Rule of Law for Whom? Human Security Perspectives on the Emerging Asian Market for SDGs: Focused on a Cambodian Case Study

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Abstract

This article examines law reform assistance for establishing rule of law in Asia by case study. In Asian countries, land grab is commonly observed as the regional market economy develops. In Cambodia, local and international NGOs jointly submitted a complaint against ANZ Bank, at the Australian National Contact Point (NCP). The NCP, established under the Organisation for Economic Co-operation and Development (OECD) is the body responsible for furthering the OECD Guidelines for Multinational Enterprise. In this case, the ANZ Bank had allegedly funded a local land grab company for a sugar cane plantation by means of an economic land concession, under the local Land Law, passed in 2001. The Asian Development Bank (ADB) assisted in drafting this law. Subsequently, relying on the 2011 UN Guiding Principles on Business and Human Rights, local farmers who lost their land, have access to remedy, however the most vulnerable persons lost their jobs at the plantation without any compensation. Without the human security perspectives from the local context, transnational soft law like the UN Guiding Principles and the OECD Guidelines could harm local vulnerable peoples. As a result, these principles and guidelines are potentially ineffective for protecting and respecting human rights as well as promoting access to justice for them. How then can Goal 16 of the UN Sustainable Development Goals (SDGs) be achieved, in the emerging Asian market?

Keywords: Rule of Law and Development, Human Security, Business and Human Rights, Cambodia, Land Grab

I. INTRODUCTION

This paper seeks a better approach to the rule of law assistance for development in the emerging Asian market. The theory of 'law and development' forms the basis for an analytical framework. Empirical study is used in this case study of Cambodia. Cambodia was selected as it typically suffers from land grabs through law, and it is an emerging

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economy. Given Cambodia's history, law reform was demanded and assisted for, during three transitional periods - (i) from a colony to an independent nation-state, (ii) from socialism to market-based economy and (iii) from war to peace. These are common features shared by most countries in this region.

Land grab is also a typical and negative consequence of law reform. The human rights-based approach advocates for access to justice for the victims. But it is not necessarily effective in the local context. In particular, the most vulnerable could be marginalised, excluded or further sacrificed. As a Japanese who has been involved in law reform assistance for so long, I would like to propose that human security perspectives be integrated into law reform practices in order to achieve a human rights-based approach.

As will be discussed in detail below, 'human security' is a United Nations (UN)-led idea of reviewing security for the individual beyond the framework of nation-state systems for post-cold-war globalisation. Its core is a comprehensive concept of development, peace and human rights. It is articulated in the UN Sustainable Development Goals (SDGs) in 2015. Its Goal 16 lists rule of law and access to justice. Thus, the law reform assistance has been reviewed in light of SDGs.

II. LAW AND JUDICIAL REFORM ASSISTANCE IN ASIA

Law is not just a tool for governance or a means of economic growth. But law reform has been identified as a key component of governance assistance for development. As a mechanism for application of law, judicial systems have been targeted as a subject of development assistance for economic growth. Trubek and Santos categorised such assistance by development agencies as "three moments in the law and development doctrine." The first moment is described as "Law and the Development State." It is followed by the second moment of "Law and the Neoliberal Market." The third moment is discussed as "Emerging Paradigm."[1]

This is also true in Asia, which is considered and expected to be the most remarkable emerging market, manifesting rapid economic growth. As an ADB case study shows,[2] in the context of Asia, judicial reform might well have had an important impact on economic growth. Needless to say, the Japanese experience demonstrates that modernisation of the law and judicial system, based on the continental model in conjunction with the American adversarial system of common law, can contribute to rapid economic growth with social stability.[3] However, the recent law and judicial reform driven hastily by foreign donors and international organisations in the emerging Asian market seem to have difficulty in

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1 D. Trubek and A. Santos, Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice in D. Trubek and A. Santos (eds.) *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press, 2006, pp. 1-18.

2 L. Armytage, "Judicial Reform in Asia: Case Study of ADB's Experience: 1990-2007", 3 *Hague Journal of the Rule of Law*, 2011, Vol. 3, pp. 70-105.

3 Y. Sato, *Commercial Dispute Processing and Japan*, Kluwer Law International, London, New York, 2001.

promoting *sustainable* development. Why are they not working well? What is the purpose of law reform? How should we assist in promoting better law reform in Asia?

After the Cold War, such law and judicial reform assistance was expected to facilitate the triple transition of (i) colonial dictators' crony capitalism to democratic liberalism, (ii) socialist command economies to market-oriented economies and (iii) conflict-torn societies to peaceful and secure societies. Global *scripts* for such legal implantation could not, however, address deep-rooted culture that would require transformation of human values. Rather, facing local reality, it was interpreted in unexpected ways, different from a global perspective. Gillespie and Nicholson describe the situation as follows: Recipients often interpret the global scripts according to a set of norms, epistemic assumptions and power frameworks that differ from those advanced by donors. [4]

In many cases, the newly introduced law and system brought about *unintended consequences*. Further, such donor driven assistance might have even been *intended* to construct and prevail in a new version of Asian colonies for the benefit of transnational corporations rather than local populations. Modern law and system should have been aimed at extending the merits of the market economy to the poor through formalisation of their assets along with De Soto's theory,[5] which was a driving force of the World Bank's law reform assistance. Unfortunately, however, in many cases in Asia, it would be more apt to describe its outcome as having done harm and impoverish those who enjoyed traditional lifestyles. Indigenous and nomadic peoples as well as simple farmers were alienated from their ecological orders and customary law.[6]

Even if law and system were formally established, it would take time to work systematically in any country. Hastily implanted by foreign donors, regardless of cultural and historical compatibility, the law would not be implemented as easily or swiftly as expected. Just the idea of a liberal market economy together with democracy and human rights is still new to most emerging Asian countries. They rush to pass a number of laws for the market without a proper understanding, just to receive foreign aid and investment. Such laws will not in fact be effective since people, accustomed to their own customary law, will not easily understand or trust them. The more laws the donors help to enact, the less confidence in such laws the people of the recipient countries have. This kind of paradox is called '*legal inflation'*. The newly introduced laws must be carefully reviewed and monitored in order to prevent the vicious cycle of the *inflation of law.* Without proper 'aftercare' post implementation from time to time, it will not work for the purpose, the assistance or intention of the donors. Rather such laws could function in ways that would benefit the local powers, which are likely to be in collusion with foreign investors and market forces to exploit local peoples' vulnerability, or did donors intend such results as a necessary process of development?

