

Regional Workshop on Mainstreaming Land Rights in the UNGPs in Asia: Summary Report

(August 2021)

Context

Land rights are human rights, noting the close interrelation of land with other human rights (livelihood, shelter, culture, identity, property, among others). The relationship of land to the right to life is also apparent in how land conflicts throughout time have caused violence, loss of lives and decent livelihood.

In recent years, land conflicts have been increasing in number and intensity. These stem from overlapping land laws and policies; State-supported agricultural investments at the expense of the loss of land and livelihoods for farmers, rural workers, and their communities; and, the private sector involved in agri-investments and land concessions that trigger conflicts.

At the global level, the United Nations Human Rights (UNHRC) unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), a set of guidelines for States and companies to prevent and address human rights abuses committed in business operations. Further, the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) was adopted by the UN General Assembly in 2018, recognizing both the need to protect land and tenure rights and the rights of those who work in defense of such. In March 2019, the UN Secretary General released a Guidance Note on Land and Conflict, which offers a framework for the UN system to prevent, mitigate, and resolve conflicts by addressing root issues on land rights more systematically. The UN has also committed to engage and support its member States in matters related to land and conflicts. However, the question is how

far communities and land rights defenders can use these instruments as tools to defend and to protect their land and human rights.

Despite these, intergovernmental organizations and governments of several countries in the region have yet to explicitly recognize *land rights as human rights* and implement programs accordingly.

The year 2021 marks ten years since the UNHRC unanimously endorsed the UNGPs. This presents an opportunity for land rights advocacies to become the center of national and regional policy discussions.

Thus, to take stock of gains and plan steps that must be pursued, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), with the Commission on Human Rights of the Philippines (CHRP), Land Watch Asia (LWA), UNDP Business and Human Rights Asia (UNDP B+HR Asia), the Office of the United Nations High Commissioner for Human Rights (UN OHCHR) in Southeast Asia, the Southeast Asia National Human Rights Institution Forum (SEANF), the International Land Coalition (ILC), and LWA Working Group on Mainstreaming Land Rights as Human Rights (LWA WG LRHR), jointly organized *Mainstreaming Land Rights in the UNGPs in Asia*.

The workshop provided an opportunity for stakeholders to appreciate the relevance of incorporating land rights in the BHR discourse, particularly in the process of UNGP implementation, including development of NAP. The workshop participants envisaged various ways to promote joint regional actions to connect BHR and land rights movements and amplify rights-holder's voices on the ground.

Around 153 participants representing 68 organizations from 24 countries advocating for land rights in the implementation of BHR at the country and regional level were engaged. Such organizations involved CSOs, National Human Rights Institutions/Commissions, private sector groups, media, academe, State agencies leading the NAP-formulation in selected countries, and intergovernmental organizations.

Framing Land Rights in the NAP for UNGPs

In asserting land rights as an integral aspect of business and human rights, it must be primarily recognized that land is a resource that is closely linked with and directly impacts human rights. In fact, land rights, being vital to other human rights, is crucial in achieving all Sustainable Development Goals.

Prof. Surya Deva, Chair of the UN Working Group on Business and Human Rights points out the profound intersection of land with the right to life and economic rights as a source of food and livelihood. Land, unlike investments or employment that are time or contract bound, can support the livelihood of many people for generations. Land is also inextricably bonded to peoples' identities and existence, thus a part of their social and cultural rights.

But for many businesses, investors, or even the State, land is but a commodity that can be bought or sold for profit over the welfare of people. Hence, there lies the competing demands for land that is a finite resource. Because it is necessary for food, livelihood, settlement, industry, and other uses, conflicts brew over access and control of the land wherein community land rights are increasingly disregarded. The growing size and influence of transnational corporations and businesses have led to their undermining land and human rights of marginalized sectors.

Aside from land conflicts, land ownership or land acquisition is still disproportionate. Only a small percentage of women can or actually own the land they work on. Land is vital to indigenous peoples for its cultural and economic value to them. However, their land rights are often easily violated. The same can be said of the disproportionate land rights of religious and linguistic minorities.

Philippine Human Rights Commissioner Gwendolyn Pimentel-Gana noted that while businesses may positively impact communities and contribute to development, conflicts between them have resulted in large-scale displacement, land grabbing, and disregard for free, prior, and informed consent (FPIC), particularly of indigenous communities.

