

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

## Policy Brief<sup>1</sup>

### CONTEXT

#### Background

Land has always been a source of conflict. While the incidence of conflict may not be increasing, the level of conflict continues to intensify as more cases surface where violence has been employed systematically. Land conflicts have often been caused by overlapping land laws and policies that are further complicated by the bias of governments to actively encourage investments on land and the exploitation of natural resources. As businesses pursue the development of their enterprises, cases abound where profits are realized at the expense of the human rights and land rights of the rural poor.

On 16 June 2011, the United Nations Human Rights Council endorsed the Guiding Principles (UNGPs) 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 UNGPs standards are applicable because the business sector has a wide range of impacts – both positive and negative – on human rights, including: 1) adequate standard of living; 2) just and favorable conditions of work; 3) water and sanitation; 4) education; 5) access to information; and 6) non-discrimination (Gotzmann and O’Brien, 2013).

#### Overview of the UNGPs

In some instances, the impacts of business enterprises may be positive, such as increasing access to employment or improving public services. Or they can be negative, such as polluting the environment, underpaying workers, or forcibly evicting communities.

In 2008, the United Nations endorsed the ‘Protect, Respect and Remedy Framework’ for business and human rights,<sup>2</sup> which recognizes unequivocally that States have the *duty* under international human rights law to *protect* everyone within their territory and *jurisdiction* over human rights abuses committed by business enterprises. This duty means that States must have effective laws and regulations to prevent and address business-related human rights abuses

<sup>1</sup> This document has been prepared to provide an overview and relevance of the UN Guiding Principles on Business and Human Rights (UNGPs BHR) in the context of the Philippines. It also summarizes the major issues and recommendations from the *National Dialogue on the UN Guiding Principles on Business and Human Rights* organized by ANGOC, Joint Action for Land Rights (JALR), KPA, and ILC last 10 January 2018 at University Hotel, UP, Diliman, Quezon City, Philippines. This national dialogue is a follow-up to the *Southeast Asia Regional Forum on Business and Human Rights* jointly organized by ANGOC, KPA and ILC last 20 October 2017 in Verjandel Hotel, Quezon City, Philippines.

<sup>2</sup> This framework was developed by then-Special Representative of the UN Secretary General, Professor John Ruggie, following three years of research and worldwide consultations with businesses, civil society, governments and victims of corporate human rights abuses.

and ensure access to effective remedy for those whose rights have been abused.

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

Finally, the UN Framework recognizes the fundamental right of individuals and communities to *access effective remedy* when their rights have been adversely impacted by business activities. States must ensure that the people affected have effective access to remedy with the court system or other legitimate non-judicial process. For their part, business companies should establish or participate in grievance mechanisms for these adversely affected individuals or communities.

In 2011, the UN Human Rights Council unanimously endorsed the UNGPs on Business and Human Rights, a set of guidelines to operationalize the UN Framework. Following the endorsement, the UN Working Group on Business and Human Rights, consisting of five independent experts, was assigned to guide the implementation of the UNGPs.

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

### The STATE Duty to PROTECT

States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations. States should set clear expectations that companies respect human rights

in every country and context in which they operate. State actions shall include: (1) enacting and enforcing laws to require businesses to respect human rights; (2) creating a regulatory environment that facilitates business to respect human rights; and (3) providing guidance to companies on their responsibilities. States should ensure that policies are coherent across its departments.

### The CORPORATE Responsibility to RESPECT

The UNGPs affirm that business enterprises – regardless of size, sector or location – must prevent, mitigate and, where appropriate, remedy human rights abuses that they are involved with, including those abuses that may have been carried out by their suppliers or partners. This requires that business enterprises have the necessary policies and processes in place to meet this responsibility. First, companies must institute a policy commitment to meet the responsibility to respect human rights. Second, they must implement human rights due diligence across their operations, products and partners.<sup>3</sup> Third, they must have processes in place to enable remediation for any adverse human rights impacts they may have caused. Where businesses identify that they have caused or contributed to adverse impacts, they should cooperate in remediation through legitimate processes.

### Access to Remedy

When a right is violated, victims must have access to an effective remedy.