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4 J. Gillespie & P. Nicholson, *Law and Development and the Global Discourses of Legal Transfers*, Cambridge Uni. Press, 2012, p. 14.

5 H. De Soto, *The Mystery of Capital*, 2000.

6 D. Hall and *et al*, *Powers of Exclusion: Land Dilemmas in Southeast Asian*, Uni. Of Hawai'i Press, Honolulu, 2011, in particular, "Chapter 2: Licensed Exclusions: Land Titling, Reform and Allocation", pp. 27-59.

Development entails social transformation. Human history shows that the sacrifice of peoples' traditional lives for industrialisation and modernisation toward economic growth can be justified. Even widening the gap between rich and poor could be tolerated within a transitional stage from a viewpoint of the trickle-down theory[7] in the flying geese paradigm,[8] in particular, in East Asia. On the other hand, without proper control, the monopoly and domination of the market would also suffocate the market economy itself. Such power imbalance must be checked and restricted to enable sustainable markets. That is why anti-monopoly or competition law is required and introduced. Also, in most Asian countries, the power is not, first of all, equally distributed. The dominating power is required and legitimised to ensure stability of a society with *good governance.* It will demand the balance of power by the rule of law.

The rule of law is a historical creation brought about to restrict power and authority. As such, it serves as a counterbalance by restricting power while at the same time empowering and entitling the powerless. Such balance ensures sustainability. Sustainable markets are a driving force of sustainable development. That is why the 'rule of law' and 'access to justice for all', which aim to include the vulnerable, has been introduced to the sustainable development paradigm: i.e. Goal 16 of the UN SDGs.[9] Thus, it also recommends a bottom-up approach through legal empowerment and entitlement of the vulnerable in development processes. Law is not just for inhuman markets, but it can also be used for *rightful resistance*[10] as part of J. Scott's *weapon of the weak*.[11] Traditional law and practices should not be flatly denied but incorporated and addressed in law reform assistance as a baseline in local contexts.

Nevertheless, it is inevitable that the newly introduced law and system will have a negative impact on local lives as a development process. Land is traditionally the most notable area for such disputes and struggles related to development. It is not only a fundamental asset and resource available to all, but also historically and traditionally considered sacred and a matter of environmental sustainability. Thus, the land law reform in developing countries seems to have become politicised and controversial. Nevertheless, the donors have dared to intervene in this highly political area of land management as a core development policy for the recipients' integration into the global market. Foreign economic powers can enter these countries, expand and let the market economy prevail even in Asia. As a result, significant numbers of people are reportedly losing their traditional land tenure in relation to the recent land law reforms.

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7 A theory that the financial benefits given to big business will in turn pass down smaller business and consumers (Merrian Webster: https://www.merriam-webster.com/dictionary/trickle-down%20theory. Site accessed on 3 April 2018.

8 A theory of industrial development to explain the catch-up process of industrialization of late comer economies, which was developed in 1930s by a Japanese economist, Mr. Kaname Akamatsu and became widely popular in the 1960s for explanation of rapid economic growth in East Asia.

9 The UN General Assembly adopted these to replace its Millennium Goals of 2000 as the new goals of all nations of 2030 on 25 September 2015. https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals. Site accessed on 25 January 2018.

10 O'Brien, "Rightful Resistance", *World Politics Journal*, 1996, Vol. 49, No.1, 31-55.

11 J. C. Scott, *Weapon of the Weak: Everyday forms of peasant resistance*, Yale University Press, 1985.

III. LAND DISPUTES AND LAND LAW: CAMBODIAN CASE STUDY AFTER REVIEWING CASES IN INDONESIA AND MONGOLIA

In order to analyse contemporary land dispute and land law, a Cambodian case is examined as empirical study. Before that, Indonesia and Mongolia cases are briefly reviewed as historical background of the post-colonial context and the post-Cold War context respectively in this region.

Based on De Soto's aforementioned theory, land law reforms to formalise land use by the poor has been assisted by many donors for pro-poor projects to include them in the market economy. In many countries, to the contrary, such reform does not seem to have resulted in securing the poor peoples' land tenure, but rather it has escalated land disputes due to a land grab. Many researchers point to unrealistic assumptions based on ignorance of the local conditions as a reason for such worldwide disasters.[12] Empirical studies in Asia indicate that rent seeking by powerful political and economic elites, colluding with foreign investors through the land market, is at the expense of the poor farmers.[13] The new land law was sometimes allegedly manipulated to justify transnational land acquisition, which caused various human rights abuses locally. In this connection, a human rights-based approach is also advocated for development authorities and foreign donors.[14]

The Indonesia case is typical in Asian post-colonial countries as colonial dictators' crony capitalism to democratic liberalism ((i) listed above). The Mongolian case is a typical post-Cold War transitional countries as socialist command economies to market-oriented economies ((ii) above). These two cases reflect the first and the second waves of "Law and Development Movement"[15] respectively. The Cambodian case is the most complex and contemporary model aimed at peace building, from a conflict-torn society to a peaceful and secure society ((iii) above). Cambodia experienced these three-dimensional transitions in law reform.

A. The Case of Indonesia

After the Cold War, law and judicial reform assistance have facilitated political and economic transitions in Indonesia. Land law reform has been targeted as the core of such transitional policy. Indonesia started the democratisation of a so-called development dictatorship. Like most of the other Asian countries, Indonesia became independent after

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12 J. M. Otto, "Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando de Soto", 1 *Hague Journal on the Rule of Law*, 2009, Vol. 1, pp. 173-195.

13 D. Loehr, "Capitalization by Formalization? Challenging the current paradigm of land reforms", *Land Use Policy*, 2012, Vol. 29, pp. 837-845.

14 P. Wisborg, "Human Rights against Land Grabbing? A Reflection on Norms, Policies, and Power", 26 *Journal of Agricultural and Environmental Ethics*, 2013, Vol.26.6, pp. 1199-1122.

15 D. Trubek, "The "Rule of Law" in Development Assistance: Past, Present, and Future", in D. Trubek and A. Santos (eds.) *supra*, pp. 74-94. Also see B. Tamanaha, "The Lessons of the Law-and-Development Studies", 89 *American Journal of International Law*, 1995, Vol. 89, pp. 470-486 and E. M. Burg, "Law and Development: A Review of the Literature and a Critique of 'Scholars in Self-Estrangement'", 1977, *American Journal of Comparative Law*, Vol. 25, pp. 492-530.

