



# WOMEN'S HUMAN RIGHTS AND NATURAL RESOURCES



BRIEFING  
PAPER

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# Introduction

**T**HE NEOLIBERAL POLITICAL ECONOMY is centred on the extraction and exploitation of natural resources. With an increased demand from rising food prices, growing corporate power and regressive economic and trade agreements, natural resources are being acquired at an unprecedented scale globally.

Member States in the ASEAN region are pursuing the extraction of natural resources to stimulate economic growth. For example, Malaysia receives more than 30% of its annual budget from oil and gas revenues and Myanmar's mining industry is the third largest recipient of foreign direct investment.

Yet, large natural extraction projects have damaging impacts on local communities and their ecosystems. Projects are often approved without the meaningful participation of affected communities and limit their access and control over natural resources. These projects have displaced communities, deprived them of their rights to land, undermined their food security and compromised sustainable natural resource management. State and investor agreements are not transparent and there are limited mechanisms and spaces for public scrutiny and engagement. Corrupt practices are thriving and the expanding power of corporate actors reveals the gaps in our accountability systems.

Due to systemic discrimination, unequal power relations and patriarchal systems, there is a gendered dimension to the exploitation of natural resources with women shouldering a disproportionate share of the impact.

Women's natural resource rights may be determined by the interaction between different norms coexisting in a context of legal pluralism (e.g. customary and statutory law), and gender struggles for access to and control of natural resources may be fought by men and women relying on both statutory and customary

norms.<sup>1</sup> Women's rights to natural resources may be curtailed by direct and indirect forms of discrimination through legislations and practices such as family laws, discriminatory inheritance laws, discrimination in land distribution, agrarian reform programmes etc.

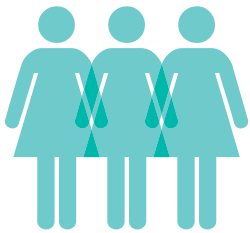
Since women are not a homogenous group, their experiences will depend on intersecting factors such as marital status, language, education level, ethnic origin and more. It is clear that at particular risk are rural women, indigenous women and women belonging to marginalised social groups, such as ethnic minorities. They face increased risks of human rights abuses because of historical discrimination and exclusion. Rural and indigenous women often have no legal right and control over land and natural resources. This combined with their limited political, economic and social power means they are the hardest hit when it comes to the commercial exploitation of natural resources.

The collusion of corruption, corporate interests and unfettered State power has fostered an environment where there is little accountability for the exploitation of natural resources and its impact on women's human rights.

This briefing paper aims to unpack the gender dimension of natural resource exploitation and focuses on key issues concerning women's rights to natural resources in the ASEAN context. It also provides analysis of women's rights to natural resources from the CEDAW and ICESCR perspective.

<sup>1</sup> <http://www.fao.org/docrep/005/Y4311E/y4311e04.htm#bm04.1>

# Key Issues for Women's Rights in Natural Resources



## Women's Meaningful Participation

Too often, thorough and meaningful consultations with local communities on projects to exploit natural resources are not conducted. The right to free, prior and informed consent is repeatedly breached in order to cater to corporate and State interests.

Where consultations are conducted, the situation is still worse for women, as processes will reflect gender power relations. Women remain grossly under-represented in political and economic decision-making and therefore wield less bargaining power and influence. There is a noticeably low participation of women, particularly indigenous and rural women in the formulation of policies and decision-making on natural resource extraction.

Women's agency and voices are rendered invisible by patriarchal structures, norms and processes and men continue to be at the centre of decision-making. This is seen predominantly where male village chiefs or heads of household are responsible for representing community interests. The lack of women's participation in policy and decision-making on natural resources also has the impact of gender-blind laws and policies regulating the exploitation of natural resources.



## Non-Recognition of Women's Rights to Land and Natural Resources

The processes to exploit natural resources can intensify existing inequalities. Women produce more than 70% of the food, yet there is still limited recognition of their rights to land and natural resources in legal

systems and in practice. In many societies women are still prevented from owning land independently of husbands or male relatives. This makes it difficult for women who have no formal rights to land to negotiate their rights and entitlements with government and corporate actors. Thus they lose access and control over their land and natural resources.

This also contributes to an uneven playing field in sharing compensation or dividends among equally affected communities. Women-led households may not receive compensation from projects if there is no male representative, as compensation is typically given to men on behalf of their families.



## Threatened Livelihoods: Food Security and Access to Water

Natural resource extraction projects limit the availability of land and resources for already vulnerable populations. The shift to commercialised agriculture replaces sustainable farming practices and disrupts the environment for small-scale farmers and this is particularly harmful in countries that have a large percent of their rural population dependent on agriculture.

Oxfam reports that an estimated 1.6 billion women depend on agriculture for their livelihoods. Projects to exploit natural resources that limit access to sources of food and sustenance threatens the livelihoods of women and their communities. The environmental degradation that comes with large-scale natural resource extraction also undermines access to water. The oil extraction projects in the Niger Delta region has led to severe environmental degradation and puts the burden on local communities to identify alternative and accessible sources of water.