These unfortunate situations were presented in six country case studies on land grabbing (featuring cases from Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines) by land rights specialist and advocate Mr. Antonio

Quizon, a former ANGOC Chairperson and Executive Director. Common themes that were observed include: *legal land grabs*, or the role of government in facilitating investments or in transferring high value lands to the private sector without ensuring adequate protection of affected communities; the lack of transparency or peoples' participation in the land acquisition process; the use of force, fraud, deception, or coercion from governments and private corporations; and resistance from communities being painted in a bad light.

Over time, it is observed that States have become more active in brokering land investments. In addition, over time, land is commodified not just as a factor of production, but also as a resource whose value will only increase, thus leading to speculation, financialization, and securitization of land. All these are ongoing while policies for secure tenure are underdeveloped or are not being implemented properly.

Integrating land rights in BHR processes and NAP formulation

The role of NHRIs/Cs in implementing the UNGPs is crucial, as these bodies monitor State actions on land rights along with other human rights.

In the ANGOC-LWA regional study on the advancement of developing National Action Plans for BHR implementation, among the hindrances or challenges stressed were the lack of awareness or low understanding of BHR concepts from governments, civil society, and communities. While there are many progressive land rights laws, some of them seemingly clash with policies that facilitate land acquisition for business on the other. In some countries, it was notable that NHRIs/Cs lacked influence and independence to the point of being undermined by other government agencies.

Among Asian countries, only the governments of Japan and Thailand have published standalone National Action Plans (NAPs) that detail their strategies to implement the UNGPs. South Korea has a human rights action plan that contains a chapter on BHR. Meanwhile, the governments of India, Indonesia, Malaysia, Mongolia, Pakistan, and Vietnam are developing NAPs. Within these countries, and in States where NAP development has yet to begin, there are opportunities to ensure that land rights are considered in the NAP.

Further, the trend of shrinking democratic space that has restricted free speech and expression has affected civil society's ability to lobby for the creation of a NAP. The limitations brought on by the COVID-19 pandemic has also impeded the NAP-formulation process in recent times.

Panelists from the government and National Human Rights Commissions also mirrored these observations.

The study called attention to how NAPs for the UN Guiding Principles on BHR can integrate land rights issues in business practices by using the three pillars as a framework:

Protect

- The State needs to develop an inclusive and sustainable model of development through a bottom-up approach of consultation and development framework;
- The State has a duty to protect against human rights abuses so they need to make sure that there should be no corporate capture of the government. Government officials need to achieve a level of neutrality in terms of balancing competing demands of land and safeguarding land rights;
- Governments must adhere to their commitments to human rights and their "Duty to Protect;" refrain from enacting laws that undercut BHR; be creative in promoting compliance with BHR;
- Address the root causes of human rights abuses;
- Governments should uphold the spirit of and comply with its obligations under international human rights instruments;
- Governments should ensure the integrity of safeguard mechanisms that regulate public and private land investments and strengthen local mediation mechanisms; strengthen the principle and practice of Free, Prior, and Informed Consent;
- Governments should apply the UNGPs in land and resource governance; as a start, governments should institute UNGPs in all State-run corporations and plantations;
- Governments should curb corruption especially in land management bureaus and prosecute all those involved; and,
- Governments should ensure their duty to protect and business's responsibility to respect human rights when responding to the COVID-19 pandemic and safeguard people's rights relating to land issues.

Respect

- Businesses acquiring land or entering long-term leases with farmers to grow certain crops, must conduct meaningful human rights due diligence before any project begins. To make it meaningful, they would have to consider Free Prior Informed Consent, emphasizing the word “consent” through genuine consultation with sectors who own or use the land;
- Companies must work with land rights defenders and see them as allies by businesses and States rather than adversaries;
- Companies must realize it is cost-efficient to observe and implement BHR now than later;
- Private sector should have independent BHR policies apart from regulations in host countries;
- Stock exchanges should require more BHR relevant disclosures; and,
- Businesses must know and show their measures to prevent and mitigate any human rights impact from their COVID-19 responses.