World War II. The Indonesian modern legal system was implanted by the Netherlands during its colonisation. Western land law governed the Dutch plantations while customary law called *adat* also regulated communal land. After independence, abundant western land was nationalised as state land. These land rights were transformed into statutory land rights. But due to limited governance capacity and a weak legal framework, the transformation ended up being inconsistent and arbitrary.[16]

Even after independence, western countries, and Japan assisted Indonesia in order to block the communist influence. Indonesian land law is very complicated. Western donors introduced capitalisation of land under the neo-colonial political economy under the dictatorship of the traditional authorities and so-called crony economy. After the Cold War, land disputes, long oppressed by the dictatorship government, were revealed. Various illegal land grabbing practices by foreign companies were repeatedly reported. Activities seemingly connected to government corruption and weak governance.

Scan. Oil Ltd., a Swedish agribusiness company, was accused of land grab for its plantation in one of the poorest areas of Central Sumba in August 2007. [17] An empirical study found that due to *adat* and the local political economy, the poor and the disadvantaged have little decision-making power as to the use and distribution of natural resources. It recommends creating a new redress mechanism to solve disputes that incorporate elements of customary institutions and rules for more accessibility for the poor.

This case study of Indonesia represents the reality of law and development of most post-colonial Asian developing countries. Historically the modern law and system were implanted for the colonising nations to control their colonies. After their independence, such a modern legal system developed for development and after Cold War, market economy for investment by multinational corporations. Nevertheless, customary law, such as *adat*, remains for local people to live traditionally. Thus, there are conflicts, in particular on land law, which is a fundamental resource of the people while it is a crucial commodity for development and investment. It is not uncommon for the local people to bring a case against a multinational corporation, but it commonly ends in disappointment, since the court is in principle applying state law modeled on the modern legal system to support market economy.

B. The Case of Mongolia

Mongolia experienced a dramatic transition towards democracy and a market economy. Land was suddenly privatised under the policy called shock therapy.[18] Foreign donors, such as ADB, World Bank and the International Monetary Fund (IMF) assisted in such a hasty and drastic change.[19] Uncertainty surrounding the privatisation processes due to

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16 Daryono, "Transformation of Land Rights in Indonesia: A Mixed Private and Public Law Model", *Pac. Rim L. & Pol'y J.*, 2010, Vol. 19, pp. 417.

17 J. Vel and S. Makambombu, "Access to Agrarian Justice in Sumba, Eastern Indonesia", *Law, Social Justice & Global Development Journal (LGD)*, 2010, Vol. 1, pp. 1-22.

18 O. Myadar, "Nomads in a Fenced Land: Land Reform in Post-Socialist Mongolia", *Asian-Pac. L. & Pol'y J.*, 2010, Vol. 11, at p.166.

19 *Ibid*. at p.181.

poor transparency has caused unfair and even illegal distribution and the oligarchy of tenure security was further solidified.[20]

Pastoral land for nomadic peoples is threatened by the exploitation of natural resources. Tourism and mining activities are also reducing the local peoples' access to land they used to live on and use for their pasturage. As a result, local communities and peoples have been forced to leave their traditional grazing areas. They will eventually end up in the slums of the cities.[21] Environmental destruction and human rights abuses from mining in these lands have also been reported. This failure is due to the rapid decollectivisation and inability to revive nomadic identity. Paradoxically, sedentarisation has been going on by rapid land privatisation so that nomadic people are integrated into the global market economy. Foreign investment has been requested to compensate for the economic crisis.

The Onggii River Basin mining company's gold-digging operation caused a water shortage affecting local people which resulted in protests.[22] The city of Erdenet, which has a rich deposit of copper ore, found that its soil was contaminated by waste produced by mining companies. Informal miners called *ninja*[23] were exposed to serious health problems when working in the mines. According to the World Bank,[24] these mining companies do not provide appreciable employment opportunities for rural populations in the country (estimated 30,000 to 100,000) nor are they desired by local communities. These mining companies prefer to use workers outside the local communities as they are more disciplined and have a better work ethic. In short, outsiders are easily controlled and managed. Under the land law, these companies are given licenses by the government for 40 years, extendable up to 100 years, to mine on State land.

This case in Mongolia shows the result of so-called shock therapy of transition economies. In socialist countries, land was owned by the state and collectively used. Rapid privatisation of land denied public use and brought about serious exploitation of vulnerable people living on such land in conjunction with the corruption of the authorities.

C. *The Case of Cambodia*

The case of Cambodia is more complicated due to the long civil war. It was part of the Indochina War, which was a proxy war during the Cold War following post-colonial struggles. It essentially destroyed law and order as well as important human resources. Under the 1991 Paris Peace Agreements, the United Nations Transitional Authority in Cambodia (UNTAC) was deployed in March 1992 to facilitate a general election for establishing a legitimised government, which became a historical peacekeeping operation. The market economy was brought in during UNTAC's mission there. After the Cold

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20 N. Bagadai, *et al*, "Does uncertainty exist where transparency is missing? Land privatization in Mongolia", 29 *Land Use Policy*, 2012, Vol. 29, pp. 798-799 and p.801.

21 O. Myadar, *supra*, at p.161.

22 *Ibid*. at p.197.

23 This is a nickname after "the teenage mutant Ninja turtles" of popular animation as they wearing backpacks resembles them.

24 World Bank, *Mongolia: A Review of Environmental and Social Impacts in the Mining Sector* 1, 2006.

War, peace building is leveraged by integration of global economy. Cambodia benefited from foreign investment by stimulating development for sustainable peace. Law reform was in particular prioritised to facilitate these transitions. The *Khmer Rouge* seriously destroyed the Cambodian legal system and human resources.[25]

Land disputes were quite common due to the forced evacuation of the people and abolishment of private ownership of land by the *Khmer Rouge*, the *Maoist* communist regime. Landmine-planted and deserted lands were normally uncontested except for land border issues. Basically, it became customary for people occupying the land and property to use them as their own. UNTAC brought back 370,000 asylum seekers staying in refugee camps in Thailand along the border into Cambodia before the general election in May 1993. The number of land and property disputes was expected to increase with the return of the asylum seekers to their original place of inhabitance.[26]

Thus, UNTAC in fact introduced the 1992 Land Law[27] which was replaced by the 2001 Land Law.[28] It aimed to reduce land disputes by providing comprehensive regulations, including titles to farmland as most Cambodians were farmers. Certainly, the objective seemed to have been achieved to some extent. However, due to the delay of land registration, it brought about *unintended consequences*. Unfortunately, the Law also created an opportunity for land grab from poor farmers and slum dwellers by means of abuse of the newly introduced land registration system by powerful families. They made profits from land as its price soared while those who were ignorant or could not afford to register their land lost it. Even people with registered land easily lost it when they could not repay the high-interest loans. Without a meaningful social security system, illness among family members caused owners to sell their land. Some even lost it to fraud due to their ignorance and lack of education.

