

Following through on BHR commitment as government, CSOs and private sector find ways forward despite the pandemic:

Summary Report on BHR Interventions in the Philippines

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

(March 2021)

Overview

The impacts of business enterprises are two-fold. It 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 from their lands.

Given the prevalence of land and resource conflicts in the Philippines, some 225 cases of conflicts documented are concentrated in almost six percent of the total territory of the Philippines (1.69 million hectares). More than half (64.9 percent) of this number were conflicts between communities and business establishments (Esplana-Salcedo, et al., 2021).

In general, private commercial interests have been a major obstacle in the struggle of the basic sectors to gain access to land or tenurial security. They include landlords who oppose land reform; loggers and miners who encroach into and destroy forests, agricultural lands, and ancestral domains; real estate speculators and developers who, among others, displace communities to build golf courses and tourist estates; and business groups out to build dirty power plants, industrial estates, ports, and recreation facilities.

Snapshots of 2020 ANGO Land and Resource Conflict Monitoring Report

- The 2020 Philippine Land and Resource Conflict Monitoring Report covered 223 ongoing cases covering 5.59 percent of the total territory of the country and affecting 507,884 households. Effects on individuals include 37 incidents of killing, 72 incidents of disappearance or abduction, 49 incidents of detainment. Over 30,000 households were displaced and more than 22,000 others face threats of displacement.
- Among the conflicts covered by the report, almost 60 percent were in the context of private investments, mostly in agribusiness plantations and mining.
- Among the entities involved in the cases, 65 percent were private companies with competing claims against communities and other rights holders. Private companies were involved in 47 percent of land and resource conflicts affecting indigenous peoples, 81 percent of conflicts affecting smallholder farmers/producers, and 73 percent of water conflicts affecting small fisherfolk.

Source: Esplana-Salcedo et al., 2021

In 2008, the United Nations endorsed the “Protect, Respect and Remedy Framework” for business and human rights¹, 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 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

¹ 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.

non-judicial process. For their part, business companies should establish or participate in grievance mechanisms for these adversely affected individuals or communities.

The Three Pillars of UNGPs

Protect (State duty). States are duty-bound to prevent, investigate, punish, and redress human rights abuses that take place in business operations within their territory. States should make it clear to companies that they should respect human rights in their operations. Among State actions towards this end are: (1) legislating and implementing laws to require businesses to respect human rights; (2) creating a regulatory environment that enables business to respect human rights; and, (3) providing guidelines to companies on their responsibilities. States should ensure coherence of policies across the bureaucracy.

Respect (Corporate responsibility). Business enterprises must prevent, mitigate and, where appropriate, remedy human rights abuses that occur in the context of their operations. All types of businesses, regardless of size, sector or location are included. Even abuses of suppliers of businesses are included in this mandate. This necessitates that policies and processes in place to meet this responsibility. A policy commitment must first be instituted to meet the responsibility of respecting human rights. Next, human rights due diligence must be implemented across the business operations, products and partners. Finally, processes must be in place to remedy 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.

Remedy (Access to). Access to effective remedy must be available to victims of rights violations. States should ensure that their judicial mechanisms could address business-related human rights abuses effectively **and** free from barriers (such as, administrative fees or lack of language interpreters) that prevent victims from presenting their cases. The State-based remedy system should also include non-judicial grievance mechanisms for business-related human rights complaints. Business entities should also set up and participate in effective grievance mechanisms for individuals and communities that are adversely impacted by their operations.

An effectiveness criterion for State- or business-based non-judicial grievance mechanisms was provided by the UNGPs. This stipulates that effective grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, and rights-compatible.

Source: UN-OHCHR, 2011

On 16 June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights (UNGPs) to operationalize 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 levels is very important to ensuring human rights practice (UN-OHCHR, 2011).

UNGPs in the Philippines

Relevance of UNGPs

The Philippine agriculture sector stands to benefit a lot from the UNGPs as foreign and domestic investments are on the rise, driven by the growing demand for food worldwide, more encouragement for biofuel production, and the liberalization of agricultural trade and investments. Coupled with gaps in land policies and administration, the increase in investments has unfortunately resulted in farmers and indigenous communities suffering human rights abuses, which include physical and economic violence. A trove of documentation has been generated detailing improper procedures in securing free, prior, and informed consent (FPIC), lack of transparency on the proposed investments, misrepresentation, and outright deception.

