

YANGON CONFERENCE ON HUMAN RIGHTS AND AGRIBUSINESS IN SOUTHEAST ASIA

PROCEEDINGS



Participants of the Yangon Conference on Human Rights and Agribusiness in Southeast Asia
(Holly Shrumm)

4th – 6th NOVEMBER 2014
YANGON, MYANMAR

Rapporteur: Sophie Chao (Forest Peoples Programme)



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ACRONYMS

ACU: Anti-Corruption Unit
 AICHR: ASEAN Intergovernmental Commission on Human Rights
 ALDAW: Ancestral Land/Domain Watch
 AMAF: ASEAN Ministers of Agriculture and Forestry
 AMAN: Aliansi Masyarakat Adat Nusantara
 ANGOC: Asian NGO Coalition
 APF: Asia-Pacific Forum
 APP: Asia Pulp and Paper
 APRIL: Asia Pacific Resources International Limited
 ARMM: Autonomous Region in Muslim Mindanao
 ASEAN: Association of Southeast Asian Nations
 ASEP: ASEAN Subregional Environment Programme
 CALG: Coalition Against Land Grabbing (or Koalisyon Laban Sa Pangangamkan Ng Lupa)
 CF: Community Forestry
 CFS: Committee on Food Security
 CHRAC: Cambodia Human Rights Action Committee
 CLE: Clinical Legal Education Programme
 CLEC: Community Legal Education Centre
 CLT: Communal Land Title (Cambodia)
 COP: Conference of Parties
 CSO: Civil Society Organisation(s)
 CSR: Corporate Social Responsibility
 DDA: Dawei Development Association
 DOA: Department of Agriculture (Myanmar)
 EIA: Environmental Impact Assessment
 EIA: Environmental Impact Assessment
 ELC: Economic Land Concession
 ERA: Everything But Arms (Cambodia)
 EU FLEGT: European Union Forest Law Enforcement, Governance and Trade Action Plan
 FDI: Foreign Direct Investment
 FELCRA: Federal Land Consolidation and Rehabilitation Authority (Malaysia)
 FELDA: Federal Land Development Authority (Malaysia)
 FESR: Framework for Economic and Social Reform
 FPIC: Free, Prior and Informed Consent
 FPP: Forest Peoples Programme
 FREDA: Forests Resource Environment Development and Conservation Association
 GAPE: Global Association for People and Environment
 GAR: Golden Agri-Resources
 GDP: Gross Domestic Product
 GHG: Green House Gases
 GIS: Geospatial Information System
 GLC: Government-Linked Companies
 GOFOGO: Good Forest Governance Project
 HIA: Health Impact Assessment
 ICC: International Criminal Court
 IFC CAO: International Finance Corporation Compliance Advisor Ombudsman
 IFI: International Financial Institution(s)
 IP: Indigenous Peoples

IPO: Indigenous Peoples Organisation(s)
IPRA: Indigenous Peoples Rights Act
ISPO: Indonesia Sustainable Palm Oil
Komnas HAM: Indonesia National Human Rights Commission
KWEG: Karen Women Empowerment Group
LBP: Land Bank of the Philippines
LCD: Least Developed Country
LICADHO: The Cambodian League for the Promotion and Defence of Human Rights
LIWG: Land Issues Working Group
LSLA: Large Scale Land Acquisition
LUASC: Land Use Allocation and Scrutinising Committee
MCP: Myanmar Country Programme (RECOFTC)
MDG: Millennium Development Goals
MERN: Myanmar Environmental Rehabilitation Conservation Network
MIFEE: Merauke Integrated Food and Energy Estate
MNHRC: Myanmar National Human Rights Commission
MOAI: Ministry of Agriculture and Irrigation (Myanmar)
MOECAF: Ministry of Environmental Conservation and Forestry (Myanmar)
MPR: People's General Assembly (Indonesia)
MRCB: Myanmar Responsible Business Centre
MRLGP: Mekong Region Land Governance Project
NAG: Network Activities Group
NCDP: National Comprehensive Development Plan
NCR: Native Customary Rights
NGOFC: NGO Forum Cambodia
NHRC: National Human Rights Commission(s)
NHRI: National Human Rights Institution(s)
NI: National Inquiry
OECD: Organisation for Economic Co-operation and Development
PFE: Permanent Forest Estate(s) (Myanmar)
PKC: Paung Ku Consortium
PNG: Papua New Guinea
PNHRC: Philippines National Human Rights Commission
POINT: Promotion of Indigenous and Nature Together
PONGO: Malaysian Palm Oil NGOs
PPP: Pyoe Pin Programme
PPVOMI: Palawan Palm and Vegetable Oil Mills Inc.
RCA: Rakhine Coastal Region Conservation Association
REDD: Reduction of Emissions from Deforestation and Forest Degradation
RISDA: Rubber Industry Smallholders Development Authority (Malaysia)
RPP: Respect, Protect and Remedy Framework
RRI: Rights and Resources Initiative
SDC: Swiss Agency for Development and Cooperation
SDC: Swiss Agency for Development and Cooperation
SEANF: Southeast Asia National Forum
SEM: Spirit in Education Movement
SEPA: Sabah Environmental Protection Association
SMART: Sinar Mas Agro Resources and Technology
SOP: Standard Operational Procedure
SUHAKAM: Malaysia National Human Rights Commission
TNC: Trans National Corporations

TNHRC: Thailand National Human Rights Commission
TNI: Trans National Investments
TNI: Transnational Institute
TUK INDONESIA: Transformasi Untuk Keadilan INDONESIA
UN: United Nations
UNCCPR: United Nations Covenant on Civil and Political Rights
UNCEDAW: UN Committee on the Elimination of Discrimination against Women
UNCESCR: United Nations Covenant on Economic, Social and Cultural Rights
UNCRC: UN Convention on the Rights of the Child
UNCTAD: United Nations Conference on Trade and Development
UNDHR: United Nations Declaration on Human Rights
UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples
UNEP: UN Environment Programme
UNFCCC: UN Framework Convention on Climate Change
UNGP: United Nations Guiding Principles on Business and Human Rights
UNPFII: UN Permanent Forum on Indigenous Issues
UNPRI: UN Principles of Responsible Investment
UPR: Universal Periodic Review
VGGT: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
VPA: Voluntary Partnership Agreements
WCIP: World Conference on Indigenous Peoples



Presentation: access to land – why does it matter? (Holly Shrumm)

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DAY 1: TUESDAY 4th NOVEMBER

Welcoming comments by the Chairperson of the Myanmar National Human Rights Commission *U Win Mra*

Distinguished guests,
Dear participants,
Ladies and gentlemen,

It gives me great pleasure to be have the opportunity to give welcoming comments to the *Yangon Conference on Human Rights and Agribusiness in Southeast Asia*, organised by the Myanmar National Human Rights Commission (MNHRC) in collaboration with Forest Peoples Programme and local and national NGOs in Southeast Asia.

On behalf of the MNHRC, I would like to extend a very warm welcome to all the participants.

The Yangon Conference is the fourth in the series of workshops on human rights and agribusiness held in Southeast Asia since 2011. The first workshop entitled *Human Rights and Business: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform*¹ was hosted in 2011 by the National Human Rights Commission of Indonesia (Komnas HAM) in Bali. The meeting focused on the challenges of ensuring respect for the rights of indigenous peoples and rural communities in the context of a rapid expansion of agribusiness, notably in the palm oil sector, and adopted a landmark declaration known as the *Bali Declaration on Human Rights and Agribusiness in Southeast Asia*.² It laid down the basis for the development of regional human rights standards for agribusiness expansion in Southeast Asia.

In 2012, a follow-up workshop was held in Phnom Penh, Cambodia, also hosted by Komnas HAM to review national and regional progress in putting into effect the *Bali Declaration*. The workshop issued the *Phnom Penh Statement on Human Rights and Agribusiness in Southeast Asia*.³ The Statement, among others, welcomes the Maastricht Principles which clarify the obligations of States to regulate the activities of trans-national corporations operating in other countries, to ensure they respect human rights, and also noted with grave concern the controversial case in Koh Kong in Southern Cambodia, involving the activities of trans-national corporations.

In 2013, a third workshop on human rights and agribusiness was convened in Bangkok, Thailand, hosted by the National Human Rights Commission of Thailand. The focus of the meeting was on trans-boundary agribusiness investment and human rights violations. The meeting adopted the *Montien Resolution on Human Rights and Agribusiness in Southeast Asia*⁴ which reiterates the call for States to develop effective regulatory frameworks to secure communities' rights to land. It also calls on States to ensure adequate protection of human rights by the private sector and to eradicate the impunity of corporations in collusion with States.

Myanmar is currently going through a rapid transformation in political, economic and social sectors. In this process, it has annulled laws which are no longer in keeping with the changing situation and amended others to be in harmony with new developments. It has also enacted new laws to be in line with the new democratic changes.

¹ See <http://www.forestpeoples.org/sites/fpp/files/publication/2012/09/bali-proceedings-2012.pdf>

² See <http://www.forestpeoples.org/sites/fpp/files/publication/2011/12/final-bali-declaration-adopted-1-dec-2011.pdf>

³ See <http://www.clec.org.kh/clecnews.php?cnsID=47>

⁴ See <http://business-humanrights.org/en/pdf-montien-resolution-on-human-rights-and-agribusiness-in-southeast-asia>

In Myanmar, farmers constitute the majority of the workforce. The *Farmland Law* to protect the rights of farmers and the *Vacant, Fallow and Virgin Lands Management Law* have been enacted by the Parliament. The *Foreign Investment Law*, to invite investment from abroad, has also been enacted. The invitation for investment in the agricultural sector and other sectors of the economy has led to the launching of many important projects in various parts of the country. The search for land space by the businesses has led to confiscation of lands owned by farmers. Increases in land acquisition and irresponsible use by businesses of the land have caused social, economic and environmental impacts on the rights of the communities that live and work on those lands.

The MNHRC has received many complaints on land issues. Among the complaints the Commission has received, complaints concerning land issues rank among the highest. The complaints are between farmers and private companies and in some cases with the local authorities of the government. Sometimes, it involves land appropriated by the military regiments. The complainants generally demand regaining possession of the land confiscated, full compensation or provision of substitute land.

Land grabbing has now assumed an alarming proportion because people impacted have become more aware of their rights and also because the problems have been sensitised by the media and the Parliament, giving urgency to the need to address them.

The report by the Farmland Investigation Commission to the Parliament gives six reasons for confiscation of farmlands: the expansion of urban areas; the expansion of industrial zones; the expansion of military regiments; the construction of State-owned factories; the implementation of State-run agricultural and animal husbandry projects and; land allocation to private companies.

To effectively resolve the problems concerning land disputes would require sustained efforts and a rights-based approach. Though successful businesses are crucial for development, a strong governance mechanism and preventative measures by States are essential, for absence of these measures can contribute to initiating crises and to perpetuate their negative impact.

I am convinced that the present conference will not only contribute substantively towards raising greater awareness of various issues relating to agribusiness, but also help maintain the impetus generated by the three previous workshops to push for better regulation of agribusiness and trans-national investments in Southeast Asia.

I wish you a very pleasant and enjoyable stay in Yangon. Thank you.

Opening comments from RECOFTC – The Centre for People and Forests
Tint Lwin Thaug, Executive Director

Ladies and gentlemen,

Today is a very special day for the MNHRC and for the CSOs present with us in this room. This conference is part of a series of annual regional human rights and agribusiness workshops, hosted by the National Human Rights Commissions (NHRC) of Southeast Asia, with the support of FPP and its partners, to promote a better understanding of human rights issues associated with land development. These conference will help all stakeholders to work together to address ongoing challenges of human rights violations in expanding land-based businesses, which also covers forestry and other land-related businesses in the Myanmar context.

RECOFTC works in partnership with FPP under the umbrella of the Rights and Resources Initiative⁵ (RRI), which is funding this event. RECOFTC was established in 1987 with the objective of capacity-

⁵ See www.rightsandresources.org

building for community forestry (CF) development in the Asia-Pacific region. Seven governments (including that of Myanmar) signed an intergovernmental charter to promote CF in the region. Since then, RECOFTC has been providing capacity development for different stakeholders in this region and beyond. Now, we are implementing the second year of our five year strategy plan, with a focus on four areas towards securing forest areas and community forestry rights: securing community forestry; enhancing livelihoods and markets; people, forests and climate change and; transforming forest conflicts. The RRI, of which RECOFTC and FPP are partners, is a global coalition of 14 core partners and more than 150 collaborators, engaged in forest and land policy reform in Asia, Africa and Latin America. The mission of the RRI is to support local communities and indigenous peoples' (IP) struggle against marginalisation by promoting greater global commitment towards policy and market and legal reforms so that IPs and communities benefit from their resources, including lands and forests.

As the largest country in mainland Southeast Asia, Myanmar is a strategic country geopolitically, with diverse resources and thereby attracting many land-based opportunities. This will impact on its people and natural resources. Myanmar welcomes 100% FDI and has approved many projects within a short period of time. More than 50 million USD for investment in the forestry sector were recently approved. Over five million ha have been given to the private sector in last three to four years, compared to 50,000 ha given to communities over the last 19 years as CF. While RECOFTC welcomes private sector investment, we are more interested in how partnerships between local communities and the private sector can be productively formed. We are interested in building the capacity of all parties to take full responsibility, to benefit-share from investment, to promote a participatory approach in the planning, monitoring and evaluation of projects, and to promote the inclusiveness of local communities as an essential element to the functioning and structure of the landscape.

Democracy is still very young in Myanmar, as is the establishment of the MNHRC. We all have mutual responsibilities to make sure that the democracy process and the institutional capacity of the MNHRC is strong, transparent and participatory. Today's event is the first in a long journey. Please take this opportunity to learn from each other in a constructive and positive mind-set. There are many lessons to be learned from other countries. A recent RRI study shows that more than 93% of land conversion involves land that is inhabited by IPs and local communities.⁶ Myanmar is a new global village: mistakes that have been made in other countries can be avoided. We need to adopt the best practices into our economic development. This is not easy, but it is definitely possible. On behalf of RECOFTC, the MNHRC and FPP, I thank all participants for making this a fruitful conference and encourage you to participate actively and learn from each other in this long journey through thick and thin. Thank you.

Opening comments from Forest Peoples Programme
Marcus Colchester, Senior Policy Advisor

Thank you to all for making the effort to come to Yangon for this conference. I would like to express particular thanks to our Lao PDR participants, who are participating for the first time in these regional dialogues. Lao does not yet have a NHRC, but that does not mean that it is not an important country to be part of this process. I am thrilled to see who is present at this meeting and the remarkable level of expertise represented among us. Every level of expertise is represented here, from the international, to the legal, and also the grassroots level. At the end of the day, the purpose of these dialogues to make sure our discussions and work really do make a difference at the local level. We need to focus on how to bring them down to the grassroots, to communities, and therefore it is very encouraging to hear that some of you will be sharing our outcomes down to

⁶ See <http://www.rightsandresources.org/news/communities-as-counterparties/>

communities with whom you work. I believe this is something that all of us should be taking away to share and follow up with affected local communities and indigenous peoples. It is thanks to your and previous participants' presence and inputs that we have managed to hold these annual conferences, and without you all this would not be possible. As a member of the RRI, FPP is also particularly grateful to the RRI for providing the majority of funding for this and previous conferences.

FPP is a human rights group based in the UK and working in 22 countries worldwide.⁷ My expectations of this conference are that we can go deeper into finding ways of going from the voluntary to the binding, so that human rights are made effective and not just aspirational. This is also an interest of the MNHRC so it is great to have that shared understanding. I would also encourage us to think about how to take the outcomes of this conference into national level legal reform processes we are involved in so that the rights-based approach is made effective. Some of you have expressed a wish for strong recommendations to emerge from the meeting: it is for you all to make these recommendations as you have the insights and the experiences. Finally, our previous meetings have all concluded with a Declaration or Statement or Resolution. The MNHRC has assured us that they would indeed like a Statement to be produced, so let us think about this and how to capture our points in such a Statement, which we want to be useful to us all, but particularly for the MNHRC as our hosts.

Self-introductions and participant expectations

Daw Than Nwe: Former Professor of Law at Yangon University and now Commissioner at the MNHRC. Expectations: Myanmar is at the beginning of the development process, and thus it is important to learn from participants and explore solutions for community rights and sustainable development of the Myanmar economy and its people.

Myint Kyi: Commissioner of the MNHRC. Expectations: to learn about legal and policy reform in other countries pertinent to the agribusiness sector.

Khin Maung Lay: Commissioner of the MNHRC. Expectations: the MNHRC is on a steep learning curve, so I will be following the discussions closely in the hope of furthering the scope of its knowledge on agribusiness and human rights.

Kyaw Tint: Chair of the Myanmar Environmental Rehabilitation Conservation Network (MERN). Expectations: to learn positive lessons from other regions. There is a lot of land use conflict and land grabbing in Myanmar, human rights have been abused, people have suffered, and thus it is expected that this conference will provide suggestions to improve the situation of people, and remedy the lack of rule of law in Myanmar.

Myrna Safitri: Executive Director of Epistema Institute, which works towards legal and policy reform on land and natural resources in Indonesia. Expectations: sharing of governance reform efforts, discussion of the possibility of SE Asia CSO partnerships in promoting appropriate legal frameworks to protect peoples' rights in face of increasing agribusiness land acquisition.

Martua Sirait: Fellow of Samdhana Institute in Indonesia. Samdhana is a regional coalition of Asian organisations promoting community-based resource management. Expectations: to learn from all participants present.

Greg Martin: Supporting Advisor to several NGOs and networks in Myanmar, with some history of involvement in these issues in Cambodia previously. Expectations: that ideas emerging from the conference discussions are not kept in the room but rather disseminated through local NGOs and community services organisations right down to the communities.

⁷ See www.forestpeoples.org

Imelda Saragih: Commissioner at Komnas HAM. Expectations: to share experiences and learn from other countries.

Rodziah Abdul: Secretary at the National Human Rights Commission of Malaysia (SUHAKAM). Expectations: to share the experiences of SUHAKAM's National Inquiry, to learn best practices from all present with respect to the regulation of agribusiness and large-scale land acquisition (LSLA) in SE Asia.

Wan Kasim: Commissioner at SUHAKAM. Expectations: to learn from others and to see how best NHRCs can address land issues in the context of Malaysia.

Sandra Moniaga: Commissioner at Komnas HAM and also involved in several NGOs in Indonesia. Expectations: to learn from others and share what the Commission has learned over the years, to use this opportunity to strengthen regional NGO collaboration in the context of the Association of Southeast Asian Nations (ASEAN).

Elisabeth Dah: Karen Women Empowerment Group (KWEG). Expectations: to learn about how gender issues and women's empowerment are being taken into consideration in agribusiness and human rights-related advocacy at the national and regional levels.

Florante Nocomura Enciso: Representative of the Philippines National Human Rights Commission (PNHRC) and lawyer. Expectations: to share recent initiatives of the PNHRC and learn from those of other NHRCs in the region.

Sophie: Project Officer at FPP. Expectations: to identify ways of linking grassroots level advocacy, with national, regional and international coalitions and initiatives.

Daisy Gardner: Private Sector Policy Advisor at Oxfam Myanmar. Expectations: Oxfam has done a lot of work with communities affected by agribusiness in Brazil, Papua New Guinea (PNG) and Cambodia, expects to learn more about the situation and challenges in SE Asia.

Ratawit Ouaprachanon: Spirit in Education Movement (SEM). Expectations: to explore how NHRC collaboration with CSOs can be enhanced to protect the rights of communities.

Than Htaik: Mekong Regional Land Governance Project (MRLGP). Expectations: how to make agribusiness accountable and beneficial for smallholder farmers.

Hnin Wut Yee: Myanmar Responsible Business Centre (MRBC). Expectations: to improve private sector business operations and sustainability in Myanmar.

Rob Oberndorf: USAID Land Tenure and Climate Change Programme. Expectations: to help ensure that insights and outcomes and messages of the conference are effectively conveyed and incorporated in a holistic land governance reform programme and USAID's land programme, which is in the early stages of being developed.

Kundan Kumar: Asia Regional Director at Rights and Resources Group, RRG, based in Washington DC. Expectations: to learn from all participants.

U Nyi Nyi Htwe: Ministry of Home Affairs of Myanmar. Expectations: to learn from all participants.

Maung Maung Kyi: Chair of Rakhine Coastal Region Conservation Association (RCA). Expectations: to share the experiences in the Rakhine state and to find a reasonable solution to land grabbing. The expansion of the agricultural sector in Rakhine has led to a lack of land for communities in the upland forests, with over 165,000 acres now held by companies, and coastal areas also significantly affected – the communities are choking.

Devasish Roy: member of the United Nations Permanent Forum on Indigenous Issues (UNPFII), from the Chittagong Hill Tracts in Bangladesh, which shares borders with the Chin and Rakhine states. Tribal Chief of the Chakma people and lawyer at the Supreme Court. Expectations: to share lessons learned from civil society organisations (CSOs), indigenous peoples' organisations (IPOs), NHRCs and National Human Rights Institutions (NHRIs). We need to stay pragmatic, but also strive to improve. Keen to learn and take some things from SE Asia to the South Asian context. Notes that two members of UNPFII are Asian. Notes that human rights standards are always the floor, not the ceiling ie the minimum that we should strive for.

Agnieszka Kroskowska: Helvetas Myanmar. Helvetas is also active in Lao PDR and is fairly new in Myanmar. It works with farmers and sees agribusiness as a cross-cutting and important issue across its work. Expectations: to find concrete strategies on how to engage with the public sector, governments and NHRCs, but also the private sector and agribusiness itself, towards making human rights a pre-condition to business operations.

Jennifer Corpuz: TebTebba, which is based in the Philippines but works internationally with communities to secure their rights to land through mapping and the drafting of their development plans. Expectations: the strengthening of laws, collaboration with governments to recognise the customary laws of IPs, and explore how to implement United Nations Guiding Principles on Business and Human Rights (UNGPs). Also works on Free, Prior and Informed Consent (FPIC) which Tebtebba sees as a prerequisite to company operations.

Ahmad Dhialuq: Forest Conflict and Governance Researcher at RECOFTC. Expectations: explore how to transform forest and land conflicts in SE Asia.

Anne-Sophie Gindroz: RRI Facilitator for SE Asia, based in Indonesia with Samdhana Institute. Expectations: to understand regional dynamics around agribusiness, identify areas for collaboration at regional level, and how to turn these discussions into effective practice.

Richard Hackman: Mekong Region Land Governance Project (MRLGP), working with smallholders in land, forest and fisheries in Lao, Vietnam, Cambodia and Myanmar, at the early stages of the project. Expectations: to learn from the experiences of other countries in the region.

Khampanh Keovilaysak: Global Association for People and the Environment (GAPE). Expectations: to strengthen communities' capacity, to learn about IP rights in relation to natural resource management across the region.

Phetsoulaphonh Chaulatidha: Project Manager at Good Forest Governance Project (GOFOGO), working in 6 provinces of Lao PDR. Expectations: to learn from seniors and experts about how IP rights are protected and how IPs can sustainably manage natural resources and secure their access to food.

Vorasone Dengkayaphichith: Land Issues Working Group (LIWG) in Lao PDR. Expectations: to hear the experiences from different countries in SE Asia on land issues and share experiences from Lao PDR in terms of agribusiness.

Phetdalay: Land Issues Working Group (LIWG). Expectations: to learn from all seniors. Planning a follow-up meeting and hope to share this meetings' proceedings with other Lao NGOs.

Thip Nouansyvang: Clinical Legal Education Programme (CLE). Works on community rights in remote areas of Lao, providing free legal consultation to local communities. Expectations: to share these proceedings at the university level and also with students to raise their awareness.

Man Vuthy: Community Legal Education Centre (CLEC). Expectations: cross-regional learning and sharing of experiences in terms of grassroots advocacy and capacity-building in Cambodia.

Sok Leang: Cambodian Human Rights Action Committee (CHRAC). Expectations: that the discussions on human rights and agribusiness will be taken into consideration by Myanmar in its political and economic transition.

Yin Yin: Land Core Group Myanmar. Expectations: to learn from the experiences of other countries in the region.

Seng Maly: CLEC. Expectations: that the conference can help develop a common mechanism to solve human rights violations in the agribusiness sector.

Touch Seta: NGO Forum Cambodia, a national organisation working on land, environment and other development issues in Cambodia. Expectations: to learn from the experiences of other countries in the region.

Holly Jonas: Natural Justice, an organisation of lawyers supporting communities and the environment. Expectations: to explore the interface between law and policy, recent initiatives and achievements of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and discuss how the outcomes of these conferences are being taken up in practice (eg how statements and resolutions are being followed up)

Jesus Torres: Representative of the PNHRC and member of the PNHRC's technical working group focused on agribusiness and human rights issues in Philippines (set up in 2011 following endorsement of the UNGP). Expectations: to explore how the UNGP will be mainstreamed at the regional level, how the linkages we are now forging can be strengthened. Noted that we need to find out the real causes of the land grabbing phenomenon and the legal and institutional avenues that we must pursue to resolve and address these. Noted that we should think about our position in terms of adopting a legally binding instrument on rights of peasants (as well as IPs and local communities).

Marivic Bero: Koalisyon Laban Sa Pangangamkam Ng Lupa (or Coalition Against Land Grabbing) (CALG), Palawan, Philippines. Expectations: to learn from the experiences of other countries in the region.

Andiko: HuMA, Indonesia, a legal and human rights NGO which facilitates community legal support, and works to protect community rights through human rights instruments and Indonesian national laws. Expectations: to hear success stories from other countries in terms of implementing human rights in the agribusiness sector.

Indriaswati Saptaningrum: ELSAM, an NGO that provides grassroots-level legal assistance to communities affected by land acquisition by companies. Expectations: to share ELSAM's experiences in pushing for legal reform at the national level (eg through filing Constitutional challenges to Constitutional Court Decisions, providing inputs to the Ministry of Agriculture regarding plantation regulations, promoting the UNGP with Komnas HAM to develop National Guidelines for implementing the UNGP, and setting up an Indonesia contact point for the establishment of a Business and HR Working Group).

Chakorn Phitakwatchara: Thailand National Human Rights Commission (TNHRC). Expectations: to learn from the experiences of other countries in the region.

Ekachai Pinkaew: TNHRC. This is the fourth time that he participates in these conferences and appreciates having been a witness to the process from its inception. Expectations: to share practices on how regional mechanisms can help resolve land conflicts.

Niran Phitakwatchara: Commissioner at the TNHRC, working on civil and political rights, community rights, and community rights over natural resources and environment. Also participated four times

in these conferences since Bali. Expectation: particular interest in trans-national investment (TNI) cases. This is his last term at the TNHRC.

Norman Jiwan: Executive Director of TUK INDONESIA. Involved since Bali as well and part of its original Steering Committee. Expectations: to learn from others about 'good practices' (no such thing as 'best practices') and an opportunity to exchange experiences across the region.

Emilianus Ola Kleden: PUSAKA, Indonesia and FPP, works on rights of IPs and forest-dependent communities. Expectations: to share positive experiences, build partnerships and also friendships.

Harjinder Kler: HUTAN, an environmental conservation NGO that sees environmental preservation as intrinsically linked to human rights. Expectations: to identify options for networking in the region. Noted that Malaysian oil palm companies are now expanding in neighbouring countries – they are getting on the right track in Malaysia but then not replicating those better practices abroad.

Lanash Thanda: Sabah Environmental Protection Association (SEPA), Sabah, lawyer in human rights and environmental law. Noted that most environmental NGOs exclude the social part of their work, but that SEPA does not. There is a long history of agribusiness in Indonesia and Malaysia, and it has created a lot of conflict. Expectations: human rights have been on the agenda for a long time but conflicts are on the increase - how do we deal with this?

Jacob Bogart: consultant at the TNHRC. Expectations: to learn how voluntary agreements can shift to binding ones for trans-national corporations (TNCs).

U Tin Maung Than: Myanmar Ministry of Environmental Conservation and Forestry (MOECAF), works on revisions to the Land Use Allocation Policy and the formulation of a National Land Use Policy. Expectations: to learn from the experiences of other countries in the region.

Su Pun Yin: MNHRC, lawyer by training who has spent 14 years working with foreign law firms on land leases. Expectations: land acquisition is one of most difficult issues to be tackled and so we need to come up with critical approaches to these processes.

Tint Lwin Thaug: Executive Director of RECOFTC. Expectations: exploring what capacity needs to be built in the region and at national levels to promote human rights and better collaboration between companies, communities and government.

Maung Maung Than: RECOFTC Myanmar Country Programme Coordinator. Expectations: to learn from the experiences of other countries in the region.

Marcus Colchester: Senior Policy Advisor at FPP, a human rights group based in the UK working in 22 countries worldwide. Expectations: to go deeper into finding ways of going from voluntary to the binding, so that human rights are made effective and not just aspirational, how to bring things down to the local level, and how to capture the points of our three days of discussion into a Statement or other output, in line with the MNHRC's wishes.



Devasish Roy (UNPFII) (Holly Shrumm)

Introduction to the workshop: how did we get here, recent developments and what will we do?
Marcus Colchester, Forest Peoples Programme

Objectives of the meeting:

- 1) To identify regional and national trends in LSLA for agribusiness
- 2) To explore how to make human rights obligations binding on agribusinesses through national reforms
- 3) To review experiences with conflict resolution and identify how to strengthen them
- 4) To review recent developments in private sector voluntary standards, international human rights and other international norms (note: international norms may help frame how to take things down to national and local level)

At the Bali conference, we saw how the region is facing very rapid expansion of mono-crop plantations driven by large-scale foreign or national investment and by national policies to increase the production of cash crops both for domestic consumption and export. It is worth noting that Indonesia is the number one consumer of palm oil in the world, not just the number one exporter, so clearly there are both domestic and global drivers at play. At that conference, we also noted the severe social and human rights impacts coming about as a result of the expansion of agribusiness. We took into account the Ruggie Principles and the Respect, Protect and Remedy (RPP) Framework,⁸ which highlights the duty of states to protect rights and provide remedy for abuses. The question for us was, how is this best achieved in practice? We also highlighted that, in line with the UNGP, companies are responsible for respecting rights even where State laws and policies do not require this. But again, how does this become effective? We gave particular emphasis to third generation human rights ie collective rights (such as those of indigenous peoples (IP)) as recognised in the evolution of international human rights law and particularly important in relation to rights to land

⁸ See http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf

and natural resources. We explore bottom-up engagement so that the reforms we advocate for are really appropriate for local circumstances and contexts. This is particularly important in Myanmar where there is huge cultural diversity and we have a Union of different States, so the unique political framework needs to be taken into account. The main point of the *Bali Declaration* was the need for binding mechanisms to make human rights effective in the agribusiness sector.