Remedy

- There is a need for an effective grievance mechanism. NHRIs/Cs, if independent, can play a very proactive and preventive role in addressing disputes;
- Whenever land is taken over by businesses, alternative remedies beyond monetary compensation should be considered;
- State-based remedies must be supported by relevant and effective legislation;
- Establish independent land dispute commissions to speed up responses to and resolutions of land-related cases;
- Strengthen local mediation mechanisms to address local land conflicts, especially those at community level;
- Disclose ownership/investment when acquiring land and offer information on how jurisdiction over such persons may be acquired in order that full and effective relief may be delivered to victims of land rights violations;
- Efforts of businesses to remediate and redress their shortcomings must be appreciated; alleviate “first-mover disadvantage”; and,
- COVID-19 should not be an excuse to close offices addressing grievances related to business operations and land issues.

Priorities and recommendations

Participants agreed that while land rights are broadly recognized by Asian governments, the current development model is not sustainable, without treating people in equal footing and safeguarding land rights. Businesses should view land rights defenders and civil society organizations (CSOs) as companions not adversaries to implement UNGPs. Speakers and participants shared the following recommendations throughout the forum.

Overall. Pursue advocacy on enacting a legally binding instrument on BHR to make States more accountable to implement the UNGPs.

For Governments

- Prioritize development and implementation of NAPs for the UNGPs at the national level, along with an appropriate monitoring mechanism, in close consultation with NHRIs/Cs, CSOs, private sector, and local communities;
- Review, reform, and enact policies that strengthen land rights and integrate the UNGPs. Implement agrarian reforms, FPIC and other safeguards, and enact policies that protect smallholders from unjust land investments;
- Focus on resolving land conflicts – create or refine the implementation of case documentation and monitoring and strengthen local mediation mechanisms such as grievance desks to benefit communities; and,
- Establishing independent land dispute agencies to speed up responses to conflicts.

For Business

- Include the UNGPs in company policies in all stages of operation and implement them;
- Work with land rights defenders to promote and uphold human rights;
- Conduct meaningful, non-deceptive human rights due diligence in cooperation with local communities before starting any project, and genuinely implementing free, prior and informed consent; and,
- Provide holistic and effective remedies that go beyond monetary compensation.

For All Stakeholders

- Popularize the UNGPs among governments, private sector, businesses, and communities through information campaigns, workshops and trainings, social media and mass media utilization; and,
- Facilitate partnerships between CSOs, communities, private sector, and the government and expand the network of advocates to pressure governments into formulating people-centered NAPs that include land rights.

Action agenda for the next five years

Towards this end, an action agenda was discussed and formulated. With the overall goal of **mainstreaming the recognition of land rights as human rights in the Asian region**, three inter-related strategies will be undertaken:

On Empowering Communities

Objective	Enhancing capacities and putting peoples and communities at the core of decision-making processes in developing policy and legal framework and implementing UNGPs by ensuring that land rights are enforced, respected and protected		
Key result area	Major interventions	Key implementors	Target institutions/ Audience
Increased awareness, understanding and capacities on land rights and UNGPs	Translating important documents of BHR including UNGPs, FPIC, UNDRIP into local languages	CSOs, NHRIs/Cs, Regional and International institutions	Communities, farmers, indigenous peoples, <i>dalits</i> , pastoralists, women, fisherfolk, urban poor
	Capacity building activities for communities through conduct of training courses, skills share programs	CSOs	
	Legal empowerment activities on UNGPs for BHR and the NAP, ensuring land rights and seeking remedies	CSOs, Legal resource groups, NHRIs/Cs	
Facilitate and open spaces for dialogues	Organize community-based dialogues	CSOs	Communities, farmers, indigenous peoples, <i>dalits</i> , pastoralists, women, fisherfolk, urban poor
	Convene regular multi-stakeholder dialogues and platforms at national and regional level	CSOs, NHRIs/Cs, Regional and International Organization	Communities, Government, private sector
	Enhance capacities of communities to gain access and participate in digital platforms	Regional and International Organization, Private sector	CSOs, NHRIs/Cs, communities

