given the vast area coverage. With their legal recognition under the Indigenous People's Rights Act (IPRA or Republic Act 8371) and the issuance of Certificates of Ancestral Domain Titles (CADTs), more than 18 percent of the total land area of the Philippines covering some 5.4M hectares are now covered by CADTs. This has been considered a landmark legislation. Unfortunately, implementation has been slow, problematic, and challenging.

Is the Strategy Fruitful? Recent reports, however, showed that such a strategy is not beneficial to indigenous communities. The scheme has resulted in unfair labor practices, exclusion of communities, and disrespect of cultural



traditions. In many instances, these mishandlings have resulted in loss of tenure security, conflicts, and violence.

Conventional technological practices of these corporations have also impacted negatively on the environment. The ancestral domains of indigenous peoples play a critical role in the ecosystem particularly in regulating water and conserving biodiversity. Transforming them indiscriminately into agricultural production areas has resulted in environmental destruction with a number of negative consequences.

Moreover, the use of pesticides and other chemical inputs has adverse impacts on the health of the community. This also contaminates the water supply of those living downstream.

Delusion of the Strategy. It is not a sound strategy to entrust development to a corporation or an institution when it is not its priority objective. The corporation may have adopted business and human rights principles and even instituted corporate social responsibility, but they come secondary to their primary goal of increasing return on investment (ROI). When push comes to shove, ROI is first and foremost consideration for the corporation.

It is the government's responsibility to ensure that its development objectives are attained. Unfortunately, administrative lapses in the leasing of the lands are a common occurrence. The downside to these investments, especially if not properly monitored, is that they displace communities and degrade the environment. And based on the reports, these are already happening. These negative impacts on the communities and resource utilization have already resulted in abuses and violence.

Moreover, what may not be clear to investors (and even to the government) is that IPs treat their lands and forest resources with reverence. It is the source of their food, medicine, and a sacred place for worship. It is much more than just production areas; it is part of their lives. They also have agricultural practices such as swidden agriculture that they have been practicing for generations. In this practice, some lands may appear to be idle and unproductive, but it is their way of land conservation by allowing the soil to regenerate. These differences in the use and management of ancestral lands should have been considered in planning and implementation.

Many of these emerging problems may have been avoided if only the communities have enough leverage in dealing with corporations. Land titles, or CADTs in the case of IPs' ancestral domain, would have provided them the power in negotiating for better partnership arrangements.

RECOMMENDATIONS

The sad experiences of IPs with oil palm companies are not entirely new. Many complaints have been filed against business corporations on unfair transactions and human rights abuses. Thus, the United Nations Human Rights Council endorsed in 2011 the UN Guiding Principles on Business and Human Rights (UNGPs-BHR) as part of implementing the UN "Protect, Respect and Remedy"³ Framework (OHCHR, 2011).

Using the UNGP on Business and Human Rights "Protect, Respect and Remedy" Framework, recommendations in addressing current oil palms concerns are forwarded.

³ PROTECT: States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations. RESPECT: Business enterprises 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. REMEDY: When a right is violated, victims must have access to an effective remedy.



Protect

Other than ensuring that FPIC is followed, a good way to protect the indigenous communities especially those wanting to lease their lands or enter into a joint venture with agricultural corporations is to strengthen their tenurial rights over ancestral domain.

Ideally, this would mean securing legal titles recognized by governments. In the absence of such titles, government agencies should strengthen and strictly enforce safeguards and government regulations to protect tenurial rights given to indigenous peoples, may they be right to use, lease, or other management agreements.

Contracts with corporations especially those facilitated by the government should follow government processes and protocols and be regularly monitored. Both government and corporations must ensure that the communities to be affected are involved in all stages of negotiation and are able to fully comprehend all aspects of the proposal. Partnership with CSOs is highly encouraged to provide the needed support.