Key elements of the *Bali Declaration* include:

- The collective rights of peoples and rural communities, especially IPs
- The responsibilities of non-State actors, especially agribusinesses and TNCs
- The need for an active role on the part of NHRIs
- The importance of access to justice, rule of law, mechanisms of conflict resolution and the right to remedy (reforms need to provide access to justice – we know as human rights experts that the abuse of rights automatically gives rise to the right to remedy, and this is part of the UNGP)
- The rights to self-determination, FPIC expressed by freely chosen representative institutions, the free disposal of natural wealth and resources, the right not to be deprived of means of subsistence, no evictions, no relocation of IPs, the right to food, including cultural choices of foods and the protection of subsistence, rights to land and to collective rights to land, respect for customary rights, cultural identity of peoples and a safe environment, options for smallholder and community development of lands and resources, and no private armies or arbitrary arrest (note: looking for stronger smallholder and community options for land development, rather than top-down private sector development)

The Phnom Penh Workshop of 2012 explored possible engagement avenues with the AICHR, how ASEAN human rights processes could capture the elements of the *Bali Declaration*, and how ASEAN human rights instruments could be made more binding on States and businesses. We visited the Koh Kong sugar cane estate, a typical example of an agribusiness land grab, where lands have been taken from communities without due recognition of their rights. This case of trans-national human rights violations, involving Thai and Taiwanese investments and also European and global investors raised several interesting issues in terms of trans-boundary justice and duty-bearers. Unfortunately, the case remains unresolved to date. We supported an appeal to groups there for justice in the resulting *Phnom Penh Statement on Human Rights and Agribusiness in Southeast Asia*.

At the Bangkok Workshop of 2013, participants shared initiatives being taken to incorporate the *Bali Declaration* into national programmes and efforts to put it into effect and we developed the *Montien Resolution on Human Rights and Agribusiness in Southeast Asia*. It was clear that a lot is being done by all at different levels, which is very encouraging – we are not just talking but taking the work forwards at these different levels. The focus on the Bangkok workshop was on how to better regulate TNIs. We also developed a very ambitious work plan which is worth revisiting as part of this conference, as it incorporates a good set of ideas and it will be interesting to hear from you all how these have been taken forward since last year.

The following summary of initiatives and developments at the global level demonstrates that what we are doing through our process is very much in line with broader thinking going on globally about how to address these issues, but also shows that our demands for more effective binding regulations are perhaps not the way the rest of the international community is going – maybe something we should be concerned about or learn from. This is not a definitive list of development but some that have been identified since the last conference in Bangkok.

There is a lot going on at the UN level on themes that are of concern to us. For instance, the Working Group on the issue of human rights and trans-national corporations and other business enterprises⁹ has been developing guidance for National Plans to implement the UNGP. This is really worth focusing on if not already being done. Among many issues raised in the Guidance, it is notable that it focuses on groups liable to be marginalised by development processes, giving emphasis to gender, IPs, the rights of children and the rights of migrants and migrant workers. The Guidance calls for national legal reforms (hence **binding**) to protect and remedy and which oblige companies to respect human rights, in line with our objectives and the *Bali Declaration*. It is also interesting to see how the UNGP are being interpreted as applying to collective rather than just individual rights – we had some doubts about whether the UNGP were being interpreted this way, which we discussed in Bali, and so this is an important step forward. Both individual and collective rights are being taken into consideration by UNGP. There is an interesting section in the guidance on the need for national action plans to spell out what would be adequate mandates of NHRIs so they can be effective in realising their work eg to give them sufficient authority to investigate business abuse of HR, propose reforms to curb this and promote remedies. This is worth the NHRCs thinking about - as you go through your evolution, can you call for stronger powers to help implement the UNGP? The Working Group's guidance gives you a mandate to call for more!

At same time, the UN Global Compact¹⁰ and the UN Environment Programme (UNEP) Finance Initiative constitute important UN principles for responsible business investment. However, these are mainly looking for **voluntary** commitments from international financial institutions (IFIs) and corporate investors. The point emphasised here is that if foreign investors are not doing due diligence in planning investments and making sure rights are respected, then things will go wrong, so although these are voluntary initiatives, they are still important to keep in mind.

The World Conference on Indigenous Peoples (WCIP) in September 2014 is another important international event to take into account. It resulted in the production of a long document of 36 points,¹¹ which reaffirms the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in a firm and clear way (member states that have endorsed UNDRIP are saying they will now seek to implement it) and gives strong emphasis to gender issues. By calling for effective implementation by members states, including through legal reforms, this initiative is instrumental in taking UNDRIP from an aspirational document (seen as non-binding by some governments) to something that says how a state should go about applying the Declaration (ie a more enforced concept through the promotion of **binding** legal reforms). Particular emphasis is given in the Outcome Statement to the need for security of land and natural resources (eg in the context of extractive industries). Pushing for enforceability, the *Outcome Statement* also asks UN Treaty Bodies to take UNDRIP into account in their deliberations, through which jurisprudence is developed. Again, this is a way of making UNDRIP more effective through other human rights instruments. Member states are asked to report to UN against UNDRIP and how they are realising national practice against it. This is an important movement in relation to the issue of collective rights in land, particularly those of IPs, and thus has great relevance for the Southeast Asian region.

Last month saw the acclamation of the *UN New York Declaration*,¹² framed by climate change discussions. It is presented as **voluntary** but has been seen as perhaps the most concrete outcome so far in the run-up to next UN Framework Convention on Climate Change (UNFCCC) Conference of

⁹ See

<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

¹⁰ See <https://www.unglobalcompact.org/> and <http://www.unep.org/>

¹¹ See <http://undesadspd.org/Home/tabid/40/news/473/Default.aspx>

¹² See <http://www.un.org/climatechange/summit/wp-content/uploads/sites/2/2014/09/FORESTS-New-York-Declaration-on-Forests.pdf>

Parties (COP) due to take place in Lima in December 2015. The Declaration has been endorsed not just by member states (particularly from forested countries) but also by key corporations implicated in deforestation and by IPOs (both from the so-called North and South). Here we see a ‘meeting of minds’ between IPs, governments and corporations on how to address the issue of deforestation. The *Declaration* calls for respect for IPs’ rights and the empowerment of local communities. It is perhaps not so clear on the rights of other citizens but still constitutes an important step forward in terms of linking environmental goals to human rights goals. Questions we can ask of this development are: how will it be monitored or enforced? Is it ambitious enough in its targets? There has been a lot of discussion on this since.

In terms of the private sector, we are hearing constant news of new corporations’ pledges to ‘no deforestation’, including from some of the biggest brands in the corporate world, who have a massive footprint in terms of where they are getting the commodities they trade in both in the North and the South.¹³ While this is innovative ground, these commitments are **voluntarily** made, largely because companies no longer want to be associated with deforestation. We can be cynical about it (ie a result of global brands vying for market shares) but if one company says they won’t do harm, then others have to too. That’s how competitive markets can work, encouraging an upward spiral towards more responsible sourcing. It is important to note that the big brands are not just the Unilevers, Mars, Cargills and so forth of the North, they also include producer corporations (huge conglomerates) in the South (like Wilmar, the number one trader in palm oil (45% of world palm oil) and number two trader in sugar in the world, Golden Agri-Resources etc). There is major work to be done in cleaning up Wilmar’s supply chain and nearly all palm oil is going to have to change to comply with these standards in some way or another (and other commodities as well eg sugar, cocoa). Commitments have also been made by major pulp and paper companies (eg Asia Pulp and Paper (APP) and Asia Pacific Resources International Limited (APRIL)). These are important developments but the question is, do these deforestation promises take human rights and people sufficiently into account? I would suggest that it is thanks to the efforts of many in the human rights field that the message *is* that ‘zero deforestation’ must be accompanied by ‘zero exploitation’. Clearly however there is a lot of work to be done to make companies keep their promises. We all have questions about how they will be enforced and monitored – some cases are clear, others not at all. This is going to be part of our work in the future ie to hold companies to account in terms of environment and human rights. It is worth thinking about that dimension in this regional meeting.

The Food and Agriculture Organisation (FAO)’s *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*¹⁴ (VGGT) of 2012 constitute **voluntary** guidelines, but they emphasise that nothing in the Guidelines should be seen to diminish States’ existing human rights obligations, and as such they do not undermine international human rights principles. Over the last year, novel monitoring tools have been developed to see how provisions on land, tenure security and governance reforms are being made effective at the national level. For instance, the Asian NGO Coalition (ANGOC) is pioneering an assessment of national land tenure laws based on the VGGT in the Philippines. Most of the work of the FAO in relation to VGGT concerns awareness-raising for governments to think through how to make reforms effective. All of this is complemented by the work of the UN Principles of Responsible Investment (UNPRI) and Committee on Food Security (CFS). Some companies have also committed to the VGGT to

¹³ See for instance for Wilmar <http://www.wilmar-international.com/wp-content/uploads/2012/11/No-Deforestation-No-Peat-No-Exploitation-Policy.pdf> for GAR <http://www.goldenagri.com.sg/110209%20Golden%20Agri-Resources%20Initiates%20Industry%20Engagement%20for%20Forest%20Conservation.pdf> for Cargill https://www.cargill.com/wcm/groups/public/@ccom/documents/document/palm_oil_policy_statement.pdf for APP <https://www.asiapulppaper.com/sustainability/vision-2020/forest-conservation-policy> and for APRIL <http://www.aprilasia.com/news/APRIL%20SFM%20POLICY.pdf>

¹⁴ See <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

complement their zero deforestation pledges (like Nestle, Cargill both of which are big players in the cocoa sector).

The European Union Forest Law Enforcement, Governance and Trade Action Plan¹⁵ (EU FLEGT)'s bilateral agreements (Voluntary Partnership Agreements - VPA) seek to enforce the legality of the timber trade and are **binding**. Although their focus is on legality, expectations are that this will move towards sustainability and give some aperture to raise human rights issues, especially since they require national level multi-stakeholder platforms. Indonesia is the only country to date in SE Asia where the VPA has been implemented, and other countries in the region are in the process of negotiating these agreements (eg Philippines, Lao PDR, Cambodia and Myanmar). Although voluntary, the VPAs do actually make requirements stronger under national laws.

A lot is going on in terms of commodity certification, which exists for a growing range of products, including soy, sugar, beef, biofuels, cotton and coffee. These schemes are taking human rights much more into account than in the past, giving greater attention to land rights, FPIC, labour standards, as well as legality. The Roundtable on Sustainable Palm Oil (RSPO)¹⁶ has also set up a Working Group on Human Rights. However these standards are **not really binding** on companies that are part of them except insofar as they want to get certified, and they want to get access to international trade by being certified as sustainable or responsible. We have however found that they are a way for communities to raise their concerns with companies and challenge abuses of the standard where land is taken without FPIC and due diligence – some space is provided through these mechanisms, although they remain voluntary. An example of a success story is the complaint filed by FPP to the RSPO on GAR's 18 planned expansions, which led the company to immediate withdraw its plans and commit to sorting out land rights issues before proceeding any further.¹⁷

To clarify the objectives of this meeting, I would like to emphasise that it is **not** an attempt to impose solutions from the top. In line with the *Vienna Declaration on Human Rights*¹⁸ of 1993, we accept human rights as universal but also the need to take into account 'national and regional particularities' and 'historical, cultural and religious backgrounds'. We seek to provide space for regional sharing, from the points of views of NHRIs and CSOs active in the field of human rights and agribusiness, and we want to build on local traditions of equity and justice.

This is a timely moment for Myanmar in this regard, given that they are developing their National Land Use Policy, which is due to be finalised later in the year. A new Land Law is also on the agenda for 2015. It is in this context that we have been requested by the MNHRC to focus this meeting on legal reforms in favour of securing human rights, and improving conflict resolution mechanisms, especially over land and resources. We hope that this meeting can feed into these processes.

¹⁵ See <http://www.euflegt.efi.int/flegt-action-plan>

¹⁶ See www.rspo.org and also a comparative report on human rights across voluntary standards at <http://www.forestpeoples.org/sites/fpp/files/publication/2012/11/securing-rights-through-commodity-roundtables-comparative-review.pdf>

¹⁷ See <http://www.forestpeoples.org/topics/agribusiness/news/2014/10/golden-agri-resources-postpones-palm-oil-expansion-plans-borneo-res>

¹⁸ See <http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

Discussion key points

- The issue of impunity has been insufficiently dealt with in initiatives to date – we need to focus more on this reality and how to address it
- On the issue of legal remedies and national level mechanisms for remedies, of course in all countries one is free to go to a court of law. But of course we know there is a huge asymmetry between IP, local communities, forest-users and for instance forest-exploiting logging or agro-corporations, foreign or local. We need to explore the mandates of NHRIs and also their role and the role of other state and non-state actors in different forms of tribunals, courts and quasi-judicial mechanisms to deal with those disputes. Ultimately it is the responsibility of the state to provide justice, but given the reality of asymmetry, how can we explore such mechanisms and institutions? Examples can be drawn from Bangladesh and the Philippines with regard to land claims and disputes in this respect.

Land use governance in Myanmar***U Tin Maung Than, Myanmar Ministry of Environmental Conservation and Forestry***

Myanmar is inhabited by over 100 national races with different cultures, customs and traditions in relation to land use. According to the 2014 census, the population of the country is 51 million. Land-related issues have emerged as the most critical, particularly in terms of land rights and land conflict. The government of Myanmar recognises that it needs to deal with the land issue on several fronts, including in terms of land use administration, land tenure security, land use rights, land dispute resolution, foreign investment, sustainable economic growth, effective environmental protection and social harmonization.

As of 2012, cultivated land constituted 17.62% of Myanmar's land (or 11,920,000 ha), with fallow land representing 0.48%, cultivated virgin land 7.94%, reserve forces 26.95%, other forest land 22.68% and other land 24.33%. The total area of agricultural land in the country is lower than in neighbour countries (18.4% compared to 23.8% in Malaysia, 38.6% in Thailand, 31.0% in Vietnam, 28.1% in Indonesia, 39.8% in the Philippines and 30.7% in Cambodia). Permanent Forest Estates (PFE) are largest in the states of Saging (11,273 square miles) and Shan (12,083 square miles), followed by Kachin (7,084 square miles), Thanintharyi (4,940 square miles) and Bago (6,207 square miles) and constitute a total of 63,977 square miles across the country. Forest cover has progressively decreased since 1990, from 57.97% of total land in 1990 to just under 47% in 2010.

Under Myanmar's Constitution of 2008¹⁹ (Article 37), the Union:

- a) Is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere of the Union;
- b) Shall enact necessary law to supervise extraction and utilisation of State-owned natural resources by economic forces;
- c) Shall permit citizens' right to private property, right of inheritance, right of private initiative and patent in accord with the law.

The country has put in place short and long-term plans, including the Framework for Economic and Social Reform (FESR) AND the National Comprehensive Development Plan (NCDP). Future objectives include the 2015 Millennium Development Goals (MDGs) and ASEAN Economic Community, the 2021 'Free from LCD' (Least Developed Country) and the 2013 ASEAN Standard.

Myanmar's sectoral land and resource management plan will focus on land investments and land-based technologies, rural and urban development, and the coordination of various government

¹⁹ See http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

mechanisms and bodies. The conceptual framework for this is composed of several elements towards improving land and resource management activities, such as social, economic and environmental development, land use policies, laws, rules and regulations, land-related information and infrastructure, and consideration of prevalent local conditions and institutional arrangements.

Myanmar sees great importance in adequate land and resource management towards ensuring that vulnerable communities are protected from climate change impacts, natural disasters, livelihood threats and threats to food security and biodiversity. Ecosystem degradation, drought and desertification, compounded with Green House Gas (GHG) emissions are also issues of concern. To resolve this, the government will be undertaking steps towards constitutional reform, land reform, land tenure reform, land management reform and land administration reform.

A sustainable land development policy needs to take into account both the market and governance structures, as well as international procedures and frameworks, existing land use policies, and information pertinent to tenure, land valuation and taxation, land use and long-term land development. From the highest level of the Land Policy, we will be focusing on process, institutions, spatial infrastructure and cadastres, right down to the land parcel unit.

There are many challenges to the process we are carrying out, the main one being land disputes, which require a long-term plan, awareness and coordination to resolve efficiently. Other challenges include the ill-regulated development of the land market (leading to instability of the economy and land prices, inappropriate investments, land grabbing and land speculation); weak protections of peoples' needs (eg in terms of poverty reduction, addressing the development gap) and; strategic planning and implementation (low inputs for land management, lack of consultation with stakeholders, lack of coordination and monitoring). For tenure, use, valuation and development of land to be effective, it needs to be rights-based, place necessary requirements on foreign investments, and make the most of investment opportunities in neighbouring countries.

Challenges at the level of policy and legislation are also numerous, and include: the lack of a simplified (comprehensive) National Land Law; weak harmonization of land-related laws, rules and regulations; the diversity of customary rights of the country's many ethnic groups; the lack of a systematic land use planning and management scheme and; the lack of urban planning. Social issues are also at stake, including the limited livelihood opportunities of local communities and resulting poverty, issues related to illegal residence and farming, land-related disputes among stakeholders, and limited knowledge and awareness of the law. Economic challenges include land grabbing, land speculation and the high price of land, resulting in the loss of foreign investment opportunities. At the technical level, the country is still weak in terms of institutional capacity to deal with land-related issues, has limited Geospatial Information System (GIS) facilities and human resources, limited land-use related data and information, and suffers from an inconsistency of land use maps and land recording systems across the various Ministries.

However, several opportunities also lie ahead of us. With strong political support, we can strive to apply the basic principles of transparency, accountability and good governance in an all-inclusive land use policy, which is in line with international practices. We do have sectoral laws, procedures, rules and regulations in place, that need to be improved. The engagement of multiple stakeholders is key in this process, as is promoting international cooperation. Peoples' participation is essential to economic structural transformation in Myanmar, supported by the market and by the public administration, and facilitated by the establishment of a technologically advanced land information system. This will be achieved through participatory policy-making, coordination and institutionalisation, and people-centred pilots across the country. Our strategy for land administration will focus on the central government, local authorities and community authorities' levels of administration, examining legal administration, decentralisation, conformation, land

registration, participatory land administration, customary land administration and township-level land administration.

A Central National Land Resource Management Committee has been set up, which consists of a Land Commission and relevant government Ministries, which are examining a wide range of sources, including statistics, on land use, technologies, the law, policy and tax. The Land Use Policy formulation process was started under the Land Use Allocation and Scrutinising Committee (LUASC), formed under a Presidential Order, chaired by the Union Minister of MOECAF and composed of 25 members who are representatives from concerned government Ministries and agencies. A series of working group meetings and stakeholder consultations have been held to draw up the draft Land Use Policy, and we are now at the fifth version of this draft. Examples of consultation include the National Workshop on Land Resource Management for Rural and Urban Development Projects, held on 15th August 2014 in Nay Pyi Taw, and the Public Consultation Meeting held on 18th October 2014 in Yangon.

The objectives of the National Law Use Policy are to benefit the people and country, to harmonise land use systems, to achieve a balance between development and conservation, to protect the land use rights of citizens and to improve the land administration system. The Policy is composed of 12 sections which cover a wide range of land-related topics, such as land use management, planning and changing land use, granting concessions or leases on State-owned lands, procedures relating to land acquisition, compensation, relocation and restitution, land disputes resolution and appeal, matters relating to assessment of land revenue, fees for land transfers and stamp duty, land use rights of ethnic nationalities, equal rights between men and women in land tenure and land use management, harmonization of laws and enactment of new laws, monitoring and evaluation, and research and development.

The draft Policy provides a blueprint for long-term scalable improvements in the land sector. It also includes a plan for surveying and relocating illegal forest and protected public forest residents who have been living in these areas for many years. As of 15th March 2013, it was recorded that 1,823,969.46 acres of land were being illegally occupied (2.3% of village land, 34.3% of paddy land, 46.7% of farmland, 7.1% of home gardens, 6.5% of perennial crop lands and 3.1% of religious or communal lands).

The government is using mapping technologies for district level land-use mapping, to measure the current status of land-use and land cover, including slopes, soil types, forest administration status, rain fall and watershed areas. Participatory land-use management planning activities have also been held at the township level, such as in Chaung Wa village in Taungoo district (30th April 2014) and in Myauk Ye Kyi village in Tanguoo district (1st May 2014).

The proposed pilots to be carried out will work towards legal harmonization, carrying out a national land inventory, carrying out participatory land-use planning, securing land and resource rights at the village and/or community levels, developing local dispute resolution mechanisms, developing an open access spatial database (One Map Myanmar) and ensuring that all pilots are related and interlinked. These pilots are intended to support the implementation of the National Land Use Policy and are currently being designed. Inputs from stakeholders are being sought to help with their design, in a 'learning by doing' approach which also incorporates a capacity-building element.

Legal harmonization will require technical assistance from experts, and also a focus on streamlining land-related procedures, the development of implementing regulations, the development of a National Land Law, and amending existing sectoral legal frameworks as needed. The National Land Inventory will rely on remote-sensing geo-spatial data in priority areas of the country, which will be managed under the Land Information Unit of MOECAF, and supported by foreign donor programmes. The participatory land-use planning will make use of data from the Land Information Unit and link

the village level to the district level planning processes, using a bottom-up multi-stakeholder approach and at the same time building the capacity of government staff.

One Map Myanmar will constitute an open access database that unifies and presents all of Myanmar's land-related spatial data. It will be managed by the Central National Land Management Committee and can then be overlaid with further data on ownership/use rights, administrative responsibility, land cover, use and suitability, and socio-economic data.

Myanmar's efforts towards securing land resource tenure rights will require a focus on increasing land tenure security of villages and communities, resource boundary mapping, the formal recognition of land-use rights, recognition of rights in the name of collective communities or ethnic groups, linking the village level land-use planning process and development of local land dispute resolution mechanisms, and supporting the adjudication of village tract administrative boundaries.

Developing dispute resolution mechanisms will be achieved through mechanism piloting towards settling historical land disputes, and disputes emerging during systematic land registration procedures and the regulations of village tract administrative boundaries. Administrative appeals procedures will be improved and alternative forms of dispute resolution explored.

USAID, the Swiss Agency for Development and Cooperation (SDC) and the EU have been working closely together in support of MOECAAF as the focal Ministry of the Central National Land Resource Management Committee, to develop the draft National Land Use Policy. This coordinated support will continue as the National Land Use Policy is implemented through pilots and multi-year scalable initiatives.

Implementation activities of the Department of Agriculture for the enhancement of agribusiness in Myanmar

Kyin Kyin Win, Ministry of Agriculture and Irrigation

The vision of Myanmar's Department of Agriculture (DOA) is that of self-sufficiency of domestic consumption in the context of an increasing population and the export of excess produce. This will be achieved through transferring technologies to farmers for better economic returns by increasing yield and improving crop quality. Land utilisation in Myanmar as of 2012 – 2013 was composed of reserved forest (27.1%), other forest (22.5%), fallow land (0.6%), cultivable waste land (7.9%), net sown land (17.5%) and other land (24.4%). The agriculture sector accounted for 10.915.128 billion kyat of the National Gross Domestic Product (GDP) in 2011 – 2012, or 25.8% of the country's overall GDP. Key crops of the country include rice, corn, groundnut, sesame, sunflower, mustard, ginger, pulses, chili, onion, garlic and potato.

As background, the DOA was established in 1901, then renamed several times (eg Rural Land Development Corporation in 1954, Land Utilisation Division in 1957, Agricultural Corporation in 1972, Myanmar Agriculture Service in 1990) and finally named the Department of Agriculture on 19th January 2013. The DOA's division include its technology transferring division (eg agricultural extension, seed, land use, plant protection, horticulture and bio-technology, state agricultural institutes) and supportive division (eg planning, administration and accounting).

The main areas of work of the Ministry of Agriculture and Irrigation are seed production, training and education, and research and development. Its six key priorities are: strengthening profitable and sustainable markets for farmers; using good quality seeds to produce quality products for a higher selling price; application of good agricultural practices, efficient use of irrigation, chemicals and natural fertilisers, encouragement of an agro-based industry which can produce value-added commodities from raw agricultural produce, and the reduction of production costs and transactional costs along the supply chain, from seeing to marketing. The lack of post-harvest technology is a

problem for the country's agricultural production, leading to significant harvest loss which could be avoided through better practices and equipment.

Food security and food safety are considered by the Ministry as essential towards population increase and health. Good agricultural practices can boost organic farming of fruits and vegetables for the export market. Upgrading existing pesticide laboratories for food safety is another priority, as is enhancing the capacity of staff in relation to health and safety.

Improvements in Myanmar's agricultural practices are being achieved in collaboration with international organisations, NGOs and companies, such as JIKA, KOICA, KRC, IRRI, FAO, ACIAR, OISCA, IDE, IVSI, GRET, CDN, Action Aid, Nangwoo Bio Co Ltd, Anada Cocoa and Coffee Co Ltd, Myanmar Vineyard Estate Co Ltd, SEIN Enterprise Export and Import Co Ltd, and the Bank for Investment and Development of Vietnam. Several institutions have been opened (ten in total), with four more planned for 2015 – 2016.

Ways forward to overcome constraints will require coordination mechanisms and strong linkages with relevant government agencies, a SWOT analysis of necessary reforms, encouraging agribusiness companies, local NGOs and international NGOs, and rural communes to participate in extension activities, and national investment planning and budget extension. Extension systems required include market-based systems, farmer needs assessment-based systems and a university-based extension system.

At a regional level, the fast growth of ASEAN and China's food trade contributed significantly to the enhancement of trade opportunities for food and agricultural products during the 36th ASEAN Ministers of Agriculture and Forestry (AMAF) meeting. Officials from the Department of Agriculture, the Ministry of Agriculture and Irrigation (MOAI), representatives of the Myanmar Rice Federation (MRF) and officials from the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) and Yunan Inspection and Quarantine (CIQ) discussed agriculture issues thoroughly on this occasion, which led to the signing of a bilateral agreement.

Discussion

- The encouraging of foreign investment is usually accompanied by an emphasis on property rights both to secure livelihoods and to allow land markets – what is the vision for the land tenure system being proposed? Will Myanmar move from a system based on land-use rights to one providing more secure land ownership rights? How to make sure it does not clash with the previous system?
- MOECAF: options for farmers, smallholders and businesses must be balanced for benefits to all. MOECAF has advised the government to a form land-use management council and the government agreed and formed a Committee to this end. However there is no umbrella law yet, instead there is a national land law formulation committee. The text for this law is going to Parliament next year.
- Are there any guidelines or policies on agribusiness in the Ministries of Myanmar? Focusing on small landholder is actually more productive than large agribusiness – are things like this incorporated in any guidelines?
- When thinking of more money and more production, are there any thoughts about how imported high yield varieties will affect indigenous crop varieties? The right to food and cultural choices is mentioned in Bali Declaration. Secondly, what about shifting cultivators and their land rights? Collective third generation rights – are those also being thought about?
- With the opening of the market economy there has been an influx of foreign investment/business in Myanmar. Learning from experiences in Cambodia, when land is given as ELCs, people are evicted – is this being taken into consideration? We need to take into account the tragedy of Economic Land Concessions (ELCs) and similar models in the region. Does the

MoA collaborate with the MNHRC in developing of revised laws, so that rights are incorporated from an early stage?

- The MoA does not have any agribusiness policies or guidelines and the MNHRC is a relatively new institution. There are several laws to protect farmers but not to regulate agribusinesses per se. We need to collaborate with other Ministries (eg MOECA) to this end.
- ESIA and FPIC must be incorporated into the land law reform process and outcomes. In the formulation of the land law, smallholder rights should be defined. As for shifting cultivation, in the draft land law, it is categorised under the chapter on indigenous peoples, which recognises these rights and farming systems. One question we face is how to determine the land tax for shifting cultivators.
- MNHRC: In Myanmar the land use history has changed over time – the British government passed the first Land and Revenue Act, which is still in existence but supplemented by subsequent ordinances. In that Act, people can own land. Then the policy on land ownership was revised through the enactment of the Land Nationalisation Act (1953). At that time, most new landowners did not know about the law or how to use it. Prior to 1953, all lands were in effect vested in rich people (absentee landlords). The Land Nationalisation Act sought to ensure that the rights of all people working the land were secured. The new Law of 2012 provides for land ownership of these peoples. However there are many unsettled or difficult to settle cases of land disputes, including cases resulting from land confiscation and land purchased by companies. After 1988, all land shifted into the hands of business owners or the military or government authorities – at the time, land use rights and owners did not have legal documents of entitlement to land. It was a very complicated time. After 2011, with the burgeoning of democracy and constitutional reform, people started to come to know about their rights, including their right to speak up and talk freely. Many complaints have been raised by farmers from villages and the coastal areas. It is in response to this situation that the new Law of 2012 has been issued. These days farmers can own the land or can sell it for money, which was not possible in the past. Farmers want to sell their land or go to urban areas or abroad – they prefer to sell land. It is not only ministries that should support community development – companies have a responsibility too in this regard. Ministries alone cannot bear the full responsibility.



Daw Than Nwe (MNHRC) (Holly Shrumm)

Updates on large-scale agribusiness land acquisitions in Southeast Asia**Indonesia****Norman Jiwan, TUK INDONESIA**

Focus of the presentation: ‘Nurturing and managing hopes with the Joko Widodo Working Cabinet amidst profit accumulations by large-scale land acquisition’ (an update of the report prepared last year by Indri in Chao 2013²⁰ with a focus on elements of the *Bali Declaration*)

A central thought to this presentation is that of ‘managing hope’ – Indonesia now has a new President which is welcome news, but this presentation will show that some elements may challenge the positive changes that one can expect from this new government.

At last year’s conference in Bangkok, our *Montien Resolution* reiterated our call for States to develop effective regulatory frameworks which secure communities’ rights to lands, territories and resources and which require agribusinesses both domestic, foreign and trans-boundary, to respect such rights in line with international human rights standards. It also led to the development of a joint action plan for civil society organisations and National Human Rights Commissions and to push for legal and policy reforms that secure community rights and place binding obligations on the private sector to respect these rights in future land acquisition.