Special Economic Zones (SEZs) or ecozones are at the core of these abusive contracts. Ecozones are selected areas in the country that have been converted into highly developed agro-industrial, tourist/recreational, commercial, banking, investment, and financial centers. Highly trained workers and efficient services will be made available to business locators within these ecozones. The Philippine Export Zone Authority (PEZA) said that it will create at least 300 new ecozones in the country, with areas ranging from 1,000 to 4,000 hectares. A cursory review of the proposed sites of ecozones shows the potential impact these will have on the land tenure of indigenous peoples (Dela Paz, 2017).

Also adversely affected by business operations are ancestral domains. Most of the country’s remaining forests, natural resources and environmentally critical areas are within ancestral domains. These resource-rich areas, which provide essential ecosystem services such as watersheds, are at the top of the list for

exploitation by investors. The staggering number of mining applications in ancestral domains attests to this fact. In Palawan and Central Mindanao, large-scale agricultural investments threaten the tenurial security, access, and control of indigenous communities over their ancestral domains. Sadly, many indigenous communities do not have the capacity to actively challenge and engage those who have interest over their lands (Quizon, et al., 2018).

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).

Major events in promoting UNGPs

A forum on “*Business and Human Rights: Introducing the UN Guiding Principles of the Ruggie Framework as a Tool for Risk Management*” was held on 25 March 2014. Key stakeholders from business, civil society, and government took part. During the forum, business sector representatives said they were willing to implement and incorporate UNGPs in their business policies and practices. They even agreed to look at the principle of extra-territoriality. The German Hanns Seidel Foundation (HSF) expressed its support for the development of a Philippine National Action Plan (NAP) on Business and Human Rights (HSF, 2014).

On 08 June 2016, the European Parliament to the Philippines issued a resolution to ensure effective implementation of all core international conventions relating to human and labor rights. The resolution focused on: (a) repression of activists peacefully campaigning for the protection of their ancestral lands from the harmful impacts of mining and deforestation, and (b) inhuman working conditions of many Filipino seafarers.

The resolution called on European Union (EU) member-States to bar vessels from their ports whose companies contravene labor rights and the EU Charter of Fundamental Rights.

Later that year, in November 2016, the Presidential Human Rights Committee (PHRC) convened a government consultation on a National Action Plan on UN Guiding Principles on Business and Human Rights (NAP for UNGPs). In the

said forum, the PHRC informed those 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 Third Philippine National Human Rights Action Plan, for the period covering 2018 to 2022.” The 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).

Only one event was held in 2017: the international workshop on “*Business, Human Rights and Access to Justice*” on 11 to 12 March. Spearheaded by the Philippine Commission on Human Rights (CHR) of the Philippines, the multi-stakeholder workshop involved delegates from China, Japan, Korea, Nepal, Mongolia, and the Philippines. United Nation (UN) agencies, including representatives from National Human Rights Institutions (NHRIs), civil society organizations (CSOs), academe, and other international organizations, also participated.

The following year, a “National Dialogue on the United Nations Guiding Principles on Business and Human Rights” was convened on 10 January 2018 as a follow-up to the international workshop of 2017. The event sought to update country stakeholders on the activities of the CHR to build awareness on the UNGPs and identify mechanisms to address business-related human rights issues. Highlighted during the dialogue was the struggle of underprivileged communities to retain control of their land in the face of expanding business interests. The participants emphasized the need for multi-stakeholder consultation in the development of the National Action Plan (NAP) for UNGPs.

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

The Commission on Human Rights (CHR) then organized the “National Forum on Business and Human Rights” on 11-12 September 2019 that brought representatives from the business sector, academe, civil society organizations,

and the government to have a deeper understanding and appreciation of the relevant issues, best practices, and current efforts in promoting business and human rights in the country. Participants agreed collectively commit to protect, respect, and fulfill human rights; continue to enhance knowledge on human rights standards and continue to raise awareness on the links between business and human rights.

