



# PHILIPPINES

by:

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## BASELINE REPORT: The Philippines

### SNAPSHOT BOX

<b>Number of Multinational Business Enterprises operating in the country</b>	No official data available
<b>Number of Micro, Small and Medium Business Enterprises operating in the country per 1,000 people</b>	As of 2009, there were 780,437 business enterprises operating in the Philippines. Of these, 99.6% (777,357) are micro, small, and medium enterprises (MSMEs) <sup>1</sup> and the remaining 0.4% (3,080) are large enterprises. Of the total number of MSMEs, 91.4% (710,822) are micro enterprises, 8.2% (63,529) are small enterprises, and 0.4% (3,006) are medium enterprises. <sup>2</sup>
<b>Number of State-owned Enterprises and the industries in which they operate</b>	As of August 2010, there were 604 Government –Owned and –Controlled Corporations (GOCCs) in the Philippines. Industries in which they operate include finance, public utilities, area development, agriculture, trading, promotion, and science. <sup>3</sup>
<b>Flow of Foreign Direct Investment from 2008 to 2012 (or other recent 3 to 5 year range)</b>	FDI applications received and approved in the first quarter of 2012 by the Authority of the Freeport Area of Bataan (AFAB), Board of Investments (BOI), Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA), and Subic Bay Metropolitan Authority (SBMA) decreased by 16.3 per cent from PhP 22.0 billion in Q1 2011 to PhP 18.4 billion. <sup>4</sup>  Total foreign direct investments (FDI) approved in the fourth quarter of 2011 by the six investment promotion agencies (IPAs), namely: Board of Investments (BOI), Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA), and Subic Bay Metropolitan Authority (SBMA) as well as the Authority of the Freeport Area of Bataan (AFAB) and Board of Investments Autonomous Region of Muslim Mindanao (BOI-ARMM) amounted to PhP 165.8 billion. <sup>5</sup>

1 Micro, small, and medium enterprises (MSMEs) are defined as any business activity/enterprise engaged in industry, agribusiness/services, whether single proprietorship, cooperative, partnership, or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, must have value falling under the following categories:

By Asset Size\*

Micro:	Up to P3,000,000
Small:	P3,000,001 - P15,000,000
Medium:	P15,000,001 - P100,000,000
Large:	above P100,000,000

Alternatively, MSMEs may also be categorized based on the number of employees:

Micro:	1 - 9 employees
Small:	10 -- 99 employees
Medium:	100 -- 199 employees
Large:	More than 200 employees

\*As defined under Small and Medium Enterprise Development (SMED) Council Resolution No. 01 Series of 2003 dated 16 January 2003. <http://www.dti.gov.ph/dti/index.php?p=532>

2 See <http://www.dti.gov.ph/dti/index.php?p=321>

3 See <http://www.senate.gov.ph/publications/PB%202010-08%20%20Issues%20and%20challenges.pdf>

4 See [http://www.nscb.gov.ph/fiis/2012/1q\\_12/fdiapp1\\_12.asp](http://www.nscb.gov.ph/fiis/2012/1q_12/fdiapp1_12.asp)

5 See [http://www.nscb.gov.ph/fiis/2011/4q\\_11/Default.asp](http://www.nscb.gov.ph/fiis/2011/4q_11/Default.asp)

	Total foreign direct investments (FDI) approved in the fourth quarter of 2010 by the four major investment promotion agencies (IPAs), namely: Board of Investments (BOI), Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA), and Subic Bay Metropolitan Authority (SBMA) amounted to PhP 116.6 billion, up by 33.2 per cent from PhP 87.5 billion approved in the fourth quarter of 2009. Total approved FDI for 2010 reached PhP 196.1 billion, 61.0 per cent higher than the PhP 121.8 billion registered in 2009. <sup>6</sup>
<b>Main industries in the country</b>	textiles and garments, pharmaceuticals, chemicals, wood products, paper and paper products, tobacco products, beverage manufacturing, food processing, machinery and equipment, transport equipment, electronics and semiconductor assembly, mineral products, hydrocarbon products, fishing, business process outsourcing services <sup>7</sup>
<b>Number of cases involving business-related human rights violations reported to (i) NHRIs, (ii) other national human rights bodies (e.g. ombudsmen) , and/or (iii) international human rights bodies</b>	<i>Awaiting official data from CHR.</i>
<b>Have the Framework and/or the Guiding Principles been translated into the country's languages and published in the country?</b>	No.

