

Human Rights and Agribusiness in Southeast Asia



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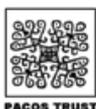
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Human Rights and Agribusiness in Southeast Asia

Report from the 6th Regional Conference

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In outline

In the heart of the state of Sabah, in the northern part of the island of Borneo, participants from indigenous organisations and communities, civil society organisations, NGOs, national human rights institutes in Southeast Asia, and from the private sector met for the 6th Southeast Asian Conference on Human Rights and Agribusiness.

The annual event, in the city of Kota Kinabalu on 3-4 November 2016 and with participation from human rights commissioners from Thailand, Myanmar, Indonesia, Philippines and Malaysia, was held to discuss and address issues related to the defence and protection of human rights in the agribusiness sector.



As a producer of 12% of the global palm oil supply, Sabah is a tangible example of the growing rush for land and natural resources across the region. The allocation of vast areas of land and forest by the government to national and foreign private companies for conversion to agribusiness activities, such as palm oil plantations and shrimp farming, has caused high rates of deforestation and the degradation of indigenous peoples' lands and livelihoods. In this scenario, participants at the event discussed the need to find a way to make human rights obligations binding on transnational and national agribusiness companies and the necessity to build a

network of concerned actors who can work together to make real change happen on the ground.

The conference, which was hosted by the Human Rights Commission of Malaysia (SUHAKAM) and the Network of Indigenous Peoples of Malaysia (JOAS) with the support of Forest Peoples Programme, was preceded by two fact-finding missions with the aim of investigating the challenges faced by indigenous communities in Pitas and Bigor due to the development of land-based projects in the areas. Reporting from the missions, community members who attended

the conference described being marginalised and excluded from any decision-making process regarding their lands and expressed deep concerns for their future and the survival of their communities.

“For indigenous peoples the environment is inextricably linked to every aspect of their lives and survival,” said Tan Sri Razali Ismail, from the Human Rights Commission of Malaysia during the opening panel. Razali highlighted the need to recognise the fundamental role of indigenous people in protecting and preserving the environment across Southeast Asia and underlined the importance of pushing for more sustainable business activities. “In view of today’s increasingly competitive landscape,” he said, “more and more companies must realise that being sustainable makes economic sense. The best way to stay in business is to ensure that the environment where you work stays intact.”

While the United Nations has developed a framework for ensuring respect for human rights by businesses, through the UN Guiding Principles on Business and Human Rights, practical action to protect human rights in the context of business activities is still weak and falls short of what is needed. In several countries, national human rights commissions are taking the lead to develop national action plans on business and human rights in conformity with the UN Guiding Principles but the challenge remains to get buy-in by relevant government agencies and then action by the private sector.

Voluntary standards, such as the Forest Stewardship Council (FSC) and the Roundtable on Sustainable Palm Oil (RSPO), created by businesses and industries to push for improved practice, are a positive sign, but one of the main concerns according to



Tan Sri Razali Ismail, from the Human Rights Commission of Malaysia. (FPP)

Marcus Colchester, Senior Policy Advisor at Forest Peoples Programme, is that they are not binding. “We have some standards that businesses are following, but these islands of good behaviours in a landscape of destruction are not good enough,” said Colchester during his presentation.

Another matter raised during the opening remarks is that most initiatives focus almost exclusively on large companies and transnationals rather than local and small companies, which often struggle to meet human rights obligations. This was particularly evident throughout 2016 when small companies in the Pahang province of Malaysia started mining for bauxite, the main source of aluminium, exploiting a loophole in Malaysian law which only required an environmental impact assessment for plots larger than 250 hectares. While this became a public scandal, mainly thanks to the work done by local and international NGOs, it also showed how little the relationship between business and local communities had improved.



Jannie Lasimbang, Secretary General of JOAS (FPP)

As participants noted during the event, however, recent developments and progress in the region bode well for the future. Particularly welcomed, for instance, were the opportunities provided by the jurisdictional approach to palm oil certification, which was discussed in the second panel and that Sabah is pioneering with the support of the RSPO. This innovative approach will apply the RSPO standard to all producers in the state and the aim is to make sure that by 2025 all palm oil produced in Sabah will be sustainable and RSPO certified. Jannie Lasimbang, Secretary General of JOAS, expressed high hopes for the new approach: "The government has made a commitment towards 100% sustainable palm oil by 2025 and has formed a steering committee where the private sector, civil

society organisations and communities can work together," she explained. "I know this will be a challenge and that seeking and achieving jurisdictional certification is a new thing, but it is also an exciting opportunity for us."

After a week of field investigations and discussions, the 6th Southeast Asian Conference on Human Rights and Agribusiness saw the release of the Sabah Resolution (p6), approved unanimously by all participants, calling to freeze agribusiness concessions until indigenous and community rights were secured and respected. Participants, as well as national and international organisations, were also asked to endorse the letter sent by the communities in Pitas to the Chief Minister of

Sabah, calling on the government to help the communities protect their last 400 hectares of mangrove forest, and appealed to the Human Rights Commission of Malaysia to investigate the case.

Six years after the first conference took place, considerable progress has been made in documenting the serious problems caused by agribusiness expansion in Southeast Asia.

In 2011, all national human rights institutions in Southeast Asia mobilised to develop a regional human rights consensus on the impacts and challenges of agribusiness - the Bali Declaration - which has already become a benchmark for the region and is widely referred to in other work on land grabs and human rights.