In recent years, there have been a number of positive developments pertinent to Indonesia. The United Nations Committee on the Elimination of All Forms of Racial Discrimination urged Indonesia’s government to respect IPs’ rights and consult with IPs with regards to proposed projects on their customary lands and territories.²¹ The World Bank Group put a two-year moratorium on its financing of the palm oil industry worldwide following numerous civil society complaints on human rights abuses by its clients.²² Constitutional Court decisions have judged that customary forests should no longer be classified as State forests, but rather as belonging to indigenous peoples.²³ Articles 21 and 47 of the Plantation Law were also revoked in line with a Constitutional Court decision which deemed these to be out of line with the Indonesian Constitution.²⁴ A moratorium on new permits over primary forests and carbon-rich peat land areas was also imposed, and extended for an additional two years.²⁵ A Joint Memorandum of Understanding (NKB12) was developed, which will accelerate forest gazettelement and the recognition and protection of forest-dependent local communities, including through participatory mapping.²⁶ AMAN and other NGOs have made significant progress in mapping indigenous peoples’ territories across the archipelago, with 3.5 million ha already identified, and the map due to be finalised by 2020 and linked to Indonesia’s One Map Policy. The indicative map of indigenous territories was launched in January 2014.²⁷

²⁰ See <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/Isla-studies.pdf>

²¹ See for instance

<http://www.forestpeoples.org/sites/fpp/files/publication/2013/09/cerdindonesiamifeeaugust2013.pdf>

²² See

http://www.ifc.org/wps/wcm/connect/159dce004ea3bd0fb359f71dc0e8434d/WBG+Framework+and+IFC+S+strategy_FINAL_FOR+WEB.pdf?MOD=AJPERES

²³ See <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2013/05/constitutional-court-ruling-restores-indigenous-pe>

²⁴ See <https://www.rainforest-rescue.org/achievements/3785/indonesia-plantation-law-contravenes-constitution>

²⁵ See <http://www.wri.org/publication/indonesias-moratorium-new-forest-concessions>

²⁶ See <http://dkn.or.id/en/english-policy-brief-of-national-forestry-council-nfc-on-the-memorandum-of-understanding-of-12-ministries-and-institutrons-on-the-acceleration-of-forest-area-stipulatton-in-indonesia/>

²⁷ See <http://www.aman.or.id/2014/01/29/indicative-map-of-indigenous-territories-launched/>

However, I would like to suggest that these ad hoc changes are not really addressing or resolving the root causes of the problem. In the forestry sector, 304 companies control 26 million ha of land under Industrial Forest Plantation permits (HPH) and 227 control 10.3 million ha of land under Industrial Timber Plantation permits (HTI), while 11,499 community households only hold 240,000 ha of land. Likewise in the plantation sector, 2,178 companies hold 16 million ha of land, while 23,728 million smallholder households hold 21 million ha, and landless farmers hold none at all. Massive income is lost also from illegal or irregular forestry activities such as mining and industrial plantations, at an estimated loss of 285,887 million Indonesian rupiah, according to the Ministry of Forestry – this only covers two sectors, so the loss is likely to be much higher if other sectors are taken into consideration. An estimated 8,510 million ha of plantations and 8,855 million ha of mining zones are believed to be illegal. The palm oil sector, which continues to thrive, is monopolised by tycoons, who, numbering only 23 own 42% of Indonesia's 10 million ha of palm oil plantations, while 4 State-owned companies hold a small 12%. Foreign investors are also looking to Indonesia to develop oil palm, including Malaysian and Thai companies.

On 20th October 2014, the seventh President of Indonesia, Joko Widodo, set up his new Working Cabinet, which is composed of several members with notable interests in agribusiness. Examples include Rahmad Gobel,²⁸ the Minister of Trade, who is also Commissioner of Sinar Mas Agro Resources and Technology (PT SMART), and the Minister of Agriculture, Andi Amran Sulaiman, who is also the CEO of sugarcane and palm oil company PT Tiran Group. 229 of the 560 Members of the House of Representatives are businessmen from oil palm, agrofuel, pulp and paper, and mining companies. Many parties are also closely linked with oil palm companies of the likes of Astra (Democratic Party Member Djoko Udjiyanto),²⁹ Wilmar (Golkar Party Chairman, Setya Novanto³⁰ and Member Mohammad Suryo Alam)³¹ and Tidar Kerinci (Gerindra Party Vice-Chairman, Fadli Zon).³² All this casts doubt on whether the new government will genuinely adopt a rights-based approach to agribusiness given their own personal and political interests in engaging with, and benefiting from, palm oil and other agribusiness crops' expansion.

²⁸ According to an announcement by the Indonesia Stock Exchange (IDX) office, Minister of Trade Rahmad Gobel has resigned as commissioner of PT SMART, but was still listed as such as of 13th November 2014. See http://www.idx.co.id/Portals/0/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201410/9da4730046_4b937de565.pdf

²⁹ Astra Agro Lestari (AAL) owns tea, cocoa, rubber and oil palm plantation subsidiaries. Djoko Udjiyanto occupied the position of President Director in 2009 – 2013, overseeing a number of AAL concessions including: Andalas I, PT. Karya Tanah Subur, PT. Perkebunan Lembah Bhakti, PT. Sari Aditya Loka, PT. Laras Astra Kartika Andalas, PT. Tunggal Perkasa Plantation, PT. Sari Lembah Subur, PT. Eka Dura Indonesia, PT. Sawit Asahan Indah, PT. Kimia Tirta Utama Borneo I, PT. Gunung Sejahtera Ibu Pertiwi, PT. Gunung Sejahtera Dua Indah, PT. Agro Menara Rachmat, PT. Gunung Sejahtera Raya Yoli Makmur, PT. Gunung Sejahtera Puti Pesona, PT. Gunung Sejahtera Raman Permai, PT. Surya Raya Nusantara Pagi, PT. Persada Bina Nusantara Abadi IV, Borneo II and Celebes, PT. Waru Kaltim Plantation, PT. Sukses Tani Nusa Subur, PT. Cakra Denta Agung Pertiwi, PT. Cakung Permata Nusa, PT. Pasang Kayu, PT. Mamuang, PT. Letawa, PT. Lestari Teladan, PT. Surya Raya Lestari Komoditi The, PT. Bantar Citalahap, PT. Bukit Sari, PT. Sankawangi, PT. Rumpun Sari Kemuning, PT. Rumpun Sari Medini Komoditi Coklat, PT. Topasari, PT. Panjiwaringin, PT. Astra Agro Lestari I and PT. Huma Indah Mekar. See <http://dct.kpu.go.id/images/dokumen/DPR/3303/07/01.pdf>

³⁰ See <http://dct.kpu.go.id/images/dokumen/DPR/5302/05/01.pdf>

³¹ Head of Exim (2009-2013), Wilmar International. See <http://dct.kpu.go.id/images/dokumen/DPR/3508/05/02.pdf>

³² Details of Fadli Zon's positions include 1) Commissioner of PT Tidar Kerinci Agung (2009-present); former 2) Director, Oil Palm Department, PT Tidar Kerinci Agung 2009; 3) General Director, Golden Spike Commissioner of Energy Indonesia Ltd 2002-2005; 4) Director of Nusantara Energy Ltd 1999-2001 5) Director of the Institute for Policy Studies (IPS) and; 6) Vice Chairman of Gerindra Party. See <http://dct.kpu.go.id/images/dokumen/DPR/3205/06/01.pdf>

In the *Bali Declaration*, we noted that States need to accept that the right to food may be violated when people are denied access to land, fishing or hunting grounds, or are deprived of access to adequate and culturally acceptable food or by the contamination of food and water sources. States therefore need to take measures to protect people's rights in land and allow land owners to decide on the use of their lands taking into account their own livelihoods and, environments. Recognising that peoples have diverse cultures and may relate to land in very different ways, States therefore have an obligation to respect collective property rights over lands, territories and resources, the right to culture and the right to self-determination (including the right to pursue their own economic, cultural and social development). States likewise have an obligation to protect certain activities that are essential to obtaining food (e.g. agriculture, hunting, gathering and fishing) and an obligation to provide or ensure a minimum level of essential food that is culturally appropriate.

We also noted that in reviewing their land tenure regimes, national governments and legislatures need to review and revise or reinforce their national policies and laws on agricultural development and land acquisition to ensure that they respect the rights of indigenous peoples and rural communities and do not facilitate the denial of people's rights to food, to land and to free, prior and informed consent. In revising their tenure systems, State should recognise that, while security of tenure is indeed crucial, individual titling, poverty eradication and the creation of a market for land may not be the most appropriate means to achieve it. Instead, States should, where relevant strengthen, customary land tenure systems and review or reinforce tenancy laws to improve the protection of land users. Drawing on the lessons learned from decades of agrarian reform, States must pay renewed attention to policies and procedures of land redistribution to ensure that they respect peoples' rights to food, livelihood, cultural identity and self-determination. These reforms must be accompanied by measures to support smallholder farmers, indigenous people, and women to promote food security. Land development schemes/programmes/mechanisms/projects must be designed in ways that do not lead to evictions, disruptive shifts in land rights and increased land concentration in the hands of corporations. While many land development programmes and policies focus on areas considered to be 'empty', 'marginal' or 'degraded', States should recognize that there are few areas truly unoccupied or unclaimed, and that frequently land classified as such is in fact subject to long-standing rights of use, access and management based on custom. Failure to recognize such rights will deprive local communities and indigenous peoples of key resources on which their wealth and livelihoods depend.

Yet natural forest land clearing continues across the Indonesian archipelago, and is particularly dramatic in Papua, where on top of deforestation, industrial concessions overlap with each other, leaving very little space for communities to live and continue their customary livelihood practices. Many companies in Papua also remain inactive, but still hold permits that are deemed valid and of greater legal weight than community claims to land. A human rights-based approach to development has yet to take shape in Indonesia. The power of eminent domain continues to limit the rights of communities, and even sustainability standards developed at the national level which are mandatory like the Indonesia Sustainable Palm Oil (ISPO)³³ are weak in that they do not require respect for communities' right to give or withhold their consent to developments planned on their lands. On a more positive note, Indonesia's National Forestry Council has now adopted the principle of FPIC in its latest paper on how to implement FPIC in REDD+ projects as part of its national REDD+ strategy. However, it should be noted that the Bahasa Indonesia translation of the document sees 'consent' translated as 'consultative process'.

With regards to the right to personal integrity and security, the use by agribusiness venture of private mercenaries, privately contracted police and para-militaries continues to plague the agribusiness sector, as exemplified by the cases of Sodong, Mesuji and Lampung. No remedy has been developed to deal with the traumatic experiences of victims of these abuses. While the

³³ See <http://www.ispo-org.or.id/index.php?lang=ina>

Constitutional Court decisions on the Plantation Law is a positive development, the revocation of Articles 21 and 47 only stops new cases but puts no restriction on appeals or the escalation of court processes. Some companies are still pursuing the IPs' leaders who were involved in demonstrations on the ground which led to the revision of the Plantation Law. The Plantation Law was also recently revised in a way that was lacking in consultation and effective participation.

In terms of the conditions of smallholders, we noted last year that States must balance policies and laws which allow corporate investment in land development, with laws and policies which promote indigenous peoples 'customary management systems, community-based initiatives and smallholders' participation, and that effective measures are also needed to avoid conditions conducive to debt slavery and other contemporary forms of slavery'. Therefore, where companies provide credit, technical assistance and/ or markets for smallholders and workers, whether through contracts or informal arrangements, it is essential that there is full transparency and an absence of coercion in all transactions affecting smallholders and workers. A positive story from Indonesia is the International Finance Corporation Compliance Advisor Ombudsman (IFC CAO)'s mediated negotiation in West Kalimantan, which improved Melayu community partnership arrangements with Wilmar's subsidiary plantations, however the details of the derivative agreements are tricky and are being manipulated as a result.

With regards to workers, international principles require that States improve the protection of local and indigenous agricultural workers by ratifying and fully complying with all ILO conventions and the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers relevant to the agrifood sector, and see that these are implemented through national laws and regulations, and by ensuring that legislation sets a minimum wage. In Indonesia, the government has now introduced a social insurance programme (BPJS) but there is a lack of transparency in labour governance and documentation, continued reported cases of human trafficking cases, low wages, along with contemporary forms of slavery and child labour.

In accordance with the principles of the UN Committee on the Elimination of Discrimination against Women (CEDAW), given that women are often disadvantaged in agricultural development schemes, States must take measures to combat discrimination and provide equal opportunities to women and strengthen women's access to, and control over, land while respecting family and other social networks, and cultural diversity and increase their participation in decision-making processes. However in many regions of Indonesia, women do not have rights in land and resources and unfortunately Indonesia's National Commission on Women and Children (Komnas Perempuan dan Anak) does not yet have in place gender-inclusive and effective conflict resolution regulations or guidance.

In accordance with the UN Convention on the Rights of the Child (UNCRC), States should adopt measures to ensure that children are: raised in a context of non-discrimination; have their best interests secured; afforded protection and opportunities for development, and; participate in all matters which affect them so that their views are taken into account, in accordance with the General Recommendation of the Committee on the Rights of the Child on indigenous children. States must take urgent action to recognise the rights of, and provide identity and support for, Stateless children born out of wedlock in plantations due to unjust laws which prevent plantation workers to marry. Indonesia has ratified and promulgated law and regulations on the rights of the child, but has not to date reconsidered its Reservations against Articles 1, 14, 16, 17, 21, 22, and 29 of the CRC. The issues of stateless children in plantation operations in Malaysia-Indonesia borders continues to be a major human rights violation.

With regards to dispute resolution, we noted in Bangkok and previously that considering that protracted land disputes between expanding agricultural development projects and rural communities and indigenous peoples are prevalent throughout the region, there is an urgent need

for strengthened dispute resolution mechanisms in line with international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples. As recommended by the UN Permanent Forum on Indigenous Issues, these should be tripartite processes which include indigenous peoples or rural communities, represented through their own freely chosen representative institutions, and/or mediators of an alternative dispute resolution mechanisms, the companies with which they are in dispute and government agencies with responsibility to regulate land issues. However, Indonesian land and plantation sector regulations do not invoke the right to FPIC, they are hampered by the militaristic approach of the legal framework (eg the Law on Social Conflict Handling) and gross human rights abuses continue in plantations, as exemplified by the forced eviction case of the indigenous Suku Anak Dalam of Jambi, and their harassment by the local government, the police and the active oil palm plantation company operating on their customary lands.

Access to justice also remains inadequate. Affected people need access to justice and States must ensure the integrity and proper functioning of law enforcement agencies, courts and the independence of the judiciary. Due provision needs to be made for indigenous peoples to exercise their customary law, but also to have access to effective conflict resolution mechanisms, including local and national courts where needed. States must ensure transparency and access to information, freedom of expression and freedom of assembly. Yet criminalization continues, as in the case of Japin and Andi at the Supreme Court in relation to the Plantation Law, of Sodong indigenous leaders who are facing legal accusations. Ineffective and/or conflicting judicial process/systems remain an issue of concern in terms of access to justice and due remedy for rights violations.

States should also ensure that companies and investors carry out through public participation, publish and share with implicated parties participatory social and environmental impact assessments taking into account the Akwe: Kon Guidelines of the Convention on Biological Diversity. States must also strengthen their regulatory and monitoring mechanisms for land investments in agribusiness through requiring human rights impact assessments. National Human Rights Institutions should develop robust systems both for assessing licences for agribusiness against human rights standards and for exacting sanctions. Indonesia has now adopted Law Number 32 Year 2009 on Protection and Management of Environment, but this law lacks operational-level implementing regulations.

In terms of development, we know that States must ensure that in taking steps to secure people's right to development, and that, in conformity with the 1993 Vienna World Conference on Human Rights, while development facilitates the enjoyment of all human rights, the 'lack of development may not be invoked to justify the abridgement of internationally recognized human rights'. It is important to note in this regard that the moratorium on the issuance of new permits over primary forest and peat land **excludes** geothermal, mineral, oil and gas mining concessions, and sugar cane plantation, and that the majority of permits over forest areas under customary ownership have been issued for precisely these sectors, and thus risk being excluded from the moratorium.

To conclude, we need to pay more attention to consumption patterns, trading and the finance sector, for herein lies the potential to change the reality of agribusiness as it is happening today. An important development in March 2014 was the proclamation of the *Palangka Raya Declaration on Deforestation and the Rights of Forest Peoples*,³⁴ which urges governments, international agencies and the international community to halt the production, trade and consumption of commodities derived from deforestation, land grabs and other violations of the rights of forest peoples; to stop the invasion of forest peoples' lands and forests by agribusiness, extractive industries, infrastructures, energy and green economy projects that deny their fundamental rights and; to take immediate and concrete actions to uphold forest peoples' rights at all levels including the right to

³⁴ See <http://www.forestpeoples.org/topics/climate-forests/news/2014/03/palangka-raya-declaration-deforestation-and-rights-forest-people>

land, territories and resources, the right to self-determined development and to continue to own, control and manage their lands according to their knowledge and livelihoods.

Malaysia

Harjinder Kler and Lanash Thanda, HUTAN and SEPA³⁵

Malaysia is in some ways a ‘three in one’ country, with three Federal Territories, Peninsular Malaysia (composed of 11 states), Sarawak and Sabah. Agribusiness is most present in Sabah and Sarawak (the largest states) and this is also where there are the most issues arising as a result of these operations. The state and federal authorities sometimes overlap, however, which is another legal challenge in terms of regulating the agribusiness sector.

In terms of human rights, Malaysia remains very reluctant to sign agreements – it subscribes to the UN but does not sign up to many things. As part of ASEAN, Malaysia is party to the *ASEAN Human Rights Declaration*, but it is worth noting that there are concerns about this Declaration for being highly government-centric. Malaysia is not a signatory to the *UN Human Rights Declaration*, but as the Attorney General’s Chamber of Malaysia has stated:

‘Malaysia by virtue of being a member of the United Nations has subscribed to the philosophy, concepts and norms provided by the Universal Declaration of Human Rights, which sets out the minimum and common standard of human rights for all peoples and all nations.’

However, it remains difficult to activate international human rights law in the context of Malaysia due to the lack of ratification of several key instruments and treaties.

In terms of food security, the situation is poor in Sabah (where the target for rice self-sufficiency is 30%, but is currently only at 23% and dropping). The United Nations Special Rapporteur on the Right to Food noted during his visit that ‘ending poverty means effectively safeguarding against exploitation’ but in Malaysia, exploitation is happening on a large scale, particularly in terms of the immigrant foreign labour force that Malaysia imports and relies on substantially, and also of course in terms of the situation of IPs and local communities. Unfortunately, the Malaysia public is generally not interested in this issue of labour and poor labour conditions, as testified by reactions to media coverage of the issue. Reports on workers’ strikes have been met with ‘anger’ by readers. The media tends to take the side of companies rather than workers, even where they say they have been abused on a daily basis. The Philippines, which is close to Sabah, is a hotbed of labour trafficking (Tenaganita had some initiatives on this underway a few years ago, funded by the US Embassy) and the situation has further deteriorated since then.

The sources of legal rights in Malaysia include those that are written (the Constitution and Statues) and those that are unwritten (common law and court jurisprudence). According to Article 160 of the Federal Constitution, ‘the law includes thus written law, common law and any custom or usage having the force of law’. The government is expected to serve as the trustee for native rights, which means they are responsible for protecting the rights of the native community, including their rights to land. However, in terms of land rights, Native Customary Rights (NCR) are never debated in Parliament. The National Inquiry is an important step in the right direction and it is to be hoped that SUHAKAM’s mandate and capacity can be enhanced in the future, and the NI debated in Parliament. Illegal projects are going on in the name of ‘development and poverty alleviation’, endorsed and encouraged by the government. Federal laws are weak and while State laws are good, the State chooses to overlook laws in name of poverty alleviation.

³⁵ Members of Malaysian Palm Oil NGOs (PONGO).

Palm oil is a huge problem for the food security of Malaysia's rural communities (note that it is not an Asian crop but comes from West Africa). With 2.6 million hectares of oil palm plantations in Peninsular Malaysia, 1.4 million ha in Sabah and 1.2 in Sarawak, we are now quickly running out of land, as the case of Sabah clearly shows. For the last 6 years, the State Department of Agriculture has been saying that palm oil will be limited to 1.1 million ha, but land continues to be opened up, and the government is not listening to its own Department of Agriculture. But palm oil interests are strong – it even has its own Ministry (under the Primary Industries and Commodities department). Mainly developed in the form of private estates (62%)³⁶, it has to be said that oil palm development *has* helped poverty alleviation. We are not saying that oil palm is evil or bad – the question is how much we plant of it and how we exploit it. Under the current model, we are not thinking enough about food security, and instead we are putting all our eggs in one basket. Now, Malaysian companies are expanding elsewhere, including in Africa – what if they reproduce the same model? Laws in those countries might be even more lax and facilitate these models, so this is a very serious concern both at home and abroad.

³⁶ As of December 2013, 13% of oil palm plantations were under the Federal Land Development Authority (FELDA), 2% under the Rubber Industry Smallholders Development Authority (RISDA), 3% under the Federal Land Consolidation and Rehabilitation Authority (FELCRA), 6% under State schemes and 14% under independent smallholders.

Thailand***Jacob Bogart, Thailand National Human Rights Commission***

I am Jacob Bogart, a research assistant at the National Human Rights Commission of Thailand, and I will be presenting for the Commission on land acquisition trends in Thailand over the past year.

Thailand has a total surface area of 512,000 square km, out of which around 160,000 square km is forest land and 208,000 square km is agricultural land. According to Pongtip Samranjit of Land Action Links, there are enough land resources in Thailand such that everyone in the country could have sufficient land for productive use if these land resources were allocated and land holdings were distributed in a just manner.

Despite this possibility, around 90% of the Thai population owns less than 0.16 hectares of land per person. The remaining 10% owns an average of 16 hectares a person. Some research estimates that as much as 70% of the land for which land deeds have been issued has been abandoned, left vacant, and not put to productive use, or put to productive use at less than 50%. The lack of productive use is estimated to cost 127 billion baht per year, indicating that it is not for immediate economic concerns that those who own the land do not cultivate it. Rather, they treat land as a speculative commodity for potential future sale.

Current information on land acquisitions in Thailand was hard to obtain for this report. Indeed, in assessing recent reports on land acquisitions in Thailand over the past year, most researchers admitted great difficulty in finding information. One source of data that could be found and relied on for land acquisition details was the Land Matrix, an online aggregator of land grabs throughout the world. The matrix revealed that there has been one deal in Thailand, as recorded by the matrix, since 2013. The deal was concluded by Engage Eco Products, with secondary investment from Leonard Capital of the Cayman Islands. The status of the deal, as of 29th October was that they had 'concluded oral agreements and are currently in production, for a piece of land in eastern Thailand, size 500 ha.' Clearly, while still relevant and important information, this one land grab surely does not represent every land grab in Thailand in the past year.

Therefore, we must ask ourselves, why is the current land-grabbing phenomenon in Thailand so hard to pin down? For one (and for various reasons), large land transactions often occur outside the glare of public knowledge -- and accountability -- historically; today's land deals are no different. For another, the current phenomenon is still unfolding (and with a degree of uncertainty and speculation as well); moving targets are inherently difficult to pin down. But this one still suffers too from not enough information from the field; much more empirical research needs to be done, perhaps especially in Southeast Asia.

However, even with such a paucity of information with which to assess updates in land acquisitions in Thailand, scholars are confident that the cause for this confusion is due less to cover ups and tacit land grab deals and more to do with the difficulty of acquiring land. Indeed, according to researcher Keith Barney "Recent developments indicate that the allocation of large-scale concessions to plantation companies in Thailand is now nearly impossible." He bases this assertion on existing Thai laws that make the acquisition of land in Thailand very difficult, especially as an individual.

While there has been a paucity of information regarding land acquisition and investment in Thailand, the Land Matrix does report an increasing number of outgoing investments by Thai companies abroad. I'm sure this issue will be covered in more detail by the respective ASEAN country in question, so I will leave it to them in their presentations.

So far I have covered general land acquisitions as they are traditionally defined. However, as noted above, with so little data on large scale grabs available in Thailand, for the sake of this report, I have expanded the definition to include instances of forcible eviction in Thailand that resemble in nature and impact large scale land grabs. To facilitate this discussion, I will now cover instances of such evictions in Thailand under the military government.

Timeline of 2014:

First, after the military coup, Prime Minister Prayuth Chan Ocha delivered money to Thai rice farmers that had been promised under former PM Yingluck in an ostensible attempt to placate a long frustrated group of Thai society. Still, the military administered what was effectively a swift cash injection into the rural economy shortly after taking power by paying billions of dollars in areas owed to rice farmers through a failed subsidy scheme that was one of Yingluck's flagship policies. Prayuth ended the scheme a month later after distributing nearly 500 billion baht.

On 22nd July, Prayuth said 77 local officials had been prosecuted, including the former chief of Sirinat National Park plus four rangers allegedly involved in extensive exploitation of state land at Naithon and Naiyang beaches.

Some 379 plots were taken over in Sirinat National Park, covering a total area of 2,743 rai and worth some Bt50 billion, said Samak Donnapee, the director of the Bureau of National Parks, Wildlife and Plant Conservation under the Natural Resources and Environment Ministry.

Phuket governor Maitree Inthusut said the problem had stemmed mainly from corrupt officials. He said surveys of these areas and inspection of land ownership must now be done with the help of local civilian administrators, plus land and forestry officials, and DNP officials, to prevent further confiscation of lands.

In September, the Southern Peasants' Federation of Thailand warned that villagers in Surat Thani's Chai Buri district were at risk of violence and eviction from mafia-like figures with links to land-grabbing schemes in the Klong Sai Pattana community. The SPFT allege that on 16th August, two mafia figures brought 50 soldiers to the village to conduct searches of eight houses without a warrant. They returned in mid-September, this time with two mafia figures, an intelligence soldier, and three unidentified men to the 906-rai (145 hectares) community and told villagers to leave within a week.

Although the land was given to the community, a large area of it was illegally occupied and palm oil plantations had been planted over the past 30 years. The Agriculture Land Reform Office filed a lawsuit against a private company in relation to the issue and won in both the primary court and the appeals court. It is now currently before the Supreme Court. The case alleges that there were attempts to force the people to vacate the land and that there had been violence against the community since 2009. The SPFT claimed three community leaders had been assassinated, in addition to the claims made by villagers that there had been an attempt to sell the land to be used as a palm oil plantation.

Mr. Pramote, of the Land Reform Network, estimates that as many as fifty communities across the Northeast are vulnerable to the military's new eviction policy.

For example, in Sakon Nakhon, on 1st October, 37 villagers of Jatrabiap village were arrested and held on bail for charges of illegally reclaiming and occupying a section of Phu Phan Reserve Forest. This past June a task force of park officials, soldiers, and police cut down 18 families' rubber tree farms totalling 383 rai (151.4 acres), in Non Jaroen village in the same reserve. According to a local activist, officials plan to clear-cut a total of 10,000 rai of rubber trees in the area by the end of the year, a move that could deprive 700 households of income.

It is estimated that the NCPO and Thai junta has performed similar actions across Thailand, with some estimates putting the number of communities evicted at 50 in the Northeast alone. This number could mean up to two million people are currently being threatened off their own land, to which they have a right.

The irony is that the NCPO specifically passed Ordinance 66 stipulating that landless people and the poor should not be adversely affected by policies outlawing encroachment and the commercial planting of rubber trees. Indeed, in law, these farmers are protected to stay on their land. However,

in practice the Thai government has actually pursued policies that evict Thai farmers. The villagers adversely affected by these evictions have taken the government to court. The hearing is scheduled for 21st November.

On 1st October, the Royal Forest Department had allocated 44.28 million rai of deteriorated forest to the agriculture ministry to give to poor landless farmers under the Sor Por Kor scheme. However, the ministry decided to hand 10.1 million rai back to the department after discovering it was fertile forest land for which land right documents cannot be issued. The Agriculture Ministry has yet to hand over another three million rai of forest land to the Royal Forest Department under this arrangement. Agriculture Minister Pitipong Phuengboon Na Ayudhaya said the issue to return the fertile forest land to the Royal Forest land to the Royal Forest Department has been discussed for more than a decade but no resolution had been reached, until now. He said he had invited Natural Resources and Environment Minister Gen Dapong Ratanasuwan to discuss the issue. He also said the ministry is in the process of verifying the rightful owners of 34.18 million rai of Sor Por Kor land across the country after discovering the land, which is meant for farmers, had been transferred to investors in many areas. Under the law, Sor Por Kor land ownership cannot be transferred.

In an article by Jean-Philippe Leblond, titled Forest Evictions under Prayuth, Leblond argued that since the coup, the military has made certain promises, notably to (1) reclaim 'most if not all' encroached land within a year (Thai PBS 2014); (2) increase forest cover from 31.5 % to 40 % by 2024 through reforestation projects; (3) produce a new agricultural and forest zoning system and 4) eradicate corruption (Nanuam 2014; Nanuam and Wipatayotin 2014). On the ground, actions have been quick to come, with authorities arresting alleged illegal loggers, investigating murky land title emissions in legal forests (eg the Sririnat Marine National Park), confiscating resorts and cultivated land and evicting villages or hamlets in at least 3 areas.

He notes that the current wave of intense conservation pressure has historically been directed solely at peasants and farmers. However, the current strain of pressure has also been directed towards non-poor encroachers, notably, owners of resorts and rubber plantations. This is in line with Prayuth's goal of lowering rubber production as a means of raising rubber prices internationally. It also aids Prayuth's goal of establishing order in rural areas and public space.

Population displacement and land confiscation cases occurred not only in protected areas, but also in areas where coerced conservation actions are generally less frequent such as national forest reserves, agricultural land reform areas and land under the jurisdiction of the military or the Treasury Department.

Finally, we might expect to see in the coming year certain actions by the government. First, and here I am quoting Leblond again, to make their actions politically more palatable, the military and forest authorities will likely continue to emphasize cases targeting rich absentee encroachers and offer limited land rights to some communities and landless farmers, as they promised last July. Doing so might minimize resistance from portions of the community forest movements who have both supported the military coup and have shown they could be selective in choosing the communities and 'encroachers' they defend."

