

Statement of the Phnom Penh Workshop on Human Rights and Agribusiness in Southeast Asia: *Making the Bali Declaration Effective*

The 31 participants of this workshop drawn from Asian National Human Rights Institutions from Indonesia, Thailand, Malaysia, Timor Leste, Myanmar and South Korea and supportive civil society organisations, met in Phnom Penh between the 9th and 11th October 2012, to review national and regional progress with putting into effect the *Bali Declaration on Human Rights and Agribusiness*, convened by the Indonesian Human Rights Commission Komnas HAM, with the support of Forest Peoples Programme and SawitWatch, and hosted by the Community Legal Education Centre.

We wish to warmly thank Professor James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples and Professor Olivier de Schutter, UN Special Rapporteur on the Right to Food, for their supportive advice and insightful interpretations on the realisation of human rights that they offered to the workshop;

We also wish to thank Rafendi Djamin, the Indonesian Representative to the ASEAN Inter-Governmental Commission on Human Rights (AICHR) for his illuminating explanations of the progress being made to establish an ASEAN human rights mechanism;

We remain, however, deeply concerned that the rapid expansion of agribusiness in the region, in the context of inadequate regulatory controls, the lack of recognition of rights and the absence of responsible business practice, continues to cause very serious and widespread problems for impacted local communities, indigenous peoples, their livelihoods and the environment;

We welcome the progress being made at the regional level by AICHR to find a solution to such problems notably through its Thematic Study on Corporate Social Responsibility and Human Rights and through the drafting process of the ASEAN Human Rights Declaration;

We also note the important complementarity between the draft ASEAN Human Rights Declaration, on the one hand,¹ which emphasises the obligations of ASEAN member countries to respect human rights consistent with the Universal Declaration on Human Rights and the 1993 Vienna Declaration and Programme of Action², and the Bali Declaration, on the other hand, which emphasises the need for States to respect the collective rights of local communities and indigenous peoples³ to their lands and territories, to food, to self-determination, free, prior and informed consent, to subsistence and to a healthy environment and which reminds agribusinesses, in particular, of their responsibility to respect human rights in their operations, in accordance with the UN Guiding Principles on Business and Human Rights;

¹ AICHR has passed a final draft of the ASEAN Human Rights Declaration to ASEAN Ministers with a view to its adoption later in 2012.

² A/CONF.157/23.

³ By indigenous peoples we include peoples nationally known as tribal peoples, hill tribes, traditional communities, ethnic minorities, minority nationalities, *masyarakat hukum adat* or *masyarakat adat*, *orang asli*, *orang asal*, native peoples, aboriginal peoples, indigenous cultural communities and so on.

We also welcome the Maastricht Principles,⁴ which clarify the obligations of States to regulate the activities of transnational corporations operating in other countries to ensure they respect human rights; taking into consideration the proliferation of transboundary agribusiness operations and investments into, within and from Southeast Asia;

Furthermore, we welcome the adoption of the *FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*⁵ which provide internationally agreed norms on how States and companies should operate to secure rights and equitable outcomes in the context of the development of lands and other natural resources;

We note with grave concern the case in Koh Kong, Southern Cambodia, where the subsidiaries of the Khon Kaen Sugar Industry Public Limited Company of Thailand (KSL) and the Ve Wong Corporation of Taiwan have taken over, without respect for rights or due process, the lands of some 207 families in the villages of Trapang Kandol, Chhouk and Chikhor for the establishment of sugar cane estates and a processing facility; taking into consideration the recent report of the UN Special Rapporteur on Human Rights in Cambodia, which refers to this as a ‘landmark case’ for the transboundary operation of National Human Rights Institutions;⁶ and welcoming the efforts of the Thai Human Rights Commission which has looked into this case and found *prima facie* evidence of violations of human rights including the right to life and the right to self-determination;⁷

We are especially concerned that despite concerted efforts to resolve these problems through appeals to the Cambodian Government and the companies involved, the filing of a case in the civil court of Cambodia, further appeals to the Thai Human Rights Commission, the European Commission and BonSucro, this critical situation remains unresolved;

We note moreover that the affected communities have insisted that the remedy they seek is not just cash compensation but the return of their lands as, they told us, ‘we need our lands like fish need water.’

In view of the above, we therefore call for the following actions:

Actions:

In order to remedy the dire situation of the communities of Koh Kong in Sre Ambel district affected by the sugar estates and associated mill, we call on:

- the Cambodian Government to review the concession agreement regarding Order number one, dated 7th May 2012, and recognise the people’s rights stipulated in the Constitution and the 2001 Land Law;
- KSL of Thailand and Ve Wong of Taiwan to return the land to the communities;

⁴ *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, available at: http://openheimer.mcgill.ca/IMG/pdf/Maastricht_20ETO_20Principles_20-20FINAL.pdf

⁵ <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

⁶ Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P Subedi A/HRC/21/63/Add.1 at paragraph 195, 24th September 2012.

⁷ Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand on the Koh Kong Sugar Cane Plantation case in Cambodia, 25/07/2012, available at: http://www.nhrc.or.th/2012/wb/en/news_detail.php?nid=662&parent_id=1&type=highlight

- Tate and Lyle of the UK and the American Sugar Refining Company of the USA to investigate in the field this situation of human rights violations and suspend purchases of sugar from the estates until the situation is resolved;
- European Union to also investigate on the ground this situation and in the light of the findings review its tax exemption on imports of sugar from Cambodia under its 'Everything but Arms Programme';

We also call on the AICHR to: take into account the Bali Declaration, and the associated reports and information presented in the proceedings of the Bali and Phnom Penh meetings, in its Thematic Study on Corporate Social Responsibility and Human Rights and; consider establishing a Working Group on Agribusiness and Human Rights to develop regional norms and remedies and receive reports from national and regional human rights institutions, agribusinesses, government agencies and civil society organisations;

We call on Governments of the ASEAN region to develop concrete actions to implement the FAO Voluntary Guidelines, mentioned above, and the Maastricht Principles, including through participatory reviews of national laws and procedures and give greater emphasis to community-based and smallholder agricultural development in order to more equitably achieve social development and food security;

As NHRIs and supportive CSOs we also commit ourselves to: further actions locally, nationally and regionally to ensure the implementation of the Bali Declaration through monitoring, the investigation of complaints, legal and policy review, capacity-building, awareness-raising and through further regional collaboration, giving further emphasis to collective rights to land and food and; to hold a follow up meeting next year to review the progress made by all the parties cited above to take the actions recommended.

We also look forward to working more closely with the UN Special Rapporteurs on the Right to Food and the Rights of Indigenous Peoples as well as the AICHR to deepen our understanding of the human rights implications of agribusiness and find effective means for companies to respect rights and for States to protect rights and secure remedies for violations.

Adopted by acclamation

Phnom Penh, Cambodia, 11th October 2012