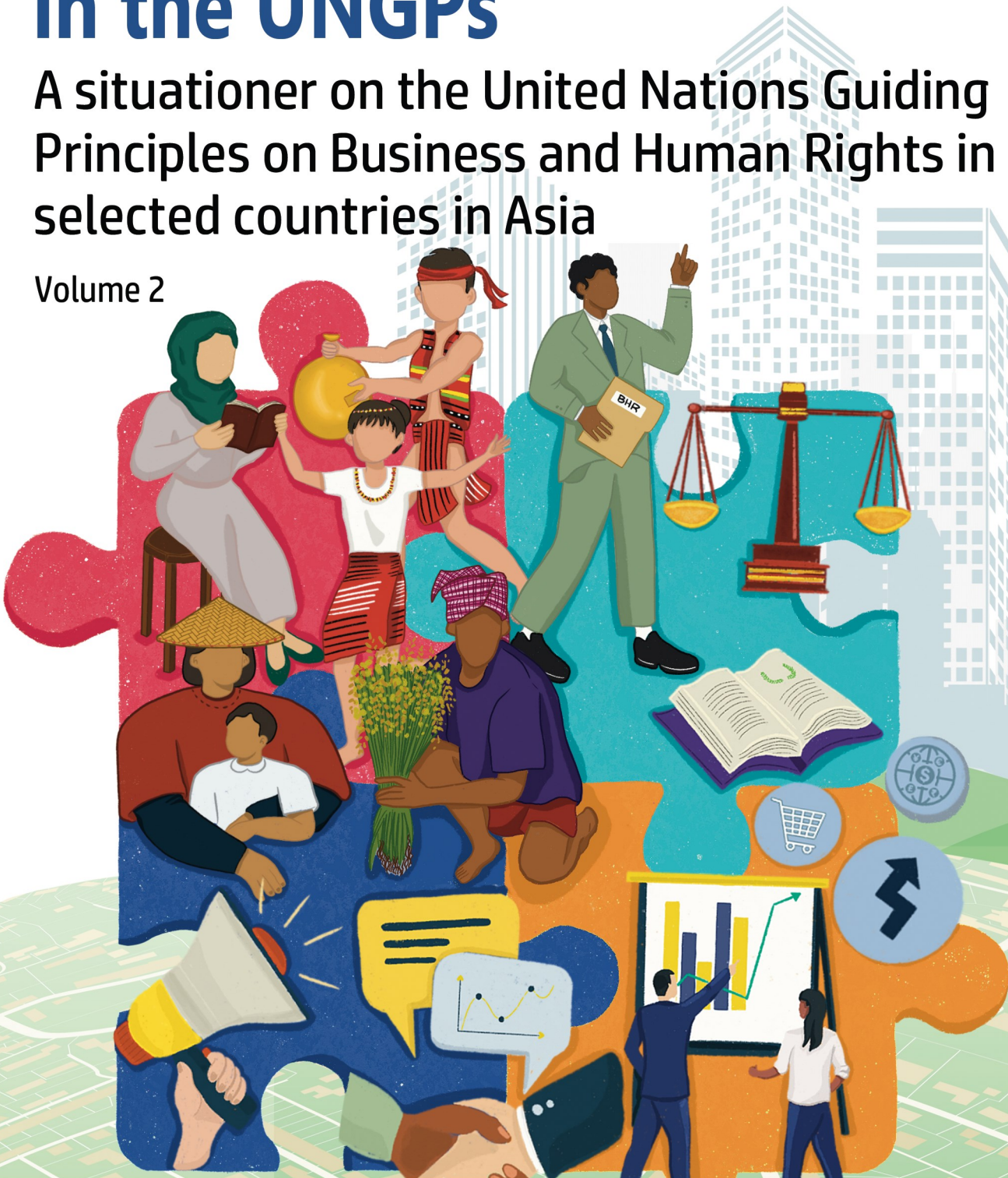


Mainstreaming Land Rights in the UNGPs

A situationer on the United Nations Guiding Principles on Business and Human Rights in selected countries in Asia

Volume 2





Founded in 1979, ANGOC is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development. ANGOC network members and partners work in 10 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

ANGOC is a member of the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium, and the International Land Coalition (ILC).



Land Watch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves civil society organizations in Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, and the Philippines. LWA aims to take stock of significant changes in the policy and legal environments; undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and, encourage the sharing of experiences on coalition-building and actions on land rights issues. LWA is convened by ANGOC.



The Land Watch Asia Working Group on Mainstreaming Land Rights as Human Rights (LWA WG LRHR) is a platform of civil society organizations from Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines working towards the recognition of land rights as human rights, through evidence-based advocacy and multi-stakeholder policy dialogues at national and regional levels. The LWA WG LRHR is presently engaged in mainstreaming land rights in the implementation of the UN Guiding Principles on Business and Human Rights, examining the trends in land grabbing in Asia, and monitoring land and resource conflicts and their effects on rights defenders and communities. ANGOC serves as the convener of this working group.

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2021



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Land Watch Asia Working Group on Mainstreaming Land Rights as Human Rights



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Association for Realisation of Basic Needs (ARBAN), a non-government development organization concerned with the fundamental rights and the basic needs of landless agricultural laborers, sharecroppers and marginalized people, was founded on 18 February 1984. It works with the rural-urban poor and powerless and indigenous people for their socio-economic, cultural, and political empowerment and emancipation from all forms of bondages including injustices, inequalities and dispossession by promoting and practicing democratic values and participatory development processes at all levels through implementing various projects and programs.

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The People's Campaign for Agrarian Reform Network, Inc. (AR Now!) is an advocacy and campaign center for the promotion of agrarian reform and sustainable development. Its vision is to achieve peasant empowerment, agrarian and aquatic reform, sustainable agriculture and rural development.

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Centre for Legislative Research and Advocacy (CLRA) is an independent, not-for-profit, non-partisan initiative, which works to support and strengthen Parliament and legislatures so as to realize the values of democratic governance. Through research, advocacy, networking, and other allied activities CLRA seeks to promote and reinforce the constitutionally assigned roles and functions of parliamentary institutions. This includes supporting institutional development and capacity building aimed at cultivating a well-functioning, sustainable and pluralistic system of democratic polity. CLRA is the pioneer organization in this comprehensive area of work in India. CLRA works closely with civil society groups, parliamentary institutions, legislators, political parties, civil servants, and media to create participatory and collective wisdom and praxis in the policy and decision-making process.

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Community Development Association (CDA) is a non-government development organization that has been facilitating the rural poor, landless and marginal farmers, the plain land indigenous peoples (IPs), including differently able men, women, and rural youth with a view to empower, ensure access to land rights and mobilize the people-centered land governance and agrarian reform upon the contextual needs and demands led by 700 village-based peoples organizations in the north-western part of Bangladesh.

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Community Self Reliance Centre (CSRC) has been at the forefront of land and agrarian rights campaign in Nepal. CSRC educates, organizes, and empowers people deprived of their basic rights to land to lead free, secure, and dignified lives. The organization's programs focus on strengthening community organizations, developing human rights defenders, improving livelihoods, and promoting land and agrarian reform among land-poor farmers. Since its establishment, CSRC has constantly worked to transform discriminatory and unjust social relations by organizing landless, land poor and marginalized communities to claim and exercise their rights.

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Established in 1994, the **Consortium for Agrarian Reform (Konsorsium Pembaruan Agrarian or KPA)** currently consists of 153 people's organizations (peasants, indigenous peoples, rural women, fisherfolk, urban poor) and NGOs in 23 provinces in Indonesia. KPA fights for agrarian reform in Indonesia through advocacy and the strengthening of people's organizations. KPA's focus on land reform and tenurial security, and policy advocacy on these issues has put the coalition at the forefront of the land rights struggles of Indonesia's landless rural poor, especially with indigenous peoples in several areas in Outer Java. KPA encourages a participatory and pluralistic approach which recognizes the development of different systems of land use and tenure to ensure land rights. KPA is a people's movement that has an open and independent character.

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Social Development Foundation (SDF) was founded in October 1998 with an aim to strengthen the autonomous grassroots movements, build secular democratic leadership among the most marginalized communities and develop scientific temper among people. SDF focuses on land reforms with right-based approach. Though the organization was constituted in Delhi, its main grassroots operations are mainly in the Uttar Pradesh and Uttarakhand States. SDF also provides necessary support to engage with policy makers, social movements, academics, lawyers, and civil society organizations.

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STAR Kampuchea (SK) is a Cambodian non-profit and non-partisan organization established in 1997 dedicated to building democracy through strengthening of civil societies. SK also provides direct support to communities suffering from resource conflicts like land-grabbing and land rights abuses through capacity building and legal services.

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Xavier Science Foundation, Inc. (XSF) is a non-political, non-stock, non-profit organization established and designed to encourage, support, assist, and finance projects and programs dedicated to the pursuit of social and educational development of the people in Mindanao. It is a legal and financial mechanism generating and managing resources to support such socially-concerned and development-oriented projects and programs.

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Foreword

A decade since the United Nations Guiding Principles on Business and Human Rights (UNGPs) were endorsed by the UN Human Rights Council, the National Action Plans (NAPs) that should realize the “Protect, Respect and Remedy” Framework of the BHR principles are still a work-in-progress.

Tragically, within the same decade, conflicts over land and resources, in particular land grabbing, have been escalating in number and intensity. Many of these conflicts are between communities, who depend on land for their sustenance and survival, and private corporations and governments, which treat land as a commodity to be used for profit. Aggrieved rural communities lament that these conflicts have led to loss of lives and livelihoods, large-scale displacement, disregard for the free, prior, and informed consent (FPIC) of indigenous communities, to name a few.

And yet, the discussion of land rights in the context of business and human rights (BHR) has not received enough attention, space, and traction. No less than Professor Surya Deva, Chairperson of the UN Working Group on Business and Human Rights raised this at the regional conference on *Mainstreaming Land Rights in the UNGPs in Asia*.¹ He underscored the following critical points:

- Land is a resource that is closely linked with and directly impacts human rights. It is profoundly intersected with the right to life and economic rights as a source of food and livelihood. Land is also inextricably linked to peoples’ identities and existence, thus a part of social and cultural rights.
- Land, unlike investments or employment, can support the livelihood of many people for generations. This is a unique characteristic of land because its uses are flexible while it is finite. Employment or investments, on the other hand, can be easily lost or terminated and may not support livelihoods across generations.
- Land and land rights are viewed contrarily among different stakeholders in society. It is unthinkable for many communities to consider selling off their land because generations owe their lives to it, and thus, they will defend

¹ This event was jointly organized by ANGOC, Land Watch Asia (LWA), the Commission of Human Rights of the Philippines (CHRP), International Land Coalition (ILC), the Southeast Asia National Human Rights Institution Forum (SEANF), UNDP Business and Human Rights Asia (UNDP B+HR Asia), the Office of the United Nations High Commissioner for Human Rights (UN OHCHR) in Southeast Asia, and LWA Working Group on Mainstreaming Land Rights as Human Rights (LWA WG LRHR).

their right to the land with their lives. But to most businesses, investors or even the State, land is viewed as nothing but a commodity that can be bought or sold for profit over the welfare of people.

- The competing demands on land for food, livelihood, settlement, business, industry, and many more, will naturally result in conflicts over access and control of the land wherein community land rights are disregarded. The increasing size and influence of transnational corporations and businesses have led to their undermining land and human rights of marginalized sectors.
- Land ownership or land acquisition is still disproportionate. Only a small percentage of women can or actually own the land they work on. Land is absolutely vital to indigenous peoples for its cultural and economic value to them. But their land rights are violated too easily. The same can be said of the disproportionate land rights of religious and linguistic minorities.

Often, the enjoyment of certain human rights being connected to secure land rights is unrecognized. Losing land rights does not only mean losing land or title to property, as many other resources, abilities, and freedoms may be lost. Thus, in the absence of a binding treaty, land rights should be observed in State practice. In addition, soft law instruments such as the UNGPs, are indicative of existing or developing legally binding norms and consensus among States and other stakeholders (UN and OHCHR, 2015). Adherence to the UNGPs addresses wide-ranging conflicts and issues pertaining to land rights. Thus, land rights should be viewed equally with other human rights, which are indivisible by nature.

For the past decade, CSOs have actively led the campaign for including land rights as an integral element of the implementation of the UNGPs. This campaign worked to pursue policy and institutional reforms combined with concrete community actions, to protect land rights and to enhance access to and control of land and tenurial security for the rural poor in Asia. CSOs and social movements need to continue guarding the impacts of land and agribusiness investments on local communities, as well as to regularly facilitate exchanges of experiences, lessons, innovations, and evidence-based recommendations for stakeholders.

A number of recommendations in ensuring land rights in the discourse of BHR are found in the articles featured in this second volume -- country reports and a regional summary by the Land Watch Asia Working Group on Land

Rights as Human Rights, summary workshop report of "*Mainstreaming Land Rights in the UNGPs in Asia*", and ANGOC's input on the initiative of the Committee of the Economic, Social and Cultural Rights in preparing a General Comment on Land.

Albeit a protracted process, the formulation of the NAPs in the different countries can provide that platform to pursue the assertion of land rights as human rights. Three interrelated actions should be undertaken in framing the NAPs:

- Continue efforts on popularizing or mainstreaming BHR in order for all the stakeholders to be aware of their responsibilities under the UNGPs;
- Strengthen National Human Rights Institutions and Commissions with guaranteed independence and resources to perform an encompassing mandate in line with the Paris Principles to promote and protect human rights and implement the UNGPs; and,
- Lobby for the formulation and adoption of NAPs for UNGPs, with a strong focus on protecting land rights.

As the NAPs are being developed across the world including Asia, this policy framework can inform these processes to integrate land rights issues in the BHR discussions. The COVID-19 pandemic should not be used as an excuse to prevent States from addressing issues or grievances around businesses and land and human rights and to stall formulation of NAPs.

Hence, States must get the process of finishing the NAPs back on track. In the end, realizing land rights as part of the Protect, Respect and Remedy Framework for business and human rights relies heavily on national action and the vigilance of land rights defenders.

If the *Right to Food realizes the Right to Life*, and food comes from the land, then congruently, the *Right to Land secures the Right to Life*. Hence, the ANGOC Regional Network strongly assert that Land Rights are Human Rights.

Chet Charya
Chairperson, ANGOC

Nathaniel Don Marquez
Executive Director, ANGOC

Instituting National Action Plans of the UN Guiding Principles on Business and Human Rights towards the Protection of Land Rights¹

Introduction

Context

Land acquisition has been contentious across millennia. By annexing land, kingdoms were consolidated and by expanding territories, empires were created. The parallelism between land acquisition then and now should not be lost on anyone, especially when, even in these times, human lives pay for the price of land.

“Land is the surface of the earth, the materials beneath, the air above and all things fixed to the soil” (UN Secretary-General, 2019). Land acquisition is being driven by growing demands for food and housing that is shrinking the supply of arable land. In addition, adverse environmental impacts contribute to the scarcity of viable land (Quizon, 2019). As many attach significant political, economic, cultural, spiritual, and symbolic value to land (UN Secretary-General, 2019), the competition to acquire and continue to hold on to land commonly leads to deep-seated conflict.

Conflicts could be traced to an increased demand for land in recent years. The increased demand is driven by State economic policies supporting massive corporate investments in agriculture and natural resources; the products of which are mainly exported (Pagsanghan, 2018). The result is that the largest one percent of farms hold more than 70 percent of agricultural land and deliver produce to a global food system run by big business.

¹This paper is a consolidation of the country reports prepared by the members of the LWA Working Group on Mainstreaming Land Rights and Human Rights, as summarized by Geminiano Sandoval, Jr. with the assistance of Nathaniel Don Marquez and Denise Hyacinth Joy Musni of the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).

Meanwhile, over 80 percent of farms have an area of no more than two hectares and are mostly detached from global food chains (Anseeuw and Bardinelli, 2020). This skewed distribution of land is no accident. The current massive landholdings of corporations were a result of import-dependent strategy of countries to produce their own food from agricultural lands abroad as a reaction to the food crisis in the 2000s (Pagsanghan, 2018).

The disproportionate corporate ownership of agricultural land coincides with a dramatic increase in land conflicts where the rural poor bear the brunt of cases of human rights violations (Pagsanghan, 2018). The situation is compounded by tenuous tenure rights, which also result in conflict as competing interests fight for control of the land (Quizon, 2019).

Conflict is also exacerbated by rural landlessness caused by population growth, fragmentation, land use conversion, environmental degradation, and the impact of natural disasters (Wickeri and Kalhan, 2010). The sad reality is that there is a direct relationship between conflict and the incidence of human rights violations.

Apart from food security, land acquisition by big business is also driven by the quest for alternative sources of energy. An unintended adverse consequence, the shift from fossil fuels to the supposedly more environment-friendly biofuels prompted large-scale acquisitions of land, including forest lands. The demand for biofuels is sustained by increasing demand for energy led by China's fast-paced development and geo-political instability in the oil-producing Middle East region (Pagsanghan, 2018).

For similar reasons, demand for land is tied to the demand for resources directly related to economic growth and development. Extractive industries like logging and mining continue to push the demand for land (Pagsanghan, 2018). Economic growth and development also gave rise to industrial estates and tourism-based real estates (Pagsanghan, 2018) which require conversion of agricultural lands.

Competition over land will not abate and deeper conflicts will persist. Land will become scarcer with climate change, population growth, food insecurity, migration, and urbanization. These pressures will continue to feed conflict not merely internally but may also spill over internationally (UN Secretary-General, 2019).

Even the COVID-19 pandemic is partially caused by these pressures, specifically by urbanization (Anseeuw and Bardinelli, 2020). The scarcity of land has driven resource-poor but cash-rich countries to make large-scale acquisitions of land in order to achieve food security and also mitigate the pressures on land-related conflict (UNHRC, 2009). Big businesses have also started to speculate on agricultural land on the belief that land prices will drastically increase (UNHRC 2009).

In acquiring land, corporations prefer lands in developing countries due to the relative low prices of available vast tracks of land that are conducive to agriculture coupled with inexpensive labor (UNHRC, 2009). It is also no coincidence that these developing countries suffer from ailing political and legal institutions that allow the exploitation of the poor and marginalized.

Box 1. Common reasons for large scale acquisitions of land

- The rush towards the production of agrofuels as an alternative to fossil fuels, a development encouraged by fiscal incentives and subsidies in developed countries;
- The growth of population and urbanization, combined with the exhaustion of natural resources, in certain countries, which therefore see large-scale land acquisitions as a means to achieve long-term food security;
- Increased concerns of certain countries about the availability of fresh water, which in a number of regions is becoming a scarce commodity;
- Increased demand for certain raw commodities from tropical countries, particularly fiber and other wood products;
- Expected subsidies for carbon storage through plantation and avoided deforestation; and,
- Particularly as far as private investors are concerned, speculation on future increases in the price of farmland.

Source: UN Human Rights Council. (2009, December 28). *Report of the Special Rapporteur on the Right to Food, Olivier De Schutter*. UN Human Rights Council. A/HRC/13/33/Add.2.

As big corporations gobble up land, especially in developing countries, conflicts begin to ripen. Unfortunately, there is an established link between land, armed conflict, and human rights violations (UN Secretary-General, 2019). This worrying development calls for a heightened observance of the United Nations Guiding Principles on Business and Human Rights (UNGPs).

Thus, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), in partnership with Land Watch Asia (LWA) members in Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines, are implementing the program "Defending Land Rights and Human Rights Defenders." This initiative aims to contribute to the goal of reducing land rights violations and ensuring that the right to land is recognized as a human right, as land rights organizations and communities become part of the regional and country dialogues.

Objectives of study

This study was undertaken to:

- provide an overview of the legal status of land rights in international law;
- review the progress of implementing the UN Guiding Principles for Business and Human Rights and formulating National Actions Plans (NAPs) in six Asian countries; and,
- recommend ways to move forward the development of the respective NAPs in these countries and in Asia in general, with particular focus on land rights.

Methodology, scope, and limitations

Six country reports were prepared to give an update on the progress of efforts to mainstream BHR in the context of land and agricultural investments and when relevant, report on the development of NAPs to implement the UNGPs.

This regional summary report consolidates the country papers prepared by the LWA Working Group on Mainstreaming Land Rights and Human Rights (LWA WG LRHR) members in Bangladesh, Cambodia, India, Indonesia, Nepal, and the Philippines.

Given the COVID-19 pandemic, data were gathered mostly through digital meetings and online sources. To the extent possible, CSO partners engaged their respective National Human Rights Institutions/Commissions (NHRIs/Cs), other CSOs working on land rights, and governments in the dialogue process in relation to the formulation and monitoring of UNGPs.

An online regional meeting among the LWA WG LRHR members validated the contents of this paper. The main highlights of this document were also presented last 3 to 4 August 2021 during an *Online Regional Workshop on Mainstreaming Land Rights in UNGPs in Asia*, jointly organized by ANGOC, LWA WG LRHR, Commission of Human Rights of the Philippines (CHRP), International Land Coalition (ILC), Southeast Asia National Human Rights Institutions Forum (SEANF), United Nations Development Programme Business and Human Rights Asia (UNDP B+HR Asia), and the Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for Southeast Asia.

Political and human rights context

As this study deals with human rights in general and land rights in particular, it is important to understand the specificities of the country contexts. Governments that are resistant to the business and human rights principles may have opaque policies leading to the lack of information on their activities. A general picture on the political climate and treatment of human rights in six Asian countries is presented in Table 1.

Table 1. Political and Human Rights Context

Country	Context
Bangladesh	<p>The Bangladesh National Human Rights Commission has fettered jurisdiction since its mandate does not include economic, social, and cultural rights (UN CESCR, 2018). Its independence is also undermined when it does not have full financial autonomy and adequate staff (UN CESCR, 2018).</p> <p>Government critics and human rights defenders are also under threat due to restrictive provisions in existing laws and proposed legislation (UN CESCR, 2018).</p> <p>Indigenous people are not recognized and protected under the Bangladesh Constitution. It has been reported that their ancestral lands have been expropriated without the requisite free, prior, and informed consent (UN CESCR, 2018).</p> <p>Women do not enjoy the same property rights as men in light of religious laws and the discrimination in the provisions of the <i>Khas</i> land distribution policy (UN CESCR, 2018).</p>
Cambodia	<p>The Cambodian People's Party remains firmly in control of the Cambodian government, as it holds all 125 seats in the Parliament. The government established a Supreme Consultative Council where seats were offered to losing political parties of the 2017 elections, seemingly as a consolation, since laws continue to be passed through the Parliament (UNHRC, 2019).</p> <p>The Cambodia National Rescue Party (CNRP) is still dissolved with its members banned from participating in elections (UNHRC, 2019). Its elected members were stripped of their positions, which were then given to unelected members of the Cambodian People's Party</p>

	<p>(UNHRC, 2019). The leader of the CNRP was detained in 2017 and is now under house arrest.</p> <p>There is general mistrust of the judiciary which was not aided by a law passed in 2015 placing the judiciary under the control of the Ministry of Justice. There is also widespread corruption while criminal convictions are often based on coerced testimonies obtained by the police (Sek, 2018).</p>
India	<p>India touts itself as the largest democracy in the world. It has a federal government in place which leads to differences in policies at the Federal State level (UNHRC, 2017a).</p> <p>About 67% of its population live in rural areas, but urbanization is growing (UNHRC, 2017a). About 90% of those living in rural areas live below the poverty line and there is a wide gap between the rich and the poor (UNHRC, 2017a).</p> <p>The National Human Rights Commission (NHRC) of India has limited powers and no move has been made to sufficiently equip it with the proper authority under the Protection of Human Rights Act (UNHRC, 2017a). It has no authority to investigate members of the military or police. It also has a very short period of one year to consider cases of human rights violations (UNHRC, 2017a). Administratively, the NHRC also lacks resources to pursue its present mandate (UNHRC, 2017a).</p> <p>UNESCO also reported a shrinking space for freedom of speech and expression. Journalists have been murdered and well-known nationalists have been assassinated (2017 Report). The rights to free speech and assembly are also curtailed by holding acts in the performance of such rights as criminal (UNHRC, 2017a).</p> <p>Laws protecting the marginalized have been amended resulting in the dilution of the laws' efficacy (SDF, 2021). Laws have also been changed to benefit corporations (SDF, 2021). Compounding such adverse changes, in at least one instance, the government defied the Supreme Court by not publishing information on environmental laws in a local language (SDF, 2021).</p>

Indonesia	<p>The government has been described to have corruption at all administrative levels (UNHRC, 2017b).</p> <p>It was observed that excessive use of force and extrajudicial killings by the police and the military during protests have been increasing (UNHRC, 2017b). There are reports that Indonesia's security forces are used to punish political dissidents and human rights defenders (UNHRC, 2017b).</p> <p>Defamation provisions from the law on information and electronic transactions are being used against critics of government (UNHRC, 2017a). A law on mass organizations was enacted which regulates and imposes onerous registration requirements for domestic and foreign associations (UNHRC, 2017b).</p>
Nepal	<p>Nepal's Constitution is relatively new. It is still just a decade removed from conflict and efforts to build a functioning democracy continue. It was only in 2011 that a law was passed to eliminate its caste system.</p> <p>The government is proposing laws that would undermine human rights and its protection in the country. For instance, the Media Council Bill limits freedom of expression, as it would allow a Media Council to penalize members of the journalism or news industry if they supposedly tarnished the image of a person (Human Rights Watch, n.d.). Similarly, the Information Technology Bill seeks to impose penalties, including imprisonment, on persons expressing their views online based on overbroad definitions of violations (Human Rights Watch, n.d.).</p> <p>The government is also proposing a law that would limit the authority to determine cases to file against human rights abusers exclusively with attorney-generals and removing such authority from the National Human Rights Commission (hrw.org). They are also proposing a law that gives the government authority to monitor and control the activity of organizations; thus making human rights defenders vulnerable to harassment and intimidation person (Human Rights Watch, n.d.).</p>
Philippines	<p>The 1987 Philippine Constitution contains a bill of rights and provisions geared to promote civil, political, and economic, social, and cultural rights and likewise, to prevent human rights violations pervasive during the Marcos regime. The same Constitution established an independent Commission on Human Rights and from this, other human rights bodies were created.</p>

The Philippines ratified eight core human rights instruments. However, the present government has refused visits of special mandate holders from the UNHRC (UNHRC, 2020) with the last visit happening in 2015.

While the Philippines has passed a substantial number of laws protecting economic, social, and cultural rights, the current administration's focus on public order and security issues, including drug trafficking, has resulted in serious violations of civil rights (UNHRC, 2020). The tenor of public order and national security has also produced problematic legislation that threaten human rights defenders' freedom to advocate and campaign for better protection of human rights (UNHRC, 2020). The OHCHR verified at least 208 murders of human rights defenders, journalists, and trade unionists over a five-year period between January 2015 and December 2019 (UNHRC, 2020). It is also a worrying development that State law enforcement agents intimidate NGOs and CSO through visits, raids, and detentions (UNHRC, 2020). Since 2015, the OHCHR also found that at least 40 lawyers, representing farmers and indigenous people on land rights cases, were killed (UNHRC, 2020).

Legal framework of the right to land

In municipal law,² a country's constitution usually contains a bill of rights that protect its citizen's civil rights. In international human rights law, the Universal Declaration of Human Rights (UDHR) is termed as the international bill of rights.

The UDHR is the progenitor of treaty law as regards human rights, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Being treaties, States may be called out to respect their obligations in these documents. These treaties also give teeth to the international bill of rights, as these three instruments have been traditionally referred as such.

The need to recognize and articulate human rights in less broad terms brought about treaties that address more specific human rights issues. They form part of the core international human rights treaties. These are:

² Also known as the national, domestic, or internal law of a sovereign State

- a. International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD);
- b. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- c. Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment (CAT);
- d. Convention on the Rights of the Child (CRC);
- e. International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (CRMW);
- f. Convention on the Rights of Persons with Disabilities (CRPD); and,
- g. International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED).

Land Rights

A review of these treaties reveals provisions that should be considered as bases for the right to land. Land is a requisite of economic, social, political, cultural, and historical activity and is directly linked to peace and security, human rights, and development (UN Secretary-General, 2019). Land issues cut across various domains of human rights. This is echoed in the draft General Comment No. 26 on Land and Economic, Social, and Cultural Rights of the CESCR. Thus, even without a stand-alone human right to land, current international human rights standards and other relevant international law already encompass land rights issues (UN and OHCHR, 2015).

It may be presumptuous to state categorically that the right to land is a fundamental right in light of its relation to other fundamental rights. Absent any codification or ratification by a significant number of States, it remains to be part of soft law.³

It should be noted that the UDHR remains to be a non-binding instrument, yet its normative impact leaves such status inconsequential (Brownlie, 2008).

Nevertheless, since protection of land rights oftentimes are requisite to the enjoyment of fundamental human rights, the practical effect elevates land rights to a higher plane in law.

³ Refers to instruments or principles that do not have legally-binding force

In the absence of a binding treaty, elements of land rights may be observed in State practice. In addition, soft law instruments, like the UNGPs, are indicative of existing or developing legally binding norms and consensus among States and other stakeholders (UN and OHCHR, 2015). There is an observable set of rules of general application from the wide State acceptance (Brownlie, 2008) of the UNGPs. Adherence to UNGPs address wide-ranging conflicts and issues pertaining to land rights. Thus, coupled with the indivisible nature of human rights, land rights should not be viewed any less than other human rights.

Importance of enforcing and protecting land rights

The most common notion of human rights violations pertaining to land rights may be that of the pervasive evictions of marginalized people from their properties.