To conclude, transparency of land ownership and land transactions in farmland in Thailand is limited. The direct investment by foreigners in Thai agribusiness or land is prohibited by law and implementation is monitored by state agencies. Regardless, access to land is limited for many and at the same time powerful elites own large amounts of land, often for speculation which leads to underutilization. Another trend of note has been how Thai companies are becoming key investors in agriculture in Southeast Asia, leading to human rights violations abroad. The NHRCT has taken up this issue and has pressed for accountability among Thai companies and will continue to do so.

That concludes the report from the National Human Rights Commission of Thailand. I thank you for your kind attention.



Niran Phitakwatchara (TNHC) (Holly Shrumm)

Philippines
Marivic Bero, Coalition Against Land Grabbing

(Presentation title: Calling for a moratorium on oil palm expansion – evidence from impacted areas. Presented by CALG in support of Ancestral Land/Domain Watch (ALDAW))

As of June 2009, the total area devoted to oil palm in the Philippines has reached 46,608 ha, covering the islands of Mindanao, Bohol and Palawan, according to the National Palm Oil Congress. 3,592 ha have been planted in Luzon – Palawan, 6,506 ha in the Central Visayas, 62 ha in Western Mindanao, 1,128 ha in Northern Mindanao, 1,217 ha in Southern Mindanao, 13,961 ha in Socsargen, 17,252 ha in Caraga and 2,890 in the Autonomous Region in Muslim Mindanao (ARMM). According to palm oil company AGUMIL,³⁷ as of 31st December 2009, 3,750.71 ha had been converted to oil palm plantations, which does not include about 12 ha for oil palm plantations in the *barangay* of Sumbiling and Tarakat in Bataraza. As of today, the overall area of oil palm in Palawan exceeds 6,000 ha. The final target for oil palm expansion in the region is between 15 and 20,000 ha and 8 million ha nationwide.

Requirements of the Land Bank of the Philippines (LBP) to release loans are not easy to meet, especially by newly formed cooperatives having little or no capital. The Bank commits 80% financial assistance while the remaining 20% become the borrower's equity. The anchor firm (the company) shoulders 10% of the equity. Original land titles are kept by the LBP for safekeeping reasons and as collateral. Because most farmers do not have any capital, AGUMIL set up the equity for the

³⁷ AGUMIL Philippines Inc. is 75% Filipino and 25% Malaysian-owned. Its sister company, Palawan Palm and Vegetable Oil Mills Inc. (PPVOMI) is 60% Singaporean and 40% Filipino-owned. The companies began their official operation in January 2006.

cooperatives in order for the LBP to commit to 80% equity. As a result, farmers will have to double loans, both from the company and the LBP.

Investigations into the impact of oil palm plantations on the environment and communities had led to several worrying findings. One is the exponential increase of pests (such as the brontispa beetle). Another is the loss of biodiversity and medicinal plants that local communities traditionally grow and use. Yet another is massive forest clearing by the company in Quezon, Brooke's Point, Bataraza and Rizal, where huge trees are being felled to make way for oil palm. Oil palm plantations have largely expended into IP ancestral lands and domains without securing IPs' FPIC. This is in violation of the Indigenous Peoples Rights Act (IPRA) of 1997 and of UNDRIP, to which the Philippines is a signatory. Other documented impacts include the loss of agricultural land and diversity of traditionally cultivated plants, the reduction in local self-sufficiency resulting from the depletion of natural resources, aggravation of flash floods and lack of proper waste management procedures. With regard to the latter, it is reported that for one ton of oil process, 2.5 tons of effluents are discharged, and it is unclear how oil mill discharges will be disposed of by AGUMIL and PPVOMI.

Land leases are subject to 30 year agreements (the equivalent to the productive lifespan of oil palm). The companies' rates are around 1,000 PHP per year per ha for the first three years, then 2,000 PHP per year per ha up to the 10th year, and 3,000 PHP per year per ha for the 11th to the 25th year. However, many IPs leasing out their lands have been paid as little as 500 PHP per year per ha. Where families have found themselves surrounded by oil palm plantations, they have also had little choice but to sell their native titles as well.

All the factors described above led officers and members of the Coalition Against Land Grabbing to submit a Petition for Moratorium on Palm Oil Expansion on 29th September 2014 to the Vice Governor of Palawan, Hon. Dennis Socrates. The group was accompanied by Bishop Pedro Arigo, the Apostolic Vicariate of Palawan and Rev. Fr. Armando Limsa. The petition was signed by almost 4,300 individuals belonging to oil palm-impacted communities, as well as local, national and international NGOs.

Myanmar
Maung Maung Than, RECOFTC MCP

(Presentation title: Land acquisition for large-scale agribusiness in Myanmar)

Myanmar has a population of 51.4 million over a land area of 67.6 million ha. The poverty rate of the country as of 2009 – 2010 was of 26%. Myanmar's GDP was 56.8 billion USD in 2014, and the agricultural sector's contribution to this was of 35 to 40%. Agriculture employs up to 70% of the Burmese workforce either directly or indirectly, and provides 25 to 30% of export values. According to the government's 30 Year Master Plan for the Agriculture Sector (2000 – 2001 to 2030 – 2031), ten million acres (four million ha) of land will be converted to industrial agriculture.

Land acquisition and conversion in Myanmar is taking place through the establishment of agro-industrial plantations by private entities; State-sponsored agriculture projects; large industrial development projects; military settlements; large public infrastructure projects; urban expansion and; land speculation by individuals. Drivers of large-scale land acquisitions for agribusiness include a need to contribute to increasing the country's GDP, to secure food supplies (eg rice, cassava and wheat) to produce biofuels (eg jatropha) and to invite more foreign investment.

As of 2013, a total of 359,455 acres had been planted with agribusiness crops in the states/regions of Tanintharyi, 172,348 acres in Kachin, 19,543 acres in Sagaing, 19,543 acres in Sagaing, 212,969 acres in Ayeyarwaddy, 120,403 in Shan, 95,949 acres in Magwe, 91,074 acres in Bago, 13,176 acres in Rakhine, 76,243 acres in Yangon, 14,497 acres in Mandalay, 15,867 acres in Kayin, 5,217 acres in

Nay Pyi Taw and 118 acres in Chin, totalling 1,196,859 acres, or 23% of land which has been allocated to agribusiness. Tanintharyi, Kachin and Sagaing constitute the regions where agribusiness expansion is happening most rapidly.

Problems resulting from rapid land conversion to agribusiness plantations include land grabbing and land conflicts, lack of recognition of rights to land of local communities or smallholders, and the fact that legal reforms underway further undermine tenure security. Impacts include environmental deterioration, huge biodiversity loss, negative impacts on local livelihoods and the displacement of local communities.

Cambodia
Touch Setha, NGO Forum Cambodia

(Presentation title: Access to land and land rights in Cambodia)

About 80% of Cambodia's population lives in rural areas, and most are dependent on agriculture as the main source of their livelihoods. 21% of Cambodia's land mass is in arable and agriculture employs 60% of the total labour force, contributing 33% of the country's GDP. 25% of the rural poor are landless, and this is increasing at a rate of 2% each year. Over 40% of the rural poor are deemed 'land-poor' (ie holding less than 0.5 ha per household). Land is thus the necessary foundation to ensure the population's livelihood, particularly that of forest-dependent communities and indigenous peoples.

The Royal Government of Cambodia's focus on large-scale agricultural investments is prioritised over providing support to smallholders. By April 2013, Economic Land Concessions (ELCs) covered 2,289,490 ha, equivalent to 63.46% of Cambodia's arable land.³⁸ Lease durations range from 70 to 100 years, so this land will not be available for rural communities for farming or to secure their food supplies in the foreseeable future.

However, the laws on paper in Cambodia are relatively strong in terms of land rights for communities, as exemplified by inter alia: the Land Law 2001; the Declaration of the Royal Government of Cambodia on Land Policy (1st July 2009); the Law on Expropriation 2010; Circular 03 on Resolution of Temporary Settlements, 2010; the National Policy on the Development of Indigenous Peoples 2009; Sub-Decree No 83 (RGC) of 9th June 2009 on the Procedures for Land Registration of Indigenous Community Land; the National Housing Policy 2014; the Draft White Paper on Land; the Draft EIA Law; the Draft Agricultural Land Law and; the National Strategic Development Plan 2014-2018. The Land Law provides for indigenous communities to receive Communal Land Titles (CLT). Circular 03 provides for the resolution of temporary (illegal) settlements via onsite upgrading and other means. The laws also provide various social and environmental safeguards pertinent to Environmental Impact Assessments (EIA), solutions for resettlement and respect of access to private land. In 2012, a moratorium on new ELCs was imposed, that continues to day (in theory).

Other initiatives worth mentioning are the establishment of an Urban Poverty Reduction Group in the municipality of Phnom Penh with a Sub-group on Land and Housing to develop a 'minimum package' in terms of a set of minimum interventions which would allow for a progressive, incremental realization of land tenure and housing rights for the urban poor. An Inter-ministerial Committee was also set up in August 2014 to review ELCs and the government has recently made political commitment to resolve land disputes. Spatial Planning is ongoing as well as the reclaiming of 'unused' ELCs, however concrete outcomes of these processes remain to be seen.

³⁸ Note that information about ELCs differ according to source. The figures cited in this presentation are those of The Cambodian League for the Promotion and Defence of Human Rights (LICADHO).

Meanwhile, land-related conflicts continue to proliferate. 311 disputes were ongoing in 2013, of which 25% or 80 cases were attributable to ELCs. 48% (or 91,323 ha) of all disputes have occurred over agricultural land. Those 311 cases affect 65,867 households and up to 309,575 people. From 311 cases, 50 resulted from forced evictions, causing people's loss of access to land and livelihoods, food, shelter, housing, health care and education. Across the country, 188,435 ha of land were subject to dispute, and 81 disputes were solved in 2013, compared to 108 in 2012 (excluding those solved by Cadastral Commissions, Administrative Commissions during Systematic Land Registration or Commune Councils).

To conclude, the problems in Cambodia are not that the laws are bad, but that their implementation is inadequate and selective. Respect of customary land rights by State institutions and private sectors continues to be lacking, and illegal operations, including particularly logging, continue unregulated. This, compounded with corruption and the lack of independence of the judiciary, mean that a rights-based approach to agribusiness is far from being practised. There has been slow progress in terms of Communal Land Registration (only eight have been registered so far). For progress to be made, better inter-ministerial coordination (Ministry of Agriculture, Forestry and Fisheries, Ministry of the Interior, Ministry of Rural Development, Ministry of Economy and Finance and Ministry of Environment) and cooperation between local authorities, CSO/NGOs and the private sector will be needed, as well as capacity building of government institutions and harnessing the political will of various State institutions, that to date have failed to ensure the effective implementation of the law.

Recommendations to this end include: developing an inclusive approach to solve land issues, based on systemic practice rather than ad hoc actions; carrying out participatory State (public and private) land mapping; improving the accessibility of independent recourse mechanisms (judicial and non-judicial), pushing for better transparency of information, lobbying for greater accountability of all land-related institutions, increased the financial and human resources of institutions working on land issues, and finally, prioritizing support to smallholders over large-scale corporate agribusiness models.

Lao PDR

Vorasone Dengkayaphichith, LIWG

The Land Issues Working Group (LIWG) is a network composed mainly of CSOs, which works towards greater management and control by communities over their land, forests and natural resources. The organisation promotes awareness and understanding of the social, environmental and economic impacts of land-related projects and cooperates with communities, civil society, the government, the National Assembly, donor agencies and the private sector. The work areas of LIWG include awareness raising, training and capacity building (e.g. engaging Lao civil society), networking and promoting dialogue (eg through thematic meetings and discussion fora), government policy support (eg feeding into formulation of the National Land Policy, cooperation with the National Assembly) and research and documentation (eg case studies and translations).

Foreign Direct Investment (FDI) into Lao PDR has increased since the country adopted its new economic policy in 1986, and State-owned enterprises have made way for private companies. As of 2012, the FDI for agriculture was 12%, and mining 27%. The main investing countries as of 2012 were China (with 807 projects at a value of 3,592,470,043 USD), Vietnam (with 438 projects at a value of 4,854,805,514 USD) and Thailand (with 750 projects at a value of 4,027,135,894 USD), followed by Korea, France, Malaysia, Japan, Norway, India and Australia. Key agricultural investment crops include industrial timber plantations (rubber, teak and eucalyptus), grown mainly by Chinese and Vietnamese investors in Champassack, Saravan, Attapue and LNT, over an area of 140,000 ha as of 2008; coffee, grown mainly by Chinese and Korean investors in Champassack and Phongsaly with

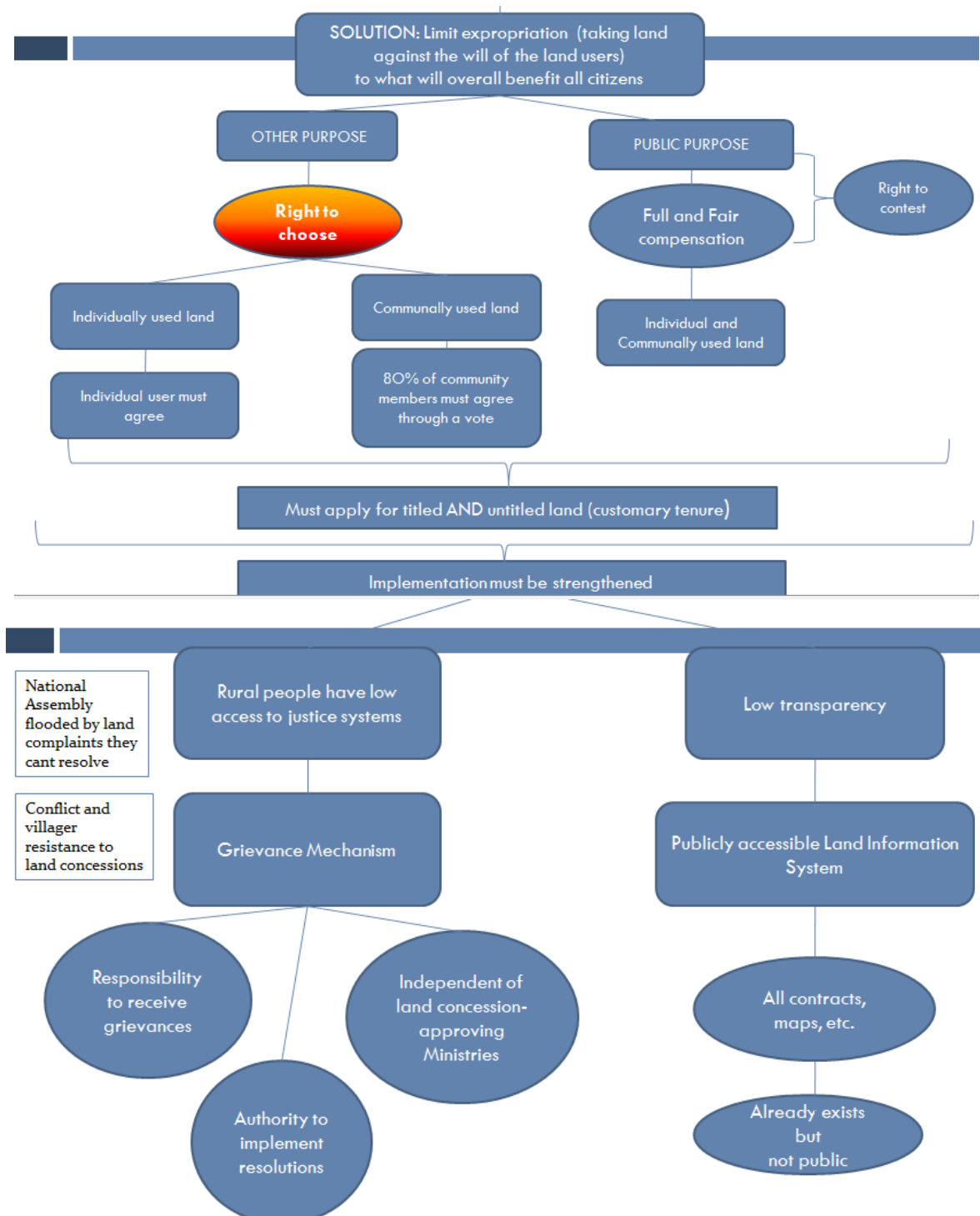
a production of 52,000 tons in 2011 – 2012; maize, grown by Thai investors in Xayabouly over 66,000 ha as of 2005; sugarcane, grown by Chinese and Thai investors in Savannakhet and Phongsaly over 200,000 ha as of 2005; and cassava, grown by Chinese investors in Borikhamxay, with a production of 812,600 tons in 2011 – 2012. It is expected that the Eighth National Social and Economic Development Plan of Lao is to be funded up to 55% by FDI. Massive investments in the extractive industry are expected in the short-term.

With these rapid changes, Lao society, environment and livelihoods are undergoing radical transformations. More and more communities are being affected by the growing pressures on natural resources, and many are seeing their livelihoods altered and sometimes disrupted. Competing interests over land, forests, and water are also in the increase. The challenge here is therefore one of balancing various interests: Lao's rich forests and relatively abundant land areas constitute a great potential for economic and social development and are an important source of income for the Government. But the same natural resources that are exploited for investment are relied upon by majority of Lao population for their food security and livelihoods. Thus investment projects should accommodate this reality by adhering to the rule of law and Corporate Social Responsibility (CSR) principles, minimizing negative impact on communities and paying fair compensation to affected communities.

The Lao legislative framework protects (at least up to a certain point) local communities and balances the various interests – safeguards *are* there, but in reality, laws are often ignored and legal enforcement is weak. At the same time, if the safeguards fail, then the risks are high and include loss of access to land and associated services, disadvantaged poor farmers and landless people, insecure jobs and low wages, exposure to competition and risks in commodity markets, adverse environmental impacts of large-scale infrastructure and industrial agriculture, changes in social structures when moving from subsistence farming to wage labour, risk of government revenue not reflecting the real value of land and other resources, and a growing gap between policy and implementation.

Problems for communities will also multiply as a result of top-down and ill-informed decision-making, lack of access to information, limited community participation in project implementation, the imbalance of power in negotiations, insecure access to land, water and forests (most land in Laos is untitled), the limited knowledge of Lao laws and regulations by communities, and their limited ability to organize themselves and defend their collective interests.

We must recognise that we are here talking about sensitive issues, and sometimes conflicting interests are at play. However, action is necessary to secure better livelihoods and protect the environment. Stakeholders have increasingly expressed concerns over ill-regulated agribusiness expansion in Lao and resulting land conflicts, including the Lao government, the National Assembly, communities, international NGOs, development partners, and investors respecting CSR. Cooperation is needed to avoid and mitigate negative impacts of large scale land-related projects on communities, and to ensure that positive expectations of investment are realized. The right to choose of communities must be respected, and there must be clear principles defined for when and where expropriation of land can be permitted. The recognition of customary land tenure rights is also essential, as is the development of a policy on communal land titling, and efforts to ensure that grievance mechanisms and effective in practice and accountable to their users.





Break-out group presentation (Holly Shrumm)

Discussion

- Competition is in human nature, it is what drives companies to seek to control land, natural resources and the market. Power and control drive corporate behaviour. Perhaps we can also see this as part of a natural tendency to strive to survive. Asymmetries of power result from the limited capacity of communities in terms of access to information and knowledge of the law and development plans, leading to what looks like a voluntary handover of rights from communities to companies. We need indicators for what constitutes genuine 'free consent'. Companies say they are doing it, but evidence from the field shows otherwise. Also, the common notion of 'unproductive land' is misleading, as it ignores local communities' own uses of the land. At the same time, however, companies also face timelines for implementation of their project, so they have their own time constraints to bear in mind. In this kind of context, how can we ensure that FPIC is being adequately applied?
- A report has recently been published by Dawei Development Association (DDA) for general distribution, which describes what has happened in the area. To date, the Thai government has been unresponsive to the complaints raised on the Dawei project, and Thai companies have also failed to respond. The case has been brought to the TNHRC. How can we replicate this kind of trans-national collaboration between NHRCS?
- The enemies of the people are the investors. How should we respond to the economic cooperation schemes under ASEAN? Should we ask for a moratorium on new concessions? Or a joint investigation on human rights violations by Asian investors in Asia? We have a shared objective to protect the people. It is clear that the recognition of IP rights is integrally linked to the protection of their land rights. How should countries like Indonesia, in process of accelerating IP recognition, learn from the Philippines? The land alienation of IPs is now a major problem yet during colonial rule IPs were not allowed to do direct deals with land purchasers.
- We are making progress. One thing that has not been mentioned yet is progress at the national level (most of the presentations given tended to focus on problems rather than existing solutions). For instance, the Constitutional Court judgment MK35 in Indonesia and

the new Village Law are gradually giving opportunities to battle more effectively at the local level. We need to assess the opportunities as well as the problems. We need to look at achievements as well, not just the challenges – what are the success stories we can learn from? Also, is there any initiative for local NGOs to engage with OECDs?

- How is the IP rights' bill process going in Indonesia? What is the likelihood of the Bill being adopted during new President Jokowi's term?
- In terms of investments, it is striking to see the tables on Thailand, Vietnam and China and other Asian countries as investors in some of our own countries. Some of us are suffering from a 'hangover' after the safeguards consultation of the World Bank, however despite all the bad experiences of IPs with the World Bank, at least they do have safeguards that we can invoke. Should we ask investors to also develop safeguards, or push for a more regional approach through ASEAN? The Philippines has lots of protected areas but the government still grants concessions in those areas – is that the same in Thailand and other countries? What about community rights within conservation areas?
- After the World Bank adopted a new policy on palm oil, many banks stopped funding the palm oil sector. Over the last five years, banks investing in Papua for oil palm have been mostly domestic, with very few foreign banks. There is a discernible trend over the last decade: whereas previously major European banks were supporting Indonesian and Malaysian palm oil industry, now, almost 60% of the banks supporting oil palm expansion are domestic banks, especially Indonesian and Malaysian ones.
- There are several important factors to stop deforestation, peat land conversion, social conflict and human rights abuses: one is to control the means of the production (the land – by recognising that it is encumbered by community rights and that FPIC must be respected). Then, if a permit is issued to a company, we need to control the legality aspect of their operations and/or expansion. Third is the market demand: there will be no oil palm expansion if there is no market demand, so we also need to control the market angle, as well as capital through banks and financiers. We need to target banks and investors as part of the strategy – this has proven effective in the World Bank case. But it is not easy – financial intermediaries, trading aspects and supply chains are part of this complicated picture. So we need to go to different levels in our advocacy. India and China are no longer actors behind the direct financing of oil palm plantation expansion. We have seen forced evictions of the Suku Anak Dalam (investigated by HuMA, FPP and others)³⁹ which entailed gross human rights violations. The majority of trade products of Wilmar are exported to China, even though China has nothing to do with the case. There are no direct or obvious links here: these links are subtle and difficult to identify and track down. Business partnerships are arranged in ways that entities are not exposed to obligations or liabilities.
- It is very important to link current human rights abuses to national reforms.
- The Dawei case is relevant to the MNHRC and information pertinent to the case has been handed over to Daw Than Nwe. Cross-country cooperation can be done in ways that respect the non-intervention principle, such as through cooperation between NHRC towards joint dialogue and problem-solving. Our hope is for open discussion and dialogue with companies and affected communities.
- In Cambodia, the government took a very long time to implement communal land titling, and it was NGOs that pushed for this commitment between government and donors. Now government has committed to a trial period of titling of 16 to 18 months. However, FPIC is still not being properly applied. We are pushing to get it incorporated in land-related regulations. Overlaps of concessions with conservation areas are receiving more treatment than those overlapping with community lands – the advocacy to this latter end is ongoing.

³⁹ See <http://www.forestpeoples.org/sites/fpp/files/publication/2011/11/final-report-pt-ap-nov-2011-low-res-1.pdf>

- 40% of forest is protected under national law in Thailand. However, there is a lack of patrolling to protect these areas from illegal logging, and also the rights of the populations living in this areas are not recognised. An example of this is Chiang Rai, where communities were forcibly evicted for illegally occupying that area. This is an ongoing issue and advocacy and dialogue need to continue to make sure that the Thai government does not discriminate against IPs in conservation areas.
- 2015 will see the formulation of the ASEAN Subregional Environment Programme (ASEP) which might lead to closer collaboration to formulate mechanisms and policies at the regional level. How can the ten ASEAN countries work together to solve the problems they share?
- IP bill in Indonesia: for now AMAN has already held discussions before the elections with Jokowi on promoting IP rights. One political promise from Jokowi as a presidential candidate is to deliver the Bill. The Bill is now at the National House of Representatives for discussion but legislature is a mess at the moment, and is no dealing with the Bill. Hopefully there will be progress next year. All the international NGOs working with Aliansi Masyarakat Adat Nusantara (AMAN) are still concentrating their efforts on getting this Bill legalised.
- MNHRC has seen an increase in complaints being received on land related conflicts.
- Governments, politicians and large companies like to talk about increasing GDP – governments especially like to say how necessary it is for companies to do this, but what they do not recognise or deal with in GDP is that a tree growing from a forest is not valued in GDP, yet if you cut it down it increases GDP. When looking at large-scale investments, we are not comparing oranges with oranges. Also, the United Nations Conference on Trade and Development (UNCTAD) has just come out with a very good report that clearly and quite strongly states that food security has not and will not come from large-scale agriculture in developing countries, and that the support of small-scale family-based agriculture will be the only way in the future to take developing countries out of poverty and maintain food security. Are there any experiences in countries where arguments against GDP by government are used, including in terms of what ecosystems provide versus abuses happening on the ground?



Rodziah Abdul (SUHAKAM) presenting at press conference on land rights of indigenous peoples in Malaysia (Holly Shrumm)

DAY 2: WEDNESDAY 5th NOVEMBER***Summary of national developments from National Human Rights Commissions*****National Human Rights Commission of Indonesia (Komnas HAM)*****Sandra Moniaga and Imelda Saragih***

This presentation provides updates from Komnas HAM with regards to human rights and agribusiness in Indonesia and actions taken by the Commission over the last year, with a particular focus on indigenous peoples, or *masyarakat hukum adat*, whose existence and rights remain to be fully or consistently recognised by the government of Indonesia.

The proliferation of conflicts in the agribusiness sector result from a number of unresolved problems, including the ignorance of the State of traditional agro-forestry businesses and resource tenure, collusion between government officials and private corporations, State-endorsed land grabbing, and the lack of a comprehensive land conflict resolution mechanism at the national level. It should be noted that agribusiness is not new in Indonesia, and has been carried out for centuries by local communities across the archipelago. Crops in question include rattan, clove, ginger, coffee, nutmeg, cinnamon, cashew nut, incense (*kemenyan*). These activities have constituted an integral part of the local economy of indigenous peoples for a very long time. However, when the government talks about agribusiness, they are not talking about indigenous agro-forestry systems but rather large-scale monoculture tree plantations.

Such large-scale 'modern' agribusiness features corporations both local, national and trans-national, and State-owned corporations as their main actors, whereas 'traditional' agro-forestry features local communities primarily. 'Modern' agribusiness sees land and resource use and tenure governed by State laws, whereas 'traditional' agro-forestry is carried out in line with customary and often oral laws (but also State laws in some cases). Large-scale agribusiness forms part of a wider supply chain involving corporations, traders and foreign consumers, whereas traditional agribusiness tends to be shaped largely by local socio-cultural and political dynamics and structures. While the species cultivated in 'modern' agribusiness tend to be foreign, those in agro-forestry are largely endemic. Large-scale monoculture requires high chemical and fertiliser input, whereas agro-forestry rarely makes use of such inputs. And whereas large-scale mono-crop plantations are fully supported by the government, mixed agro-forestry landscapes receive minimum support, or are simply ignored by the government.

Land grabbing for agribusiness purposes is also nothing new in the history of Indonesia, and started during the Dutch colonial period through the transplantation of the Dutch property regime (*domein Verklaring*), the forest area designation and the inception of large-scale plantation development. During Suharto's era, Dutch colonial policies were continued and further developed, including through the 'Forest Areas' designation and increased plantation development. The Post-*reformasi* period saw an unprecedented intensification of large-scale agribusiness development, as testified to by the millions of hectares of oil palm plantations developed, the 1 million hectare rice field project, the Merauke Integrated Food and Energy Estate (MIFEE) project in Papua, and the 560,000 ha sugarcane plantation project of Menara Group (a Malaysian company) in the small Aru Islands of the Moluccas.⁴⁰

⁴⁰ For a chronology and analysis of deforestation in Indonesia, see Colchester M, P Anderson & S Chao 2014 *Assault on the Commons: Deforestation and Denial of Rights in Indonesia*. Forest Peoples Programme. (forthcoming)

Another form of land grabbing is systematically done by the State through forest area designation and gazettelement under the Forest Utilisation Agreement of the 1980s, whereby the State classifies almost 70% of Indonesia's land mass as forest (inclusive of cities, villages, rice fields and plantations). Yet as demonstrated by AMAN's preliminary mapping results on indigenous territories (due for completion in 2020), many of these State forest areas overlap with lands occupied, owned and used by indigenous peoples.⁴¹

The fall of Suharto's totalitarian regime saw an exponential increase in land conflicts and expressions of discontent over the land grab phenomenon. Land conflicts are proliferating across the country, and have resulted in multiple human rights violations, including the right of indigenous peoples and local communities to life, the right to freedom from fear, the right to land, the right to a healthy environment, the right to work and many more. The People's General Assembly (*Majelis Permusyawaratan Rakyat - MPR*), the highest authoritative government institution in Indonesia, enacted MPR Decree No. IX of 2001 on Agrarian and Natural Resources Management Reform in recognition of these problems, and the new Indonesian President, Joko Widodo, has committed to implementing the Decree.

The lack of effective and accountable land and other natural resources conflict resolution mechanisms is a major challenge in terms of addressing these conflicts. Available mechanisms, such as those of the National Land Agency, the Ministry of Forestry, Komnas HAM and the Ombudsman, are hampered by limited capacity and resources. Komnas HAM and CSOs have been promoting a special mechanism for agrarian conflict resolution, but while this has been discussed at the higher levels of government, it failed to be implemented during former President Susilo Bambang Yudhoyono's presidency. The Ministry of Forestry is in many ways part of the problem rather than the solution, as is the Ministry of Agriculture. As such, sectoral conflict resolution mechanisms have their weaknesses and above all lack independence and efficiency.