CSOs should continue to provide capacity-building support to local communities by conducting training courses on negotiating contracts, proposal development, understanding financial statements, and the like. Further, CSOs must continue documentation and monitoring of investments that affect rural communities such as IPs.

Related to monitoring, official spatial data that includes technical descriptions and geographic boundaries of plantation sites and other investment areas must be made available, for government to observe overlaps with ancestral domains that signify potential conflicts.

It is also recommended that government, with the private sector, CSOs, and communities, embark on a *comprehensive* study on the environmental, social, and economic impacts (both positive and negative) of oil palm plantations. Such initiative shall provide basis on where we can strike the balance between meeting the domestic demand for palm oil and securing the rights of smallholders, while preserving our environment and natural resources. The study should also include assessments of the productivity of existing plantations and infrastructure (ex. oil mills, farm-to-market roads, etc.) vis-à-vis the needed volume of palm oil for sufficient local consumption.

Respect

Corporations should observe FPIC in engaging IP communities. It is the responsibility of NCIP to ensure that all corporations investing in ancestral lands respect this process. Regular consultations, updating, and dialogues should be observed.

However, government agencies and corporations alike should remember that indigenous peoples have *“the right to say no,”* and may decline the entry of investments into their lands. Project negotiations are not merely avenues where IPs, corporations, and governments work out terms and implementation mechanisms for projects that are sure to push through. During discussions on projects, the right to say "no" should be reiterated and emphasized. When this right is exercised, it should be respected.

Remedy

It is also sensible for corporations to set up help/grievance desks to provide a venue for complaints and other concerns.




Complaints and grievances should be properly documented and addressed. Agencies may also dedicate offices that may receive and process such complaints. Partner CSOs and/or legal offices should be tapped. Remedial processes can start with the grievance desk of a company, if it has one. If not, the complainant can get an endorsement from the Commission on Human Rights (CHR) before filing a case in the appropriate legal court.

It is also important that exit strategies such as contract cancellation or termination should be in place even before the contract is signed.

In addition, given that these investments are continuing and that more ancestral lands of IP communities are targeted, the establishment of local help desks that IPs can contact is recommended. This would be convenient for IPs who are residing in remote locations. The provision of help desks can be coordinated with the CHR. ■

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DISCLAIMER

The views expressed in this study do not necessarily reflect those of ILC.

ACRONYMS

ABERDI	A Brown Energy and Resources Development, Inc.
AGMIHICU	Agtulawon-Mintapod Higaonon Cumadon
AGPI	Agumil Philippines, Inc.
ALDAW	Ancestral Land/Domain Watch
AMRC	Asia Monitor Resource Centre
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ARBs	agrarian reform beneficiaries
AVA/s	Agribusiness Venture Agreement/s
BARMM	Bangsamoro Autonomous Region in Muslim Mindanao
CADT	Certificate of Ancestral Domain Title
CALT	Certificate of Ancestral Land Title
CALG	Coalition Against Land-Grabbing
CARL	Comprehensive Agrarian Reform Law
CBFM	Community-Based Forest Management
CSOs	civil society organizations
CTUHR	Center of Trade Union and Human Rights
DA	Department of Agriculture
DENR	Department of Environment and Natural Resources
DTI	Department of Trade and Industry
EPGC	Eastern Petroleum Group of Companies
FFB	Fresh fruit bunches
FPIC	Free, Prior, and Informed Consent
FPPI	Filipinas Palm Oil Plantations, Inc.
IFMA/s	Integrated Forestry Management Agreements
IP/s	Indigenous people/s
IPRA	Indigenous People’s Rights Act
KASAMAKA	Kapunungan Sa Mga Mag-uuma sa Kaanibungan
LBP	Land Bank of the Philippines
NCIP	National Commission on Indigenous Peoples
NGPI	NDC-Guthrie Plantations, Inc.
NTFP/s	non-timber forest product/s
NTFP-EP	Non-Timber Forest Products Exchange Programme
PPDCI	Philippine Palm Oil Development Council, Inc.
PPOIDC	Palawan Palm Oil Industry Development Council
PPVOMI	Palawan Palm & Vegetable Oil Mills Inc.
PCA	Philippine Coconut Authority
PSA	Philippine Statistics Authority
ROI	return on investment