The event gave birth to the Philippine Business and Human Rights Working Group (BHR WG)² with the goal of engaging the various stakeholders in advocating for the application of the UNGPs, recognizing the importance of collaboration between the business sector and civil society organizations in understanding, advocating, and promoting human rights. Convened by CHR, the group is currently composed of 13 organizations representing private sector, CSOs, academe and United Nations.³

As part of working together towards the formulation of the National Action Plan for UNGPs, the BHR WG initiated the preparation of a Guidance Document which provides a national framework and comprehensive guidance on how relevant stakeholders can ensure that the three pillars of respect, protect, remedy, are enforced and implemented.

In early 2020, ANGOC hosted a writeshop on the said document with the BHR WG that was followed by subsequent meetings that led to its launching at the end of 2020.

On 24 August 2020, the Philippine Alliance of Human Rights Advocates (PAHRA) convened a workshop in pursuit of its initiative to develop a CSO National Action Plan (CSO NAP) on Business and Human Rights.

A draft CSO NAP with case studies was prepared for validation by CSOs with the view of using it as a tool to pressure the Government to revive its commitment to develop a NAP for UNGPs. Participants committed to collaborate in lobbying for the NAP formulation for the UNGPs and contributing to the process of further developing the CSO NAP.

² Later renamed the *Multi-stakeholder Business and Human Rights Group* (MSBHRG)

³ It is composed of the following: Commission on Human Rights, Alyansa Tigil Mina, Asian NGO Coalition for Agrarian Reform and Rural Development, Ateneo Human Rights Center, Employers Confederation of the Philippines, First Philippines Holdings, Inc., Foundation for Media Alternatives, Initiatives for Dialogue and Empowerment through Alternative Legal Services, Oxfam Philippines, Philippine Alliance of Human Rights Advocates, University of Asia and the Pacific-Center for Social Responsibility, University of the Philippines-Institute of Human Rights and UN Women.

On 28 September 2020, ANGOC organized the Roundtable Discussion on the Status of NAP for UNGPs in the Philippines. Participated in by CSOs working on land rights, the event provided an update from CHR and a presentation of the CSO NAP. (Refer to the next section of this report.) The participants acknowledged the importance of the NAP formulation for UNGPs and the need for collaboration among different networks. Concretely, as inputs to the CSO NAP, the participants shall provide cases on land rights and agriculture and specific recommendations on land rights vis-à-vis the UNGPs.

BHR status in the country

Main agencies responsible for formulating and implementing the NAP for UNGPs

As per Article 2, Section 11 of the Philippine Constitution, the State values the dignity of every human person and guarantees full respect of human rights. As an independent constitutional office, the function of the Commission on Human Rights is to act as monitor, advocate, and educator of government on human rights matters (Atty. Jesus Torres, Chief of the Economic, Social and Cultural Rights Center of CHR during the *Stakeholders' Consultation on Philippine National Action Plan on Business on Human Rights, 11 May 2018*).

Concretely, in line with its human rights obligation, the roles of government are to: a) respect, which is to refrain from interfering in the enjoyment of these rights, b) protect, which is prevent others from interfering in the enjoyment of these rights; and, c) remedy, which is to adopt appropriate measures towards the full realization of these rights.

With regard to international human rights treaties of which the State is a signatory, as in the case of the UNGPs, the government shall implement, translate and harmonize it with national laws. CHR's role is to advise and monitor the three main branches of government on the implementation of these international human rights treaties.

Atty. Jesus Torres summarized the relevance of the NAP as an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UNGPs.” As there are many existing and overlapping laws related to business and human rights in the country, there is a need to undertake more studies to make these

laws complementary using the UNGPs as a synchronizing framework (Roundtable discussion organized by ANGOC last 28 September 2020).

An essential element in the formulation of NAP is that it should be context-specific, comprehensive, and transparent in presenting the country's human rights situation and adverse impacts of business activities, if any. The process should be inclusive to all stakeholders, engaging even those with the most diverse views. Clear, realistic, and measurable indicators should be set as the NAP shall be regularly reviewed and updated.

Initial efforts of CHR in mainstreaming the UNGPs

In 2013, “the UNGPs were activated by the CHR during the leadership of former Executive Director Atty. Jacqueline Mejia and then Chairperson Etta Rosales. The latter started popularizing the UNGPs by facilitating fora with the sectors engaged 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 UNGPs” (ANGOC, et al., 2018). Aside from building awareness, the CHR has sought to identify the mechanisms needed to effectively address issues on BHR.