In 1997, the UN Committee on Economic, Social, and Cultural Rights, in its General Comment No. 7 underscored the interrelationship and interdependency of all human rights and thus, forced evictions may lead to the violation of other human rights, such as the *“right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions”* (UN CESCR, 2017). Investment-linked evictions have been found to result in cases of physical and sexual violence against women (UN CESCR, 2017). It should be noted that in its General Comment No. 4, the Committee stated that everyone should have a *“degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”*

Many forced evictions can be traced to the disingenuous approach taken by business or government with local communities in the process of acquiring land. Local communities are often not extended prior consultation nor provided accurate information about their land. They only find out about the loss of their land when they are dispossessed by armed groups, which is often preceded by harassment, intimidation, and coercion (Pagsanghan, 2018).

In many cases, the enjoyment of certain rights is connected to land rights. Thus, land rights violations also serve as means to commit violations of other fundamental human rights. It should be borne in mind that land rights do not only refer to losing land or title to property, as many other resources, abilities, and freedoms may be lost. Table 2 shows examples of the interrelatedness of human rights and underscores the relevance of land rights:

Table 2. Human rights dependent on land rights and vice-versa

Human Right	Main Source Instruments	How this Human Right is Affected When Land Rights are Threatened or Violated
Right to Food	a. Art. 25, UDHR b. Arts. 11.1, 11.2, ICESCR c. Art. 28.1, CRPD	<ul style="list-style-type: none"> When development prevents the vulnerable and marginalized from accessing land that is the source of their food
Right to Adequate Housing	a. Art. 25 UDHR b. Art. 11.1 ICESCR c. Art. 17.1 ICCPR	<ul style="list-style-type: none"> Rising land prices due to development, privatization, poor urban planning, gentrification; poor settles on land with low market value that are often times polluted or in hazard-prone areas Evictions in rural areas due to large scale developments; infrastructure projects, extractive and industrial activities, and even armed conflict
Rights to Freedom of Opinion, Expression and Assembly	a. Arts. 19 and 20, UDHR b. Art. 19, 20, and 21, ICCPR c. Art. 5 (d) (viii) and (ix), ICEAFRD	<ul style="list-style-type: none"> Affects human rights defenders of land rights Informal settlers or those victims of eviction are subjected to excessive use of force by police, or subjected to harassment Criminalization of acts of protest or criticism of government or business When urbanization results in smaller public spaces for assembly
Right to Freedom of Religion	a. Art. 18, UDHR b. Art. 18, 27 ICCPR c. Art. 5 (d) (vii), ICEAFRD d. Art. 14. CRC	<ul style="list-style-type: none"> When religious sites are expropriated by the State Mere limitation on the exercise of religion is a violation as when access to religious sites is limited or undermined due to conflict or development
Right to Life	a. Art. 3, UDHR; b. Article 6 (1) ICCPR	<ul style="list-style-type: none"> When land is the source of subsistence and is unlawfully taken When life is taken in defense of one's land or on behalf of others by human rights defenders When eviction violates the dignity of one's life
Right to Property	a. Art. 17 UDHR; b. Art. 5 (d) (v) and (vi), ICEAFRD c. Arts. 15 (2) and 16 (1) (c) and (h), CEDAW	<ul style="list-style-type: none"> When right to property is interpreted to give preference to current property arrangements Over-focus on individual titling without recognizing condition and needs of marginalized groups Gender discrimination on right to own property
Right to Information	a. Art. 19, UDHR b. Art. 19 (2), ICCPR	<ul style="list-style-type: none"> Marginalized stakeholders are left out of consultations or are not provided complete information on land deals, development projects or land reform; Minority groups are not given information on land issues in a language they understand

Source: United Nations (UN) and Office of the High Commissioner for Human Rights (OHCHR). (2015). Land and Human Rights – Standards and Applications. United Nations. https://www.ohchr.org/documents/publications/land_hr-standardsapplications.pdf

Threats to land rights

Land conflicts may either be land disputes or structural land conflicts (Quizon, 2019).

Land disputes normally involve opposing claims involving land or resource that may be resolved through civil proceedings or other pacific means within a legal system. Structural land conflicts are deeper and larger controversies involving lands or resources.

These conflicts may involve opposing interests of many large groups and even classes of people where the enormity of the issues could not be settled by the existing legal system (Quizon, 2019). Such conflicts at times would lead to violence and greater threats to human rights.

The UN Secretary General (UN Secretary-General, 2019) identified a number of land-related issues that normally escalate into conflict. These include:

- a. Politics of exclusion employed by powerful actors where people are displaced from their lands and homes;
- b. Scarce natural resources where disputes over land arise due to increasing demand from a growing population, adverse environmental impact on land, or battles over resources such as water;
- c. Population pressure where the demand for land as space increases because of high land-to-people occupancy ratios or urbanization;
- d. Economic and political competition between power blocs that include instances where foreign corporations compete with local communities for land; or,
- e. Weak land administration systems where a weak State, outdated or irrelevant laws, and lack of dispute resolution capacity further marginalize people from their lands.

Large investments in land are normally welcomed by troubled States that are impoverished with an unstable political environment. Big multinationals and wealthy governments engage with such countries to take advantage of their situations that normally feature weak laws that leave people unprotected. As a result, these businesses and governments do not realize the economic prospects of their investments. Instead, they create an environment for conflict and for rife human rights violations (Pagsanghan, 2018).

It should be underscored that deprivation of land rights not only arises through conflict. Climate change is a serious threat to land rights, not just to those who till the land, but it is a threat to each and every person's right to land. It is also becoming widely accepted in law that a safe, clean, healthy, and sustainable environment, including land, is essential for the enjoyment of human rights (UN and OHCHR, 2015).

Complex corporate and financial structures also threaten land rights especially as regards obtaining redress for abuses. Due to the many layers of such structures, actual ownership of the business is difficult to determine. Private equity firms and asset managers have started placing their client's money in farmlands and thus, those in control of a business may be geographically and institutionally distant from where abuses may happen (Anseeuw and Bardinelli, 2020).

While the human rights system emanating from the UDHR is largely within the ambit of international law, ultimately, the effective protection of human rights depends greatly on municipal legal systems (Brownlie, 2008). Even the State duty to protect is a mere standard of conduct where a State's duty to protect human rights is merely vicarious and its responsibility is only triggered when the violation may be attributed to it and mainly for its inaction.

In this light, the context of land rights issues in Asia is relevant. The six countries (Bangladesh, Cambodia, India, Indonesia, Nepal, and Philippines) are immersed in varying degrees of land-related issues and conflicts as shown below:

Table 3. Land-related conflicts in six Asian countries

Country	Examples of Land-Related Conflicts
Bangladesh	<ul style="list-style-type: none"> <li data-bbox="286 1450 1224 1522">▪ 75% of all pending court cases are land-related conflicts and account for 10% of the country's GDP (CDA, 2018). <li data-bbox="286 1522 1224 1663">▪ Indigenous people are not recognized and protected under the Bangladesh Constitution. It has been reported that their ancestral lands have been expropriated without the requisite free, prior, and informed consent (UN CESCR, 2018). <li data-bbox="286 1663 1224 1734">▪ There are incidents of land grabbing, as the government fails to fully implement it <i>Khas</i> land distribution policy (UN CESCR, 2018). <li data-bbox="286 1734 1224 1837">▪ Women also do not enjoy the same property rights as men in light of religious laws and the discrimination in the provisions of the <i>Khas</i> land distribution policy (UN CESCR, 2018).

	<ul style="list-style-type: none"> ▪ From 2015 to 2018, in relation to land disputes, 1,484 houses of indigenous people were burned down, 206 houses were looted and ransacked, 146 people were assaulted/injured, nine killed and 40 women were raped or were victims of attempted rape (Quizon, 2019). ▪ From 2015 to 2018, 1,544 indigenous families were forcibly evicted from their ancestral lands (Quizon, 2019).
Cambodia	<ul style="list-style-type: none"> ▪ The lack of governance through formal land titles, corruption and lack of legitimate land rights governance allows businesses to commit land grabbing and forced evictions with impunity (STAR Kampuchea, 2021). ▪ As many as a million people are dealing with land disputes (Quizon, 2019). ▪ As of 2019, 60,000 people are estimated to have been forcibly evicted from their homes (Quizon, 2019). ▪ Community activists who protested land grabs and evictions were arrested after being charged with incitement and damage to property as well as concocted common crimes (Quizon, 2019). ▪ There were reports of killings of community activists who protested land grabs and evictions (Quizon, 2019).
India	<ul style="list-style-type: none"> ▪ Approximately 70% of the traditional homeland of indigenous peoples in India has historically been designated as forest and has been brought under the control of the Government since colonial time. ▪ Many of the land disputes involve forest lands, thus affecting tribal groups or indigenous peoples. ▪ Use of force is commonly employed by government and businesses in acquiring land for infrastructure and industries (Pagsanghan, 2018). ▪ Current drivers of land conflict include: State-led development projects (for infrastructure, Special Economic Zones, etc.) which has led to the displacement of an estimated 60 million people from 1947 to 2004, of which 40% are tribals; continuing land conversion of forests to other uses; and, privatization of community lands that are under common property use and tenure.
Indonesia	<ul style="list-style-type: none"> ▪ Land conflicts between large corporations and small agricultural communities are very common. ▪ Between 2004 and 2015, 1,770 agrarian conflicts involving one million households over an area of at least seven million hectares were recorded (Quizon, 2019). ▪ Over a 20-month period, a review of agrarian land disputes revealed the deaths of 22 people and injury to 318 people usually committed by State security forces or private security (Quizon, 2019). ▪ In 2017, 369 persons from protesting communities were arrested after civil and criminal cases were filed against them and in the first eight months of 2018, 152 were arrested (Quizon, 2019). ▪ In 2017, 32% of agrarian land conflicts pertained to plantations, including those for oil palm (Pagsanghan, 2018).

	<ul style="list-style-type: none"> ▪ Mining industries often damage water resources that are used for food production, forcing villagers and farmers around the mining area to use mine pit water for household use and for irrigation of crops and fish farming (UNHRC, 2018). ▪ As of 2018, the government has only issued its sustainable palm oil certification to 16.7% of plantations (UNHRC, 2018). ▪ In December 2017, the construction of the Batang-Semarang highway resulted in the forced eviction of hundreds of local community members, including peasants from nine villages (UNHRC, 2018).
Nepal	<ul style="list-style-type: none"> ▪ The Nepalese laws and government policies do not recognize traditional land and territories (Pagsanghan, 2018). ▪ Land conflicts arise due to complicated legal procedures, lack of awareness, loopholes, and duplications in land laws (Pagsanghan, 2018). ▪ Land conflicts also arise from discrimination against women and the minority group of <i>Dalits</i> (Quizon, 2019). ▪ From 2012 to 2016, an annual average of 25,000 land-related cases were filed in court (Quizon, 2019).
Philippines	<ul style="list-style-type: none"> ▪ 23% of land dispute cases resulted in the murder of a party, with 87.5% of such killings perpetrated by military or private armed groups (Quizon, 2019). ▪ From 2017 to mid-2018, businesses and landed families filed at least 147 trespassing or theft cases against community leaders and members (Quizon, 2019). ▪ In the Philippines, from January 2017 to June 2018, 431 instances of human rights violations were found in 233 of the conflict cases studied – 61 of these involved the assassination of individuals, most of whom were affiliated with CSOs or social movements (ANGOC). ▪ In 2017, the Philippines was classified as the second deadliest country for land and environmental rights defenders (Pagsanghan, 2018).

Business and Human Rights

In the 2000s, the dark side of globalization started to show its ugly face. While environmental protection came to the forefront of globalization issues and sustainable development became a byline, businesses making money at the expense of human rights were also being exposed. In 2003, the UN released the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, but reception was very lukewarm.

In 2007, however, the UN General Assembly categorically adopted the principle that under international law, "States have a duty to protect against non-State human rights abuses within their jurisdiction, and that this duty extends to protection against abuses by business entities (UNHRC, 2007).

This statement underscored a State's "Duty to Protect" in what would later be one of the three pillars in a framework on business and human rights. This Duty to Protect was also cited in the Human Rights Committee's General Comment 31 stating that the obligations under the International Convention on Civil and Political Rights (ICCPR) would only be fully discharged if the duty to protect against violations of the ICCPR extends to private actors (UNHRC, 2007).

The international legal system was also disabusing itself of the notion that corporations may not be subjects of international law and thus, they may be held responsible for their corporate actions (UNHRC, 2007). New realities point to corporations having duties and responsibilities in international law in light of their increased and active involvement in the international plane (UNHRC, 2007).

Moreover, with international criminal tribunals expanding individual responsibility and domestic statutes assigning responsibility to corporations for international crimes, corporate responsibility to respect human rights was becoming more established (UNHRC, 2007).

With corporations' responsibility for human rights having been established, the natural consequence of such development is the need to answer the question of enforcement. Standards regulating corporate action would be for naught if there were no processes for investigation, punishment and redress of violations of human rights (UNHRC, 2007). Thus, there should be judicial and non-judicial, and public and private means for victims to file their grievances or access to remedies.

The Ruggie Report, released in 2008, underscored the incompleteness of human rights instruments, as these did not cover compliance by businesses (Lubbers, Genugten, and Lambooy, 2008). This report established the Protect, Respect, and Remedy Framework (UNHRC, 2007).

Gaps in the human rights legal framework as regards corporations are partially filled by specific human rights enjoying *jus cogens*⁴ status. In theory, the peremptory nature of such rights directly impels corporations to respect and comply with human rights standards (Lubbers, Genugten, and Lambooy, 2008). In any event, many gaps remain as many continue to question the legal status of the so-called third generation human rights.

⁴ Overriding principle of international law, consisting of customary law that cannot be set aside by treaty or acquiescence; a peremptory norm from which no derogation is permitted (Brownlie, 2008).

In 2011, after numerous consultations, the UN Guiding Principles on Business and Human Rights (UNGPs) were released. While geared towards addressing many of the gaps involving compliance by enterprises with human rights standards, it should be noted that the Guidelines do not create new obligations under international law, as they are merely normative.

Recently, S&P Global submitted a report to the UN Working Group on BHR assessing compliance by 703 companies with the UNGPs (Rodriguez and Wild, 2021). The review was part of S&P Global's Corporate Sustainability Assessment covering the period of 2017 to 2020. S&P Global's evaluation covered the companies' level of commitment to human rights, their human rights due diligence framework, their assessment of impacts, and their disclosure policies.

The report revealed a positive reception for BHR among companies as the commitment level to human rights rose to 90 percent in 2020 from only 66 percent in 2017 (Rodriguez and Wild, 2021). These overall numbers reveal discouraging results when distilled per industry. While consumer staples companies were found to have a 98 percent commitment rate in 2020, the commitment to human rights by real property and industrial companies are at a rate of only 44 percent and 68 percent in 2020 (Rodriguez and Wild, 2021).

In terms of geography, the source of commitments skew towards Europe (Rodriguez and Wild, 2021). It can be seen that committing to human rights is not a matter of economic progress since North American companies lag in terms of rate of commitment.

The report also noted that the commitment to human rights by companies do not necessarily mean full compliance with the UNGPs. For instance, 17 percent of the companies which made commitments to human rights do not have a due diligence mechanism to ensure their compliance (Rodriguez and Wild, 2021). Companies are also hesitant to reveal remediation measures they undertook as only 33 percent made disclosures, and only 22 percent disclosed mitigation measures they implemented (Rodriguez and Wild, 2021).

Significance of NAPs

National Action Plans (NAPs) have been developed for responses on many global issues such as human trafficking, climate change, and water quality

(Quick and Wrzoncki, 2017). At the World Conference on Human Rights in 1993, the development of NAPs by States was promoted as a means to protect human rights (Quick and Wrzoncki, 2017). NAPs are also being developed in line with the programs under the 2030 Sustainable Development Goals (Quick and Wrzoncki, 2017).

A National Action Plan for UN Guiding Principles on Business and Human Rights is an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UNGPs” (UNWG on BHR, 2016). To be effective, NAPs must be: “1) be founded upon the UNGPs, 2) respond to specific challenges of the national context, 3) be developed and implemented through an inclusive and transparent process, and 4) be regularly reviewed and updated (UNWG on BHR, 2016).”

The institution, or mere process of institution, of a NAP, brings about inertia in promoting the principles of BHR. Once a government commits to participating in the NAP’s development, the following may be expected, as pointed out by the UN Working Group:

- a. Greater coordination and coherence within government on the range of public policy areas that relate to business and human rights;
- b. An inclusive process to identify national priorities and concrete policy measures and action;
- c. Transparency and predictability for interested domestic and international stakeholders;
- d. A process of continuous monitoring, measuring and evaluation of implementation;
- e. A platform for ongoing multi-stakeholder dialogue; and,
- f. A flexible yet common format that facilitates international cooperation, coordination, and exchanges of good practices and lessons learned (UNWG on BHR, 2016).



Governments are also encouraged to submit national reports to international bodies on the status of human rights in their jurisdiction (Quick and Wrzoncki, 2017).

So far, 30 countries have published a NAP for BHR while 15 countries have NAPs under development. In the Asia-Pacific Region, only Japan, South Korea, and Thailand have published their NAPs. While India, Indonesia, Malaysia, Mongolia, Pakistan, and Vietnam are the countries considered to have NAPs under development (National Action Plans on BHR Website, n.d.).

The process may also result in the prevention and reduction of business-related human rights abuses (Quick and Wrzoncki, 2017). It also promotes the provision of remedy to victims of non-compliance with BHR (Quick and Wrzoncki, 2017).

The involvement of stakeholders in the preparation of a NAP calls for the mobilization of resources. This empowers the rights-holders and even the human rights defenders advocating for BHR (Quick and Wrzoncki, 2017).

Governments usually involve various agencies, working through inter-agency committees or consultative groups, in developing a NAP (Quick and Wrzoncki, 2017). A clear lead agency or leader within government, equipped with the requisite authority and adequate resources, should be designated to lead the development of a NAP (Quick and Wrzoncki, 2017).

Stakeholders are often involved at all stages of the preparation of a NAP (Quick and Wrzoncki, 2017). It is recommended that stakeholders adopt terms of reference, objectives, a work plan, and a timeline to plan and manage their involvement in the drafting of a NAP (Quick and Wrzoncki, 2017).

It has been observed though that the poor and marginalized groups, for whom the NAP on BHR is being developed, are often left out of the drafting process (Quick and Wrzoncki, 2017). This already does not comply with the UNGPs. Governments are thus encouraged to include these groups by:

The process of developing NAPs has been found to bring about a stronger culture of respect for human rights and of honoring international commitments as the process also serves to hold governments accountable to stakeholders.

- a. Providing a mechanism for confidential or anonymous submissions;
- b. Giving financial support for travel and other consultation attendance costs;
- c. Translating and interpreting materials and proceedings into minority languages;
- d. Providing protection against negative repercussions for participation; and,
- e. Organizing local or stakeholder-specific dialogue events, such as gender-segregated events; and specific outreach to children and other groups (Quick and Wrzoncki, 2017).

In establishing a National Action Plan, the UN Working Group identified the following phases: 1) initiation; 2) assessment and consultation; 3) drafting of Initial NAP; 4) implementation; and, 5) update.

Box 2: Steps in the Development of a National Action Plan

Phase 1: Initiation

1. Seek and publish a formal Government commitment
2. Create a format for cross-departmental collaboration and designate leadership
3. Create a format for engagement with non-governmental stakeholders
4. Develop and publish a work plan and allocate adequate resources

Phase 2: Assessment and consultation

5. Get an understanding of adverse business-related human rights impacts
6. Identify gaps in State and business implementation of the UNGPs
7. Consult stakeholders and identify priority areas

Phase 3: Drafting of initial NAP

8. Draft the initial NAP
9. Consult on the draft with interested stakeholders
10. Finalize and launch the initial NAP

Phase 4: Implementation

11. Implement actions and continue cross-departmental collaboration
12. Ensure multi-stakeholder monitoring

Phase 5: Update

13. Evaluate impacts of the previous NAP and identify gaps
14. Consult stakeholders and identify priority areas
15. Draft updated NAP, consult on, finalize, and launch it

Source: UN Working Group on BHR. (2016 November). *Guidance on National Action Plans on Business and Human Rights*. UNWG on BHR. https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf

Status of NAPs in Six Asian Countries

Based on the country reports, the progress of the six countries in instituting their respective National Action Plans has been assessed as follows:

Table 4. Stage of NAP for BHR development

Country	Phase	Observation
Bangladesh	Not Initiated	There is no information whether the government, aside from the Bangladesh Human Rights Commission, has committed to the institution of a NAP.
Cambodia	Not Initiated	There is no information if Cambodia has committed to the development of a NAP. There are efforts by some CSOs to campaign for the establishment of a National Human Rights Institution (NHRI).
India	Drafting	The Indian Ministry of Corporate Affairs issued a National Guideline for Responsible Business Climate under its NAP for the UNGPs. The NAP refers to a Zero Draft document issued in 2019. In addition, the focus of discussions for this NAP refers to labor rights.
Indonesia	Assessment and Consultation	By Presidential Decree, BHR was added to the 2015 to 2019 National Action Plan for Human Rights. However, the country report clarifies that the decree only mandates policymakers to have a better understanding of BHR. Unfortunately, this NAP has not been renewed after it expired in 2019.
Nepal	Not Initiated	Efforts at instituting a NAP are being hindered by the COVID-19 pandemic. The government has only made a verbal commitment to implement BHR.
Philippines	Initiation	While a prior commitment to institute a NAP for UNGPs was secured from the previous administration, the current administration has not taken proactive measures to pursue the process. Though in its thematic report to the UNWG, the government reiterated its support for the drafting of a NAP.

Governments' policies also contradict their commitment or counter the efforts of implementing the UNGPs and instituting their respective NAPs. This situation fails against the operational principle of the UNGPs pertaining to general state and regulatory functions.

In India, while the stakeholders are working to build on their Zero Draft of a NAP, laws were enacted diluting their intended protections. In Cambodia, the government's seeming carefree grant of land concessions undermines any progress on protecting and preserving land rights. In Indonesia, there is the general view that human rights, more so BHR, are not a government priority.

There is also a consistent observation that NHRIs/Cs do not have adequate powers and resources. More importantly, their independence from the government is not always guaranteed.

Activities on BHR initiated by LWA Working Group on Mainstreaming Land Rights as Human Rights

Since 2018, members of the LWA Working Group on Mainstreaming Land Rights as Human Rights (LWA WG LRHR) have been active in mainstreaming concepts of BHR, and in advocating for the inclusion of land rights in discussions on BHR.

In 2020, due to COVID-19, most interventions of the LWA WG LRHR members were mainly conducted online. Activities revolved around raising awareness; consensus building among CSOs; and, engagement with stakeholders such as NHRI/NHRCs and governments.

Noting the need to popularize the UNGPs to the broader public, information and education materials were prepared. Briefing papers explaining BHR issues were produced in Bangladesh, Indonesia, and the Philippines. In India, articles on the status and commentaries on the Zero Draft were released to the media.

Focus group discussions among CSOs – with CSOs working on land rights in particular – were organized to update them on the status on the NAP formulation in the six countries as well as to generate inputs to the NAPs. Recommendations focused on protecting land rights of the poor as inputs to the NAPs. With regard to Cambodia, CSOs contributed to the discourse for the creation of an independent National Human Rights Institution (NHRI).

These processes then culminated in dialogues mostly with NHRIs/Cs. In Indonesia, Nepal, and the Philippines, engagements with governments and the private sector, though on a limited scale, were undertaken. Other BHR-related issues were raised during the consultations such as land grab sectoral studies and land conflict monitoring reports prepared by the

members of the LWA WG on LRHR. The recommendations are found in the succeeding section of this paper.

Summary of Hindrances and Challenges Observed

It appears that the biggest hurdle to enacting a NAP is securing the commitment of governments, in particular the executive branch. Arguably, this is the most important, as government's commitment does not only refer to agreeing to enact a NAP, but also includes its commitment to the contents and its continual updating.

This is evident in the case of the Philippines where a previous administration committed to the institution of a NAP for UNGPs, but the current initiatives towards such formulation do not involve the incumbent government.

In this regard, the observed shift in many countries towards authoritarianism hinders the development of a NAP for UNGPs. Aside from withholding commitment or support to such effort, authoritarian regimes often undermine the independence of National Human Rights Institution or Commission by not allocating funds and resources.

Governments must stay true to their commitments to human rights. As civic space is shrinking with the rise of authoritarian and populist governments, governments must be called to task for ignoring their commitments to binding human rights instruments.

It has been reported that governments use new laws to lessen the efficacy of existing laws that protect communities. These governments also pass laws that curtail freedom of speech and expression; thus, affecting the ability of affected communities and human rights defenders to raise awareness on human rights abuses. They also pass laws that are inconsistent with their commitments to human rights, but rather serve the interests of big business. This issue is indicative of the general BHR situation in a country.

Legislation enacted by such regimes can readily be attributed to them. As these are documents, they can easily be reviewed and assessed. The protection of human rights largely depends on domestic legal systems. Therefore, it is crucial that governments are made to comply with their obligations, primarily their duty to protect.

Addressing this issue is very complicated. First, while there is indeed a shift towards authoritarianism, it must be emphasized that not all governments pass laws or adopt policies contrary to human rights because of such attitudes. As can be seen in the reports, the issue may be purely in terms of awareness and understanding of the UNGPs not only on the part of government, but across all stakeholders.

Second, many governments are developing countries that also have young democracies or are in a post-conflict situation. These governments may still be finding their footing in balancing human rights and the rush of investments.

The COVID-19 pandemic also proves to be a major challenge in this respect. Governments may place the NAP lower on its list of priorities and those with poor human rights records may even use the pandemic as an excuse for their lack of interest in establishing a NAP.

Unfortunately, as can be seen in the reports, government commitment to the NAP and the pandemic are even less of a problem compared to the awareness of BHR. It was observed that in many States, the concept of BHR is still so alien that popularizing it still needs to be prioritized until a critical mass is achieved. Only when a sufficient number of people in government, business, communities, and civil society are aware of the UNGPs and the need to enact its NAP, will a NAP for UNGPs gain significant traction.

One reason for the lack of awareness, as observed in some of the country reports, is that the UNGPs is not translated into local languages. Local languages, in this regard, do not refer to the official languages of the countries, but the languages spoken by marginalized groups, including indigenous peoples.

Much more than this is that most, if not all, countries are not a monolith of people. Various peoples, indigenous and even migrants, of different cultures make up a population and in certain cases, a caste system, or remnants of or a semblance of a caste system that stratify the population into different classes. Thus, this may serve as a hindrance in the preparation of a NAP where not all interests are represented because members of a certain group are excluded or conversely, members of a particular class dominate the discussions. Other cultural biases may also affect participation in the NAP preparation.

With governments and corporations ignoring BHR standards, the issue of remedial measures comes to fore.

Access to remedy can be viewed as an issue on two levels. Primarily, under the UNGPs, it refers to the remedy provided to the person wronged. On the second level, there is the question whether a remedy, on a regulatory level, can be pursued against government and corporate actors who persistently do not comply with the UNGPs. The existence of a remedial measure on the second level may impel government and companies to participate in the NAP development process.

There is also a chicken and egg situation as regards conflict and violence and the NAP development. The NAP serves to guide all stakeholders in implementing the UNGPs and address BHR issues including land conflict.

However, because of violence or threat of violence and intimidation employed by armed security forces or militia (who are sometimes State agents), members of affected communities, the poor and marginalized, and even members of CSOs and human rights defenders think twice before participating in NAP-related activities. Closely related to this concern is the shrinking space for activists as freedom of expression and assembly are curtailed.

As observed worldwide, the shrinking civic space is also affected by false information propagated on the internet. Addressing this is a double-edged sword since laws that would regulate online information are used by authoritarian governments against their critics, including human rights defenders.

Thus, measures to protect truth and free speech must be addressed by other actors, in particular online platform companies. This is a necessary step, not only in ensuring that the correct information on UNGPs is circulated, but also to encourage wholehearted participation by all stakeholders in the development of a NAP for UNGPs.

Recommendations

The list of recommendations from the country reports can be summarized into three overarching proposals:

- continue efforts on popularizing or mainstreaming BHR in order for all the stakeholders to be aware of their responsibilities under the UNGPs;
- strengthen NHRC/NHRI with guaranteed independence and resources to perform an encompassing mandate in line with the Paris Principles to promote and protect human rights and implement the UNGPs; and,
- lobby for formulation and adoption of a National Action Plan for UNGPs, with a strong focus on protecting land rights.

Table 5 outlines the major recommendations of the country reports.