While many communities are resorting to putting signs up to demarcate customary forests (referred to as *pelangisasi*), this does not always resolve the problems. On the positive side, communities' understanding and awareness of their rights is growing and, frustrated by the number of unresolved conflicts, many are now reclaiming their territories in peaceful ways, but sometimes physical conflicts do arise. All this is complicated by the 'free riders of *adat* rights' from former Sultanates and land speculators involved in some cases, which has further complicated ongoing land conflicts.

Like the National Human Rights Commission of Myanmar, Komnas HAM was set up under a Presidential Decree (No. 50 of 1993) at around the same time as the Vienna Declaration and Programme of Action. It could be argued that this initiative was taken by the government to divert attention from the embarrassment of the Timor-Leste situation at the time. As of 1999, the existence of Komnas HAM is based on Law No. 39 of 1999 on Human Rights, which also determines the existence, objectives, functions, membership, principles, organs as well as the duties and mandates of the Commission. In addition to its competence under Law No. 39 of 1999, Komnas HAM also has the mandate to conduct inquiries on gross violations of human rights under Law No. 26 of 2000 on the Human Rights Court. Furthermore, Komnas HAM is mandated by Law No. 40 of 2008 on the Elimination of Ethnic and Racial Discrimination to monitor any actions and efforts to eliminate ethnic and racial discrimination (article 8 (1)).

The objectives of Komnas HAM are to develop conducive conditions for the implementation of human rights in accordance with Pancasila (the Five State Principles), the 1945 Constitution, the United Nations Charter and the Universal Declaration of Human Rights and; to enhance the protection and upholding of human rights for the personal development of Indonesians as human beings in their entire ability to participate in various aspects of life (article 75, Human Rights Law No.

⁴¹ See <http://www.aman.or.id/2014/01/29/indicative-map-of-indigenous-territories-launched/>

39 of 1999). To achieve these aims, Komnas HAM studies, researches, disseminates information about, monitors and mediates a wide range of human rights issues [ibid, article 76 (1)].

The Commission receives a huge number of complaints pertaining to land. 6,358 complaints were filed in 2011, 6,284 in 2012, 5,919 in 2013 and 6,229 as of October 2014. The overwhelming majority of these complaints related to plantation development (121 cases), followed by forestry (25), oil and gas mining (6) and mineral and coal mining (13). The main causes of land conflict include land grabbing (by the military, police, State and/or companies), which constituted 254 cases in 2010, 377 in 2011 and 754 in 2012; violence (3 in 2010, 28 in 2011 and 44 in 2012) and the grabbing of indigenous peoples' lands (38 in 2010, 66 in 2011 and 72 in 2012). Human rights violations by corporations as of 2012 were identified in 1,126 complaints, in relation to land conflict (446 cases), labour (307 cases), the environment (85 cases), migrant workers (52 cases) and others (236 cases).

Towards promoting alternative solutions to the land grabbing phenomenon and its dire consequences in Indonesia, Komnas HAM works in four related areas – research and study (to research and review existing laws and identify possible legal avenues for victims to obtain remedy, such as through the judiciary system and special mechanisms); education and public awareness (to raise peoples' awareness about human rights); monitoring and inquiry (to conduct monitoring based on submitted complaints and to encourage the State and corporations to take concrete action to resolve land conflicts) and; mediation (to mediate conflict between communities whose rights have been violated by State-owned companies or private corporations).

In terms of research and study, Komnas HAM has signed MoUs with 12 Ministries and other State institutions to accelerate the gazettelement of forest areas. The MoUs contain information and guidance on conflict typology, conflict data development, conflict resolution mechanisms, opportunities for legal harmonization, and studies on regulation and governance. In addition, Komnas HAM is currently conducting a National Inquiry on the Rights of Indigenous Peoples over their Territories within the areas designated as forest by the Ministry of Forestry.

In terms of education and public awareness, the Commission carries out training, campaigns and produces publications. For instance, on 14th – 15th October 2014, the Commission carried out a training for police officers in South Sumatra related to agrarian conflict prevention. The police is one of many stakeholders involved by the Commission in the National Inquiry.

In terms of monitoring and investigation, Komnas HAM is actively monitoring the operations and impacts of mining and plantation companies in relation to land conflict, environmental pollution and violence, and providing recommendations to the relevant institutions and parties to address these issues. Such recommendations have included the enclaving of conflicted land, the setting up of a mediation forum between the local government and the communities, and the setting up of a task force by the local government. The Commission also holds regular meetings with relevant Ministries (eg the Ministry of Forestry), the police, NGOs and the House of Representative to discuss these concerns. Its investigations have also included investigations into violence by the police, army and corporate officers against indigenous peoples and other local communities, and against human rights defenders.

Finally, Komnas HAM's mandate is unique in the region in that it gives the Commission a mediating function as well as those delineated above. The mediation that the Commission undertakes is anchored in the principles of independence, confidentiality and voluntary participation. As an alternative dispute resolution mechanism, it has the potential to become a tool to remedy victim's rights without the Commission taking any particular side in the conflict. Mediation is also a better option in terms of strengthening the position of the victim, encouraging good will on the part of the perpetrator, and pushing for greater political will from the government to address and resolve land conflicts. Komnas HAM acts on a case by case basis as mediator in conflicts between local communities and corporations, that usually also involve either the central or local government

bodies. MoUs with local governments (eg in Central and East Java) have been signed as a result of such mediations, which seek to accelerate land conflict resolution in these provinces. A Joint Team of the Mediation Sub-commission and the Monitoring and Investigation Sub-commission has also been formed to deal with particular cases and issues (in Central Java: PLTU Batang, Semen Indonesia in Rembang, Indocement in Pati, and Semen Gombang (Medco Group) in Kebumen; in North Sumatra: land conflicts between State-owned companies PTPN II and III and the communities of Deli Serang, Langkat and Labuhan Batu Utara; in Jambi: land conflict between private company PT Asiatic Persada and the indigenous Suku Anak Dalam).

The Commission has also conducted focus group discussions on human rights and business with 10 private companies and 10 State-owned companies, which resulted in the development of an Action Plan and Task Force to develop National Guidelines on Human Rights and Business, to be adopted by corporations in their policies and operations.

Komnas HAM's National Inquiry on the Rights of Indigenous Peoples over their Territories within the Ministry of Forestry-claimed forest areas was initiated as a result of a number of inter-related factors. Community dependency on forest resources remains high in Indonesia, with 31,957 villages located in forest areas, of which around 71.06% depend on such resources for their subsistence and livelihoods. 'Legitimate', or State and law-endorsed land grabbing, is the main cause of conflicting claims between indigenous communities and the State. This land grabbing is also systematised under the process of forest area designation and the issuance of forestry licenses under State policies. Conflicts are on the rise, as is the number of victims of these conflicts. The suspected perpetrators of human rights abuses linked to forestry include the Ministry of Forestry itself, forestry companies, mining companies and other private and public actors.

The National Inquiry started with research and data collection and stakeholder meetings, as well as training workshops facilitated by other institutions and individuals, such as APF and RWI, and former NHRI members in Malaysia and Australia. The TORs and working team were developed through multi-stakeholder meetings, involving State institutions, CSOs and community organisations, such as AMAN. Inquiry Commissioners were recruited from a wide range of relevant backgrounds, including experts on women's rights, indigenous peoples' rights, forestry management and human rights, and an Inquiry Director was appointed for internal coordination of the project. Fund-raising was also carried out, targeting State budgets, CSO budgets and other donors. The Ministry of Forestry, the Anti-Corruption Commission and the Ministry of Agrarian Affairs were also lobbied during this preparatory phase.

Ongoing elements of the National Inquiry include research into forestry laws and regulations, and the regional situations in terms of land conflicts, the development of a land conflict database and interventions in terms of policy development. As examples of the latter, Komnas HAM supported the newly elected President Jokowi's Team in formulating his program for indigenous peoples' rights' recognition, protection and rehabilitation (September 2014). It also supported several district governments to enact district regulations and/or Head of district decrees recognizing indigenous peoples and their territories. The Commission is also preparing a more comprehensive set of recommendations for indigenous peoples, national and local governments, the private sector and other parties.

The Regional Public Hearings are now underway, and involve research and collection of data on human rights violations and ethnographies of ongoing agrarian conflicts, preparation of testifiers by CSOs, press briefings, public discussions and discussions with university students. 5 Public Hearings will be conducted in Sulawesi, Sumatra and Kalimantan. Further Hearings will be held in Jayapura (for Papua) and Mataram (for Bali-Eastern Indonesia) and nationally in Jakarta for national stakeholders and on women's rights. 41 cases based on different types of forest classifications will be heard, involving over 90 testifiers.

To conclude, the presence of large-scale agribusiness-based corporations in Indonesia has resulted in negative impacts on the human rights of local communities, including the rights of indigenous peoples. Some of Indonesia's laws, regulations and policies do not accommodate human rights principles. Many corporations (especially national/State corporations) have yet to implement the Protect, Respect and Remedy Framework as elaborated by the UN Special Representative on Business and Human Rights, and continue to limit their understanding of responsibility to CSR. There is a lack of political will from the government (both at the national and local levels) to solve land conflicts in a comprehensive and systematic manner. Those cases that were settled during President Susilo Bambang Yudhoyono's era have generally failed to address the root causes of the disputes and are not based on human rights principles. The Forestry Law of 1999 and the Agrarian Ministry's Decree of 1999 required district regulation for the recognition of indigenous peoples and their territories. However, most of indigenous peoples' lands are also claimed by the government as State forest areas and indigenous communities lack any form of legal recognition. It is in this context that Komnas HAM is exploring ways to provide remedy and fulfil the rights of victims of corporate action, through its mediation efforts. Although these efforts have some drawbacks, the Commission hopes that these efforts will give birth to best practices for the future in terms of addressing and remedying human rights violations.

The legal reform processes underway in Indonesia provide both opportunities and threats for the future. Constitutional Court Decision No 35 of 2012 (read in May 2013) and the newly amended Plantation Law of 2014 are positive signs of change in terms of the recognition of indigenous peoples' rights, as is the newly signed Joint Four Minister Decree on the Procedures to Resolve Land Rights Issues in Forest Areas of October 2014 and the draft Bill on Indigenous Peoples' Rights. Also promising is President Jokowi's agenda to implement MPR Decree on Agrarian and Natural Resources Management No. IX of 2001, which will lead to a review and revision of laws and regulations towards resolving agrarian conflicts. The government (both local and central) will have to re-evaluate their policies on large-scale agribusiness and harmonise these in accordance with the 1945 Constitution and human rights laws. National Guidelines on Human Rights and Business also need to be adopted by corporations in their policy and practices. And the government, State institutions and corporations have to develop comprehensive human rights education programmes for their staff and officers, including for the military and police.

National Human Rights Commission of Malaysia (SUHAKAM)

Rodziah Abdul and Wan Kasim

(Presentation title: SUHAKAM's National Inquiry into the land rights of indigenous peoples and subsequent activities in business and human rights)

SUHAKAM's National Inquiry (NI) into the land rights of indigenous peoples and subsequent activities in business and human rights was conducted in 2010, largely in response to the wide range of complaints and memoranda on alleged infringements of the rights of indigenous peoples from civil society. Authority was given to SUHAKAM to conduct the NI under the Human Rights Commission of Malaysia Act 1999: Section 12 (1) Authority and Section 14, which gives the Commissions powers relating to inquiries. In the Inquiry, SUHAKAM examined the root causes of land issues from a human rights perspective. 1.27 million MYR was spent on the project, which took 18 months in total to complete. The Inquiry Panel was assisted by independent consultants identified because of their expertise and experience.

Decisive factors towards undertaking the Inquiry included an investigation of the issue at hand (human rights), an assessment of the capacity of the Commission, and assessment of how realistic the project was, and whether SUHAKAM was the appropriate organisation to carry out the Inquiry.

The Commission also asked itself who the important stakeholders to be involved would be, how the engagement process would be carried out, and what roles these stakeholders could play.

As background, indigenous peoples in Malaysia include the aboriginal peoples of Peninsular Malaysia and the natives of Sabah and Sarawak. The majority of these still live in rural areas and in some cases in highly remote areas. There are 39 IP groups in Sabah (representing 61% of the state population), 28 IP groups in Sarawak (representing 71% of the state population) and 13 groups in Peninsular Malaysia (representing 1% of the peninsular population).

The National Inquiry started with an introductory session, to ensure that stakeholders understood the true intention of the Commission and its TORs, and that those who participated in the process were informed of the objectives of the NI and what to expect of it. During this time, SUHAKAM invited submissions to be made to the Commission by indigenous peoples, and also appointed researchers from local universities to support the NI process. These researchers undertook in-depth studies into indigenous peoples' land rights, which included fieldwork and GPS mapping, and examinations of the conceptual and legal frameworks of indigenous peoples' land ownership in Malaysia.

The second phase of the NI was the public consultation. Through this process, information was gathered on areas of conflict on indigenous peoples' land as well as related evidence, applicable laws, procedures and policies. Public consultations were conducted in the three main regions (Sabah – June 2011, then Peninsular Malaysia – July 2011, then Sarawak – September 2011) and stakeholders included indigenous peoples, NGOs and relevant government agencies. Short dialogue sessions were held with indigenous peoples and statements from these stakeholders recorded by SUHAKAM where requested. The third phase of the process was the public inquiry or public hearings. During this stage, specific witnesses were called to appear before the Panel to give further information and to verify certain facts (April - June 2012). The last phase of the process was the production of the NI report (available on the SUHAKAM website).⁴²

The NI was a very extensive exercise, involving 6,500 witnesses in public consultations, 892 recorded statements (407 from Sabah, 198 from Sarawak and 287 from Peninsular Malaysia), 132 cases heard from 490 witnesses at the Public Hearing and 57 received public submissions, over a period of 18 months.

The issues investigated in the NI are categorised under 6 main themes (administration, plantation, commercial development projects, compensation, inter-agency coordination and gazetting of indigenous peoples' lands), based on which 18 recommendations were developed pertinent to the prevention of future loss of NCR land, remedy for land loss, addressing land development imbalances, recognising indigenous customary rights to land, addressing land administration issues and recognising land as central to indigenous peoples' identity.

The NI was officially release on 5th August 2013, at an event attended by the Minister of the Prime Minister's Department, during which the Minister announced the setting up of a special Task Force, an initiative welcomed by the Commission as an immediate and concrete response to the NI Report, and further encouraged by the Minister's assurance that the purpose of the Task Force is not to come up with an alternative or counter Report but to fully consider the NI Report and its recommendations. However, no timeline or deadline has been given for implementation of these recommendations by the government.

Several challenges faced in the NI process should be noted. First, it focused only on indigenous peoples' land issues. Second, time and manpower constraints were substantial. High costs was also

⁴² See <http://e-gov.my/suhakam/suhakams-national-inquiry-report-into-the-land-rights-of-indigenous-people-in-malaysia/>

involved to carry out the project. The project also did not focus on gender specifically. It was clear from the findings and process that there is an overall lack of recognition of indigenous peoples' rights by Malaysian authorities and a lack of understanding of the concept of indigenous peoples' customary land.

Following the production and distribution of the NI report to the public, SUHAKAM then continued pursued other activities, including holding several discussions on business and human rights (ongoing since 2012) involving public listed companies, Government-Linked Companies (GLCs) and plantation and logging companies. Several challenges were identified in relation to business and community rights through the NI and these discussions. First are the adverse effects of development and plantation activities carried out by private businesses on lands over which native customary rights are exerted, resulting in dispossession and the loss of indigenous peoples' source of sustenance and livelihood. It was reiterated that businesses should uphold the principle of FPIC before entering into any new development area where IPs are likely to be affected. To date, human rights awareness appears to be lacking in the business sector, with many giving more attention to CSR programmes entail voluntary undertakings for the benefit of the wider community such as environmental preservation and the sponsorship of students for higher education. Yet other companies are simply unaware of the concept of CSR. As such we recommend that businesses integrate human rights principles into their CSR practices and develop accompanying policies to keep them from perpetrating or facilitating human rights abuses.

In terms of workers/labourers' rights, businesses need to respect the rights of workers and treat workers in a humane manner, irrespective of origin, race, colour, religion, gender, physical ability and other characteristics of identity. They must put in place policies and applicable grievance procedures to ensure workers' rights are protected, including non-discrimination policies and anti-harassment codes.

The government also needs to strengthen domestic legislation with respect to equality and non-discrimination, workers' rights, environmental protections and compliance with international human rights treaties. Rights-based policies must be developed and applied to the private sector, as well as tax incentives, corporate grants and other forms of monetary relief to offset the expense of putting human rights into practice. Governments should also develop sanctions and sanctioning mechanisms for the violation or abuse of human rights by corporations.

It should be noted that while Malaysian businesses have access to a plethora of information and policies on CSR, this is not the case for human rights. As such, to minimise the risk of business sectors violating human rights, the Commission is working to encourage the development of a code of best practice to enable businesses to map areas that require further attention and improvement.

National Human Rights Commission of Thailand

Niran Phitakwatchara

Nobel prize winner Joseph Eugene Stiglitz, once noted that globalization today is not for the poor as the majority of the population, not for the environment and not for the stability of the economy or region. He stated that promoting local and international democracy is fundamental to reforming the global economic policy, and that democracy aids social stability, empowers the free flow of information, and promotes a decentralised economy upon which efficient and equitable economies rely.

In this and previous conference, we have seen how agribusiness is expanding within the paradigm of neo-liberalism and globalization, and its impacts on the peoples and economies of Southeast Asia. And while the way agribusiness is developing is shaped by the different political regimes of the

region, as are the role and functions of ASEAN's National Human Rights Institutions, its impacts on people and the environment are very much comparable across the countries.

The Thailand National Human Rights Commission has been working particularly on issues of extra-territoriality and trans-boundary human rights violations in Cambodia (Koh Kong and Oddar Meanchey provinces) and Myanmar (Dawei). Several other trans-boundary cases have been lodged with the Commission, including on the Hutgyi Dam construction project on the Salaween River (Myanmar-Thailand); the Baan Kum Dam construction project on the Mekong River (Laos-Thailand); the construction of dams and the blasting of islets in the Mekong River (China-Thailand); the Xayaburi dam in Lao PDR (Lao PDR-Thailand);⁴³ the electricity coal plant in Hong Sa, Lao PDR (Lao PDR-Thailand); the Special Economic Zone and Industrial Complex in Dawei, Myanmar (Myanmar-Thailand); the massive concessions and land acquisition in Koh Kong Province, Cambodia (Cambodia-Thailand) and; the concessions in Oddar Meanchey Province, Cambodia (Cambodia-Thailand). The work of the TNHRC includes public hearings, multi-stakeholder dialogues, technical support to affected communities, mediation and dispute settlement, on-site investigations into human rights abuses, information and data collection and research, documentation and reporting, litigation, policy recommendations and human rights promotion.

In all of these and other cases, it is inevitably the communities who are the victims of capitalism, resource and power monopolies and ill-regulated globalisation, as reflected in the all-pervasive and centralised authority of the government over natural resources and property. Consumerism and materialism, combined with a dependency on labour, is far from sustainable. Instead, what we need is a knowledge-based society which is self-managed and self-sustained, based on the respect for human rights, civil and political rights, diversity, sustainable development, community rights and economic, social and cultural rights. In this framework, money stops being the main target based on the realisation that there are many other important values, including health, freedom and plurality, as well as self-determined development.

It is usually the economic dimension of the ASEAN community which receives most attention, but people tend to forget its other aspects, including those of politics and security, society and culture. Countries are reluctant to interfere in their neighbours' politics and sovereignty, but we should recognise that human rights is about people, culture and society, and so should not be seen as an impediment to national sovereignty or development. As such it is a mandate of the NHRCs to ensure that human rights are given as much consideration as economic rights in the formation of the ASEAN community. If not, we are heading towards an even greater gap between the rich and the poor (in which the poor will continue to be the majority) and increased differentiation and discrimination against the poor, the further commodification of natural resources, the privatisation of community proprietary rights, and the monopoly over wealth of the State and investors, rather than communities themselves.

Agribusiness in Thailand is largely in the form of contract farming, which has its problems, including the destruction of resources and former local livelihoods, the monopoly of public assets in few hands, the monopoly of raw materials, the increased vulnerability of farmers to market demands, and the control of information flow. The latter has worsened since the military coup in Thailand has further restricted access to and control over information. The contract farming model has also led to the violation a number of rights, including community rights (eg rights and entitlements to natural resources and the environment, and rights to culture and customary agricultural livelihoods), the rights of small-scale agriculturalists (including their right to self-determination), and the civil and political rights of Thai citizens (including their right to assembly, to information and to freedom of expression).

⁴³ The Xayaburi dam case was the first trans-boundary case received by a Thai court for investigation.

The Koh Kong case, investigated by the TNHRC, is a huge land concession in Koh Kong which was initiated in the context of the announcement of the European Union's 'Everything But Arms' (ERA) programme in Cambodia, which stimulated the exploitation of land through agribusiness intensification, particularly for the export of raw sugar to the European market, with waivers of EU import tariffs. The Cambodian Land Concession Policy has also allowed private agribusiness companies to acquire huge land concessions for extended lease periods. The Land Concession Act was approved by the Cambodian Congress in March 2006, granting claims of proprietary right over the lands in Koh Kong to such companies (Koh Kong Plantation Co Ltd and Koh Kong Sugar Cane Co Ltd, Sugar Cane Plantation and Processing Plant) causing 456 families in 3 villages to lose a total of 19,100 ha of their land to the companies. Community property was also demolished and/or burned down when the land was taken over. The case is a perfect example of the violation of communities' rights to land, life and self-determination. The European Parliament has also recognised that governments should take responsibility for land rights abuses, and voiced concern that European Union trade preferences under the 'Everything but Arms' initiative were fuelling human rights abuses. The case has been taken by the TNHRC to the United Nations Global Compact to seek resolution and remedy for communities.

The Oddar Meanchey case concerns a sugarcane plantation and processing plant established by a private Thai company. NGO Equitable Cambodia lodged a complaint to the TNHRC on 21st May 2013 (Case No.259/2556) on serious human rights violations involving the company in three separate Economic Land Concessions (ELCs) in the districts of Samrong and Chongkal, Oddar Meanchey Province, northwest Cambodia. On 11th August 2014, the Commission carried out field visits to 3 villages and 1 resettlement area in the province, which revealed that the ELCs had led to the confiscation of land and property from the local communities, the destruction of their homes, the killing of their livestock, the looting of their crops, threats, intimidation and arbitrary arrest, as well as extreme food insecurity and impoverishment over the last few years. A complete collapse of the communities was witness, particularly in O Batmun, where only 14 households remain from an original 214 households, only 9 of which are entitled to 1 ha of farmland, while the rest are now landless.

The TNHRC's investigation in the Dawei Special Economic Zone in Myanmar (205.51 square km) shows how the development project has adversely affected the rights, livelihoods and environment of 20 to 36 villages, or around 22,000 – 43,000 individuals from 4,383 – 7,807 households. Around 71% of households have lost their lands, and their cultures and customary practices are gradually become eroded. Communities have little access to information and their right to participation in the planning and implementation of the Zone are restricted. They have now exhausted all domestic remedies, and even through those channels, only about 15% of the affected population received some kind of compensation.

To conclude, a number of actions need to be either taken or enhanced by the National Human Rights Commissions of the ASEAN region. First, we must continue to verify facts in complaints submitted to us, and carry out field investigations to meet directly with the victims and witness the conditions on the ground. Second, NHRCs have the potential to play an important role in courts by submitting *Amicus Curiae* briefs in support of the community victims. Engagement with and lobbying towards other entities, including international organisations, relevant UN agencies and also the media, are necessary to complement the Commissions' work. Based on its case experiences, the TNHRC is now finalising a comprehensive investigation report which will include recommendations for all relevant stakeholders, including the Thai government, corporations, ASEAN governments, international agencies and the SEANF. It is also recommended that our annual Dialogues on Human Rights and Agribusiness in Southeast Asia be complemented with more regular follow-up meetings in between the annual conference, to check progress on work plans developed. In this way, we can push collectively for concrete outcomes to our action plans, and communicate initiatives, outcomes and challenges on a more frequent basis.

National Human Rights Commission of the Philippines
Jesus Torres and Florante Nocomura Enciso

1.) At the outset, let me walk you through the perspective of the Commission on Human Rights of the Philippines (CHRP) in performing its role in the “Business and Human Rights” agenda. I hereby quote our Chairperson, Loretta Ann P. Rosales:

“Based from the legal framework of NHRI’s role on BHR and the domains on which it can be mainstreamed in corporate policies, CHRP’s roles can be summed up to what I termed as GIA, which stands for Guide, Inform and Assist (GIA), specifically:

- provide GUIDANCE to the Philippine Government to identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights to business enterprises and other non-State actors;
- provide INFORMATION and advice on how corporations operate its business with due regard to the potential HR risk and on how to remediate any harm done to rights holders with full regard to its accountability;
- ASSIST victims of corporate abuses or victims of human rights violations by the State or its agencies in seeking judicial or non-judicial remedies as may be appropriate under the circumstances.”

2.) In performing its mandate, CHR does not consider so far any substantial distinction among businesses to an extent whereby a particular business by itself is regarded as having impacts in the observance of human rights. Stated otherwise, and by way of an example, the CHR has never resolved or declared that the mining industry is by itself having adverse human rights impact or breeding human rights abuses, although we have findings that a particular mining company failed to respect human rights. The same is true with agribusiness, or particularly the palm oil industry. CHR has not resolved that agribusiness or the palm oil industry is breeding human rights violations. Each individual case that has come to our attention will be evaluated on the merits, and thus on the basis of proof. Due process is observed and its twin requirements of notice and hearing are regarded as necessary pre-conditions. The business enterprise being complained of is given the chance to present its contentions. What is clear however is that CHR performs its investigative monitoring functions with the primary objective to identify the specific effective remedies that could be availed by the party whose human rights are violated or abused. That is how CHR guides, informs, and assists.

3.) During its early stages, CHR has already been quite aggressive in promoting and protecting human rights in the Philippines. It is so aggressive that, sometime in 1991, it had issued orders of injunction against the then called “Export Processing Zone Authority⁴⁴”, among other state actors, commanding it, the 125th Philippine National Police Company and the Governor of Cavite Province and their subordinates to desist from committing further acts of demolition, terrorism, and harassment against farmers groups therein. EPZA sought judicial action from our Supreme Court questioning CHR’s power to issue orders of injunction on the basis of its mandate to provide for preventive measures and legal aid services to the under privileged whose human rights have been violated or need protection. Unfortunately, the Supreme Court ruled that CHR has no power to issue orders of injunction. The said ruling is still observed to this day. Still, CHR is not precluded by law or jurisprudence to file and pursue a court action for injunction and other judicial or quasi-judicial remedies; that is, instead of CHR issuing the injunction order in the exercise of its own mandate. The

⁴⁴ Now called the Philippine Economic Zone Authority starting 1995.

complaining parties must go to the courts, or in the issues relevant to our present discourse, the Department of Agrarian Reform, the National Commission on Indigenous Peoples, or our National Labour Relations Commission to name a few. I mentioned this concern because even now those who are complaining to us would expect that CHR can order the performance or non-performance of certain acts, and mostly against corporations that allegedly harass and threaten individuals and communities where they operate.

4.) With this preliminary view of the CHR, let us now move on with this discourse to land rights concerns. Admittedly, access to land in the Philippines serves as traditional basis for the exercise of civil and political rights, particularly on the right to public participation. It cannot be denied that issues covering land are mostly related to human rights concerns. As such, agrarian reform is inevitably inclusive of human rights impacts. While a right to land is not yet by itself recognized in international human rights law⁴⁵, literatures show that access to, the use of and control of, land is regarded as vital in the realization of the human right to adequate standard of living, right to housing, right to food, to water, right to privacy, right to property, freedom of movement, right to work, and right to health, among other economic, social, and cultural rights. However, there are positive efforts at the international level to elaborate on the rights of people working in rural areas⁴⁶. The Human Rights Council mandated its Advisory Committee to study ways and means to further advance the rights of people working in rural areas, including women, in particular smallholders engaged in the production of food and/or other agricultural products, including from directly working the land, traditional fishing, hunting and herding activities. CHR has intended:

- to contribute to the efforts leading to the recognition of the right to land in international human rights law.
- to elaborate on the draft declaration on the rights of peasants and other people working in rural areas, by contextualizing international principles within the Philippine setting and experience;

5.) Admittedly, in the Philippines, pursuit to own land entails social conflicts. A farmer who is said to be tilling the soil, and in some cases the first one to physically occupy a piece of agricultural land, will eventually be threatened with eviction by somebody who does not have physical possession of the land, but with a certificate of title, claiming as the real owner. In the Philippines, our land registration laws are primarily based on the Torrens System, which provides for the principle of constructive notice to the whole world that a parcel of land is owned by the registered owner. Land ownership must be proven in paper. In effect, the lowly farmer or an indigenous community, who holds no proof of land ownership, would be then considered as possessor in bad faith. Under our civil laws, someone who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity. In the social conflicts that come to our attention, the

⁴⁵ Article 14 of Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) dedicated to the rights of rural women states that women should “have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement scheme.” The nine core human rights treaties are: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Rights of Persons with Disabilities.

⁴⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/AUNdeclarationtopromotepeopleworkinginruralareas.aspx> (accessed Sept. 16, 2013)

alleged landowners would usually tell CHR that they are offering parcels of land to the community by way of compromise, but the community would not accept. Upon further investigation, such offers by landowners are cleverly worded in the memorandum of agreement to be most favourable to them. There is prima facie evidence to show that government officials adopt the “hands-off” policy when social conflicts are linked to land disputes. The local chief of police would tell our Ombudsman that the movement of the PNP personnel is limited due to the fact that the land is privately owned, and they must always act cautiously when responding to a given situation or else a complaint will be filed against them in court by either of the conflicting parties. In instances where the government succeeded in distributing agricultural lands to farmers, the major challenge would then be the capacity of these agrarian reform beneficiaries.