In addressing the second pillar of protect, the CHR in early 2017 proposed amendments to the Corporation Code of the Philippines through a position paper submitted to the 17th Congress of the House of Representatives (Atty. Jesus Torres, CHR, *Stakeholders' Consultation on Philippine National Action Plan on Business on Human Rights, 11 May 2018*).

One of the many roles of CHR is to ensure “access to remedy.” In terms of providing access to remedy, the CHR filed in December 2016 the “*world's first ever national investigation into human rights harms resulting from climate change, despite apparent opposition from some fossil fuel companies*” (BusinessMirror, 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 (BusinessMirror, 2016).

While the guidelines of the UN Working Group on UNGPs do not specifically identify the Executive branch of the government as the sole entity responsible for crafting the NAP, the presence of the National Human Rights Action Plan (NHRAP) explains the important role of the said branch.

The NHRAP is the government's blueprint for implementing the various international human rights treaties that the Philippines is a party of.

In fact, it was completed whether a NAP for UNGPs is necessary, or it can very well be integrated in the NHRAP. In terms of the office in charge of the NHRAP as well as providing advice to the President in addressing human rights issues, the Presidential Human Rights Committee (PHRC) was created in 1988 by then President Corazon Aquino. Currently attached to the Office of the President (with its Executive Director appointed by the President), all government agencies are directed to cooperate and support PHRC in performing its mandate, thus making promotion of human rights a key responsibility of the executive branch.

Having the Executive through the PHRC take the lead in the NAP formulation of UNGPs reflects a high level of government commitment and priority.

In the Guidance Document on Business and Human Rights prepared by the BHR WG, it notes that its linkage with the Sustainable Development Goals (SDGs) and the current administration's Philippine Development Plan "*AmBisyon Natin 2040*" is a significant aspect of the UNGPs. The alignment of the three documents allows the government and the business sector to have a more comprehensive appreciation of the interrelatedness of their principles and goals. This can be useful in crafting focused strategies to fulfill each sector's respective human rights obligations and responsibilities (MSBHRG, 2020). The UNGPs also serves as a guide to CSOs and communities in determining specific areas they should give attention to when talking to government and business interests.

Status of NAP Formulation for UNGPs

While the country has expressed its full commitment to the UNGPs, it is unfortunate that the incumbent administration, in particular the Executive branch, has not issued an order to proceed with the NAP formulation process, much less allocate resources to support the process.

Since 2015 in the Philippines, with the support of the UNDP, several initiatives have been initiated by the CHR, PHRC, and CSOs on the UNGPs. Information-education-communication materials have been produced and consultations involving CSOs, government, and the business sector have been held. Unfortunately, with the current administration, all initiatives were halted.

Repeated inquiries of CSOs and CHR with the PHRC have not led to any progress towards the enactment of the NAP for UNGPs. At the very least, a set of policy directions could have emanated from the President through the PHRC.

Meanwhile, in the absence of such NAP a few government agencies have adopted approaches with environmental and human rights considerations, through the release of “sustainability” policies.

As in the case of the Securities and Exchange Commission (SEC), the agency released Memorandum Circular No. 04 series of 2019 – Sustainability Reporting Guidelines for Publicly-Listed Companies, which states that the agency can suspend and impose fines on companies unable to submit their sustainability reports. The Central Bank of the Philippines on the other hand, released Circular No. 1085 series of 2020 – Sustainable Finance Framework, which expects banks to incorporate sustainability principles (environmental and social risks) in their governance frameworks, operations, and disclosures in their annual reports.

However, in order to facilitate coordination, synchronization and monitoring, it is the position of the CHR that a separate NAP for UNGPs should be formulated (Atty. Torres in the ANGOC-organized roundtable discussion on the status of UNGPs last 28 September 2020). By having a NAP, standards can be set which provide basis for data gathering and reporting by the different government agencies in relation to UNGPs.

At the same time, by having the NAP as a platform for dialogue with various stakeholders, a complete picture of the UNGPs is presented and assessed. There is disconnect when governments and the business report on just investments (i.e., jobs created, income), while CSOs report on human rights violations caused by the private sector.