A second conference on making the Bali Declaration effective was held in Phnom Penh the following year and was successful in raising these issues with the ASEAN Inter-Governmental Commission on Human Rights (AICHR). The commissioners and participants also visited the villages of Trapang Kandol, Chhouk and Chikhor in Koh Kong, in Southern Cambodia, which had lost lands to the Khon Kaen Sugar Industry Public Limited Company of Thailand (KSL) and the Ve Wong Corporation of Taiwan. Thanks to local NGOs, international advocacy and concerted action by the Thai Human Rights Commission, a settlement was subsequently reached between the villagers and the companies.

In 2013, the Thai Human Rights Commission (THRC) hosted the third conference, directing the network of Southeast Asia Regional Human Rights Commissions to focus on transnational investments, notably in Laos, Cambodia and Myanmar. The Montien Resolution, which resulted from the meeting, is an expression of this growing commitment.

Follow-up work by the THRC brought further attention to these transnational cases and improved the situation of the affected groups.

In 2014, the Myanmar Human Rights Commission (MHRC) hosted the conference in Yangon and the efforts informed national actors of the importance of tenure reforms and regulatory measures to hold agribusiness to account. MHRC was able to strengthen land rights aspects of the new land policy developed by the government.

The fifth conference, hosted by the Coalition against Land Grabbing (CALG), looked into specific cases of land grabbing by palm oil companies in Palawan, in the Philippines, and mobilised support for a province-wide moratorium on the expansion of oil palm plantations. The conference spurred the Philippines Human Rights Commission to intervene in the case, set up a regional office, establish a unit in its central office focused on land rights and economic, social and cultural rights and carry out a wide-ranging review of the gaps in national law making. Two draft bills were supported in the senate for specific reforms to address the most serious gaps. At the national level, the National Commission on Indigenous Peoples (NCIP) also intensified its monitoring of the cases of land grabbing in Palawan, with its Regional Office assisting in the filing of legal cases in court. Meanwhile CALG was able to leverage international support for its advocacy and global campaigns in favour of impacted communities.

Sabah Resolution

The participants of this conference, drawn from the South East Asian National Human Rights Institutions Forum, UN Permanent Forum on Indigenous Issues and from supportive civil society, indigenous representatives and international organisations, including from Bangladesh, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines and Thailand, met in Kota Kinabalu in Sabah, Malaysia, on 3-4 November 2016 to consider ways of ensuring State and Non-State actors respect, protect and remedy human rights in the agribusiness sector.

The meeting also included staff and board members from the Roundtable on Sustainable Palm Oil (RSPO) and from global companies, Unilever, Cargill and Sime Darby. It was convened by the Human Rights Commission of Malaysia – SUHAKAM - and the Jaringan Orang Asal SeMalaysia (the Indigenous Peoples' Network of Malaysia), with the support of the Forest Peoples Programme (FPP).

The participants reviewed recent developments and progress in the region, directly relevant to making human rights obligations binding on agribusiness, and explored in particular the opportunities and challenges provided by RSPO's piloting of the Jurisdictional Approach to certification in Sabah. While the final report on the meeting will capture proceedings in more detail, including action plans on specific cases and major challenges, key findings include the following:

The potential of jurisdictional certification to raise the environmental and social standards of commodity production was highlighted by RSPO, companies and local NGOs. Sabah has committed to 100% RSPO-certified sustainable palm oil by 2025. The jurisdictional approach is meant to ensure wider compliance by medium- and small-producers, as well as large companies, with no lowering of the standard. Locally adapted measures to respect and protect rights – to customary lands, the right to Free, Prior and Informed Consent (FPIC), of workers and of smallholders – are being developed. However, the meeting noted that complementary mechanisms are also needed to provide remedy for human rights abuses and to verify and enforce compliance. There is also a need to overcome the current limitations of multi-stakeholder certification systems to address deeply nested power disparities and encourage respect for human rights and diversified production.

Within the region, even where FPIC is legally required, FPIC processes face severe problems, especially from militarisation, government agency incompetence, imposed representation, lack of community awareness of their rights and overhasty decision-making.

In several countries, national human rights commissions are taking the lead to develop National Action Plans on Business and Human Rights in conformity with the UN Guiding Principles but the challenge remains to get 'buy in' by relevant government agencies and then action by the private sector. In the Philippines, the commission is undertaking a detailed review of the extent the current legal framework places binding obligations on agribusiness. The commissions noted that their limited budgets and mandates restrict their capacity to address abuses, while their fortunes have also changed as different national governments more or less committed to human rights took power, by electoral or other means. Despite setbacks, the Thai Human Rights Commission has been able to address several transboundary investments by Thai companies in Myanmar, Laos and Cambodia, facilitated in part by the conferences.

In both Indonesia and Malaysia, there have been delays in implementing the recommendations of the National Inquiries on Indigenous Peoples' Land Rights, but these were at least being taken up at Cabinet level in Malaysia and in Indonesia where a Special Task Force on Indigenous Peoples' Rights is also being considered by the president. Action to implement the recommendations is still needed. Greater transparency and involvement of rights-

holders in monitoring implementation was advocated. In Bangladesh, a new land commission, with a majority of indigenous members, has just been set up in the Chittagong Hill Tracts, with the authority of a civil court to recognise rights and adjudicate and resolve land disputes in accordance with laws, customs and procedures of the region.