Table 5. Key recommendations to pursue UNGPs and the formulation of NAPs

Country	Recommended Actions
Bangladesh	<ul style="list-style-type: none"> ▪ Government should publish an annual status report of the implementation of UNGPs; ▪ Monitor efforts of government, private and civil society organizations involving UNGPs; ▪ Elevate policy advocacy at international level to make UNGPs an international legally binding instrument; ▪ Increase solidarity to protect land rights defenders; ▪ NHRC should assist the government in formulating the NAP, in conducting advocacy and awareness building campaigns with CSOs; and in monitoring business agreements, laws, and polices relating to BHR; ▪ Government should coordinate with CSOs and international agencies which are working on the National Baseline Assessment and National Action Plan towards UNGPs; and, ▪ A national committee with representation from NGOs, NHRC and other stakeholders should be formed towards NAP formulation.
Cambodia	<p><i>For Government:</i></p> <ul style="list-style-type: none"> ▪ Institute an independent NHRI with sufficient financial and human resources and compliant with international standards, including the Paris Principles, to ensure its independence; ▪ Organize a Working Group composed of representatives from CHRC, OHCHR, and CSOs to discuss the establishment of the NHRI in Cambodia; ▪ Prioritize awareness building on UNGPs among government officials, businesses and investors, CSOs and the general population;

	<ul style="list-style-type: none"> ▪ Streamline the communal land titling process for indigenous peoples; ▪ Investigate land-related incidents of harassment. It should hold those responsible accountable for human rights violations; ▪ Release land rights activists who are imprisoned for exercising their freedom of expression and assembly; and, ▪ Government should review the environmental and social impact assessments (ESIAs) of infrastructure projects or SEZ, including ELCs, and make findings available to affected communities and the public in a timely manner. <p><i>For Private Sector:</i></p> <ul style="list-style-type: none"> ▪ Increase awareness on BHR among field staff; ▪ Establish effective, accessible and transparent operational-level grievance mechanisms, in line with the principles of the UNGPs, for people who are adversely affected by their business activities; ▪ Companies involved in land disputes should take responsibility for disputes and seek to work with CSOs and affected communities in reaching a solution, rather than take legal action against them; ▪ Effectively remedy all human rights violations, and ensure that any remedy meets the effectiveness requirements of the UNGPs; ▪ Respect the principle of Free Prior and Informed Consent; and, ▪ Constantly engage with affected communities and CSOs involved in the land dispute resolution process. <p><i>For CSOs:</i></p> <ul style="list-style-type: none"> ▪ Prioritize activities that raise awareness on BHR among relevant stakeholders; ▪ Support communities seeking redress for land rights violations by providing legal support; ▪ Build capacity of focal persons/youth from communities concerned about legal land rights and entitlements; ▪ Encourage and facilitate dialogue between stakeholders to resolve land disputes in accordance with the UNGPs; ▪ Engage with HR and legal experts to analyze the draft law on the establishment of an NHRI and its compliance with the BHR and Paris Principles; and, ▪ Ensure that the NHRI will have independence from the RGC and that it will be staffed with independent and diverse representatives from stakeholders and experts.
India	<p><i>In relation to the Zero Draft of NAP:</i></p> <ul style="list-style-type: none"> ▪ Organize consultations with human rights defenders and community organizations; ▪ Issues of land, water and common property resources and livelihood should be included; and, <p>Gender and intersectionality of the issues must be included in the draft guidelines, covering issues of single women, <i>adivasi-dalit</i> women, and sexual minorities.</p>

	<p><i>In relation to BHR and land rights:</i></p> <ul style="list-style-type: none"> ▪ Generate more awareness and engage stakeholders, particularly <i>dalits</i>, <i>adivasis</i>, civil society organizations, and social movements; ▪ Emphasize that there should be no eviction or displacement without people’s consent, prior rehabilitation and other financial compensation; ▪ Protect land rights defenders and environmental activists, particularly those working with <i>dalits</i> and <i>adivasis</i>; ▪ Support the NHRC’s suggestion to make UNGPs mandatory; and, ▪ Restore land and “access” to resources to the communities or people once a company withdraws from the area after public protests or demands.
Indonesia	<p><i>In relation to NAP formulation:</i></p> <ul style="list-style-type: none"> ▪ For CSOs to continue advocating for a Presidential Decree on NAP for UNGPs that includes agrarian resources or a Presidential Decree that can complement the existing NAP for UNGPs with relevant agrarian issues; ▪ Include the creation of a work unit with a measurable program, and an adequate budget to implement NAP; and, ▪ Align the NAP for UNGPs with the SDGs. <p><i>In relation to BHR and land rights:</i></p> <ul style="list-style-type: none"> ▪ Authorities must resolve existing agrarian conflicts effectively and fairly; ▪ Business must be encouraged to comply with human rights principles, and the State must be at the forefront of protecting, respecting and fulfilling human rights; ▪ Strengthen the role and authority of Komnas HAM to encourage the incorporation of human rights principles into various institutions and their policies, especially those related to land; ▪ Since local governments have a more direct relationship with farmers, they should issue local regulations based on human rights principles; and, ▪ Advocate for a business and human rights treaty that will clarify the obligations of transnational companies as regards human rights. The treaty should also contain a rights restoration mechanism for victims in jurisdictions that fail to hold businesses accountable.
Nepal	<ul style="list-style-type: none"> ▪ Consult landless, informal settlers and pro-poor communities prior to setting the development agenda for the NAP; ▪ A separate unit should be established in the Office of Prime Minister and Council of Minister to monitor business and human rights; ▪ The NHRC should prepare an annual progress report on NAP for UNGPs and disseminate the findings to the concerned stakeholders; and, ▪ CSOs need to organize a joint campaign and advocacy for the formulation of the NAP for UNGPs.



Philippines	<p><i>Government is called to:</i></p> <ul style="list-style-type: none"> ▪ Complete land and resource reform programs and ensure tenure security for the rural poor; ▪ Ensure the integrity of safeguard mechanisms that regulate land investments by integrating the UNGPs in all aspects of land and resource governance; ▪ Processes and protocols should be followed and regularly monitored when it comes to contracts between farmers/IPs and corporations; and, ▪ Pursue the commitment to formulate the NAP. <p><i>Business sector should:</i></p> <ul style="list-style-type: none"> ▪ Uphold FPIC processes and principles; ▪ Set up grievance mechanisms to provide a venue for concerns; and, ▪ Create dedicated offices to receive and process such complaints.
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At the same time, CSOs in Bangladesh and Indonesia advocate for a binding treaty on UNGPs. While compliance with the UNGPs is greatly dependent on a State government's commitment to uphold it, having a binding treaty heightens a State's compliance with the BHR.

Under the principle of *pacta sunt servanda* in international law, States must comply with their obligations in good faith. A treaty also helps define the specific obligations of a State, including the obligation to enact laws consistent with the treaty. The treaty would also allow mechanisms to call out an erring State and checks that allow international bodies to monitor and inspect the country.

Based on the observations from the situations of the six countries in the study, the following actions are also recommended under the three pillars of UNGPs:

Protect

- Governments must adhere to their commitments to human rights and their "Duty to Protect." They must be progressive and responsive in their policies and legislations and should not slide back to traditional positions that ignore the UNGPs in favor of investments. Governments are responsible in filling governance gaps and market failures (UNWG on BHR, 2018) and should not be the ones creating stumbling blocks in the promotion of BHR. A prime example of such contradiction is the Economic Land Concession policy adopted in Cambodia where government itself actively awards large tracts of land to agri-business investments – undermining land rights of its citizens in the process.

Thus, governments must refrain from enacting laws that undercut BHR. They must also be creative in promoting compliance with the UNGPs.

- Governments must address the root causes of human rights abuses. For instance, as regards land rights, governments must enact and enforce national legislation and policies that promote access and tenure security to land, forests, waters, and pastures of smallholder farmers, fishers, indigenous peoples, rural women, pastoralists, youth, differently-abled persons, and other marginalized sectors; and prevent the unnecessary destruction and conversion of fertile land, forests and water bodies.
- Governments should uphold the spirit of and comply with its obligations under international human rights instruments (e.g., CEDAW, ICCPR, ICESCR, ICERD, CBD, Paris Agreement, UNGPs, VGGT, ILO 169, UNDRIP, UNDROP, etc.), specific to land rights for marginalized sectors, such as smallholder farmers, indigenous peoples, rural women, tenants, sharecroppers, leaseholders, agricultural laborers, fisherfolk, and pastoralists.
- Governments should ensure the integrity of safeguard mechanisms that regulate public and private land investments and strengthen local mediation mechanisms for the resolution of land and other resource conflicts.
- Governments should strengthen the principle and practice of Free, Prior, and Informed Consent (FPIC) and other safeguard measures. Together with the full and effective participation of indigenous peoples, States should establish mechanisms to ensure the implementation of FPIC prior to the entry of development activities or investments in the lands and territories of indigenous peoples. Safeguards must have a precautionary approach that should guide decision-making on any measure that may affect rights over lands and resources, and other rights that are instrumental to the survival of indigenous peoples.
- The integrity of safeguard mechanisms that regulate land investments should be ensured by integrating the UNGPs in land and resource governance. Governments should take the lead in promoting good business practice by immediately applying UNGPs principles in all State-run corporations and plantations.
- Curb corruption in all its forms within land agencies. Prosecute violators along with the government officials engaged in bribery and extortion, preparation of fake documents, forgery, and related crimes in grabbing land and property.

- Governments must include BHR in their COVID-19 response. It has been reported that the COVID-19 pandemic accentuated human rights abuses. Thus, governments must address the pandemic not only as a health issue, but also as a human rights issue. For example, land rights holders and affected communities are often the poor and marginalized. With COVID-19 affecting their livelihood, they may become more vulnerable to giving up their rights to government projects and realty developers.

Respect

- Companies must realize that UNGPs has become a norm and investing in understanding it and implementing it company-wide is worthwhile. Before long, States will require corporations' compliance with risk-mitigation, even elimination, measures and systems and remedial mechanisms in line with the UNGPs. It may prove more costly for a company to try to catch up in implementing the UNGPs than embedding the principles in its core now. This is no truer than in land acquisition transactions that run the risk of being undone or the development being reduced to a white elephant some years later when stakeholders successfully claim relief for ignoring their right to land.
- The private sector has a responsibility and duty to respect human rights of people in all their operations, regardless of the State legal framework or government actions in the host countries.
- Corporations must listen to their shareholders or investors. Investors appear to be more conscious about BHR and have become more active in calling for responsible action from their companies. In turn, corporations must be more detailed in delivering their reports to their shareholders.
- Stock exchanges are private companies and by themselves are also part of big business. It has been found that in countries where stock exchanges require environmental, social and governance disclosures, there is also high compliance with disclosures relating to BHR (Asia Pacific Forum). Thus, stock exchanges can require more BHR relevant disclosures from companies listed on their exchanges. For example, real estate companies or conglomerates involved in development may be required to report their land acquisitions and the impact on communities or indigenous peoples in the area.
- Businesses must learn to balance their COVID-19 responses between buoying up their financial position and human rights. They must be mindful of the UNGPs in addressing the effects of COVID-19 on their business. In land acquisitions, companies must find ways to comply with

obtaining the free, prior, and informed consent of affected communities even when personal contact is limited. While the company's survival is at stake, businesses must also accept that the externality of a pandemic affects all and that losses are to be expected. Businesses must not cut costs at the expense of BHR.

Remedy

- State-based judicial and non-judicial mechanisms are wholly dependent on relevant laws. Even an independent and functioning judicial or non-judicial body is only as good as the laws on which any grievance is based. Thus, this issue goes back to the commitment of governments to the human rights accords they ratified.
- Establish independent land dispute commissions to speed up the response to, and resolution of, land-related cases.
- Strengthen local mediation mechanisms for addressing local land conflicts, especially those involving civil cases at community level.
- Complex financial structures have also blurred the ownership of international conglomerates in that the true owners of land are beyond the reach of remedial measures. Thus, companies must disclose their ownership and investors when acquiring land and offer information on how jurisdiction over such persons may be acquired in order that full and effective relief may be delivered to victims of land rights violations.
- There should be a shift in focus from the wrong when remedial measures are undertaken by companies. Companies appear to have low compliance rates with this pillar of the BHR because of the negative effects on their reputation, not to mention their share prices. The UN Working Group identified this as the "first mover challenge" where companies which publicize risks to human rights in their companies are castigated (UNWG on BHR, 2018). While violations of BHR are contemptible, efforts of businesses to remediate and redress their shortcomings must be appreciated. Showcasing such efforts will encourage other businesses to implement similar mechanisms and will also aid in promoting the UNGPs.
- Covid-19 pandemic should not be an excuse to close offices addressing BHR issues or grievances. It should be the complete opposite given that the pandemic has left rights holders more vulnerable. Aside from providing alternative access to remedy, like utilization of online platforms, governments and business should start preparing plans for the immediate reopening of offices providing remedies or addressing grievances. Such plans should include addressing case backlogs.

Conclusion and ways forward

The Protect, Respect, Remedy Framework has attained consensus in the community of nations. There is also a significant growth in the number of businesses committing to human rights. The UNGPs is steadily gaining prominence, though in terms of acceptance and implementation on the ground, much is desired.

The Protect, Respect and Remedy Framework relies heavily on national action to have significant effect. It can be seen in the profile of the countries that were reviewed that they ratified many of the core human rights instruments, yet most, if not all, come far short in complying with the UNGPs. There is incongruence between their accepted obligations under international law and their adopted policies domestically.

There is no question on the enormity of the task ahead to give effect to BHR, more so on the specific area of land rights. Lack of awareness and capacity remains an issue. Even with knowledge of the UNGPs, comprehension and understanding of the principles cannot be presumed.

The COVID-19 pandemic clearly held back efforts on mainstreaming BHR and formulating the countries' respective NAPs for UNGPs. Governments and businesses must exert all efforts to protect peoples not only from the health effects of COVID-19, but the amplifying effects it has on human rights issues.

With the world slowly healing and recovering from the pandemic, it is hoped that efforts to institute NAPs get back on track and bear fruit. ■

List of acronyms	
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BHR	Business and Human Rights
CAT	Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHR	Commission on Human Rights (Philippines)
CHRC	Cambodia Human Rights Committee
CRC	Convention on the Rights of the Child
CRMW	International Convention on the Protection of the Rights of Migrant Workers and Members of their Families
CRPD	Convention on the Rights of Persons with Disabilities
FPIC	Free, Prior and Informed Consent
HRD	Human Rights Defender
ICAR	International Corporate Accountability Roundtable
ICCPR	International Covenant on Civil and Political Rights
ICEAFRD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearances
ILC	International Land Coalition
LWA	Land Watch Asia
LWA WG LRHR	LWA Working Group on Mainstreaming Land Rights as Human Rights
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
NAP	National Action Plan
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
RGC	Royal Government of Cambodia
SDG	Sustainable Development Goal
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN CESCR	United Nations Committee on Economic, Social, and Cultural Rights
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council

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Annex 1. The three pillars of the UN Guiding Principles on Business and Human Rights

The State Duty to Protect Human Rights

Foundational Principles	Operational Principles
<ul style="list-style-type: none"> ■ States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. ■ States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. 	<p>General State Regulatory and Policy Functions</p>
	<ul style="list-style-type: none"> ■ Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; ■ Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; ■ Provide effective guidance to business enterprises on how to respect human rights throughout their operations; and, ■ Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.
	<p>The State-Business Nexus</p>
	<ul style="list-style-type: none"> ■ States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence; ■ States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights; and, ■ States should promote respect for human rights by business enterprises with which they conduct commercial transactions.
	<p>Supporting business respect for human rights in conflict-affected areas</p>
	<p>Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:</p> <ul style="list-style-type: none"> ■ Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; ■ Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; ■ Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; and, ■ Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.
<p>Ensuring Policy Coherence</p>	
<ul style="list-style-type: none"> ■ States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support; ■ States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts; and, ■ States, when acting as members of multilateral institutions that deal with business-related issues, should: (a) seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; (b) encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; and, (c) draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges. 	

The corporate responsibility to respect human rights

Foundational Principles	Operational Principles
<ul style="list-style-type: none"> ■ Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. ■ The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. ■ The responsibility to respect human rights requires that business enterprises: (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and, (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. ■ The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts. ■ In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: a) policy commitment to meet their responsibility to respect human rights; (b) human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and, (c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. 	<p>Policy Commitment</p>
	<p>As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:</p> <ul style="list-style-type: none"> ■ Is approved at the most senior level of the business enterprise; ■ Is informed by relevant internal and/or external expertise; ■ Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; ■ Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; and, ■ Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.
	<p>Human rights due diligence</p>
	<ul style="list-style-type: none"> ■ In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. ■ Human rights due diligence: (a) should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; and, (c) should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve. ■ In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) draw on internal and/or independent external human rights expertise; and, (b) involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation. ■ In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action. (a) Effective integration requires that responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise. Also, internal decision-making, budget allocations and oversight processes enable effective responses to such impacts. (b) Appropriate action will vary according to: (1) whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; and, (2) the extent of its leverage in addressing the adverse impact. ■ In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should: (a) be based on appropriate qualitative and quantitative indicators; and, (b) draw on feedback from both internal and external sources, including affected stakeholders. ■ In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: (a) be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences; (b) provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved; and, (c) in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.
	<p>Remediation</p>
<p>Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.</p>	
<p>Issues of Consent</p>	
<ul style="list-style-type: none"> ■ In all contexts, business enterprises should: (a) comply with all applicable laws and respect internationally recognized human rights, wherever they operate; (b) seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements; and, (c) treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate. ■ Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable. 	

Access to Remedy

Foundational Principles	Operational Principles
<p>As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/ or jurisdiction those affected have access to effective remedy.</p>	<p>State-based Judicial Mechanisms</p>
	<p>States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.</p>
	<p>State-based non-judicial grievance mechanisms</p>
	<p>States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.</p>
	<p>Non-State-based grievance mechanisms</p>
	<ul style="list-style-type: none"> ▪ States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms. ▪ To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. ▪ Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.
<p>Effectiveness criteria for non-judicial grievance mechanisms</p>	
<p>In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:</p> <ul style="list-style-type: none"> ▪ <i>Legitimate</i>: Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; ▪ <i>Accessible</i>: Being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; ▪ <i>Predictable</i>: Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; ▪ <i>Equitable</i>: Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; ▪ <i>Transparent</i>: Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; ▪ <i>Rights-compatible</i>: Ensuring that outcomes and remedies accord with internationally recognized human rights; ▪ <i>A source of continuous learning</i>: Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; and, ▪ <i>Operational-level mechanisms</i> should also be based on engagement and dialogue; consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances. 	

Laying the groundwork for the formulation of the National Action Plan for UNGPs in Bangladesh¹

Community Development Association (CDA)

(February 2021)

Background

The UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), a set of guidelines to operationalize the UN “Protect, Respect and Remedy” Framework, in 2011.

Developed by the Special Representative of the Secretary-General John Ruggie, these Guiding Principles provide the first global standard for preventing and addressing the risk of adverse impacts on human rights caused by business activities. It provides the internationally accepted framework for enhancing standards and practice regarding business and human rights.

In 2008, the United Nations endorsed the “Protect, Respect and Remedy Framework” for business and human rights, which recognizes unequivocally that States have the duty under international human rights law to protect everyone within their territory and jurisdiction against human rights abuses committed by business enterprises.

This duty means that States must have effective laws and regulations to prevent and address business-related human rights abuses and ensure access to effective remedy for those whose rights have been abused (ANGOC et al., 2018).

¹This document was prepared to provide an overview and relevance of the **UN Guiding Principles on Business and Human Rights (UNGPs)** in the context of Bangladesh and its status and interventions towards its National Action Plan. This initiative is undertaken as part of the regional commitment based initiative “*Defending Land Rights and Human Rights Defenders*” coordinated by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and partners from Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines.

Each of the three pillars of UNGPs - protect, respect and remedy - defines concrete, actionable steps for governments and companies to meet their respective responsibilities to prevent human rights abuses in company operations and provide remedies for such abuses.

In 2014, the United Nations Human Rights Council (UNHRC) issued a call to all Member States to formulate a National Action Plan (NAP) to help implement UNGPs in their respective national contexts (Haque, 2020). Soon after, the UNGPs were endorsed by States in the Human Rights Council. The United Nations Working Group started to call upon governments to start the process to develop NAPs as a means to implement the UNGPs (UNWG, 2016).

What is the role or value of a NAP or why is an NAP important to implement Business and Human Rights?

The UN Working Group on Business and Human Rights says the NAPs and the process of coming up with them can provide for: i) greater coordination and coherence within government on the range of public policy areas that relate to business and human rights; ii) an inclusive process to identify national priorities and concrete policy measures and action; iii) transparency and predictability for interested domestic and international stakeholders; iv) a process of continuous monitoring, measuring and evaluation of implementation; v) a platform for ongoing multi-stakeholder dialogue; and, vi) a flexible yet common format that facilitates international cooperation, coordination, and exchanges of good practices and lessons learned (UNWG, 2016).

Bangladesh is yet to formulate its National Action Plan on UNGPs (NAP for UNGPs). It is urgent that an NAP for Bangladesh is formulated. The steps being taken to come up with one thus needs to be reviewed.

Objectives

This report aims to:

- explore the status of UNGPs in Bangladesh focusing on the engagement of State agencies and CSOs towards formulation of National Action Plan; and,
- identify the interventions of CSOs for popularizing UNGPs in Bangladesh.

Methodology

Mainly qualitative data were sought and used for this report. Data and information were collected from primary and secondary sources. Informal interviews were also conducted with key stakeholders and experts on business and human rights.

We intended to organize consultation and validation workshops to assess how the NAP is being formulated in Bangladesh and the current status. Unfortunately, due to the COVID-19 pandemic, data gathering was undertaken through online rather than face-to-face activities.

Status of UNGPs in Bangladesh

Main agencies responsible for formulating and implementing NAP

Three major acts -- popularizing the issue, conducting a National Baseline Assessment (NBA), and formulating a National Action Plan (NAP) -- are needed to implement UNGPs in Bangladesh (Haque, 2019).

The Cabinet is the country's highest collective decision-making body and is led by the Prime Minister. Various Cabinet Committees and Secretaries' Committees make decisions on various issues. NAP formulation needs Cabinet approval. Two ministries -- the Ministry of Commerce and the Ministry of Industries - can take the initiative to formulate NAP.

The Ministry of Law and Parliament Affairs and National Human Rights Commission (NHRC) along with other stakeholders can provide legal and technical support in this regard.

The UNGPs are not a legally binding instrument to be made by the UN. Bangladesh, like other UN member-States, only endorsed it in 2011. Bangladesh has many laws and policies related to business and human rights (BHR) but no laws and policies are specifically related to UNGPs (Haque, 2019).

Some agencies execute State duty to protect human rights abuses by business operations while some others (judiciary) are involved in remedial process following their human rights violations. Some State agencies themselves are doing business, forming limited companies in Bangladesh (Haque, 2019).

Various stakeholders can work as actors in the implementation process of UNGPs in Bangladesh as stated in the diagram below.

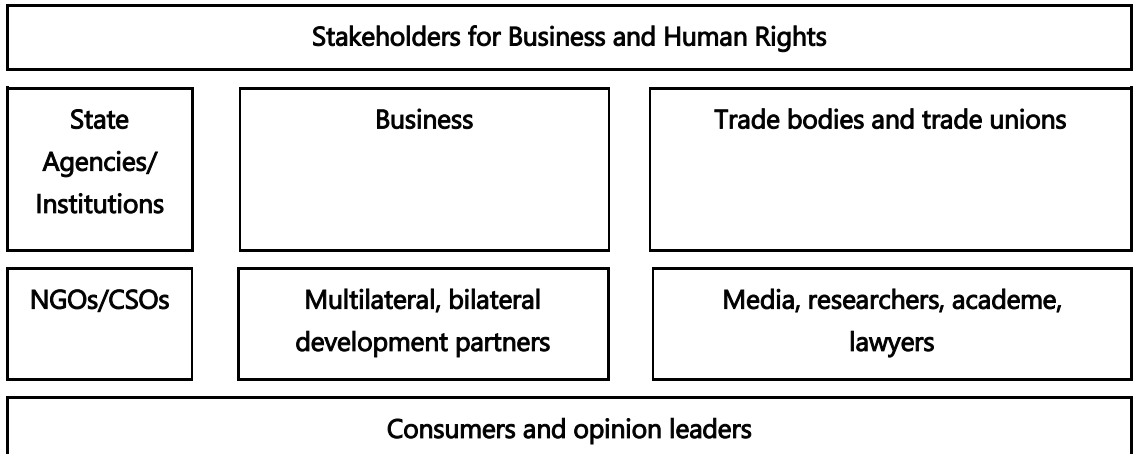


Diagram: Haque (2019)

The diagram shows that many State agencies/institutions/committees are responsible for formulating the NAP and the implementation of UNGPs in Bangladesh as the stakeholders. Over 100 State agencies, including the Prime Minister Office and at least 25 ministries, are responsible for its implementation, though most of the State agencies are still unaware of the issue.

Only the NHRC has engaged in some activities although it can request the government bodies concerned to take steps/action in this regard. Unfortunately, as it stands now, the NHRC is a tiger without teeth.

Thousands of business organizations, trade bodies and trade unions, civil society organizations, multilateral and bilateral development partners and agencies, mass media institutions, academe, research institutions, and researchers are also key stakeholders in the formulation of the NAP and its implementation and compliance with the UNGPs.

Progress of the UNGPs and formulation of the NAP as of December 2020

A non-State actor, the United Nations Development Programme (UNDP), conducted a National Baseline Assessment (NBA) on UNGPs under its regional project (Haque, 2019). The assessment focused on two components: i) stakeholder mapping and their engagements, and ii) state of judicial and non-judicial mechanisms for remedy.

Draft reports on the two assessment studies had been prepared but updates are yet to be provided.

Opportunities for CSO interventions on UNGPs and formulation of its NAP

Bangladesh has a vibrant NGO sector which has achieved some success in health care, income generating activities and promotion of human rights. CSOs can be engaged to popularize UNGPs on a massive scale to ensure good business and human rights practices in the country. CSOs can participate in the NAP formulation process, or can give opinions, but the final decisions will be made by the State agencies.

CSO interventions towards UNGPs and formulation of its NAP

2018 Interventions

A small scale project on UNGPs was implemented in Bangladesh by Community Development Association (CDA) and other NES members in 2018 with financial and technical assistance from ILC and ANGOC.

A discussion meeting and three consultation workshops were organized in 2018 with the participation of NHRC and CSOs to raise awareness on BHR issues and make an advocacy plan to formulate NAP. The 2018 initiative engaged NHRC and other stakeholders.

CSOs, including NES members, gained technical knowledge on BHR issues. NHRC and CSOs signed the *Bangkok Declaration on Land Rights as Human Rights*. Two policy reports -- UNGP-BHR: A Policy Brief Toward Bangladesh National Action Plan and Bangladesh Land Monitoring Report 2018 — were published. These reports were also disseminated among the stakeholders.

Under the same initiative, a scorecard was developed by ANGOC and Land Watch Asia to assess Responsible Agricultural Investment (RAI) in Bangladesh.

Interventions in 2020

Awareness raising activities on UNGPs were resumed in 2020 with the financial and technical assistance from ILC and ANGOC. The goal was to popularize the UNGPs and promote initiatives for the formulation of the NAP.

Unfortunately, meetings and discussions in 2020 had to be conducted online due to the COVID-19 pandemic. Focus group discussion meetings with NES members and ANGOC team were organized.

Data on the country situation and land conflicts (including case studies) were recorded. The status of UNGPs in the country was reviewed to prepare this report.

CSO recommendations on the NAP for UNGPs

Mainstreaming of the UNGPs and the implementation of the National Action Plan in Bangladesh require the following: a) recognition of UNGPs by NHRC and other government and human rights bodies; b) formulation of the national action plan; c) publication of annual State reports; and, d) monitoring of UNGPs involving State, private and civil society organizations.

The NHRC should assist the government in formulating the NAP, conduct advocacy and awareness building campaign with CSOs; and monitor business agreements, laws, and policies relating to business and human rights.

The government and civil society organizations should work towards the following:

- coordination among CSOs and international agencies working on the National Baseline Assessment and National Action Plan towards UNGPs;
- engagement with other concerned State agencies, along with the National Human Rights Commission;
- policy advocacy at the international level to make UNGPs a legally binding instrument for countries like Bangladesh;
- a strong commitment from political parties to implement UNGPs;
- formation of a national committee on the NAP formulation, with the representation of NGOs, NHRC and other stakeholders;
- solidarity to protect land rights defenders; and,
- translation of UNGPs into Bangla and publication of communication materials and books to help stakeholders internalize and popularize the guidelines in the country.

Plan of CSOs towards the continuation of engagement related to BHR in 2021

Stakeholders, including the government bodies, CSOs, businesses, are still unaware of the technical and implementing mechanisms of UNGPs and its National Action Plan in Bangladesh.

CSOs suggested organizing more dialogues, seminars, consultations as well as policy advocacy and mass media campaign along with publishing communication materials like posters, leaflets, books and booklets, in Bangla.