Opportunities for CSO interventions on BHR

Nonetheless, the situation has not deterred the CHR from promoting UNGPs while CSOs have consistently been lobbying for the formulation of NAP for UNGPs.

There is willingness and openness between and among CHR, business sector and other stakeholders to push for the formulation of the NAP. Building on the momentum of the “National Forum on Business and Human Rights” and the formation of the Philippine Multi-stakeholder Business and Human Rights Group, the members have agreed to continue the process of dialogue, analysis, and documentation as part of confidence building measures to nurture the partnership. BHR WG members view these engagements as steps and inputs toward the formulation of the NAP. It was likewise agreed that the government, the PHRC in particular, should constantly be involved in the process.

The BHR WG has been serving as a platform for stakeholders to discuss, analyze, and assess the BHR situation in the country as well as propose recommendations to achieve the three pillars of UNGPs. These are essential inputs in the formulation of the NAP for UNGPs. While there are only a few representatives from the business sector in the BHR WG, the launch of the Guidance Document - which the BHR WG produced - has elicited interest from other groups in the said sector.

Outside the BHR WG, CSOs have been engaging the CHR, government and the business community in a number of awareness raising events on UNGPs to include workshops, sharing of studies, brainstorming on recommendations to the NAP.

Rationale of CSO involvement on UNGPs

There are three reasons why CSOs are involved in UNGPs.

First, the fundamental premise of people-centered development is that people have certain basic and universal human rights as defined in the Universal Declaration of Human Rights of the United Nations. Thus, it is a fundamental responsibility of every government to respect and protect these rights. At the same time, the authority of government derives from the will of the people and may be exercised only in accordance with that will. *It follows therefore that it is the right and responsibility of the people, not the government, to determine what constitutes the public good.* Government is an instrument of the people, created by the people to serve their will.

Second, developing sustainable human societies involves far more than making a few adjustments to the margins of the economy and investing in

conserving technologies. It means creating a system of economic institutions and management practices that anchors economic power in the community and achieves a substantial degree of equity in power relations. The current pandemic has demonstrated that approaching sustainability as purely an investment problem with the assumption that market forces are the key to achieving it, had failed.

Third, voluntary action is an expression of both basic human rights and the civic responsibility to participate actively in the life of the community. Indeed, voluntary action is one of the highest forms of citizenship as it represents action in the service of community. CSOs assume important roles as agents of democratic expression and citizen innovation – contributing to the search of more just, sustainable and inclusive approaches to national development. CSOs thus should be viewed as essential partners in sustainable development.

Given these three propositions, CSOs have three key roles to play in our society in general, and to business and human rights in particular:

First is that of a **facilitator**. CSOs serve as a bridge between the communities and other stakeholders, particularly the government, the business sector, and international organizations. CSOs contribute to fostering a meaningful dialogue and engagement with the duty-bearers, rights-holders, and other relevant stakeholders, with a view of exploring partnerships among the government, the business sector, and communities for joint actions toward common development goals. It should be noted that the basic task of CSOs is to empower people and communities by making them aware of their potentials, rights, and obligations as members of a free, independent and democratic society.

Second, as an **advocate**, CSOs seek to use the UNGPs as a framework in developing business and human rights agenda and advocacy campaign work to guide stakeholders in their engagement and partnerships with relevant stakeholders. CSOs will lobby with the national government to formulate, in consultation with all relevant stakeholders, a NAP for UNGPs. CSOs will likewise call for the genuine adherence to the principles of Free, Prior, and Informed Consent (FPIC), and the conduct of Environmental and Human Rights Impact Assessments before business projects are approved and operationalized.

Finally, as public interest groups, CSOs have a **monitoring role** to play. CSOs can document, monitor, and report cases of business impacts on human rights and communities. These reports provide an alternative opinion and non-business or non-governmental source of information. They aim to increase transparency and accountability, to enhance monitoring and evaluation tools, and to improve the compliance of relevant stakeholders with laws and standards.

As such, a better-framed engagement can aid critical reflection and decision-making of the stakeholders and help maintain an objective perspective, especially in documenting positive business impacts that are often overshadowed by the sheer number of reported adverse effects of businesses on human rights and communities.

