

PALAWAN STATEMENT ON HUMAN RIGHTS AND AGRIBUSINESS IN SOUTHEAST ASIA

The 93 participants in this conference drawn from the South East Asian National Human Rights Institutions Forum (SEANF), UN Permanent Forum on Indigenous Issues and from supportive civil society and international organisations, including from Bangladesh, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines and Thailand, met in Puerto Princesa in the Philippines between the 5th and 6th November 2015, to consider ways of ensuring State and Non-State actors respect, protect and remedy human rights in the agribusiness sector. The meeting was convened by the Commission on Human Rights of the Philippines (CHRP) and the Coalition Against Land Grabbing (CALG) of Palawan, with the support of the Forest Peoples Programme (FPP).

The participants reviewed recent developments and progress directly relevant to making human rights obligations binding on agribusiness in the region. While the final report on the meeting will capture proceedings in more detail, key findings include the following.

Growing global concern about land grabbing and land investments is not being matched with mandatory controls and enforceable standards. There is growing inequity in the region both in terms of income and access to lands and forests. South East Asia lags behind other regions in terms of forest areas allocated for community forestry and lands securely recognised as belonging to indigenous peoples. Large-scale land allocations for timber plantations and agribusiness continue to be given priority over communities' rights, livelihoods and local food security. There is widespread corruption by corporate and government officials in land concessions and land titling. Despite notable advances in the evolution of voluntary standards, significant gaps remain in the framework of law for making human rights binding on agribusiness

Land conflicts continue to proliferate and have led to the criminalization of protestors, violence, and extra-judicial killings. A large proportion of the complaints being handled by National Human Rights Institutions (NHRI) relate to land conflicts. In a number of countries new models of contract farming, company-community joint ventures and smallholder cooperative schemes have proven exploitative and controversial, with costs and risks being unduly borne by communities while benefits flow to investors who control financial and farm management. Even where legal systems are in place to secure human and peoples' rights, problems of corruption and poor governance frustrate improvements.

The meeting also noted numerous instances of the abusive exploitation of migrant labour and even human trafficking, associated with the demand for cheap labour by competing agribusinesses and other development programmes. More attention needs to be given to the problems faced by workers in the agribusiness sector.

The massive fires occurring in Indonesia are not just an environmental catastrophe and threat to the global climate but should be seen as a human rights violation nationally, regionally and globally. There is a need for a stronger moratorium on land clearance, and measure must be taken to ensure that enforcement efforts target those actors behind the land clearance and not just the labourers and farmers being pushed to light land and forest fires.

These discouraging regional trends are being intensified through a parallel intensification of mining, oil and gas developments, infrastructure, mega-dams and transportation schemes in the absence of complementary efforts to protect rights and safeguard communities' welfare. New free trade agreements and regional development schemes deepen this problem. Regional plans for effecting the ASEAN Economic Community must be matched with instruments at the ASEAN level to place binding human rights obligations on corporations and investors. National laws are needed to make human rights violations by corporations and investors justiciable, including with respect to their operations in other countries in the region.

More positively there have been widespread efforts to raise awareness about the responsibilities of businesses to protect human rights. NHRIs are working with national governments to develop National Action Plans on Business and Human Rights and efforts now need to be made to make these standards binding on state agencies and corporations. In Indonesia, the government has pledged more leniency towards protestors, to allocate forest lands to communities, step up land redistribution and impose stricter controls on the issuance of licences and to control illegal fires. It has also passed a new law allowing communities in concessions to claim communal land titles. These initiatives now need to be matched by concrete implementation measures.

Despite best efforts, there have been parliamentary delays in the implementation of the recommendations of the Malaysian Human Rights Commission's National Inquiry on Land Rights of Indigenous Peoples. The meeting noted the urgent need to accelerate implementation of these proposals to strengthen the protection of Indigenous Peoples' rights.

