

Towards a Philippine National Action Plan for the UN Guiding Principles on Business and Human Rights*

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Context

Agriculture and Land Conflicts in the Philippines

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


The UNGP BHR are of particular importance to Philippine agriculture as investments, both foreign and domestic, continue to increase. These investments are driven by the growing demand for food, the incentives given to biofuel production and the opening up of the economy to agricultural trade and investments. Unfortunately, these investments have resulted to instances of physical and economic displacement of farmers by investors.

The Land Governance and Assessment Framework study of the World Bank in 2013 found that policies and guidelines in the Philippines encourage direct

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negotiations between rights holders and investors; in most cases, however, these are not always transparent. Reports of improper procedures in securing free, prior and informed consent (FPIC), lack of full disclosure on the proposed investments, and misrepresentation have been documented.

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

Relevant government agencies recognize these problems and have issued the Joint DAR-DENR-LRA-NCIP Administrative Order No. 1 of 2012 (JAO 1) to clarify their respective jurisdictions, policies, programs, and projects. Unfortunately, JAO 1 has been causing undue delay in the issuance and registration of ancestral land and ancestral domain titles.

Among agricultural farmers who have gone into long-term contracts (such as long-term lease, joint venture, and marketing contracts) with large agribusiness companies, many of these contractual arrangements are problematic and unfavorable to the smallholder farmers (FAO, 2013).

In the transactions between business companies and agricultural farmers and indigenous communities on their ancestral lands, the following issues have been identified:

Non-consultation of local communities: Investments in forestlands do not require consultation with local communities given that these areas are part of the public domain. As such, inhabitants of ancestral domains within forestlands are not consulted prior to investment operations. Despite policies mandating Free, Prior, and Informed Consent (FPIC), several cases of forcible entry into ancestral domains have also been documented. In some instances, FPIC processes are also manipulated in favor of investors.

Non-transparency and access to information: Important and basic documents, such as contracts between the investor and former landowner or with the farmers, have been found to be inaccessible. To make matters worse, farmers and indigenous peoples lack the technical or legal capacity to examine contracts and financial documents.

Erosion of land tenure security: Land use rights and restrictions are relatively clear and straightforward. And yet, implementation on the use of the



land with agricultural corporations has resulted in displacement from ancestral lands or farms, and loss of livelihood.

Lack of support in dispute resolution: There are avenues to lodge complaints by affected parties with responsible agencies. Yet, despite the presence of these mechanisms for lodging complaints, there is a perceived lack of support in prioritizing farmers and indigenous peoples, particularly in providing them with the much-needed legal support.

Emerging Business and Human Rights Issues in Land and Agriculture

Increasing land and agricultural investments

In light of continuing gaps in land policies and land administration – this situation has resulted in human rights abuses among agricultural farmers and indigenous communities. As part of its continuing initiative to monitor security of land rights in the country, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) prepared a research study on *Land Conflicts and Rights Defenders in the Philippines*. This study revealed that 55 percent of the 354 recorded land and resource conflicts from January 2017 to June 2018 were caused by land investments. These conflict-laden investments cover more than 847 thousand hectares of land. Majority of land investment conflicts (88 percent) are between communities and private businesses. The same study found that government agencies and LGUs have served as key facilitators of private investments on land (Salomon, 2018).

The following grievances highlight ongoing and potential abuses in the future:

Endangering IPs' ancestral lands from impacts of mining and deforestation. Cases documented reveal that several medium and large-scale mining corporations either ignore FPIC processes or manipulate the processes in their favor. The presence of military personnel protecting corporation claims limits the freedom of the IPs to work on their lands. As a result of such, they experience harassment and killings. Documented cases include 76 killings of indigenous human rights defenders from 2010 to 2016 (Tebtebba Foundation, 2016). From January 2017 to June 2018, 19 individuals have been killed, 4 have been injured, while 5 have been detained, in defense of their lands against destructive or unwelcome mining investments (Salomon, 2018).