Major Interventions towards the popularization of BHR and the formulation of the NAP for UNGPs

Despite the limitations due to the COVID-19 pandemic, several interventions, albeit conducted online, were undertaken by CHR and CSOs, and to a certain degree, the private sector.

Notable initiatives include those of the Multi-stakeholder Business and Human Rights Group, either collectively or through bilateral or institutional activities.

As a group, BHR WG took the task of developing the Guidance Document on Business and Human Rights. It is an attempt to “inform all the stakeholders of the prevailing norm and key expectations under the UNGPs concerning the protection and respect of human rights in the business setting. As it builds on existing efforts of the stakeholders to incorporate human rights in their practices, it aims to equip them with practical guidance on how they can better fulfill their respective obligations and responsibilities concerning business interaction with human rights, including the integration of a gender perspective. It also presents opportunities for all stakeholders to work together and appreciate the spaces they can benefit from and contribute to sustainable, inclusive development” (MSBHRG, 2020).

The document also enumerates the benefits to duty-bearers and stakeholders when principles of the BHR are followed. Specific roles and responsibilities of the government, business, CSOs and communities with sample tools are likewise spelled out in the Guidance Document.

Also, some CSOs have taken the initiative to draft a CSO NAP for the UNGPs since 2018. Anticipating that the NAP formulation may not be feasible under the current administration, PAHRA facilitated the drafting of a CSO NAP as a step towards the finalization of a NAP for UNGPs.

The document that follows the outline recommended by the UN Working Group on Business and Human Rights contributes to the discourse on the business and human rights situation in the country by analyzing the human rights deficit and documenting some case studies as reference materials. It should be noted that most of the cases revolve around labor issues, hence the need to bring other sectors affected by investments such as land and agriculture.

The following is the initial analysis of the draft CSO NAP based on the three pillars of UNGPs as presented by PAHRA and ATM during the roundtable discussion organized by ANGOC last 28 September 2020:

Protection issues. According to CSOs, weak or inadequate capacities of regulators in charge of oversight on human rights impacts of corporations and business enterprises are often exploited by transnational corporations. They have bigger budgets to hire experts that will give them more favorable assessments.

Respect issues. CSOs also noted that existing laws and mechanisms that require business to respect human rights are not complied with. Corporations influence or control public consultations. Community representatives were sometimes asked to sign an attendance sheet, which would be later presented as “consent”. The FPIC process was improperly done in some indigenous communities. There were also cases of consent certificates for a previous, unrelated project being recycled for a new project.

Remedy issues. According to CSOs, access to remedy is probably the weakest pillar. Transboundary violations or extra-territorial obligations are frequently ignored. Going after erring transnational corporations is a lengthy and expensive process. Corporations have the means to hire the best lawyers, while affected communities merely depend on public attorneys, which leads to a process skewed in favor of the violators.

ANGOC, for its part, is implementing a regional initiative in relation to UNGPs. First is the case study on the expansion of oil palm plantations in ancestral domains of indigenous peoples in the country, particularly in the province of Palawan and the island of Mindanao.

With the global demand for palm oil on the rise, the Philippine government and private corporations have been prompted to increase the country's production of the commodity.

With these developments, ancestral domains of IPs have become the target for expansion of oil palm plantations. There are numerous reports that many oil palm plantations in the Philippines were born out of land grabbing.

The paper reviews and provides further information on the allegations that the growing palm oil industry has led to land grabs against indigenous communities in the country. It analyzes the present drive to expand oil palm plantations and recommends ways to protect the rights of IPs entangled in these enterprises.

ANGOC is also monitoring land and resource conflicts as they have increased in number, coverage, and intensity over time. Building on the monitoring initiative in 2018, a more systematic way to gather data and to report on land and resource conflicts is being undertaken.

The 2020 Land and Resource Conflict Monitoring Report has been presented in a multi-stakeholder dialogue jointly organized by ANGOC and CHR. With the recognition of the importance of land conflict monitoring in the work of the CHR, the ESCR Division of the Commission requested ANGOC to organize and facilitate a training course through a series of webinars for 25 CHR field investigators.

ANGOC oriented the participants on land rights and land governance principles and introduced the land and resource conflict monitoring initiative. Towards the end of the course, an action plan on monitoring land conflicts was formulated by the CHR regional offices.