CSOs likewise proposed the following activities, processes and outputs to promote the implementation of the UNGPs in the country:

Major activities	Process	Outputs
Awareness building	<ul style="list-style-type: none"> ▪ Dialogue ▪ Seminar, Consultation ▪ Discussions ▪ References 	<ul style="list-style-type: none"> ▪ Consensus among the NHRC, CSOs, Media
Discussion Workshop	<ul style="list-style-type: none"> ▪ Orientation ▪ Information/Material distribution ▪ Participatory discussion ▪ Linking with SDG, ESCR, CEDAW ▪ Review of existing domestic policies/legislation/laws 	<ul style="list-style-type: none"> ▪ Unity ▪ Clear understanding ▪ Updated information ▪ Increased capacity ▪ Increased knowledge ▪ Internalization
Networking and Policy Advocacy	<ul style="list-style-type: none"> ▪ Negotiation ▪ Continuous information sharing ▪ Meeting ▪ Press conference ▪ Dialogue 	<ul style="list-style-type: none"> ▪ Publication of statement ▪ Connection with the sources and Influence ▪ Awareness on specific rights and solidarity ▪ Engagement plan ▪ Draft policy paper ▪ Formulation of Watchdog/ Monitoring Group ▪ Relationship-building at Regional and International level
Training and Capacity Development	<ul style="list-style-type: none"> ▪ Participatory ▪ Bottom up ▪ Workshop ▪ Using IEC materials/Case studies (UNGPs, Other International instruments and tools) ▪ Action research 	<ul style="list-style-type: none"> ▪ Internalization ▪ Capacity to identify conflict issues ▪ Skills for negotiations and advocacy ▪ Awareness on specific information and the conflicting issues happening countrywide ▪ Preparation of respective action plans

Research and studies/Fact Findings	<ul style="list-style-type: none"> ▪ Survey and Interview ▪ FGD/PRA/Scorecard ▪ Literature Review ▪ Data Analysis ▪ Case Studies ▪ Seminar 	<ul style="list-style-type: none"> ▪ Knowledge and guiding materials ▪ Advocacy tools ▪ Realistic/rational policy documents ▪ Increased engagement of research institutions including statistical agencies of the Government
Strategic Communication Campaign	<ul style="list-style-type: none"> ▪ Use of mass media, folk media, online media and social media ▪ Rally ▪ TVCs, Ads ▪ Human Chain ▪ Street meeting, Street drama ▪ Signature collection ▪ Distribution of IEC materials ▪ Public hearing ▪ Press release/conference/briefing, talk show, documentary films, column write-up ▪ Cultural events with the facts 	<ul style="list-style-type: none"> ▪ Sensitization ▪ Popularization ▪ Culture of Human Rights ▪ Responsiveness and Cohesion among State, policy makers and business enterprises ▪ Democratization and Land Governance ▪ Harmonization and respect
Monitoring Land Conflict Legal Aid Services	<ul style="list-style-type: none"> ▪ Visit HR conflict/abuse/violation area ▪ Fact finding ▪ Checking of secondary sources ▪ Situation analysis and validation ▪ Review and Follow-up 	<ul style="list-style-type: none"> ▪ Prepared Monitoring Report/ Periodical report ▪ Media Campaign ▪ Negotiation, Advocacy and Lobby for remedy ▪ Documentation (facts, photo, audio-video, news clippings, articles) ▪ Investigation by NHRC ▪ Strengthened rule of law
Annual Report Preparation	<ul style="list-style-type: none"> ▪ Collection of facts by CSOs ▪ Collection of all program documents by each CSO ▪ Collection of monitoring reports and documents by each CSO ▪ Sharing with stakeholders an NHRC 	<ul style="list-style-type: none"> ▪ Publication ▪ Accountability increase of State and Business Enterprises ▪ Lobby and Advocacy with national and regional State bodies with updated policy papers

List of acronyms

ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BHR	Business and Human Rights
CDA	Community Development Association
CSO	Civil Society Organization
ILC	International Land Coalition
NAP	National Action Plan
NES	National Engagement Strategy
NHRC	National Human Rights Commission
NBA	National Baseline Assessment
UNDP	United Nations Development Programme
UNHRC	United Nations Human Rights Council
UNGPs	United Nations Guiding Principles on Business and Human Rights
UN WG	UN Working Group on BHR

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Disclaimer

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In Pursuit of a National Human Rights Institution (NHRI) in Cambodia:

Summary Report of Interventions on UNGPs and Establishment of NHRI

Star Kampuchea (SK) and Attorney Sek Sophorn

(February 2021)

Introduction

In 2008, the United Nations endorsed the “Protect, Respect, and Remedy Framework” for business and human rights.

This framework unequivocally recognizes that States have the *duty* under international human rights law to *protect* everyone within their territory and/or jurisdiction from human rights abuses committed by business enterprises.

The UN Framework also addresses the human rights (HR) responsibilities of businesses.

Business enterprises have the *responsibility to respect* human rights wherever they operate and whatever their size or industry. In other words, companies must know — and show — that they respect human rights in all their operations.

The UN Framework also recognizes the fundamental right of individuals and communities to access effective remedy when their rights have been adversely impacted by business activities.

When a business enterprise abuses human rights, States must ensure that the people affected can access an effective remedy through the court system or other legitimate non-judicial process.

Companies, for their part, are expected to establish or participate in effective grievance mechanisms for any individuals or communities adversely impacted by their operations.

On 16 June 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), a set of guidelines that operationalize the UN Framework and further define the key duties and responsibilities of States and business enterprises with regard to business-related human rights abuses.

Henceforth, the Working Group on Business and Human Rights (UNWG) was mandated by the United Nations Human Rights Council (UNHRC) to promote the effective and comprehensive implementation of the UNGPs.

The UNWG likewise noted in its 2016 Guidance on Business and Human Rights that National Action Plans (NAPs) can be an important means to promote the implementation of the UNGPs (DIHR, n.d.).

Background of this Report

The UNGPs provide a roadmap for States and businesses, as well as civil society, donors and development partners, to better manage this new wave of development (CCHR, 2016) for sustainability in line with SDG.

However, Cambodia is suffering with the growing tension between agribusiness activities and communities for the last decade.

The Royal Government of Cambodia (RGC), through the Economic Land Concession (ELC) policy, has given million hectares of land to large-scale agribusiness investments. This has led to a festering land conflict between peasants, indigenous peoples and companies as well as authorities.

Land expropriation, land grabbing, resettlement and forced eviction remain a problem.

While Cambodia is party to many international human rights instruments, the country is still struggling with many inconsistencies and violations.

The RGC initiates the establishment of independent human rights commission aimed at ensuring the HR standard and democratic space in the country. Regarding business and human rights, the RGC has not yet enforced it. But local NGOs, even with their limited space, have been taking several initial steps to introduce the framework to the country (ANGOC, 2019).

The BHR framework demands that corporations demonstrate universal respect for human rights in all operations. The UNGPs outline how States and business can protect and promote human rights through three central pillars: 1) the State duty to protect against human rights abuses; 2) the corporate responsibility to respect human rights; and, 3) access to remedy, which requires States and businesses to provide access for victims of business-related human rights abuses to effective judicial and non-judicial remedies (Sek Sophorn, 2018).

During the reporting period, the undecided issues about the HR situation in Cambodia in 2019 and 2020 become the case in particular between the RGC and the UNSR in charge of HR as well as the EU.¹

The RGC claimed that all actions so far taken against the former opposition were above board, while the EU and UM Special Rapporteur (UNSR) claimed that the action of the RGC violated the HR of Cambodian people who supported the former opposition party.

How are HR violations defined under the UN?

Definition and types of human rights violations²

States largely violate human rights either by its own action - involving State actors such as police, judges, prosecutors and government officials - or through its inaction or when it looks away when conflicts arise between individuals or groups within a society.

In other words, if the State knowingly stands aside and does nothing to protect the inherent rights of vulnerable people or groups, then it also becomes a party to the violations, such as when corporate interests collide with those of indigenous peoples or farmers (Soken-Huberty, n.d.).

Civil rights, which include the right to life, safety, and equality before the law are considered by many to be “*first-generation*” rights. Political rights, which include the right to a fair trial and the right to vote, also fall under this category. These are protected under the Universal Declaration of Human Rights and the International Covenants of Human Rights.

¹ The EU decided in August 2020 to cut its EBA policy for Cambodia by 20 percent due to alleged human rights violations.

² <https://www.humanrightscareers.com/issues/what-are-human-rights-violations/>

Also forming part of the bases for human rights protection is the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) which came into effect in 2007. This declaration recognized, among others, indigenous peoples' rights to communal land and culture.

The UNGPs likewise stems from the Universal Declaration of Human Rights which is recognized by Cambodia.

This report summarizes the status of BHR development in Cambodia and the ways that the country, through its institutions, is moving forward to enhancing UNGPs considering that Cambodia still does not have a National Human Rights Institution.

The lack of such a dedicated institution has been a barrier to the recognition and implementation of BHR, and consequently the formulation of the critical NAP.

Report Writing Methodology

This report drew on the previous study³ with additional data coming from discussions among key players on the how the principles of UNGPs are being implemented in Cambodia.

The report referred to primary data such as laws and policy as well as secondary data from various reports of government, UN agencies, international organizations (IOs), NGOs and other sources.

While this report takes the viewpoint of civil society, the interview with key persons, consultation meetings with civil society workers and focus group discussion provided various insights on BHR.

The final version incorporated the inputs from the validation consultation workshop held on 20 October 2020, in Phnom Penh. There were 17 participants (5 women, 12 men) from the Councils of Ministers, the Cambodia Human Right Committee (CHRC), UN Office of the High Commission for Human Rights (UNOHCHR), NGOs, and communities from the urban and rural areas.

³ BHR principle baseline study by SK in collaboration with attorney Sek Sophorn, November 2018

Objectives of Report Writing

This report was prepared to provide an overview of the state of BHR in Cambodia, specifically the protection of the land rights of those concerned with development projects, as well as the status of the establishment of a National Human Rights Institution (NHRI) that complies with Paris Principles. This also explores opportunities for key actors to play significant roles in enhancing the implementation of UNGPs as well as the establishment of an NHRI in Cambodia.

Status of UNGPs in Cambodia

Cambodia Development Overview

Cambodia with a population⁴ of 15,288,489 is one of the 10 ASEAN country members. It recognizes all human rights and fundamental freedoms in the Universal Declaration of Human Rights (UDHR) and UN Charter in its current Constitution.

Cambodia states in its Constitution that:

- “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights.”
- “Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.”
- “The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with law.”

How are individuals’ rights protected according to these provisions in the Constitution? And what institution/body is responsible for making sure that these standards are indeed met?

⁴Provisional population census 03 March 2019

Cambodia is still struggling to answer these questions. In the specific context of the UNGPs, issues on respect and protection of human rights and remedies in case of violations remain unresolved.

To tackle thorny human rights issues, the RGC established a State-run national organization to address human rights (HR) issues from the government's perspective while various non-governmental organizations (NGOs), associations have been monitoring HR issues.

In 2018, a number of NGOs and State actors met and assessed where Cambodia was in terms of upholding the provisions of the UNGPs.

On 17 May 2019, Simon Walker, Representative of the Office of the High Commissioner for Human Rights in Cambodia, said during a peer learning session on BHR that in recent years:

- a Cambodian Corporate Social Responsibility Platform was established;
- more and more companies adopted due diligence policies;
- leading international brands advocated, together with their workers, for higher minimum wages; and,
- multi-stakeholder networks such as the Ethical Trading Initiative (ETI) together with the International Labour Organization (ILO), with its Better Factories Cambodia local partners, organized collective actions and high-level meetings with the government to discuss concerns and potential solutions regarding Cambodia's trade benefits.

Status of UNGPs

As said earlier, Cambodia has incorporated international human rights covenants in its Constitution. However, it is still uncertain how the UNGPs can be applied in Cambodia.

In November 2018, in the consultation workshop attended by government representatives and concerned key actors in Cambodia, it was confirmed that issues concerning UNGPs were new to Cambodia, thus the urgent need to raise awareness of the principles among stakeholders.

In particular, it remains unclear how businesses in Cambodia can be compelled to respect human rights and to recognize potential violations related to their

operations, considering the larger issue of the further tightening of the political and civic space in Cambodia as noted in the 45th session of the HR council on 5 October 2020.

The UN noted the use of legal and administrative measures against political activists, human rights defenders and critics of the Cambodian government, a finding that was challenged by the RGC. It countered the conclusions, saying that the report was discriminatory and that Cambodia was committed to human rights protection.

The OHCHR, meanwhile, took note of Cambodia's efforts to address challenges to land and housing rights, specifically forced evictions, resettlement and land titling processes.

Overall, there has not been any significant progress in Cambodia on implementing the UNGPs in relation to land rights. There has been no formal or explicit action on behalf of the RGC to do so.

Investments and land in Cambodia

Since the enactment of the Land Law in 2001, Cambodia has developed significantly the executive instruments for land governance in Cambodia, including State and private land.

Existing laws provide that potential investors must secure an economic land concession (ELC) from the RGC.

Some 301 companies⁵ in Cambodia have ELCs that cover 2.189 million hectares. The Ministry of Land Management, Urban Planning and Construction (MLMUPC) has issued 5.789 million land titles, accounting for 82.7 percent of the total seven million land plots in Cambodia.⁶

There are some companies that do implement provisions of the UNGPs, including a number of those embroiled in land disputes.

For example, one of the companies that have been locked in a land dispute with the Bunong indigenous community in Busra Commune, Pech Chreada

⁵ http://www.licadho-cambodia.org/land_concessions/

⁶ MLMUPC progress report July 2020 and next planning

District, Mondulhiri Province for over a decade has taken a number of steps to implement the UNGPs.

These include participating in dispute resolution processes, providing continual training staff on business and human rights, establishing a grievance procedure, adopting relevant policies and working with the community to map and protect sacred lands.⁷

However, while the company has taken steps to respond to the land dispute, they have not adequately addressed their human rights impact as the dispute has not yet been resolved. It also needs to do more before it can fully implement UNGPs.

In Cambodia, companies usually address their human rights impact only after violations are exposed. There are unfortunately many companies in Cambodia that do not have any regard for their human rights impact. As such, they do not have processes or policies in place to comply with the UNGPs.

Even on an informal or indirect level, there has been minimal action to implement the UNGPs in Cambodia. There are not enough protections against business-related human rights abuses, particularly when the government grants large tracts of land through ELCs or Special Economic Zones (SEZs) to corporations. Land conflicts have erupted and there are not enough remedies in place when peoples' rights are violated.

The government, however, in 2020 issued a list of lawyers offering legal services to women and the poor. This is on top of the department of the Bar Association dedicated to defending poor's rights.

Land rights as human rights

In 1992, the RGC passed the country's first Land Law that recognized the citizens' right to own land. Land ownership rights have since been protected under the Cambodian Constitution.

⁷ For more information, please see case study on Socfin-KCD: CCHR, 'Factsheet: Business Responsibility to Respect Human Rights', (July 2019), <https://cchrcambodia.org/admin/media/factsheet/factsheet/english/2019-7-16-factsheet-business-responsibility-to-respect-HR-eng.pdf>

In August 2001, the Land Law became the only piece of legislation that specifically provides for citizens' right to own land. It also spells out the mechanisms for possession, titling, protection of the possessor and remedies through alternative dispute resolution (ADR) set by the RGC. It also set the framework for the granting of economic and social land concessions (ELCs and SLCs).

The Cambodian Constitution recognizes and protects the rights to private and collective land ownership. The current Land Law determines the terms and conditions for the rights to possess, claim, and transfer ownership rights.

Governance of land rights in Cambodia has become one of the major issues confronting the country. Among the issues concern titling. Under the law, both private and public lands have to be titled. State land needs to be titled as government property under the name of a State agency, for example, before the land can be leased or managed.

Legitimate rights to land⁸ are not being effectively enforced even if these rights are expressly recognized under Cambodian law. Possession rights are not systematically governed.

Unless the land is titled, the law of Cambodia generally treats all land as belonging to the State,⁹ which then has the power to have it leased or managed by a private company under an ELC.

The lack of transparency and effective governance of land rights have long been a pressing issue in Cambodia, with land grabbing among the most urgent concerns. Local NGOs working on human rights issues have documented reports on land rights and issues related to land. The UNSR also made report on this issue.

Similar to privately-owned lands, indigenous peoples' rights to land are recognized and protected under the Land Law of Cambodia. Issues relating to governance of their rights are also not generally resolved. Under current procedures, the MLMUPC has registered 30 indigenous communities as collective land owners.

⁸ Voluntary Guidelines on Governance Tenure on Land, Fisheries and Forests in the Context of National Food Security

⁹ Article 58 of Constitution and article 161 of 2007 Civil Code

Legal registration procedures are unfortunately often at odds with customary practices. For example, these 30 communities received 819 certificates for different pieces of land that cover 31,605 hectares for 3,033 families.¹⁰

The RGC through MLMUPC has assumed that titling land will address land disputes, but issues related to land rights go far beyond just titling.

Remedies and procedure in place

In 2019 and 2020, the RGC established three more Courts of Appeals to resolve cases. Also, the RGC institutionalized a land dispute committee at the district, provincial and national levels.

Cambodia has an established ADR system, but the challenge is in having enough qualified and trained staff to settle disputes. Often, ADR staff do not have the right skills or are not legally mandated to dispense justice through this alternative legal means.

For example, a village chief, who is the nearest person of authority in the area, is sometimes approached to settle disputes, including land-related cases, before the dispute is elevated to the regular courts. The village chief, however, is not mandated to settle such disputes but has been constrained by circumstances to play that role. The village chief is the assistant to Commune Chief¹¹ in administration.

The Commune Council was established as a government organization under the Councils of Ministers (CoM) to take on HR issues. However, there is no available detailed information on what the body is doing and its achievements so far.

In 2013, the Prime Minister issued Directive No.1 to address disputes relating to ELCs across the country. Then on 3 June 2016, the MLMUC issued a decision to form 27 dispute resolution committees with three duties. These are to work together with the Cadastral Office and select cases for research and investigation; mediate the case or recommend it to the MLMUPC; and finally, prepare reports to MLMUPC for resolution.

¹⁰ Page 10, MLMUPC Progress Report July 2020

¹¹ Law on Commune Council administration and management

On 3 July 2020, the RGC has passed the draft law that aims to legalize legitimate rights over State property. It is now being heard by Cambodia's legislature.

The Do-No-Harm principle usually applied to health can be extended to also cover human rights and business and development, in that the possible harm posed by projects or land use must be carefully weighed against the benefits to the greater number of people.

In Cambodia, ELCs have affected traditional land occupation and development. Stakeholders have so far said that they have not seen any significant progress in the implementation of UNGPs principles in Cambodia. Evidence is that tenure insecurity has persisted, primarily due to lack of governance of legitimate rights over land.¹²

For example, many low-income households who live on land that is not recorded in the administration system often face disputes with development projects. Legitimate land rights are supposed to be protected under the law, but the implementation or enforcement is hindered by inadequate governance.

CSO Interventions towards the promotion of BHR related to land rights

The Cambodian government has placed a premium on the type of economic development that prioritizes physical infrastructure, regardless of the negative impact on the rights of affected citizens or communities, including indigenous peoples and farmers.

Civil society organizations in Cambodia have been playing a key and active role in advancing the rights of these affected communities. There is space for the CSOs to operate but there are constraints such as new legislations that add to the burden of CSOs. There have also been reports of harassment by government agencies. Among these new laws that affect CSOs is the Law on Association and Non-Governmental Organization (LANGO). The said law seeks to regulate CSOs was passed in 2015. Under LANGO, the government is authorized to monitor CSOs, their activities and finances. For CSOs, LANGO imposes an unnecessary burden and those working in human rights and governance feel harassed because of greater government control.¹³

¹² Legitimate rights to land is described in VGGT as State duty to protect and remedies, if affected.

¹³ The Ministry of Interior and CSOs have met and discussed the concerns and proposed amendment to the draft law.

In 2019 and 2020, even with COVID-19 pandemic, the RGC, represented by the Ministry of Interior (Mol), has discussed with NGOs/IOs their concerns over LANGO and proposed amendments. No timeframe has been set to complete the amendments. This is another illustration of how spaces for CSOs to operate have remained, albeit narrowing.

CSO interventions towards the promotion of BHR related to land rights (January to September 2020)

Fewer CSOs are implementing projects that promote BHR. Of the 12 CSOs contacted for the report, only two not-for-profit organizations have ongoing projects related to the UNGPs.

Even before the passage of the current Land Law, CSOs have already been working on land disputes and land rights in Cambodia. There are some CSOs not working on land that nevertheless took part in discussions. One of these CSOs provide legal and psycho-social support to land human rights defenders through its Protecting Fundamental Freedoms Project.

The BHR Project focuses on the overall impact of business and investment on the human rights landscape in Cambodia and advocates for the implementation of the UNGPs.

The lack of governance through formal land titles, corruption and lack of legitimate land rights governance in Cambodia have become opportunities for corporate actors to commit significant human rights violations such as land grabbing or forcible evictions with impunity.

Even with this reality, there are efforts to ensure adherence to human rights by corporate actors granted land under Economic Land Concession or Social Land Concession by the government.

Projects focus on encouraging corporate social responsibility among corporations, facilitating dialogues between the government, corporate actors and affected communities, and works to empower local communities, CSOs and land human rights defenders. There is also a project that looks at the impact of development projects on community fisheries in coastal regions.

Outputs and Emerging Outcomes of key activities implemented by CSOs

These interventions have resulted in the following:

- capacity building activities with affected communities pressing their land rights;
- advocacy workshops and trainings with communities to empower and educate them on their legal rights;
- field and desk research on business and human rights, particularly land rights, abuses in Cambodia; and,
- support for legal services and advice to selected people who need them to fight for their land rights.

CSO recommendations on NHRI and UNGPs

To Government on NHRI

- In general, CSOs recommend that the NHRI be operational with sufficient financial and human resources. It should be independent from the executive branch of the RGC. The NHRI has to meet international standards, including the Paris Principles, to ensure its independence. It should be noted that the Constitution of Cambodia under Article 8 provides for the protection of human rights.
- A specific recommendation is to organize a Working Group composed of representatives from CHRC, UNOHCHR, and concerned CSOs to begin discussions on the establishment of the NHRI in Cambodia. An NGO can kick-start the dialogue.

To Government on BHR and the UNGPs

- Prioritize activities that will raise awareness on UNGPs among government officials, businesses and investors, CSO staff as well as local people;
- Work with UNSR on how to implement the UNGPs. For example, the government can require compliance with the UNGPs before private companies can implement projects that involve an ELC from the government;
- CHRC should nominate a facilitator to discuss with CSOs the possible formation of a Working Group on BHR. The Terms of

Reference (ToR) should be initiated by the Working Group (WG). The Working Group should be represented by at least three sectors: government, CSOs and business. One of the key elements of the ToR is the drafting of a National Action Plan for UNGPs;

- Streamline the communal land titling process for indigenous peoples and adopt national guidelines to ensure any necessary evictions and relocations are conducted in line with international human rights standards;
- CHRC should investigate all forms harassment and hold people accountable for human rights violations in relation to land disputes; and release land rights activists who are currently imprisoned for exercising their freedom of expression and assembly; and,
- Review the environmental and social impact assessments (ESIAs) of infrastructure projects or SEZ, including ELCs, and ensure that they are made available to affected communities and the public in a timely manner.

To private sector

- Increase awareness of field staff on BHR and their responsibility to local people around and inside their project area;
- Establish effective, accessible and transparent operational-level grievance mechanisms for those who may be adversely affected by their business activities, in line with the principles of the UNGPs;
- Companies involved in land disputes should take responsibility for disputes and seek to work with CSOs and affected communities in reaching a solution, rather than take legal action against them;
- Exercise due diligence prior to starting any operation in Cambodia;
- Effectively remedy all human rights violations, and ensure that any remedy meets the effectiveness requirements of the UNGPs; and,
- Engage with affected communities. Ensure meaningful consultations and respect the principle of Free Prior and Informed Consent (FPIC), and constantly engage with affected communities and CSOs involved in the land dispute resolution process.

To CSOs

- Prioritize activities that will raise awareness on BHR among relevant stakeholders including the RGC, corporate actors, communities and CSOs;

- Nominate a facilitator to discuss with the RGC/CHRC the proposal to form a WG and the need to establish an independent NHRI in line with the Paris Principles and UNGPs;
- Support communities seeking redress for land rights violations, such as by providing legal support and capacity building to focal persons/youth from communities concerned on legal land rights and entitlements, what constitutes an effective remedy under international human rights law and national instruments; and,
- Encourage and facilitate dialogue between affected communities, corporate actors and public authorities to discuss the resolution of land disputes in accordance with the UNGPs.

State of Establishing an NHRI to further protect human rights in Cambodia

This section provides an overview of the process for establishing an NHRI in Cambodia, the actors involved, the direction being taken and the ways forward. It also looks at how UN and CSO can be a part of the process in pursuit of the common goal of genuine independence and trust.

The primary concern of CSOs with the proposed NHRI is its independence. It has to be neutral and free from political interference if it is to effectively fulfill its mandate. However, given the current political situation in Cambodia, that needed independence cannot be guaranteed.

The establishment of an NHRI is long overdue, however, and CSOs have long been advocating for the formation of such an independent body. CSOs note that unfortunately, their participation in the process has not been well received and not very meaningful.

UN Paris Principles

To fulfill its human rights obligations under the current Constitution, Cambodia must adhere to the 'Paris Principles'¹⁴ in forming the NHRI.

The Paris Principles set out the main criteria that NHRIs are required to meet:

¹⁴ <http://ennhri.org/about-nhris/un-paris-principles-and-accreditation/>

- Establishment under primary law or the Constitution;
- A broad mandate to promote and protect human rights;
- Formal and functional independence;
- Pluralism, representing all aspects of society;
- Adequate resources and financial autonomy;
- Freedom to address any human rights issue arising;
- Annual reporting on the national human rights situation; and,
- Cooperation with national and international actors, including civil society.

Cambodia Human Rights Committee

The Cambodian Human Rights Committee (CHRC) is a government organization mandated to address human rights concerns. Established in January 2000, it has been playing an important role in dealing with HR affairs including documenting cases, reporting to the UNHR and interacting with CSOs in Cambodia.

However, after 20 years, there is a lack of detailed information available on its website, including pertinent background and official documents on the establishment of the CHRC. It has an official Facebook page (<https://.facebook.com.chrc.gov.kh>) with pictures of the organization's activities, but not much more than that.

The CHRC led discussions in July 2020 on the establishment of an NHRI. It gathered inputs from various stakeholders such as the UNOHCHR and selected embassies in Phnom Penh that will go into the drafting of the law on NHRI.

There is still no clear timeframe nor specific steps to be taken to ensure the passage of the law.

But on 19 June 2020, His Excellency Chin Malin, CHRC Vice President and Spokesperson of the CHRC, was quoted in news reports as saying that the RGC intends to establish an NHRI in accordance with international principles precisely to protect human rights.

He also said that the draft law had already been completed by the CHRC and that the RGC was committed to having the NHRI in place within this sixth legislative term or until July 2023.

What is crucial is for the NHRI to be an independent body considering that human rights organizations and defenders have been facing increased intimidation and harassment.

Threats of physical violence, surveillance, arrest and arbitrary criminal and civil lawsuits, compounded by a culture of impunity, have dogged human rights workers attempting to carry out basic human rights activities.

All of these forms of intimidation hamper efforts to reduce and prevent human rights abuses.¹⁵ The participation of CSOs in the process of establishing the NHRI will be severely limited if there is no transparent and clear roadmap.

There are concerns that even if the NHRI will be independent on paper, it will not be provided adequate financial or human resources to be able to do its job effectively or that it will ultimately be silenced.

These concerns stem from perceptions that human rights bodies previously set up by the RGC such as the CHRC are ineffective and politically aligned with the government, thus cannot represent all sectors and do not conform with the standards of the Paris Principles.

Efforts of CSOs in Cambodia advocating for the establishment of NHRI

There used to be discussions on human rights issues and the planned establishment of an NHRI among independent consultants and staff of NGOs that are working on human rights concerns. But these had stopped and have not yet been revived.

It is yet unclear what the appropriate platform will be to open conversations between the CHRC and NGOs, although the CHRC had said in June 2020 that there were efforts to establish an NHRI that will be in charge of human rights affairs in Cambodia.

Such talks are crucial at this time given the prevailing political, economic and social situation influenced by COVID-19 and tensions between the Cambodian government and the international community.

¹⁵ UNSR also noted on 16 November 2020 https://cambodia.ohchr.org/sites/default/files/UN%20experts%20alarmed%20by%20civil%20society%20crackdown%2C%20attacks%20on%20defenders_Final_EN.pdf

A number of CSOs believe that efforts to push human rights issue will not bear much because of the current human rights and political environment with a de-facto one-party State.¹⁶

They are also concerned that an NHRI to be established at this time will not be independent, as required by international human rights standards. CSOs believe that if an NHRI is to be established, it must be composed of individuals clearly independent from the RGC and from different sectors to ensure diverse representation.

Possible members include independent experts and former members of Cambodia's civil society. The selection of the representatives to the NHRI has not yet been discussed.

CSOs in Cambodia have long been advocating for the establishment of an independent NHRI. A number had participated in a regional working group, a national conference and a joint working group composed of both CSOs and government representatives. They have consistently pushed for the creation of an NHRI that will conform with the Paris Principles¹⁷ in many of their projects and reports.

They have also taken their advocacy overseas, going for instance to the United Nations - particularly the UN Human Rights Committee¹⁸ - to pressure the Cambodian government to establish an NHRI. Recently, however, CSOs have become highly concerned that the independence of the planned NHRI would not be guaranteed given the country's current human rights and political environment.

Outcomes of the efforts of CSOs in Cambodia advocating for the establishment of NHRI

There had been discussions among CSOs and UN agencies as well as CHRC on the draft law that will pave the way for the establishment of an NHRI. However, there is no mechanism to ensure the engagement or participation of CSOs involved in human rights in the finalization of the draft law.

¹⁶ The Ruling Party, CPP, won all 125 seats in National Assembly in July 2018 General Election after dissolution, by the Supreme Court, of CNRP the only opposition party in the National Assembly on 16 November 2017, and all Commune Council seats which was won by the CNRP in June 2017 election for a term of five years.

¹⁷ See the Paris Principles here: <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>.

¹⁸ CCHR, 'List of Issues submission for the Human Rights Committee's third review of the Kingdom of Cambodia' (May 2020) p. 3, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1374&Lang=en.

The draft law as of April 2015 in the Khmer language is composed of nine chapters with 41 articles. The draft law has been circulated among key CSOs but there has not been any detailed discussion nor study on it. There is no outstanding project nor resources allocated for this task of going over the draft law.

In summary, moves to establish an NHRI are underway but without a specific timeframe, resources and platform for discussions with stakeholders and key players in the human rights sector.