Mining operations have also caused deterioration of the environment, resulting to worsened health conditions, affected livelihoods, degraded water quality, decreased agricultural production and fish catch, and communities' greater vulnerability to the effects of natural disasters.

On the other hand, a moratorium on mass-scale tree-cutting issued in 2011 effectively makes cases of corporate logging illegal (EJ Atlas, 2018). A log ban has also been issued in 2017. Despite this, ANGOCC has recorded six forestry investments encroaching upon ancestral domains from 2017 to June 2018. These cases are either ongoing or have been halted with potential for resurgence (Salomon, 2018).

Transgressing land rights of agricultural farmers. Of the 193 investment land conflicts that were recorded by ANGOCC from January 2017 to June 2018, 52 percent were plantation investments covering no less than 118 thousand hectares of land. These agribusiness investments were characterized by the production of a single type of crop (mono-cropping), thus crippling the food security of the community (Salomon, 2018).

Many of these investments benefit the investors more than the farmers they engage in businesses with. The unfair terms stipulated in contracts and lack of information provided to farmers lead to short-lived benefits, eventual loss of control over the land, and large sums of debt (FAO, 2016).

Many cases of lease agreements involved investors paying farmers rent lower than the amortization needed for the farmers to sustain their ownership over the land. In some instances, this has led farmers to surrender their land-ownership to the agribusiness company. In cases of growership contracts, farmers have been unable to meet production quotas that have been set too high, and are sometimes penalized for such. Furthermore, some growership agreements do not take into account costs of production and prevailing market-prices, leading to minimal gains for farmers involved in these contracts (Salomon 2018; FAO, 2016).

In 2017, the Philippines has been classified as the second deadliest country in the world and the deadliest country in Asia for environmental rights defenders (Global Witness, 2018; Cox, 2018; Watts, 2018). 41 percent of the killings that Global Witness recorded in the Philippines in 2017 were related to agribusinesses (Global Witness, 2018). Also taking into account Global Witness's data, ANGOCC recorded 431 incidents of human rights violations (including 61 killings) related to land and resource conflicts from 2017 to June 2018 (Salomon, 2018).



Corporate operations displacing communities, curtailing livelihood, and degrading the environment. Almost 17,000 households were recorded to have been evicted from their residence as a result of land and resource conflicts from 2017 to June 2018. Most of these displacements are linked to land and agricultural investments, through the entry of plantation investments and mining in ancestral domains in Mindanao, and infrastructure projects. Infrastructure projects also pose the most threat of displacement among communities (Salomon, 2018).

Irresponsible corporate and mining operations have been identified, warned, and issued closure orders by then Secretary Lopez of the Department of Environment and Natural Resources (DENR). One of these companies is the Semirara Mining and Power Corporation operating at Caluya, Antique. The company has been asked to explain why it should not be held liable for several violations due to its operations in the province (Geronimo, 2016). The information used by the DENR to demand a show cause order from the mining company has been provided by the Commission on Human Rights (CHR). The CHR used the UNGP on Business and Human Rights in conducting investigations and in convening an inter-agency working group with the Department of Environment and Natural Resources (DENR), Environmental Management Bureau (EMB), and Department of Agrarian Reform (DAR), among others.

The UNGP BHR and Land Governance in the Philippines

Introduction of UNGP BHR in the Philippines

On 25 March 2014, key stakeholders from business, civil society, and government came together in a forum titled *“Business and Human Rights: Introducing the UN Guiding Principles of the Ruggie Framework as a Tool for Risk Management.”*

The main objective was to introduce the UNGP BHR and how these can be implemented and realized in practical terms. Participants from the business sector expressed their willingness to implement and incorporate UNGP BHR in their business policies and practices and even agreed to look at the principle of extra-territoriality. More dialogues and consultations were planned towards finding a common ground on some issues, such as, the negative effects of mining or illegal logging. During this event, the German Hanns Seidel Foundation (HSF) expressed its support for the development of a Philippine National Action Plan for Business and Human Rights (HSF, 2014).