In several countries, notably Indonesia and Thailand, there is increasing inequity in land distribution. Land disputes causing human rights violations are among the most common complaints received by the commissions, from land grabbing, imposed concessions and absent or unclear titling. In Indonesia, community members are often criminalised for resisting imposed agribusiness concessions and agrarian conflicts are increasing. In Thailand, numerous conflicts have emerged, notably in Special Economic Zones in 10 Provinces. In Myanmar, 75% of complaints received by the commission relate to land. In the Philippines, the ineffectiveness of local offices of the National Commission on Indigenous Peoples to ensure FPIC was noted. Palm oil was expanding in Palawan and in Mindanao, and there have been killings and other serious abuses. Some progress has been made to profile the oil palm land grabs in Palawan with the support of NCIP, CHRP and NGOs, but remedy remained elusive. Even where remedial processes were being tried, the inequitable balance of power between companies and communities frustrated good outcomes. International processes such as OECD were onerous and costly to engage with. Communities need much more information and locally accessible, well resourced, independent mediation to make remediation processes effective.

In Indonesia to date only 2% of forests have been allocated to community management but more than 60% handed out to companies. Current government policies now promise to allocate a further 12 million hectares of forests to communities, a target, which, if realised, might raise this to 10%. In the agrarian sector there is also growing inequality in land ownership, which the current government's agrarian reform strategy seeks to address through the resolution of conflicts and the redistribution of 9 million hectares of land. While new legal options exist to secure indigenous peoples' and local communities' rights in forests and farmlands, the procedures are onerous and not yet widely applied. Throughout the region, legal reforms are needed to speed up land rights recognition and titling. Stronger institutional responses are needed to integrate protections of indigenous peoples' rights into agrarian reforms and forest policy development.

In Laos and Cambodia, land conflicts continue owing to imposed land concessions on unprotected community lands. Both countries have imposed moratoriums on new land concessions in 2012 while current contracts are reviewed, but the review processes lack transparency. In Cambodia, collusion and corruption between government and business in land matters, overlapping ministerial responsibilities and conflicting laws continue to be major obstacles to reform. A draft policy and law on land in Laos is still being developed, with CSO participation, which needs to clarify how it will secure customary rights and communal tenures and provide full, fair and prior compensation in cases of expropriation. The principle of FPIC is not yet widely accepted in Laos. Efforts to hold foreign investors

accountable to international standards are being frustrated by the restrictive enabling environment. Meanwhile, companies are getting around the concessions moratorium, through unfair contract-farming arrangements, which are generating growing farmer dissatisfaction. In general, efforts to reform laws and ensure effective implementation require greater government comprehension of the real problems faced by farmers and indigenous peoples.

The meeting agreed that moratoriums on the issuance of further concessions are needed to provide a necessary breathing space so agrarian and agribusiness policies, laws and implementation capacity can be adjusted to ensure more equitable and rights-based outcomes, including in Sabah.

While the meeting focused on land rights and the continuing problem of land grabbing from indigenous peoples and local communities, it was noted that agribusiness in the region is associated with abuse of labour rights, forced labour, child labour, human trafficking and exploitative relations with smallholders in supply chains. The human rights responsibilities of actors in the downstream value chain also need attention. It was also noted that even where there have been gains in agrarian reforms or indigenous rights recognition, these are often frustrated by contradictory government programmes, for dams, mines and infrastructure, which open up vulnerable areas before land rights are secured.

Community spokespersons attending the meeting observed that they face marginalisation and are too often treated as ignorant rural folk. Their rotational farming methods are mis-perceived as 'idle

lands'. Indigenous peoples emphasised that they need to organise for themselves in order to secure their rights in line with international human rights laws. The human rights commissions, NGOs and international community all need to support their struggles and magnify their voice so it is heard by governments and companies.

Delegates heard sobering reports from the two fact-finding trips, undertaken by two teams of delegates just prior to the conference, to review two government-supported projects, one for shrimp-pond development in Pitas and the other a palm oil joint venture on customary lands under 'communal title' in Bigor. In both cases, there have been serious land rights violations and environmental destruction of mangroves and upland forests respectively, after inadequate consultation with the communities involved. The meeting called on participants and international and national organisations to endorse the letter sent by the Pitas communities to the Chief Minister of Sabah, called on the government to respond appropriately, and appealed to SUHAKAM to investigate the case. As one Bigor resident noted: "Our economy has been truly disrupted by the coming of oil palm. We feel so disappointed. We have nowhere to hunt anymore. We have nowhere to plant our crops. Our economy has been destroyed." (Statly Ahimpang).

In Tongod a 14-year land conflict with a subsidiary of Genting Plantations has now been resolved through the courts owing to community unity, sustained NGO support and long years of pro bono legal counsel. The cases reveal both the lack of protection afforded to indigenous peoples' rights in Sabah and the need to revise the law on

communal title so that it can't be mis-used to promote corporate interests at the expense of customary landowners.

Finally, delegates from KomNasHAM (the human rights commission of Indonesia) kindly offered to host the 7th conference in 2017, in collaboration with CSOs, with the objectives of reviewing progress on the main findings raised at the previous six conferences; focusing on transboundary concerns related to human rights and agribusiness, and; advocating a regional mechanism to address human rights violations by agribusiness. This proposal was warmly endorsed by the whole meeting.