<sup>6</sup> See <http://www.nscb.gov.ph/fiis/2010/4q-10/Default.asp>

<sup>7</sup> See <http://www.state.gov/r/pa/ei/bgn/2794.htm>

## Types of Business Enterprises in the Country

<b>Name of the Type of Business Enterprise</b>	<b>Description of the Legal structure of the Type of Business Enterprise</b>	<b>Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?</b>	<b>Any legislation specifically applicable to the Type of Business Enterprise</b>  (E.g. Corporations Law)	<b>Laws which the Type of Business Enterprise are expressly excluded from</b>
Sole/individual proprietorship	Unincorporated, with no legal personality distinct from owner.	No	None	None
Partnership	Two or more persons bound to contribute money or industry to a common fund with the intention of dividing the profits among themselves.  A partnership has a juridical personality separate from the people composing it.	No	None	None
Corporation	A corporation is an artificial being created by operation of law, having the right of succession and only the powers, attributes, and properties expressly authorized by law or incident to its existence. <sup>8</sup>  It is a juridical person capable of having rights and obligations, with a personality distinct from its members or stockholders. Stockholders cannot be held liable for corporate obligations. Neither may a corporation be held liable for the personal obligations of its stockholders.	No	Corporation Code  Securities Regulation Act	None

<sup>8</sup> Batas Blg. 68, Sec. 2 (The Corporation Code)

	<p>A corporation has continued existence during the term stated in its articles of incorporation. It is not affected by any change in the members or stockholders or by transfer of shares by a stockholder to a third person.</p>			
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**OVERVIEW OF THE COUNTRY’S BUSINESS AND HUMAN RIGHTS LANDSCAPE**

The Philippines is no stranger to the tension between business interests and human rights. Nowhere is this more apparent or notorious than in the mining industry. The Philippines is one of the world’s most highly mineralized countries, with untapped mineral wealth estimated at more than \$840 billion. Philippine copper, gold, and chromate deposits are among the largest in the world.<sup>9</sup> However, concerns over environmental degradation, violations of indigenous peoples and cultural communities’ rights, and even extrajudicial killings and enforced disappearances of anti-mining advocates have led many to condemn and oppose mining activities in the country.<sup>10</sup>

The Philippines’ business process outsourcing (BPO) industry accounts for about 15% of the global outsourcing market and has been the fastest-growing segment of the Philippine economy. Although industry revenues slowed from 40% growth during 2006 and 2007, the BPO sector exhibited resilience amid the global financial turmoil, generating more than \$6 billion in revenues in 2008 (up 26%) and \$7.2 billion in 2009. BPO revenues rose 26% to nearly \$9 billion in 2010, and will likely surpass 20% growth in 2011. The sector created about 100,000 new jobs in 2011, bringing total BPO employment to about 600,000.<sup>11</sup> Up until recently, antiquated provisions in the Labour Code presented obstacles to equal employment opportunities and gave a loophole for companies to adopt hiring policies against women.

The Philippines also benefits from foreign currency remittances by migrant workers. Annual deployment of Filipino migrant workers has been increasing steadily since the 1970s. By 2010 there were a staggering 2.043 million OFWs (men: 1.068 Million (52.3%), women: 975,000 (47.7%)) who were working or had worked abroad in recent months.<sup>12</sup> These workers are susceptible to whole host of human rights abuses such as labour trafficking and white slavery.

