

Theme 2:

Partnership founded on a shared human rights mandate

This section summarizes the reflections of the National Human Rights Institutions and Commissions (NHRIs and NHRCs) on the land conflict monitoring reports, and how they can partner with CSOs in defending the rights of communities to land and resources.

Land in international human rights instruments and standards and the global development agenda

Currently, international human rights law contains no explicit reference to a human right to land. Nevertheless, many international human rights instruments associate land issues with specific substantive human rights. Land issues are often connected to the right to food, gender equality, protection and assistance of internally displaced persons (IDPs), and the rights of indigenous peoples (IPs) to their ancestral lands. United Nations (UN) human rights bodies and special procedure mandate holders have addressed land issues in relation to various rights, including housing, food, water, health, work, freedom of expression, self-determination, and participation in public affairs and cultural life.

Regional human rights mechanisms, such as the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and Court of Human Rights, and the European Court of Human Rights, have also tackled land issues as they relate to various civil, cultural, economic, political, and social rights, including minority and indigenous peoples' rights.

International humanitarian law may intersect with land issues through prohibitions on attacks or destruction of essential civilian objects and responsibilities of occupying powers within occupied territories. Standards relevant to refugees and displaced persons recognize their housing, land, and property rights, emphasizing their importance for long-term peace, stability, economic development, and justice.

International environmental law has limited references to the relationship between land and human rights. However, in October 2021, the UN Human Rights Council declared that having a clean, healthy and sustainable environment — including, by extension, land — is a human right.

Discussions on environmental law acknowledge the importance of certain human rights and principles, such as access to information, participation in decision-making, and access to justice in environmental matters. Human Rights Council resolution 40/11 obligates States to respect, protect,

and fulfill the rights of environmental human rights defenders and the communities they represent. In summary, despite the absence of a stand-alone human right to land, existing international human rights standards and other relevant international laws are already addressing a wide range of land issues.

The importance of addressing land issues in order to forestall conflict is also inscribed in international agreements that pertain to social and economic development. The Agenda 2030 for Sustainable Development, which was adopted by UN Member States in 2015, is replete with references to access to land. Several Sustainable Development Goals (SDGs) contain targets and indicators on how land-access dimensions support the achievement of the Goals. These include:

- SDG 1 (1.4.2) – equal rights to economic resources, including ownership and control over land;
- SDG 2 (2.3.1, 2.3.2, and 2.4.1) – importance of secure and equal access to land and other resources for raising agricultural productivity and small farmers’ incomes;
- SDG 5 (5.a.1 and 5.a.2) – equal rights of women to ownership and control over land;
- SDG 11 (11.1.1., 11.3.1 and 11.7.1) – guarantee of access for all to adequate, safe, and affordable housing; and,
- SDG 15 (15.1.1, 15.1.2, 15.2.1, and 15.3.1) – sustainable use of ecosystems in line with international agreements.

The 17 SDGs may be regarded as entitlements, or human rights, that everyone, everywhere, should enjoy. All UN Member States have endorsed, and in many cases, worked to incorporate the SDGs in their national development plans. As access to land, indeed, equal ownership of it, is a pillar of many of these Goals, States can be held accountable to fulfill the right to land.

More recently, the UN issued its March 2019 Guidance Note of the UN Secretary-General, titled *“The United Nations and Land and Conflict.”* This document lays down a UN Framework for Action to enable the UN System to “be more fit for purpose on land and conflict issues.”

This document is a tacit recognition by the UN System that over the coming decades, competition and conflict over land is going to intensify. It cites evidence of the link between land, armed conflict, and human rights abuses. And with its mandate of building and maintaining peace and security within and across national borders, the UN views land conflicts as a significant threat that its agencies must tackle in a holistic and integrated manner in order to better support its Member States in their peacebuilding and human rights pursuits.

In brief, the numerous references to land issues as they relate to the realization of substantive human rights, land access metrics in several SDGs, and the UN Secretary-General’s marching orders to deal with, resolve, and forestall land conflicts to prevent human rights abuses, among others, comprise a solid mandate for governments, especially NHRIs and NHRCs to recognize the right to land as a human right.

As affirmed by Virgilio da Silva Guterres, the concurrent Chairperson of the Southeast Asian National Human Rights Institution Forum (SEANF) and of the Provedoria dos Direitos Humanos e Justica (PDHJ), NHRI of Timor Leste, “NHRIs, NHRCs, and CSOs as human rights advocates, look at land not just in terms of square meters or hectares, but as a part of a person’s or community’s identity.”