It is the duty of the State to ensure that domestic judicial mechanisms are able to address business-related human rights abuses effectively and do not erect barriers (such as, administrative fees or lack of language interpreters) that prevent victims from presenting their cases. A comprehensive State-based remedy system should also provide non-judicial grievance mechanisms to adjudicate business-related human rights complaints. Business enterprises should also provide for, or participate in, effective

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<sup>3</sup> *Human rights due diligence* refers to the process of identifying and addressing the human rights impacts of a business enterprise across its operations and products, and throughout its supplier and business partner networks. Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations.

mechanisms to address grievances from individuals and communities who may be impacted adversely by the company's operations.

The UNGPs set out a list of effectiveness criteria for State- or business-based non-judicial grievance mechanisms. These criteria stipulate that effective

grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, and rights-compatible. Simply put, they must provide genuine remedies for the victims of human rights violations by companies and must not amount to communications or political exercises.

### Box 1: The Struggle for Agrarian Justice of the Pagatpat Asosasyong Mansasaka (PAMA)

**B**arangay Pagatpat is one of 80 *barangays* in Cagayan de Oro, Misamis Oriental on the north-central part of the city, with a large river (Iponan River) located at the north-east. *Barangay* Pagatpat used to be an agricultural community with major crops of corn, banana, rice, coconut, and papaya. At present, many of the agricultural lands have been reclassified into residential lands to cope with the fast-growing population of the city. *Barangay* Pagatpat has been identified by the City Government as one of its relocation sites. Recently, a housing project of 1,000 houses was constructed by the city government to cater to informal settlers living in the city.

The reclassification of agricultural lands to residential lands has affected the farm areas of the *Pagatpat Asosasyong Mansasaka* (PAMA). Since 1980, members of the PAMA have been the actual tillers of five parcels of agricultural land with a total size of 18.6949 hectares, under peaceful and consensual arrangements with the now deceased landowner Amelia G. Navarro. On 9 February 1991, Ms. Navarro passed away and the same landowner-farmer relationship continued with the landowner's sole heir, Mr. Celestino Navarro, and his subsequent heirs Ms. Karen Alicia Rineheart and Ms. Aubrey Alicia Rineheart who reside in the United States of America.

The peace was disturbed in 2007 when Jukens Builders and Trade bulldozed the farmlands of the PAMA to make way for socialized housing. Total damage was estimated at PhP 1,000,000. Jukens Builders and Trade is owned by Joselito Talaid, Mayor of Kadinglan, Bukidnon. Mr. Talaid claimed that the landholdings of the PAMA were sold to him by Ms. Karen Alicia Rineheart and Ms. Aubrey Alicia Rineheart in 2008. In the following years, Jukens Builders and Trade continued to seize the land claimed by the PAMA. Today, only four hectares remain with the association.

On 29 November 2007, PAMA filed a declaration of Tenancy, Peaceful Possession, Security of Tenure, Damages, and issuance of Temporary Restraining Order (TRO) against Jukens Builders and Trade as represented by Joselito J. Talaid.

On 21 January 2008, the DAR provincial officer of Misamis Oriental issued a Notice of Coverage (NOC) to the heirs of Amelia G. Navarro placing the entire landholding under Comprehensive Agrarian Reform Program (CARP) coverage.

Subsequently on 6 February 2008, PAMA filed with DAR a complaint for illegal, premature, and unauthorized conversion against Jukens Builders and Trade for having developed a housing project even without the required conversion order from the Department of Agrarian Reform (DAR).

By this time, the Jukens Builders and Trade had already constructed a fence around the landholding. A guard house and gate marked protrude the entrance of the landholding with a conspicuous sign which read: FATIMA WEST PLAIN SUBDIVISION. Paved roads had also been constructed on the PAMA farmlands where laborers continued to cut down the remaining fruit-bearing trees.

The subsequent investigation by the DAR Provincial Office of Misamis Oriental found ongoing developments in the area without prior DAR clearance. As a result, the Regional Director John M. Maruhom issued a Cease and Desist Order (CDO) against Jukens Builders and Trade on 7 July 2008 to prevent further destruction of the land.

Initially, Jukens Builders and Trade failed to comply with the DAR order, forcing the DAR Region 10 office to enlist the help of the Philippine National Police (PNP) Regional Command to impose the CDO (dated 13 November 2008); thus, forcing Jukens Builders and Trade to stop operations for seven days. However, on 27 February 2009, the newly-appointed Acting DAR Regional Director issued an order lifting the CDO; thus, allowing Jukens Builders and Trade to continue the destruction of the agricultural lands.