Below are the main activities conducted by the MSBHRG⁴

Table 1. Main activities conducted by the MSBHRG in 2020.

Event	Organizer/s	Date
Virtual Launch of the BHR Guidance Document	MSBHRWG, CHR, UN Women	21 December 2020
Virtual Forum on the Impacts of COVID-19 from the Perspective of Business and Human Rights	CHR and the School of Interdisciplinary Science and Innovation of Kyushu University, Japan, in partnership with the Federation of Free Workers, the Philippine Chamber of Commerce and Industry in Japan, the Asia Centre, and the Business and Human Rights Resource Centre	27 November 2020
Webinar on Business and Human Rights: Risks and Opportunities for Business	University of Asia and the Pacific – Center for Social Responsibility	14 October 2020
CSO Roundtable on the Status of NAP and UNGPs	ANGOC	28 September 2020
Land Rights and Land Conflict Monitoring Training for CHR Regional Offices	CHR and ANGOC	25-28 August 2020
Consultation-Validation on CSO National Action Plan on Business and Human Rights	PAHRA	24 August 2020
Project-End Conference of Human and Labor Rights through General Scheme of Preference Plus	PAHRA	31 July 2020
BHR WG Virtual Meeting	CHR	28 July 2020
UN Virtual Forum on Responsible Business and Human Rights, Asia-Pacific	UN Women, UNDP, UNWG, ILO, UNICEF and ESCAP	9-11 June 2020
Women at Work: Business and Human Rights amid Covid-19	IDEALS, Oxfam, Business and Human Rights Resource Center, ISEA and WEAVE	05 June 2020
Collaborative Discussion on Land Conflict Monitoring Initiative in the Philippines	ANGOC	22 May 2020
Philippine BHR WG Meeting	CHR, UN Women	20 February 2020
Writeshop on Guidance Document	CHR, ANGOC	20 January 2020
Multi-stakeholder Assembly on Business and Human Rights	University of the Philippines- Institute of Human Rights	13 December 2019
National Forum on Business and Human Rights	CHR	11-12 September 2019

⁴ This list is not an exhaustive enumeration of the activities.

CSO recommendations as inputs to the NAP on the UNGPs (with focus on land rights)

A number of studies and consultations have pointed out the following issues in relation to transactions between business companies and agricultural farmers and indigenous communities on their lands:

- *Non-transparency and access to information:* The victims are often denied access to important and basic documents, such as contracts. Even when these documents are available, they are little use to farmers and indigenous peoples because they lack the capacity to fully understand them.
- *Erosion of land tenure security:* While land use rights and restrictions are relatively clear and straightforward, the difficulty in enforcing these restrictions on land use by agricultural corporations has resulted in the displacement and loss of livelihood of farmers.
- *Lack of support to farmers and indigenous peoples in dispute resolution:* While venues to lodge complaints exist within the government structure, there is a perceived lack of support in providing victims with legal support.

These concerns were also observed in the 2020 Land and Resource Conflict Monitoring Report. Additionally, the same report also revealed that violations against communities and rights defenders did not cease and even intensified during the height of the COVID-19 lockdown.

The highest number of incidents occurred from March to June 2020, as powerful groups and individuals took advantage of communities' limited mobility and the public's shifted priorities, to pursue their own self-interest. During the height of the lockdown in March, there were several reports of illegal business operations in rural communities, including at least four illegal mining activities.

Communities get entangled in such conflicts because of weak or faulty implementation of asset reform laws that seek to recognize and protect rights to land and resources. As was further illustrated by the case study on oil palm plantations, even if communities are able to legally secure their rights over land and resources, circumvention of FPIC processes and blatant ignorance of rights and traditional systems of governance can still lead to both legal and illegal land grabs.

Even if the NAP for UNGPs has not yet been drafted, CSOs will continue to advocate and convene multi-stakeholder consultations geared towards the NAP formulation. At the same time, CSOs will organize workshops with the vulnerable sectors to help them know better their rights, the mechanisms, and options in dealing with investors.