**Adopted by acclamation.
4 November 2016**

Recommendations and actions needed

- ▶ With regard to jurisdictional certification, complementary mechanisms are needed to provide remedy for human rights abuses and to verify and enforce compliance.
- ▶ There is a need to overcome the current limitations of multi-stakeholder certification systems to address deeply nested power disparities and encourage respect for human rights and diversified production.
- ▶ Greater transparency and involvement of rights-holders is needed in monitoring implementation.
- ▶ Communities need much more information and locally accessible, well resourced, independent mediation to make remediation processes effective.
- ▶ Throughout the region, legal reforms are needed to speed up land rights recognition and titling.
- ▶ Stronger institutional responses are needed to integrate protections of indigenous peoples' rights into agrarian reforms and forest policy development.
- ▶ Efforts to reform laws and ensure effective implementation require greater government comprehension of the real problems faced by farmers and indigenous peoples.
- ▶ Moratoriums on the issuance of further concessions are needed to provide a necessary breathing space so agrarian and agribusiness policies, laws and implementation capacity can be adjusted to ensure more equitable and rights-based outcomes, including in Sabah.
- ▶ While the meeting focused on land rights and the continuing problem of land grabbing from indigenous peoples and local communities, it was noted that agribusiness in the region is associated with abuse of labour rights, forced labour, child labour, human trafficking and exploitative relations with smallholders in supply chains. The human rights responsibilities of actors in the downstream value chain also need attention.
- ▶ Indigenous peoples emphasised that they need to organise themselves in order to secure their rights in line with international human rights laws. The human rights commissions, NGOs and international community all need to support their struggles and magnify their voice so it is heard by governments and companies.

Jurisdictional approach

Sustainable landscape management has been a major topic of national and international policy discourse in recent years and it includes stakeholder discussions and agreement of decisions related to land and water-use that provide a balance between community, commercial and conservation interests.

One example of an industry initiative based on the landscape principle is the RSPO's jurisdictional approach, which was discussed in detail during the first day of the 6th Regional Conference on Human Rights and Agribusiness.

The jurisdictional approach, explained Datuk Darrel Webber, spokesperson of the RSPO at the conference, certifies palm oil production based on provincial landscapes instead of focusing on the single companies. As such, it speeds up the identification of High Conservation Value Areas and High Carbon Stock forests. At present, six African countries have expressed interest in the approach along with Ecuador and Sabah.

According to Webber, applying the jurisdictional approach in Sabah will bring a number of benefits, including wider compliance by small, medium and large producers with no lowering of the standard.

State-wide RSPO certification will also spur locally adapted measures to respect and protect the rights of smallholders and local communities and to make stakeholders work together to overcome productivity, environmental and social challenges facing the industry.

Biswaranjan Sen, from the multinational consumer goods company Unilever, reminded participants of the good that palm oil can bring, but acknowledged the ongoing problems linked to the industry, including deforestation, peat destruction, and human rights abuses. According to Sen, using a landscape approach is critical to address the challenges faced by the agribusiness industry as it highlights the connection between human beings and natural systems while linking up all the actors involved – governments, companies and communities.

In order to work, however, a number of factors need to be favourable, explained Sen: "The first one is the need for an enlightened government to take the lead and create the conditions in which the approach can succeed. We also need to have clear and agreed objectives between the various stakeholders as well as an open decision-making process with communities. Free, prior and informed consent is the first and most important step but this open relationship goes beyond that."

Important but often overlooked, is also making sure that laws and regulations are consistent across the landscape and even

within the same state to avoid bureaucratic stalling and loopholes.

“Before the approach is set up we need to answer a series of questions in order to see if it can work,” said Webber explaining the different steps of the jurisdictional approach. “Who will maintain the certification? How will stakeholders monitor sustainability performance in a given landscape? How will we involve multiple stakeholders? And finally, how will the RSPO ensure or validate the effectiveness of this approach?” Once these questions have been answered and the approach has been set up, a jurisdictional certification steering committee can be established, along with working groups for specific areas, including FPIC: “We have facilitated a series of meetings through the working group on FPIC in Sabah,” said

Webber. “Many challenges have been identified, including how to achieve FPIC and still respect and listen to the smallest groups within a community.”

When asked about remedy and accountability, Webber reassured the audience that the issue was being addressed and that multiple options were on the table, including non-judicial processes. However, the meeting noted that complementary mechanisms were also needed to provide remedy for human rights abuses and to verify and enforce compliance. There was also a need to overcome the current limitations of multi-stakeholder certification systems to address deeply nested power disparities and encourage respect for human rights and diversified production.

“

We also need to have clear and agreed objectives between the various stakeholders as well as an open decision-making process with communities. Free, prior and informed consent is the first and most important step but this open relationship goes beyond that.

”

Biswaranjan Sen, Unilever

National updates

Part of the conference was dedicated to reviewing developments in the region, share efforts and discuss solutions related to the protection and promotion of human rights in the agribusiness sector. Participants from Myanmar, Thailand, Indonesia, Malaysia, Philippines and Laos made presentations on their national action plans and shared progress directly related to making human rights obligations binding.



After almost 50 years of dictatorship and silence, **Myanmar** is finally working towards making human rights a central aspect of the country's political life. The Myanmar National Human Rights Commission was created in 2014, following the first free national elections since 1962. While huge progresses have been made in relation to the protection of human rights, Myanmar's history of silence and repression casts a long shadow. "We have been organising seminars and talks to educate the population, the army and even the government about human rights protection," said Dr. Myint Kyi, Myanmar National Human Rights Commissioner. "People are now less scared to talk and reflect about human rights, but more needs to be done."

Land rights have been in the spotlight since 2011, when the parliament was formed. In 2012 the government released two laws to substitute the outdated 1894 Land Acquisition Act: the Farm Land Law and the Vacant, Fallow and Virgin Land Law. While moving away from the first act was positively welcomed and highly necessary,

many aspects still require the attention of the human rights commission. The definition of "vacant, fallow and virgin land", for instance, is not clear nor is the process for defining and registering lands. This and the fact that the state is the ultimate owner of all land, means that land can be confiscated for development projects without previous consultation with local communities. An opportunity for change is the new National Land Use Policy, passed in 2016, which the commission feels could catalyse a more human rights and people-centred approach to investment and land tenure. "We are also encouraging the government to sign the International Covenant on Economic, Social and Cultural Rights which remains unsupported at the moment," said Kyi.