Upon learning of the lifting of the CDO, PAMA filed a Motion for Reconsideration with the Acting DAR 10 Regional Director on 19 March 2009. After almost one year (22 February 2010), the Acting DAR Regional Director issued a resolution denying the Motion for Reconsideration and affirming the lifting of the CDO.

The PAMA farmers wrote a letter (dated 9 February 2010) asking the DAR Region 10 Office to effect an NOC and to distribute the subject lands to farmer-beneficiaries. Immediately after hearing the bid of the PAMA, Jukens Builders and Trade applied for the Land Use Conversion of the subject lands from agricultural to residential with the DAR on 10 February 2010. PAMA opposed the application

of conversion through the filing of an Opposition/Objection dated on 8 March 2010 with the Center for Land Use Policy, Planning and Implementation (CLUPPI).

With the assistance of Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD Mindanaw), PAMA filed an urgent Motion to Enforce the Cease and Desist Order before the Office of then DAR Secretary Virgillo De Los Reyes on 19 July 2010, enjoining Jukens Builders and Trade to stop developing the subject landholdings.

After almost two years, DAR issued an NOC covering the subject landholdings on 15 December 2012. In retaliation, Jukens Builders and Trade hired security guards on 23 June 2011 to defend its landholding developments. These guards were instructed to harass the PAMA and their families. These incidents prompted the farmers through DAR Provincial Office, to request for assistance from the PNP-Cagayan de Oro City. On 27 April 2012, the residence of Alejandro Responte, the leader of the PAMA, was showered with bullets by unidentified men. Fortunately, no one was hurt.

On 13 September 2012, the DAR Adjudication Board (DARAB) promulgated the Decision in DARAB Case No. 16067, (Reg. Case No. X (06) 2041) that the PAMA shall not be considered as *de jure* tenants in the subject landholdings. A Motion for Reconsideration was filed but subsequently denied. Thereafter, the Decision was raised to the Court of Appeals through a Petition for Review on the Decision of the DARAB dated 15 December 2014. A Petition for Review

on the Decision of the Court of Appeals was likewise filed before the Supreme Court (SC) but was again denied by the SC in its resolution dated 25 March 2015.

Thus, the issue on tenancy was finally resolved – the PAMA shall not be considered as *de jure* tenants in the subject landholdings. Despite this, the PAMA persisted to claim its members' rights over their land under the CARP as they applied as agrarian reform beneficiaries (ARBs) for the land with the assistance of the DAR office in Cagayan de Oro City.

On 9 November 2017, in a dialogue between DAR and the PAMA, the DAR Central Office committed to facilitate the resolution of the cases of the PAMA lodged with the DAR. On 17 November 2017, the DAR certified the particular case of the PAMA ADM case no. A01'02-X0222-1039 or "Protest for CARP Coverage and Application for Land Use Conversion Order, entitled Celestino G. Navarro et. al./Jukens Builders and Trade represented by Joselito Talaid VS PAMA represented by Mr. Alejandro Responte et. al" as a flashpoint case deserving speedy resolution due to the threat to life and limb against of the PAMA.

Currently, the PAMA occupies only four of the 18 hectares of their claimed land. They continue to sustain their alliances with BALAOD Mindanaw, the Archdiocese of Cagayan de Oro, the City Peace and Order Council, and the DAR Provincial and City Offices. They are being supported by the ANGOC and the People's Campaign for Agrarian Reform Network, Inc. (AR Now!) in the national level. ■

#### **Source:**

Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (2017). *Continued struggle of farmers towards justice and land tenure security: A case brief of Pagatpat Farmers Association VS Jukens Builders and Trade*. Cagayan de Oro, Misamis Oriental, Philippines. [Unpublished case brief for the Joint Action for Land Rights].

## THE UNGPs AND LAND GOVERNANCE IN THE PHILIPPINES

### Introduction of UNGPs 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 UNGPs and how these can be implemented and realized in practical terms. Participants from the business sector expressed their willingness to implement and incorporate UNGPs 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 on 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 for Human Rights – and implementation of the UNGPs 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 port 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 Commission on Human Rights (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.

### **Operationalization of the UNGPs in the Philippines**

While the UNGPs are 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 UNGPs and other international covenants.