The Forum was followed by a resolution of the European Parliament to the Philippines on 8 June 2016 to ensure effective implementation of all core international conventions relating to human and labor rights. The resolution called for continuing progress in the promotion of human rights – including the publication of the National Action Plan (NAP) for Human Rights – and implementation of the UNGP on Business and Human Rights. The resolution focused attention on the repression of activists peacefully campaigning for the protection of their ancestral lands from the harmful impacts of mining and deforestation. It also concentrated on the inhuman working conditions of many Filipino seamen, calling on European Union (EU) member-States to bar vessels from European ports when working conditions contravene labor rights and the EU Charter of Fundamental Rights.

More recently, on 11 March 2017, a two-day international workshop on “Business, Human Rights and Access to Justice” was held in the Philippines. The multi-stakeholder workshop, led by the Philippine CHR, involved delegates from China, Japan, Korea, Nepal, Mongolia, Philippines, and other United Nation (UN) agencies, including representatives from National Human Rights Institutions (NHRIs), civil society organizations (CSOs), academe, and other international organizations.

As a follow-up to the international workshop, a “*National Dialogue on the United Nations Guiding Principles on Business and Human Rights*” was convened on 10 January 2018 in the Philippines. The conference sought to update country stakeholders on the activities of the CHR to build awareness on the UNGP BHR and identify mechanisms to address business-related human rights issues. The struggle of underprivileged communities to retain control of their land in the face of expanding business interests was also highlighted, and the conference participants emphasized the need for multi-stakeholder consultation in the development of the NAP on Business and Human Rights.

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



Operationalization of the UNGP BHR in the Philippines

The Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights/UNWGG), mandated by the United Nations Human Rights Council (UNHRC) to promote the effective and comprehensive implementation of the UNGP BHR, noted in its 2016 Guidance on Business and Human Rights that National Action Plans (NAPs) can be an important means to promote the implementation of the UNGP BHR (DIHR, n.d.). In the Philippines, the Presidential Human Rights Committee (PHRC), the primary advisory body to the Office of the President in effectively addressing all human rights concerns/issues in the country, is tasked to initiate the formulation of the NAP of the UNGP BHR.


In November 2016, the PHRC held a government consultation on a National Action Plan for Business and Human Rights. PHRC subsequently informed representatives participating in the dissemination forum on concluding observations of the United Nations Committee on Economic, Social, and Cultural Rights (UNCESCR), that the country will be embarking on the formulation of the 3rd Philippine National Human Rights Action Plan, 2018-2022. The said plan will set out the activities and targets, including monitoring and reporting activities, covering the eight core human rights treaties to the Philippines has committed to (NEDA, 2017).

To date, the country has yet to produce a NAP on the UNGP BHR. It remains uncertain whether the Philippine National Human Rights Action Pan will include a section on business and human rights, or whether a separate NAP is to be developed (DIHR, n.d.).

However, while the UNGP BHR is still not fully in place in the country, these have started to be implemented and operationalized. A key step is the building of awareness among relevant constituencies and development of indicators towards monitoring business corporations' observance of UNGP BHR and other international covenants.

Building Awareness on the UNGP BHR

The UNGP on Business and Human Rights was activated by the CHR during the leadership of former Executive Director Jacqueline Mejia and then Chairperson Etta Rosales. The latter started popularizing the UNGP BHR by facilitating forums with the sectors interested in mining, land rights, and agrarian



reform. These fora included a UNDP-assisted event where government officials and top managers from the business community were called upon to clarify issues and align their understanding of the UNGP BHR.

In an interview, Jesus Torres, Division Chief of the Economic, Social, and Cultural Rights (ESCR) Center of the CHR, emphasized that even before the UNGP BHR were identified, monitoring matters related to Business and Human Rights (BHR) is embedded in the CHR's mandate to keep an eye on human rights issues. The CHR conducts data gathering and research before engaging, requesting, or recommending to government agencies on legal issues.