Other challenges are the general lack of understanding about the existing land laws and a lack of collaboration between the government and local farmers. Myanmar has the fastest growing economy in Southeast Asia and is attracting international investment, including companies that take advantage of the low levels of enforcement and out-dated legislation to avoid human rights obligations.



Tuenjai Deetes, National Human Rights Commissioner of **Thailand**, notably one of the main country-investors in Myanmar, underlined Thailand's ongoing effort to seek information and conduct research on the impact of Thai investments in other countries. Since the disclosure of the Koh Kong case in 2006, when more than 4,000 Cambodian villagers were forcefully evicted by Thai company Khon Kaen Sugar Industry to make room for sugar plantations, Thailand has been testing out the idea of cross-jurisdictional action, which would facilitate fact finding in other countries and cross-boundary support to conduct research on parent companies.

While the rights of indigenous and local communities are officially recognised in Thai law, the increasing inequality in land distribution makes human rights violations and social conflicts extremely frequent. The situation has worsened since 2014, when the National Council for Peace and Order issued the Order No. 64/2557. Protection of land ownership has weakened and land grabbing increased. "The total land area of Thailand is over 53 million hectares, but social and class inequality is reflected in the distribution of land and only 10% of the population owns almost 60% of the land," explained Deetes during her presentation. "It is a challenge for the Thai National Human Rights Commission to work with the military government," she continued. "Our mandate is to protect the human rights of people, but at the same time we need to be realistic about what can be achieved under a military government."

Despite the many setbacks, the Thai National Human Rights Commission has been working hard since it was first established 15 years ago to gain the trust of local communities

and indigenous peoples. A network of indigenous peoples of Thailand is now being developed to seek practical solutions and push for the registration of community land. Media and academia have offered great help and support and are powerful allies to demand for change but the Thai Human Rights Commission has a limited mandate and no judicial function, which has often restricted their capacity to address abuses. Udom Charoennyomprai, from civil society organisation IMPECT, commented: "The government has created policies and laws without really considering the human rights and interests of local peoples. We have been struggling for a long time... ."



Similar difficulties are experienced in the **Philippines**, where national and international companies have occupied ancestral domains and communal lands owned by indigenous peoples. Despite the existence of an Indigenous Peoples Rights Act and of the National Commission on Indigenous Peoples, the agency responsible for protecting the rights of the indigenous peoples in the country, land grabbing, human rights abuses, child labour and extra judicial killings are still extremely frequent.

For the past few years, the National Commission on Human Rights of the Philippines has been supporting the development of a National Action Plan on Business and Human Rights based on the UN's Protect, Respect and Remedy Framework. "The National Action Plan needs to be developed and implemented by the government," said Roberto Eugenio T. Cadiz, National Human Rights Commissioner of the Philippines. "But the present

administration is not exactly a fan of human rights, so part of our mandate has been to jumpstart this process in the hope that the government will jump in later down the line and see the value in it.”

In the meantime, the palm oil industry has been strengthening and expanding, particularly in Palawan and Mindanao, two islands in the southern part of the country. Reporting on the situation there, Johnmart Salunday, CALG’s Board member and president of Natripal, a local indigenous peoples’ organisation, said that over 7,000 hectares in Palawan have been converted into oil palm plantations and that the targeted expansion of 20,000 hectares might now increase due to new investments.

“Oil palm plantations have largely expanded into indigenous peoples’ ancestral land without free prior and informed consent,” said Salunday, addressing the audience. “This is a violation of the Indigenous Peoples Rights Act of 1997 and of the UN Declaration of the Rights of Indigenous Peoples of which the Philippines is one of the 144 signatory states.”



The damages caused by oil palm plantations and agribusiness activities are not limited to the Philippines. In **Indonesia**, forest destruction started as early as the 1970s, when the country opened up to commercial logging. Since then, on average, Indonesia has lost 1.5 million hectares of forests every year. “At this rate,” said Nur Kholis, National Human Rights Commissioner of Indonesia,

while presenting to the conference, “the entire low land forest of Indonesia, the richest in biodiversity and timber resources, will disappear in the coming decade.”

Inequality in land ownership remains the main cause of poverty in the country. Based on an inquiry recently carried out by the National Human Rights Commission of Indonesia, the number of agrarian conflicts in the country is rapidly increasing, especially in the plantation sector. According to Kholis this is mainly caused by the expansion and operation of large-scale plantations, particularly on the islands of Sumatra and Kalimantan. “Agrarian conflicts and plantation development are like two sides of the same coin,” he explained. “Companies often acquire land through intimidation and coercion, using violence and without suitable compensation.”

In an attempt to improve the situation, the current government has put forward a new agrarian reform strategy seeking to address social inequality through the resolution of conflicts and the redistribution of 9 million hectares of land. While new legal options have been made available to secure indigenous people and local communities’ rights in forests and farmlands, the procedures are onerous and not yet widely applied. The situation has further deteriorated with the establishment of the 2015 Presidential Decree on land acquisition for public use, which allows private companies to act on behalf of the government and carry out land expropriation for the public good. Any objection by landowners to the seizing of their lands must be made to the governor, the provincial head, who has a maximum of three working days to approve it or reject it. “A period of three days is completely inadequate to fully assess an objection to the seizure of lands by affected citizens,” said

Andi Muttaqien, Deputy Director of ELSAM – a policy advocacy organisation based in Jakarta – during his remarks. “This demonstrates the arbitrariness of the government’s approach to citizens’ concerns about their land rights.”