#### **1. Building Awareness on the UNGPs**

The UNGPs on Business and Human Rights was activated by the CHR during the leadership of former Executive Director Atty. Jacqueline Mejia and then Chairman Etta Rosales. The latter started popularizing the UNGP by facilitating forums with the sectors interested in mining, land rights, and agrarian reform. These fora included a UN Development Programme (UNDP)-assisted event where government officials and top managers from the business community were called upon to clarify issues and align their understanding of the UNGPs.

In an interview, Atty. Jesus Torres, Chair of the ESCR Center, emphasized that even before the UNGPs were identified, the CHR had embedded in its mandate to monitor human rights issues on Business and Human Rights. The CHR conducts data gathering and research before engaging, requesting, or recommending to government agencies on legal issues. Also, CHR has been exploring similar existing initiatives that complement their goal on mainstreaming the UNGPs on Business and Human Rights.

#### **2. Establishing Mechanisms and Developing BHR Monitoring Tool**

Aside from building awareness on the UNGPs, 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 (ESCR);<sup>4</sup> (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.

#### **3. 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 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, 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

<sup>4</sup> 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.



sovereignty of their mother State; this is because most of these companies do not have local registration or counterparts in the Philippines.<sup>5</sup> 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).

## UNGPs and Philippine Agriculture

The UNGPs 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 negotiations between rights holders and investors; in

### Box 2: The OFFWA Association's Protracted Pursuit of Their Right to Land

In 1998, 400 hectares of *Hacienda San Lucas* in *Barangay Hilamonan* were first covered under the Comprehensive Agrarian Reform Program (CARP). With an enumerated population of 12,212 in 2010, *Barangay Hilamonan* is the most populous of the 32 *barangays* in Kabankalan City (Philippine Statistics Authority, 2010).

The Overflow Farmers and Farmworkers Association (OFFWA) is an organization of farmers and laborers of *Hacienda San Lucas* in *Sitio Overflow*, *Barangay Hilamonan*. OFFWA, which emerged from the reorganization of *Katilingban sang Mangunguma kag Mamumugon sang Overflow* (KAMMO), was formally established in 2012, and was registered with the Department of Labor and Employment (DOLE) in 2015 with the help of the Social Action Center–Kabankalan. As of July 2017, OFFWA has 56 members engaged in the cultivation of rice, sugarcane, and banana.

When Pablo Luis Azcona, current administrator of the *hacienda*, became aware of the land's coverage under the CARP, he demanded that the farmworkers vacate the *hacienda*. With the help of hired armed goons, Azcona began to drive the farmworkers away to prevent them from working on the *hacienda*. Purportedly, two farmers were slain by these armed goons during these operations. The farmers' families were forced to move to a relocation site that had been allegedly purchased by the local Department of Agrarian Reform (DAR) from the National Housing Authority (NHA).

The farmers believe that, in the year 2000, Mr. Azcona himself applied for the conversion/reclassification of CARP-covered land. The farmers do not know, however, whether the land use of the areas in question has actually been changed from agricultural to either residential or industrial in the municipality's zoning plan.

In 2012, the agrarian reform process for *Hacienda San Lucas Inc.* went back to step one. First, a new notice was issued

for some 130 hectares of land under title number T-46616, which was published by the Philippine Daily Inquirer (PDI) on 4 October 2012. In 2014, new notices for more than 270 hectares of land under title numbers T-208006 and T-208008 were issued by DAR and published by the Philippine Star on 22 May 2014. However, since these lots are affected by the previously-mentioned application for land conversion, the land acquisition and distribution (LAD) process for the two titles has halted.

To this date, the DAR Municipal Office (DARMO) maintains that it has not received any conversion order from the DAR Central Office. However, despite the unclear status of the conversion application and the opposition of potential agrarian reform beneficiaries (ARBs), several construction projects have emerged and persist on allegedly Comprehensive Agrarian Reform Extension with Reforms (CARPER)-covered land, including a subdivision named after the original owner of the *hacienda*. As of the moment, construction of the La Villa Concha subdivision has nearly been completed and the units are almost ready for occupancy. The construction of the *villa* has been commissioned to HLJ Construction and Enterprises, headed by a certain Henry Jordan.