Due to the gendered division of labour, women have this primary role of providing food, fuel and care for their families. So the destruction and displacement that is a consequence of these projects puts additional pressure on women who have to shoulder the responsibilities, even as their landscapes change.

The competing demands over access to water sources has led some companies leading extraction projects to restrict access. For example, after the largest agribusiness in Zambia obtained land from a large-scale acquisition, it fenced off all the perennial rivers. This meant that women could not access these sources of water. Access and control over water sources is inextricably linked to food security, so any projects that threaten access to water also threaten livelihoods.



### Women Human Rights Defenders

Women human rights defenders, particularly those challenging the extractive industries, face heightened risks of death, violence, intimidation, enforced disappearances and harassment at the hands of State security and private security forces. The work of women human rights defenders is often criminalised and stigmatised and they are labelled as “anti-development” and “enemies of the State.”

This is against a backdrop of shrinking space for activism on extractive industries. States are cracking down on social movements, activists and peaceful assemblies that challenge the extractive industries and economic model. The UN Special Rapporteur on Human Rights Defenders has noted that human rights defenders in extractive industries in the Americas, face the highest risk of death.

For women human rights defenders that speak out against the exploitation of natural resources they face greater risks of reprisals because they are not only challenging traditional gender roles, but they are challenging the power relations governing control of natural resources.

Global Witness reports that the attacks against environment defenders continue to increase, with indigenous and rural communities as specific targets. As the global demands for natural resources escalate, so too do the risks for women human rights defenders and the pervasive culture of impunity for the human rights abuses targeted at them for their work.

The military and armed forces, as well as private security companies are used to protect elite interests and their presence translates into a heavy-handed response to any resistance to the exploitation of natural resources.



### Accountability for Women's Human Rights Violations

There is a lack of accountability for the violations of women's human rights in the context of natural resource exploitation. States repeatedly fail to recognise the interlinkages between trade and economic agreements, gender equality laws and natural resource management. Women are still not recognised as rights-holders over land and natural resources; and the violations they face in the exploitation of natural resources are continue to be met with insufficient accountability. Where avenues do exist, structural obstacles for women's access to justice remain.

For example, women face sexual and gender-based violence by state security and private security forces around the sites of natural extraction projects. For women human rights defenders, this violence is meted out in retaliation for their resistance to the extractive industries. But there is also the rampant exploitation and abuse of women on and around natural extraction sites. The Porgera gold mine in Papua New Guinea where hundreds of women testified to rape and sexual violence by the private security personnel of Barrick Gold Mine demonstrates the unequal power structures and gender dynamics at play. The company used its own “remedy framework”, an alternative to the judicial system, to address the allegations of sexual violence.

# Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and International Covenant on Economic, Social and Cultural Rights (ICESCR)

**V**ARIOUS HUMAN RIGHTS INSTRUMENTS guarantee women's equal rights to access, use and control land. Women's rights in relation to land are well-established in international human rights standards and guidelines, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>1</sup>

CEDAW and ICESCR recognise the central principle of substantive equality and provide an important normative framework for claiming and upholding ESC rights, which can strengthen the accountability for women's rights to natural resources through the interpretation and application of the normative standards and the existing mechanisms. In addition to the key principles and thematic articles of these treaties, CEDAW and ICESCR committees have laid out several recommendations to States Parties to address violations of women's rights in the access, control of natural resources with extra attention on natural resources extraction, land grabbing by private companies through general recommendations and concluding observations. (Refer to Annex 1 for key recommendations for recently reviewed ASEAN countries (Cambodia, Laos, Myanmar, Vietnam, Thailand, Philippines and Indonesia) from both committees)

CEDAW and ICESCR have considered the principles of substantive equality and non-discrimination with regards to a number of intersecting elements and aspects of rights of women concerning land and natural resources such as rights to non-discrimination, equality, right to food, right to housing, right to water and sanitation, right to social security, right to livelihood, right to participation, right to land and inheritance, economic rights within marriage and family.

In making claims for women's rights to natural resources, it is important to understand, and where appropriate draw on, the key concepts that underlie the enjoyment of these rights and/or inform how the state approaches its obligations to protect, respect and fulfil human rights.

## Key principles and elements of rights under CEDAW and ICESCR

### CEDAW

CEDAW Article 14 and the recent General Recommendation 34<sup>2</sup> on the rights of rural women are very significant to help address the issues of natural resource exploitation and its impact on women. CEDAW's recommendation addresses the negative and differential impacts of economic policies, including agricultural and general trade liberalization, privatization and commodification of land, water and natural resources, on the lives of rural women and fulfilment of their rights. It calls for State parties to address specific threats posed to rural women by climate change, natural disasters, land and soil degradation, water pollution, droughts, floods, desertification, pesticides and agro-chemicals, extractive industries, monocultures, bio-piracy, and loss of biodiversity, particularly agro-biodiversity.

In its General Recommendation 34, CEDAW reaffirms:

Rural women often have only limited rights over land and natural resources. In many regions, they suffer from discrimination in relation to land rights, including with respect to communal lands, which are controlled largely by men (para 55).