Outputs and emerging outcomes of key activities implemented by CSOs

- Few dialogues between the RGC, businesses and affected communities;
- Dialogues with business enterprises to raise awareness on and increase respect for human rights;
- Dialogue and advocacy to the RGC to enhance respect for land rights;
- Group discussion among NGOs on how the NHRI will be established as an independent entity with a broad mandate; one that is accessible, accountable and has adequate resources; and,
- Despite efforts, there is still no NAP in place to operationalize the UNGPs.

Plan of CSOs towards the continuation of engagement related to BHR and the establishment on NHRI (January to December 2021)

- Awareness raising among CSOs and government on UNGPs;
- Engaging with HR and legal experts and together analyze the draft law on the establishment of NHRI to determine if it will comply with the BHR and Paris Principles. CSOs want to make sure that the NHRI will have adequate powers of investigation, adequate resources and facilities, including funding, so that it can operate independently of the RGC, and that the NHRI will be composed of staff independent from the RGC with diverse representation of stakeholders, including independent experts;
- Discussion with the Australian Embassy on how the consultation process can be made more inclusive; and,
- Participation in the series of consultations called by the CHRC with CSOs and the public on the draft law on NHRI. The objective is to receive inputs from various sectors to improve the draft law prior to submission to the Council of Ministers for further deliberation. ■

List of acronyms	
ADR	Alternative Dispute Resolution
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ASEAN	Association of Southeast Asian Nations
BHR	Business and Human Rights
CLT	Collective Land Title
CCHR	Cambodia Center for Human Rights
CESCR	Committee of Economic, Social and Cultural Rights
CHRC	Cambodia Human Right Committee
CoM	Council of Ministers
CSOs	civil society organizations
ELC	Economic Land Concession
ESIAs	Environmental and Social Impact Assessments
ETI	Ethical Trading Initiative
GDP	Growth Domestic Product
G-NGO	Government- Non-Governmental Organization
HR	Human Rights
ICCPR	International Convention on Civil and Political Rights
ILO	International Labour Organization
IOs	International Organizations
LANGO	Law on Association and Non-Governmental Organization
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MoI	Ministry of Interior
NAP	National Action Plan
NGOs	non-governmental organizations
NHRI	National Human Rights Institution
RGC	Royal Government of Cambodia
SCM	Supreme Council of Magistracy
SEZs	Special Economic Zones
SDGs	Sustainable Development Goals
SK	STAR Kampuchea
SLC	Social Land Concession
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council
UNOHCHR	United Nations Office of the High Commission for Human Rights
UNSR	United Nations Special Rapporteur
UNTAC	United Nations Transitional Authorities in Cambodia
UNWG	United Nation Working Group

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Finally, we thank the King and Governments of Cambodia for maintaining the enabling environment for development and participation of key actors in this report. We wish to see Cambodia in the near future with full respect of HR and fundamental freedom of every person in the Kingdom of Cambodia.

Sincerely yours,

Chet Charya, Executive Director, STAR Kampuchea
Nhek Sarin, Deputy Executive Director, STAR Kampuchea

Disclaimer

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From the voluntary to mandatory:

A commentary of land rights CSOs on the Zero Draft of the National Action Plan for UNGPs in India

INDIA

Social Development Foundation (SDF)

(February 2021)

Background

Context

Business and Human Rights have become increasingly important at this time when countries have been competing with each other to help big corporation grab land in the name of “development” and “investment”.

In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs).

India immediately endorsed the principles, although acceptance by the private sector remains voluntary. The fact is that to attract investments, the government adopted soft measures and focused on charity based on Gandhian principles of “trusteeship” as mentioned in the document of the Government of India.

Prior to the UNGPs, the business sector was guided by the Corporate Social Responsibility (CSR) guidelines formulated in 2009 by the Ministry of Corporate Affairs. But these were more about philanthropy, mainly contributions to charitable causes. Most corporate entities actually found a way out by developing their own “trusts” and “foundations” to get the tax benefit.

Currently, the bulk of the CSR money goes to the Prime Minister’s relief fund, which unfortunately remains out of the purview of the Right to Information Act.

That means the people will only know about the expenditures and their rationale if the government wishes it. Otherwise, it is being treated as a secret fund.

The Ministry released a second set of guidelines in 2011 entitled, “National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business”. Given the goals and objectives of Sustainable Development Goals (SDGs) as well as UNGPs, the government came up with yet another set of guidelines in 2019 called the “National Guidelines on Responsible Business Conduct”.

As per the mandate of the UNGPs, the Ministry of Corporate Affairs formulated the “National Guidelines for Responsible Business Climate” under the National Action Plan for UNGPs and came out with an initial Zero Draft in 2018.

The Ministry formed a working group involving other related Ministries, National Human Rights Commission (NHRC), corporate bodies and engaged in wide-ranging consultations on the issue. It finally issued the Zero Draft in February 2019 with the aim of completing it by 2020.

The Committee headed by the Ministry of Corporate Affairs decided to do the following:

- undertake a comprehensive study to assess the implementation of UNGPs in India through a review of the country’s legal and policy framework;
- identify key priority areas for the Government for effective implementation of the principles envisaged under the UNGPs;
- prepare time-bound policy actions to achieve objectives; and,
- articulate clear responsibilities of relevant Ministries/Department of the Government of India.

India’s current National Action Plan (NAP) is laudable yet needs more teeth to protect the rights of the communities and workers, specifically their right to access and control land, water and other natural resources necessary for their survival and livelihood.

Labor issues such as wages, leaves and bonuses are indeed important but what must be addressed by the guidelines are the issues of land grabbing and dispossession of indigenous people, peasants in the name of “investment and development”.

After all, this was one of the prime reasons for the drafting of the UNGPs, thus it is essential that India’s NAP address land rights issues.

The NAP should also look at different laws and regulations that have adversely affected communities and people in the name of development or business.

To this end, a few issues needs further elaboration:

- The “consent” clauses in the Land Acquisition and Resettlement Act have been diluted. The Act in 2013 gave communities strong power to say no to any acquisition of land in the name of “development”.
- The changes in the environmental laws, particularly on Environmental Impact Assessment (EIA) procedures, need public discussion. The government, for example, declined to publish the relevant information in local languages except Hindi and English despite Delhi High Court’s order. EIA is a strong tool to protect the marginalized but it has been diluted to benefit the companies.
- Changes in labor laws have made it difficult for labor and labor unions to function.
- An analysis of three farm laws suggest that they are drafted more for the benefit of business sector rather than farmers. Even the right to access the court has been restricted while corporates are allowed to hoard products.
- During COVID-19, the UN Rapporteur on Housing Rights had asked governments to stop evictions of the people or communities under any pretext. Unfortunately, the Government of India did not share the sense of urgency.

Social Development Foundation (SDF), Ekta Parishad and Centre for Legislative Research and Advocacy (CLRA) as part of the Land Watch Asia Working Group on Mainstreaming Land Rights as Human Rights (LWA WG LRHR), facilitated by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).

During the preparatory workshop of the LWA WG LRHR, the participants agreed to hold consultations on the NAP and link it with the National Human Rights Commissions and other government bodies.

To date, two consultations were organized in India to come up with a strategy related to Zero Draft.

Objective of this report

The concept of Business and Human Rights emerged as a response to the growing threat to rights and liberty of the indigenous communities, pastoralists, *dalits*, *adivasis* and peasants due to displacement and land acquisition in the name of development.

As the power and role of big corporations was accepted by all, it also became necessary to develop mechanisms so that these corporations will follow the right processes and protect the rights of the people.

This report seeks to spell out these guidelines and whether these can be followed by corporations as well as the government. It also aims to determine whether the draft guidelines really follow what the UNGPs actually endorsed and wanted.

It is heartening to know that the Indian government has taken the initiative and started consultations on the UNGPs on its own. However, not enough people know about these. As it is, the Zero Draft as it stands now does not cover concerns about the land, forest, water or any other natural resources issues.

The draft also does not mention the issues and problem related to *dalits*, *adivasis* as well as the environment.

So far, we do not know how these voluntary guidelines will be implemented, whether these will just remain on paper in some researcher's manual or will actually be effectively followed.

Unless the NAP will clearly spell out the issues of *adivasis*, *dalits*, farmers and pastoralists in India who are directly affected by the current developmental model, things may not move and corporate takeover of finite resources will just continue.

How this report was prepared

SDF, Ekta Parishad and CLRA organized two online consultations. These consultations were participated in by civil society, academia, former bureaucrats, activists and members particularly from *dalit* and *adivasi* communities.

Unfortunately, most of them were not quite aware of the formulation process of the NAP for UNGPs, although they want to be involved as every one of them felt that corporates were responsible for their plight and were indeed engaged in land grabbing with the support of government.

This report is the result of consultations with civil society representatives, particularly those with *dalit-adivasi*-farmers background. We also looked at the Zero Draft and talked to the National Human Rights Commission (NHRC) as well as other NGOs.

We also looked at the critique provided by various experts who wrote about the Business and Human Rights process in India. Our primary concern was the issue of land rights as well as issues of *dalits* and *adivasis*. In preparing this report, we also looked at the changes in various laws during the last six years since the incumbent government took over.

This report analyzed the whole document after discussion with community activists and put forward suggestions in the greater interest of the communities as well as the environment.

Scope and limitations

Due to lockdowns brought about by the COVID-19 pandemic, face-to-face meetings became next to impossible. Even the government bodies were not functioning fully so it was decided to organize virtual civil society consultations, particularly with those most affected by the current “developmental” model.

Activists based in Chhattishgarh, Odisha, Jharkhand, Andhra Pradesh, Telangana, Uttarakhand, Uttar Pradesh participated in the online deliberations.

Of course, SDF cannot claim that it was able to consult everyone due to time constraints. Also, most of the land rights organizations as well as resource rights organizations were not aware of the UNGPs and the Zero Draft, hence further explanations on the topics and related issues need to be done.

Status of UNGPs in India

The Government of India's Ministry of Corporate Affairs acts as the lead organization in formulating the national action plan of UNGPs while the National Human Rights Commission (NHRC) can be involved in monitoring and evaluating the implementation.

At the same time, the NHRC organized several workshops and consultations nation-wide and wanted government to make these guidelines mandatory to be followed by the corporate sector.

Progress of the UNGPs and the formulation of its NAP

To date, a Zero Draft of the NAP was prepared in February 2019 by the Ministry of Corporate Affairs. The document, however, only provided a listing of laws and provisions, highlighted the connection of States and business, some description of the situation of collective bargaining and leveraging public procurement.

Since then, there were limited attempts by the Ministry to reach out to different constituencies. In the middle of February 2020, a notification was released seeking recommendations from the public with regard to the proposed NAP for UNGPs.

Currently, nothing much is available on the website of the Government of India. At the same time, due to lockdown brought about by the pandemic, things have come to a standstill.

Opportunities for CSO interventions on BHR and formulation of NAP for UNGPs

Since the deadline to provide inputs has passed, there is little chance for CSO intervention. It appears that the government is reaching out more to corporate groups as well as various ministries. Unless the Ministry of

Corporate Affairs feels that it needs further consultation on the issue, it is very unlikely that the government will again initiate the process.

The NAP is a major step forward as social, economic and environmental guidelines of businesses are being formulated. However, of equal importance is to ensure proper system of checks and balances as well as the monitoring of such guidelines.

With the increasing cases of land conflicts and grabbing of lands by the business sector, a comprehensive framework for business and human rights as contained in the NAP is necessary to resolve such issues.

Recent issues indicate that “there is a lack of a body which should act as an interface between State and business enterprises to ensure that best policies are formulated to promote respect of human rights” (Sharma, 2019).

Description of CSO interventions towards the popularization of BHR and the formulation of the NAP for UNGPs

Rationale/purpose of interventions

As mentioned earlier, there is not much opportunity for CSO intervention in India due to the COVID-19 breakout.

Our understanding was that most of the land rights organizations, environmental groups, indigenous people’s organizations, *dalit* organizations, farmers organizations and other human rights groups are not even aware of these initiatives related to the formulation of the NAP for UNGPs.

The government’s response was being defined by the Ministry of Corporate Affairs, which engaged with other related ministries, National Human Rights Commission as well as corporate bodies.

A few NGOs did get involved in the process and organized their own consultations at various levels and found that there is not much public information available about the issue.

In particular, the Praxis Institute for Participatory Practices and Partners in Change convened over two years some 21 consultations across 11 cities. While more than 600 participants from CSOs, small businesses, workers, trade unions, independent researchers, experts and lawyers were engaged, the organizers acknowledged that many constituencies and their voices remained unheard.

It was noted that an honest review of the country's context – the human rights violations caused by a number of business investments as reported by an online web portal "Delhi Post" - is needed.

The consultations focused more around labor issues which are important but did not adequately cover land and resource issues, defeating the very purpose for which the issue of Business and Human Rights were raised at the national and international levels and UNGPs were formulated.

Meanwhile, the two consultations organized by SDF, Land Forum India and Ekta Parishad in 2021 were more about sharing information and ideas related to UNGPs.

The reality is that the corporate sector is considered a major threat to people's rights and hence activists on the ground are more cautious about the initiative taken by the government and the corporate sector. Participants fear it is a trap but the aim of the consultations was to strengthen the initiative and push forward the agenda of land and resource rights as well as environmental protection in the National Action Plan.

It is essential to engage with civil society organizations, particularly those whose life and culture are impacted and influenced by the developmental work.

Some of the major points that emerged during the online consultations are the following:

- "Land is a composite entity which includes land, water, minerals and forest resources. We must include it in the framework. It has become a trend that once a company withdraws from its project due to public pressure, the land goes to a "land bank". It has not returned to the people. The rights of the people are not being recognized. We must speak for them." (Dr Goldy M George, Chhattishgarh)

- “Government speaks in the interest of the corporate sector. Over 6,000 *adivasis* are in jails without any convictions in Jharkhand. Anyone who speaks for the people is in jail. Bhoodan land is being transferred into a land bank. I feel it is a contradiction. Business and Human Rights can not go together. They violate our human rights and now they want to ‘help’ us.” (Ramdev Vishwbandu, Jharkhand)
- Article 21 says Right to Life with Dignity. Where are the *dalit*, *adivasi*, displaced people, women in the scheme of things in the interest of business? We need to discuss widely. Corporate have started their own NGOs and not keen to support others. They want to use the charitable approach and not encourage the rights-based approach.
- “Those who are working for HRs are facing intimidations and threats. They are being arrested. Who will take their voice to the authorities? Authorities and administration have become like the representatives of the companies. Most of the time, officials go beyond their domain to favor the big corporations.” (Ganesh Ravi, Jharkhand)
- “Land, forest and livestock are important. Land bank is basically the grazing land. All those lands are common properties and these are being shifted to the land bank. It is going to be a big issue. The administration considers those who raise these issues an obstacle. We must speak about it and protect the rights of the HR defenders.” (Activist from Jharkhand)
- “Jharkhand has a history of land rights movement. It is related to human rights. We must include land rights in the human rights discourse. Guidelines are not enough. We must include them in law and at the international level. NHRC normally does not take land rights issues. NHRC needs to be sensitized. NHRC is not taking these cases such as land rights, housing etc.” (Onkar, Jharkhand)
- “Right to property is no longer a fundamental right. We must support our farmers as this is the fight for our freedom. Corporates taking over our agriculture is nothing else but destroying the livelihood of lives and resources of farmers. *Dalits* and women never had property rights but our Constitution has guaranteed such right. Now we have regressive forces who want to deny these sections their rights. The problem is not in Constitution but those who are implementing it now. Society was always controlled by certain communities and people. We must internationalize it. We face threats and intimidation. Activists are frightened. Thus there is a need for more and more interaction and awareness, networking and sensitization, more brainstorming on the issue.” (Judge B D Naqvi, Lucknow, Uttar Pradesh)

- “All three bills on agriculture are against farmers. Women do not have land, no land for agriculture. Women’s issues are important and not discussed. The entire discourse is male-dominated. Women’s issues need to be taken seriously. Labor laws are being amended. *Adivasis* are being displaced from their places. People have been evicted without rehabilitation and things are continuing. Activists are now afraid of speaking out. We need to make proper planning, setting aside our differences. The situation is very bad as people are being evicted and dispossessed. It is basically corporate takeover. We need to seriously think about it and join hands.” (Shobhna Smriti, Jaunpur, Uttar Pradesh)
- We need to include the issue of single women, *adivasis* and *dalits*, transgender, fisherwomen. We will have to look through Intersectionality and gender diversity in the Business and Human Rights. Access to information is also important. Access to resources is human rights. (Sunila Singh, Delhi)

Description of outputs and emerging outcomes of key activities implemented

Two online consultations were conducted on the issue and were participated in by CSOs and human rights defenders. Efforts undertaken to engage the National Human Rights Commission fell short. Questions were raised on whether the non-binding nature of the UNGPs was enough reason for non-engagement in the NAP process.

A brief outline about Business and Human Rights issues in India is already done in Hindi and now being shared with CSOs working with *dalits* and *adivasis*. As the final draft of the NAP is targeted by June 2021, it all depends on the government, on whether it will open up the consultation process to various stakeholders. However, because of severe restrictions due to the pandemic, there is still inaction, as face-to-face meetings and conferences are difficult to convene.

CSO recommendations on the NAP for UNGPs (with focus on land rights)

After two consultations (organized by SDF last 16 January 2021 and 25 February 2021) and based on further discussions with activists, academics, followed by a careful analysis of the reports of previous consultations by CSOs on the issue, we arrived at the following recommendations.

- There is not much knowledge about BHR among the stakeholders, particularly *dalits*, *adivasis* as well as civil society organizations, social movements etc. Hence, it is important to generate more awareness and engage them on the issue.
- Issues of land, water and common property resources and livelihood should be discussed and included in the NAP.
- Issues of affected communities particularly *adivasis* and *dalits* should be included in the draft guidelines on Business and Human Rights in India.
- No eviction or displacement without people's consent and prior rehabilitation and other financial compensation should be emphasized.
- Zero Draft should be discussed further with human rights defenders and community organizations.
- Gender and intersectionality of the issues must be taken into account in the draft guidelines and issues of single women, *adivasi-dalit* women, sexual minorities such as transgender.
- Land Rights defenders, environmental activists particularly those working with *dalits* and *adivasis* should be protected.
- The National Human Rights Commission should be engaged and their suggestion that the UNGPs be made mandatory and not voluntary must be supported.
- Land and "access" to resources must be restored to the communities or people once a company withdraw from the area after public protests or demands.

Plan of CSOs towards the continuation of engagement related to BHR

After two consultations as well as individual interactions with various groups, it was realized that there is a lack of information in this regard and further consultations and training programs are required.

Most of the participants also felt that engagement with NHRC was important though they were not much enthused about the Ministry of Corporate Affairs. Yet it was felt that it would be good to still try to engage with the Ministry.

The following is the work plan that emerged out of these consultations and one-to-one meetings with organizations and individuals.

- More CSO consultations at different levels, particularly those engaged with community organizations, including indigenous peoples;
- Networking with organizations who have already done ground work and workshops like Praxis and VANI (Voluntary Action Network of India);
- Engage with lawmakers, Ministry of Corporate Affairs and the NHRC and explore possibilities of jointly organizing consultations;
- Conduct online training workshops for activists working on the issue; and,
- Prepare an India report on the issue once the final draft is out. ■

List of acronyms	
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BHR	Business and Human Rights
CLRA	Centre for Legislative Research and Advocacy
CSOs	civil society organizations
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
EP	Ekta Parishad
LWA WG LRHR	Land Watch Asia Working Group on Mainstreaming Land Rights as Human Rights
NAP	National Action Plan
NHRC	National Human Rights Commission
SDF	Social Development Foundation
SDG	Sustainable Development Goal
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights

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Fighting to move from voluntary to mandatory:

2020 Status of National Action Plan for UNGPs in Indonesia

Consortium for Agrarian Reform (KPA)

(December 2020)

Introduction

The traditional concept of human rights emphasizes that human rights violations are committed by the State because of its inability to protect, to respect and to fulfill. Meanwhile, non-State actors are commonly referred to as parties who do not respect human rights or simply perpetrators of criminal acts. This kind of *State-centric view* is still dominant today (ELSAM: 2016).

At present, such understanding of human rights is certainly not sufficient. Moreover, the world is increasingly connected economically. In today's global economic order, companies can operate globally and are very influential in the socio-political and legal fields. In fact, company's profit-seeking activities or company bankruptcy can cause big problems economically and politically in a country.

The increasing influence of business has prompted a number of ideas so that business entities are positioned as actors responsible for aspects of human rights. This idea is growing and encouraging the birth of global guidelines on business and human rights.

In 2011, the UN Human Rights Council adopted the UN Guiding Principles on Business and Human Rights (UNGPs). This set of principles was written by John Ruggie, Special Representative of the Secretary General of the United Nations. This guideline is not legally binding. Even so, all countries and corporations are morally bound and must, in all of their activities, pay respect to the human rights values adopted in the John Ruggie guiding principles.

The three pillars in the guiding principles have become the main foundation for States and companies in dealing with the impact of human rights violations by corporations, namely:

- Pillar I describes the State's obligation to protect individuals from the impact of human rights violations related to corporations and summarizes a number of operational principles that must be applied by the State to implement its obligations.
- Pillar II identifies the company's responsibility to respect human rights and describes the due diligence process the company must undertake to fulfill its responsibility.
- Pillar III stresses and elaborates that these guiding principles have been supported by the State, private sector and civil society.

These guiding principles have become the main reference for preventing, reducing and remedying the impact of human rights violations caused by business activities. The three pillars of UNGPs are then brought down again in the form of a National Action Plan (NAP), which is intended to be more applicable at the national level.

The development of NAP for UNGPs in Indonesia

The Indonesian National Commission on Human Rights (Komnas HAM) has played an important role in encouraging the adoption of the BHR framework not only in Indonesia but also in Southeast Asia.

Komnas HAM is also active in disseminating and developing the concept of business and human rights. Together with civil society organizations and human rights organizations, they initiated the formation of a National Action Plan for the UN Guiding Principles on Business and Human Rights (NAP for UNGPs) in Indonesia.

The NAP for UNGPs was issued under Komnas HAM Regulation No. 1 of 2017 that provided for the Ratification of the National Action Plan for Business and Human Rights, State Gazette No. 856.

According to the government, Indonesia supports and is committed to implementing the UNGPs as part of human rights regulations in Indonesia.

In fact, Presidential Regulation No. 33 of 2018 amending the 2015 to 2019 National Action Plan for Human Rights already included Business and Human Rights.

However, existing policies and steps have been limited to laying out efforts to disseminate the relational foundations between business activities and human rights (El Muhtaj, 2019) and have not emphasized the responsibility of the State and corporations to build a holistic policy capable of accelerating inclusive, equitable development and justice (Wagiman, 2000).

According to the government, there are matters related to NAP for UNGPs, namely:

- Action No. 10: facilitating local governments in recognizing indigenous peoples and their territories;
- Action No. 14: raising awareness for all stakeholders regarding business and human rights (guidance and dissemination on business and human rights);
- Action No.15: raising awareness of legal aid for indigenous peoples;
- Action No. 27: implementing Presidential Regulation No. 88 of 2017 concerning Settlement of Agrarian Disputes in Forest Areas; and,
- Action No. 41: providing nursing rooms in government offices.

However, this Presidential Regulation, which is directly related to business and human rights (BHR), is just a mandate to increase government policymakers' understanding of BHR.

Given the enormous amount of work needed to advance the three pillars of UNGPs in Indonesia, it seems that the mandate of the Presidential Regulation is far from adequate. Even then, several ministries have already carried out a number of consultations and discussions related to BHR.

In 2017, the government of Indonesia, through the Ministry of Foreign Affairs, held a National Coordination Meeting to gather inputs from all relevant stakeholders (government, companies, civil society, and national human rights institutions) to help draft the NAP for UNGPs.

On 19 January 2018, the Ministry of Foreign Affairs organized a National Symposium on Business and Human Rights, a follow up to similar meetings in 2015 and 2017.

The Ministry of BUMN (State-owned Enterprise) also held a consultation on BHR in April 2018. It invited 27 BUMN representatives to encourage companies to put in place more adequate mechanisms to uphold and protect human rights principles.

Then, in May 2018, the Ministry of Law and Human Rights collaborated with UNDP Indonesia to carry out a Training of Trainers on Business and Human Rights for State civil servants. This training course involved various inter-ministerial State civil servants, including the Coordinating Ministry for Economic Affairs, the Ministry of Foreign Affairs, and the Ministry of Law and Human Rights.

There are now 20 State civil servants trained by experts in BHR. They have, in turn, produced several trainer candidates for Business and Human Rights who can provide an understanding of Business and Human Rights for the Central Government and Local Governments. The Ministry of Law and Human Rights has also developed a module on BHR for State Civil Servants.

The Indonesian government, together with the ASEAN Intergovernmental Commission of Human Rights (AICHR), also expressed its support for the ASEAN Action Plan for Business and Human Rights. In a United Nations forum, Indonesia campaigned to change the nature of the UNGPs from voluntary to internationally binding.

Other Business and Human Rights Initiatives

- Kadin and BHR

According to the Indonesian Chamber of Commerce (Kadin), BHR cannot be separated from the original idea of corporate social responsibility (CSR) that is centered on philanthropic activities such as giving donations.

In broad terms, CSR is a concept that says a company is responsible for managing the impact of its products and services on the environment and the communities in which it operates.

Socially responsible behavior is demonstrated by, among others, ethical and transparent behavior, and compliance with applicable laws and regulations throughout its operations.

However, according to Kadin, social responsibility has been understood differently by companies and stakeholders. These differences can be ironed out by adhering to ISO 26000, which covers seven core subjects: a) organizational governance; b) human rights; c) labor practices; d) environment; e) fair operating practices; f) consumer issues; and, g) community engagement and empowerment.

As such, Kadin said members can be in line with BHR if they implement ISO 26000.

- Roadmap for Sustainable Financing from the Financial Services Authority (FSA)

In early 2014, the Financial Services Authority (FSA) launched a Sustainable Finance Roadmap for the financial services industry with a specific target of developing concrete actions for Indonesian banks to support environment-friendly projects.

Then in July 2017, FSA launched FSA Regulation No. 51/POJK.03/2017 concerning Implementation of Sustainable Finance for Financial Service Companies, Issuers, and Public Companies. This regulation requires the bank and non-bank financial industry to issue their Sustainable Finance Action Plan to the FSA. This regulation underscores the financial industry's commitment to implement Indonesia's environmental laws.

As for corporate Initiatives in dealing with agrarian disputes, the Indonesia Business Council for Sustainable Development, which was formed in collaboration with KADIN Indonesia and the World Business Council for Sustainable Development (WBCSD), established a Conflict Resolution Unit (CRU).

Its aim is to provide and facilitate long-term mediation and resolution of agrarian-related disputes. To date, however, no action plan on human rights-related principles has been released.

- Indonesia Global Compact Network (IGCN) and the Indonesian Working Group on Business and Human Rights

On 8 April 2006, 22 companies and organizations in Indonesia committed to support, promote and implement the principles of the United Nations Global Compact. They formed a local network of the UN Global Compact called Indonesia Global Compact Network (IGCN).

Since its founding, the IGCN has been actively promoting Business and Human Rights issues beyond the UN Global Compact.

On 7 April 2017, IGCN formed a Business and Human Rights Working Group consisting of representatives from businesses, NGOs and universities. Together with Oxfam, INFID and other NGOs, IGCN maintains multi-stakeholder collaborations and organizes regular discussions to discuss business and human rights issues.

- Indonesian Sustainable Palm Oil (ISPO) and Roundtable on Sustainable Palm Oil (RSPO)

Indonesian Sustainable Palm Oil (ISPO) is the palm oil standardization system used by the Indonesian government and was founded in response to the dynamics taking place at the *Roundtable on Sustainable Palm Oil 2008* (RSPO).

Like ISPO, the RSPO is a global forum that champions the UNGPs and is akin to a Human Rights Working Group. ISPO and RSPO set high standards of human rights and environmental principles for their members.

RSPO was initiated in 2004 by environmental and human rights activists who are concerned with the social and environmental impact of palm oil expansion, especially in Indonesia and Malaysia. ISPO adopted almost all of the RSPO principles and criteria. The difference is, RSPO is voluntary while ISPO is mandatory and should be applied to palm oil companies in Indonesia.

ISPO is based on a BHR agenda. Companies that do not meet the requirements face sanctions such as suspension of their membership. Unfortunately, membership suspension was not seen as a strong enough deterrent by a number of companies, thus the continued violations of RSPO and ISPO standards.

In response, ISPO and RSPO released certificates to inform consumers about sustainable products so that they can make an informed purchasing decision. However, this too was considered ineffective in stopping human rights and environmental violations by palm oil companies.

- Initiatives of NGOs

Today, many CSOs and civil society coalitions are working on business and human rights issues.

In the agrarian and agricultural sector, KPA, ELSAM and YLBHI have worked on issues related to agrarian conflicts and human rights violations. Sawit Watch has focused on monitoring the impact of the palm oil industry.

Sawit Watch and the Forest People Program have sent a letter to the UN High Commissioner for Human Rights in response to the Ruggie Report. In the letter, they called on the UN Secretary General for Business and Human Rights to include their discussions in a report on the condition of human rights in oil palm plantations.

There is also the Indonesian Focal Point for the Initiative for Legally Binding International Agreements, a coalition of Indonesian NGOs that campaigns for legally binding instruments and agreements at the UN level.

At the UN Forum held from 6 to 10 July 2015, they expressed their concerns about the First Session of the intergovernmental working group on transnational companies and other business enterprises in relation to human rights.

Direction of National Action Plan on Business and Human Rights, 2020 to 2024

In 2017, the Indonesian government, through the Ministry of Foreign Affairs, held a National Coordination Meeting to gather inputs needed from all relevant stakeholders (government, companies, civil society, and national human rights institutions) to prepare the NAP for UNGPs.