In September of 2016, DAR reported that the issuance of the Notice of Coverage (NOC) for title number T-46616, the first one to be issued, had been erroneous. Mr. Azcona claimed that the NOC had not been served to him as the administrator of San Lucas Inc. Since the NOC has yet to be served to and received by the landowner, land acquisition has yet to commence.

OFFWA members then confronted the DARMO about Azcona's claim, but even the Municipal Agrarian Reform Officers (MAROs) were unable to provide proof that the NOC had actually been received by Azcona. Further, OFFWA's land claim folders could no longer be found at the office.

<sup>5</sup> Interview with Jackie Canlas, Legal Consultant, Commission on Human Rights, 10 March 2017.

At the same time, OFFWA's members continue to be hindered from working on the hacienda. To make ends meet, they have been engaging in various skilled to semi-skilled occupations unrelated to agriculture. OFFWA members are calling upon the Kabankalan government to clarify the land use status of the areas on which construction projects are ongoing. Industrial activities should also be brought to an immediate halt, if it is determined that the subdivision and

other projects are illegally being constructed on agricultural land.

Regarding the issuance of an erroneous NOC, OFFWA has called upon the DARMO – specifically, MAROs Lito Delos Santos, Luz Rezaga, and Rolando Morales – to sign CARPER-LAD Form 14, or the Report on Failure to Serve the NOC or VOS (voluntary offer to sell) Acceptance Letter to the Landowner and Request for its Publication. ■

**Source:**

Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan/Solidarity Towards Agrarian Reform and Rural Development (Kaisahan Inc.). (2017). *Case Brief: Overflow Farmers and Farm Workers Association (OFFWA)*. [Unpublished case brief for the Joint Action for Land Rights].

Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). (2017). Field Interview. 4 July 2017, Negros Occidental.

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 to 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. 01-12 to clarify their respective jurisdictions, policies, programs and projects. Unfortunately, this has worsened the situation, causing undue delay in the issuance of 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-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 lack the technical or legal capacity to audit and examine 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 the displacement of farmers and loss of livelihood.
- Lack of support to farmers 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, particularly in providing them with the much-needed legal support.

### Emerging Business and Human Rights Issues in Agriculture

Increasing agricultural investments—despite continuing gaps in land policies and administration—has resulted in human rights abuses among agricultural farmers and indigenous communities. These complaints have already been filed in relevant government agencies as well as in international bodies.

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

### 1. *Endangering IPs' ancestral lands from impacts of mining and deforestation*

In a statement released in September 2016 for the 59<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights (CESCR), the Tebtebba Foundation underscored the continuing problems faced by indigenous peoples of the Philippines in mining and the abuse of their rights to land.

Despite the presence of FPIC, medium and large-scale mining corporations are manipulating these processes

in their favor. The presence of military personnel protecting corporation claims limits the freedom of the IPs to work on their lands. Instead, they experience harassment and killings. Documented cases include 76 killings of indigenous human rights defenders from 2010 to 2016 (Tebtebba, 2016). Mining operations have caused deterioration of the environment, resulting to worsened health condition, livelihood, water quality, and decreased agricultural production and fish catch.

### 2. *Transgressing land rights of agricultural farmers*

As part of its initiative to monitor land reform in the country, the Asian NGO Coalition for Agrarian Reform

#### Box 3: The Agumil Case: The Aborlan Coco Farmers

**F**illed with hopes of much better income, the small coconut farmers in Aborlan, Palawan entered into contracts with an oil palm company, cleared 200 hectares of their farms for the entry of oil palm, and accessed PhP 13 million loans from Land Bank of the Philippines (LBP) for farm development. However, after almost 10 years of waiting, the farmers have not earned a single centavo and their loans have more than tripled.

While oil palm may have provided fulfilled dreams in other countries and regions, the opposite happened in Aborlan. A recent study by the Institute of Land Governance (ILG) revealed the following:

- Increasing farmers' indebtedness, e.g., from PhP 13 million to PhP 43 million pesos for one cooperative alone;
- Unfair contracts that have put the palm oil company in control of technology, production, project, and loan funds, thereby allowing the company to earn more from the cooperative;
- Displacements of farmers from controlling their lands, loss of incomes, livelihoods, and sources of foods for 10 years;
- Low capacity of the farmers' cooperative to engage investors and the lack of local groups assisting in the formulation of land deals, thereby leading to unfair contracts;
- Encroachment of mono-crop oil palm in forestlands since only 33 percent of the lands are alienable and disposable (A&D); and,
- Insufficient government support to grievances to address the farmers' concerns.