6.) Recent developments:

1. Background; The Writ of Amparo: It is a prerogative writ issued by the Court addressed primarily to the Government particularly its security department to ensure that the right to life, security and liberty of an individual is protected. Historically, it originated in Mexico as a judicial remedy of the families of *‘desaparecidos’* or disappeared individuals. During that time there were rampant disappearances of many Mexican nationals perceived to be ‘enemies of the State’. Its effectiveness in establishing accountability led to its adoption by many Latin American countries experiencing massive disappearances, especially in Honduras and Guatemala. Clearly, the Writ is a Spanish word in origin from the word *‘amparar’* which literally means *‘to protect’*. Hence, essentially it serves to protect the right to life, security and liberty of an individual and curb the Government’s practice of ‘denial’ whenever asked about the whereabouts of a disappeared individual. With this Writ state security agents are directed/ordered to determine and produce evidence on *what, when and how* an individual disappeared and *who the perpetrator is* and NOT merely swiftly deny the circumstances of the disappearance.
2. The remedy of the *Petition for Writ of Amparo* – to be discussed by Atty. Enciso

The Rules on the *Writ of Amparo* was adopted by the SC of the Philippines and it took effect on 24th October 2007, however, actual cases that test the effectiveness of the Writ only arose sometime in 2009 and up to this present. The new writ was succinctly explained by the Supreme Court in the case of RAZON VS. TAGITIS, G.R. No. 182498, 3rd December 2009, wherein it explained that:

This Decision reflects the nature of the Writ of *Amparo* – a protective remedy against violations or threats of violation against the rights to life, liberty and security. *It embodies, as a remedy, the court’s directive to police agencies to undertake specified courses of action to address the disappearance of an individual, in this case, Engr. Morced N. Tagitis.* It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines *responsibility*, or at least *accountability*, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. Accountability, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with

knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

We highlight this nature of a Writ of *Amparo* case at the outset to stress that the unique situations that call for the issuance of the writ, as well as the considerations and measures necessary to address these situations, may not at all be the same as the standard measures and procedures in ordinary court actions and proceedings. In this sense, the Rule on the Writ of *Amparo*^[4] (*Amparo Rule*) issued by this Court is unique. Since the *Amparo* Rule is barely new, it should be read, too, as a work in progress, as its directions and finer points remain to evolve through time and jurisprudence and through the substantive laws that Congress may promulgate.

3. By way of an illustration how the Rule on Amparo applies let me give you our recent case being handled, the case of *Rowaldo Macario vs. SIDEKO, the Regional Director and the Regional Chief of Region VI PNP and the Local Executive of the Municipality of Carles*.

A. Sicogon Case

1. Background in Brief

- 1.1 Island of Sicogon is part of the Municipality of Carles, Province of Iloilo (situated in the Western part of the Visayas regions of the Philippines)
- 1.2 Total land area -1,163 hectares
- 1.3 Barangays (smallest political unit) –San Fernando, Alipata and Buaya
- 1.4 Distribution of land area –809 hectares or 70% is titled land claimed by Sicogon Development Corporation (SIDEKO); 282 hectares or 30% is public lands. 335 hectares or 43% of the total land area is claimed by residents as agrarian or CARPable lands
- 1.5 1900 –people of Sicogon built their community/dwellings
- 1.6 1972 –SIDEKO with tile came in to build a resort along the coastal areas and to develop the area as a premier tourist destination that will rival the world famous Boracay.
- 1.7 2004 –DAR introduced the CARP in the island, & more than 200 farmer beneficiaries were identified;
- 1.8 2008 –the residents petitioned the DENR for the coverage of 22-hectare public lands under Free Patent
- 1.9 2008 –SIDEKO declared “*huwes de kutsilyo*” or *justice by knife* & declared war against the residents

2. HRVs occurred despite several reports and information to the Philippine National Police and the local executive of the Municipality of Carles.

- 2.1.1. Right to Life: Threats and Harassments
- 2.2. Right to Choose one’s Residence: Forced eviction & Displacement
- 2.3. Freedom of Movement: Controlled Egress and Ingress (SIDEKO implemented a monitoring of residents entering and leaving the island, basically outsiders are strictly forbidden to enter even government agencies and media)
- 2.4. Right to be Consulted: No/lack of resettlement (livelihood)
- 2.5. Right to Speedy Resolution of Cases: snail paced CARP coverage
- 2.6. Trump-up charges were filed against the island-residents; administrative cases were filed against the DAR Provincial Agrarian Reform Officer

3. Remedy

3.1. Legal

- 3.1.1. It may be filed at any time with the RTC of the place, Court of Appeals or the Supreme Court. Filed in *November 2013* a Petition for the Issuance of Writ of Amparo –Court of Appeals Manila Station
- 3.1.2. Filed Petition for Certiorari & Prohibition w/application for TRO &/or Preliminary Injunction – Supreme Court; S.C. issued Resolution dated 11th *June 2014* issued a TRO prohibiting any tribunal from proceeding with hearing on the Amparo case.
- 3.1.3. Administrative Case –in 21st *April 2014*, an administrative charge was filed against a police officer who failed to respond to the call for help of a resident during the forced eviction/displacement
- 3.1.4. Agrarian Coverage (CARPER) –on 10th *April 2014*, DAR dismissed the 2 petitions of SIDEKO (application for exemption and appeal of administrative decisions) & ordered the coverage of the 335 hectares CARPable portion of the island

3.2. Meta-legal

- 3.2.1. Peoples' Organization –*Federation of Sicogon Farmers & Fisherfolks Association (FESIFFA)* is the mother association of the 3 barangays' people's associations that were formed to unite the people [*Buaya Fisherfolks & Farmers Association (BUFFA)*, Brgy. Buaya; *Alipata Small Farmers and Fisherfolks Association (ALISFFA)*, Brgy. Alipata; *Asosasyon sang Mangunguma kag Mananagat sa San Fernando (AMMASAN)*, Brgy. San Fernando]
- 3.2.2. Community Rally –residents of the Island marched to the Capital of Iloilo Province and staged a rally at the Provincial Capital (seat of power) and pressured the Governor to resolve the dispute
- 3.2.3. Dialogue –on 15th *May 2014*, CHRPP initiated an Inter-Government Agency dialogue between the residents' 3 representatives and concerned government agencies; Recommendations were proposed, one of which is capacity building (para-legalism)
- 3.2.4. Onsite inspections –on 16th *May 2014*, conducted 2 onsite inspections (1) on the Sicogon Island and held an informal dialogue with the residents, and (2) on the corporation's proposed Resettlement Area
- 3.2.5. *Dialogue –a dialogue on the 2nd week of November 2014 was scheduled with the representatives of the corporation and representatives of the residents and the Petitioners to discuss the various HR issues involved*

4. Yolanda (Hainan) Tragedy

Human Rights Advisory CHR-A2014-001 "Human Rights Standards on Housing, Land, and Property Rights of Populations Affected by Typhoon Yolanda"

The key human rights issues identified by the Commission in the context of the Typhoon Yolanda response are as follows:

- a) Non-discrimination and equitable assistance in all housing, land and property rights interventions, especially during the beneficiary selection process for emergency shelter and resettlement, to ensure the protection of vulnerable populations;
- b) Ensuring that genuine consultation takes place with persons affected by displacement and resettlement, and that they are provided with comprehensive information on resettlement options available to them;
- c) Conducting any evictions, demolitions and imposition of "no-build or no-dwelling zones" only as a measure of last resort and in compliance with the process mandated by law;
- o Government must prioritize property restitution as the preferred remedy for persons displaced by natural disasters.

34. “No-build or no-dwelling zones” should only be implemented if the following conditions are met, to guarantee the rights of those affected:
- (a). **“No-build or no-dwelling zones” must not render people homeless.** For those unable to provide for themselves, the Government must ensure that adequate housing or resettlement is made available in a reasonable time;
 - (b). **Persons affected by “no-build or no-dwelling zones” must be genuinely consulted** on alternative relocation plans in accordance with the requirements set out above;
 - (c). **Compensation must be provided to affected persons** for losses to property and shall be made available in addition or as a voluntary alternative to resettlement; and
 - (d). **Administrative appeals and judicial review** must be available to those affected.”
5. The expiration of the CARP – DAR officially said that 522,405 hectares of agricultural land are yet to be distributed under agrarian reform asserts it can complete the land acquisition and distribution before the term of President Aquino III ends in 2016, despite the fears of farmers and reform advocates that CARP may end by June 30, 2014
6. Government is promoting the palm oil industry, and has done with a “Palm Oil Industry Roadmap for 2014-2023 Philippines’ oil palm production area is gradually increasing at an average rate of 7.62% per annum, from 38,599 hectares in 2008 to 53,014 hectares in 2012. CARAGA region⁴⁷ still dominates the production area of the country with 35% of the total area planted, followed by SOCSKSARGEN⁴⁸ with 30%
7. Zero Hunger Bill/ The Right to Adequate Food Framework Act of 2014 is pending in the lower house of Philippine legislature:

The bill requires the State to improve the following over time:

- Rural population’s access to productive resources
- Areas devoted to food production in every region
- Budget for programs creating access to productive resources
- Budget for agriresearch, irrigation, training, technology, credits, and rural development
- Rural female-headed households, rural women with legal title to agricultural lands
- Budget and coverage for social transfer and public nutrition programs for the disadvantaged
- Coverage of school feeding programs
- Public awareness on food and nutrition programs⁴⁹

⁴⁷ Designated as Region XIII. The Caraga Region was created through Republic Act No. 7901 on 23rd February, 1995. The region is composed of five provinces: Agusan del Norte, Agusan del Sur, Surigao del Norte, Surigao del Sur and Dinagat Islands; six cities: Butuan City, Cabadbaran, Surigao, Tandag, Bislig and Bayugan; 67 municipalities and 1,311 barangays. Butuan City is the regional administrative center.

⁴⁸ Officially designated as Region XII. The name is an acronym that stands for the region's four provinces and one of its cities: South Cotabato, Cotabato, Sultan Kudarat, Sarangani and General Santos City.

⁴⁹ <http://www.rappler.com/move-ph/issues/hunger/72657-zero-hunger-house-priority>

A Commission on the Right to Adequate Food will be mandated to monitor its implementation. Those whose right to adequate food are violated may file complaints, and the Commission will investigate and refer such cases to the Ombudsman. It will serve as an attached agency of the Commission on Human Rights.

Sec 4 of the bill says: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food, or means for its procurement."

Certain provisions in the bill that will help achieve food security for all include: increasing the agricultural productivity of small farmers and indigenous peoples by ensuring them the right to their land and providing technical, financial, and material assistance; increasing the amount of land used for food production; improving poor communities' ownership of land and access to resources; strengthening the role of women in food production; and the right to adequate food response during times of disasters and emergencies.⁵⁰

8. Proposed Amendments to Batas Pambansa Blg. 68 or the Corporation Code of the Philippines: Sections 15, 47, and 125

Amendment of Section 15 of the Corporation Code, to read as follows:

Section 15. *Forms of Articles of Incorporation.* – Unless otherwise prescribed by special law, articles of incorporation of all domestic corporations shall comply substantially with the following form:

ARTICLES OF INCORPORATION
OF

(Name of Corporation)

KNOW ALL MEN BY THESE PRESENTS:

The undersigned incorporators, all of legal age and a majority of whom are residents of the Philippines, have this day voluntarily agreed to form a (stock) (non-stock) corporation under the laws of the Republic of the Philippines;

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be " _____, INC. or CORPORATION";

SECOND: That the purpose or purposes for which such corporation is incorporated are: (If there is more than one purpose, indicate primary and secondary purposes);

It is part of the purposes of the corporation to support and respect the protection of internationally proclaimed human rights and make sure it is not complicit in human rights abuses.

THIRD: That the principal office of the corporation is located in the City/Municipality of _____, Province of _____, Philippines;

⁵⁰ <http://www.rappler.com/move-ph/issues/hunger/49653-house-bill-end-hunger>

xxx xxx xxx

Amendment of Section 47 of the Corporation Code, to read as follows:

Section 47. *Contents of by-laws.* – Subject to the provisions of the Constitution, this Code, other special laws, and the articles of incorporation, a private corporation may provide in its by-laws for:

1. A policy commitment to meet its responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights and such other processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.
3. The human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;⁵¹
4. [1.] The time, place and manner of calling and conducting regular or special meetings of the directors or trustees;
5. [2.] The time and manner of calling and conducting regular or special meetings of the stockholders or members;
6. [3.] The required quorum in meetings of stockholders or members and the manner of voting therein;
7. [4.] The form for proxies of stockholders and members and the manner of voting them;
8. [5.] The qualifications, duties and compensation of directors or trustees, officers and employees;
9. [6.] The time for holding the annual election of directors of trustees and the mode or manner of giving notice thereof;
10. [7.] The manner of election or appointment and the term of office of all officers other than directors or trustees;
11. [8.] The penalties for violation of the by-laws;
12. [9.] In the case of stock corporations, the manner of issuing stock certificates; and
13. [10.] Such other matters as may be necessary for the proper or convenient transaction of its corporate business and affairs.

Amendment of Section 125 of the Corporation Code, to read as follows:

Section 125. *Application for a license.* – A foreign corporation applying for a license to transact business in the Philippines shall submit to the Securities and Exchange Commission a copy of its articles of incorporation and by-laws, certified in accordance with law, and their translation to an official language of the Philippines, if necessary. The application shall be under oath and, unless already stated in its articles of incorporation, shall specifically set forth the following:

⁵¹ These three new provisions are copied verbatim from the UNGP Principle Nos. 15 and 16(c)

1. The date and term of incorporation;
2. The address, including the street number, of the principal office of the corporation in the country or state of incorporation;
3. The name and address of its resident agent authorized to accept summons and process in all legal proceedings and, pending the establishment of a local office, all notices affecting the corporation;
4. The place in the Philippines where the corporation intends to operate;
5. The specific purpose or purposes which the corporation intends to pursue in the transaction of its business in the Philippines: Provided, That said purpose or purposes are those specifically stated in the certificate of authority issued by the appropriate government agency;
6. An undertaking to support and respect the protection of internationally proclaimed human rights and make sure it will not be complicit in human rights abuses;
7. [6.] The names and addresses of the present directors and officers of the corporation;
8. [7.] A statement of its authorized capital stock and the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any;
9. [8.] A statement of its outstanding capital stock and the aggregate number of shares which the corporation has issued, itemized by classes, par value of shares, shares without par value, and series, if any;
10. [9.] A statement of the amount actually paid in; and
11. [10.] Such additional information as may be necessary or appropriate in order to enable the Securities and Exchange Commission to determine whether such corporation is entitled to a license to transact business in the Philippines, and to determine and assess the fees payable.

Attached to the application for license shall be a duly executed certificate under oath by the authorized official or officials of the jurisdiction of its incorporation, attesting to the fact that the laws of the country or state of the applicant allow Filipino citizens and corporations to do business therein, and that the applicant is an existing corporation in good standing. If such certificate is in a foreign language, a translation thereof in English under oath of the translator shall be attached thereto.

The application for a license to transact business in the Philippines shall likewise be accompanied by a statement under oath of the president or any other person authorized by the corporation, showing to the satisfaction of the Securities and Exchange Commission and other governmental agency in the proper cases that the applicant is solvent and in sound financial condition, and setting forth the assets and liabilities of the corporation as of the date not exceeding one (1) year immediately prior to the filing of the application.

Foreign banking, financial and insurance corporations shall, in addition to the above requirements, comply with the provisions of existing laws applicable to them. In the case of all other foreign corporations, no application for license to transact business in the Philippines shall be

accepted by the Securities and Exchange Commission without previous authority from the appropriate government agency, whenever required by law.

National Human Rights Commission of Myanmar

Daw Than Nwe

Not many people are aware of the existence of the Commission or of its mandate, so I will give a brief overview to start off my presentation. Since the change of government in Myanmar in March 2011, our country has opened up in many respects. The initial MNHRC was established under Notification No. 34/2011 dated 5th September 2011 of the Government of the Republic of the Union of Myanmar (Presidential Order) and was composed of 15 members. The current MNHRC was formed under Presidential Order No.23/2014, dated 24th September 2014 and is composed of 11 members. The Commission was reformed based on the views expressed by the Parliament that the former Commission was not constitutional, as required under the Paris Principles. The newly formed Commission has also received a broader mandate, such as for investigations and questioning. The MNHRC became a Member of SEANF on 12th September 2012 and Associate Member of the Asia-Pacific Forum (APF) on 5th November 2012, and is now trying to become a member of the International Coordinating Committee of National Human Rights Institutions (ICC).

The Myanmar National Human Rights Commission Law No.21 / 2014 was promulgated on 28th March 2014. Its objectives are:

- (a) To promote and protect the fundamental rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar effectively;
- (b) To create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations;
- (c) To effectively promote and protect the human rights contained in the international conventions, decisions, regional agreements and declarations accepted by Myanmar;
- (d) To engage, coordinate, and cooperate with the international organizations, regional organizations, national statutory institutions, civil society and registered non-governmental organizations working in the field of human rights.

The members of the current Commission come from different backgrounds, including diplomats, academia, advocates, representatives from the PYIDAUNGSU HLUTTAW, representatives from the Myanmar Women's Affairs Federation and representatives from Non-Governmental Organizations. These members are appointed through a Selection Board which submits to the President a list of thirty nominees selected in accordance with these procedures. The President selects and appoints in coordination with the Speaker of the PYITHU HLUTTAW and the Speaker of the AMYOTHA HLUTTAW, members of the Commission from the list of nominees submitted by the Selection Board. The law has guaranteed the 'independency' of the Commission by requiring that the Commission 'consider and act independently on matters that fall within its powers'.

Duties and Powers of the Commission are as follows:

- (a) promoting public awareness of human rights and efforts to combat all forms of discrimination through the provision of information and education;

(b) carrying out the following to monitor and promote compliance with international and domestic human rights laws:

(i) recommending to the Government the international human rights instruments to which Myanmar should become a party;

(ii) reviewing existing laws and proposed bills for consistency with the international human rights instruments to which the State is a party and recommending the legislation and additional measures to be adopted for the promotion and protection of human rights to the PYIDAUNGSU HLUTTAW through the Government;

(iii) assisting the Government in respect of its preparation of reports to be submitted under obligation in accordance with the international human rights instruments to which the State is a party and on the contents of those reports.

(c) verifying and conducting inquiries in respect of complaints and allegations of human rights violations;

(d) visiting the scene of human rights violations and conducting inquiries, on receipt of a complaint or allegation or information;

(e) inspecting the scene of human rights violations and, after notification, prisons, jails, detention centres and public or private places of confinement;

(f) consulting and engaging the relevant civil society organizations, business organizations, labour organizations, national races organizations, minorities and academic institutions, as appropriate;

(g) consulting, engaging and cooperating with other national, regional and international human rights mechanisms, including the Universal Periodic Review, as appropriate;

(h) responding to any matter referred to the Commission by the PYIDAUNGSU HLUTTAW or the PYITHU HLUTTAW or the AMYOTHA HLUTTAW or the Government;

(i) responding to the specific matters referred by the President in connection with the promotion and protection of human rights;

(j) preparing reports in respect of the functions of the Commission and publishing them as appropriate;

(k) carrying out anything incidental or conducive to the implementation of any function of the Commission;

(l) submitting to the President and the PYIDAUNGSU HLUTTAW an annual report on the situation of human rights in Myanmar, the activities and functions of the Commission, with such recommendations as are appropriate;

(m) submitting special reports on human rights issues to the President as and when necessary.

From September 2011 to September 2014, the MNHRC has been working on several key areas, namely, complaints on violations of human rights, prisoner issues (eg torture, jail conflicts), relations with outside human rights bodies, missions to Kachin and Rakhine states, the issuance of public statements, investigations on land issues and criminal cases, meetings with the public and the media, the translation and publication of the Universal Declaration Human Rights (UDHR), the

establishment of a library and website, participation in the drafting of the Violence Against Women document, holding workshops on the United Nations Covenant on Economic, Social and Cultural Rights (UNCESCR), the Universal Periodic Review (UPR), business and human rights, torture, disability and so forth, undertaking staff training and NHRI regional workshops, drafting an enabling act of the Commission⁵² and others. The work on prisoners' release, living standards and torture are the areas where the Commission has been most successful to date.

Land conflict cases are numerous across the country. Of the 7,113 complaints received by the MNHRC in 2011 – 2014, 1,159 (or 59%) were land-related complaints, some are private matters but some involving the authorities, military regiments and companies in cases of land confiscation, compensation issues, substitution issues and tenurial issues. These cases have been sent by the MNHRC to the relevant government authorities to address.

The MNHRC has carried out several field missions following complaints. An example is the mission held on 7th – 12th October 2012, when the Secretary of the Commission and 3 Members visited the Letpadaungtaung copper mine and Sabetaung and Kyesintaung mines in Salinggyi township of Sagain region. Problems in this particular case included the displacement of local communities, the loss of farmland and herding land of local communities and the fact that inadequate compensation. The MNHRC team examined the effects of the mines on the socio-economic lives of the people of the area and the actions being taken by the company to minimize the impacts of the operations on the environment and communities' health. The findings of the team were also conveyed to the Office of the President for consideration. The report that resulted from this mission led to the formation of a National Commission of Enquiry headed by Daw Aung San Su Kyi.

Lao PDR (GAPE)
Khampanh Keovilaysak

(Presentation title: Experiences on land issues in GAPE's working areas, Southern Lao PDR)

GAPE is a grassroots IP organisation of Lao PDR that works primarily in Champassak province, Paksong district and Bachieng district. Agribusiness is expanding in these regions, notably rubber plantations (three active companies – Lao-Viet cooperation, Duckluck and Bing Yeuang in Bachieng) which cover a total area of 18,541 ha, or 23.51% of the total district area. These lands, however are also home to local villagers who actively use it for their subsistence agricultural activities. Most of these peoples are indigenous groups (eg the Ohn, Yahn, Ong, Jeruk). In Paksong, land concessions are a problem together with hydropower facility construction. Rubber has been planted over 5,921 ha of land (or 1.67% of the district's total land area). Conflicts have emerged between four villages and the company (Outspan, who holds 1,300 ha) and no fair compensation has been paid to these communities for the loss of their lands. In another concession in Paksong, 2,500 villagers from 11 villages were resettled by the company HHPC in 1995 and while they were provided with a new settlement area, this was lacking in agricultural land, thus threatening the food security of the communities. The company has provided various facilities to the communities (eg schools, housing, health service centres) but the key concern of the communities is that their traditional land has been lost – what they want is their own land back. As a result of the shortage of agriculturally suitable land, the villagers must now purchase their food with the little money they can earn. The forest, which they have customarily depended on, is rapidly vanishing to make way for more rubber.

⁵² The UN, EU and APF were instrumental in the drafting of the MNHRC law.

Lao law is relatively strong on paper when it comes to human rights. Article 17 of the Constitution, for instance, states that ‘land is national heritage’ and that the State must ‘ensure rights to use, transfer and inherit [land]’. Article 27 notes that the State must ‘protect rights and fair benefit of workers’. Article 41 states the ‘right to lodge complaints and petitions’ of citizens. Article 42 states that the ‘rights of Lao citizens in their bodies, honour and houses are inviolable’. Article 44 notes that ‘Lao citizens have rights and freedom of speech, press and assembly’. Decree 88 of the Implementing Land Law further recognises ‘customary land rights’ (Article 26), although it should be noted that this does not apply to IP’s traditional practices, such as shifting agriculture. Finally, Decree 192 describes compensation principles that the State should abide by (Article 6). However, the law is one thing and the reality is quite another. The Constitution is not being put into practice by government authorities.

GAPE’s activities include carrying out impact surveys, scaling up community access to complaints mechanisms, training village legal volunteers, provided village legal training, organising village exchange visits, facilitating villagers’ access to justice, as well as policy advocacy. Problems are faced in the impact surveys as the process tends to be highly controlled and a lot of information kept out of the public domain. The same restrictions are faced in conducting meetings in villages, such that communities find it difficult to freely raise their voice and express their grievances.

GAPE has learned many valuable lessons in its work to date. Justice is difficult to achieve given the powerful interests of influential individuals behind the land deals. Local authorities lack commitment to provide remedy to communities. Villagers lack knowledge on existing grievance mechanisms and how to activate or access them. And CSO movements are highly controlled and restricted. It should also be noted that many investors in Lao are from China, where safeguards and regulations on operations are lacking, and therefore there are limited avenues for CSOs to pursue in securing the rights of communities and ensuring they are provided remedy where human rights are abused.

Cambodia (CHRAC)

Sok Leang

The Cambodian government’s Human Rights Committee was established in 2000, headed by a Senior Minister, a government advisor and the Head of the Anti-Corruption Unit (ACU). In September 2006, a conference was held in Cambodia on the establishment of an independent NHRC. The conference was organised by the Royal Government of Cambodia (represented by H.E. Om Yentieng) and the Cambodia Working Group for an ASEAN Human Rights Mechanism (represented by Mr. Kem Sokha, now the vice president of the National Assembly from the opposition party). In this meeting, the Prime Minister expressed his conviction of the need for the establishment of such a Commission and spoke of human rights as being within the mandate of the government and the responsibility of all. The Prime Minister also expressed Cambodia’s support for the establishment of an ASEAN human rights mechanism. A joint committee between the government representatives and civil societies was then established to proceed to create an NHRI for Cambodia. However, it is now nearly 10 years since this conference took place and yet Cambodia still does not have an NHRI in place.

Current human rights mechanisms in the country are the government’s Cambodian Human Rights Committee, the National Assembly’s Commission on Human Rights and the Senate’s Commission on Human Rights. However, these institutions are not widely supported because none are fully functioning, and neither are they transparent nor independent in any shape or form. The Cambodian Working group has now finalized the draft law on the establishment of the NHRI, which needs to be discussed with the government as part of a joint committee. Only after this draft has been agreed to

by the government can it proceed to the council of ministers for review and approval, before going to the National Assembly and the Senate.

There are however several obstacles to the establishment of a genuinely independent and effective National Human Rights Institution in Cambodia. The ruling party has been in power for more than 20 years, and many of the current government officials are family members of these, with their own political and economic interests. Many businessmen have also entered politics, leading to the formation of interest groups within politics. Power abuse through connections, wealth and influence remain serious concerns. These individuals are worried about the establishment of an independent NHRI as they have been in power for a long time and have committed many human rights abuses in that time – a transparent and accountable Commission would threaten them with investigation and punishment, so they are reluctant to support it. The Head of the ACU has investigated some cases, but not in a systematic way, and he has been criticised for not explaining why certain cases have been treated over others and based on what kind of methodology.

A number of opportunities are also visible. The fact that the Chairman of the Senate's Human Rights Commission is from the opposition party gives us some hope that communications with that body can be improved. Since the national elections in July 2013, there has been an increase in the voice of the opposition party, which is pressing more on the corruption side in the National Assembly, tends to disclose more information on state expenditure and denounces instances of nepotism. Before that, ruling party had more than two thirds of the seats in Parliament, and so basically could do whatever they wanted, regardless of the law. Now, civil society sees possibilities and opportunities in the rebalancing of party power. Another positive development is that the draft law on the establishment of an NHRI was finalised by the Cambodian civil society Working Group a few weeks ago.



Breakout group discussion: on community-based conflict resolution mechanisms (Holly Shrumm)

Discussion

- The situation in Cambodia is a sobering reality check in terms of the potential of setting up a NHRC in the country. Opportunities to use formal mechanisms are constrained by either anti-democratic forces (Thailand), novelty of process (Myanmar), or yet to come into being (Cambodia).
- We should note the enormous importance of human rights work and challenges for human rights activists across the region to different degrees, but particularly in the context of Lao PDR.
- What is the peak body for human rights given that many of countries in ASEAN either do not have NHRCs (eg Cambodia, Lao, Vietnam) and many have poor records for human rights: is ASEAN the right body to push through some of things we would like to see happening at the moment?
- The most important mechanism for fighting for rights is the Commission in partnership with civil society and the people. We need to strengthen peoples' networks towards community research and participatory methods. The voice of civil society is critical to any change being able to take place in terms of respect for rights. The NHRCs can act as bridges from local to international and regional platforms (eg ASEAN, UN, EU). We need to 'think local but act global'.
- The AICHR/ASEAN did help to get the trans-boundary cases going and gave legitimacy to cross-boundary human rights investigations.
- There is a culture in Asia also in terms of natural resource management and protection and perspectives on natural resources which is different to the West in many ways.
- Komnas HAM: an important precedent was established in 2012 in the case of a migrant workers case sentenced to the death penalty in Malaysia, in which the Indonesian Chair cooperated with the Ministry of Foreign Affairs to carry out a joint inquiry on the case, followed by political lobbying. They also worked with SUHAKAM and the Malaysian government. Another case concerns the stolen children from East Timor. During Indonesian colonisation, 4,000 children were taken to Indonesia without the consent of their families. These types of cases are not easy to investigate, and the Commission is still in process of doing this together with the East-Timor Provedor, and with CSOs (including ELSAM). The process up to now has been between the NHRI and NGOs as the government is not so serious about this case. We are trying to lobby the government to take the issue more seriously.
- Thailand: NHRCs are not organisations of power – we are there for awareness-raising and fact-finding. We are not hegemonic or of the government, or political. We are just there for the wellbeing of the people.
- SUHAKAM: we have received some complaints on migrant workers from the Myanmar and Bangladesh NHRCs, and engaged with local authorities for them to take the complaints further. We have no enforcement authority and can only engage with relevant government agencies. Once we have communicated complaint, we will follow up with respect to their responses and actions.
- Philippines: there are a number of scenarios possible for NHRCs. First, we can investigate particular foreign business enterprises investing in the Philippines and committing human rights abuses. We can engage local diplomatic offices of this country. The NHRC on its own can conduct investigations without much interference from government agencies. Or, another scenario is that another investigating body (NHRI) can request information from the PNHRC about any rights violations by that company. In that case, the NHRC will allow such investigations to push through. If it involves local Filipinos within our territorial jurisdiction, we will carry out own independent investigation. We wish to have terms of reference with these inquiring bodies which are foreign to us that ensure the independence of the PNHRC is maintained.