Land issues in the ambit of national human rights mandates

National Human Rights Institutions (NHRIs) and National Human Rights Commissions (NHRCs) in Bangladesh, Indonesia, Nepal, the Philippines, and Timor Leste are playing an important role in the realization of land rights and in addressing the adverse impacts of land conflict on human rights.

Bangladesh’s NHRC monitors all unresolved land conflicts. It is working to secure recognition and protection of collective land ownership in the country’s legal system. At the same time, the Bangladesh NHRC is advocating for the development of comprehensive land use plans and zoning as a long-term strategy to reduce conflicts related to land use.

The Commission on Human Rights of the Philippines (CHRP) investigates human rights violations and abuses stemming from land conflict, and holds both State and non-State actors to account. This is part of its mandate to ensure that the State’s obligation to respect, protect, and promote civil, political, economic, social, and cultural rights is fulfilled, in compliance with international human rights treaties and obligations. Through its monitoring work, the CHRP brings to light the realities and life experiences of affected communities, raises awareness about the human rights dimensions of land issues, and recommends rights-centered policy and legislative measures. Additionally, the CHRP facilitates democratic dialogue to ensure that all relevant stakeholders contribute to a meaningful exchange in promoting land rights protection, ensuring equitable access to land resources, and preventing land-related human rights abuses or violations.

Nepal’s NHRC focuses on monitoring the impact of business operations on human rights. This mandate received a boost recently, when the government of Nepal endorsed its first National Action Plan (NAP) on UN Guiding Principles on Business and Human Rights (UNGPs) on 27 December 2023. It was launched by the Minister for Labor, Employment, and Social Security on 23 March 2024. This NAP was one of the key actions in the National Human Rights Action Plan (NHRAP) introduced by the government in 2020.

The NHRI of Indonesia, called *Komisi Nasional Hak Asasi Manusia*, or Komnas HAM, has been receiving cases on conflicts, about 20 percent of them are agrarian-related. A roadmap is being prepared to resolve such conflicts. At the same time, Komnas HAM has undertaken a number of initiatives that have been recognized as best practice in human rights-based approach to resolving agrarian conflict. [See box story]

Indonesia's best practice: Human-rights based approach to land conflict resolution

Komnas HAM has been lauded for the following initiatives.

National Inquiry on Indigenous People Rights over Their Territory in Forest Zone (2014 to 2016).

Komnas HAM launched a national inquiry to document rights abuses, including threats and abuses of local peoples' tenure rights. The National Inquiry was part of seven nationwide public hearings on violations of IPs' human rights in relation to land, forests, and natural resource issues. These public hearings gave visibility to the numerous abuses, and thus became a venue for elevating IPs' claims and exacting accountability from government authorities. The Inquiry elevated the formal recognition of IP's customary resource rights on the agenda of the newly-elected government of Joko Widodo. It also led in 2016 to the start of designation of customary forests.

Standard Norms and Setting of Human Rights on the Land and Natural Resources (2021). This document aims to provide authoritative explanation on the implementation of human rights norms and principles, and permissible limitations on the land and natural resources sector.

It has been used by stakeholders in various ways: advocacy, campaigns, education, and legal action to mainstream human rights in land and natural resources management. The 2023 Indonesia Land Tenure Conference endorsed this document as an important instrument and guidance for human rights advocacy on tenurial conflict.

Mediation. Komnas HAM mediates allegations of human rights abuses arising from agrarian conflict. On particular and systemic cases, Komnas HAM can issue recommendations to the President and to the Parliament.

Monitoring. Komnas HAM monitors and investigates allegations of human rights abuses in agrarian conflict. Komnas HAM then submits its conclusions and recommendations to the government for the protection of and restitution to the human rights victims. As with mediation, Komnas HAM can issue recommendations to the President and to the Parliament on particular and systemic cases.

Recommendations for strengthening the Land Conflict Monitoring Initiative

The NHRIs and NHRCs generally confirmed the findings of the 2023 Land Conflict Monitoring Reports in six Asian countries. They specifically acknowledged the monitoring framework for its comprehensive design, the evidence-based presentation of results, and the segregation of data, especially by vulnerable groups, including women, IPs, scheduled castes, among others. The representative from the Cambodian Human Rights Committee (CHRC) reiterated the importance to maintain these qualities in establishing credibility of the LWA in land conflict monitoring.

The national human rights officials said that the data of the land conflict monitoring were a strong complement to their own current findings, thus reinforcing their regular monitoring work. They felt confident that the country reports could be presented to their governments to give a clearer picture of the dimensions and magnitude of land conflicts, as well as to the media, to support their information outreach.