#### **Source:**

Salcedo, R. G. (November 2016). *The Palawan oil palm: The Aborlan Coco Farmers- Agumil Case*. Xavier Science Foundation-Institute of Land Governance (XSF-ILG). [Unpublished].

These issues need to be addressed through the following recommendations:

- The government should review the contracts for possible termination or amendments, and look closely at the financial records of the palm oil company;
- LBP should take a second look at the current status of farmers' loans, which may have already reached hundreds of million pesos;
- The Philippine Coconut Authority (PCA) should look at status of coco farmers who have lost income for the past 10 years;
- The Cooperative Development Authority (CDA) should review the management take-over of farmers' lands by the palm oil company;
- The Department of Environment and Natural Resources (DENR) should act on the encroachment of oil palm plantation into forest zones; and,
- A grievance mechanism should be established with an effective penalty clause that is accessible to the farmers.

To ensure sustainable safeguards of farmers interests into the future, the following are also proposed:

- Establish a mechanism, led by a third independent party, to review land deals for fair partnerships;
- Build capacities of local CSOs on responsible land investments to become local land deal advocates;
- Build capacities of communities on the engagement of investors; and,
- Conduct serious studies to develop oil palm production technologies that are not based on mono-cropping. ■



and Rural Development (ANGOC) published a 2015 research study on land conflicts and human rights violations in the Philippines. In this study, ANGOC presented data stating that the Philippines is third among countries with the highest number of deaths among land and environment defenders (Global Witness as cited in ANGOC et. al., 2015). Moreover, data from the Commission on Human Rights shows a total of 77 cases of agrarian/land-related conflicts (CHR as cited in ANGOC et. al., 2015).

An example of a land right violation among agricultural farmers is the Agumil Case – the resistance of Aborlan Coco Farmers against a big oil palm company. Small coconut farmers entered into a contract to clear over 200 hectares of their farmlands for the entry of an oil palm company and accessed a PhP 13 million loan from the Land Bank of the Philippines (LBP) for farm development. After 10 years of waiting, not a single centavo was earned and their loans ballooned to PhP 43 million (Salcedo, 2016).

According to Mr. Renante Salcedo of the Institute of Land Governance (XSF-ILG), there are 11 other cooperatives that have signed the same agreement with the company and are likely to face the same fate in the future. Clearly, the company took advantage of the farmers’ inability to negotiate with investors

and thoroughly review the contract. The farmers lost their lands, income, livelihood, and are experiencing security threats.<sup>6</sup>

### 3. Corporate operations displacing communities, curtailing livelihood and degrading the environment

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 CHR. The CHR used the UNGPs on Business and Human Rights in conducting investigations and 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 table below lists a number of complaints resulting from the company’s mining operations:

| Complaints/Study  | Environmental Degradation*   |
|---|--|
| <ul style="list-style-type: none"> <li>▪ Complaint from the community on black silt from the coal washing plant on 3 December 2008</li> <li>▪ The west wall of the Panian Pit collapsed due to a landslide on 14 February 2013</li> <li>▪ An incident that occurred at the northern edge of the Panian Coal Mine, resulting in the death of several workers in July 2015 (Rappler, 2015)</li> </ul> | <ul style="list-style-type: none"> <li>▪ Massive clearing affecting the island ecosystem</li> <li>▪ Mangroves and portions of coastal areas lost through clearing, land reclamation, dumping of infill, and siltation due to run off</li> <li>▪ Degradation of water quality due to contaminants reaching nearby public</li> <li>▪ Increased particulate matter in the waters and ambient air</li> <li>▪ Siltation of the marine environment</li> <li>▪ Damage to coal areas due to infill dumping</li> <li>▪ Impacts on existing mangrove biodiversity due to infrastructure</li> <li>▪ Presence of toxic contaminants in the water, such as mercury</li> <li>▪ Displacement of local residents</li> <li>▪ Adverse impacts on local livelihoods</li> <li>▪ Unsafe working conditions that resulted to the death of workers</li> <li>▪ Loss of access to water source by existing communities</li> </ul> |
| <p><i>*Source: Report of investigation conducted on 15-17 April 2009 as published by Rappler.</i></p>   |  |

<sup>6</sup> Interview with Renante Salcedo, ILG Coordinator, 15 February 2017.