As a result of the rapid commoditisation of land, many poor or vulnerable people lost their land legally under the law. Capitalisation and formalisation of land rights would bring about a land grab through rent seeking by the powerful political and economic elite. Poor farmers living in and cultivating land under customary law were exploited.[29] These phenomena seem to be tolerated by international society for the higher priority of maintaining peace. A development dictatorship or authoritarian regime might be a

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25 Y. Sato, "Lessons from UNTAC Human Rights Operation", *Technology and Development (JICA)*, 1997, No. 10, pp. 45-53.

26 *Ibid*.

27 In 1989, just after the departure of the Vietnamese troops, which ousted *Khmer Rouge* and occupied Cambodia for ten years, the land privatization had been already started. The 1992 Law invalidated the title of land before 1979, when *Khmer Rouge* forced all the inhabitants in Phnom Penh to evacuate to faming land. It provided for land title in residential areas by verification of five years possession. But, farming land was not regulated under this temporal law.

28 English translation is available at: http://www.metheavy.com/File/Media/Land%20Law%202001.pdf. Site accessed on 26 January 2018.

29 D. Loehr, "Land Reforms and the Tragedy of the Anticommons-A Case Study from Cambodia", *Sustainability*, 2012, Vol. 4, pp. 773-793.

sort of necessary evil as the country transitions towards sustainable peace.[30] From this perspective, Cambodia may arguably be at the stage of a *structural violence* now.[31]

Recently, serious human rights violations and abuses seem to have occurred in conjunction with land grab. The laws, which were introduced by foreign donors and international organisations, are arguably manipulated to justify a land grab and related human rights abuses all over Cambodia. Serious human rights violations and abuses have occurred in conjunction with land grab activities. The laws introduced by foreign donors and international organisations may have arguably been manipulated to justify land grab activities and human rights abuses in Cambodia. An example of this can be seen in the list of investors often granted leases by the Economic Land Concession (ELC) regardless of the complaints against these investors.

ELCs grant a lease period of 99 years for 'state private land' from the authorities. The government considers unregistered land to be state private land. Inhabitants whose land is not registered can be suddenly forced to evacuate from the land they have lived on and cultivated. According to a Land Report in 2013 by a Cambodian NGO, the Cambodia Human Rights and Development Association (ADHOC), over the past years, more than 20 percent of Cambodian land resources are concentrated in the hands of one percent of the population, and more than 60 percent of arable land has already been granted to private companies in the form of ELCs.[32]

According to the ADHOC reports and other NGO reports, in Kampong Speu Province, a Thai-affiliated businessman (who was also a Cambodian Senator), build a sugar cane plantation for exporting sugar to Thailand and other countries. His company, Phnom Penh Sugar Co. (PPS), claims to have been granted ELC for the land where farmers were actually cultivating and living in villages in Om Laing commune, Thpong district.[33] Their land was not registered and they did not know the land law. Village leaders protesting the eviction were arrested on charges of damaging the company's property, located in the disputed land under the land law. The villagers were protesting against PPS and refused to evacuate from there. Allegedly, PPS has not provided the villagers with adequate compensation for the land they lost. Even when they were given substitute

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30 The UN endorsed the power-sharing of the victor of the 1993's UNTAC facilitated general election of FUNCINPEC headed by Norodom Ranariddh with the loser of Cambodian People's Party headed by Hun Sen since he refused to transfer the power. So as the Second Prime Minister, Hun Sen continued to rule most of Cambodian territory until 1997 when Hun Sen ousted Ranariddh by their military clash. Since then he has been ruling Cambodia as a guarding of peace – he occasionally claims that if opposition parties win the election, another war occurs in Cambodia.

31 J. Galtung, "Violence, Peace and Peace Research", 6 *Journal of Peace Research*, 1969, Vol. 6.3, pp. 167-191.

32 ADHOC, *Land Situation in Cambodia 2013*. Even according to the Ministry of Agriculture, Forestry and Fishery (MAFF) of Cambodia, until 8 June 2012, Cambodia granted ELC to 118 companies of the total land area of 1,204, 750 hectares, while ADHOC and other NGOs estimate the total more than 2 million hectares. See MAFF homepage: http://www.maff.gov.kh/elc/, and for detailed mapping of ELC, see another famous local NGO called LICADHO's home page: http://www.licadho-cambodia.org/land_concessions/. Site accessed on 26 October 2017.

33 This area was isolated and controlled by *Khmer Rouge* until their final surrender in 1998. Thus, the area was isolated and underdeveloped despite being close to Phnom Penh.

lands, they were too remote for anyone to access and were neither suitable for cultivation nor living. Their lives have essentially been destroyed.[34]

The Cambodian case illustrates a paradox of peace building of conflict-torn countries by the rule of law assistance. Law and legal systems are essential institution for state building. They provide a mechanism of non-violent dispute settlement processing following transitional justice to prevent the resumption of violent conflicts. For sustainable peace, the rule of law must be established in tandem with democracy. Economic and social developments are expected to deal with deeply embedded root causes of conflicts. When a newly legitimised government introduces market economy with assistance from foreign donors, and international aid agencies, the laws for governance and market are prioritised for infrastructure of market economy. As a result, traditional and customary laws that preserve local authority and protect local people are set aside by new modern laws to meet global standards. The local political and economic elites with vested interests dominate and benefit as agents of global power while local vulnerable people under the colonial structure are sacrificed. Such exploitation system is supported by structured violence. The contemporary development dictator justifies it as prevention of conflict. The law more or less supports this structure under the auspice of the so-called rule of law, for which foreign donors assisted.

If such hard law paradigm for rule of law has such limitations, how about emerging soft law paradigms? The UN and the OECD as well as the private sector itself may try to control abuse of human rights in developing countries via the supply chain. However, can soft law solve this paradox of colonial market? We examine the application of such transnational soft law below.