However, future monitoring projects would be greatly enhanced by using primary data sources to the extent possible; maximizing information from government sources; and, further engaging the government in discussing and analyzing the draft reports.

Moreover, a number of the NHRIs and NHRCs highlighted other notable trends in their countries, including: the increasing impact of strategic national development projects as a driver of land conflicts; and, the greater vulnerability of Dalits, or scheduled castes, to land conflicts, even though they did not rank highly in the total number of cases as per county reports presented during the workshop. Timor Leste's PDHJ, lamented that the culture of impunity and forced evictions – are also taking place in the country in the name of development.

It is worth mentioning that Komnas HAM is also studying the impact of PSN or the National Strategic Project as government must implement natural resources management policies that are consciously aimed at respecting, protecting, and ensuring the fulfillment of human rights. Human rights must underline every development policy and program which involves the control and use of land and natural resources.

The NHRIs and NHRCs also cited the need for a separate category for women in the sectors most affected by land conflict, and for gender disaggregation of findings, especially on victims of human rights violations as a result of land conflicts. The same data disaggregation would benefit other vulnerable groups, such as children, the elderly, and persons with disability.

A recommendation was made to use the reports to advocate for a refinement of human rights instruments, mechanisms, and treaties to make them more responsive to the issue of land rights. Furthermore, relevant national laws need to be amended or strengthened to provide for improved coordination and collaboration among all parties that have a stake in land governance. The disconnect often results from differing interpretations of the same law or regulation.

Enhanced land conflict monitoring, and beyond

The NHRIs and NHRCs agreed that they would like to explore joint land conflict monitoring with civil society organizations (CSOs), as exemplified by the partnership of ANGOC with the CHRP [see box]. They can go beyond monitoring and jointly undertake complaint management and

investigation. Their partnership can extend to programs to ensure that recommendations arising from the resolution of land conflicts are properly enforced.

Specifically to Nepal, the NHRI proposed a role for CSOs in the implementation of the NHRAP, as described earlier.

CHRP-ANGOC partnership

The Commission of Human Rights in the Philippines (CHRP) has had a productive partnership with the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) to tackle land rights. They collaborated on the Land Conflict Monitoring Report in 2018, which provided a systematic way to document and report on land and resource conflicts in the Philippines, and the CHRP's 2023 Land Rights Monitoring Report that assessed the human rights situation of the indigenous peoples, rural agricultural workers and landless farmers, informal settlers, and human rights defenders in the context of land rights in the Philippines.

The Land Rights Monitoring Report is a comprehensive analysis of existing land policies in the Philippines. This report aims to identify gaps and issues in the current policies. It was prepared by reviewing the records of the CHRP, including reports and relevant publications.

Additionally, a series of focus group discussions were conducted – with affected communities, relevant national government agencies, and land rights defenders – who are among the most victimized and endangered groups in the country, especially since the Philippines has been recognized as the most dangerous country in Asia for land and environmental defenders. The findings of the Monitoring Report were instrumental in creating a policy advisory on land rights that put forward well-founded, action-oriented recommendations for all stakeholders to address the issues identified in the Monitoring Report.

A potential offshoot of joint land conflict monitoring is to use the reports as an input to the Universal Periodic Review (UPR). The UPR is a cyclical review process that evaluates how well each country is fulfilling its human rights obligations and commitments. CSOs, in partnership with NHRIs and NHRCs, can contribute to the third component of the UPR, which is a summary of information submitted by other stakeholders, including civil society actors, NHRIs, and regional organizations. CSOs can also submit written information to be included in the report summarizing information from various stakeholders. This information is considered during the review.

Beyond land conflict monitoring, two other recommendations were put forward. The first is to undertake an assessment of the effectiveness of land conflict resolution mechanisms. Government and CSOs could look into their respective mechanisms and jointly propose improvements to those.



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The other recommendation, based on current practice by Komnas HAM, is to form an “Agrarian Reform Task Force or TTRA” within the NHRI/NHRC that will strategically respond to human rights violations in agrarian and natural resource conflicts. This Team will conduct a review of laws and regulations, conduct field studies, meet with stakeholders, including ministries, and coordinate with CSOs. It should be noted that certain aspects of the TTRA need to be improved based on the findings of the Office of the Ombudsman of the Republic of Indonesia (ORI). For one, there is the limitation of authority of the TTRA to resolve agrarian conflicts as it can only facilitate in the process of resolving such conflicts. The ORI proposes to formulate a comprehensive framework and regulation regarding agrarian conflict resolution relating to State assets and forest areas.