The CHR has acknowledged that much is needed to fully adopt the UNGPs 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 UNGPs as a synchronizing framework.

According to Atty. Jesus Torres of the CHR, the Commission, alongside with other stakeholders, should come together and develop a collaborative platform to minimize the adversarial handling of cases.<sup>7</sup>

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 on the UN Guiding Principles on BHR;
- Engage business sector in constructive dialogues on BHR, and document and disseminate good practices;
- Conduct workshops among stakeholders, particularly the vulnerable sectors to help them know better their rights, the mechanisms, and options they have in dealing with investors/businesses; and,
- For the academe to help in conducting studies that would strengthen and simplify the adoption of UNGPs such as a) analyzing the gaps in existing Philippine laws related to BHR; and b) linking success of businesses to its observance of human rights.

The implementation of the UNGPs in the Philippines is important not only in 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 right as a human right.

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. ■

<sup>7</sup> Interview with Atty. Jesus Torres, Economic, Social, Economic, Social and Cultural Rights (ESCR) Center Chief, Commission on Human Rights.

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

Founded in 1979, ANGOC is a regional association of national and regional networks of non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC network members and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs). ANGOC is the convener of the Land Watch Asia (LWA) campaign. ANGOC is also a member of the International Land Coalition (ILC), the Global Forum on Agricultural Research (GFAR) and the Global Land Tool Network (GLTN).

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### Xavier Science Foundation, Inc. (XSF)

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

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### Joint Action for Land Rights

The "Joint Action for Land Rights" is a project jointly implemented by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD Mindanaw), Solidarity Towards Agrarian Reform and Rural Development (Kaisahan), and People In Need

(PIN). JALR contributes to the work of civil society organizations, including human rights organizations, working with vulnerable and socially excluded groups with particular focus on supporting the empowerment of farmers and indigenous peoples to claim their rights, including protecting the rights of human rights defenders. The project is supported by the European Union's European Instrument for Democracy and Human Rights (EU-EIDHR).



### People In Need (PIN)

The People in Need (PIN) organization was established in 1992 by a group of Czech war correspondents who were no longer satisfied with merely relaying information about ongoing conflicts and began sending out aid. It gradually became established as a professional humanitarian organization striving to provide aid in troubled regions and support adherence to human rights

around the world. Throughout the 25 years of its existence, PIN has become one of the biggest non-profit organizations in Central Europe. In addition to humanitarian aid and human rights, it now also targets education and helps people living in social exclusion. PIN is part of the Alliance2015, a strategic network of seven European non-governmental organizations engaged in humanitarian aid and development projects. This collaboration increases effectivity both in working in the target countries and in campaigns aimed at influencing the attitudes of politicians and the general public in Europe.

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### Delegation of the European Union to the Philippines

The EU Delegation to the Philippines is one of 140 diplomatic missions that represent the EU across the globe. It aims to strengthen EU-Philippines relations in particular through promoting strong economic and trade ties, developing EU-Philippines dialogue through the recently-signed Partnership and Cooperation Agreement, supporting the Government in its peace

efforts in Mindanao, and working with the Philippines' Administration to reach the UN Millennium Development Goals.

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### Konsorsium Pembaruan Agrarian (KPA)

The Consortium for Agrarian Reform or Konsorsium Pembaruan Agrarian (KPA) is built to fight for the realization of a fair agrarian system, and guarantee the balanced spread of agrarian resources for the Indonesian people;

guarantee of ownership, mastery and the usage of agrarian sources for the peasant, angler and indigenous people; and also the quarantine of prosperity for the poor people. Established in 1994, as the Consortium for Agrarian Reform, KPA promotes agrarian reform in Indonesia through advocacy and the strengthening of people's organizations. KPA's focus on land reform and tenurial security, and policy advocacy on these issues have put the coalition at the forefront of the land rights struggles of Indonesia's landless rural poor, especially with the indigenous peoples in several areas in Outer Java. KPA encourages a participatory and pluralistic approach which recognizes the development of different systems of land use and tenure to ensure land rights. KPA is a people's movement that has an open minded and independent character.

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### International Land Coalition (ILC)

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

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