<sup>2</sup> Women and ESCR Working Group briefing paper: the intersection between land and women's economic, social and cultural rights

<sup>3</sup> CEDAW General Recommendation on the rights of rural women, CEDAW/C/GC/34

The Committee considers rural women's rights to land, natural resources, including water, seeds, forestry, as well as fisheries, as fundamental human rights. Barriers that prevent them from enjoying these rights often include discriminatory laws, lack of harmonization of laws and ineffective implementation of laws at the national and local levels, as well as discriminatory cultural attitudes and practices (para 56).

States parties should take all necessary measures, including TSMs, to achieve rural women's substantive equality in relation to land and natural resources, and should design and implement a comprehensive strategy to address discriminatory stereotypes, attitudes and practices which impede their rights to land and natural resources (para 57).

Extraterritorial Obligation (ETO)-The evolution in understanding and interpreting ETOs is embodied in the formation of the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (The Maastricht Principles)<sup>3</sup>.

Decades of growth in transnational business activities have had a decisive influence on the realisation of the human rights of people in States that host foreign investment projects. The notion of jurisdiction has progressed towards a firm recognition of States' duties beyond their borders. UN treaty bodies have addressed extraterritorial human rights issues in their various reports, statements and general comments. In so doing, these bodies have played an important role in developing and consolidating the understanding of how to apply the concept of jurisdiction to the actions and omissions of States.<sup>4</sup>

In its General Recommendation 30<sup>5</sup>, CEDAW reaffirms:

The Committee reiterates general recommendation No. 28 (2010) to the effect that the obligations of States parties also apply extraterritorially to persons within their effective control, even if not situated within the territory, and that States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory (para 8). The Convention also requires States parties to regulate the activities of domestic non-State actors, within their effective control, who operate extraterritorially. The Committee reaffirmed in its general recommendation No. 28 (2010) the requirement in article 2 (e) of the Convention to eliminate discrimination by any public or private actor, which extends to acts of national corporations operating extraterritorially (para 10).

Due diligence- Article 2 of CEDAW imposes an obligation on state parties to prevent discrimination by non-state actors. This obligation includes responsibility to investigate, prosecute and punish violations of human rights caused by non-state actors.

## ICESCR

In its Article 11, CESCR considers that States should reform agrarian systems in such way as to achieve most efficient development and utilization of natural resources.

In Article 12 it further states for the improvement of all aspects of environmental and industrial hygiene. In several General Comments, the CESCR has noted that States have obligations to ensure that non-state actors operating outside of their territory, including corporations, do not violate economic, social and cultural rights. These include General Comment 19 on the Right to Social Security, General Comment 15 on the Right to Water, General Comment 12 on the Right to Food and General Comment No. 14 on the Right to Health.

In its General comment 7<sup>6</sup> on the right to adequate housing, CESCR highlights the disproportionate impact of forced eviction on women and recommends the States parties:

<sup>4</sup> Global Economy, Global Rights: A practitioners' guide for interpreting human rights obligation in the global economy (ESCR Net), para 9.5

<sup>5</sup> Global Economy, Global Rights: A practitioners' guide for interpreting human rights obligation in the global economy (ESCR Net), para 4.

<sup>6</sup> CEDAW General Recommendation 30 on women in conflict prevention, conflict and post- conflict situations, CEDAW/GC/30

<sup>7</sup> General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions



Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved (para 10).

While this briefing paper demonstrates some understanding about CEDAW and ICESCR on issues concerning women's rights to natural resources, there is an opportunity to expand the interpretation and application of key principles such as substantive equality, non-discrimination, state obligation and extraterritorial obligations under ICESCR and CEDAW and to clarify further what these obligations entail specifically from the standpoint of women's rights in natural resources by recognizing the various manifestations of discrimination against women.



# ASEAN's Neoliberal Paradigm of Development: Situating Women's Rights in the Context of Natural Resource Governance<sup>1</sup>

(This section has been contributed by Women's Legal and Human Rights Bureau)

## When Economic Growth becomes the Primary Goal of Regional Integration

ASEAN is characterized by diverse political regimes and systems of government -- from military regimes, monarchies, communist-socialist states to opening democracies. The year 2015 is seen as a key milestone in the ASEAN integration agenda.<sup>2</sup> ASEAN was lauded to have "transformed into an increasingly well-regulated, dynamic and creative platform for trade and commerce across what many regard as the world's fastest-developing economic region."<sup>3</sup> ASEAN believes that by integrating ASEAN economies that the ASEAN Economic Community (AEC) becomes a single market and production base.<sup>4</sup> The AEC has positioned ASEAN at the centre of global supply chains."<sup>5</sup>

At the centre of the ASEAN regional integration is the ASEAN Economic Community. The AEC is the "realization of the end goal of economic integration."<sup>6</sup> ASEAN pushes member states in the direction of market-driven, competitive economic growth. Member States have to catch up and meet targets to be able to, as ASEAN desires, accelerate economic growth.<sup>7</sup> There are however, uneven levels of development between and among the ASEAN Member States (AMS). The CLMV ASEAN's Neoliberal Paradigm of Development: Situating Women's Rights in the Context of Natural Resource Governance<sup>8</sup> (Cambodia, Laos PDR, Myanmar and Vietnam) countries in the Mekong region are found "lagging behind and will likely find it hard to catch up in the accelerated economic integration"<sup>9</sup>.