The Philippines has been reported to be a source country and, to a much lesser extent, a destination and transit country for men, women, and children subjected to sex trafficking and forced labour. A significant number of Filipino men and women who migrate abroad for work are subsequently subjected to conditions of involuntary servitude worldwide. Men, women, and children are subjected to conditions of forced labour in factories, at construction sites, on fishing vessels, on agricultural plantations, and as domestic workers in Asia and increasingly throughout the Middle East. A significant number of Filipino women working in domestic service in foreign countries also face rape, physical violence, and sexual abuse. Skilled Filipino migrant workers, such as engineers and nurses, are also subjected to conditions of forced labour abroad.<sup>13</sup>

9 See <http://www.state.gov/r/pa/ei/bgn/2794.htm>  
 10 See Ibid.; also [http://www.asiasentinel.com/index.php?option=com\\_content&task=view&id=4705&Itemid=214](http://www.asiasentinel.com/index.php?option=com_content&task=view&id=4705&Itemid=214)  
 11 See <http://www.state.gov/r/pa/ei/bgn/2794.htm>  
 12 See <http://www2.ohchr.org/english/bodies/cmw/docs/ngos/CMA.Philippines.CMW16.pdf>  
 13 See <http://manila.usembassy.gov/2012traffickinginpersons.html>

## OVERVIEW OF THE COUNTRY'S BUSINESS AND HUMAN RIGHTS LANDSCAPE

Trafficking in men, women, and children within the country also remains a significant problem in the Philippines. People are trafficked from rural areas to urban centres. Men are subjected to forced labour and debt bondage in the agriculture, fishing, and maritime industries. Women and children are trafficked within the country for forced labour as domestic workers and small-scale factory workers, for forced begging, and for exploitation in the commercial sex industry. Hundreds of victims are subjected to forced prostitution each day in well-known and highly visible business establishments that cater to both domestic and foreign demand for commercial sex acts. Filipino migrant workers, both domestically and abroad, who become trafficking victims are often subject to violence, threats, inhumane living conditions, non-payment of salaries, and withholding of travel and identity documents.<sup>14</sup>

Traffickers, in partnership with organized crime syndicates and corrupt law enforcement officers, regularly recruit family and friends from villages and urban neighbourhoods, often masquerading as representatives of government-registered employment agencies. Fraudulent recruitment practices and the institutionalized practice of paying recruitment fees often leave workers vulnerable to forced labour, debt bondage, and commercial sexual exploitation.<sup>15</sup>

Child sex tourism remains a serious problem in the Philippines, with sex tourists coming from Northeast Asia, Australia, New Zealand, Europe, and North America to engage in the commercial sexual exploitation of children. Increasingly, Filipino children are coerced to perform sex acts for Internet broadcast to paying foreign viewers.<sup>16</sup>

Child labour is also a pressing issue. The 2011 Survey on Children in the Philippines revealed that of the 29 million Filipino children aged 5-17 years old, there were roughly about 5.5 million working children, of which almost 3 million were engaged in hazardous child labour.<sup>17</sup>

The Philippine government appears to be cognizant of human rights issues arising from business activities. In its submission to the working committee during the 2012 Universal Periodic Review, the Philippine government expressed an aspiration to “fully engage the private sector as [a] partner in promoting human rights, especially with respect to the affirmation and enforcement of the whole array of economic, social, and cultural rights.”

The passing of a law on Corporate Social Responsibility (CSR) with explicit provisions on the corporate obligation to respect human rights would be a welcome step in this direction. At present, the Philippines has no CSR law, leaving companies to decide how and whether to adopt any CSR policies or initiatives.

14 Ibid.

15 Ibid.

16 Ibid.

17 See [http://www.ilo.org/manila/info/public/pr/WCMS\\_184097/lang--en/index.htm](http://www.ilo.org/manila/info/public/pr/WCMS_184097/lang--en/index.htm)

## **I. How has the State reacted to the UN “Protect, Respect and Remedy” Framework (“Framework”)?**

It appears that the Philippine Government has not made any statements with specific reference to the Framework. If any such statements have in fact been made, they are not readily available to the public.