In the same year, the Coordinating Ministry for Economic Affairs was appointed the National Focal Point for Business and Human Rights in Indonesia. Its task has since been taken over by the Ministry of Law and Human Rights, which is overseeing the preparation of the 2020 to 2024 Business and Human Rights Roadmap.

Several activities carried out by the Ministry of Law and Human Rights as focal point include holding the Multi Stakeholders Forum in Bogor in February 2019.

The Multi Stakeholders Forum produced 10 recommendations for Indonesia to implement the UNGPs, to wit:

- Spell out guidelines for awareness raising efforts among stakeholders at all levels;
- Adopt policy commitments to develop a NAP for UNGPs or a Chapter on Business and Human Rights in the National Action Plan on Human Rights;
- Consolidate existing baseline assessment efforts and fill in data gaps;
- Align the NAP for UNGPs with the SDGs;
- Support the continuation and enhancement of ongoing human rights-related certification initiatives;
- Develop a communication strategy to communicate evidence of progress in Indonesia more effectively;
- Engage in regular consultations with CSOs and the private sector;
- Break down the road map into actionable tasks and assign a responsible party to carry out each task;
- Agree on the timeframe and roadmap targets; and,
- Adopt proper Standard Operating Procedures.

The first draft of the 2020 to 2024 Business and Human Rights Roadmap was presented at the Limited Consultation Discussion in Jakarta that gathered 13 related Ministries/Institutions, the Indonesian Entrepreneurs Business Association, the European Entrepreneurs Business Association (Switzerland) in Indonesia, development partners and other UN Agencies.

Participants provided inputs to help make the targets and indicators more focused, measurable and impactful. This discussion also identified priority proposals from the 2020 to 2024 Business and Human Rights Roadmap that

would be integrated into the 2020 to 2024 National Human Rights Action Plan. These include protecting the rights of children, women, indigenous peoples and people with disabilities.

The Roadmap was thus revised and the second draft was again presented to the group. During the second consultation, it was agreed upon that the Roadmap should be prepared based on the **3Cs: *Capacity building, Clear expectation and Compliance.***

After some debate, it was decided that the targets of the Business and Human Rights Roadmap are: (a) to reach out to companies that have been exposed to the concept of BHR; (b) establish a supporting mechanism, namely the due diligence mechanism, reporting and remedy mechanisms as well as marginalized groups' access to remedy; and, (c) include more indicators and targets, such as the protection of children's rights beyond forced labor.

The third draft is being prepared based on inputs from the Second Limited Consultation Discussion, to be later discussed in the Third Limited Consultation Discussion which invites civil society and academics. Also, a bill is being deliberated on and seeks to form the legal basis for the establishment of the Business and Human Rights Task Force which will coordinate the implementation, monitoring and evaluation and reporting of the implementation of the UNGPs in Indonesia.

Delays in the process may be inevitable, however, as according to the Indonesian government, it is now necessary to again discuss the ministries/agencies related to the Task Force. Also, there is a need for more coordination of activities and support for the implementation of the UNGPs to be carried out by both the relevant government institutions and development partners.

The development of NAP for UNGPs in Indonesia has not focused on problems related to natural resources. There are also indications that the government does not see human rights as a key issue. For example, the Presidential Regulation on NAP for UNGPs expired at the end of 2019 and has not been renewed. On this note, two major recommendations are put forward: a) incorporate agrarian reform in the NAP for UNGPs, and b) advocate for a legally binding treaty.

Pushing for a National Action Plan for UNGPs that Covers Agrarian Resources

Until the end of 2020, there are no signs that the Presidential Regulation on NAP for UNGPs will be ratified. Throughout 2020, the world seemed to have stalled due to the Covid-19 pandemic; hence, the Presidential Decree on NAP for UNGPs was neglected. With the expiration of the old Presidential Regulation, there is now room to advocate potential policies, in particular:

- Advocating the crafting of a broader Presidential Decree on NAP for UNGPs that includes more areas, such as business in agrarian resources/SSA fields.
- If a new NAP for UNGPs Presidential Decree is deemed not strong enough to include matters related to Business and Human Rights in the SSA field, the second option is to push for the drafting of a Presidential Decree on NAP for UNGPs that is specifically related to SSA that can complement the existing Presidential NAP for UNGPs.

Indeed, even some people in civil society are skeptical about UNGPs, mainly because it is voluntary in nature and therefore not strong enough to prevent or sanction human rights violations of corporations.

Thus, urgent steps need to be undertaken to add more substance to the NAP for UNGPs under the two scenarios above:

- In the previous National Action Plan, agrarian rights were enshrined under the right to adequate food and the environment. This is in accordance with the Covenant on Economic, Social and Cultural Rights, the Food Law and the Law on Protection and Empowerment of Farmers. However, it needs to be further refined, so that land rights will be mainstreamed in the action plan to protect farmers and help uphold the right to food and ensure food security.
 - a. Resolve existing agrarian conflicts in an effective and fair society. Business must be encouraged to comply with human rights principles, and the State must be at the forefront of protecting, respecting and fulfilling human rights. It is important that both State-run and private corporations uphold human rights but this does not mean that the State can shirk its responsibilities as the

main duty holder of human rights. Therefore, voluntary mechanisms are not enough to ensure the protection of human rights. There should be avenues where cases against violators can be heard. Given the magnitude of agrarian conflicts that have resulted in various human rights violations in the business cycle, SSA needs to promote agrarian conflict resolution mechanisms.

- b. Komnas HAM, in mainstreaming land rights as human rights in the action plan and its derivatives, must have clear steps to take, especially in dealing with the three main actors mentioned in the NAP, namely local governments, MSMEs (micro, small and medium-scale enterprises), and BUMN (State-owned Enterprises).
- c. The NAP for UNGPs recommends that countries and companies take steps to comply with human rights principles. But to put more teeth into it, the action plan must be transformed into a work unit, a measurable program, and provided an adequate budget.
- d. The role and authority of Komnas HAM must be strengthened as part of its thrust to encourage the incorporation of human rights principles into various institutions and policies, especially policies related to land in Indonesia.
- e. Local governments should be encouraged to produce local regulations based on human rights principles, especially since local governments are at the forefront of providing services to rural farmers.
- f. Engage civil society to collect evidence and produce studies on the implementation of the UNGPs in the land and agriculture sector.
- g. The government and the business sector should engage civil society in the formulation of NAP for UNGPs.
- h. Strengthen the capacity of stakeholders, especially civil society, to understand the complex structures between supply chains and corporate actions that affect human rights.

Advocating for a Legally Binding Treaty

The proposal for a binding legal framework in international human rights law on business and human rights is driven by the push of a large number of developing countries and international civil society groups who question the effectiveness of the UNGPs in resolving human rights violations by multinational corporations.

The establishment of legally binding international business and human rights instruments will be used to clarify the obligations of transnational companies in the area of human rights, and provide an effective rights restoration mechanism for victims in cases where domestic jurisdictions fail to hold these companies accountable.

The lack of a binding mechanism for corporate activities leaves a regulatory gap, as existing national mechanisms have, in many cases, proven insufficient to adequately handle situations arising from transnational business ventures.

On the other hand, the UNGPs are still based on the principle of the State as the main guardian of human rights, putting its focus on strengthening national legal mechanisms for States to regulate company activities in their territories.

Problem arises again when the limitations of national legal jurisdictions make it difficult to handle complex corporate structures, allowing errant corporations to avoid responsibility. In many cases a group of companies containing parent companies, subsidiaries, affiliates, joint ventures, supply chains and others are usually treated as separate entities, although there are often very close relationships within the group.

This allows group companies to protect themselves from liability with risky businesses by exploiting a subsidiary, which contains the damage to certain branches of the company. In fact, it becomes more complicated when law enforcement has to cut cross borders, especially if the chain of ownership crosses a number of subsidiaries that are domiciled in different States. Therefore, the cross-border territorial aspect (*extraterritorial*) is very important in law enforcement efforts against multinational corporations. The extra-territorial aspect is still being debated in international humanitarian law.

The extra-territorial aspect is actually related to human rights because international humanitarian law clearly outlines that the obligation of States to protect is not limited to cases in their territory.

The proposed legally binding treaty will also encourage cross-border cooperation on access to victim remedy. That there are legal loopholes in international humanitarian law cannot be disputed thus the real challenge is to reach a global consensus on how to close the gap, primarily through a legally binding treaty. ■

List of acronyms	
BAPPENAS	The Ministry of National Development Planning
BHR	Business and Human Rights
BUMN	State-owned Enterprise
CRU	Conflict Resolution Unit
CSR	Corporate Social Responsibility
ELSAM	Institute for Policy Research and Advocacy
FSA	Financial Service Authority
IBCSD	Indonesia Business Council for Sustainable Development
IGCN	Indonesia Global Compact Network
INFID	International NGO Forum on Indonesian Development
ISO	International Organization for Standardization
ISPO	Indonesian Sustainable Palm Oil
Kadin	Indonesia Chamber of Commerce
Komnas HAM	The Indonesian National Commission on Human Rights
MSMEs	Medium Scale Businesses
NAP	National Action Plan
NAP for UNGPs	National Action Plan on the United Nations Guiding Principles on Business and Human Rights
NGOs	Non-Governmental Organizations
RSPO	Roundtable on Sustainable Palm Oil
SNI	Indonesia National Standard for Product Certification
SSA	Agrarian Resources
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNDP	United Nation Development Programme
WALHI	Indonesian Forum for Environment
WBCSD	World Business Council for Sustainable Development

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Taking the first steps in the right direction: Summary Report on CSO Interventionson UNGPs in Nepal

NEPAL

Community Self Reliance Centre (CSRC)

(February 2021)

Background

In 2008, the United Nations endorsed the “Protect, Respect, and Remedy Framework” that laid down the principle that States have the duty under international human rights law to protect everyone within their territory and/or jurisdiction from human rights abuses committed by business enterprises.

At the same time, the Framework stipulated that business enterprises must respect human rights wherever they operate and whatever their size or industry and that individuals and communities have the fundamental right to seek remedies when their rights are adversely impacted by business activities, such as by going to the courts.

On 16 June 2011, the UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), guidelines that operationalize the UN Framework and further define the key duties and responsibilities of States and business enterprises regarding business-related human rights abuses.

The Working Group on Business and Human Rights (UNWG) was mandated by the UNHRC to promote the effective and comprehensive implementation of the UNGPs. To help fulfill that mandate, the UNWG noted in its 2016 Guidance on Business and Human Rights that National Action Plans (NAPs) can be an important means to promote the implementation of the UNGPs.

Objective of this report

This report was thus prepared to inform the public about the status of the NAP for UNGPs in Nepal and the contribution to as well as participation of CSOs in its formulation. Specifically, this report was formulated to:

- give an update on the status of the UNGPs in Nepal and the role of the NHRC;
- document the progress on the NAP for UNGPs and how CSOs have been lobbying or pushing for their advocacies in the plan's formulation; and,
- make the government and other concerned stakeholders more aware of the importance of the UNGPs in Nepal.

How this report was prepared

This report is the result of two formal interviews and several informal discussions between CSRC and the point person on BHR of the NHRC.

The concept of UNGPs is not widely known by stakeholders in Nepal such as government officials and even CSOs and NGOs. Fortunately, representatives of the NHRC are familiar with the agenda and know their roles and responsibilities.

Aside from the interviews and the discussions, this report also made reference to the UNGPs and synthesized relevant secondary data.

Scope and limitations

Due to the COVID-19 pandemic, the writer could not personally meet with authorities who could shed more light on the status of the NAP preparation. But even then crucial information was secured through phone conversations with point persons and concerned stakeholders.

This report also made heavy use of secondary data and is mostly guided by qualitative tools and techniques of data collection.

Status of UNGPs in the country

Nepal is just starting to formulate its NAP for UNGPs.

According to the office of the Prime Minister, the Nepalese government has been discussing the concept of business and human rights with the country's enterprises, as well as CSOs and development organizations.

NHRC has been organizing since 2018 workshops, seminars, and webinars to acquaint the government ministries, NGOs, and business enterprises with the framework as well as the working guidelines.

According to the focal person for BHR, the NHRC has also been consulting with the media at the local and provincial levels to engage them in spreading the messages of BHR and the roles of stakeholders in the formulation of the NAP that will institutionalize the UNGPs in Nepal.

So far, five such consultations have been undertaken.

Also, the NHRC is constantly collaborating with CSOs and government agencies to advocate the passage of the NAP for UNGPs in Nepal.

Main agencies responsible for formulating and implementing the National Action Plan (NAP) for UNGPs

The Constitution of Nepal has declared NHRC one of the country's constitutional bodies.

It is a free, independent and autonomous body tasked to investigate possible human rights violations and recommend appropriate sanctions against violators.

It is also tasked to recommend to the government the ratification of international treaties. As such, it has recommended to the Nepalese government the formulation of the NAP for the further promotion and protection of human rights.

As a member-State of the United Nations and a State party of several international human rights treaties, the Government of Nepal sends its representatives to various forums such as the Universal Periodic Review, UN General Assembly, and the UN Forum on Business and Human Rights.

Representing Nepal during the UN Forum on BHR in Geneva, Switzerland on 27 November 2019 is Koshal Chandra Subedi, Joint Secretary at the Office of the Prime Minister and Council of Ministers.

Mr. Subedi said then that the Government of Nepal was committed to implementing the UNGPs.

Nepal is also preparing to adopt the 5th National Human Rights Action Plan that recognizes the importance of the UNGPs and encourages enterprises to mainstream UNGPs in all their activities.

According to Mr. Subedi, the government is committed to continuing to better institutionalize the business and human rights agenda in the country.

Progress of the UNGPs and the formulation of its NAP

The devastating COVID-19 pandemic has prevented Nepal from making any significant progress in the formulation of the NAP that will operationalize the UNGPs.

Because of containment measures to prevent the spread of COVID-19, work toward crafting the NAP was limited to initial consultations with the NHRC team on formulating the NAP.

Before COVID-19 hit the world hard in 2020, CSRC and other CSOs were able to organize consultations, workshops and seminars on BHR.

The point person for BHR of NHRC said it has at least started the process of consulting with concerned stakeholders.

Dipendra Singh said: "We are raising awareness on the importance of BHR for the concerned stakeholders through different workshops, and seminars. The businesspersons who were not interested in participating for the NAP formulation process at the beginning are now inspired us for the formulation of NAP. They realize the importance of NAP for business sectors as well."

NHRC, for example, organized a regional conference on Business and Human Rights in Pokhara, capital city of Gandaki province, in February 2017 with the goal of spreading the message on the importance of upholding BHR to concerned stakeholders.

Similarly, NHRC organized two regional consultation webinars on BHR in January 2020 to collect recommendations from stakeholders in Butwal and Nepalganj, regional business hubs of Lumbini Province.

Opportunities for CSO interventions on BHR and formulation of NAP for UNGPs

Nepal's NHRC has fortunately always considered CSOs among the important stakeholders that it knows it has to engage with to formulate the NAP for UNGPs.

It has always been open to collaborate with CSOs to organize dialogues, discussions, and other consultations. CSOs can thus take advantage of this openness by working jointly with the NHRC to draw up recommendations on what will go into the NAP.

Since NHRC has limited financial and human resources, CSOs can fill the gap and help the NHRC conduct national and provincial workshops so that more sectors will be made aware of the UNGPs and the impact on citizens, corporations as well as the government.

As it is now, many of those in the corporate world are not aware of the UNGPs and the State's obligation to uphold and defend citizens' human rights if these are violated by businesses.

Since Nepal is a State party of ILO 169, which provides for the promotion of human rights of every citizen regardless of caste or gender, the government is responsible for formulating the NAP as soon as possible and the CSOs can help the government fulfill that mandate.

CSO interventions towards the popularization of BHR and the formulation of the NAP

Some CSOs had already collaborated with NHRC to organize workshops, and seminars relating to the UNGPs.

A multi-stakeholder dialogue on business and human rights, for instance, was conducted on 20 August 2018. The discussion held in Kathmandu was jointly organized by CSRC, NHRC and Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP).

The dialogue was conducted to delve into human rights violations committed by the business sector across the country.

Representatives of the government, private sector, national human rights institutions, funding agencies, diplomatic missions and victims of development projects attended the key dialogue.

CSRC presented papers during the dialogue to inform the stakeholders of the meaning, basic tenets, and importance of BHR.

CSRC also partnered with the NHRC to conduct a webinar on Business and Human Rights and roles of stakeholders in the formulation of the NAP. The webinar held on 23 December 2020 was attended by senior level government stakeholders including the joint secretary from the Office of Prime Minister and Municipal Council (OPMMC), Ministry of Land Management Cooperatives and Poverty Alleviation (MoLMCPA), National Planning Commission (NPC) and the Sub-Secretary of Ministry of Industry, Commerce and Supply (MoICS).

Rationale/purpose of interventions

It has been 10 years since the UNGPs were endorsed by the UN Human Rights Council and yet knowledge on these guidelines and the duties and responsibilities of the government and business enterprises to check against business-related human rights abuses remains low.

This is why it is important that more business enterprises, workers and other stakeholders be made aware of the importance of the UNGPs to better engage the government in the formulation of the NAP.

CSOs can play a key role in providing inputs to the draft NAP to be formulated by the government in consultation with relevant stakeholders such as the private sector.

Description of outputs and emerging outcomes of key activities

According to Dipendra Singh, the focal person of NHRC on BHR, the NAP for UNGPs formulation process is yet to start in Nepal. The Government of Nepal has established a monitoring unit for BHR at the Ministry of Law and Justice. The United Nations Development Programme (UNDP) has been supporting to

the government to implement the program from that unit. He said, "The government has now internalized that it is the government's duty to formulate NAP to fulfil the duty of international obligation."

Recommendations of CSOs on NAP for UNGPs

CSOs have recommended that the government protect and respect the rights of the landless and informal settlers. They are more vulnerable to rights violations because of the development projects of both government and the private sector.

Some of the CSOs' recommendations to government in relation to the UNGPs are:

- The government should start discussions with concerned stakeholders on the formulation of the NAP that will operationalize the UNGPs;
- The landless, informal settlers and pro-poor communities need to be consulted prior to setting the development agenda. Their concerns should be addressed through the NAP for UNGPs;
- A separate unit should be established in the Office of Prime Minister and Council of Minister to monitor business and human rights;
- As many business enterprises are not aware of the importance of NAP for UNGPs, a dialogue should be organized to make more of them aware of its importance;
- The NHRC should prepare an annual progress report on NAP for UNGPs and disseminate the findings to the concerned stakeholders; and,
- CSOs need to organize a joint campaign and advocacy for NAP formulation of UNGPs. Separate roles and responsibilities should be delegated to like-minded organizations working in human rights sector.

Response to the recommendations of CSOs

The government and other stakeholders provided their own updates, insights into and recommendations on the formulation of the NAP during the webinar on Business and Human Rights (BHR) organized by CSRC on 23 December 2020. These include:

Government

- The government is in regular consultation with business enterprises, CSOs and development partners to begin the process of formulating the NAP for UNGPs in Nepal;
- It has established a separate unit on BHR at the office of Ministry of Law, Justice and Parliamentary Affairs. This unit prepares the agenda for the formulation of NAP for UNGPs based on consultations with concerned stakeholders; and,
- The Ministry of Laws, Justice and Parliamentary Affairs has helped organize provincial and local level dialogues organized by NHRC.

NHRC

- NHRC organized regional level workshops in 2020 that were participated in by media, business enterprises, CSOs and province and local level government authorities to inform them about the importance of NAP for UNGPs in Nepal;
- NHRC has partnered with CSOs and other development organizations for the advocacy for the NAP formulation for UNGPs in Nepal; and,
- NHRC will submit through its annual report the recommendations to the Government of Nepal to initiate the formulation of NAP in Nepal.

Plan of CSOs towards the continuation of engagement related to BHR

The plan on UNGPs is as follows:

- Meeting with NHRC to discuss on the progresses of BHR;
- Support to NHRC to publish progress report on BHR;
- Multi-stakeholder dialogue on UNGPs; and,
- Preparation of policy brief and submit to the Office of Prime Minister and Council of Ministers. ■

List of acronyms	
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BHR	Business and Human Rights
CSOs	civil society organizations
CSRC	Community Self Reliance Centre
ILO	International Labour Organization
NAP	National Action Plan
NHRC	National Human Rights Commission
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council
UNWG	United Nations Working Group on Business and Human Rights

Acknowledgment

This report summarizes the major highlights of the status of the UN Guiding Principles on Business and Human Rights (UNGPs) in Nepal.

The information presented in this report is the outcome of the following: a) webinar on Business and Human Rights organized by the Community Self Reliance Centre (CSRC) together with National Human Rights Commission (NHRC), and b) review of various reports such as annual reports of NHRC, Constitution, laws, and policies. The suggestions, recommendations, and status of the formulation of the National Action Plan for UNGPs in Nepal presented by the senior government officials during the webinar were analyzed and presented as well as in this report.

In this regard, this paper is the outcome of the collaborative efforts of the government and its agencies, NHRC, UN agencies and civil society organizations.

CSRC would like to thank NHRC Secretary Bed Prasad Bhattarai, NHRC focal person on BHR Dipendra Singh and other NHRC representatives for providing relevant documents and information related to UNGPs.

We would also like to thank the Office of Prime Minister and Municipal Council, especially Joint Secretary Koshal Chandra Regmi, for joining our webinar and presenting the status of the National Action Plan (NAP) formulation process in Nepal with the government's upcoming plans.

We would like to express our gratitude to the Ministry of Land Management, Cooperatives and Poverty Alleviation (MoLMCPA), National Planning Commission, (NPC), Ministry of Industry, Commerce and Supply (MoICS) for sharing their thoughts on the NAP formulation for UNGPs in Nepal.

We acknowledge our sincere thanks to many business enterprises including Nepal Chamber of Commerce, National Business Initiatives (NBI) and other social and development organizations.

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Jagat Basnet, PhD
Executive Director

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Following through on BHR commitment as government, CSOs and private sector find ways forward despite the pandemic:

Summary Report on BHR Interventions in the Philippines

Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)

(March 2021)

Overview

The impacts of business enterprises are two-fold. It may be positive, such as increasing access to employment or improving public services, or they can be negative, such as polluting the environment, underpaying workers, or forcibly evicting communities from their lands.

Given the prevalence of land and resource conflicts in the Philippines, some 225 cases of conflicts documented are concentrated in almost six percent of the total territory of the Philippines (1.69 million hectares). More than half (64.9 percent) of this number were conflicts between communities and business establishments (Esplana-Salcedo, et al., 2021).

In general, private commercial interests have been a major obstacle in the struggle of the basic sectors to gain access to land or tenurial security. They include landlords who oppose land reform; loggers and miners who encroach into and destroy forests, agricultural lands, and ancestral domains; real estate speculators and developers who, among others, displace communities to build golf courses and tourist estates; and business groups out to build dirty power plants, industrial estates, ports, and recreation facilities.

Snapshots of 2020 ANGO Land and Resource Conflict Monitoring Report

- The 2020 Philippine Land and Resource Conflict Monitoring Report covered 223 ongoing cases covering 5.59 percent of the total territory of the country and affecting 507,884 households. Effects on individuals include 37 incidents of killing, 72 incidents of disappearance or abduction, 49 incidents of detainment. Over 30,000 households were displaced and more than 22,000 others face threats of displacement.
- Among the conflicts covered by the report, almost 60 percent were in the context of private investments, mostly in agribusiness plantations and mining.
- Among the entities involved in the cases, 65 percent were private companies with competing claims against communities and other rights holders. Private companies were involved in 47 percent of land and resource conflicts affecting indigenous peoples, 81 percent of conflicts affecting smallholder farmers/producers, and 73 percent of water conflicts affecting small fisherfolk.

Source: Esplana-Salcedo et al., 2021

In 2008, the United Nations endorsed the “Protect, Respect and Remedy Framework” for business and human rights¹, which recognizes unequivocally that States have the *duty* under international human rights law to *protect* everyone within their territory and *jurisdiction* over human rights abuses committed by business enterprises. This duty means that States must have effective laws and regulations to prevent and address business-related human rights abuses and ensure access to effective remedy for those whose rights have been abused.

The UN Framework also addresses the *responsibility* of businesses to *respect* human rights wherever they operate and whatever their size or industry. Companies need to be aware of their actual or potential impacts, prevent and mitigate abuses, and address adverse impacts where they are involved. The UN Framework also makes the important clarification that the responsibility of businesses exists independently of the duty of State to protect human rights.

Finally, the UN Framework recognizes the fundamental right of individuals and communities to *access effective remedy* when their rights have been adversely impacted by business activities. States must ensure that the people affected have effective access to remedy with the court system or other legitimate

¹ This framework was developed by then-Special Representative of the UN Secretary General, Professor John Ruggie, following three years of research and worldwide consultations with businesses, civil society, governments and victims of corporate human rights abuses.

non-judicial process. For their part, business companies should establish or participate in grievance mechanisms for these adversely affected individuals or communities.

The Three Pillars of UNGPs

Protect (State duty). States are duty-bound to prevent, investigate, punish, and redress human rights abuses that take place in business operations within their territory. States should make it clear to companies that they should respect human rights in their operations. Among State actions towards this end are: (1) legislating and implementing laws to require businesses to respect human rights; (2) creating a regulatory environment that enables business to respect human rights; and, (3) providing guidelines to companies on their responsibilities. States should ensure coherence of policies across the bureaucracy.

Respect (Corporate responsibility). Business enterprises must prevent, mitigate and, where appropriate, remedy human rights abuses that occur in the context of their operations. All types of businesses, regardless of size, sector or location are included. Even abuses of suppliers of businesses are included in this mandate. This necessitates that policies and processes in place to meet this responsibility. A policy commitment must first be instituted to meet the responsibility of respecting human rights. Next, human rights due diligence must be implemented across the business operations, products and partners. Finally, processes must be in place to remedy any adverse human rights impacts they may have caused. Where businesses identify that they have caused or contributed to adverse impacts, they should cooperate in remediation through legitimate processes.

Remedy (Access to). Access to effective remedy must be available to victims of rights violations. States should ensure that their judicial mechanisms could address business-related human rights abuses effectively **and** free from barriers (such as, administrative fees or lack of language interpreters) that prevent victims from presenting their cases. The State-based remedy system should also include non-judicial grievance mechanisms for business-related human rights complaints. Business entities should also set up and participate in effective grievance mechanisms for individuals and communities that are adversely impacted by their operations.

An effectiveness criterion for State- or business-based non-judicial grievance mechanisms was provided by the UNGPs. This stipulates that effective grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, and rights-compatible.

Source: UN-OHCHR, 2011

On 16 June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights (UNGPs) to operationalize the UN “*Protect, Respect and Remedy*” framework. This was brought about by the realization that – at the peak of globalization – delineation of clear roles and responsibilities of business enterprises at the local, national, and international levels is very important to ensuring human rights practice (UN-OHCHR, 2011).

UNGPs in the Philippines

Relevance of UNGPs

The Philippine agriculture sector stands to benefit a lot from the UNGPs as foreign and domestic investments are on the rise, driven by the growing demand for food worldwide, more encouragement for biofuel production, and the liberalization of agricultural trade and investments. Coupled with gaps in land policies and administration, the increase in investments has unfortunately resulted in farmers and indigenous communities suffering human rights abuses, which include physical and economic violence. A trove of documentation has been generated detailing improper procedures in securing free, prior, and informed consent (FPIC), lack of transparency on the proposed investments, misrepresentation, and outright deception.

Special Economic Zones (SEZs) or ecozones are at the core of these abusive contracts. Ecozones are selected areas in the country that have been converted into highly developed agro-industrial, tourist/recreational, commercial, banking, investment, and financial centers. Highly trained workers and efficient services will be made available to business locators within these ecozones. The Philippine Export Zone Authority (PEZA) said that it will create at least 300 new ecozones in the country, with areas ranging from 1,000 to 4,000 hectares. A cursory review of the proposed sites of ecozones shows the potential impact these will have on the land tenure of indigenous peoples (Dela Paz, 2017).

Also adversely affected by business operations are ancestral domains. Most of the country’s remaining forests, natural resources and environmentally critical areas are within ancestral domains. These resource-rich areas, which provide essential ecosystem services such as watersheds, are at the top of the list for

exploitation by investors. The staggering number of mining applications in ancestral domains attests to this fact. In Palawan and Central Mindanao, large-scale agricultural investments threaten the tenurial security, access, and control of indigenous communities over their ancestral domains. Sadly, many indigenous communities do not have the capacity to actively challenge and engage those who have interest over their lands (Quizon, et al., 2018).

These concerns are intensified by ambiguous land use policies and processes that have resulted in overlapping jurisdictions among agencies, conflicting land claims and consequent land rights abuses. They are manifested in double titling, confusing municipal land classification, discrepancies in boundary surveys, and overlapping property rights (Ravanera, 2015).

Major events in promoting UNGPs

A forum on “*Business and Human Rights: Introducing the UN Guiding Principles of the Ruggie Framework as a Tool for Risk Management*” was held on 25 March 2014. Key stakeholders from business, civil society, and government took part. During the forum, business sector representatives said they were willing to implement and incorporate UNGPs in their business policies and practices. They even agreed to look at the principle of extra-territoriality. The German Hanns Seidel Foundation (HSF) expressed its support for the development of a Philippine National Action Plan (NAP) on Business and Human Rights (HSF, 2014).