## Implications to Natural Resource Governance

Despite promises of economic growth, ASEAN is "far from democratizing assets and resources."<sup>10</sup> The AEC framework maintains "an economic growth track that mainly benefits a handful of politically powerful and already wealthy local elites. Member states remain, by and large, neglectful and unmindful of grassroots communities' rights, the sustainability of local economies and production for domestic needs."<sup>11</sup>

There are fears that the directions and processes of the economic integration will hurt the local economies and small communities. For instance, in countries like Cambodia, rampant land grabbing has been linked to "globalisation, the liberalisation of land markets, and increased foreign direct investment,"<sup>12</sup> among others -- the direction that the AEC obliges Member States to take<sup>13</sup>. With Cambodia's predisposition to "large-scale, market-oriented development",

<sup>8</sup> Part of an on-going research undertaken by the Women's Legal and Human Rights Bureau (WLB)

<sup>9</sup> ASEAN Secretariat. 2015, 4

<sup>10</sup> Ibid.

<sup>11</sup> Bernie Magkilat, "ASEAN Economic Community seen as trading powerhouse." Manila Bulletin. January 2, 2016, accessible at <http://www.mb.com.ph/asean-economic-community-seen-as-a-trading-powerhouse/>

<sup>12</sup> Ibid.

<sup>13</sup> Declaration on the ASEAN Community Blueprint adopted on 20 November 2007

<sup>14</sup> Kurlantzick, 2012; and JIXianbai, "Why the ASEAN Economic Community Will Struggle: Serious weaknesses within ASEAN threaten the realization of the bloc's regional project." The Diplomat. September 24, 2014. Accessible at <http://thediplomat.com/2014/09/why-the-asean-economic-community-will-struggle/>; in WLB, 10-11, forthcoming

<sup>8</sup> Part of an on-going research undertaken by the Women's Legal and Human Rights Bureau (WLB)

<sup>15</sup> Hank Lim and KhinMaungNyunt, "Study to Determine the Impact of Accelerating the ASEAN Economic Community from 2020 to 2015 on Cambodia, Lao Pdr, Myanmar And Vietnam (CLMV)". Final Report. July 2010. Accessible at [www.asean.org/images/2012/Economic/IAI/Comm%20work/Impact%20of%20accelerating%20AEC%20on%20CLMV%20Report.pdf](http://www.asean.org/images/2012/Economic/IAI/Comm%20work/Impact%20of%20accelerating%20AEC%20on%20CLMV%20Report.pdf); in WLB, 10-11, forthcoming

<sup>16</sup> Brunei Council on Social Welfare, SolidaritasPerempuan, and Women's Legal and Human Rights Bureau, "Compliance with Women's Rights Standards: The Case of Migration of Domestic Workers from Indonesia and the Philippines in Brunei Darussalam, 2013. Accessible at [https://womenscaucusonasean.files.wordpress.com/2014/01/compliance-with-womens-rights-standards\\_domestic-workers-from-indonesia-and-the-philippines-in-brunei-2.pdf](https://womenscaucusonasean.files.wordpress.com/2014/01/compliance-with-womens-rights-standards_domestic-workers-from-indonesia-and-the-philippines-in-brunei-2.pdf); in WLB, 14, forthcoming.

<sup>17</sup> Ibid.

<sup>18</sup> Borrás and Franco 2010, Zoomers 2010, in Ahmad Dhiaulhaq, et al., "Land grabbing and forest conflict in Cambodia: Implications for community and sustainable forest management" in *Forests under Pressure: Local Responses to Global Issues*, 2014. Accessible at [http://www.researchgate.net/publication/266734023\\_Land\\_grabbing\\_and\\_forest\\_conflict\\_in\\_Cambodia\\_implications\\_for\\_community\\_and\\_sustainable\\_forest\\_management](http://www.researchgate.net/publication/266734023_Land_grabbing_and_forest_conflict_in_Cambodia_implications_for_community_and_sustainable_forest_management); in WLB forthcoming

<sup>19</sup> WLB forthcoming

concessions to investors, business and corporate sector have“ adversely affected the rights and livelihoods of Cambodia’s rural communities<sup>14</sup> and led to rapid and extensive deforestation<sup>15</sup>. The rest of the CLMV, as with the member countries in ASEAN, follow suit. The Laos government in pursuit of generating investments offers “numerous investment incentives, including generous concessions, tax holidays and cheap labour costs”.<sup>16</sup> The opening up of markets was seen particularly unfavourable to small producers. Unable to compete with foreign investors, many small producers lost their small businesses and livelihoods. <sup>17</sup>



## Locating Women's Rights and Gender Equality

Asian developmental capitalism has resulted in a “neo-patriarchal” approach to bringing women into the economy without a concern with the gendered assumptions behind that inclusion.<sup>18</sup> In the ASEAN Vision 2020 and succeeding action programmes, for example, women were referred to in the contexts of both creating “caring societies” and ensuring the resilience of the family as the “basic unit” of society. Women’s issues were housed as socio-cultural, not political in nature, as women were framed not only separate from political concerns but fundamentally apolitical.<sup>19</sup> Neoliberalism is said to promote “formal equality” in the context of competition and increasing the pool of available labour, but does not support the redistribution of social and economic rights or the transformative character of substantive equality for women.<sup>20</sup>