IV. IMPACT OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: EFFECTIVENESS OF HUMAN RIGHTS DUE DILLIGERNCE

A. Human Rights Abuse Complicity

The case of PPS received extensive international media attention in January 2014. Oxfam Australia, in its report on the funding of a land grab, criticised ANZ Bank's loan via its subsidy to PPS. It was accused of being involved in environmental destruction and human rights violations against the farmers. The military violently forced them to evacuate. Exploitation of laborers, including child labourers, was also pointed out. ANZ

[34] Assisted by ADHOC, I visited the village, interviewed the leaders and inspected the disputed land and the substitute land on 2 June 2010. In Ratana Kiri Province, land belonging to the indigenous people was granted ELC to a rubber plantation company exporting rubber to China. In September 2009, defenders of ADHOC for villagers detained on illegal occupation of land were also charged a criminal charge of incitement and defamation. These incidents are now quite common. Even the Head of ADHOC's Human Rights and Legal Aid Section was charged with public defamation and other criminal charges on July 2015 as he condemned the arbitrary arrest and detention of two residents involved in a high-profile land dispute in Siem Reap Province.

Bank is accused of complicity in these human rights abuses.[35] The summary of the facts the report argues is as follows.

> ANZ Bank lends tens of millions of dollars through its subsidiary, ANZ Royal Bank, which has been a joint venture since 2010 with another Cambodian tycoon (ANZ Bank holds majority shares) close to the Prime Minister. A social impact assessment was conducted in 2013 and an audit carried out by a consulting company at the request of PPS. It found that PPS failed to perform a proper social/environmental impact assessment. PPS failed to implement the environmental, health and social management programs required by ANZ Bank. It adopts the Equator Principles[36] and Human Rights Due Diligence (HRDD) procedures recommended by the UN Guiding Principles on Business and Human Rights in 2011 (the GPs)[37] to meet its ethical lending obligations and recommended its own 2010 audit commissioned by ANZ Royal Bank.[38]

B. Access to Remedy

According to Oxfam Australia, ANZ Bank refuses to pay the compensation requested by local people in Thpong district for their damages, as it received a repaid loan from PPS and terminated the relationship with PPS just after its accusation. This seems inconsistent with the HRDD as per the GPs for protecting human rights by economic enterprises, as it failed to provide for or facilitate affected people's access to remedy through legitimate processes (Paragraph 22 of the GPs).

Then, on behalf of the affected farmers, two NGOs, the Equitable Cambodia (a Cambodian NGO) and Inclusive Development International (a US based NGO), jointly filed a complaint against ANZ Bank and ANZ Royal Bank for their breach of the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) at the Australian National

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35 Oxfam Australia, *Banking on Shaky Ground: Australia's Big Four Banks and Land Grabs*, 2014, pp. 33-35.

36 This is a voluntary code adopted by financial institutions around the world that have agreed to only fund projects that adhere to "sound social and environmental standards" in 2003. As of June 2013, the Equator Principles III were available. Currently, 80 financial institutions in 35 countries have officially adopted it, covering over 70 percent of international Project Finance debt in emerging markets (http://www.equator-principles.com/index.php/about-ep/about-ep Site accessed on 27 January 2018.

37 They were presented in the final report by the UN Special Representative of the UN Secretary-General "[….] on the issue of human rights and transnational corporations and other business enterprises." (the so-called Ruggie Report [A/HRC/17/31]) and endorsed by the UN Human Rights Council in its Resolution [17/4] in 2011. They are milestones of the UN's efforts to address the private sector, which cannot be directly bound by international law, on how to deal with human rights.

38 According to Oxfam Australia, the ANZ Royal Bank's 2010 audit team did not visit the resettlement sites of the local farmers who were forcefully evicted. I have visited the village to interview the village leader and the resettled framers in a remote mountain dwelling three times since 2010. The families I visited on 2 June 2010 were living on a small patch of land with no water nor crops. Their land was far from the main road, some10 minutes by car. Their lives were quite hard and their compensation was meager, making the integrity of the 2010 audit quite questionable. The 2010 audit was necessary for ANZ Bank to comply with its obligations as a signatory to the Equator Principles.

Contact Point (NCP) in October 2014 under the OECD Guidelines.[39] They were accused of contributing to human rights abuses through their actions and omissions, and failing to take reasonable measures to prevent or remedy them. ANZ Bank responded via an NGO called Business & Human Rights Resource Centre based in London with a letter dated October 20, 2014. Denying its responsibility, it claims that it has been working to encourage the resolution of the issues by: (i) remaining in contact with the Cambodian government and European Union officials and (ii) offering the ANZ Bank's support to the Ad-Hoc Committee to work on the issues, consisting of representatives from the EU, the Ministry of Commerce, provincial administrations and the sugar industry.[40]

The EU is also involved in the negotiation. Its EBA (Everything But Arms) preferential trade scheme for least developed countries is now being reviewed for Cambodia since it is claimed to have harmed the poor rather than supporting them.[41] When I visited the village leader[42] in 2011, he told me that he had been invited to Brussels and cities in Germany to appeal to the public to boycott this "bloody and bitter sugar" from Cambodia. Thus, the exempted tariff applied for the import of the commodity seems to be a focal point of the pressure to redress the farmers concerns in Cambodia. The case also seems to have received reference in the ILO-backed Arbitration Council in Cambodia for mediation.[43] In addition, according to Equitable Cambodia, in response to the complaint, the Australian NCP has offered to mediate between the parties in early 2016. [44]

Due to such pressures, PPS seems to have paid some sizeable compensation money to the village leader and some village representatives selectively. Some of their family members are also working for the plantation and sugar factories of PPS. Nevertheless, most vulnerable people, who were relocated to a remote area claim that they have not received any compensation. Rather they claim that PPS even confiscated the substituted farmland allocated far away from their houses in small patch of lands in the remote relocation area. Obviously, the village of farmers and their communities were divided

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39 The OECD Guidelines provide a section on human rights, which was added to the 2011 update (see: http://www.oecd.org/corporate/mne/) Site accessed on 23 January 2018. For details of complaints, see Inclusive Development International (IDI) and Equitable Cambodia (EC), 2014. Also see IDI homepage: http://www.inclusivedevelopment.net/what/advocacy/cambodia-anz-backed-sugar-land-grabs/. Site accessed on 26 May 2015.