ANGOC's contribution to the UN Committee on Economic, Social, and Cultural Rights' Draft General Comment No. 26 on Land and Economic, Social, and Cultural Rights¹

Introductory Remarks

The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) was borne out of country consultations that culminated in the World Conference on Agrarian Reform and Rural Development (WCARRD) in 1979. Its founders from various Asian NGOs all held that agrarian reform was a fundamental element to eradicate poverty. While there have been many shifts in development advocacy through the decades, ANGOC continues to believe that land and resource rights are still essential to the development of

Asian rural communities. Land is NOT just an economic commodity but a necessary instrument of equity for the poor. Access and control to land and resources brings direct relief to rural poverty, but just as importantly, its democratizing effects enable other pro-poor reforms to work more effectively.

Tenure security to land brings livelihood, reduces social tensions and conflicts over resources, achieves sustainable management of lands, and improves overall peace for greater political and economic stability.

The current COVID-19 pandemic has reinforced the crucial need for secure land and housing tenure as never before. As small farmers across Asia remain in the frontlines of this pandemic, by continuing to be major food producers and suppliers, yet small farmers and producers rural artisans and indigenous peoples continue to be deprived of access and control over land, water,

¹ The Committee on Economic, Social and Cultural Rights (CESCR) is formulating a general comment on Land and Economic, Social and Cultural Rights. Such document seeks to clarify the specific obligations of States parties relating to land and the governance of tenure of land under the International Covenant on Economic, Social and Cultural Rights (ICESCR). As part of the public consultation process, CESCR has invited interested individuals and organizations to send in their comments on the draft. The draft can be accessed at <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCR-draft-GC-land.aspx>



forests and coastlines – resources on which depend for livelihoods.

Land rights are recognized when enforced. It is a continuing political process, since it involves changing power relations. Even after legislative reforms are instituted, there is a need for constant public vigilance and pressure to influence governments to exert political will for land rights. Thus, the ANGO network welcomes this initiative of the Committee of the Economic, Social and Cultural Rights in preparing a General Comment No. 26 on Land and Economic, Social and Cultural Rights.

Many of the land conflicts described in the initial paragraphs of the General Comment are pervasive in Asia. The roots of many land conflicts in Asian countries may be traced to enduring historical injustices, inequitable access to land and resources, faulty and weak implementation of past land and resource reforms, emergent clashes between statutory and customary tenure systems, misappropriation of State domains, and the lack of regard for human rights of the disadvantaged and vulnerable sectors.

On this note, the ANGO Network submits our inputs to this draft General Comment No. 26.

On Women and Land Rights

In Paragraph 16, the General Comment recognized the discrimination suffered by women as regards their land rights, most commonly their right to own property such as land. In the same paragraph, there is a statement directing States to monitor and regulate customary law as regards the right of women to inherit land.

While this statement dips into the topic of customary law, it fails to acknowledge the far stringent rules in many States against land

ownership by women. Such States usually observe religious laws in their State legislation. Religious laws embedded in national laws are much harder to change. The General Comment should emphasize the non-discrimination clause under Article 2, paragraph 2 of the Covenant as a State obligation to make their laws secular and grant land ownership rights to women, single women other than widowed and girls, with time-bound actions.

Even then, it has been seen in many cases in Asia where patriarchal tendencies overrule legislation giving equal rights of ownership to women. As the draft General Comment recognized such policy incoherence with implementation, the statement cited above was limited to inheritance laws. Such statement should encompass any and all rights pertaining to women owning land to give full effect to the Covenant's non-discrimination clause.