Similar scenarios were described by Francis Johen, National Human Rights Commissioner of **Malaysia**, and the three civil society representatives from Laos, whose remarks closed the first day of the Agribusiness and Human Rights Conference. “Serious ongoing conflicts and violence against human rights defenders are on the rise,” said Johen, addressing the audience. “The number of court cases involving claims or disputes on native customary rights over land or forest continues to increase. Even though decisions have been made in the High Court or Court of Appeal in favour of indigenous peoples, the State Government has not taken action or changed its policy or laws, awaiting instead for the outcome of appeals to the Federal Court, which have not yet been resolved.”

Due to the high number of cases received, in 2010 the National Human Rights Commission of Malaysia opened a national inquiry to investigate the land rights of indigenous peoples. In 2013 the Commission published a report summarising the data collected and listing a series of recommendations for the government to implement. After the report was published the government set up a task force to look into the issues and approved 17 out of the 18 recommendations put forward by the commission. Because of the slow implementation of the

recommendations, however, violations of indigenous peoples’ land rights continue. In Sabah, for instance, companies continue to argue that environmental impact assessments and FPIC are not needed when the activities are aimed at eradicating poverty and bringing development. Thomas Jalong, from JOAS, reminded participants that violence against human rights defenders is also on the rise and that retaliation against community members and activists continues to be the norm.



In **Laos**, where the principle of FPIC is not yet widely accepted, farmers and indigenous people struggle to see their land rights recognised and respected. A draft law on land is currently being developed, with the involvement

of civil society organisations, which will hopefully clarify how customary land rights and communal tenures can be secured while providing full, fair and prior compensation in cases of expropriation. “Since 2012, Laos has adopted a moratorium on concessions in order to revise all contracts leases,” explained Christian Castellanent, deputy team leader of the Mekong Region Land Governance project. “However, while concession issuance has slowed down significantly there is a lack of transparency and reorientation of agribusiness towards contract farming and direct leases. There are also illegal land deals still going on at the local level.”

In general, the audience agreed, efforts to reform laws and ensure effective implementation across the region require greater government comprehension of the real problems faced by farmers and indigenous peoples.

Fact-finding missions

On 1-2 November, before the conference, two fact-finding missions were organised with the help and support of JOAS, PACOS and SEPA to Pitas, on the north coast, and Bigor, in the interior. Participants on the missions were shown the effects of agribusiness activities on the life of local communities, on their lands and forests. Back in Kota Kinabalu, participants and community members presented the findings to the rest of the conference participants and discussed steps forward and possible solutions.

Bigor is a small village in the region of Nabawan, Sabah, approximately 250km southeast of Kota Kinabalu. The indigenous people of the region, known as the Murut, have been living in Bigor for more than seven generations, primarily growing a variety of different agricultural products which form the centrepiece not only of their income, but also of their livelihoods. The most common crops cultivated in the area include tapioca, rice, corn, rubber, durian, papaya, and other vegetables, while hunting also procures meats such as wild boar, venison, and chicken.



Oil palm plantations and land clearing in Bigor, Malaysia.
(Dico Luckyharto/FPP)

In 2009, the Sabah government instituted communal title as a means of fast-tracking native title claims under the pretext of economic development. This policy, however, has been exploited by the government to favour private companies taking control of customary lands for oil palm production, through imposed joint venture agreements (JVA). These JVAs have deprived indigenous people of their customary rights to the land and ignored the significance of adat, their native customary law.

In Bigor, the rapid issuance of communal title and the conversion of the land into oil palm plantations based on a JVA between the government and company Mutiera Eramas Sdn Bhd have had a major impact on local communities.

Reporting from the fact-finding mission, participants at the conference expressed concerns over the situation in Bigor where the communities live in deep poverty and where the land has been divided without following traditional ownership boundaries, creating conflicts in the village administration.

“

This is the customary land of the Murut people. As its inheritors, our struggle is to secure our rights to this land, and ensure it is passed on to future Murut generations.

”

Angin Lambahan



Communities also lamented that their free, prior and informed consent wasn't respected, that they were not given information before the project started, and the little information they had was not in their local language thus was nearly impossible for them to understand. The communities felt disappointed that the government was failing to protect their customary rights and they denounced the intimidation and pressure exerted on community members to force them into signing the contract with the company.

Without any land to farm or forest to hunt, the community was deprived of their main source of income and livelihood. Forced to look for food elsewhere, a few community members entered the neighbouring conservation area and were arrested by forest rangers. Others, who dared to report the destruction of their crops, were accused of preventing the company's employees from doing their job and subsequently arrested. Statly Ahimpang, a member of the Murut community, spent two weeks in jail before being released and suffered several strokes because of the stress of seeing his land and the land of his community taken away from them.

"On August 14, 2015, a massive protest was held by affected villagers in front of the Nabawan district office to demand assurances from the Nabawan District Officer that the destruction of their lands would be stopped," said Norman Jiwan, from the Indonesian NGO Transformation for Justice Indonesia (TUK), who reported back from the fact-finding mission. "A number of press releases were also issued in local newspapers by the villagers and their elected representatives. In August 2016, the work by the developer was stopped temporarily."

The case of Bigor, Jiwan pointed out, is illustrative of the failings of the communal title approach, which purports to safeguard land rights, but by transferring decision making powers to the state and the company serves to deprive people of their land, self-government and cultural rights.