On 08 June 2016, the European Parliament to the Philippines issued a resolution to ensure effective implementation of all core international conventions relating to human and labor rights. The resolution focused on: (a) repression of activists peacefully campaigning for the protection of their ancestral lands from the harmful impacts of mining and deforestation, and (b) inhuman working conditions of many Filipino seafarers.

The resolution called on European Union (EU) member-States to bar vessels from their ports whose companies contravene labor rights and the EU Charter of Fundamental Rights.

Later that year, in November 2016, the Presidential Human Rights Committee (PHRC) convened a government consultation on a National Action Plan on UN Guiding Principles on Business and Human Rights (NAP for UNGPs). In the

said forum, the PHRC informed those participating in the dissemination forum on concluding observations of the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), “that the country will be embarking on the formulation of the Third Philippine National Human Rights Action Plan, for the period covering 2018 to 2022.” The plan will set out the activities and targets, including monitoring and reporting activities, covering the eight core human rights treaties to the Philippines has committed to (NEDA, 2017).

Only one event was held in 2017: the international workshop on “*Business, Human Rights and Access to Justice*” on 11 to 12 March. Spearheaded by the Philippine Commission on Human Rights (CHR) of the Philippines, the multi-stakeholder workshop involved delegates from China, Japan, Korea, Nepal, Mongolia, and the Philippines. United Nation (UN) agencies, including representatives from National Human Rights Institutions (NHRIs), civil society organizations (CSOs), academe, and other international organizations, also participated.

The following year, a “National Dialogue on the United Nations Guiding Principles on Business and Human Rights” was convened on 10 January 2018 as a follow-up to the international workshop of 2017. The event sought to update country stakeholders on the activities of the CHR to build awareness on the UNGPs and identify mechanisms to address business-related human rights issues. Highlighted during the dialogue was the struggle of underprivileged communities to retain control of their land in the face of expanding business interests. The participants emphasized the need for multi-stakeholder consultation in the development of the National Action Plan (NAP) for UNGPs.

During the “Stakeholders’ Consultation on the Philippine Action Plan on Business and Human Rights” held on 11 May 2018, the discussion on the UNGPs was expanded to a wider range of government and civil society organizations. The CHR also solicited feedback from the stakeholders on how the UNGPs can be further actualized in specific sectoral contexts. One major concern raised by the consultation participants was the inadequate involvement of the business sector in the conversations thus far.

The Commission on Human Rights (CHR) then organized the “National Forum on Business and Human Rights” on 11-12 September 2019 that brought representatives from the business sector, academe, civil society organizations,

and the government to have a deeper understanding and appreciation of the relevant issues, best practices, and current efforts in promoting business and human rights in the country. Participants agreed collectively commit to protect, respect, and fulfill human rights; continue to enhance knowledge on human rights standards and continue to raise awareness on the links between business and human rights.

The event gave birth to the Philippine Business and Human Rights Working Group (BHR WG)² with the goal of engaging the various stakeholders in advocating for the application of the UNGPs, recognizing the importance of collaboration between the business sector and civil society organizations in understanding, advocating, and promoting human rights. Convened by CHR, the group is currently composed of 13 organizations representing private sector, CSOs, academe and United Nations.³

As part of working together towards the formulation of the National Action Plan for UNGPs, the BHR WG initiated the preparation of a Guidance Document which provides a national framework and comprehensive guidance on how relevant stakeholders can ensure that the three pillars of respect, protect, remedy, are enforced and implemented.

In early 2020, ANGOC hosted a writeshop on the said document with the BHR WG that was followed by subsequent meetings that led to its launching at the end of 2020.

On 24 August 2020, the Philippine Alliance of Human Rights Advocates (PAHRA) convened a workshop in pursuit of its initiative to develop a CSO National Action Plan (CSO NAP) on Business and Human Rights.

A draft CSO NAP with case studies was prepared for validation by CSOs with the view of using it as a tool to pressure the Government to revive its commitment to develop a NAP for UNGPs. Participants committed to collaborate in lobbying for the NAP formulation for the UNGPs and contributing to the process of further developing the CSO NAP.

² Later renamed the *Multi-stakeholder Business and Human Rights Group* (MSBHRG)

³ It is composed of the following: Commission on Human Rights, Alyansa Tigil Mina, Asian NGO Coalition for Agrarian Reform and Rural Development, Ateneo Human Rights Center, Employers Confederation of the Philippines, First Philippines Holdings, Inc., Foundation for Media Alternatives, Initiatives for Dialogue and Empowerment through Alternative Legal Services, Oxfam Philippines, Philippine Alliance of Human Rights Advocates, University of Asia and the Pacific-Center for Social Responsibility, University of the Philippines-Institute of Human Rights and UN Women.

On 28 September 2020, ANGOC organized the Roundtable Discussion on the Status of NAP for UNGPs in the Philippines. Participated in by CSOs working on land rights, the event provided an update from CHR and a presentation of the CSO NAP. (Refer to the next section of this report.) The participants acknowledged the importance of the NAP formulation for UNGPs and the need for collaboration among different networks. Concretely, as inputs to the CSO NAP, the participants shall provide cases on land rights and agriculture and specific recommendations on land rights vis-à-vis the UNGPs.

BHR status in the country

Main agencies responsible for formulating and implementing the NAP for UNGPs

As per Article 2, Section 11 of the Philippine Constitution, the State values the dignity of every human person and guarantees full respect of human rights. As an independent constitutional office, the function of the Commission on Human Rights is to act as monitor, advocate, and educator of government on human rights matters (Atty. Jesus Torres, Chief of the Economic, Social and Cultural Rights Center of CHR during the *Stakeholders' Consultation on Philippine National Action Plan on Business on Human Rights, 11 May 2018*).

Concretely, in line with its human rights obligation, the roles of government are to: a) respect, which is to refrain from interfering in the enjoyment of these rights, b) protect, which is prevent others from interfering in the enjoyment of these rights; and, c) remedy, which is to adopt appropriate measures towards the full realization of these rights.

With regard to international human rights treaties of which the State is a signatory, as in the case of the UNGPs, the government shall implement, translate and harmonize it with national laws. CHR's role is to advise and monitor the three main branches of government on the implementation of these international human rights treaties.

Atty. Jesus Torres summarized the relevance of the NAP as an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UNGPs.” As there are many existing and overlapping laws related to business and human rights in the country, there is a need to undertake more studies to make these

laws complementary using the UNGPs as a synchronizing framework (Roundtable discussion organized by ANGOC last 28 September 2020).

An essential element in the formulation of NAP is that it should be context-specific, comprehensive, and transparent in presenting the country's human rights situation and adverse impacts of business activities, if any. The process should be inclusive to all stakeholders, engaging even those with the most diverse views. Clear, realistic, and measurable indicators should be set as the NAP shall be regularly reviewed and updated.

Initial efforts of CHR in mainstreaming the UNGPs

In 2013, “the UNGPs were activated by the CHR during the leadership of former Executive Director Atty. Jacqueline Mejia and then Chairperson Etta Rosales. The latter started popularizing the UNGPs by facilitating fora with the sectors engaged in mining, land rights, and agrarian reform. These fora included a UNDP-assisted event where government officials and top managers from the business community were called upon to clarify issues and align their understanding of the UNGPs” (ANGOC, et al., 2018). Aside from building awareness, the CHR has sought to identify the mechanisms needed to effectively address issues on BHR.

In addressing the second pillar of protect, the CHR in early 2017 proposed amendments to the Corporation Code of the Philippines through a position paper submitted to the 17th Congress of the House of Representatives (Atty. Jesus Torres, CHR, *Stakeholders' Consultation on Philippine National Action Plan on Business on Human Rights, 11 May 2018*).

One of the many roles of CHR is to ensure “access to remedy.” In terms of providing access to remedy, the CHR filed in December 2016 the “*world's first ever national investigation into human rights harms resulting from climate change, despite apparent opposition from some fossil fuel companies*” (BusinessMirror, 2016). This petition was submitted by 18 individuals and 14 organizations, implicating 47 carbon producers/fossil fuel companies, such as, Chevron, ExxonMobil, Total, BHP Billiton, Suncor, and Conoco Philips (BusinessMirror, 2016).

While the guidelines of the UN Working Group on UNGPs do not specifically identify the Executive branch of the government as the sole entity responsible for crafting the NAP, the presence of the National Human Rights Action Plan (NHRAP) explains the important role of the said branch.

The NHRAP is the government's blueprint for implementing the various international human rights treaties that the Philippines is a party of.

In fact, it was completed whether a NAP for UNGPs is necessary, or it can very well be integrated in the NHRAP. In terms of the office in charge of the NHRAP as well as providing advice to the President in addressing human rights issues, the Presidential Human Rights Committee (PHRC) was created in 1988 by then President Corazon Aquino. Currently attached to the Office of the President (with its Executive Director appointed by the President), all government agencies are directed to cooperate and support PHRC in performing its mandate, thus making promotion of human rights a key responsibility of the executive branch.

Having the Executive through the PHRC take the lead in the NAP formulation of UNGPs reflects a high level of government commitment and priority.

In the Guidance Document on Business and Human Rights prepared by the BHR WG, it notes that its linkage with the Sustainable Development Goals (SDGs) and the current administration's Philippine Development Plan "*AmBisyon Natin 2040*" is a significant aspect of the UNGPs. The alignment of the three documents allows the government and the business sector to have a more comprehensive appreciation of the interrelatedness of their principles and goals. This can be useful in crafting focused strategies to fulfill each sector's respective human rights obligations and responsibilities (MSBHRG, 2020). The UNGPs also serves as a guide to CSOs and communities in determining specific areas they should give attention to when talking to government and business interests.

Status of NAP Formulation for UNGPs

While the country has expressed its full commitment to the UNGPs, it is unfortunate that the incumbent administration, in particular the Executive branch, has not issued an order to proceed with the NAP formulation process, much less allocate resources to support the process.

Since 2015 in the Philippines, with the support of the UNDP, several initiatives have been initiated by the CHR, PHRC, and CSOs on the UNGPs. Information-education-communication materials have been produced and consultations involving CSOs, government, and the business sector have been held. Unfortunately, with the current administration, all initiatives were halted.

Repeated inquiries of CSOs and CHR with the PHRC have not led to any progress towards the enactment of the NAP for UNGPs. At the very least, a set of policy directions could have emanated from the President through the PHRC.

Meanwhile, in the absence of such NAP a few government agencies have adopted approaches with environmental and human rights considerations, through the release of “sustainability” policies.

As in the case of the Securities and Exchange Commission (SEC), the agency released Memorandum Circular No. 04 series of 2019 – Sustainability Reporting Guidelines for Publicly-Listed Companies, which states that the agency can suspend and impose fines on companies unable to submit their sustainability reports. The Central Bank of the Philippines on the other hand, released Circular No. 1085 series of 2020 – Sustainable Finance Framework, which expects banks to incorporate sustainability principles (environmental and social risks) in their governance frameworks, operations, and disclosures in their annual reports.

However, in order to facilitate coordination, synchronization and monitoring, it is the position of the CHR that a separate NAP for UNGPs should be formulated (Atty. Torres in the ANGOC-organized roundtable discussion on the status of UNGPs last 28 September 2020). By having a NAP, standards can be set which provide basis for data gathering and reporting by the different government agencies in relation to UNGPs.

At the same time, by having the NAP as a platform for dialogue with various stakeholders, a complete picture of the UNGPs is presented and assessed. There is disconnect when governments and the business report on just investments (i.e., jobs created, income), while CSOs report on human rights violations caused by the private sector.

Opportunities for CSO interventions on BHR

Nonetheless, the situation has not deterred the CHR from promoting UNGPs while CSOs have consistently been lobbying for the formulation of NAP for UNGPs.

There is willingness and openness between and among CHR, business sector and other stakeholders to push for the formulation of the NAP. Building on the momentum of the “National Forum on Business and Human Rights” and the formation of the Philippine Multi-stakeholder Business and Human Rights Group, the members have agreed to continue the process of dialogue, analysis, and documentation as part of confidence building measures to nurture the partnership. BHR WG members view these engagements as steps and inputs toward the formulation of the NAP. It was likewise agreed that the government, the PHRC in particular, should constantly be involved in the process.

The BHR WG has been serving as a platform for stakeholders to discuss, analyze, and assess the BHR situation in the country as well as propose recommendations to achieve the three pillars of UNGPs. These are essential inputs in the formulation of the NAP for UNGPs. While there are only a few representatives from the business sector in the BHR WG, the launch of the Guidance Document - which the BHR WG produced - has elicited interest from other groups in the said sector.

Outside the BHR WG, CSOs have been engaging the CHR, government and the business community in a number of awareness raising events on UNGPs to include workshops, sharing of studies, brainstorming on recommendations to the NAP.

Rationale of CSO involvement on UNGPs

There are three reasons why CSOs are involved in UNGPs.

First, the fundamental premise of people-centered development is that people have certain basic and universal human rights as defined in the Universal Declaration of Human Rights of the United Nations. Thus, it is a fundamental responsibility of every government to respect and protect these rights. At the same time, the authority of government derives from the will of the people and may be exercised only in accordance with that will. *It follows therefore that it is the right and responsibility of the people, not the government, to determine what constitutes the public good.* Government is an instrument of the people, created by the people to serve their will.

Second, developing sustainable human societies involves far more than making a few adjustments to the margins of the economy and investing in

conserving technologies. It means creating a system of economic institutions and management practices that anchors economic power in the community and achieves a substantial degree of equity in power relations. The current pandemic has demonstrated that approaching sustainability as purely an investment problem with the assumption that market forces are the key to achieving it, had failed.

Third, voluntary action is an expression of both basic human rights and the civic responsibility to participate actively in the life of the community. Indeed, voluntary action is one of the highest forms of citizenship as it represents action in the service of community. CSOs assume important roles as agents of democratic expression and citizen innovation – contributing to the search of more just, sustainable and inclusive approaches to national development. CSOs thus should be viewed as essential partners in sustainable development.

Given these three propositions, CSOs have three key roles to play in our society in general, and to business and human rights in particular:

First is that of a **facilitator**. CSOs serve as a bridge between the communities and other stakeholders, particularly the government, the business sector, and international organizations. CSOs contribute to fostering a meaningful dialogue and engagement with the duty-bearers, rights-holders, and other relevant stakeholders, with a view of exploring partnerships among the government, the business sector, and communities for joint actions toward common development goals. It should be noted that the basic task of CSOs is to empower people and communities by making them aware of their potentials, rights, and obligations as members of a free, independent and democratic society.

Second, as an **advocate**, CSOs seek to use the UNGPs as a framework in developing business and human rights agenda and advocacy campaign work to guide stakeholders in their engagement and partnerships with relevant stakeholders. CSOs will lobby with the national government to formulate, in consultation with all relevant stakeholders, a NAP for UNGPs. CSOs will likewise call for the genuine adherence to the principles of Free, Prior, and Informed Consent (FPIC), and the conduct of Environmental and Human Rights Impact Assessments before business projects are approved and operationalized.

Finally, as public interest groups, CSOs have a **monitoring role** to play. CSOs can document, monitor, and report cases of business impacts on human rights and communities. These reports provide an alternative opinion and non-business or non-governmental source of information. They aim to increase transparency and accountability, to enhance monitoring and evaluation tools, and to improve the compliance of relevant stakeholders with laws and standards.

As such, a better-framed engagement can aid critical reflection and decision-making of the stakeholders and help maintain an objective perspective, especially in documenting positive business impacts that are often overshadowed by the sheer number of reported adverse effects of businesses on human rights and communities.

Major Interventions towards the popularization of BHR and the formulation of the NAP for UNGPs

Despite the limitations due to the COVID-19 pandemic, several interventions, albeit conducted online, were undertaken by CHR and CSOs, and to a certain degree, the private sector.

Notable initiatives include those of the Multi-stakeholder Business and Human Rights Group, either collectively or through bilateral or institutional activities.

As a group, BHR WG took the task of developing the Guidance Document on Business and Human Rights. It is an attempt to “inform all the stakeholders of the prevailing norm and key expectations under the UNGPs concerning the protection and respect of human rights in the business setting. As it builds on existing efforts of the stakeholders to incorporate human rights in their practices, it aims to equip them with practical guidance on how they can better fulfill their respective obligations and responsibilities concerning business interaction with human rights, including the integration of a gender perspective. It also presents opportunities for all stakeholders to work together and appreciate the spaces they can benefit from and contribute to sustainable, inclusive development” (MSBHRG, 2020).

The document also enumerates the benefits to duty-bearers and stakeholders when principles of the BHR are followed. Specific roles and responsibilities of the government, business, CSOs and communities with sample tools are likewise spelled out in the Guidance Document.

Also, some CSOs have taken the initiative to draft a CSO NAP for the UNGPs since 2018. Anticipating that the NAP formulation may not be feasible under the current administration, PAHRA facilitated the drafting of a CSO NAP as a step towards the finalization of a NAP for UNGPs.

The document that follows the outline recommended by the UN Working Group on Business and Human Rights contributes to the discourse on the business and human rights situation in the country by analyzing the human rights deficit and documenting some case studies as reference materials. It should be noted that most of the cases revolve around labor issues, hence the need to bring other sectors affected by investments such as land and agriculture.

The following is the initial analysis of the draft CSO NAP based on the three pillars of UNGPs as presented by PAHRA and ATM during the roundtable discussion organized by ANGOC last 28 September 2020:

Protection issues. According to CSOs, weak or inadequate capacities of regulators in charge of oversight on human rights impacts of corporations and business enterprises are often exploited by transnational corporations. They have bigger budgets to hire experts that will give them more favorable assessments.

Respect issues. CSOs also noted that existing laws and mechanisms that require business to respect human rights are not complied with. Corporations influence or control public consultations. Community representatives were sometimes asked to sign an attendance sheet, which would be later presented as “consent”. The FPIC process was improperly done in some indigenous communities. There were also cases of consent certificates for a previous, unrelated project being recycled for a new project.

Remedy issues. According to CSOs, access to remedy is probably the weakest pillar. Transboundary violations or extra-territorial obligations are frequently ignored. Going after erring transnational corporations is a lengthy and expensive process. Corporations have the means to hire the best lawyers, while affected communities merely depend on public attorneys, which leads to a process skewed in favor of the violators.

ANGOC, for its part, is implementing a regional initiative in relation to UNGPs. First is the case study on the expansion of oil palm plantations in ancestral domains of indigenous peoples in the country, particularly in the province of Palawan and the island of Mindanao.

With the global demand for palm oil on the rise, the Philippine government and private corporations have been prompted to increase the country's production of the commodity.

With these developments, ancestral domains of IPs have become the target for expansion of oil palm plantations. There are numerous reports that many oil palm plantations in the Philippines were born out of land grabbing.

The paper reviews and provides further information on the allegations that the growing palm oil industry has led to land grabs against indigenous communities in the country. It analyzes the present drive to expand oil palm plantations and recommends ways to protect the rights of IPs entangled in these enterprises.

ANGOC is also monitoring land and resource conflicts as they have increased in number, coverage, and intensity over time. Building on the monitoring initiative in 2018, a more systematic way to gather data and to report on land and resource conflicts is being undertaken.

The 2020 Land and Resource Conflict Monitoring Report has been presented in a multi-stakeholder dialogue jointly organized by ANGOC and CHR. With the recognition of the importance of land conflict monitoring in the work of the CHR, the ESCR Division of the Commission requested ANGOC to organize and facilitate a training course through a series of webinars for 25 CHR field investigators.

ANGOC oriented the participants on land rights and land governance principles and introduced the land and resource conflict monitoring initiative. Towards the end of the course, an action plan on monitoring land conflicts was formulated by the CHR regional offices.

Below are the main activities conducted by the MSBHRG⁴

Table 1. Main activities conducted by the MSBHRG in 2020.

Event	Organizer/s	Date
Virtual Launch of the BHR Guidance Document	MSBHRWG, CHR, UN Women	21 December 2020
Virtual Forum on the Impacts of COVID-19 from the Perspective of Business and Human Rights	CHR and the School of Interdisciplinary Science and Innovation of Kyushu University, Japan, in partnership with the Federation of Free Workers, the Philippine Chamber of Commerce and Industry in Japan, the Asia Centre, and the Business and Human Rights Resource Centre	27 November 2020
Webinar on Business and Human Rights: Risks and Opportunities for Business	University of Asia and the Pacific – Center for Social Responsibility	14 October 2020
CSO Roundtable on the Status of NAP and UNGPs	ANGOC	28 September 2020
Land Rights and Land Conflict Monitoring Training for CHR Regional Offices	CHR and ANGOC	25-28 August 2020
Consultation-Validation on CSO National Action Plan on Business and Human Rights	PAHRA	24 August 2020
Project-End Conference of Human and Labor Rights through General Scheme of Preference Plus	PAHRA	31 July 2020
BHR WG Virtual Meeting	CHR	28 July 2020
UN Virtual Forum on Responsible Business and Human Rights, Asia-Pacific	UN Women, UNDP, UNWG, ILO, UNICEF and ESCAP	9-11 June 2020
Women at Work: Business and Human Rights amid Covid-19	IDEALS, Oxfam, Business and Human Rights Resource Center, ISEA and WEAVE	05 June 2020
Collaborative Discussion on Land Conflict Monitoring Initiative in the Philippines	ANGOC	22 May 2020
Philippine BHR WG Meeting	CHR, UN Women	20 February 2020
Writeshop on Guidance Document	CHR, ANGOC	20 January 2020
Multi-stakeholder Assembly on Business and Human Rights	University of the Philippines- Institute of Human Rights	13 December 2019
National Forum on Business and Human Rights	CHR	11-12 September 2019

⁴ This list is not an exhaustive enumeration of the activities.

CSO recommendations as inputs to the NAP on the UNGPs (with focus on land rights)

A number of studies and consultations have pointed out the following issues in relation to transactions between business companies and agricultural farmers and indigenous communities on their lands:

- *Non-transparency and access to information:* The victims are often denied access to important and basic documents, such as contracts. Even when these documents are available, they are little use to farmers and indigenous peoples because they lack the capacity to fully understand them.
- *Erosion of land tenure security:* While land use rights and restrictions are relatively clear and straightforward, the difficulty in enforcing these restrictions on land use by agricultural corporations has resulted in the displacement and loss of livelihood of farmers.
- *Lack of support to farmers and indigenous peoples in dispute resolution:* While venues to lodge complaints exist within the government structure, there is a perceived lack of support in providing victims with legal support.

These concerns were also observed in the 2020 Land and Resource Conflict Monitoring Report. Additionally, the same report also revealed that violations against communities and rights defenders did not cease and even intensified during the height of the COVID-19 lockdown.

The highest number of incidents occurred from March to June 2020, as powerful groups and individuals took advantage of communities' limited mobility and the public's shifted priorities, to pursue their own self-interest. During the height of the lockdown in March, there were several reports of illegal business operations in rural communities, including at least four illegal mining activities.

Communities get entangled in such conflicts because of weak or faulty implementation of asset reform laws that seek to recognize and protect rights to land and resources. As was further illustrated by the case study on oil palm plantations, even if communities are able to legally secure their rights over land and resources, circumvention of FPIC processes and blatant ignorance of rights and traditional systems of governance can still lead to both legal and illegal land grabs.

Even if the NAP for UNGPs has not yet been drafted, CSOs will continue to advocate and convene multi-stakeholder consultations geared towards the NAP formulation. At the same time, CSOs will organize workshops with the vulnerable sectors to help them know better their rights, the mechanisms, and options in dealing with investors.

In addition, CSOs working on land rights have raised the following recommendations in relation to the UNGPs:

Protect

Government is called to:

- Complete land and resource reform programs (Comprehensive Agrarian Reform Program, Indigenous Peoples' Rights Act, Fisheries Code) and ensure tenure security for the rural poor. Tenure security will also be achieved through the institution of an effective and efficient mechanism to resolve overlapping claims on land.
- Government must also ensure the integrity of safeguard mechanisms that regulate land investments by integrating the UNGPs in all aspects of land and resource governance. In the case of indigenous peoples, aside from ensuring that the FPIC process is followed, enforcing indigenous communities' rights over ancestral domain is another way to protect them from onerous business deals. A legal title recognized by governments is the ideal. But in the absence of such title, especially given the lengthy and tedious processes involved in acquiring such document, the government should institute and strictly enforce legal safeguards to protect tenurial rights of indigenous peoples.
- Government processes and protocols should be followed and regularly monitored when it comes to contracts between farmers/IPs and corporations. Governments and corporations must involve the affected communities in all stages of negotiation and ensure that these communities fully comprehend all aspects of the proposal. Communities should partner with CSOs who can provide the needed support in this endeavor.
- Finally, government awareness on land rights as human rights must be enhanced, especially for the military and the police.

Respect

It goes without saying that business sector should comply with government regulations to ensure the sustainability of their investments. FPIC processes and principles should be upheld by corporations when engaging not only with indigenous peoples, but with other rights holders as well. In the case of FPIC for IPs, the NCIP must ensure that corporations investing in ancestral lands do not dilute this process, which involves regular consultations, updating, and dialogue with communities before, during, and after the implementation of a project.

Moreover, it should be reiterated to both government and the business sector that communities have “*the right to say no*” to investments in their lands, and such decisions should be respected. Negotiations are not merely meant to thresh out implementation mechanisms but more importantly decision-making venues where the affected parties always have the right to decline.

Remedy

Setting up grievance mechanisms to provide a venue for concerns is also sensible for corporations, because it allows for the possibility of grievances to be properly documented and addressed. Government agencies and business entities should create dedicated offices to receive and process such complaints. Partner CSOs should also be involved in this undertaking. In the absence of a grievance desk, the CHR can be an effective alternative. When all else fails, there are the courts.

Contract cancellation or termination should be included in the contract so that an exit strategy is in place even before the contract is signed.

CHR response to the CSO recommendations

The CHR has acknowledged and welcomed the efforts of CSOs in relation to the CSO NAP. CHR will continue to engage in such process.

CHR views CSOs as partners in carrying out its mandate. With the various cases supporting the different advocacies of CSOs, a constant exchange of information and discussion of the issues should be continued. This should

contribute to generating independent information on the human rights situation of the country.

At the same time, the CHR is expected to focus its engagement on the business sector and the local government units given their limited involvement in the UNGPs. The Guidance Document on Business and Human Rights will be the main vehicle in doing so.

Furthermore, there is a need to re-strategize the approach of engaging the private sector to make them receptive to the UNGPs.

Roadmap on continuation of engagements related to BHR

In the last meeting of the MSBHRG, members have agreed on the following priorities for 2021:

- Awareness-raising activities on UNGPs using the Guidance Document, through online roundtable discussions with the business sector;
- Developing knowledge products and organize capacity building activities for local CSOs and communities, particularly in light of the pandemic;
- Developing training modules on the Guidance Document for various stakeholders;
- Formulating a joint statement in commemoration in June 2021 of the 10th year of the adoption of UNGPs; and,
- Finally, CSOs will continue to organize and empower the rural poor to enable them to effectively defend their rights. ■

List of acronyms	
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BHR WG	Philippine Business and Human Rights Working Group
CHR	Commission on Human Rights (of the Philippines)
CSO	civil society organization
HRBA	human rights-based approach
MSBHRG	Multi-stakeholder Business and Human Rights Group
NAP	National Action Plan
NHRAP	National Human Rights Action Plan
OHCHR	Office of High Commissioner on Human Rights
PHRC	Presidential Human Rights Committee
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights

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Regional Workshop on Mainstreaming Land Rights in the UNGPs in Asia: Summary Report

(August 2021)

Context

Land rights are human rights, noting the close interrelation of land with other human rights (livelihood, shelter, culture, identity, property, among others). The relationship of land to the right to life is also apparent in how land conflicts throughout time have caused violence, loss of lives and decent livelihood.

In recent years, land conflicts have been increasing in number and intensity. These stem from overlapping land laws and policies; State-supported agricultural investments at the expense of the loss of land and livelihoods for farmers, rural workers, and their communities; and, the private sector involved in agri-investments and land concessions that trigger conflicts.

At the global level, the United Nations Human Rights (UNHRC) unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), a set of guidelines for States and companies to prevent and address human rights abuses committed in business operations. Further, the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) was adopted by the UN General Assembly in 2018, recognizing both the need to protect land and tenure rights and the rights of those who work in defense of such. In March 2019, the UN Secretary General released a Guidance Note on Land and Conflict, which offers a framework for the UN system to prevent, mitigate, and resolve conflicts by addressing root issues on land rights more systematically. The UN has also committed to engage and support its member States in matters related to land and conflicts. However, the question is how

far communities and land rights defenders can use these instruments as tools to defend and to protect their land and human rights.

Despite these, intergovernmental organizations and governments of several countries in the region have yet to explicitly recognize *land rights as human rights* and implement programs accordingly.

The year 2021 marks ten years since the UNHRC unanimously endorsed the UNGPs. This presents an opportunity for land rights advocacies to become the center of national and regional policy discussions.

Thus, to take stock of gains and plan steps that must be pursued, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), with the Commission on Human Rights of the Philippines (CHRP), Land Watch Asia (LWA), UNDP Business and Human Rights Asia (UNDP B+HR Asia), the Office of the United Nations High Commissioner for Human Rights (UN OHCHR) in Southeast Asia, the Southeast Asia National Human Rights Institution Forum (SEANF), the International Land Coalition (ILC), and LWA Working Group on Mainstreaming Land Rights as Human Rights (LWA WG LRHR), jointly organized *Mainstreaming Land Rights in the UNGPs in Asia*.

The workshop provided an opportunity for stakeholders to appreciate the relevance of incorporating land rights in the BHR discourse, particularly in the process of UNGP implementation, including development of NAP. The workshop participants envisaged various ways to promote joint regional actions to connect BHR and land rights movements and amplify rights-holder's voices on the ground.