Within ASEAN states, women are disadvantaged in acquiring land and assets by a lack of access to information and discriminatory laws.<sup>21</sup> Women contribute substantially to economic welfare through large amounts of unpaid work, such as child-rearing and household tasks, but domestic work continues to remain unseen and unaccounted for in national income; and finally a lack of clarity in key labour laws relating to equal pay, discrimination and maternity benefits contribute to gender inequality in the labour market.<sup>22</sup>

ASEAN’s perspective and approach on gender mainstreaming in the AEC is narrow and does not address the underlying systemic and interrelated issues that adversely affect peoples in ASEAN, particularly the marginalized sectors. In dominant discourse regarding human rights and women’s rights, there is a glaring lack of literature on the impact of regional economic integration and marginalized subsectors of women, such as women in the informal economy and in agriculture, lesbian, bisexual and transgendered women, women with disabilities, indigenous women, among others.

<sup>20</sup> UNOHCHR 2007, NGO Forum on Cambodia 2010b, Ratner and Parnell 2011, Schneider 2011 in Ahmad Dhiaulhaq, et al., 2014; in WLB forthcoming

<sup>21</sup> Ahmad Dhiaulhaq, et al., 2014; in WLB forthcoming

<sup>22</sup> J&C Lao, “Asean Economic Community Special Report – Laos: Little and Big Fish”, 2014. Accessible at <http://jclao.com/asean-economic-community-special-report-laos/>; in WLB, forthcoming

<sup>23</sup> Ibid.

<sup>24</sup> Davies, “Women and Development,” 116.

<sup>25</sup> Davies, “Women and Development.” 122.

<sup>26</sup> Raday, Frances. “Gender and democratic citizenship: the impact of CEDAW.” Oxford University Press and New York University ICON10 No.2 (2012): 524-525. Accessed April 12, 2016. doi: 10.1093/icon/mor068.

<sup>27</sup> Jha and Saxena, “Projected Gender Impact of the ASEAN Economic Community”, 17.

<sup>28</sup> Jha and Saxena, “Projected Gender Impact of the ASEAN Economic Community”, 17-18.

**ANNEX 1:**

CEDAW and ICESCR references to women's rights to land and natural resources in concluding observations of ASEAN countries

CEDAW	CESCR
<b>LAND APPROPRIATION, LAND GRABBING, FORCED EVICTIONS</b>	
<p><b>CEDAW</b> has expressed concerns over the land appropriation and resulting displacement, forced evictions and relocations as a result of large development projects, extractive industries and disasters that continue to affect rural women disproportionately including religious minorities and indigenous women (<i>Philippines, 2016</i>).</p> <p>The Committee has expressed concerns of forced evictions from land, mainly by the military, which is then granted to foreign companies under concession (<i>Myanmar, 2016</i>)</p> <p>Recommends the State party to:</p> <ul style="list-style-type: none"> <li>- Ensure effective consultations with affected communities before granting concessions for the economic exploitation of lands and territories traditionally occupied or used by women in companies or third parties, and to secure the free, prior and informed consent of affected women.</li> </ul> <p>The Committee has expressed concerns that women are subjected to displacement and evictions due to large scale land concessions and urban development (<i>Cambodia, 2013</i>)<sup>29</sup></p> <p>Recommends State Party to:</p> <ul style="list-style-type: none"> <li>• Improve women's access to land and tenure security, ensure that land acquisitions for economic and other concessions follow due process, and that adequate compensation is provided following sufficient consultative processes</li> </ul> <p>Recognize that forced evictions are not a gender-neutral phenomenon, but that they disproportionately affect women, and take immediate measures to protect women and girls from further evictions</p>	<p>CESCR has expressed concerned that land-grabbing continues and that the Comprehensive Agrarian Reform Program Extension with Reforms has now been phased out, despite having been only partly implemented, leaving many farmers landless. Moreover, women farmers were a small minority among the beneficiaries of the agrarian reform owing to their subordinate status within the household.</p> <ul style="list-style-type: none"> <li>• It recommends that the State party to take the measures necessary to stop land-grabbing, to facilitate the distribution of land to landless farmers, including by further extending the agrarian reform process launched with the Comprehensive Agrarian Reform Law of 1988, and to ensure that women are not discriminated against in land distribution (<i>Philippines, 2016</i>).<sup>30</sup></li> </ul> <p>CESCR expressed grave concern over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone; that at least 150,000 Cambodians continue to live under threat of forced eviction; and that authorities of the State party are actively involved in land-grabbing. Further the Committee expressed deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies (<i>Cambodia, 2009</i>).<sup>31</sup></p> <p>The Committee urges the State party to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples. The Committee recommends that the State party undertake urgent consultations with all stakeholders in order to reach a definition of "public interest" to complement the 2001 Land Law and develop clear guidelines for possible evictions. The Committee also urges the State party clearly to identify the demarcation of State public land and State private land (<i>Cambodia, 2009</i>).</p> <p>The Committee expressed concerns at reports of forced evictions without adequate reparation nor alternative housing, including in the context of development projects. And also that, under the State party's legislation, evictions may be carried out even if they render tenants homeless (<i>Indonesia, 2014</i>).</p> <ul style="list-style-type: none"> <li>• The Committee calls on the State party to bring its legislation on forced evictions into line with international standards, including by (a) ensuring that evictions are only used as a last resort; (b) strictly defining the circumstances and safeguards under which evictions can take place; and (c) ensuring that victims of forced evictions are provided with adequate alternative housing or compensation and have access to effective remedies.</li> </ul> <p>Ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation, bearing in mind the Committee's general comments no. 4 (1991) on the right to adequate housing and no. 7 (1997) on forced evictions (<i>Thailand, 2015</i>)</p>