The meeting heard extensive testimony from CSOs and community members affected by oil palm plantations in Palawan and took stock of the two day fact-finding which had been carried out by about thirty members of the conference in the preceding two days. The preliminary findings and testimony, as well as previous investigations by CHRP, provided prima facie evidence that indigenous peoples' and local communities' lands are being taken over by oil palm companies without respect for their rights, without the mandatory free, prior and informed consent from indigenous peoples and without the required presence of the National Commission on Indigenous Peoples (NCIP). These procedures have continued even after NCIP warned one of the companies that they were entering ancestral domain and should report to the NCIP office, two years ago.

Companies are adopting schemes of acquiring lands through forced and fraudulent land sales with the alleged complicity of local government officials. These measures are depriving the indigenous communities of their livelihoods, dislocating them from their culture, and driving them into further poverty and occasioned severe impacts on the forests and local environment. Cooperative joint ventures have imposed unexplained and heavy debts on communities and these debts are being maintained in ways resembling debt peonage. Pollution of rivers with palm oil mill effluents risks affecting the health of downstream residents and fish stocks. Both the plantations and the mill have been imposed without required environmental impact assessments.

Moreover, although government policy promotes palm oil production to meet domestic demand for edible oils, local companies appear to be exporting the majority of their production. There is a need for additional measures to protect indigenous peoples' rights and ensure the rights of women and vulnerable groups are protected. These measures need to be

applied to agribusiness in general as government policies also promote the expansion of other plantation crops like rubber and cacao.

The meeting agreed to endorse a recent petition issued by CALG calling on the provincial government to impose a moratorium on palm oil development (see annex). The CHRP is expected to issue its position on the said petition and intends to hold a public inquiry into the case and carry out continuous monitoring while it deepens its investigation of the alleged violations. In view of the violations of due process required under the Indigenous Peoples' Rights Act, NCIP will exercise its quasi-judicial powers to place a restraining order and injunction on the company while the case is processed.

The meeting reviewed the effectiveness of various mechanisms to provide redress and accountability for violations of rights. Key findings include the following.

In Indonesia many communities carry out demonstrations to protest the occupation of their lands by companies but these actions too often lead to police repression, violence, injury and sometimes deaths. It is thus vital to provide other accessible remedies. Reviewing experiences with the use of customary law and courts, the meeting noted these only function for civil cases and where both parties agree to be held to account by them.

In the Philippines the existence of the Indigenous Peoples' Right Act and the mandate of the National Commission on Indigenous Peoples to have quasi-judicial powers have been successfully deployed to defend some communities. There are institutional weaknesses in the reach and capacity of NCIP that also need to be addressed but other countries in the region are urged to follow the Philippines' lead.

In the region as a whole, although important advances have been achieved in the national courts, the high costs of litigation, the lack of independence of the judiciary and the absence of expertise among judges and lawyers in understanding indigenous peoples' rights have frustrated good results. However, although time consuming, the Constitutional Courts have brought important gains in some countries.

Communities frustrated by the lack of government actions to protect rights have taken their cases to the international level. Reviewing experiences with the UN treaty bodies it was noted that Asian indigenous peoples have used these processes less than other regions. Cases such as that of the Aru Islanders of Eastern Indonesia protesting the government promoted take-over of their lands by a sugar plantation have been successfully heard by the UN Committee on the Elimination of Racial Discrimination (CERD) which has made strong recommendation to the government of Indonesia to amend its approach. These recommendations have been backed by the NHRI for Indonesia (KomNas HAM), but the government is yet to act and has failed to respond to the CERD for 8 years.

It was urged that the ASEAN approach to Business and Human Rights adopt a 4th 'pillar', being the right to a sound and healthy environment. The meeting re-iterated the call of the SEANF for the establishment of a regional human rights court at the ASEAN or Asian level. However, the meeting also recognised that while global, regional and national remedies are helpful the strongest guarantee of indigenous peoples' and local communities' rights comes from their strength of resolve and unity. One indigenous leader was cited:

Ancestral Domain is our free school, free hospital, free market and free hardware and forms the basis for the very life of Indigenous Peoples, especially we Taganua: if we lose our land, we lose our life.

Indigenous Peoples and farmers attending the meeting called on participants to develop practical actions to recognise and protect their rights. In the final session, break out groups brainstormed strategies and tactics for concerted action, which are to be developed into an action plan for local, national and regional use.