In addition, CSOs working on land rights have raised the following recommendations in relation to the UNGPs:

Protect

Government is called to:

- Complete land and resource reform programs (Comprehensive Agrarian Reform Program, Indigenous Peoples' Rights Act, Fisheries Code) and ensure tenure security for the rural poor. Tenure security will also be achieved through the institution of an effective and efficient mechanism to resolve overlapping claims on land.
- Government must also ensure the integrity of safeguard mechanisms that regulate land investments by integrating the UNGPs in all aspects of land and resource governance. In the case of indigenous peoples, aside from ensuring that the FPIC process is followed, enforcing indigenous communities' rights over ancestral domain is another way to protect them from onerous business deals. A legal title recognized by governments is the ideal. But in the absence of such title, especially given the lengthy and tedious processes involved in acquiring such document, the government should institute and strictly enforce legal safeguards to protect tenurial rights of indigenous peoples.
- Government processes and protocols should be followed and regularly monitored when it comes to contracts between farmers/IPs and corporations. Governments and corporations must involve the affected communities in all stages of negotiation and ensure that these communities fully comprehend all aspects of the proposal. Communities should partner with CSOs who can provide the needed support in this endeavor.
- Finally, government awareness on land rights as human rights must be enhanced, especially for the military and the police.

Respect

It goes without saying that business sector should comply with government regulations to ensure the sustainability of their investments. FPIC processes and principles should be upheld by corporations when engaging not only with indigenous peoples, but with other rights holders as well. In the case of FPIC for IPs, the NCIP must ensure that corporations investing in ancestral lands do not dilute this process, which involves regular consultations, updating, and dialogue with communities before, during, and after the implementation of a project.

Moreover, it should be reiterated to both government and the business sector that communities have “*the right to say no*” to investments in their lands, and such decisions should be respected. Negotiations are not merely meant to thresh out implementation mechanisms but more importantly decision-making venues where the affected parties always have the right to decline.

Remedy

Setting up grievance mechanisms to provide a venue for concerns is also sensible for corporations, because it allows for the possibility of grievances to be properly documented and addressed. Government agencies and business entities should create dedicated offices to receive and process such complaints. Partner CSOs should also be involved in this undertaking. In the absence of a grievance desk, the CHR can be an effective alternative. When all else fails, there are the courts.

Contract cancellation or termination should be included in the contract so that an exit strategy is in place even before the contract is signed.

CHR response to the CSO recommendations

The CHR has acknowledged and welcomed the efforts of CSOs in relation to the CSO NAP. CHR will continue to engage in such process.

CHR views CSOs as partners in carrying out its mandate. With the various cases supporting the different advocacies of CSOs, a constant exchange of information and discussion of the issues should be continued. This should

contribute to generating independent information on the human rights situation of the country.

At the same time, the CHR is expected to focus its engagement on the business sector and the local government units given their limited involvement in the UNGPs. The Guidance Document on Business and Human Rights will be the main vehicle in doing so.

Furthermore, there is a need to re-strategize the approach of engaging the private sector to make them receptive to the UNGPs.

Roadmap on continuation of engagements related to BHR

In the last meeting of the MSBHRG, members have agreed on the following priorities for 2021:

- Awareness-raising activities on UNGPs using the Guidance Document, through online roundtable discussions with the business sector;
- Developing knowledge products and organize capacity building activities for local CSOs and communities, particularly in light of the pandemic;
- Developing training modules on the Guidance Document for various stakeholders;
- Formulating a joint statement in commemoration in June 2021 of the 10th year of the adoption of UNGPs; and,
- Finally, CSOs will continue to organize and empower the rural poor to enable them to effectively defend their rights. ■

List of acronyms	
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BHR WG	Philippine Business and Human Rights Working Group
CHR	Commission on Human Rights (of the Philippines)
CSO	civil society organization
HRBA	human rights-based approach
MSBHRG	Multi-stakeholder Business and Human Rights Group
NAP	National Action Plan
NHRAP	National Human Rights Action Plan
OHCHR	Office of High Commissioner on Human Rights
PHRC	Presidential Human Rights Committee
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights

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ANGOC likewise expresses its gratitude to the members of the Multi-stakeholder Business and Human Rights Group (MSBHRG) for their commitment to mainstream BHR principles among CSOs, the government, academe, and the private sector, and for continuing to be a venue for discourse on issues and joint actions on BHR.

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