Children from the Murut community, Bigor. (Sophie Chao)

Below is a list of the recommendations that the communities and the participants at the fact-finding mission shared with the audience at the conference:

- ▶ Gather more information on the process through which the agreement was entered into. This should provide a strong basis for making a legal challenge to the contract which should be deemed void under Malaysian contract law as well as constitutional provisions related to indigenous people's rights.
- ▶ Increase empowerment and capacity building at the community level in order to help communities build their own institutions, strengthen unity, and be aware of their rights in the context of entering into agreements and seeking remedy for impacts.



Shrimp ponds in Pitas, Malaysia. (Colin Nicholas/COAC)

- ▶ Document the impact of the titling process to help address the issue in the specific case and strengthen arguments for urgent reforms.
- ▶ Exclude communities which reject communal title from the communal title scheme.
- ▶ Clarify boundaries of customary lands of each village, household, and individual through participatory mapping.
- ▶ Translate the contract into the local language so that it is fully accessible for the community.
- ▶ Challenge the legality of the contract for lack of understanding on the part of the signatories.
- ▶ Document in detail the livelihoods of the Murut people and the negative impacts that the project has had on them.
- ▶ Strengthen community solidarity and unity to make their collective decisions stronger.
- ▶ Strengthen support from local, national and international NGOs.

The communities living in **Pitas**, albeit with some differences, described a similar situation. In 2010, the Malaysian government launched a new economic initiative aimed at turning Malaysia into a high-income economy by 2020. One of the projects carried out under this plan, a joint venture between the Malaysian government and private company Sunlight Seafood Sabah, sought to tackle extreme poverty in the district of Pitas, one of the poorest in Sabah, by establishing the country's largest shrimp farm and promising job opportunities for members of local communities. Since then, however, the project has caused numerous problems for the local people including environmental problems and damage to the ecosystem.

The six communities living on the banks of the Telaga river rely heavily on mangroves for food and income. When the project started, more than 800 hectares of mangrove forest were cleared to make room for a large-scale shrimp farm, depriving the communities of their main sources of food and livelihood. Land clearance started in 2013, without any

consent from the local communities who have been living there for generations and prior to the release of an Environmental Impact Assessment (EIA). When the EIA was finally rejected in June 2014, the company continued the clearing ignoring complaints from the communities and local NGOs.

Recently the six indigenous villages have formed their own organisation – the G-6 – to counteract the actions of the company and the absence of government support. Participants at the fact-finding mission reported that despite these efforts human rights violations, unemployment and poverty still occur.

“People look at us as if we were stupid for resisting development,” said Mastupang Somoi, a member of the Pitass community, who attended the conference. “We had started to believe that our efforts were futile and worthless, but after sensing the concern of others during the fact-finding mission our hope has strengthened.”

As part of the Global Call to Action on Indigenous and Community Land Rights, a global movement seeking to promote land rights worldwide, Forest Peoples Programme, SEPA and JOAS realised a short documentary with the aim of collecting the community’s voice and support their demand for land rights. The documentary, which is available online, was used to ask local, regional and international organisations to endorse a letter from the communities calling on Musa Aman, Chief Minister of Sabah, to stop the destruction of community mangrove forests in Pitass. The letter was submitted to the Chief Minister with more than 100 endorsements on 26 April 2017.

Opposite is a list of the recommendations that the communities and the participants at the fact-finding mission shared with the audience at the conference:

- ▶ Promote the active engagement of national human rights entities, particularly for carrying out complaint processes.
- ▶ Build trust among the relevant parties.
- ▶ Promote collaboration between civil society organisations and community-based organisations to document the situation based on data-gathering. Prepare an action plan.
- ▶ SUHAKAM will gather information and testimonies.
- ▶ Exercise native customary rights over the remaining 400 hectares of mangrove forest with the solidarity of the six villages. Request rehabilitation support for the damaged areas.
- ▶ Compile a report on the fact-finding mission from the ground up with joint design of methodology (SUHAKAM, civil society organisations and community-based organisations).
- ▶ Figure out a legal avenue for litigation based on the information found through a proper investigation process.
- ▶ Work on media attention and international solidarity.



Mastupang Somoi, community representative from Pitass. (FPP)

“

When there is destruction of the mangrove area, we feel that our indigenous identity is being destroyed too.

”

Noredah Samad

Emerging issues: Challenges and solutions

As the event approached its end, participants were invited to form groups and propose practical solutions to issues that had emerged over the two days of discussions and presentations. Five topics were selected for their urgency and relevance: Company and community experiences with conflict resolution; jurisdictional approaches and human rights; implementing and monitoring the national inquiry's recommendations related to agribusiness and human rights; legal recognition of communal areas; and making FPIC a legal requirement.

Below is a brief summary of the main challenges identified by the participants and their suggested solutions.

Group 1: Company and community experiences with conflict resolution

Challenges:

- ▶ The documents provided are often in English rather than in the local language. Sometimes no documents are provided
- ▶ The whole community is rarely involved in conflict resolution processes
- ▶ Use of intimidation
- ▶ There are discrepancies between the goals of the community and those of the company

Solutions:

- ▶ Negotiations need to be carried out with the whole community, not just a few members
- ▶ The company must give villagers enough time to make decisions
- ▶ The community needs to be properly informed

- ▶ During the negotiations and mediations the company must send people who know about the project and who have the power to make decisions (often representatives from the company do not have the power to make decisions and do not know the situation)
- ▶ The community needs to be less fragmented and have faith that the negotiation process will succeed
- ▶ It is important to establish relationships with other organisations (environmental NGOs, certification bodies etc.) outside the village and involve them in the talks to advise the community during conflict resolution
- ▶ Any documentation given out by the company should be recorded by the community
- ▶ The community needs to develop a media and advocacy team so that their message can be spread on their own terms. An idea could be for the community to establish their own media platform so that they can control what they want to say without the risk of the message being distorted.