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

Adopted by acclamation

6th November 2015

Annex 1:

PETITION FOR THE ISSUANCE OF A MORATORIUM TO OIL PALM PLANTATION EXPANSION IN THE PROVINCE OF PALAWAN

Members of the Indigenous Cultural Communities in the Province of Palawan, farmers and civil societies and other residents thereon petition the Sangguniang Panlalawigan and the Governor of Palawan to issue a moratorium against the expansion of oil palm plantations in the Province.

Key Petitioners:

MEMBERS, REPRESENTATIVES AND GENUINE LEADERS OF THE INDIGENOUS AND FARMERS COMMUNITIES OF THE SOUTHERN MUNICIPALITIES IMPACTED AND TARGETED BY OIL PALM DEVELOPMENT;

WE THE UNDERSIGNED CALL THE ATTENTION OF THE HONORABLE MEMBERS OF THE SANGGUNIANG PANLALAWIGAN AND OF THE GOVERNOR OF PALAWAN ON THE FOLLOWINGS:

In 1990 the whole province of Palawan, because of its unique bio cultural diversity, was declared by UNESCO a Man and Biosphere Reserve, it is home to eight (8) protected areas and it has been declared "Game Refuge and Bird Sanctuary" in 1967 and it is a "Mangrove Reserve" since 1981;

Palawan mainland is home to three major indigenous communities, which are the Pala'wan, Tagbanua and Batak, a large portion of its territory is also claimed as their ancestral domain;

Independent reports have established that considerable portions of the last remaining Philippine lowland forest (primary and secondary) of Southern Palawan have been clear-cut to allow the entry of oil palm plantations; [see ALDAW geotagged report part II and photographic evidences of forest conversion for oil palm in Bgy. Sandoval (Municipality of Bataraza) and Bgy. Berong (Municipality of Quezon);

Oil palm plantations eradicate native plants and animals from the areas being encroached, and thus are directly responsible for wide scale biodiversity loss;

It has now been ascertained that forest clearing for oil palm development by companies and enterprises such as Agumil Philippines, Inc, the Palawan Palm and Vegetable Oil Mills Inc (PPVOM), San Andres, etc. has taken place in the absence of DENR 'tree cutting permits' and thus in violation of EO 23 and of sections 68 and 69 of Presidential Decree (PD) 705, as well as of other existing environmental laws;

In the course of various ocular inspections, CENRO-Quezon has established that oil palm plantations have encroached on Alienable and Disposable Land (94.2930 ha) and on Timberland (185.2398 ha) in the Municipalities of Quezon and Rizal (see attached report); Agumil Philippines Inc and its sister company PPVOMI have no 'tree cutting permits' from the DENR and from PENRO-Palawan. As a result, a criminal case against Agumil Philippines Inc, has already been filed by CENRO-Quezon (see attached copy).

In the course of a field visit and technical appraisal, CENRO-Brooke's Point has established that oil palm planters in the Municipality of Bataraza are continuously clearing/cutting all natural grown trees/vegetation without the necessary permits from DENR and that the area developed/cut/cleared allegedly by Agumil Philippines, Inc include 19,21 ha within Alienable and Disposable Land and 2,69 ha within timberland. Moreover, the area allegedly cleared by San Andres farmers' cooperatives consists of 9,18 ha within Alienable and Disposable Land (see attached report);

The first Multipartite Monitoring Team (MMT) was carried out in the Municipality of Quezon on 14 November 2013, amongst the various mission's findings, the MMT was able to document massive forest clearing and removal of riparian vegetation along the edges of Ljambungan river in Bgy. Berong, allegedly being carried out by Agumil Philippines Inc. (see attached photos and report).

The MMT also documented the illegal opening of a road along the side of the same river allegedly constructed by the same company; causing severe soil erosion and collapsing of river edges (see attached photos). Such findings indicate that Agumil Philippines Inc and PPVOMI have violated DENR EO 23 in both barangay Tagusao and Berong.