## **II. Is the State duty to protect against human rights abuses by third parties, including businesses (“State Duty to Protect”), recognized in the country’s domestic legal system?**

### **1. Do any of the State’s domestic laws, including the Constitution / basic law of the State, provide a basis for a State Duty to Protect?**

Although the Philippine Government does not appear to have taken a position specifically regarding the Framework, Philippine law does recognize an existing state duty to protect human rights, and consequently, a duty to protect against human rights abuses.

#### **State Duty to Protect under the 1987 Constitution**

The Philippine Constitution abounds with provisions indicating recognition and acceptance of the state’s duty to protect against human rights abuses. Article II of the Constitution, for instance, declares state policies to guarantee full respect for human rights, protect the family as a social institution, protect the youth, ensure the equality of women and men, protect the rights to health and environment, and protect the rights of workers:

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the

family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

Section 15. The State shall protect and promote the right to health of the people and instil health consciousness among them.

Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Section 18. The State affirms labour as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Aside from these State policies, the Constitution also devotes Article XIII entirely to social justice and human rights, with sections specifically relating to labour, agrarian and natural resources reform, urban land reform and housing, health, women, and people’s organizations. The following provisions under Article XIII clearly denote a state duty to protect:

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 3. The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labour to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

Section 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

In addition to these, the State also undertakes to “protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.”<sup>18</sup>

### **State Duty to Protect in Philippine Statutes**

The State duty to protect against human rights abuses by third parties, including businesses, is also recognized in the Philippines’ statutory enactments. Most notable of these are laws pertaining to labour, indigenous peoples, children, human trafficking, and the environment.

#### **Labour**

In keeping with the State policies on labour established by the Constitution, the Labour Code of the Philippines declares that the State “shall afford protection to labour, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.”<sup>19</sup>

The Philippines also has an avowed duty to protect Filipino migrant workers from human rights abuses beyond the country’s borders. The Migrant Workers and Overseas Filipinos Act of 1995 express this duty in the following declarations:

(a) In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular, continuously monitor international conventions, adopt/be signatory to and ratify those that guarantee protection to our migrant workers, and endeavour to enter into bilateral agreements with countries hosting overseas Filipino workers.

(b) The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this

18 CONSTITUTION, ART. XII, § 5.

19 Labour Code, Presidential Decree No. 442, Art. 3.



end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.

(c) While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.

(d) The State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.

(e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/documented or irregular/undocumented, are adequately protected and safeguarded.<sup>20</sup>

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20 Republic Act No. 8042, § 2, as amended by Republic Act No. 10022. “An Act amending Republic Act no. 8042, otherwise known as the migrant workers and overseas Filipinos Act of 1995, as amended, further improving the standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes.”

## Indigenous Peoples

The Indigenous Peoples Rights Act of 1997 (IPRA) was enacted in an attempt to fulfil the State’s undertaking under the Philippine Constitution to “protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.”<sup>21</sup> Section 2 of the IPRA articulates the State’s policies in this regard:

The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
- b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural wellbeing and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
- d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinctions or discriminations;
- e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and

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21 Supra, note 1.

- f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, their rights to their ancestral domains.

### Children's Rights

The Special Protection of Children against Child Abuse, Exploitation and Discrimination Act (Anti-Child Abuse Law) declares in no uncertain terms the state duty to protect children against abuse. Its latest iteration<sup>22</sup> sets forth the following policies and principles:

It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development including child labour and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

<sup>22</sup> Republic Act No. 7610. In 2003, the law was amended by Republic Act No. 9231, (An Act providing for the elimination of the worst forms of child labour and affording stronger protection for the working child, amending for this purpose Republic Act no. 7610, as amended, otherwise known as the "Special Protection of Children against Child Abuse, Exploitation and Discrimination Act")

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.<sup>23</sup>

### Human Trafficking

The Anti-Trafficking in Persons Act of 2003<sup>24</sup> expresses the state duty to protect in Section 2, which states:

It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations

<sup>23</sup> Republic Act No. 7610, § 2, as amended by Rep. Act. No. 9231.