## FREE, PRIOR AND INFORMED CONSENT (FPIC), GENDER/HUMAN RIGHTS/ENVIRONMENT IMPACT ASSESSMENT

The State party should ensure that development projects are implemented only after conducting gender impact assessments involving rural women. In addition, the State party should ensure that opium eradication is carried out together with the development of sustainable alternative livelihoods with local communities, where rural women and women belonging to ethnic groups are most affected (*Laos, 2009*).

CESCR recommends to take the steps necessary to ensure the registration of indigenous lands, including through improving the collective land title claim process; Ensure that the free, prior and informed consent of the indigenous peoples concerned is obtained before granting licences to private companies; and that indigenous peoples are represented by their own chosen representatives on local decision-making bodies, such as local mining boards and development units (*Philippines, 2016*)

The Committee is deeply concerned about the most recent FAO global forest survey estimating that the State party has lost 29 per cent of its primary tropical forest cover over the last five years, one of the most serious cases being the continuing destruction of the Prey Long forest in Northern Cambodia. The Committee is also concerned about the reports that the rapid increase in economic land concessions in the last several years, even within the protected zones, is the major factor in the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival (*Cambodia, 2009*).

- The Committee urges the State party to review its policy regarding the conversion of protected zones into economic concessions, by conducting environmental and social impact assessments including consultations with relevant stakeholders and communities with due regard to their right to participate in informed decisions that affect their lives. The Committee strongly recommends that the granting of economic concessions take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone. The Committee requests the State party to give, in its next periodic report, detailed information on the progress made in the implementation of these policies. (*Cambodia, 2009*)

The Committee urges the State party to ensure, in law and in practice, the free, prior and informed consent of ethnic minorities on decisions that affect them, and provide legal assistance in that regard. Undertake an assessment of the impact of revocation and sedentarization policies on the enjoyment of Covenant rights and involve ethnic minorities in policy-making and the design of plans aimed at addressing identified issues (*Vietnam, 2014*).

<sup>29</sup> Concluding observations on the fourth and fifth periodic report of Cambodia, CEDAW/C/KHM/CO/4-5

<sup>30</sup> Concluding observations on the combined fifth and sixth periodic reports of the Philippines, E/C.12/PHL/CO/5-6

<sup>31</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, CAMBODIA, E/C.12/KHM/CO/1

## RIGHTS TO LAND AND INHERITANCE AND LAND TITLES

Committee has expressed concern that women continue to face limited access to land and tenure security (**Cambodia, 2013**).

The Committee welcomes that the Land Law (2013) provides for the issuance of land use certificates in the name of both spouses. However, it remains concerned that, in practice, male-only certificates are often issued and that mediation of disputes tends to privilege men over women (**Vietnam, 2015**)

- Recommends the State Party to establish effective monitoring mechanisms for the implementation of the Land Law and ensure that land use certificates bear the names of both spouses and that legal remedies are given priority over mediation in case of land disputes involving women

The Committee notes that article 28 of the family law on the equal division of matrimonial property contains an exception based on fault and is concerned that this exception may involve risks of disadvantage for women (**Laos, 2009**).<sup>32</sup>

- The Committee recommends the State party to revise article 28 of the Family Law with a view to abolishing the exception to the equal division of matrimonial property based on fault.

The Committee urges the State party to Pay special attention to the needs of rural women to ensure that they have access to health, education, clean water, sanitation services and income-generating projects; and eliminate discrimination in women's ownership and inheritance of land (**Indonesia, 2012**)

The Committee expresses concern about the large number of land disputes and cases of land-grabbing in the State party. It is also concerned that regulations such as Presidential Regulation 65/2006 on Procurement of Land for Realizing Development for Public Interest render individuals and communities vulnerable to land-grabbing as only 34 per cent of land in the State party is certified. Similarly, the Committee is concerned that court decisions on land cases have been primarily made on the basis of the existence of titles. Furthermore, the Committee expresses concern at the prohibitive cost of titling that has accompanied the settlement of land disputes.