The expansion of oil palm plantations outside the authorized ECC area (ECC-R4B-0807-17B-3909 issued to PPVOMI on September 26, 2008) in Quezon was confirmed by Roselyn Julian (Rep. of Agumil Philippines Inc.) in the course of the MMT mission. The mission also found evidence of Agumil oil palm plantations expanding in the Tagbanua CADT area in Berong with no formal evidence of free-prior informed consent (FPIC) being obtained by such communities, and with no Certificate of Precondition (CP) released by the National Commission on Indigenous Peoples (NCIP) to Agumil Philippines, Inc, as it would be required by the Indigenous Peoples Rights Act (R:A. 8371);

The Palawan Provincial Office of NCIP has already ascertained that oil palm plantations overlap with the ancestral domain of Tagbanua and Palawan tribes in at least 16 barangay belonging to five municipalities (see attached letter);

The expansion of oil palm plantations by Agumil Philippines, Inc., and by other companies and enterprises, is taking place without the Free and Prior Informed Consent (FPIC) of the local indigenous communities, and thus in violation of NCIP Administrative Order no.3 of series of 2012 and in contradictions with other key articles stated in the Indigenous Peoples Rights Act (R.A. 8371) such as the: 1) Rights of Ownership (Chapter III, Sec. 7, item a); 2) Rights to Religious, Cultural Sites and Ceremonies (Chapter VI, Section 33); 3) Right to Develop Lands and Natural Resources. (Chapter III, Sec. 7, item b); 4) the Rights to Ancestral Lands (Chapter III, Sec. 8); 5) the Right to Determine and Decide Priorities for Development (Chap. IV, Sec. 17), etc;

Members of indigenous communities also claim that there is a direct relationship between oil palm expansion, the impoverishment of their diet, and the progressive deterioration of their traditional livelihood. Such indigenous communities believe that oil palm plantations are responsible for the drastic decline of medicinal plants traditionally used by them for curing common ailments, as well as for the depletion of non-timber forest products (NTFP), animal species and fresh water resources on which they also depend for their livelihood; (see attached ALDAW report to NTFP-EP and Broederliik Delen).

Except for a SEP clearance issued to PPVOMI for its nursery and oil mill area (about 13 hectares) there are no SEP clearances issued for the remaining thousands of hectares being converted into oil palm plantations (around 6,000 ha until present time).

The existence of this SEP clearance (and of no other SEP clearances) was confirmed in a letter from PCSD to ALDAW/NATRIPAL dated 27 August 2013 (see attached letter and copy of SEP clearance) in response to ALDAW/NATRIPAL request letter dated 22 August 2013 (see attached letter). The development and expansion of oil palm plantations without SEP clearance is in clear violation with the key provisions of the Strategic Environmental Plan (R.A. 7611);

Between 20-25 November 2013, in the course of a field appraisal, the Palawan Council for Sustainable Development (PCSD) had already ascertained for itself the complaints raised by members of oil palm impacted municipalities during a set of consultations facilitated by ALDAW, which were based on interviews to 20 respondents from the six oil palm affected municipalities in Southern Palawan;

The officials and members of the cooperatives who entered into agreements with Agumil Philippines, Inc, bitterly complain that several sections found within the signed Production Technical Marketing Agreement (PTMA) are solely in favor of Agumil Philippines, Inc and at the disadvantage of cooperatives. As a result, there have been numerous and unheard calls on the part of the officials and members of such cooperatives to request urgent amendments in the terms and conditions of such agreements;

Members and officials of those cooperatives engaged in oil palm plantation further complain about the lack of transparency on the part of the Agumil Philippines, Inc. and about company's financial reports not being shared with its members, as well as about the lack of economic benefits received from oil palm plantations and the difficulties in coping with their loan obligations;

Plantation workers, which include both local indigenous people and migrants, have complained about unfair working conditions, delayed payments and unfair computation of working days, and about no benefits and/or any form of insurance being provided by the company to its workers;

In line with this we ask the provincial government of Palawan to immediately issue a moratorium on the expansion of the oil palm plantation in Palawan until:

- **All** charges and evidences against Agumil Philippines, Inc. and other enterprises involved in oil palm expansion are properly assessed and processed through the available legal and juridical means;
- **Reliable** scientific data such as social, cultural, economic and environmental baseline studies become available on the real benefits gained from oil palm development in comparison to the adverse environmental and social costs which have so far been assessed and documented and which also need additional investigation and research in order to be fully understood;
- **A** serious review and topographic mapping of existing and proposed oil palm plantations is carried out in order to assess their present ecological status and the overlapping between them and those areas that are still conserved and managed by indigenous people as well as the overlapping with ECAN land categories, timberland, etc; and

IMMEDIATELY STOP THE PLANTING AND TENDING OF OIL PALMS IN AREAS THAT HAVE ALREADY BEEN PROVEN TO BE PART OF TIMBERLAND, ALIENABLE & DISPOSABLE LAND, ANCESTRAL LAND DOMAIN, ETC AND, THUS, TO PROCEED TO THE ERADICATIONS OF EXISTING OIL PALMS IN SUCH LOCATIONS, AS WELL AS TO THE REHABILITATION OF DEFORESTED AREAS THROUGH THE REPLANTING OF ENDEMIC TREE SPECIES.

Annex 2:

NAME	GOVERNMENT AGENCY / ORGANIZATION
1. Com. Roberto Eugenio T. Cadiz	Commission on Human Rights of the Philippines
2. Atty. Jesus G. Torres	Commission on Human Rights of the Philippines
3. Atty. Flora C. Atilano	Commission on Human Rights of the Philippines
4. Atty. Rexford Guevarra	Commission on Human Rights of the Philippines
5. Atty. Krissi Shaffina Twyla Rubin	Commission on Human Rights of the Philippines
6. Atty. Eunice Sta. Maria	Commission on Human Rights of the Philippines
7. Ms. Princess Molleno	Commission on Human Rights of the Philippines
8. Atty. Jacqueline Ann De Guia dela Peña	Commission on Human Rights of the Philippines
9. Mr. Dennis dela Peña	Commission on Human Rights of the Philippines
10. Mr. Edgar De Luna	Commission on Human Rights of the Philippines
11. Ms. Odette Lana	Department of Social Welfare and Development
12. Dir. Dominador Gomez	National Commission on Indigenous Peoples (NCIP)
13. Atty. Josie Rodriguez.	National Commission on Indigenous Peoples (NCIP)
14. Atty. Kissak Gabaen	National Commission on Indigenous Peoples (NCIP)
15. Mr. Dominador Opras	National Commission on Indigenous Peoples (NCIP)
16. Ms. Vercelita Montealto	National Commission on Indigenous Peoples (NCIP)
17. Mr. Estelito A. Acob	Provincial Environment Office (PENRO) Palawan
18. Egr. Maria Rosario Aynon A. Gonzalez	Palawan State University
19. Ms. Cecilia P. Malolos	Western Philippine University
20. Ms. Norma Molinyawe	DENR
21. Atty. Philip Jerome Hilario	City Government of Puerto Princesa
22. Mr. Kerwin Arnold Mawie Palatino	City Government of Puerto Princesa
23. Ms. Melody Balanza	Office of Cong. Ted Baguilat
24. Mr. Johnny lilang	DENR-PENRO
25. Ms. Gondin Buat	Coalition against Land Grabbing (CALG)
26. Ms. Marivic Bero	Coalition against Land Grabbing (CALG)
27. Mr. Johnmart Salunday	Coalition against Land Grabbing (CALG)
28. Mr. Motalib Kimel	Coalition against Land Grabbing (CALG)
29. Mr. Welly Mande	Coalition against Land Grabbing (CALG)
30. Mr. Boy Soda	Coalition against Land Grabbing (CALG)
31. Mr. Daniel Sinta	Coalition against Land Grabbing (CALG)
32.. Mr. Narlito Candal	Coalition against Land Grabbing (CALG)
33. Ms. Josefa Gacilos	Coalition against Land Grabbing (CALG)
34. Mr. Jonavel Kimel	Coalition against Land Grabbing (CALG)
35. Ms. Jinky Bernardo	NATRIPAL
36.Mr. Rosalino Lisag	NATRIPAL
37. Ms. Joanne Abrina	NATRIPAL
38. Mr. Gadong Saavedra	Batak Federation
39. Rustico Mauricio	Batak Federation
40. Tirso Abucal	
41. Jimbay Saavedra	Batak Federation
42. Rico Bolontong	Batak Federation
43. Adelina Rodriguez	Batak Federation
44. Alicia Abucal	Batak Federation
45. Jocelyn Gupo	Batak Federation
46. Myrna Saavedra	Batak Federation
47. Sr. Xenia Mae Juanitas	Agustinian Missionaries of the Philippines (AMP)
48. Mr. Willie Tingor	Palawan Katutubo Mission (PKM)
49. Mr. Roy D. Bero	KOMPRES-Palawan
50.Maman Suede Taiban	Indigenous and farmers leaders from southern oil palm impacted municipalities
51. Mr. Rodick Asil	Indigenous and farmers leaders from southern oil palm impacted municipalities
52. Cheiftain Joseph Eling	Indigenous and farmers leaders from southern oil palm impacted municipalities