CHR has also been exploring similar existing initiatives that complement their goal to mainstream the UNGP on Business and Human Rights (Torres, personal interview, 9 March 2017). Early this year, CHR submitted a position paper to the 17th Congress of the House of Representatives, on the proposed amendments to the Corporation Code of the Philippines (Batas Pambansa Bilang 68). The Commission proposes to mainstream the UNGP BHR in the amendment of the Code, drawing upon the second pillar of UNGP BHR: the corporate responsibility to respect human rights (CHR, 2018).

Establishing Mechanisms and Developing BHR Monitoring Tool

Aside from building awareness on the UNGP BHR, the CHR has sought to identify the mechanisms needed to effectively address issues on BHR. One such mechanism is the establishment of indicators that are needed to monitor businesses and their adherence to human rights. Using pre-tested indicators, CHR intends to: (a) review related literature on the International Covenant on Economic, Social, and Cultural Rights;¹ (b) engage rights holders; and (c) encourage participation of duty-bearers, including businesses. Along this objective, the CHR is in the process of developing a guidebook for monitoring and reporting purposes.

Providing Access to Remedy

One of the many roles of CHR is to ensure “access to remedy.” In December 2016, the CHR filed the “world’s first ever national investigation into human rights harms resulting from climate change, despite apparent opposition from some fossil fuel companies” (Fidh, 2016). This petition was submitted by 18 individuals

¹ The International Covenant on ESCR is a UN human rights treaty that gives legal force to the Universal Declaration of Human Rights. This treaty covers important areas of public policy, such as the rights to: work, fair and just conditions of work, social security, adequate food, clothing and housing, health, and education.



and 14 organizations, implicating 47 carbon producers/fossil fuel companies, such as, Chevron, ExxonMobil, Total, BHP Billiton, Suncor, and Conoco Philips (Greenpeace, 2016).

According to the CHR, from 21 of the 47 participants who have responded, only six have essentially admitted their contribution to increasing fossil fuel emission and cited programs they have initiated to mitigate the negative effects of their business operations. The other 15 companies have questioned CHR's jurisdiction, saying that the Commission is encroaching on the sovereignty of their mother State; this is because most of these companies do not have local registration or counterparts in the Philippines (Canlas, personal interview, 10 March 2017). The issue of jurisdiction states that a country may apply criminal law to domestic companies for conduct abroad – that is, the principle of extraterritoriality (Global Witness, 2011).

Recommendations to Further Mainstream the UNGP BHR in the Philippines


The CHR has acknowledged that much is needed to fully adopt the UNGP on BHR in the Philippines. The many existing and overlapping laws related to business and human rights have caused more chaos than order. Thus, there is a need to undertake more studies to make these laws complementary, using the UNGP BHR as a synchronizing framework.

According to Jesus Torres of the CHR, the Commission, alongside other stakeholders, should come together and develop a collaborative platform to minimize the adversarial handling of cases (Torres, personal interview, 9 March 2017).

Also, it is important to establish the indicators that will be used in monitoring BHR to foster agreements and understanding in observing these guidelines.

Along this direction, the following activities are recommended:

- ❑ Convene a multi-stakeholder consultation upon the development of the National Action Plan for Business and Human Rights led by the Presidential Human Rights Committee;
- ❑ Conduct workshops among stakeholders, particularly the vulnerable sectors to help them better understand their rights, the mechanisms, and options they have in dealing with investors/businesses; and,

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- ❑ For the academe to help in conducting studies that would strengthen and simplify the adoption of UNGP BHR such as a) analyzing the gaps in existing Philippine laws related to BHR; and b) linking the success of businesses to their observance of human rights.

The implementation of the UNGP BHR in the Philippines is important not only for rectifying business-related human rights violations, but also in preventing future injustices, given the increasing investments in agriculture. Complementary policy guidelines should also be promoted such as the recognition of land rights as human rights.

On a more urgent note, there is need for immediate response to the adverse impacts of mining and corporate business operations in ancestral lands that are affecting indigenous communities. ■

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