- The Committee urges the State party to adopt a land policy which (a) establishes an institution tasked with the oversight of settlement of land disputes; (b) promotes settlement approaches that take into account the fact that land titles are not always available; (c) reviews relevant laws and regulations which make individuals and communities vulnerable to land-grabbing; (d) facilitates the titling of land without prohibitive procedural costs; (e) secures the involvement of the national human rights institutions and the civil society (**Indonesia, 2014**).<sup>33</sup>

## NATURAL RESOURCES AND HOUSING, FOOD SECURITY

The Committee draws the attention of the State party to FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security as well as the Basic Principles and Guidelines on Development Based Evictions and Displacement, developed by the Special Rapporteur on adequate housing (A/HRC/4/18) (**Vietnam, 2015**).

The Committee is concerned at the denial of the traditional rights of ethnic minorities to their ancestral lands and natural resources and the concentration of land ownership in the hands of a very small proportion of the population. It is also concerned about the implementation of its forest conservation policy that has resulted in the destruction of crops and forced evictions; The adverse effects of economic activities connected with the exploitation of natural resources, including large-scale projects such as the Map Ta Phut Industrial Estate, on the enjoyment of economic, social and cultural rights by people living in the areas concerned and the lack of participatory mechanisms and consultations, as well as limited access to information for affected individuals and communities (**Thailand, 2015**).<sup>34</sup>

- The Committee recommends that the State party take all necessary steps, including revising its legal and policy framework, to effectively remove all obstacles to enjoyment of traditional individual and communal rights by ethnic minorities in their ancestral lands and take effective measures to guarantee land tenure rights without discrimination so as to ensure access to land and adequate housing for all (**Thailand, 2015**)

Adopt a human-rights based approach in its development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent (**Thailand, 2015**).

<sup>32</sup> Concluding observations on the combined sixth and seventh report of the Lao People's Democratic Republic, CEDAW/C/LAO/CO/7

<sup>33</sup> Concluding observations on the initial report of Indonesia, E/C.12/IDN/CO/1

<sup>34</sup> Concluding observations on the combined initial and second periodic reports of Thailand, E/C.12/THA/CO/1-2

## WOMEN HUMAN RIGHTS DEFENDERS, INDIGENOUS AND LAND ACTIVISTS

The Committee is concerned that female human rights defenders who advocate for women's land rights are often subjected to intimidation and harassment by law enforcement personnel. The Committee recommends the State Party to promptly investigate, and wherever appropriate, prosecute cases of intimidation and harassment by law enforcement personnel against women human rights defenders advocating for land rights (*Cambodia, 2013*)

The Committee recommends the State Party to investigate allegations of harassment, arbitrary detention, ill-treatment of women human rights defenders, prosecute those responsible and provide remedies to the victims and to take specific steps to create an enabling environment in which women human rights defenders and women's rights organizations can be freely established and freely operate in the State party, in line with article 7 (c) of the Convention (*Vietnam, 2015*).<sup>35</sup>

The Committee urges the State party to take all measures necessary to protect human rights defenders, including trade union activists, defenders of the urban poor, indigenous activists and peasant activists, from killing and all forms of violence. It also urges the State party to ensure a safe and favourable environment supportive of those defenders' work to promote and protect economic, social and cultural rights. It recommends that the State party step up its efforts to promptly and thoroughly investigate all reported cases of harassment, disappearance and killing of human rights defenders and bring the perpetrators to justice (*Philippines, 2016*).

The Committee expresses concern at reports of enforced disappearances and killings of land rights and environmental activists, with perpetrators often going unpunished. The Committee urges the State party to adopt all measures necessary to protect human rights activists, including those working to defend economic, social and cultural rights, from any and all acts of intimidation, harassment and killings and to ensure that perpetrators of such acts are brought to justice (*Thailand, 2015*).

## COMPENSATION, RELOCATION AND ALTERNATIVE LIVELIHOOD

The Committee is concerned at the recent increase in expropriation and relocation programmes in the context of development projects, disaster risk reduction and responses to climate change, which have negatively affected the livelihood of rural women (*Vietnam, 2015*).<sup>36</sup>

- Recommends to the State party- use expropriation only for a public purposes defined under the law and with adequate compensation and reparation for the affected women. Evictions and relocations should not result in affected women being rendered homeless or vulnerable to the violation of human rights.

The Committee is also concerned that relocation sites provided to victims of evictions frequently lack basic infrastructure and access to essential services such as water, sanitation and basic health care, affecting women disproportionately (*Cambodia, 2013*).

- It recommends the state party to ensure that evicted communities are relocated to sites which enable women to access their places of employment, schools, health care centers (including sexual and reproductive care), community centers, and other services and amenities necessary to ensure the realization of their rights under the Convention.

The Committee is concerned that laws and regulations governing land revocation and sedentarization fall short of international standards; Individuals and communities affected by development programmes have not obtained fair compensation for seized lands, while some have not been adequately resettled; Resettled individuals and communities have encountered difficulties in finding and alternative livelihood; Sedentarization policies have not taken into account the negative impact on the cultural rights of ethnic minorities (*Vietnam, 2014*).<sup>37</sup>

- It recommends the State party to guarantee transparency of the processes, including by making information on compensation rates, places of resettlement and support policies available well in advance; incorporate age-group-specific and gender-sensitive alternative livelihood strategies in revocation and sedentarization plans and enforce the obligation for enterprises benefiting from revoked lands to recruit landless persons; ensure accessible and effective remedies, including by reviewing complaints received and providing compensation where appropriate.