53. Chieftain Malangca Ella	Indigenous and farmers leaders from southern oil palm impacted municipalities
54. Mr. Romeo Japson	Indigenous and farmers leaders from southern oil palm impacted municipalities
55. Mr. Benjamin Bahandi	Indigenous and farmers leaders from southern oil palm impacted municipalities
56. Mr. Oracanay Milly Saya	Indigenous and farmers leaders from southern oil palm impacted municipalities
57. Mr. Impong Norte	Indigenous and farmers leaders from southern oil palm impacted municipalities
58. Cheiftain Rodolfo Bulagis	Indigenous leaders from West Coast locations being affected or targeted by other types of large-scale plantations
59. Mr. Jacinto Torce	Indigenous leaders from West Coast locations being affected or targeted by other types of large-scale plantations
60. Mr. Salvador Dulce	Indigenous leaders from West Coast locations being affected or targeted by other types of large-scale plantations
61. Mr. Efren Ongot	Indigenous leaders from West Coast locations being affected or targeted by other types of large-scale plantations
62. Mr. Elito Ninge	Indigenous leaders from West Coast locations being affected or targeted by other types of large-scale plantations
63. Mr. Dario Pandeno	Indigenous leaders from West Coast locations being affected or targeted by other types of large-scale plantations
64. Ms. Roselyn Julian	Agumil, Inc
65. Marcus Colchester	Forest Peoples Programme
66. Viola Belohrad	Forest Peoples Programme
67. Lisken Situmorang	Forest Peoples Programme
68. Dico Luckyharto	Forest Peoples Programme
69. Tommy Indyan	Indigenous Lawyer Association/AMAN
70.. Sok Leang	Cambodia Human Rights Action Committee (CHRAC)
71. Andhika Vega Putra	Samdhana Institute
72. Norman Jiwan	Transformasi Untuk Keadilan INDONESIA
73. Lanash Thanda	Sabah Environmental Protection Association (SEPA)
74. Jannie Lasimbang	Indigenous Peoples Network of Malaysia/Jaringan Orang Asal SeMalaysia (JOAS).
75. Manja Bayang	Tebtebba
76. Roger Lambino	Tebtebba
77. Dr Binod Chapagain	RECOFTC - The Center for People and Forests
78. Fauziah Rasad	Indonesia NHRC
79. Imelda Indriani Saragih	Indonesia NHRC
80. Pareswari Subramaniam	Malaysia NHRC
81. Dr. Myint Kyi	Myanmar, MNHRC
82. Nordin Kasim Madating	Malaysia NHRC
83. Dr Nirun Pithakwatchara	Thailand NHRC
84. Ekachai Pinkaew	Thailand NHRC
85. Devasish Roy	UN Permanent Forum on Indigenous Issues
86. Dr. Dario Novellino	University of Kent
87. Saphet Sivilay	PVVRI, Laos
88. Prof Daw Than Nwe	Myanmar, MNHRC
89. Constanze Weiske	Leipzig University