40 ANZ Bank (Ben Walker, Head of Sustainable Development), 2014, 2. See Homepage of Business and Human Rights Resource Centre: http://business-humanrights.org/en/cambodia-displaced-villagers-bring-oecd-complaint-against-anz-for-allegedly-financing-project-linked-to-forced-land-confiscation-anz-responds Site accessed on 14 August 2015. The Sydney Morning Herald February 23, 2017. Site accessed on 23 January 2018: http://www.smh.com.au/national/investigations/victims-put-pressure-on-anz-over-the-loss-of-their-land-20170222-guiin4.html.

41 Equitable Cambodia (EC) and IDI, *Bitter Sweet Harvest: A Human Rights Impact Assessment of the European Union's Everything But Arms Initiatives in Cambodia. Cambodia and Germany*, 2013. http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf Site accessed on 26 May 2015.

42 He had been detained and released after the village people's protest by blocking National Road No. 4.

43 Interview with an arbitrator of the Council in Phnom Penh on 14 November 2014.

44 Interview with staff of EC and ADHOC in Phnom Penh on 30 September 2015 and an email from E. Vuthy, Executive Director of EC on March 16, 2016. According to him, the Australian government will send an investigation mission for this case.

and destroyed by the selective payment of compensation. They are now blaming each other for receiving bribes from PPS. [45]

Such market-based soft law (the GPs and the OECD Guidelines) approaches seem somewhat effective at least in regards to accountability of the private sector for protection of human rights as we are now all connected with each other in this global market. Now networks of stakeholders in supply chains and value chains seem to be able to contribute to complement for the implementation of hard law through such soft law. However, soft law does not also seem to be immune from a similar dilemma on the rule of hard law; namely, the gap between global discourse and local reality.

C. *Real Issues from a Human Security Point of View: How to spare the children from absolute poverty?*

As in the case of the negative impacts caused by Oxfam Australia's criticism and the subsequent campaigns against global companies, effective remedy has not been provided for the most vulnerable local victims. This is especially true for labour-intensive manufacturers, such as shoemakers and others in the apparel industry, given local suppliers' record of human rights violations and other forms of abuse. Cutting off the relationship with PPS caused the allegedly exploited labourers, including child labourers, either to lose or almost lose their jobs and thereby their means of survival. Losing their access to income, these children risk being sold even by their own parents as they may otherwise not be able to afford to take care of them. Child trafficking is, unfortunately, not uncommon in Cambodia.[46] In this way, they can be doubly victimised due to the absence of an alternative for survival.

In addition, many companies might also hesitate to invest in such developing countries, as it could prove too risky for their reputations. The threat of being publicly criticised by the global market could also cause a chilling effect to companies on opportunities of business and investment for local development. The living conditions of local farmers leave them vulnerable to these NGOs' decisions to announce human rights violations by foreign companies if they fail to consider local needs for human security. From a human security point of view, such a result cannot be acceptable.

So-called global standards, including the GPs, developed in New York, Washington D.C. and Geneva, are not necessarily the most functional in terms of implementation

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[45] Interviews with local peoples in the village on 10 August 2016. One of the village councils, who claims to be a former *Khmer Rouge* solider, that ten village representatives secretly received sizable amount of money for compensation. So now the new representatives were chosen for negotiation with PPS. Remnants of *Khmer Rouge* seem to remain support of the villagers. The village leader, who went to Europe to appeal for boycotting the sugar from PPS, was seriously sick and claimed that he received equivalent of more than 100,000USD for compensation to his family. His big house is located just in front of beautifully paved load accessing the PPS factories. His son is working for PPS. In contrast, the people, who were relocated in the remote relocation land around ten km away from the mail read, live in shabby hutches. They even suffer from lacking in drinking water.

[46] See CNN report: http://edition.cnn.com/interactive/2013/12/world/cambodia-child-sex-trade/ (Site accessed on 27 May 2015). I interviewed several Cambodian children, who were sold by parents and refused by them after they were rescued from Bangkok at Save the Children's Smile Association (SCSA) in Siem Reap in 2012.

in developing countries such as Cambodia. Voiceless masses in these countries are not properly represented in the process of developing the standards that later affect them. They are then ignored if and when the principles are actually applied in the field, so far removed from the centre of the market. Local context is in fact not duly considered when they are developed in faraway places but applied to the day-to-day lives of villagers in rural areas; even if the international society so demanded, the Cambodian government and judiciary may not have the capacity to bring justice to the people due to their weak governance.

Like law reform assistance, this gap also has to be identified and addressed in the implementation of the GPs and other global standards. How can the market hedge such exploitation risks and rent-seeking opportunities by mitigating such gaps in practicing HRDD? If these are not sufficiently taken into account, unintended consequences will continue to reduce the human security of local populations in developing countries, as is the case of hard law introduced by foreign donors.

Individualistic, adversary and competitive markets advanced by donors through their law reform technical cooperation are locally challenged by what has been a neo-patriarchical and paternalistic society protected by traditional customary collective ownership in the field. The sudden introduction of a market economy in traditional pre-modern societies seems to have escalated or created new avenues for corruption. Corruption, itself, might be construed by donors to rule the local communities by the law of donors. The human rights discourse is also double-edged as it creates human rights imperialism based on a modern-European model without due care for local culture and social reality. The rule of law is reconsidered in light of customary law and practice to co-exist with modern state law, which includes recent views on legal pluralism.[47] While the value of human rights itself is universal, an approach for how it should be realised varies, depending on local contexts. Without due care for local contexts, even soft law like the GPs will also become harmful to local people. These people have a right to participate in their own development. They can also promote their own human rights therein.

The global discourse must be interpreted within and adapted to local contexts in the practice of law reform assistance in developing countries.[48] Responding to international criticism against ELC due to the prevailing land grab and human rights abuses, the Cambodian Prime Minister issued the Directive 001 in 2012 to suspend ELC and sent a large number of students to volunteer for land registration.

In addition, the real impact of foreign assistance for governance, in particular, law reform assistance, must be questioned. The registration system introduced by Land Law 2001, which was assisted by ADB, had adverse effects on poor farmers. Without registration, they could not claim their land titles. Unregistered land is considered to be state private land. ELC can therefore be granted on it. The World Bank had assisted land registration in Cambodia but its assistance was suddenly terminated due to alleged corruption in the process. Thus, poor farmers, who cannot fulfill the registration procedure,

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47 B. Z. Tamanaha, "The Rule of Law and Legal Pluralism in Development", 3 *Hague Journal of the Rule of Law*, 2011, Vol.3. No.1, p. 13.