It would also be beneficial to underscore the phenomenon, especially in many parts of Asia, of agriculture being widely a female occupation. It has been observed that men leave farming in pursuit of work in urban cities; leaving the women in the countryside to till the land. This shift in gender profile should be reflected in States' policies, particularly the official recognition of women as farmers and their inclusion in all support services. States should recognize the role of women in food systems as producers and processors and implement policies, as regards land in particular, that support their activities.

Gender equity is a target only reached when women are finally always included and thoughtfully considered – rather than merely mentioned for compliance's sake – in policies, programs, and plans. It is primarily through empowering women and developing their capacities that rural women can learn to push



for sound reforms, not only in terms of land laws and policies concerning women, but including the wider spectrum of women's rights. The interrelatedness of human rights underscore that the mere grant of a right to own land to women does not allow them the full enjoyment of such right. It also means critically examining assumptions and expectations about gender roles – and asserting rights and entitlements of women, as provided in international conventions, national laws, and human rights declarations.

On Indigenous People, Land, and the Environment

In Paragraph 23, the General Comment should also take into account the unintended consequences environmental initiatives have on indigenous people. In Asia, it has been a common occurrence where government mandates to protect the environment undermine the rights of indigenous people.

For instance, the right of indigenous peoples to administer and manage the resources on their lands are taken over by government pursuant to environmental protection laws. This is most significant in Asia where 70 percent of indigenous peoples originate and such percentage is indicative of the vast area of their ancestral domains.²

The campaign of certain environment causes to protect wildlife and forests have also succeeded in establishing reserves and protected areas.

Unfortunately, such efforts have also displaced the indigenous peoples from their ancestral domains, where they have co-existed with wildlife and have tended the land's resources for centuries. In many Asian countries, indigenous communities

² *Indigenous Peoples in the Asia-Pacific Region* (FAO, 2018). <http://www.fao.org/3/ca2045en/CA2045EN.pdf>

"In Paragraph 23, the General Comment should also take into account the unintended consequences environmental initiatives have on indigenous people."

live in the remaining frontiers where biodiversity and forest ecosystems have been kept intact over many decades through customary practice, traditional management and sustainable use.

Therefore, States should recognize their obligation to respect indigenous peoples' rights and not subvert such rights in advancing other agenda. Furthermore, States should recognize the contribution of indigenous peoples in ecosystem conservation over the years by strengthening their collective rights in governing their ancestral domain.

In paragraph 23, the General Comment cited the remedies provided by the Inter-American Court of Human Rights and the African Commission on Human and People's Rights, but stopped short of declaring the provision of remedies a State obligation under the Covenant. It should be a State obligation to initiate independent inquiries and provide appropriate restitution to indigenous peoples removed from their lands through whatever means. In case where lands cannot be restituted, it should also be a State obligation to ensure the provision of safe and proper relocation, just compensation, and rehabilitation.

On Defining Land Grabs

Land grabs should find more emphasis in Paragraphs 25, 30, and 31. Apart from forced evictions, land grabs must be addressed, as they



are more insidious violations of land rights. In land grabs, people unknowingly lose their lands since many land grabs are legal in nature. Forced evictions are just one of the consequences of land grabs. Thus, the General Comment, being one focused on land rights, should adopt a definition of land grabs. Available definitions to consider are those from EcoRuralis,³ which was endorsed by FAO.

Land grabs are characterized by gaining control over land, usually large areas, through means usually involving fraud or the assertion of dominance or force. This is possible due to the more “superior positions of money, power, knowledge, and influence” by land grabbers. As already indicated, many land grabs are legal as they are pursued under the auspices of government policies and legislation.

In Asia, it has been seen that massive land acquisitions by big business or conglomerates are attended by corruption and manipulation. Hence, land rights holders lose their rights because they are not given the opportunity to be involved with the process that lacks transparency. It is imperative that land grabs be defined in Paragraph 32 in order for States to be properly guided on their policies and to better protect its citizens.