- MNHRC: we do have cases related to the trans-boundary movements of workers, and sometimes some trafficking cases. For migrant workers, we have a comprehensive task force to address migrant workers issues and anti-trafficking (government bodies, Minister of Home Affairs). In this country there are many Commissions and Committees and Focal Points on this issue (eg the Farmland Investigation Commission at Parliament). Complaints will be addressed to at least 14 Committees and Commissions. Our mandate is to do fact-finding and send information to relevant authority departments, but we have received very few trans-boundary complaints.
- Cambodia: in the Koh Kong case, the TNHRC intervened. We needed to go through available channels in country first, and once we had exhausted these, we approached the TNHRC. We need to try whatever works and key to this is identifying and working with people of good will within the institutions – Dr Niran is one such example. A lot depends on will.
- Political elites are another major issue. In Cambodia, people who have authority or monopoly to issue licenses to recruitment agencies, give licenses to their family members (nepotism). We need transparency and due diligence to overcome this.
- In Cambodia, during the free market economy in the early 1990s, people possessed/owned land/property in ways that depended on authorities. There was no need to get cadastral certification if you wanted to buy or sell land. Few people have registered land and property. By law, one needs to have land/property at the cadastral committee to have official legal title to the land. However, people in the countryside hold no official documents to prove their ownership of land. In rural areas, it is very easy to appropriate land especially where companies are well connected with political elites. Tenurial vulnerability is the key problem, and so we need to push for land registration to strengthen communities' evidence of rights to land.
- In some cases presented, the political elites or those sitting in government are part of the problem in human rights abuses (eg land appropriation of IPs and local communities). Are there any examples of how to deal with this political situation? It seems that governments sometimes use human rights issues as a political mask to cover their face but carry out no real implementation at the grassroots level. Are there any examples of how to deal with the realities of governments using human rights to 'cover their face'?
- There is a lack of information about investments being shared with local communities, and this is the start of the problem. Control of information is power, and companies and States abuse this, hence the importance of fact-finding by institutions like the NHRCs.
- The PNHRC is often branded as communist or leftist by political elites because it supports the rights of farmers and indigenous peoples. We usually use a persuasive approach to show them that adhering to principles of human rights is for the benefit of all, and for the common good. If this approach will not take effect, we have the capacity to at least do naming and shaming (including at the international level through the UPR). In terms of political elites, the question we ask is, how can we turn them into our allies? For instance, the PNHRC is now engaging with military because we think it is better to engage them in face to face dialogue to find solutions and increase mutual understanding.
- We heard about examples where NHRCs could investigate and conduct fact-finding missions in other countries (ie trans-boundary). What is mechanism for such cross-boundary activities? Could this be an avenue to also reinforce NHRCs in other countries? We noted earlier the different levels of openness to issue of human rights across countries, and the sometimes highly limited political space of CSOs to engage on agribusiness and human rights. A progressive NHRC can make a difference by investigating in other countries. Is there any possibility to interact with CSOs in those more progressive countries?
- How do we ensure the standards and quality of NHRCs in dealing with the huge amount of complaints that they receive? How are complaints monitored in terms of implementation of recommendations? What about the use of other complaints mechanisms (eg OECD, RSPO) -

do NHRCs have any form of engagement with them, or do you feel this would be useful, and if so, what kind of engagement?

Key points from breakout group discussions

1. *Analyse the obstacles that block implementation of laws and identify solutions to overcome these obstacles*
 - Duty-bearers do not fully understand laws: they need to be trained on how to implement laws effectively.
 - Legal and practical barriers: categorization of rights are part of the problem (eg land rights).
 - Conflicts of laws: lack of harmonization between international, national and provincial laws, and also certain agencies in our respective governments have different mandates and interpretations of laws.
 - Disregard for international law: these are not being implemented or taken into account in the revision of existing laws.
 - Budget/skills: lack of capacity and competency within the government particularly at the provincial and district levels.
 - Structural barriers in terms of bureaucratic red tape and complex administrative procedures.
 - No harmonization of laws at different levels of authority as well as overlapping jurisdictions of various government bodies.
 - Legal fragmentation of landscape, the absence of a holistic landscape perspective in the law, leading to the breaking down of this landscape into parts which do not make much sense in and of themselves, as they are relational and dependent on other elements of the landscape (eg forest, rivers, settlements, agriculture).
 - No clear procedural by-laws: the laws may be good on paper, but governments do not know how to put them into practice.
 - Challenges for NHRIs to get their recommendations adopted by the government: these are coming strongly from the NHRIs but the challenge is to get them heard and acted upon.
 - Manipulation/inferior status of customary laws including by co-opted local elites and spurious claimants.
 - Recommendation there should be one centralised law reform organisation (maybe in the form of a commission or committee).
 - Certain agencies in our respective governments have different mandates and interpretations of laws. Also there are different levels in the political structure (eg national and local legislature).
 - It is important to ensure that NHRIs, NGOs, CSOs engage their governments and legislature to give them proper insights to a rights-based approach to the legislative process which is participatory and bottom-up, not top-down. Based on experience, consultation and the involvement of stakeholders in the legislation process is critical to better long-term outcomes.

2. *Promoting coordination among NHRIs in the region to address human rights abuses associated with trans-boundary investments, labour migration and trafficking*
 - Need to include other stakeholders in the discussion, not just NHRIs, for instance, CSOs and the media for wider dissemination of issues.
 - The SEANF meets at least three times a year to discuss common issues and this is a basis for further and stronger regional cooperation, and also pushing for more focus on trans-boundary issues. It is high time that we do this.
 - Need to engage more with the AICHR, although it does not recognise SEANF as a legal entity which makes it more difficult but there is no harm in trying to push for recognition. Individual NHRIs should engage with their country AICHR representatives and build personal and professional contacts with them. We should do the same with the Committee on Women and Children (which also has country representatives) and the Committee on the Rights of Migrant Workers.
 - Continue to push for an ASEAN regional human rights court (and draw from experiences of Africa and Latin America in setting up and operationalising regional human rights courts)
 - NHRIs should engage actively with certification or regulatory bodies (eg RSPO, MSC) so we are on same page, issues are brought to their attention and lessons learned are shared towards better practice by states and corporations.
 - Took note of ASEAN Community that will be formalised in 2015. This formalisation may be an opportunity to bring up issues and for this, the NHRIs need to engage with ASEAN leaders so the community does not just look good on paper but works on the ground too. In other words, we need to push for a 'people-centred' ASEAN, and this will not happen if human rights issues are not given priority.

3. *Overcoming the asymmetry of power in relations between companies and communities: sharing information, building community capacity, providing legal support and making FPIC effective? Clarify who are IPs in the ASEAN context.*
 - Need to differentiate cases of self-ascription and ascription by others: IP rights are not defined under international law, although criteria do exist and self-determination is a key principle in the identification of IPs.
 - IPs peoples can most usefully be define as peoples who have continuously lived as organised communities on a communally-bounded and defined territory. They have a unique relationship and ties to their traditional territories, lands, seas and waters. They retain some or all of their own social, economic, cultural and political institutions.
 - Although there is no definition of IPs per se, the criteria should be specific enough to discourage 'free riders'.
 - There must be laws that recognize the right of communities to their lands and their right to give or withhold consent to projects in their territory (FPIC).
 - Communities must be provided with, and be able to access, accurate, independent and complete information in a language that they understand.
 - Awareness raising, capacity building and provision of legal support for communities must be scaled up.
 - The capacity and awareness of duty-bearers (eg government and private sector) on IPs and IPs' rights, particularly FPIC, must also be scaled up.
 - The role of media is important to publicise cases of IP rights' abuses and to pressure actors into remedying these violations through legal reform.
 - Laws or guidelines must require the presence of independent sources of information in the consultation process with communities.

- Communities must be able to access technical assistance in understanding the information presented.
 - There must be laws or guidelines that require FPIC before projects can be conducted on communities' land.
 - Implementing agencies (duty-bearers) must be empowered to carry out their duties properly.
 - FPIC process must be independently and adequately funded – it is a long-term and iterative process, not a one-off tick-the-box exercise.
 - Awareness-raising and building capacities of communities to participate in FPIC process, negotiate with companies, and access redress and grievance mechanisms are key.
 - There must be sanctions for companies that violate FPIC.
 - An effective monitoring system for FPIC needs to be set up.
 - Laws should ensure that there is no undue influence over the FPIC process (eg cases of military and high-level government officials attending FPIC consultations).
 - Third party impartial participants should act as observers during the FPIC process (they do not take sides with either party, and can mediate conflicts or disputes).
 - The law should also contain provisions to address situations where community leaders are co-opted by company and no longer represent the interests of their community. In Indonesia in many cases, community leaders are part of the problem (elite co-optation) and play a role in human rights abuses, when they take sides with companies – root of the problem, and big issue in terms of collective rights and representation.
 - Examples of successful FPIC processes and outcomes should be shared with communities, along with examples of the consequences on communities of lack of FPIC
 - Governments should consider imposing limitations on the FPIC processes (eg in 'no-go zones', such as irrigated land and land planted with staple crops).
 - Information is important in terms of power-sharing. It is not enough because sharing is one thing, understanding is another. Communities need help to understand the information they receive. Accuracy of information also important. Laws must require independent source of information for communities. FPIC should not be a way for States to get away from their responsibility to communicate with communities. Sometimes, communities seem to give their consent to a project, even though they know it is not to their advantage. Need capacity-building for duty-bearers too eg government officials, companies who may not know about FPIC (or even State laws). Sanctions must lead to obligations on companies to change their practice.
4. *How to counter money politics and the capture of cabinet and legislature by vested interests and ensure strong political leadership for reform*
- Track/follow the money/capital, markets, trades of trans-boundary cases/investments "China Factor" or untouchable investors/states.
 - Democratization of licensing regimes (bottom up approach against local problems).
 - Improve access to benefits sharing.
 - Address defamatory measures/clauses exploited against activists and communities. NHRIs to review and investigate defamation, sedition, false cases against activists and affected communities.
 - Encourage ASEAN countries to ratify the UN Convention against Corruption (Indonesia, Malaysia, Cambodia, China, Singapore, Brunei have ratified it).
 - Develop different legal and institutional mechanisms to defend human rights defenders/activists, affected communities.
 - Media strategies to expose cases (local and international levels/media).
 - Social media campaigns.

- Undertake/promote transparency initiatives (open documents, open contract etc).



Jesus Torres presenting on the work of the Philippines National Human Rights Commission (Holly Shrumm)

DAY 3: THURSDAY 6th NOVEMBER

The World Conference on Indigenous Peoples and safeguarding indigenous peoples' land and human rights
Devasish Roy, UN Permanent Forum on Indigenous Issues

The World Conference on Indigenous Peoples (WCIP) was the first ever World Conference on the subject of indigenous peoples. With regards to IP participation, although formally a meeting of the UN General Assembly, the WCIP included IPs at all important stages, including regional and thematic caucuses (representatives of caucuses of seven geographical regions and two thematic groups (women and youth)) in all preparatory meetings and UN General Assembly consultations, and these nine IP Caucuses also had their own preparatory caucus meetings and produced their own regional/thematic Declarations. The WCIP saw IP representatives in the 'co-drivers' seat - IP representatives were appointed as Co-Facilitators, Co-Chairs and Co-Advisers, along with UN Member-State representatives, on an equal basis, in both the informal consultations and the formal WCIP 'Round Table' and other meetings.

The Global Indigenous Peoples' Caucus met in Alta, Norway and unanimously adopted the *Alta Outcome Document*, which formed the basis of the *Zero Draft* of the Outcome Document, and was formally mentioned in the Final Outcome Document (of WCIP) and acknowledged as a formal UN

document. The Outcome Document of the WCIP was adopted by the UN General Assembly with the Free, Prior and Informed Consent of indigenous peoples as the outcome of a Global UN Conference, including Heads-of-States and Heads-of-Governments and other High-Level (ministerial-level) Delegations of UN member States. The Outcome Document contains ‘action-oriented’ proposals and recommendations, including those drawing upon ‘best practices’ and acknowledges and *welcomes* the preparatory meetings and processes of the Indigenous Peoples and their Declarations, including the *Alta Outcome Document* [Art 2]. The Outcome Document also reaffirms support to UNDRIP [Art 3].

It reaffirms the commitment of UN member States to apply [the right and principle of] Free, Prior and Informed Consent (FPIC) before ‘adopting and implementing legal and administrative measures affecting [Indigenous Peoples]’ [Art 3]. Specifically on the application of FPIC on land-related matters, the Document recognizes the commitment of States to [apply FCIP] ‘prior to the approval of any project affecting [Indigenous Peoples] lands or territories and other resources’ [Art 20]. Reference is also made to the UN Guiding Principles on Business and Human Rights in Art 24, which reiterates the need for adherence to the Ruggie Principles in terms of the commitment to prevent abuse of indigenous peoples’ rights. Commitments were also made in the Document towards cooperation with indigenous peoples ‘to develop and implement [National Action Plans], Strategies or Other Measures to achieve the ends of the [UN Declaration on the Rights of Indigenous Peoples]’ [Art 8]. In terms of indigenous peoples’ justice institutions, the Document also acknowledges the relevance of Indigenous Peoples’ *Justice Institutions* and commits states to *cooperate and dialogue with Indigenous Peoples* for ‘dispute resolution, justice and harmonious relations’ [Art 16].

Acknowledging the role of indigenous peoples ‘through traditional sustainable agricultural practices, including seed supply systems, and access to credit and other financial services, markets, secure land tenure’ etc. [Art 26], the signatories to the Document ‘commit [ourselves] to developing, in conjunction with the indigenous peoples concerned, and where appropriate, policies, programmes and resources to support indigenous peoples’ occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition’ [Art 25]. Commitments are also made to ‘respecting the contributions of indigenous peoples to ecosystem management and sustainable development, including knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures.’ [Art 35]

The Document also acknowledges the contributions of ‘Indigenous Peoples’ Traditional Knowledge on Conservation of Natural Resources and Protection of Biological Diversity ‘ [Art 22] and the ‘contributions of Indigenous Peoples to Sustainable Development and protection of the planet, ecosystems and ‘Mother Earth’’ [Art 34]. Finally, the Document confirms that ‘indigenous peoples’ knowledge and strategies to sustain their environment should be respected and taken into account when we develop national and international approaches to climate change mitigation and adaptation’ [Art 36]. With regards to disaggregated data and holistic indicators, the Document acknowledges the need to disaggregate data and statistics and utilise ‘*Holistic Indicators of Indigenous Well Being*’ [Art 10].

Key points from break-out group discussion: moving from voluntary to binding frameworks

Lao PDR and Cambodia group

- Government institutions and CSOs must work together to harmonise existing national laws with international human rights law as part of legal and policy reform processes.
- Existing voluntary standards are a step in the right direction, and can be instrumental to push for broader legal and policy reform, in line with the higher benchmark required under these standards.

- NHRIs should monitor the implementation of human rights laws and standards on a continuous and systematic basis, rather than on an ad hoc basis. For this they require a greater budget, resources and capacity, and this is where CSOs and donor agencies are critical.
- Human rights investigations and monitoring should be done by NHRIs in collaboration with relevant CSOs and academics.
- Evidence-based research into human rights abuses should be published as reports to lobby policy-makers to rectify legal loopholes and lack of harmonization with international law.
- Complaint mechanisms should also have sanction mechanisms, scaled to the degree and severity of the cases in question. Without such sanction mechanisms, they will remain weak and ineffective.
- Awareness of government authorities, the police and the military on human rights issues both in law and practice, must be raised at the central and local levels.
- In countries where political frameworks make it difficult and sometimes even dangerous for land and human rights activists to work, support should be sought from international agencies, including the UN.

Indonesia and Malaysia group

- Laws may be good on paper, but it is the implementation that counts, and for that to be effective, understanding of the law by local and provincial government authorities needs to be scaled up.
- CSR is now a binding obligation in Indonesia – other countries should seek to make this compulsory as well, and ensure that CSR also fully incorporates human rights elements and principles.
- The ASEAN treaty on haze and existing environmental laws can be used to push for human rights in parallel to environmental protection, and to show that both are intrinsically related and mutually dependent.
- Discussions on setting up an environmental court at the ASEAN level are underway – we should follow developments on this initiative as it may offer an opportunity to raise human rights issues.
- Stronger cooperation is needed between NHRIs in ASEAN to strengthen their individual and collective actions.
- A comprehensive compilation of existing regulations pertinent to the agribusiness sector should be produced by each ASEAN country's NHRC in collaboration with CSOs, to identify relevant State laws, voluntary or market-based regulations (eg World Bank safeguards, RSPO, OECD etc) and how these can be harmonised upwards.
- A review of the elements of existing national law that infringe on peoples' human rights should be carried out, publicised and used for lobbying purposes (note that this is already part of NHRIs' mandate).
- Komnas HAM is carrying out outreach to State enterprises and private companies on the UNGP through focus group discussions towards developing national guidelines for business and human rights.
- SUHAKAM is engaging with the private sector to raise awareness on the UN GP as well. A National Action Plan has been adopted by the government, which will address the issue of corruption and social impacts of business operations, with indicators. The NHRI is also part of this Action Plan, concentrating on IPs in forested areas (same with NHRI Indonesia).
- Ongoing challenge to be addressed is the different understandings of the difference between CSR and human rights by companies and the government.
- Human rights awareness tends to be very poor among companies across Indonesia and Malaysia.

- How do we create incentives and disincentives for companies to adhere to human rights standards?
- How do we develop or strengthen consumer awareness as well? Eg product boycott of companies that violate human rights? Consumer campaigns?
- Potential support from OJK (green banking programme in Indonesia)?
- NHRIs should consider organising a conference with businesses to talk about human rights and agribusiness (next year's Annual Dialogue maybe?)
- Malaysia: NGOs need to keep pushing the human rights agenda.

Myanmar group

- Monitoring and evaluation of law enforcement and duty-bearers needs to be systematised.
- Transparency and accountability, including through information sharing, needs to be required under laws.
- A review of existing laws should be carried out to ensure social and environmental safeguarding measures are in line with regional and international standards (eg FPIC, EIA, SIA).
- Capacity-building and awareness-raising needed for duty bearers but also CSOs and local communities.

Philippines and Thailand group

- Existing standards include Ruggie Principles, OECD, FAO, Global Compact, CSR policies, Equator Principles, international human rights treaties, multilateral environmental treaties, RSPO, FSC etc.
- Verifiers and/or indicators for adherence to human rights principles need to be contextually developed.
- Popularisation of human rights with businesses should be undertaken to encourage them to develop companies' human rights policies or Standard Operational Procedures (SOPs) within specified time frames.
- Human rights impact assessments should be made compulsory under the law.
- Elements of voluntary guidelines should be incorporated into domestic law.
- Need to lobby the legislature to push for rights-based legal and policy reform (eg amendments of corporation codes, executive orders and policy directives).
- Government should develop guidelines on human rights (eg inclusive of requirements for participation, transparency, accountability, compliance, grievance and redress mechanisms).
- Spatial planning should be re-done to properly map and accommodate community livelihoods and territories.
- Test cases in courts could help get the laws passed, through invoking the Ruggie Principles and creating jurisprudential precedents with wider relevance in the country and in the region.
- Continue to engage with AICHR to push for a regional human rights court mechanism.
- Continue cooperation with international bodies through bilateral and multi-lateral agreements on human rights adherence.

Key points from break-out group discussions: conflict resolution mechanisms

Community-based conflict resolution mechanisms

- Existing community conflict resolution mechanisms need to be thoroughly documented and scaled up, as well as innovated and adapted to new situations by communities with support of CSOs.

- Access to fair, transparent, clear and impartial information for communities is critical (as well as media and press access).
- Access to justice is critical.
- Platforms for community dialogues at the national and regional levels are necessary (with CSO facilitation).
- Indigenous peoples' customary justice system should be documented as community protocols, as well as its relation to State court systems (differences, similarities, pros and cons, where can they converge, forms of acceptable evidence etc).

State conflict resolution mechanisms

- Need to revitalise the role of the SEANF.
- CSOs in countries without an NHRI should pressure the government for the establishment of one that will also be a member of the SEANF.
- SEANF should urge the AICHR to establish institutionalised consultation mechanisms at the regional and national levels.
- Joint studies on agribusiness and human rights should be carried out by SEANF as thematic studies.
- Need to encourage SEANF to carry out a joint study on regional conflict resolution mechanisms.
- Need to connect voluntary certification processes with NHRIs and SEANF in two-way dialogue.
- Need to eliminate reservations in international human rights treaties by ASEAN governments (eg CERD).

Private sector conflict resolution mechanisms

- Every company should set up a grievance mechanism that is accountable and accessible to local communities.
- This remedy mechanism should be independent as far as possible.
- Multi-stakeholder engagement should be general best practice in conflict resolution.
- The process of decision-making should be transparent.
- In some cases a third party mediator is needed, and this person should be fully trained in human rights principles.
- Note that national interpretations of the UN GP can weaken its impact.
- Need to take into consideration also gender issues in terms of representation in conflict resolution processes (who speaks for them? How do we ensure their participation without violating customary norms?).
- Need to improve conflict resolution through making FPIC mandatory at all levels and for all kinds of conflicts resolution processes.
- Conflict resolution mechanisms need to be accessible to communities (eg in their local language, in forms that are relevant to them culturally speaking).
- The State has an important role to play in ensuring that there are also accountable conflict resolution mechanisms at the State level, not only voluntary company policies.
- Benchmarking exercises should be carried out on human rights performance to establish some sort of baseline and rank companies accordingly.
- Opportunities offered by the UN Global Compact should be considered (eg company reporting).
- Independent media should be able to document conflict resolution processes, so they do not take place behind closed doors – this will enhance accountability and transparency.
- Tax incentives would help push companies to abide by human rights standards and provide remedy to affected communities.

Regional and international conflict resolution mechanisms

- Stakeholders who need to take part in building up regional conflict resolution mechanisms include governments, businesses and civil society, as well as local communities themselves.
- AICHR: need to push AICHR to set up a regional complaints mechanism or grievance procedure.
- The UPR is also an opportunity where CSOs can push for the establishment of a national conflict resolution mechanism that is accountable to ASEAN.
- International CSO advocacy: Global Witness campaign on rubber in Vietnam and Lao PDR, Udom Meenchey case in Cambodia, IFC CAO complaint in Indonesia – need to draw the lessons learned from these processes and include these actors in our dialogues.
- Equator Principles: engage with this to put pressure on and hold the banking sector to account.
- UPR: there is room here for CSOs and NHRIs to voice their views, we need to engage in this process to ensure optimal outcomes for the State, companies and communities (but note of course that States can reject the recommendations from UN bodies).
- The government needs to be educated on human rights – what can UN bodies do to this end (eg CERD, ILO, FAO, CEDAW?).
- Special Rapporteurs: governments might not accept their missions in-country – a challenge.
- Using international human rights mechanisms can be a time-consuming and protracted process – need to be realistic about this, but also active them where domestic remedies have been exhausted, and to set important precedents for the country and the region.
- Inter-Parliamentarian dialogues should be promoted (eg ASEAN and EU) to push for a rights-based approach to agribusiness, trade and the market.

Discussion

- In Myanmar, there is a need to link voluntary commitments with national regulatory and policy frameworks in a form of upwards harmonization. We need to understand what we have and what we do not have – are we dealing with a problem of lack of laws, or a problem of enforcement of these laws? It is important to review existing laws to ensure they support the implementation of safeguards, but we also need to strengthen law enforcement. Currently we have laws and regulations in existence but the problem is not lack or limitation of the law but rather its enforcement. We need a clear monitoring mechanism that regulators themselves can use to monitor themselves. We also need to monitor land conversion processes and the human rights impacts resulting from these. We also need to think about how communities can be involved as well as CSOs in the monitoring mechanisms set up. This requires full participation and transparency. A review of existing laws and policies will reveal numerous loopholes and gaps. It will be critical to amend existing laws or enact new laws so that voluntary guidelines are backed up by national regulatory frameworks. The role of the Parliament here is critical, supported by fact-finding reports from civil society and other actors. Capacity-building and awareness-raising to duty-bearers and other stakeholders (eg communities) must be sustained and enhanced. Myanmar is in transition – there are many priorities to be addressed, but there are also capacity constraints for all stakeholders, including the duty-bearers.
- Experience of Thailand: from the passing of Constitution in 1997, the policy of development has been framed in terms of economic liberalisation and capitalism, but the other side of

this is respect of community rights and securing their land rights. The government has to announce state obligations and policies during their inauguration, and this includes respecting community rights as per the Constitution. There are two aspects to community rights: one is the right to life and the other is the right to self-determination and participation. A Cabinet Resolution in 2010 towards preserving local cultures led to the legalisation of shifting agriculture by Karen communities. Environmental Impact Assessments (EIA) and Health Impact Assessments (HIA) requires knowledge of the process by all parties, social capital for business, and an understanding on the part of local communities so that they can make decisions in this process. Participatory processes need to be organised by an independent agency, and the government should abide by the rule of law.

- The UN GP has noted the obligation on states to protect and respect and remedy human rights (abuses) – there is no question about that. The State *has* this obligation. The UN GP also state that companies have the responsibility to respect human rights even in absence of national laws to that effect. The question left hanging and not clearly answered in the original distribution of the Guidance is, how does this responsibility translate into practice if there is no national law in practice? How do you make that responsibility binding? In the opening remarks, we mentioned that there is new Guidance issued by the UNWGBHR for the development of national action plans which recommends that countries review how they will place obligations on companies to observe human rights through national law. The only example that we have heard during this meeting of direct obligations being placed on companies is from the presentation from the Philippines where we heard that the Corporation Code had been revised to place this obligation on companies. How will other countries follow that lead? How does civil society and the NHRC in the Philippines make that new Corporation Code effective?
- Myanmar does not have treaties or binding instruments to ensure the responsiveness of businesses to the population. Three groups are involved: first, government authorities need to make the laws and rules to protect rights. Second, corporations must respect and protect rights. If they have committed violations of these rights, they must compensate and/or provide remedy in other ways, and promptly. But these only guidelines and not mandated. Therefore we *need* this move from the voluntary to the binding. For effective laws and guidelines, we need some kind of national plan to ‘fill the gaps between the laws’.
- Indonesia and Malaysia have focused more on the second pillar of the Ruggie Framework. We have tried to initiate different avenues such as roundtable discussions at SUHAKAM and regular FGDs for Komnas HAM to flag issues under the Ruggie Principles, such as the responsibility of business entities to come up with a policy or SOP on human rights. With regards to the question on CSR, this was also raised as a concern by Indonesian civil society organisations and businesses when the CSR law was enacted, given that by nature CSR is voluntary. While the law is there now, our problem is that there are no operational procedures for how to make it effective in the ground. There is a clause in companies’ law that if they fail to do CSR they will face administrative and criminal sanctions under the law. Many business associations complained to the House of Representatives on this, and recently tried to lobby for an amendment of this clause to make it less binding (especially the criminal sanction sections). It is a controversial issue in Indonesia. Some CSOs also did not agree that CSR should be binding as they were afraid that it would be misused and open up new room for corruption among local governments and government agencies that monitor the implementation of CSR.
- The World Conference paragraph on the UN GP both recalls the responsibility of corporations to operate transparently and that of states to take further steps to prevent the abuse of IP rights (although clearly this could apply to all citizens). The state is the primary duty-bearer and those affected by businesses are the rights-holders. The r role of NHRCs and

others arises where there is asymmetry between corporate bodies and ordinary citizens. It remains the responsibility of the state as it is through the licenses and permits that states allow business corporations to operate in their country. It is the state who is in best position to help the private sector adhere to those principles and international human rights standards. Even if a country has not ratified a human rights treaty it does not mean that the government is not bound to follow international human rights standards. All countries are under review by the Human Rights Council every four years, in which one does not only invoke treaties ratified, but rather any human rights standard of universal application, including customary international law, such as the right not to be killed without due process. States cannot derogate from certain human rights even in times of emergency. Ultimately the responsibility lies with the state. If NHRCS with CSO support talk to the government to transform the provisions of international standards into national laws or treaties, it is for the good of all citizens, especially those that are most disadvantaged. Otherwise ordinary citizens are too weak a group to take on these big corporations.

YANGON STATEMENT ON HUMAN RIGHTS AND AGRIBUSINESS IN SOUTHEAST ASIA

The 65 participants of this workshop drawn from the South East Asian National Human Rights Institutions Forum (SEANF) and from supportive civil society organisations, including from Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines and Thailand met in Yangon, Myanmar between the 4th and 6th November 2014, to consider ways of ensuring State and Non-State actors respect, protect and remedy human rights in the agribusiness sector. The meeting was convened by the Myanmar National Human Rights Commission (MNHRC), with the support of the Forest Peoples Programme (FPP), RECOFTC-The Center for People and Forests and the Rights and Resources Initiative.

The meeting took note of the convergence of global concern about the impacts of commodity trades, and trans-national and extraterritorial investments on peoples, lands and forests as manifest in the work of UN Guiding Principles on Business and Human Rights, the Global Compact, UN Working Group on the issue of human rights and trans-national corporations and other business enterprises, UN Principles for Responsible Investment, the Outcome Statement of UN World Conference on Indigenous Peoples, UN General Assembly's New York Declaration, the multiple pledges of global corporations to adopt policies for Zero Deforestation and Zero Exploitation, the proliferation of voluntary certification schemes for commodities, FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and the European Union Forest Law Enforcement Governance and Trade initiative.

The meeting noted that these processes give emphasis to the importance of both State and Non-State actors recognising human rights, in particular, indigenous peoples' and local communities' rights to lands and resources, and the need to respect their right to Free, Prior and Informed Consent (FPIC) for operations proposed on their lands. They also imply the need for legal reforms and changes of current practice to make such standards effective and binding.

The Chairman of the Myanmar National Human Rights Commission, other members of the Commission and representatives of the Myanmar Ministry for Environment, Conservation and Forests and Ministry for Agriculture noted that the workshop came at an opportune time as the country was actively reviewing its land use policies, land laws and programmes to support farmers, and in view of the alarming increase of land conflicts as a result of a rapid increase in foreign investment notably in agribusiness and forestry. The Ministries also highlighted the importance of sustainable natural resource management for the benefit of future generations of Myanmar.

Human rights, environmental and development NGOs from the region noted increasing number of complaints about human rights violations and environmental impacts linked to trans-national investment, migrant labour and human trafficking. They also noted that government policies to generate foreign exchange, foreign investment, agro-fuels and commodity exports, while designed to stimulate national development, were imposing heavy costs on communities in terms of land grabs, forced eviction, loss of livelihoods, lack of local and national food security, and environmental degradation and erosion of biodiversity. Rising land and wealth concentration in agrarian sectors was also highlighted, while smallholders are being immiserated through heavy debts linked to land

development schemes. Controversial business enterprises are increasingly financed by land speculation and land banking, national and regional banks, and foreign investment within Asia.