48 J. Gillespie and P. Nicholson, *supra*, pp. 10-15.

are left vulnerable and without any title as the law essentially invalidated their customary land tenure. Under the law, disputes related to unregistered land shall be referred to the Cadastral Commission for dispute settlement. According to the results of my interviews with local people and donor staff, however, this does not seem to work well due to widespread corruption and weak governance.

Once land is registered, the titleholder may use litigation for the land dispute. Nevertheless, it allegedly remains difficult for poor farmers to use litigation in courts even with the new Code of Civil Procedures, assisted by Japan International Cooperation Agency (JICA), was adopted in 2006 and entered into force in 2007. According to ADHOC, poor farmers cannot deposit the litigation fees required for filing a lawsuit. The Code provides for exemption of such deposits by people who cannot afford to pay them. However, they have to first be recognised as such by the local authorities in order to qualify for exemption. In practice, they would most probably have to give up litigation as they have no means of bribing the authorities.[49] Thus, it can be said that the Code has not yet helped the poor farmers gain access to justice although while it improved general court practices in a technical sense. So how should we deal with these predicaments?

V. HUMAN SECURITY PERSPECTIVES

The United Nations Development Program (UNDP) first introduced human security in its Human Development Report 1994. After the Cold War, the development agenda was addressed as a new security matter in conjunction with sustainable peace. This concept advocates a viewpoint of vulnerable people in development processes. Human security is concerned with the downside risks of vulnerable people. Its approach is based on not only their protection but also empowerment. To this end, it promotes international cooperation since national security alone is no longer sufficient for the protection of individuals in a globalised world. Beyond the nation-state system, this new paradigm requires the contributions and participation of the private sector and civil society as non-state actors.[50]

UNDP is also promoting a (human) rights-based approach to development. Why should such a concept of human security be advocated and what is its relationship to development? Human rights are based on individualism that originated in Europe. But this underlying value has not been shared in fact with many developing countries, in particular, in Asia. A human security discourse would be more flexible and context-oriented and "*it recognizes the interlinkages between peace, development and human rights, and equally considers civil, political, economic, social and cultural rights.*"[51] It would provide for cross-disciplinary and comprehensive ways of understanding, so as to be more acceptable and realistic to people living in neo-patriarchal and paternalistic societies. Thus, it can

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[49] Interview with Mr. Thun Saray, President of ADHOC in Phnom Penh on 14 November 2014. In my interview with him on 30 September 2015, he also reported that the Social Land Concession for poor landless people under the Land Law has been currently abused as a new tool of land-grabbing.

[50] United Nations General Assembly, 2010, para. 30 at 8 and para. 53 at 13.

[51] United Nations General Assembly, *Follow-up to General Assembly resolution 66/290 on human security: Report of the Secretary-General* (A/68/685, December 2013). UNGA, *Follow-up paragraph 143 on human security of the World Summit Outcome* (A/66/L.55/Rev.1), paragraph 3 (c), in particular.

introduce more community-centred and comprehensive perspectives in development or investment in remote areas of developing countries.

It is, however, criticised as being too vague to be an analytical tool. Meanwhile, traditional structural violence may be inevitable in local communities. Nevertheless, from the human security's point of view, this would promote care for vulnerable people as a higher priority in impact assessments of their own. It would not be so easy to identify such vulnerable people in local context. Thus, affected local people, in particular, the most vulnerable voiceless persons as the highest priority, should be consulted and included in designing development and investment projects.

FPIC (Free Prior Informed Consent)[52] is now customarily required to uphold indigenous peoples' rights in the context of environmental protection. Such processes can also be applied to vulnerable local populations in any development and investment projects in principle. However, it would be difficult to identify the rights holders in the local political economy and to protect privacy and business secrets.[53] Thus, in the process of planning and implementing the project, a negotiation mechanism among stakeholders, with independent third-party participation should to be incorporated. Human security perspectives promote ad-hoc dispute settlement by stakeholders; e.g., local people assisted by lawyers and NGOs, governments and foreign investors.

HRDD should not only be accountable to due process, but also based on traditional, informal and customary practices. Even if such practices seem incompatible with human rights and democratic principles, they should not be dismissed at once, but rather modified and reformed from these viewpoints.[54] Instead of just rejecting the child labour, for instance, decent work for local people could also include facilitation to educate their children as part of planning and implementing the projects. Adequate opportunities for education must be ensured for these children even if they have to work to subsist in a harsh local reality.

Certain corrupt activities viewed as corrupt activities by global standards, might be locally tolerated as necessary evils or cultural practices for local people living in patron-client societies. Cancelation of assistance projects due to a no-tolerance policy could harm the most vulnerable people. The local elite might even take advantage of it as an opportunity to abuse. In such situations, foreign donors should make efforts to control and mitigate controversial activities by introducing approaches fitting the local context to reduce such risks and their root causes.

Thus, access to justice, which is listed as Goal 16 (in particular, 16.3) in the SDGs, could be articulated and refined through local customary practices for access to remedy

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[52] FPIC is a key principle in international law and jurisprudence related indigenous peoples. It is the principle that community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. It is advanced by NGO called Forest Peoples Programme (see its home page: http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic Site accessed on 27 May 2017.

[53] See D.L. Deisley and L.K. Lipsett, *Free, Prior, and Informed Consent: Observation on "Operationalizing" Human Rights for Indigenous Peoples*, No. 2 RMMLF-INST Paper No. 2A, Rocky Mountain Mineral Law Foundation, 2013, pp. 1-2.

[54] Ross Clarke, "Customary Legal Empowerment: Towards a More Critical Approach", in Janine Ubink (Ed.) *Customary Justice: Perspectives on Legal Empowerment*, IDLO, 2011, pp. 43-66.

in local contexts. Simply adapting global standards would not be successful. These are interpreted and manipulated by local elite to secure their vested interests as discussed in the case study. Law reform assistance also aims to reform customary law in the field in order to achieve the idea of the rule of law and to restrict the abusive power as well as empower the vulnerable. In other words, law reform assistance is not only a matter of implanting modern law suitable for advanced market economies. It requires comprehensive approach since it is also linked with other SDGs, such as Goal 1 of poverty reduction and Goal 4 of education for all.