On Policy Advocacy

Objective	Adoption of UNGPs through the formulation and implementation of the National Action Plans (NAPs) with a strong land rights dimension		
Key result area	Major interventions	Key implementors	Target institutions/ Audience
Institutionalization of UNGPs	Lobby governments to initiate a participatory, transparent and multi-stakeholder NAP formulation of UNGPs	CSOs, Communities, NHRIs/Cs	Governments
	Push for a separate section in the NAP for land rights	CSOs, Communities	
	Advocate government to allocate budget to ensure effective implementation of the UNGPs		
	Set-up a monitoring system of the implementation of the UNGPs	CSOs, Communities, NHRIs/Cs	Governments, Regional and International Organizations
Creation of favorable policy environment for land rights and BHR	Lobby key legislative agenda in support of land rights as human rights and the implementation of UNGPs such as campaigning for the passage or review of national laws legal framework that would promote the implementation of UNGPs and development of NAP or relevant policy frameworks	CSOs, Communities	Governments, NHRIs/Cs
	Engage with UN human rights mechanisms (such as Special Procedures, UPR, CEDAW) and advocate and address issues in relations to BHR and land rights	CSOs, NHRIs/Cs, Regional and International Institutions	Governments
	Strengthening national mechanisms and institutions in support of land rights and human rights, to include greater authority and independence for NHRIs/Cs to perform their functions		
	Sensitize government agencies and institutions to integrate land rights in the implementation of UNGPs	CSOs, NHRIs/Cs	
Transparent monitoring of the impact of land investments	Produce, discuss and disseminate national and regional CSO reports documenting land rights, land conflicts and BHR issues	CSOs, Communities	Governments, NHRIs/Cs, Regional and International Organizations, Private sector
	Strengthening the FPIC mechanism	Communities, CSOs, NHRIs/Cs, Regional and International Institutions	Government

On Constituency Building

Objective	Generate broad-base support for land rights and the UNGPs		
Key result area	Major interventions	Key implementors	Target institutions
Increased understanding among various stakeholders on the importance of UNGPs and incorporating land rights in the NAPs	Popularize the UNGPs through localization, use of social media and mass media, production information, education and communication materials	CSOs, NHRIs/Cs, Regional and International Organizations	Governments, Private sector
	Document, disseminate and discuss studies of successful practices on land and human rights by businesses, including cases successfully resolved in relation to issues on land rights as affected by business operations	CSOs (including academe), communities	
	Document, disseminate and discuss studies of genuine application of FPIC processes on land investments		
Foster dialogues and partnerships towards proactive actions to address and provide remedies to land and human rights issues in relation to businesses	Organize multi-stakeholder forums at the country and regional levels	CSOs, NHRIs/Cs, Governments, Regional and International Organizations, Private sector	General public
	Capacitate businesses/private sector on the human rights framework and land rights in the UNGPs	NHRIs/Cs, Regional and International Organizations, CSOs	Private sector
	Prepare and discuss annual report on the status of UNGP implementation at the country and regional levels	CSOs	NHRIs/Cs, Governments, Regional and International Organizations, Private sector, General public

Ways Forward and Conclusion

The three pillars of the UNGPs outline the principles, practices and behavior all business enterprises should adhere to, and the measures expected from States in dealing with human rights violations of businesses. These would help address conflicts around land rights. As immediate steps to promote the UNGPs and the formulation of the NAPs, participants were thus encouraged to sustain the exchange of information on UNGPs, monitor and document land rights violations and initiate multi-stakeholder processes of formulating the National Action Plans for the UNGPs.

With the COVID-19 pandemic, there is a rise in crises of poverty, hunger and malnutrition burdening smallholder farmers, agricultural workers, indigenous peoples, fisherfolk, pastoralists, slum-dwellers, women and youth. Ironically, the small farmers in Asia are at the frontlines of this pandemic as major suppliers of food.

Yet, their land rights and livelihoods are still not secure. Alarming, a surge of killing and harassment of land rights defenders and communities continue to occur in Asia with the onslaught of “development” for mining, plantations, and economic zones.

For the past decade, CSO groups have actively led the campaign for including land rights as an integral element of the implementation of the UNGPs. This campaign worked to pursue policy and institutional reforms combined with concrete community actions, to protect land rights and to enhance access to and control of land and tenurial security for the rural poor in Asia.

CSOs working on land rights, together with national bodies on human rights, have an important role in mainstreaming and monitoring the implementation of the UNGPs. CSO movements also need to continue guarding the impacts of land and agribusiness investments on local communities, and facilitating exchanges of experiences, lessons, innovations, and evidence-based recommendations for stakeholders.

In the end, the workshop participants from CSOs and NHRIs/Cs enjoin other groups and institutions in amplifying the importance of linking land rights in various platforms beyond the UNGPs, such as in the UN Food Systems Summit. ■

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