Hand in hand with States’ obligations to protect persons from land grabs, is a shift in policy that emphasizes diversified and sustainable agriculture. This is most true in Asia where

conglomerates have been acquiring large areas of land for their home country’s food demands. Meanwhile, 75 percent of home farms are located in Asia; 80 percent of which are small scale. The latter constitute 87 percent of the world’s farms.⁴ Together, they have been the backbone of Asian agriculture. Therefore, Articles 12 (a) and 12 (b) of the Covenant should not be interpreted to refer to industrial farming, but rather include small farms in the global food chain. This thrust should be elaborated in Paragraph 28.

On Human Rights Defenders

The paragraph dedicated to Human Rights Defenders lack reference to the pervasive shrinkage of civil space in many countries, including many States in Asia. This issue is at the front and center of Human Rights Defenders’ concerns, most especially those involved in the defense of land rights. In line with the Covenant, States should adopt effective measures to combat the culture of violence and impunity, and to protect human rights defenders, land and environmental defenders, including indigenous leaders and peasant activists.

On Climate Change and Displacement

The Sub-section on Climate Change needs to further elaborate on the displacement of people as a result of weather becoming more severe. It should be underscored that the root cause of land conflict may arise because of the effects of climate change. For instance, land erosion may result in the loss of food sources or shelter. It may also alter boundaries. Coastal areas of delta countries and tiny islands may sink or low-lying areas may become permanently flooded.

Any of such consequences further result in the displacement of peoples.

³ “Land grabbing can be defined as being the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally-typical amounts of land by any person or entity (public or private, foreign or domestic) via any means (‘legal’ or ‘illegal’) for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights.” *What is Landgrabbing? A Critical Review of Existing Definitions.* (EcoRuralis, 2016). https://drive.google.com/file/d/0B_x-9XeYoYkWSDh3dGk3SVh2cDg/view?resourcekey=0-NEtyTMQ5NXEHKvjMW96KNw



Mass rally against land encroachment by Trust (Guthi) in Dang, Nepal. Photo by CSRC.

On this aspect, States should have the obligation to ensure that policies are in place to protect those susceptible to loss of land as a result of climate change. There should be available remedies, safe and appropriate relocation, including compensation, for those who lose their lands. Moreover, in anticipation of the worsening impacts of climate change, States should take into consideration sustainable land use and management in their policy formulation.


The sub-section should also highlight that high poverty levels along with the lack of tenure security heighten the risks and vulnerability of people to the effects of climate change and natural disasters. This has led to rising casualties in terms of deaths and injuries, destruction to property, and people displaced by such events.

⁴ Land Governance in Asia: Understanding the debates on land (Quizon, 2013). <https://d3o3cb4w253x5q.cloudfront.net/media/documents/FramingtheDebateLandGovernanceAsia.pdf>

While the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) was referred in the General Comment in other contexts, it was not mentioned in this sub-section on Climate Change. States should promote and utilize the VGGT as a “mandate” to protect tenure rights in the event of climate change and disasters. The VGGT is one of the few international documents that expressly mentions the linkages of tenure to climate change and natural disasters.

On Global and Regional Shocks

Under Part IV, it is recommended that a section dealing with global or regional shocks be added as sub-section “G”. The world has seen how economic crises and pandemics amplify the hardships of vulnerable and marginalized peoples and communities. Economic crises are cyclical in nature and the next economic bubble bursting may come soon after the economic recovery



from this pandemic. Epidemiologists have also predicted that zoonotic viruses causing outbreaks will become more common in light of rapid urbanization.⁵

These events have adverse effects on land rights. In the current pandemic, reports of human rights abuses related to land rights dramatically increased. Such abuses also extend to human rights defenders.

It is in these challenging circumstances where the free, prior, and informed consent is not observed in land dealings. Worse, it is also in these circumstances where communities, out of desperation, easily waive their right to free, prior, and informed consent, in exchange for ephemeral economic benefits.