A new law and system must be created to fit the needs of local people, in particular, from a viewpoint of legal empowerment of the vulnerable. But that is not easy since the local political and economic elites, who are more or less backed by foreign business, often dominate the counterpart government. They enjoy seeking rents and capturing their elite. Even lawyers involved in such law reform assistance projects cannot be immune from such dilemmas. People who are always marginalised and vulnerable people are most likely to be excluded from such policy-making and legislative processes.

Human security perspectives, in contrast, promote polycentric network governance[55] through the participation of non-state actors to complement such limitations. In particular, the private sector's supply and value chains, and civil society networks can keep each other in check. Stakeholder networks will examine the sustainability of market and development at HRDD.[56] With their collaboration for monitoring the real effects of the law and order, assisted by local lawyers and researchers on this area of study, the donors could receive effective feedback to take care of necessary amendments and improvements for ensuring improvements and better project implementation.

The opportunities of rent seeking and corruption can be controlled and minimised in such day-to-day monitoring as a form of aftercare through the assistance offered through collaboration with stakeholders. Then, access to remedy will also be integrated in the process of law reform. Legal empowerment is also promoted in the course of monitoring, feedback, aftercare and follow-up. In this way, people will eventually become confident in the rule of law.

These stakeholders will refer not only to hard law like human rights conventions, but also soft law, such as the GPs, the United Nations Global Compact (UNGC)'s Ten Principles on human rights, labour rights, environment and anti-corruption,[57] and the OECD Guidelines, as well as voluntary standards such as ISO26000 of Social Responsibility[58] and the Equator Principles. Thus, even these non-binding instruments can

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55 J. S. Davis, "Network Governance Theory: A Gramscian Critique", Environment and Planning A, 2010, Vol. 44, pp. 2687-2704.

56 See paragraph 36 of the UNGA, 2014, *supra*.

57 As proposed by former UN Secretary-General Kofi Annan in 2000, non-state actors, mainly the private sector engaging business are committed to the UN principles on these. As of 27 January 2018, its membership consisted of 9,670 companies from 161 countries. See: https://www.unglobalcompact.org Site accessed on 27 January 2018.

58 This is the standard of social responsibility launched by International Standard Organization in 2010. It contains human rights due diligence affiliated with the UN Guiding Principles on Business and Human Rights in 2011. See: https://www.iso.org/iso-26000-social-responsibility.html . Site accessed on 27 January 2018.

be effective for sustainable development and investment to bring about synergy effects. The synergy effects are not only for soft law paradigm, but also traditional hard law.

The UK Modern Slavery Act 2015 is typical to supplement and support the UN GPs and the OECD Guideline as well as other soft law mechanism by legally requiring global companies to research and reveal their supply-chain operations. It promotes transparency for consumers and investors as the end users of such chains to decide their attitudes for sale and investment. In this way, reputation risk as a core enforcement element can be effective to ensure the removal of human rights complicity from the market.

The SDGs' Goal 17 of partnership articulating human security perspectives promotes such synergy for their Goal 16 of access to justice by non-state actors, such as private sector and civil society. Hard or formal law is no longer sufficient even at the level of enforcement in the global market, neither is soft law effective in fact without support of traditional hard law or state institutions. Hard law and soft law complement each other in the rule of law.

Nevertheless, soft law is also not necessarily effective to provide vulnerable people access to justice in their local context since soft law itself is also created and promoted by so-called global North. Thus, Cappellett's third wave of access to justice movement, ADR can be tested in traditional local context,[59] however ADR is an alternative concept to modern formal dispute resolution mechanisms modeled on modern judicial system.

For inclusiveness of soft law with informal processing, I argue CDP (Comprehensive Dispute Processing) based on Japanese experience.[60] Traditional model is not an alternative to modern formal model. Modernisation is not a premise of development. In pre-modern local context, in particular, customary law and practice based on local culture and authority should be respected and mobilised first. Modern law and system could be integrated with adequate modification for improvement of their rule of law in careful consideration of their political economy. Such negotiation approach for inclusive development in a local context should be recommended for law reform cooperation for all, including marginalised voiceless peoples. So-called *living law* in communities can facilitate better implementation of law, whether hard or soft.[61]

VI. CONCLUSION AND RECOMMENDATION

It is recommended that law reform assistance providers have in mind human security perspectives on the rule of law in the emerging Asian market in the context of access to justice for all, in particular, for the vulnerable. Specifically, the following five points should be seriously considered in planning and implementing as well as accessing and evaluating the law reform assistance, in particular, as regards land law.

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[59] M. J. Trebilcock and R. J. Daniels, *Rule of Law Reform and Development: Changing the Fragile Path of Progress*, Edward Elgar, 2008, pp. 276-278.

[60] Y. Sato, *supra*.

[61] Although such folk law is considered the culprit in sanctifying various basic human rights abuse, e.g., women and ethnic or religious minorities, such social or cultural norms and practices should not necessary be viewed as timeless given. In conjunction with global norm and practice, they could be transformed gradually to fit in the process of their endogenous development. See M. J. Trebilcock and R. J. Daniel, *supra* n. 60 at p. 36.

First, the highest priority should be placed on the legal empowerment of the vulnerable in its law reform assistance. Second, local law, in particular, customary law and practice as well as traditional dispute processing should also be respected and reformed in the process of law reform assistance to ensure appropriate integration in the global market. Third, *rightful resistance* could be encouraged through legal awareness and legal aid to realize the rule of law for checks and balances through comprehensive dispute processing against powerful elites. Fourth, emerging soft law on human rights responsibilities of transnational enterprises, such as GPs and other CSR instruments, including ISO26000 and the UNGC principles, should be referred to. Fifth, collaboration between private sector networks, civil societies, lawyers and researchers in area studies should be promoted to monitor legal practices on the ground and provide feedback to donors on the rule of law.

Law is not just a tool to govern people. Rather law is people's confidence, based on history and culture. Law is also not an ideology. Without economic, social and political elements, law cannot work properly. The rule of law projects advanced by donors must understand local context as well as respect and encourage local ownership. They are not at all represented by their governments. For sustainability in development, legal empowerment for the purposes of human security for the vulnerable people is essential. The trial and error approach would be useful and applicable. Continuous monitoring and feedback by a network of stakeholders, in particular, non-state actors from the field are crucial for the methodology for promotion of such rule of law for people. It requires sociological analysis and knowledge from deep area studies for better implementation and effect of law in the local context. Thus, law reform assistance is not just for technical transformation of law and systems, rather it is a constructive joint venture for mutual understanding of donors and beneficiaries as well as all the stakeholders for creation of new legal confidence through interdisciplinary studies.