Group 2: Jurisdictional approach and human rights

Challenges:

- ▶ Power imbalance: the jurisdictional approach empowers local authorities but it is unclear whether it will improve or compound the power balance
- ▶ The commodity production supports a certain model of production (e.g. monocultures)
- ▶ Remedies, rehabilitations and sanctions over human rights violations are difficult to guarantee because of the power imbalance

Solutions:

- ▶ The imbalance of power could be resolved through a local certification system. Communities are in the best position to say whether commodities are sustainably produced. Committed local authorities can provide certification, ensure that human rights audits take place, and that the company is respecting the standards
- ▶ Diversity of cultures should be encouraged and diversity could be criteria for certification
- ▶ In the local certification system, communities should be allowed to suspend the certificates whenever problems arise, thus sending a strong market signal
- ▶ Local certification needs to be linked to proper law enforcement

Group 3: Implementing national inquiry recommendations related to agribusiness and human rights in Malaysia

Challenges:

- ▶ Stakeholders are not sufficiently involved. It is difficult for stakeholders to influence recommendations and encourage implementation

Solutions:

- ▶ Stakeholders need to be involved throughout the inquiry process, right from the beginning and throughout the process (e.g. involvement in monitoring and implementation)
- ▶ Stakeholders need to communicate among each other. Establishing a working group could be a mechanism to enable this

Group 4: Legal recognition of communal areas

Challenges:

- ▶ There is a lack of political will
- ▶ The procedure to obtain the right takes too long
- ▶ Some countries have good laws but they are not implemented as they should
- ▶ Some countries have conflicting laws
- ▶ The communal land is limited due to the issuance of land concessions to companies

Solutions:

- ▶ Communal title should be vested in the community as a whole, based on rights issued by a state agency
- ▶ What should be adequate procedure for the title holder to engage in a joint venture?
 1. Approval from the majority of the members of the community
 2. Decide for how long the agreement will be applied
 3. Consider inter-generational issues
 4. Make sure that indigenous communities have the right to zone their land
 5. Establishment of safeguards such as: zoning, planning, FPIC, food sovereignty
 6. Consider sustainability.

Group 5: Making FPIC a legal requirement

Challenges:

- ▶ There is a lack of political will
- ▶ There is no genuine democratic context (free consent is required)
- ▶ There are power imbalances between the state and indigenous peoples
- ▶ FPIC is often interpreted by states and corporations only as a tick-box exercise

Solutions:

- ▶ It is essential that a broad network of indigenous peoples is established
- ▶ The UN Guiding Principles on Business and Human Rights should be implemented and the role of the National Human Rights Commissions needs to be acknowledged
- ▶ The International Criminal Court's new focus on land grabs could help making FPIC a legal requirement
- ▶ Corporations need to commit to FPIC
- ▶ It is important to develop accountability mechanisms involving indigenous peoples
- ▶ FPIC must be more than a legal requirement. It has to be understood as a political tool for indigenous peoples, which is grounded in their collective rights
- ▶ Governments must understand that there are principles that have to be followed, and indigenous peoples need to be aware of their rights

Participant list

Name	Role	Organisation	Country
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Ms Joyce Gondio		AIPP	Philippines
Mr Febriyan Anindita		AMAN	Indonesia
Mr Andiko		ASM	Indonesia
Mr Jumain Andarum	Community representative	Bigor	Malaysia
Mr John Mart Salunday	Project Coordinator	Coalition Against Land Grabbing (CALG)	Philippines
Ms Gondin Monio	Secretary and Finance Officer	Coalition Against Land Grabbing (CALG)	Philippines
Mr Sok Leang	Coordinator of "Business & Human Rights" Project	Cambodia Human Rights Action Committee (CHRAC)	Cambodia
Mr Colin Lee	Director of Corporate Affairs, Palm Oil	Cargill	Singapore
Mr Colin Nicholas	Coordinator	Center for Orang Asli Concerns (COAC)	Malaysia
Mr Atty. Jesus G. Torres		Commission on Human Rights of the Philippines (CHRP)	Philippines
Mr Roberto Eugenio T. Cadiz	Commissioner	Commission on Human Rights of the Philippines (CHRP)	Philippines
Mr Chum Narin	Land and Natural Resource program manager	Community Legal Education Center (CLEC)	Cambodia
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Ms Suzane Jimmy		JOAS	Malaysia
Ms Christina		JOAS	Malaysia

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Mr Tan Sri Razali Ismail	Chairman	SUHAKAM (Malaysian NHRC)	Malaysia
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Mr Ekachai Pinkaew	Human Rights Official	Thai NHRC	Thailand
Mr Felix Ukil	Community representative	Tongod	Malaysia
Mr Norman Jiwan		Transformasi Untuk Keadilan INDONESIA	Indonesia
Mr Devasish Roy	Asian Representative	UN Permanent Forum on Indigenous Issues	Bangladesh
Ms Shin Shin Lee	National Coordinator, GEF Small Grants Programme Malaysia	UNDP	Malaysia
Prof. Dr. Ramy Bulan	Associate Professor	Faculty of Law University of Malaya	Malaysia
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Participants at the 6th Southeast Asian Conference on Human Rights and Agribusiness. (Albert Bansa/JOAS)

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