Around 153 participants representing 68 organizations from 24 countries advocating for land rights in the implementation of BHR at the country and regional level were engaged. Such organizations involved CSOs, National Human Rights Institutions/Commissions, private sector groups, media, academe, State agencies leading the NAP-formulation in selected countries, and intergovernmental organizations.

Framing Land Rights in the NAP for UNGPs

In asserting land rights as an integral aspect of business and human rights, it must be primarily recognized that land is a resource that is closely linked with and directly impacts human rights. In fact, land rights, being vital to other human rights, is crucial in achieving all Sustainable Development Goals.

Prof. Surya Deva, Chair of the UN Working Group on Business and Human Rights points out the profound intersection of land with the right to life and economic rights as a source of food and livelihood. Land, unlike investments or employment that are time or contract bound, can support the livelihood of many people for generations. Land is also inextricably bonded to peoples' identities and existence, thus a part of their social and cultural rights.

But for many businesses, investors, or even the State, land is but a commodity that can be bought or sold for profit over the welfare of people. Hence, there lies the competing demands for land that is a finite resource. Because it is necessary for food, livelihood, settlement, industry, and other uses, conflicts brew over access and control of the land wherein community land rights are increasingly disregarded. The growing size and influence of transnational corporations and businesses have led to their undermining land and human rights of marginalized sectors.

Aside from land conflicts, land ownership or land acquisition is still disproportionate. Only a small percentage of women can or actually own the land they work on. Land is vital to indigenous peoples for its cultural and economic value to them. However, their land rights are often easily violated. The same can be said of the disproportionate land rights of religious and linguistic minorities.

Philippine Human Rights Commissioner Gwendolyn Pimentel-Gana noted that while businesses may positively impact communities and contribute to development, conflicts between them have resulted in large-scale displacement, land grabbing, and disregard for free, prior, and informed consent (FPIC), particularly of indigenous communities.

These unfortunate situations were presented in six country case studies on land grabbing (featuring cases from Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines) by land rights specialist and advocate Mr. Antonio

Quizon, a former ANGOC Chairperson and Executive Director. Common themes that were observed include: *legal land grabs*, or the role of government in facilitating investments or in transferring high value lands to the private sector without ensuring adequate protection of affected communities; the lack of transparency or peoples' participation in the land acquisition process; the use of force, fraud, deception, or coercion from governments and private corporations; and resistance from communities being painted in a bad light.

Over time, it is observed that States have become more active in brokering land investments. In addition, over time, land is commodified not just as a factor of production, but also as a resource whose value will only increase, thus leading to speculation, financialization, and securitization of land. All these are ongoing while policies for secure tenure are underdeveloped or are not being implemented properly.

Integrating land rights in BHR processes and NAP formulation

The role of NHRIs/Cs in implementing the UNGPs is crucial, as these bodies monitor State actions on land rights along with other human rights.

In the ANGOC-LWA regional study on the advancement of developing National Action Plans for BHR implementation, among the hindrances or challenges stressed were the lack of awareness or low understanding of BHR concepts from governments, civil society, and communities. While there are many progressive land rights laws, some of them seemingly clash with policies that facilitate land acquisition for business on the other. In some countries, it was notable that NHRIs/Cs lacked influence and independence to the point of being undermined by other government agencies.

Among Asian countries, only the governments of Japan and Thailand have published standalone National Action Plans (NAPs) that detail their strategies to implement the UNGPs. South Korea has a human rights action plan that contains a chapter on BHR. Meanwhile, the governments of India, Indonesia, Malaysia, Mongolia, Pakistan, and Vietnam are developing NAPs. Within these countries, and in States where NAP development has yet to begin, there are opportunities to ensure that land rights are considered in the NAP.

Further, the trend of shrinking democratic space that has restricted free speech and expression has affected civil society's ability to lobby for the creation of a NAP. The limitations brought on by the COVID-19 pandemic has also impeded the NAP-formulation process in recent times.

Panelists from the government and National Human Rights Commissions also mirrored these observations.

The study called attention to how NAPs for the UN Guiding Principles on BHR can integrate land rights issues in business practices by using the three pillars as a framework:

Protect

- The State needs to develop an inclusive and sustainable model of development through a bottom-up approach of consultation and development framework;
- The State has a duty to protect against human rights abuses so they need to make sure that there should be no corporate capture of the government. Government officials need to achieve a level of neutrality in terms of balancing competing demands of land and safeguarding land rights;
- Governments must adhere to their commitments to human rights and their "Duty to Protect;" refrain from enacting laws that undercut BHR; be creative in promoting compliance with BHR;
- Address the root causes of human rights abuses;
- Governments should uphold the spirit of and comply with its obligations under international human rights instruments;
- Governments should ensure the integrity of safeguard mechanisms that regulate public and private land investments and strengthen local mediation mechanisms; strengthen the principle and practice of Free, Prior, and Informed Consent;
- Governments should apply the UNGPs in land and resource governance; as a start, governments should institute UNGPs in all State-run corporations and plantations;
- Governments should curb corruption especially in land management bureaus and prosecute all those involved; and,
- Governments should ensure their duty to protect and business's responsibility to respect human rights when responding to the COVID-19 pandemic and safeguard people's rights relating to land issues.

Respect

- Businesses acquiring land or entering long-term leases with farmers to grow certain crops, must conduct meaningful human rights due diligence before any project begins. To make it meaningful, they would have to consider Free Prior Informed Consent, emphasizing the word “consent” through genuine consultation with sectors who own or use the land;
- Companies must work with land rights defenders and see them as allies by businesses and States rather than adversaries;
- Companies must realize it is cost-efficient to observe and implement BHR now than later;
- Private sector should have independent BHR policies apart from regulations in host countries;
- Stock exchanges should require more BHR relevant disclosures; and,
- Businesses must know and show their measures to prevent and mitigate any human rights impact from their COVID-19 responses.

Remedy

- There is a need for an effective grievance mechanism. NHRIs/Cs, if independent, can play a very proactive and preventive role in addressing disputes;
- Whenever land is taken over by businesses, alternative remedies beyond monetary compensation should be considered;
- State-based remedies must be supported by relevant and effective legislation;
- Establish independent land dispute commissions to speed up responses to and resolutions of land-related cases;
- Strengthen local mediation mechanisms to address local land conflicts, especially those at community level;
- Disclose ownership/investment when acquiring land and offer information on how jurisdiction over such persons may be acquired in order that full and effective relief may be delivered to victims of land rights violations;
- Efforts of businesses to remediate and redress their shortcomings must be appreciated; alleviate “first-mover disadvantage”; and,
- COVID-19 should not be an excuse to close offices addressing grievances related to business operations and land issues.

Priorities and recommendations

Participants agreed that while land rights are broadly recognized by Asian governments, the current development model is not sustainable, without treating people in equal footing and safeguarding land rights. Businesses should view land rights defenders and civil society organizations (CSOs) as companions not adversaries to implement UNGPs. Speakers and participants shared the following recommendations throughout the forum.

Overall. Pursue advocacy on enacting a legally binding instrument on BHR to make States more accountable to implement the UNGPs.

For Governments

- Prioritize development and implementation of NAPs for the UNGPs at the national level, along with an appropriate monitoring mechanism, in close consultation with NHRIs/Cs, CSOs, private sector, and local communities;
- Review, reform, and enact policies that strengthen land rights and integrate the UNGPs. Implement agrarian reforms, FPIC and other safeguards, and enact policies that protect smallholders from unjust land investments;
- Focus on resolving land conflicts – create or refine the implementation of case documentation and monitoring and strengthen local mediation mechanisms such as grievance desks to benefit communities; and,
- Establishing independent land dispute agencies to speed up responses to conflicts.

For Business

- Include the UNGPs in company policies in all stages of operation and implement them;
- Work with land rights defenders to promote and uphold human rights;
- Conduct meaningful, non-deceptive human rights due diligence in cooperation with local communities before starting any project, and genuinely implementing free, prior and informed consent; and,
- Provide holistic and effective remedies that go beyond monetary compensation.

For All Stakeholders

- Popularize the UNGPs among governments, private sector, businesses, and communities through information campaigns, workshops and trainings, social media and mass media utilization; and,
- Facilitate partnerships between CSOs, communities, private sector, and the government and expand the network of advocates to pressure governments into formulating people-centered NAPs that include land rights.

Action agenda for the next five years

Towards this end, an action agenda was discussed and formulated. With the overall goal of **mainstreaming the recognition of land rights as human rights in the Asian region**, three inter-related strategies will be undertaken:

On Empowering Communities

Objective	Enhancing capacities and putting peoples and communities at the core of decision-making processes in developing policy and legal framework and implementing UNGPs by ensuring that land rights are enforced, respected and protected		
Key result area	Major interventions	Key implementors	Target institutions/ Audience
Increased awareness, understanding and capacities on land rights and UNGPs	Translating important documents of BHR including UNGPs, FPIC, UNDRIP into local languages	CSOs, NHRIs/Cs, Regional and International institutions	Communities, farmers, indigenous peoples, <i>dalits</i> , pastoralists, women, fisherfolk, urban poor
	Capacity building activities for communities through conduct of training courses, skills share programs	CSOs	
	Legal empowerment activities on UNGPs for BHR and the NAP, ensuring land rights and seeking remedies	CSOs, Legal resource groups, NHRIs/Cs	
Facilitate and open spaces for dialogues	Organize community-based dialogues	CSOs	Communities, farmers, indigenous peoples, <i>dalits</i> , pastoralists, women, fisherfolk, urban poor
	Convene regular multi-stakeholder dialogues and platforms at national and regional level	CSOs, NHRIs/Cs, Regional and International Organization	Communities, Government, private sector
	Enhance capacities of communities to gain access and participate in digital platforms	Regional and International Organization, Private sector	CSOs, NHRIs/Cs, communities

On Policy Advocacy

Objective	Adoption of UNGPs through the formulation and implementation of the National Action Plans (NAPs) with a strong land rights dimension		
Key result area	Major interventions	Key implementors	Target institutions/ Audience
Institutionalization of UNGPs	Lobby governments to initiate a participatory, transparent and multi-stakeholder NAP formulation of UNGPs	CSOs, Communities, NHRIs/Cs	Governments
	Push for a separate section in the NAP for land rights	CSOs, Communities	
	Advocate government to allocate budget to ensure effective implementation of the UNGPs		
	Set-up a monitoring system of the implementation of the UNGPs	CSOs, Communities, NHRIs/Cs	Governments, Regional and International Organizations
Creation of favorable policy environment for land rights and BHR	Lobby key legislative agenda in support of land rights as human rights and the implementation of UNGPs such as campaigning for the passage or review of national laws legal framework that would promote the implementation of UNGPs and development of NAP or relevant policy frameworks	CSOs, Communities	Governments, NHRIs/Cs
	Engage with UN human rights mechanisms (such as Special Procedures, UPR, CEDAW) and advocate and address issues in relations to BHR and land rights	CSOs, NHRIs/Cs, Regional and International Institutions	Governments
	Strengthening national mechanisms and institutions in support of land rights and human rights, to include greater authority and independence for NHRIs/Cs to perform their functions		
	Sensitize government agencies and institutions to integrate land rights in the implementation of UNGPs	CSOs, NHRIs/Cs	
Transparent monitoring of the impact of land investments	Produce, discuss and disseminate national and regional CSO reports documenting land rights, land conflicts and BHR issues	CSOs, Communities	Governments, NHRIs/Cs, Regional and International Organizations, Private sector
	Strengthening the FPIC mechanism	Communities, CSOs, NHRIs/Cs, Regional and International Institutions	Government

On Constituency Building

Objective	Generate broad-base support for land rights and the UNGPs		
Key result area	Major interventions	Key implementors	Target institutions
Increased understanding among various stakeholders on the importance of UNGPs and incorporating land rights in the NAPs	Popularize the UNGPs through localization, use of social media and mass media, production information, education and communication materials	CSOs, NHRIs/Cs, Regional and International Organizations	Governments, Private sector
	Document, disseminate and discuss studies of successful practices on land and human rights by businesses, including cases successfully resolved in relation to issues on land rights as affected by business operations	CSOs (including academe), communities	
	Document, disseminate and discuss studies of genuine application of FPIC processes on land investments		
Foster dialogues and partnerships towards proactive actions to address and provide remedies to land and human rights issues in relation to businesses	Organize multi-stakeholder forums at the country and regional levels	CSOs, NHRIs/Cs, Governments, Regional and International Organizations, Private sector	General public
	Capacitate businesses/private sector on the human rights framework and land rights in the UNGPs	NHRIs/Cs, Regional and International Organizations, CSOs	Private sector
	Prepare and discuss annual report on the status of UNGP implementation at the country and regional levels	CSOs	NHRIs/Cs, Governments, Regional and International Organizations, Private sector, General public

Ways Forward and Conclusion

The three pillars of the UNGPs outline the principles, practices and behavior all business enterprises should adhere to, and the measures expected from States in dealing with human rights violations of businesses. These would help address conflicts around land rights. As immediate steps to promote the UNGPs and the formulation of the NAPs, participants were thus encouraged to sustain the exchange of information on UNGPs, monitor and document land rights violations and initiate multi-stakeholder processes of formulating the National Action Plans for the UNGPs.

With the COVID-19 pandemic, there is a rise in crises of poverty, hunger and malnutrition burdening smallholder farmers, agricultural workers, indigenous peoples, fisherfolk, pastoralists, slum-dwellers, women and youth. Ironically, the small farmers in Asia are at the frontlines of this pandemic as major suppliers of food.

Yet, their land rights and livelihoods are still not secure. Alarming, a surge of killing and harassment of land rights defenders and communities continue to occur in Asia with the onslaught of “development” for mining, plantations, and economic zones.

For the past decade, CSO groups have actively led the campaign for including land rights as an integral element of the implementation of the UNGPs. This campaign worked to pursue policy and institutional reforms combined with concrete community actions, to protect land rights and to enhance access to and control of land and tenurial security for the rural poor in Asia.

CSOs working on land rights, together with national bodies on human rights, have an important role in mainstreaming and monitoring the implementation of the UNGPs. CSO movements also need to continue guarding the impacts of land and agribusiness investments on local communities, and facilitating exchanges of experiences, lessons, innovations, and evidence-based recommendations for stakeholders.

In the end, the workshop participants from CSOs and NHRIs/Cs enjoin other groups and institutions in amplifying the importance of linking land rights in various platforms beyond the UNGPs, such as in the UN Food Systems Summit. ■

Citation:

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ANGOC's Contribution to the UN Committee on Economic, Social, and Cultural Rights' Draft General Comment No. 26 on Land and Economic, Social, and Cultural Rights¹

Introductory Remarks

The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) was borne out of country consultations that culminated in the World Conference on Agrarian Reform and Rural Development (WCARRD) in 1979. Its founders from various Asian NGOs all held that agrarian reform was a fundamental element to eradicate poverty. While there have been many shifts in development advocacy through the decades, ANGOC continues to believe that land and resource rights are still essential to the development of Asian rural communities. Land is NOT just an economic commodity but a necessary instrument of equity for the poor. Access and control to land and resources brings direct relief to rural poverty, but just as importantly, its democratizing effects enable other pro-poor reforms to work more effectively.

Tenure security to land brings livelihood, reduces social tensions and conflicts over resources, achieves sustainable management of lands, and improves overall peace for greater political and economic stability.

The current COVID-19 pandemic has reinforced the crucial need for secure land and housing tenure as never before. As small farmers across Asia remain in the frontlines of this pandemic, by continuing to be major food producers and suppliers, yet small farmers and producers, rural artisans and indigenous

¹The Committee on Economic, Social and Cultural Rights (CESCR) is formulating a general comment on Land and Economic, Social and Cultural Rights. Such document seeks to clarify the specific obligations of States parties relating to land and the governance of tenure of land under the International Covenant on Economic, Social and Cultural Rights (ICESCR). As part of the public consultation process, CESCR has invited interested individuals and organizations to send in their comments on the draft. The draft can be accessed at <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCR-draft-GC-land.aspx>

peoples continue to be deprived of access and control over land, water, forests and coastlines – resources on which depend for livelihoods.

Land rights are recognized when enforced. It is a continuing political process, since it involves changing power relations. Even after legislative reforms are instituted, there is a need for constant public vigilance and pressure to influence governments to exert political will for land rights.

Thus, the ANGOC network welcomes this initiative of the Committee of the Economic, Social and Cultural Rights in preparing a General Comment No. 26 on Land and Economic, Social and Cultural Rights.

Many of the land conflicts described in the initial paragraphs of the General Comment are pervasive in Asia. The roots of many land conflicts in Asian countries may be traced to enduring historical injustices, inequitable access to land and resources, faulty and weak implementation of past land and resource reforms, emergent clashes between statutory and customary tenure systems, misappropriation of State domains, and the lack of regard for human rights of the disadvantaged and vulnerable sectors.

On this note, the ANGOC Network submits our inputs to this draft General Comment No. 26.

On Women and Land Rights

In Paragraph 16, the General Comment recognized the discrimination suffered by women as regards their land rights, most commonly their right to own property such as land. In the same paragraph, there is a statement directing States to monitor and regulate customary law as regards the right of women to inherit land.

While this statement dips into the topic of customary law, it fails to acknowledge the far stringent rules in many States against land ownership by women. Such States usually observe religious laws in their State legislation. Religious laws embedded in national laws are much harder to change. The General Comment should emphasize the non-discrimination clause under Article 2, paragraph 2 of the Covenant as a State obligation to make their laws secular and grant land ownership rights to women, single women other than widowed and girls, with time-bound actions.



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Even then, it has been seen in many cases in Asia where patriarchal tendencies overrule legislation giving equal rights of ownership to women. As the draft General Comment recognized such policy incoherence with implementation, the statement cited above was limited to inheritance laws. Such statement should encompass any and all rights pertaining to women owning land to give full effect to the Covenant's non-discrimination clause.

It would also be beneficial to underscore the phenomenon, especially in many parts of Asia, of agriculture being widely a female occupation. It has been observed that men leave farming in pursuit of work in urban cities; leaving the women in the countryside to till the land. This shift in gender profile should be reflected in States' policies, particularly the official recognition of women as farmers and their inclusion in all support services. States should recognize the role of women in food systems as producers and processors and implement policies, as regards land in particular, that support their activities.

Gender equity is a target only reached when women are finally always included and thoughtfully considered – rather than merely mentioned for compliance's sake – in policies, programs, and plans. It is primarily through empowering women and developing their capacities that rural women can learn to push for sound reforms, not only in terms of land laws and policies concerning women, but including the wider spectrum of women's rights.

The interrelatedness of human rights underscore that the mere grant of a right to own land to women does not allow them the full enjoyment of such right. It also means critically examining assumptions and expectations about gender roles – and asserting rights and entitlements of women, as provided in international conventions, national laws, and human rights declarations.

On Indigenous People, Land, and the Environment

In Paragraph 23, the General Comment should also take into account the unintended consequences environmental initiatives have on indigenous people. In Asia, it has been a common occurrence where government mandates to protect the environment undermine the rights of indigenous people.

For instance, the right of indigenous peoples to administer and manage the resources on their lands are taken over by government pursuant to environmental protection laws. This is most significant in Asia where 70 percent of indigenous peoples originate and such percentage is indicative of the vast area of their ancestral domains.²



² Indigenous Peoples in the Asia-Pacific Region (FAO, 2018). <http://www.fao.org/3/ca2045en/CA2045EN.pdf>

The campaign of certain environment causes to protect wildlife and forests have also succeeded in establishing reserves and protected areas. Unfortunately, such efforts have also displaced the indigenous peoples from their ancestral domains, where they have co-existed with wildlife and have tended the land's resources for centuries. In many Asian countries, indigenous communities live in the remaining frontiers where biodiversity and forest ecosystems have been kept intact over many decades through customary practice, traditional management and sustainable use.

Therefore, States should recognize their obligation to respect indigenous peoples' rights and not subvert such rights in advancing other agenda. Furthermore, States should recognize the contribution of indigenous peoples in ecosystem conservation over the years by strengthening their collective rights in governing their ancestral domain.

In paragraph 23, the General Comment cited the remedies provided by the Inter-American Court of Human Rights and the African Commission on Human and People's Rights, but stopped short of declaring the provision of remedies a State obligation under the Covenant. It should be a State obligation to initiate independent inquiries and provide appropriate restitution to indigenous peoples removed from their lands through whatever means. In case where lands cannot be restituted, it should also be a State obligation to ensure the provision of safe and proper relocation, just compensation, and rehabilitation.

On Defining Land Grabs

Land grabs should find more emphasis in Paragraphs 25, 30, and 31. Apart from forced evictions, land grabs must be addressed, as they are more insidious violations of land rights. In land grabs, people unknowingly lose their lands since many land grabs are legal in nature. Forced evictions are just one of the consequences of land grabs. Thus, the General Comment, being one focused on land rights, should adopt a definition of land grabs.

Available definitions to consider are those from EcoRuralis,³ which was endorsed by FAO.

³"Land grabbing can be defined as being the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally-typical amounts of land by any person or entity (public or private, foreign or domestic) via any means ('legal' or 'illegal') for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights." *What is Landgrabbing? A Critical Review of Existing Definitions*. (EcoRuralis, 2016). https://drive.google.com/file/d/0B_x-9XeYoYkWSDh3dGk3SvH2cDg/view?resourcekey=0-NEyTMQ5NXEHKvjMW96KNw

Land grabs are characterized by gaining control over land, usually large areas, through means usually involving fraud or the assertion of dominance or force. This is possible due to the more “superior positions of money, power, knowledge, and influence” by land grabbers. As already indicated, many land grabs are legal as they are pursued under the auspices of government policies and legislation.

In Asia, it has been seen that massive land acquisitions by big business or conglomerates are attended by corruption and manipulation. Hence, land rights holders lose their rights because they are not given the opportunity to be involved with the process that lacks transparency. It is imperative that land grabs be defined in Paragraph 32 in order for States to be properly guided on their policies and to better protect its citizens.

Hand in hand with States’ obligations to protect persons from land grabs, is a shift in policy that emphasizes diversified and sustainable agriculture. This is most true in Asia where conglomerates have been acquiring large areas of land for their home country’s food demands. Meanwhile, 75 percent of home farms are located in Asia; 80 percent of which are small scale. The latter constitute 87 percent of the world’s farms.⁴ Together, they have been the backbone of Asian agriculture. Therefore, Articles 12 (a) and 12 (b) of the Covenant should not be interpreted to refer to industrial farming, but rather include small farms in the global food chain. This thrust should be elaborated in Paragraph 28.

On Human Rights Defenders

The paragraph dedicated to Human Rights Defenders lack reference to the pervasive shrinkage of civil space in many countries, including many States in Asia. This issue is at the front and center of Human Rights Defenders’ concerns, most especially those involved in the defense of land rights. In line with the Covenant, States should adopt effective measures to combat the culture of violence and impunity, and to protect human rights defenders, land and environmental defenders, including indigenous leaders and peasant activists.

⁴ *Land Governance in Asia: Understanding the debates on land* (Quizon, 2013). <https://d3o3cb4w253x5q.cloudfront.net/media/documents/FramingtheDebateLandGovernanceAsia.pdf>

On Climate Change and Displacement

The Sub-section on Climate Change needs to further elaborate on the displacement of people as a result of weather becoming more severe. It should be underscored that the root cause of land conflict may arise because of the effects of climate change. For instance, land erosion may result in the loss of food sources or shelter. It may also alter boundaries. Coastal areas of delta countries and tiny islands may sink or low-lying areas may become permanently flooded. Any of such consequences further result in the displacement of peoples.

On this aspect, States should have the obligation to ensure that policies are in place to protect those susceptible to loss of land as a result of climate change. There should be available remedies, safe and appropriate relocation, including compensation, for those who lose their lands. Moreover, in anticipation of the worsening impacts of climate change, States should take into consideration sustainable land use and management in their policy formulation.

The sub-section should also highlight that high poverty levels along with the lack of tenure security heighten the risks and vulnerability of people to the effects of climate change and natural disasters. This has led to rising casualties in terms of deaths and injuries, destruction to property, and people displaced by such events.

While the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) was referred in the General Comment in other contexts, it was not mentioned in this sub-section on Climate Change. States should promote and utilize the VGGT as a “mandate” to protect tenure rights in the event of climate change and disasters. The VGGT is one of the few international documents that expressly mentions the linkages of tenure to climate change and natural disasters.

On Global and Regional Shocks

Under Part IV, it is recommended that a section dealing with global or regional shocks be added as sub-section “G”. The world has seen how economic crises and pandemics amplify the hardships of vulnerable and marginalized peoples and communities. Economic crises are cyclical in nature and the next economic

bubble bursting may come soon after the economic recovery from this pandemic. Epidemiologists have also predicted that zoonotic viruses causing outbreaks will become more common in light of rapid urbanization.⁵

These events have adverse effects on land rights. In the current pandemic, reports of human rights abuses related to land rights dramatically increased. Such abuses also extend to human rights defenders.

It is in these challenging circumstances where the free, prior, and informed consent is not observed in land dealings. Worse, it is also in these circumstances where communities, out of desperation, easily waive their right to free, prior, and informed consent, in exchange for ephemeral economic benefits.

Thus, in global or regional shock events, States should not waver in their efforts to protect land rights and any other right that affect the enjoyment of land rights. States should also implement social protection measures during such times, not only in terms of providing for subsistence, but also to alleviate peoples' vulnerabilities.

States should not use economic crises or pandemics as an excuse to suspend efforts at protecting land rights or withhold or divert resources from its instrumentalities engaged in land rights protection, whether directly or indirectly.

States should ensure that judicial bodies and other instrumentalities providing remedy to victims are able to resolve cases and disputes as far as practicable during crises.

Most importantly, in the recovery phase following a crisis, States should not employ economic recovery policies that give preference to huge investments in land or in the extraction of resources at the expense of land rights, which to some extent is an application of Article 2, paragraph 3 of the Covenant. States should be mindful of all interests in developing a recovery plan.

⁵ *How urbanization affects the epidemiology of emerging infectious diseases* (Neiderud, 2015). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4481042/>;

Does urbanization make emergence of zoonosis more likely? Evidence, myths and gaps (Ahmed, Davila, Allen, et al., 2019). <https://journals.sagepub.com/doi/full/10.1177/0956247819866124>;

Urbanization and Disease Emergence: Dynamics at the Wildlife–Livestock–Human Interface (Hassel, Begon, Ward, and Fèvre, 2017). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5214842/>;

Urbanisation brings animals and diseases closer to home (The Conversation, 2014) <https://theconversation.com/urbanisation-brings-animals-and-diseases-closer-to-home-34415>



On the UN Guiding Principles on Business and Human Rights

The General Comment makes no mention of the UN Guiding Principles on Business and Human Rights (UNGPs). It is understood that the General Comment seeks to define State obligations under the Covenant as regards land rights. However, the pillars of the UNGPs address many gaps in systems that give rise to land conflicts. States should adopt and implement the UNGPs in land and resource governance and hold corporations accountable for upholding human rights. As an initial effort, governments should implement the UNGPs in the management and operations of State-owned enterprises. ■



The International Land Coalition (ILC) is a global alliance of civil society and intergovernmental organizations working together to put people at the center of land governance. The shared goal of ILC's over 200 members is to realize land governance for, and with people at the country level, responding to the needs and protecting the rights of women, men and communities who live on and farm the land.

ILC's network in Asia is a coalition of 54 organizations working on land issues across 13 countries. The ILC Asia network comprises of regional, national, and local civil society, producer and farmer, indigenous peoples, pastoral organizations, as well as research institutes, non-governmental organizations, and commitment-based organizations. ILC-Asia is committed to monitoring national governments' adherence to the Sustainable Development Goals (SDGs), promoting the Voluntary Guidelines on Responsible Governance and Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT), to supporting World Forum on Access to Land, to putting forward the principles of food sovereignty, and to developing a space for dialogues on the UN Guiding Principles on Business and Human Rights through the National Action Plans (NAPs).

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The United Nations Development Programme (UNDP) supports governments in the development and implementation of National Action Plans on Business and Human Rights. UNDP also works with civil society by providing grants to organizations in the region in support of human rights defenders, and works with businesses in developing due diligence tools, conducting training for staff, and supporting impact assessments.

UNDP BH+R Asia project promotes and supports the implementation of the UN Guiding Principles on Business and Human Rights in Asia through regional initiatives focused on advocacy, policy development, technical advisory support, capacity building, awareness raising, innovation platforms, regional peer learning events, and South-South cooperation. UNDP supports dialogue, awareness and training on the UN Guiding Principles on Business and Human Rights in Bangladesh, India, Indonesia, Malaysia, Myanmar, Sri Lanka, Thailand, and Viet Nam.

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2021 marks ten years since the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs). While many accomplishments have been achieved since 2011, much is still left to be desired. The UNGPs present an opportunity for land rights advocacies to remain at the center of national and regional policy discussions, especially in the context of globalization and the persistence of the land rush in Asia. However, National Action Plans (NAPs) on Business and Human Rights (BHR) remain absent in most countries in Asia, and civil society organizations have constantly observed that land rights appear as a secondary topic during BHR discussions.

This publication thus details civil society’s interventions on highlighting land rights in pursuit of implementing the UNGPs. Included are a summary of the status of implementation of the UNGPs and civil society recommendations on including land rights in NAPs, as well as the summary report on the Online Regional Workshop on Mainstreaming Land Rights in the UNGPs in Asia. This journal also contains the ANGOC network’s contributions to the UN CESCR’s General Comment on Land and Economic, Social, and Cultural Rights, which aims to clarify obligations of States in matters involving land and tenure governance.