<sup>24</sup> Republic Act No. 9208

Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families. United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

## Environment

In the Clean Air Act,<sup>25</sup> the Philippines recognizes and undertakes to protect the following rights:

- The right to breathe clean air
- The right to utilize and enjoy all natural resources according to the principles of sustainable development
- The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process
- The right to participate in the decision-making process concerning development policies, plans and programs,(?) projects or activities that may have adverse impact on the environment and public health
- The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances
- The right of access to public records which a citizen may need to exercise his or her rights effectively under the Act
- The right to bring action in court or quasi-judicial bodies to enjoin all activities in violation of environmental laws and regulations, to compel the rehabilitation and clean up of

affected area, and to seek the imposition of penal sanctions against violators, including private actors, of environmental laws

- The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity

## 2. Has the State Duty to Protect been recognized by the State's courts?

The state duty to protect against human rights abuses by non-state entities has been recognized by the Supreme Court of the Philippines.

In *International School Alliance of Educators (ISAE) v. Quisumbing*,<sup>26</sup> the Supreme Court upheld the principle of “equal pay for equal work” in the International Covenant on Economic, Social, and Cultural Rights and ruled against the validity of International School, Inc.’s policy of paying foreign teachers hired abroad 25% more than their counterparts who were hired locally. The Court said:

That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. The Constitution in the Article on Social Justice and Human Rights exhorts Congress to “give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities.” The very broad Article 19 of the Civil Code requires every person, “in the exercise of his rights and in the performance of his duties, [to] act with justice, give everyone his due, and observe honesty and good faith.

International law, which springs from general principles of law, likewise proscribes discrimination. General principles of law include principles of equity, *i.e.*, the general principles of fairness and justice, based on the test of what is

25 Republic Act No. 8749

26 G.R. No. 128845, June 1, 2000.

reasonable. The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation — all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

In the workplace, where the relations between capital and labour are often skewed in favour of capital, inequality and discrimination by the employer are all the more reprehensible.

The Constitution specifically provides that labour is entitled to “humane conditions of work.” These conditions are not restricted to the physical workplace — the factory, the office or the field — but include as well the manner by [sic] which employers treat their employees.

The Constitution also directs the State to promote “equality of employment opportunities for all.” Similarly, the Labour Code provides that the State shall “ensure equal work opportunities regardless of sex, race or creed.” It would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment.

Discrimination, particularly in terms of wages, is frowned upon by the Labour Code. Article 135, for example, prohibits and penalizes the payment of lesser compensation to a female employee as against a male employee for work of equal value. Article 248 declares it an unfair labour practice for an employer to discriminate in regard to wages in order to encourage or discourage membership in any labour organization.

Notably, the International Covenant on Economic, Social, and Cultural Rights, *supra*, in Article 7 thereof, provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

a. Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work...

The foregoing provisions impregnably institutionalize in this jurisdiction the long honoured legal truism of “equal pay for equal work.” Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries.<sup>22</sup> This rule applies to the School, its “international character” notwithstanding.

The School contends that petitioner has not adduced evidence that local-hires perform work equal to that of foreign-hires. The Court finds this argument a little cavalier. If an employer accords employees the same position and rank, the presumption is that these employees perform equal work. This presumption is borne by logic and human experience. If the employer pays one employee less than the rest, it is not for that employee to explain why he receives less or why the others receive more. That would be adding insult to injury. The employer has discriminated against that employee; it is for the employer to explain why the employee is treated unfairly.

The employer in this case has failed to discharge this burden. There is no evidence here that foreign-hires perform 25% more efficiently or effectively than the local-hires. Both groups have similar functions and responsibilities, which they perform under similar working conditions.

The School cannot invoke the need to entice foreign-hires to leave their domicile to rationalize the distinction in salary rates without violating the principle of equal work for equal pay.