The Committee expressed concern about the lack of effective consultation with, and legal redress for, persons affected by forced evictions, as well as the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. It is also concerned over reports of violence during the evictions, in some cases carried out by the police (*Cambodia, 2009*).

The Committee strongly recommends that the State party, as a matter of priority, undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects and to ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation that complies with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions and guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health care centres and transportation at the time the resettlement takes place. (*Cambodia, 2009*).

<sup>35</sup> Concluding observations on the combined seventh and eighth periodic reports of Viet Nam, CEDAW/C/VNM/CO/7-8

<sup>36</sup> Concluding observations on the combined seventh and eighth periodic reports of Viet Nam, CEDAW/C/VNM/CO/7-8

<sup>37</sup> Concluding observations on the second to fourth periodic reports of Viet Nam, E/C.12/VNM/CO/2-4



## MINORITY WOMEN, INDIGENOUS PEOPLE AND CUSTOMARY LAND

The Committee recommends the State Party Implement effective measures to eliminate discrimination and violence, including sexual violence and intimidation, against women belonging to religious minorities, such as Ahmaddiyah, Christians, Buddhists and Baha'is, and indigenous women; ensure their security and enhance their enjoyment of human rights and ensure access to land and natural resources for indigenous women, through all available means, including temporary special measures, in accordance with article 4, paragraph 1, of the Convention, and general recommendation No. 25 (2004), on temporary special measures (*Indonesia, 2012*)<sup>38</sup>

The Committee recommends that the State party fully implement the 1997 Indigenous Peoples' Rights Act to ensure that, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples' rights to their lands, territories and resources are fully recognized and protected and that their free, prior and informed consent is obtained in respect of the adoption of any legislation, policy or project affecting their lands or territories and other resources; Prioritize the adoption of the National Land Use Bill and ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) (*Philippines, 2016*)

The Committee notes with concern that the 2001 Land Law, which provides for the titling of indigenous communities' communal lands, has not been implemented effectively and that so far, no indigenous community has received any land title. The Committee also notes with concern, the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral domains, lands and natural resources (*Cambodia, 2009*).

The Committee urges the State party to implement the 2001 Land Law without further delay and to ensure that its policies on registration of communal lands do not contravene the spirit of this law. The Committee emphasizes the need for carrying out environmental and social impact assessments and consultations with affected communities with regard to economic activities including mining and oil explorations, with a view to ensuring that these activities do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources. The Committee encourages the State party to consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries (*Cambodia, 2009*).

The Committee recommends that the State party in particular guarantee the right of indigenous peoples to own, use, control and develop the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The Committee also encourages the State party to consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples (*Thailand, 2015*).

The Committee is concerned at provisions of recently adopted Law No. 18/2013 on Prevention and Eradication of Forest Destruction as well as other laws in force in the State party which contravene the Decision 35/PUU-X/2012 of the Constitutional Court on the right of ownership of customary forests by Masyarakat Hukum Adat. It is further concerned that, while the State party has granted concessions on forested land to develop palm oil plantations, members of Masyarakat Hukum Adat have reportedly been arrested on the basis of the Law No. 18/2013 (*Indonesia, 2014*).

<sup>38</sup> Concluding observations on the combined sixth and seventh periodic report of Indonesia, CEDAW/C/IDN/CO/6-7



	<ul style="list-style-type: none"> <li>The Committee recommends that, as a priority for the implementation of the Plan of Action of the Joint Agreement for the Acceleration in the Determination of Forest Regions, the State party amend all legislative provisions which are incompatible with the Constitution Court Decision 35/PUU-X/2012, including those contained in the Law 18/2013 on Prevention and Eradication of Forest Destruction, and take steps for the review of decisions against members of Masyarakat Hukum Adat based thereon; Identify and demarcate customary lands and forests, resolve disputes thereon, in consultation with representatives of Masyarakat Hukum Adat and the national human rights institutions.</li> </ul> <p>Effectively guarantees their inalienable right to own, develop, control and use their customary lands and resources; Define strong mechanisms for ensuring the respect of their free, prior and informed consent on decisions affecting them and their resources, as well as adequate compensation and effective remedies in case of violation. The Committee also recommends that the State party undertake to harmonize existing laws according to the new law on the rights of Masyarakat Hukum Adat and ratify the ILO Convention on Indigenous and Tribal Populations, 1989 (No. 169).</p>
<b>CROSS-BORDER ISSUES/ EXTRA-TERRITORIAL OBLIGATION</b>	
	<p>The Committee recommends that the State party establish a clear regulatory framework with a view to ensuring that companies incorporated or with their main offices under the State party's jurisdiction are legally accountable regarding violations of economic, social and cultural rights in their projects abroad, in particular in cross-border development projects. The State party should also take into account its obligations under the Covenant when negotiating international agreements. <i>(Thailand, 2015)</i></p>