

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 transnational 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 transnational 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 transnational 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 transnational 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