Thus, in global or regional shock events, States should not waver in their efforts to protect land rights and any other right that affect the enjoyment of land rights. States should also implement social protection measures during such times, not only in terms of providing for subsistence, but also to alleviate peoples' vulnerabilities.

States should not use economic crises or pandemics as an excuse to suspend efforts at protecting land rights or withhold or divert resources from its instrumentalities engaged in land rights protection, whether directly or indirectly. States should ensure that judicial bodies and other instrumentalities providing

remedy to victims are able to resolve cases and disputes as far as practicable during crises.

Most importantly, in the recovery phase following a crisis, States should not employ economic recovery policies that give preference to huge investments in land or in the extraction of resources at the expense of land rights, which to some extent is an application of Article 2, paragraph 3 of the Covenant. States should be mindful of all interests in developing a recovery plan.

On the UN Guiding Principles on Business and Human Rights

The General Comment makes no mention of the UN Guiding Principles on Business and Human Rights (UNGPs). It is understood that the General Comment seeks to define State obligations under the Covenant as regards land rights. However, the pillars of the UNGPs address many gaps in systems that give rise to land conflicts. States should adopt and implement the UNGPs in land and resource governance and hold corporations accountable for upholding human rights. As an initial effort, governments should implement the UNGPs in the management and operations of State-owned enterprises. ■

⁵ *How urbanization affects the epidemiology of emerging infectious diseases* (Neiderud, 2015). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4481042/>; *Does urbanization make emergence of zoonosis more likely? Evidence, myths and gaps* (Ahmed, Davila, Allen, et al., 2019). <https://journals.sagepub.com/doi/full/10.1177/0956247819866124>; *Urbanization and Disease Emergence: Dynamics at the Wildlife–Livestock–Human Interface* (Hassel, Begon, Ward, and Fevre, 2017). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5214842/>; *Urbanisation brings animals and diseases closer to home* (The Conversation, 2014) <https://theconversation.com/urbanisation-brings-animals-and-diseases-closer-to-home-34415>



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

The Land Watch Asia Working Group on Land Rights as Human Rights (LWA WG LRHR) is a platform of civil society organizations from Bangladesh, Cambodia, India, Indonesia, Nepal, Philippines working towards the recognition of land rights as human rights, through evidence-based advocacy and multi-stakeholder policy dialogues at national and regional levels. The LWA WG LRHR is presently engaged in mainstreaming land rights in the implementation of the UN Guiding Principles on Business and Human Rights, examining the trends in land grabbing in Asia, and monitoring land and resource conflicts and their effects on rights defenders and communities.

ANGOC serves as the convener of this working group.



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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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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Centre for Legislative Research and Advocacy (CLRA) is an independent, not-for-profit, non-partisan initiative, which works to support and strengthen Parliament and legislatures so as to realize the

values of democratic governance. Through research, advocacy, networking, and other allied activities CLRA seeks to promote and reinforce the constitutionally assigned roles and functions of parliamentary institutions. This includes supporting institutional development and capacity building aimed at cultivating a well-functioning, sustainable and pluralistic system of democratic polity. CLRA is the pioneer organization in this comprehensive area of work in India. CLRA works closely with civil society groups, parliamentary institutions, legislators, political parties, civil servants, and media to create participatory and collective wisdom and praxis in the policy and decision-making process.

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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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The 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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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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Land Watch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national

and regional development agenda. The campaign involves civil society organizations in 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 convener of LWA.



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. The 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 farm the land.

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Driven by the desire for profit and investments, the rich and powerful were able to tilt the playing field firmly toward their side. As a result, the poor and marginalized are being systematically dispossessed of coveted precious land that is theirs by right. This growing land grabbing phenomenon and the conflicts that it has inevitably spawned are seen across the region and detailed in this edition of Lok Niti, which aims to provide key perspectives on how and why land grabbing is happening in Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines. Given these dire conditions, a number of recommendations have been outlined in the papers presented in this journal.



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