Despite these worrying trends, the meeting also noted important efforts being made at national levels to review and revise land tenure laws, recognise customary rights, strengthen social and environmental safeguards, expose corruption and empower village authorities. There are significant opportunities for national human rights institutions to collaborate with each other and with civil society groups to investigate abuses, expose violations and promote remedies. In some countries laws are already quite adequate and the main challenge is to ensure these laws are upheld and violations punished.

Representatives of the national human rights institutions reviewed their efforts to secure human rights especially of rural communities. The commissioners noted the huge number of complaints they have received in recent years, the great majority about land grabs, land conflicts and the violation of the rights of indigenous peoples and local communities. Given the scale and systemic nature of these problems, National Inquiries had been undertaken into indigenous peoples' rights, completed in Malaysia and still underway in Indonesia, which had exposed the need for legal reforms to secure these peoples' rights but these had yet to be acted on effectively. Commissions had also engaged extensively with companies and governments to raise awareness about human rights and of the need for companies to change their policies so that they respect human rights, especially rights to land and FPIC.

Apart from researching, exposing and reporting instances of human rights abuse, including through site visits, Commissions - where mandated such as in Indonesia - had also helped to mediate dispute settlement processes between companies and communities. The Thai Human Rights Commission had invested considerable effort in investigating, and seeking remedy for, human rights abuses associated with trans-boundary development projects where Thai Government or Thai private sector enterprises were involved, including cases in Lao PDR, Cambodia and Myanmar. In Indonesia, Malaysia and the Philippines efforts are being made to develop national action plans on the implementation of the Guiding Principles on Business and Human Rights. In the Philippines amendments to the Corporation Code are being considered which would require companies to respect human rights. The importance of media work to raise awareness in national society about human rights, especially of vulnerable sectors such as workers, IPs, women and migrants, was highlighted.

The meeting noted the importance of National Human Rights Commissions enjoying autonomy, having strong mandates that allow them to secure justice for victims, and having strong relations with the legislatures and administration. Some Commissions noted that they are still working within limitations, owing to restricted mandates, limited budgets, and weak support from parliaments and the executive. In Cambodia and Lao PDR, efforts to establish National Human Rights Commissions have not yet been successful. The workshop urged government of countries where National Human Rights Commissions don't yet exist to establish one.

In searching for solutions to these challenges, the meeting focused on the need to strengthen the capacities and mandates of National Human Rights Institutions (NHRI) including through overcoming the legal, practical and structural barriers that impede respect for rights, measures to implement international and regional law, the harmonization of laws (including customary law) at different levels of government and improved adoption of NHRI's recommendations by governments. The current fragmentation of national laws and contradictions between laws at various levels need to be overcome. Strengthened regional cooperation between SEANF and ASEAN InterGovernmental Commission on Human Rights (AICHR) is also needed, as is the setting up of an ASEAN Human Rights Court, and the establishment of national level complaints and redress mechanisms. NHRIs should also actively coordinate with certification and regulatory bodies, such as the Roundtable on

Sustainable Palm Oil and the OECD. Strengthened collaboration with CSOs and community organizations was also required.

The workshop also explored means for overcoming asymmetries in power relations between companies and communities, including through making information more accessible and appropriate to communities, providing a stronger legal framework that protects rights and which regulates FPIC and through capacity-building. Detailed investigations are also needed of the main institutions and individuals investing in agribusiness, as well as more transparency in licensing regimes and reinforcement of anti-corruption initiatives, including through ratification of the anti-corruption convention. Stronger measures are needed to protect human rights defenders, including through effective media strategies and public transparency initiatives.

In line with the Guidance for National Action Plans on Business and Human Rights, the meeting explored how to make the Guiding Principles binding on trans-national and other companies consistent with international human rights law. The following priority actions were identified: legal reviews to identify if the gaps are in laws or enforcement; evidence-based research and documentation to demonstrate the scale of the problems and the need for reforms; reforms of national legislation in line with international law, where needed; development of indicators and implementing guidance for companies and other stakeholders; building up the capacity and budgets of duty bearers; coordination between NHRIs, other government agencies and CSOs; build up capacity of NHRIs, communities and CSOs to monitor compliance; develop complaints mechanisms to compensate victims and sanction violators; test cases, including through the use of other countries' courts where applicable, to refine measures to overcome legal challenges to enforcement.

Given the thousands of existing, unresolved land conflicts and the rapid expansion of agribusinesses in the region, the meeting then reviewed the potential of conflict resolution mechanisms by the State, communities and businesses and at the regional and international level. Many State institutions already exist in the different countries to resolve disputes, and information about these mechanisms needs to be shared within the region. These mechanisms need to be reviewed and strengthened (and where relevant constituted in other countries) to ensure they have greater transparency, independence, impartiality and are accessible to local communities, including through building capacity and funding to make them workable. Community-level conflict resolution institutions, including customary laws and courts, can be strengthened through better provision of information, making them more accessible and affordable and providing legal support to plaintiffs. Such processes need to be explored and should be recognized and endorsed by the government and receive support from NHRIs.

In line with the Guiding Principles, some businesses have also adopted grievance and dispute resolution mechanisms. These processes work better where they adopt international norms and best practices (such as FPIC), are managed by independent parties and are transparent. They can be strengthened by trained mediators where disputes are intractable. Lessons from the complaints mechanisms of IFIs and banks endorsing the Equator Principles need to be consolidated. States need to provide incentives to companies to avoid and resolve such conflicts. Regionally, greater sharing of experiences is needed including through SEANF and AICHR and liaison with the UN Special Rapporteurs. The need for an ASEAN-level mechanism for addressing conflicts was again highlighted. Formal relations between SEANF and AICHR also need to be established.

Finally, participants from the Philippines noted their interest in hosting the next meeting, subject to formal endorsement by Philippines National Human Rights Commission. It was suggested that the meeting should directly involve agribusinesses and review concrete cases where efforts are being made to ensure that businesses respect human rights. This proposal was warmly endorsed by the whole meeting.

Adopted by consensus

6th November 2014

ANNEXES

Annex 1: Concept note



Yangon Workshop on Human Rights and Agribusiness in Southeast Asia

(4 – 6 November 2014)

Kandawgyi Palace, Yangon

Concept note

International human rights organisation Forest Peoples Programme will collaborate with the National Human Rights Commission of Myanmar in 2014 and local and national NGOs to organise and hold a regional workshop on Agribusiness and Human Rights in Southeast Asia on 4 – 6 November 2014.

This activity builds on the very successful progress made in the previous 3 consecutive years in investigating and documenting the expansion of agribusiness in Southeast Asia (with a focus on oil palm) and its impacts on indigenous peoples and other local communities, and in engaging with Southeast Asian National Human Rights Commissions and Institutions to build regulatory capacity and standards in Southeast Asia by promoting the application of binding international human rights standards on the agribusiness sector, thereby moving from a ‘business to business’ voluntary to one that imposes normative human rights obligations on private sector operators and national governments.

In 2010, FPP and its partners documented the serious problems in the expanding palm oil sector in Southeast Asia, notably in Thailand, Cambodia, the Philippines and Vietnam, in the edited volume *Oil palm expansion in Southeast Asia: trends and implications for indigenous peoples and local communities*. In 2011, we mobilised the National Human Rights Commissions and Institutions in Southeast Asia to develop a regional human rights standard on agribusiness with a focus on palm oil, the *Bali Declaration on Human Rights and Agribusiness in Southeast Asia*, following the very successful *Bali workshop on Human Rights and Agribusiness*, hosted by the National Human Rights Commission of Indonesia. In 2012, also hosted by the National Human Rights Commission of Indonesia, we held a follow-up workshop in Phnom Penh, this time engaging with the ASEAN Intergovernmental Commission on Human Rights (AICHR) through its Indonesia representation. The workshop, as well as a field visit to the controversial Koh Kong sugarcane concession led to the development of the *Phnom Penh Statement on Human Rights and Agribusiness in Southeast Asia*. The proceedings of the Bali Workshop were also published in 2012, *Human rights and agribusiness: Plural legal approaches to conflict resolution, institutional strengthening and legal reform*.

In 2013, a third workshop on human rights and agribusiness was convened in Bangkok, this time hosted by the National Human Rights Commission of Thailand, with a particular focus on trans-

boundary agribusiness investments and human rights violations. The workshop was the occasion of the launch of a landmark publication, *Agribusiness Large-Scale Land Acquisitions and Human Rights in Southeast Asia: Updates from Indonesia, Thailand, Philippines, Malaysia, Cambodia, Timor-Leste and Burma*, which documents in detail the patterns of production, financing, supply chains and human rights dimensions of this growing sector in the region in the last 3 to 4 years. The workshop led to the acclamation of the *Montien Resolution on Human Rights and Agribusiness in Southeast Asia* which reiterates the call for States to develop effective regulatory frameworks which secure communities' rights to lands, territories and resources and which require agribusinesses both domestic, foreign and trans-boundary, to respect such rights in line with international human rights standards. A joint action plan for civil society organisations and National Human Rights Commissions and Institutions was also developed to push for legal and policy reforms that secure community rights and place binding obligations on the private sector to respect these rights in future land acquisition.

During the Bangkok workshop, the Myanmar National Human Rights Commission expressed its interest in hosting the next meeting of this process in Yangon in 2014 which was warmly welcomed by all participants, and FPP intends to provide them support and cooperation in the organisation of this event this year.

This year's workshop will seek to maintain the impetus generated through the previous three meetings to push for better regulation of agribusinesses and trans-national investments in Southeast Asia so they respect human rights and prevent unjust land acquisitions. The initiative will continue the thematic focus of rights-based regulation of agribusiness in Southeast Asia but will invest efforts in the stronger inclusion of the Myanmar Human Rights Commission and Myanmar civil society groups in the expanding network. In particular, the project aims to raise awareness among Myanmar's government and civil society actors of the need for tenure reforms to secure community rights and counter large-scale land acquisition and forest destruction. Conflict resolution and access to remedy and justice are also expected to feature as key themes of discussion and regional strategy and capacity-building. Participants will include Human Rights Commissioners of Indonesia, Malaysia, Thailand and the Philippines, concerned non-governmental organisations from Southeast Asian countries, including Cambodia, as well as representatives of ASEAN and United Nations human rights bodies such as the UN Special Rapporteur on the Right to Food, the UN Special Rapporteur on the Rights of Indigenous Peoples and a representative of the UN Permanent Forum on Indigenous Issues.

Annex 2: Agenda

Day 1 – 4th November

8:30 – 9:00	Registration	
9:00 – 9:30	Welcoming comments Myanmar National Human Rights Commission Forest Peoples Programme RECOFTC – The Center for People and Forests	Moderator: Marcus Colchester U Win Mra Marcus Colchester Tint Lwin Thuang
9:30 – 10:30	Self-introductions (name, organisation, expectations from conference)	All
10:30 – 10:45	Overview of background of meeting, taking stock of where we are at, agenda and expected outcomes	Marcus Colchester
10:45 – 11:00	Q&A	Moderator
11:00 – 11:15	Coffee break	
11:15 – 11:30	Presentation by Myanmar Ministry of Environmental Conservation and Forestry	U Tin Maung Than
11:30 – 11:45	Presentation by Myanmar Ministry of Agriculture and Irrigation	Kyin Kyin Win
11:45 – 13:00	Discussion	Moderator
13:00 – 14:00	Lunch	
14:00 – 15:45	Updates on Large Scale Agribusiness Land Acquisitions in Southeast Asia Malaysia Indonesia Thailand Philippines Myanmar Cambodia Lao PDR	Moderator: Martua Sirait Harjinder Kler Norman Jiwan Jacob Bogart Marivic Bero Maung Maung Than Touch Setha Vorasone Dengkayaphichith
15:45 – 16:00	Coffee break	
16:00 – 16:50	Broader discussion	Moderator
16:50 – 17:00	Closing comments Logistical info	Moderator
18:00	Welcome dinner	Kandawgyi Hotel
Day 2 – 5th November		
9:00 – 9:15	Summary of Day 1	Martua Sirait
	Summary of national developments from National Human Rights Commissions	Moderator: Marcus Colchester
9:15 – 10:15	Panel 1: Myanmar, Thailand, Cambodia, Lao PDR	Daw Than Nwe Niran Pithakwatchara Sok Leang Khampanh Keovilaysak
10:15 – 10:30	Discussion	Moderator
10:30 – 10:45	Coffee break	
10:45 – 11:30	Discussion continued	Moderator
11:30 – 12:15	Panel 2: Indonesia, Malaysia, Philippines	Dr Sandra Moniaga Rodziah Abdul Atty Jesus Torres
12:15 – 12:45	Discussion	Moderator
12:45 – 13:45	Lunch	
13:45 – 14:30	Breakout groups: 1) Analyse the obstacles that block implementation of laws and identify solutions to overcome these obstacles	Moderator: Ahmad Dhiaulhaq

	<p>2) Promoting coordination among NHRIs in the region to address human rights abuses associated with trans-boundary investments, labour migration and trafficking</p> <p>3) Overcoming the asymmetry of power in relations between companies and communities: sharing information, building community capacity, providing legal support and making FPIC effective? Clarify who are IPs in ASEAN context.</p> <p>4) How to counter money politics and the capture of cabinet and legislature by vested interests and ensure strong political leadership for reform</p>	
14:30 – 15:30	Reporting back in plenary	Moderator
15:30 – 15:45	Coffee break	
15:45 – 16:50	Discussion	Moderator
16:50 – 17:00	Closing comments Logistical info	Moderator
Day 3 – 6th November		
9:00 – 9:10	Overview of Day 2	Jennifer Corpuz
9:10 – 9:30	Presentation on the outcomes of the World Conference on Indigenous Peoples	Devasish Roy
9:30 – 10:30	Break-out groups <i>How to transition from voluntary to binding standards on trans-nationals and other companies - national level plans</i>	Moderator: Emil Kleden
10:30 – 10:45	Coffee break	
10:45 – 11:45	Reporting back in plenary	Moderator
11:45 – 12:30	Discussion	Moderator
12:00 – 13:00	Lunch	
13:00 – 14:00	PRESS CONFERENCE	
14:00 – 15:30	Break-out groups <i>Conflict resolution mechanisms – improving, scaling up and innovating</i>	Moderator: Myrna Safitri
15:30 – 15:45	Coffee break	
15:45 – 16:45	Reporting back in plenary	Moderator
16:45 – 17:15	Reading out of Yangon Statement and final comments	Moderator
17:15 – 17:30	<p>Closing comments</p> <ul style="list-style-type: none"> • Myanmar National Human Rights Commission • Forest Peoples Programme • RECOFTC 	<p>Daw Than Nwe</p> <p>Marcus Colchester</p> <p>Maung Maung Than</p>

Annex 3: Participant list

Participant	Country	Organisation
Daw Than Nwe	Myanmar	Myanmar National Human Rights Commission
Khin Maung Lay	Myanmar	Myanmar National Human Rights Commission
Nyan Zaw	Myanmar	Myanmar National Human Rights Commission
U Soe Phone Myint	Myanmar	Myanmar National Human Rights Commission
Myint Kyi	Myanmar	Myanmar National Human Rights Commission
Kyin Kyin Win	Myanmar	Myanmar Ministry of Agriculture and Irrigation
U Tin Maung Than	Myanmar	Myanmar Ministry of Environmental Conservation and Forestry
U Nyi Nyi Htwe	Myanmar	Myanmar Ministry of Home Affairs
Imelda Indriani Saragih	Indonesia	Indonesian National Human Rights Commission
Sandra Moniaga	Indonesia	Indonesian National Human Rights Commission
Wan Kasim Wan Kadir	Malaysia	Malaysia National Human Rights Commission
Rodziah Abdul	Malaysia	Malaysia National Human Rights Commission
Jesus Torres	Philippines	Philippines National Human Rights Commission
Florante Nocomura Enciso	Philippines	Philippines National Human Rights Commission
Niran Pithakwatchara	Thailand	Thailand National Human Rights Commission
Jacob Bogart	Thailand	Thailand National Human Rights Commission
Ekachai Pinkaew	Thailand	Thailand National Human Rights Commission
Chakorn Phitakwatchara	Thailand	Thailand National Human Rights Commission
Marcus Colchester	UK	Forest Peoples Programme (FPP)
Sophie Chao	China	Forest Peoples Programme (FPP)
Tint Lwin Thaung	Thailand	RECOFTC - The Center for People and Forests
Ahmad Dhiaulhaq	Thailand	RECOFTC - The Center for People and Forests
Seng Maly	Cambodia	Community Legal Education Center (CLEC)
Sok Leang	Cambodia	Cambodia Human Rights Action Committee (CHRAC)
Man Vuthy	Cambodia	Community Legal Education Center (CLEC)
Touch Setha	Cambodia	NGO Forum Cambodia
Martua Sirait	Indonesia	Samdhana Institute
Norman Jiwan	Indonesia	Transformasi Untuk Keadilan INDONESIA
Andiko	Indonesia	HuMa
Indriaswati Saptaningrum	Indonesia	ELSAKA
Myrna Safitri	Indonesia	Epistema Institute
Emil Ola Kleden	Indonesia	PUSAKA
Harjinder Kler	Malaysia	HUTAN
Lanash Thanda	Malaysia	Sabah Environmental Protection Association (SEPA)
Holly Jonas	Canada	Natural Justice
Marivic Bero	Philippines	KOALISYON LABAN SA PANGANGAMKAM NG LUPA" or 'COALITION AGAINST LAND GRABBING' (CALG)
Jennifer Corpuz	Philippines	Tebtebba

Khampanh Keovilaysak	Lao PDR	Global Association for People and the Environment (GAPE)
Phetsoulaphonh Chaulatidha	Lao PDR	CARE - Good Forest Governance (GOFOGO)
Phetdalay	Lao PDR	Land Issues Working Group (LIWG)
Thip Nouansyvong	Lao PDR	Clinical Legal Education Programme (CLE)
Vorasone Dengkayaphichith	Lao PDR	Land Issues Working Group (LIWG)
Than Htaik	Lao PDR	Mekong Region Land Governance Project
Anne-Sophie Gindroz	Indonesia	Samdhana Institute/Rights and Resources Initiative (RRI)
Robert Oberndorf	Myanmar	USAID
Maung Maung	Myanmar	RECOFTC - The Center for People and Forests
Zaw Win	Myanmar	RECOFTC - The Center for People and Forests
Su Pan	Myanmar	RECOFTC - The Center for People and Forests
Kyaw Tint	Myanmar	Myanmar Environmental Rehabilitation Conservation Network (MERN)
Greg Martin	Myanmar	Myanmar Environmental Rehabilitation Conservation Network (MERN)
Ko Salai	Myanmar	Pyoe Pin Programme
Kevin Woods	Myanmar	Transnational Institute (TNI)
U Ohn	Myanmar	Forests Resource Environment Development and Conservation Association (FREDA)
Richard Hackman	Lao PDR	Mekong Region Land Governance Project
Elisabeth Dah	Myanmar	Karen Women Empowerment Group (KWEG)
Jasmine Burley	Myanmar	Oxfam Myanmar
Naw Ei Ei Min	Myanmar	Promotion Of Indigenous and Nature Together (POINT)
Ye Lin Myint	Myanmar	Paung Ku Consortium
Kyaw Thu	Myanmar	Dawei Development Association (DDA)
Ratawit Ouaprachanon	Myanmar	Spirit in Education Movement (SEM)
Bobby Mg	Myanmar	Network Activities Group
Hnin Wut Yee	Myanmar	Myanmar Responsible Business Center (MRBC)
Maung Maung Kyi	Myanmar	Rakhine Coastal Region Conservation Association (RCA)
Agnieszka Kroskowska	Myanmar	Helvetas Myanmar
Devasish Roy	Bangladesh	UN Permanent Forum on Indigenous Issues

Annex 4: Selected photos

(taken by Holly Jonas)



Breakout group discussion on community-based conflict resolution mechanisms



Press conference



Breakout group presentations on moving from voluntary to binding standards in Myanmar



National Human Rights Commissioners and CHAC share updates on the work of the Commissions pertinent to human rights and agribusiness



Plenary session



Sandra Moniaga (Komnas HAM) and Daw Than Nwe (Myanmar National Human Rights Commission)

Annex 5: Nov 4 press release

Regional dialogue pushes for rights-based reform of the agribusiness sector in Southeast Asia

Tuesday 4 November 2014, Yangon, Myanmar – National Human Rights Commissions of ASEAN member countries, civil society organisations from Indonesia, Malaysia, the Philippines, Thailand, Cambodia, Myanmar and Lao PDR and United Nations representations are participating in a 3 day conference starting today, hosted by the Myanmar National Human Rights Commission, co-organised by UK-based international human rights organisation [Forest Peoples Programme](#) and Thailand-based international organisation [RECOFTC – The Center for People and Forests](#) and co-funded by the Rights and Resources Initiative (RRI), The Climate and Land Use Alliance (CLUA), Ford Foundation and DfID. The conference is the fourth in a series of annual regional dialogues ([Bali – 2011](#), [Phnom Penh – 2012](#), [Bangkok – 2013](#)) and will assess progress made since the [Bali Declaration on Human Rights and Agribusiness in Southeast Asia](#) (2011) towards building regulatory capacity and standards in Southeast Asia by promoting the application of binding international human rights standards on the agribusiness sector, thereby moving from a ‘business to business’ voluntary to one that imposes normative human rights obligations on private sector operators and national governments.

Agribusiness is central to the economy of most Southeast Asian countries. However, ill-regulated land acquisition and conversion, compounded with legal and policy frameworks that fail to recognise and protect the rights of indigenous peoples and local communities, and the lack of access to justice and remedy where these rights are violated, mean equitable development of lands and forests remains a key challenge for the region as a whole, and land-related conflicts are increasing in number, scale and gravity. A recent report by RRI Partner Forest Trends notes that commercial agriculture and timber plantations constitute the most significant threat to the world’s remaining forests, accounting for over 70 percent of all deforestation across tropical and sub-tropical countries, and largely operating without the necessary social and environmental safeguards, or protection of the customary rights of forest-dependent peoples.⁵³

Tint Lwin Thaug, Executive Director of RECOFTC – The Center for People and Forests, says

Local communities and indigenous peoples are still being disadvantaged by large-scale commercial agricultural investment, and the key drivers of this are their unclear and insecure tenure rights. This is exacerbated when agribusiness land conversion is carried out on the lands already owned, used or otherwise occupied by local people. Promoting community forestry is one of RECOFTC’s key activities, in order to secure the rights of local communities and as an essential precondition for win-win land use and investment.

Recent years have seen a proliferation of private sector-led voluntary standard-setting initiatives (eg the Roundtable on Sustainable Palm Oil) that recognise the importance of protecting customary rights in land and other natural resources. At the same time the *UN Guiding Principles on Business and Human Rights* emphasise the responsibility of businesses to respect human rights, which exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations. International instruments, such as the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the *United Nations Convention on the Elimination of all Forms of Racial Discrimination* (CERD) reaffirm the rights of indigenous peoples and local communities to inter alia Free, Prior and Informed Consent, to natural resources, customary lands, livelihoods and food security.

⁵³ See http://www.forest-trends.org/documents/files/doc_4718.pdf

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, endorsed by the Committee on World Food Security (CFS) in May 2012, also encourage respect for rights, good governance and equitable outcomes that secure local people's livelihoods and promote long-term community-based development. However, the lack of harmonization of these instruments with national laws poses a critical challenge to their implementation. Recognition of these challenges has led to policy reforms in several countries in an attempt to ensure that agribusiness operations are in line with principles of international law but the gap between policy and practice remains a serious concern.⁵⁴

This year's workshop seeks to maintain the impetus generated through the previous three meetings to push for better regulation of agribusinesses and trans-national investments in Southeast Asia so they respect human rights and prevent unjust land acquisitions, this time with a stronger inclusion of the Myanmar Human Rights Commission and Myanmar civil society groups in the expanding network. Daw Than Nwe, Commissioner at the Myanmar National Human Rights Commission, says

Myanmar being an agribased economy country, the majority of the population is located and engaged in farming and forest areas. During this economic transitional period, there are many challenges. I hope this workshop will provide fruitful outcomes enabling us to counter challenges in securing community rights and achieving sustainable development in our country.

Devasish Roy, a member of the United Nations Permanent Forum on Indigenous Issues, notes that

The adoption of the Outcome Document of the recent World Conference on Indigenous Peoples by the UN General Assembly, drawing upon the Global Indigenous Peoples Preparatory Conference in Alta and regional-level processes, constitutes a significant advancement in commitment of UN member states to advance indigenous peoples' rights, including in Asia. The regional conference in Yangon offers, following soon after the WCIP in September 2014, offers a major opportunity to advance these global commitments at the national levels in Southeast Asia, through closer partnerships between these states and their indigenous peoples.

Expected outcomes of this regional conference include a better cross-country understanding of the challenges and opportunities in current legal and policy reform processes for the securing of communities' rights to land, resources and livelihoods; a strategy for enhance collaboration between National Human Rights Commissions and concerned Civil Society Organisations and; a sharing of lessons learned from conflict resolution processes towards better alignment with the UN Guiding Principles on Business and Human Rights.

Dr Marcus Colchester, Senior Policy Advisor at Forest Peoples Programme, notes that

With investment in expanding agribusinesses far outpacing the capacity of governments and civil society groups to regulate and monitor them, National Human Rights Commission have a crucial role to play in exposing rights violations and strengthening laws to curb further abuses. As Myanmar opens up, it faces similar challenges to those already being experienced in other parts of South East Asia. We hope this meeting can spur reforms to secure the rights and livelihoods of natural resource-dependent communities and indigenous peoples.

⁵⁴ See <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/lsla-briefings.pdf>

Annex 5: Nov 10 press release**Regional statement takes stock of progress made and challenges remaining towards binding human rights standards on the agribusiness sector**

Monday 10 November 2014, Yangon, Myanmar – On 4 – 6 November, National Human Rights Commissions and civil society organisations of Indonesia, Malaysia, Thailand, the Philippines, Lao PDR and Myanmar, congregated in Yangon for the Fourth Regional Conference on Human Rights and Agribusiness in Southeast Asia, this year hosted by the Myanmar National Human Rights Commission, co-organised by Forest Peoples Programme and RECOFTC – The Centre for People and Forests, and supported by the Rights and Resources Initiative, Ford Foundation, the Climate and Land Use Alliance, and the UK *Department for International Development*.

The conference assessed progress made since the [Bali Declaration on Human Rights and Agribusiness in Southeast Asia](#) (2011) towards building regulatory capacity and standards in Southeast Asia by promoting the application of binding international human rights standards on the agribusiness sector, as embodied in the resulting [Yangon Statement on Human Rights and Agribusiness in Southeast Asia](#). Dr Marcus Colchester, Senior Policy Advisor of Forest Peoples Programme, stated

It is encouraging to learn of the progress being made by several NHRIs to develop National Action Plans to implement the UN Guiding Principles of Business and Human Rights and that efforts are already underway to develop new laws making it obligatory for business to respect human rights. The National Inquiries into the rights of indigenous peoples, undertaken by the National Human Rights Commissions in Malaysia and underway in Indonesia, show that stronger laws are needed to protect indigenous peoples' customary rights to lands and forests. The recommendations of these Inquiries now need to be acted on.

Experiences were shared by participants regarding the various initiatives underway in the region towards moving from policy to legal reforms that ensure that framework laws accommodate tenurial and cultural diversity, and are in harmony with international human rights principles. Cambodian delegates from the Community Legal Education Centre (CLEC), NGO Forum Cambodia and the Cambodian Human Rights Action Committee (CHRAC), noted jointly that

The government of Cambodia is a signatory to several international human rights instruments and treaties, however the continued absence of an independent National Human Rights Commission means the government also lacks this crucial mechanism to ensure that human rights are duly protected and respected. The outcomes of the series of annual dialogues on agribusiness and human rights that the Yangon conference is part of, clearly demonstrate that if governments do not actively uphold the interests of their people, then trans-national and others businesses will take advantage of the situation, leading to social conflict and suffering which the government must remedy.

The obstacles to the implementation of laws in practice were also analysed, as were opportunities to promote coordination among National Human Rights Institutions in the region to address human rights abuses associated with trans-boundary investments, labour migration and human trafficking. A key issue raised was that of overcoming the asymmetry of power in relations between companies and communities, and how this affects access to information, building community capacity, providing legal support and making Free, Prior and Informed Consent effective. The Commissioners noted the huge number of complaints they have received in recent years, the great majority about land grabs, land conflicts and the violation of the rights of indigenous peoples and local communities. Andiko of legal and human rights NGO HuMA and ASM Law Offices in Indonesia, notes

Democratization requires robust and accountable laws that are both rigorously implemented and independently monitored. Complementing legal and policy reform at the national and regional levels, community capacity-building and access to information remain essential to ensuring grassroots transformation towards a rights-based approach to development. Respect for rights is a win-win solution, not only because it protects communities, but also because it gives those responsible and progressive companies who are striving towards best practice a greater competitiveness in international markets.

In searching for solutions to these challenges, the meeting focused on the need to strengthen the capacities and mandates of National Human Rights Institutions (NHRI) including through overcoming the legal, practical and structural barriers that impede respect for rights, measures to implement international and regional law, the harmonization of laws (including customary law) at different levels of government and improved adoption of NHRI recommendations by governments. The Statement also called for strengthened regional cooperation between Southeast Asian National Forums (SEANF) and the ASEAN InterGovernmental Commission on Human Rights (AICHR), the setting up of an ASEAN Human Rights Court, and the establishment of national level complaints and redress mechanisms. Dr Niran Pithakwatchara, Commissioner of the Thailand National Human Rights Commission, states

Particularly concerned and actively engaged on investigating trans-boundary corporate human rights abuses, we call on the governments of ASEAN's State Parties to make all efforts towards guaranteeing that the rights of their peoples are secured through the development of effective and appropriate safeguards, and sustained through constructive multi-stakeholder dialogue, towards regional and local development which is genuinely sustainable in the environmental and social senses, and which takes into due consideration rights and particularities of ASEAN's numerous indigenous peoples.

Looking forward, Rodziah Abdul, Secretary of the Human Rights Commission of Malaysia (SUHAKAM) states

In line with the aspiration for an ASEAN Community by 2015, which strives to create a people-centred ASEAN, it is necessary to ensure that broad and meaningful consultation is at the core of every policy-making process within member-states, including on human rights issues. SUHAKAM is of the view that in anticipation of ASEAN Chairmanship in 2015, Malaysia, which is highly regarded by its neighbours for its steady economic development and growth, should also be seen as a leading nation in the realm of human rights promotion and protection.