While we recognize the need of the School to attract foreign-hires, salaries should not be used as an enticement to the prejudice of local-hires. The local-hires perform the same services as foreign-hires and they ought to be paid the same salaries as the latter. For the same reason, the “dislocation factor” and the foreign-hires’ limited tenure also cannot serve as valid bases for the distinction in salary rates. The dislocation factor and limited tenure affecting foreign-hires are adequately compensated by certain benefits accorded them which are not enjoyed by local-hires, such as housing, transportation, shipping costs, taxes and home leave travel allowances.

The Constitution enjoins the State to “protect the rights of workers and promote their welfare,” “to afford labour full protection.” The State, therefore, has the right and duty to regulate the relations between labour and capital. These relations are not merely contractual but are so impressed with public interest that labour contracts, collective bargaining agreements included, must yield to the common good. Should such contracts contain stipulations that are contrary to public policy, courts will not hesitate to strike down these stipulations.

In this case, we find the point-of-hire classification employed by respondent School to justify the distinction in the salary rates of foreign-hires and local hires to be an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local-hires. The practice of the School of according higher salaries to foreign-hires contravenes public policy and, certainly, does not deserve the sympathy of this Court.

This decision is significant not only because it expressly recognizes the State’s obligation to promote and ensure equality in employment, but also because it demonstrates that the duty includes protecting the right to equality against infringement by non-State actors.

### **III. Is the State taking steps to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulations and adjudication?**

#### **1. Are there government bodies and/or State agencies that have the responsibility to prevent, investigate, punish and redress business-related human rights abuses? If so, how have they done so?**

In the Philippines, there is no single agency tasked specifically with the prevention, investigation, punishment, and redress of human rights abuses. Although the Philippine has a National Human Rights Institution called the Commission on Human Rights (CHR), it does not have any prosecutorial or adjudicatory powers.<sup>27</sup> Thus, there is not much it can do on its own in terms of actual prevention, punishment, and redress of business-related human rights abuses.

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<sup>27</sup> This was the essence of the Supreme Court’s ruling in *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991:

The most that may be conceded to the Commission in the way of adjudicative power is that it may *investigate*, *i.e.*, receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights. But fact finding is not adjudication, and cannot be likened to the *judicial function* of a court of justice, or even a quasi-judicial agency or official. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function, properly speaking. To be considered such, the faculty of receiving evidence and making factual conclusions in a controversy must be accompanied by the authority of *applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law*. This function, to repeat, the Commission does not have.

However, the country does have a number of executive agencies responsible for preventing, investigating, punishing, and redressing acts or omissions violating domestic laws that may be characterized as business-related human rights abuses.

The Department of Justice (DOJ) serves as the government's prosecution arm and administers the country's criminal justice system by investigating crimes and prosecuting offenders. As will be discussed below, many acts or omissions constituting human rights abuse are considered crimes under Philippine law. The Department of Labour and Employment, through the various bureaus and offices under it, is responsible for the administration and enforcement of the country's labour laws, including those protecting the rights of Migrant Workers. The responsibility for enforcing and administering laws relating to the environment and mining is vested in the Department of Environment and National Resources and exercised through the specialized boards and agencies under it, such as the Pollution Adjudication Board and the Mines and Geosciences Bureau. The responsibility for implementing laws for the protection of indigenous peoples' rights, on the other hand, belongs primarily to the National Commission on Indigenous Peoples.

## **2. Are there laws and/or regulations that hold business enterprises and individuals accountable for business-related human rights abuses, and are they being enforced?**

### **2.1. To what extent do business enterprises and company organs face liability for breaches of laws by business enterprises?**

#### **2.1.1. Can business enterprises be held legally accountable as legal persons?**

Under Philippine law, partnerships and corporations are juridical persons, i.e., they possess legal personality separate and distinct from their

members. As a consequence of their separate personality, business enterprises organized as partnerships or corporations can be held legally accountable as legal persons. A sole proprietorship, on the other hand, does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise,<sup>28</sup> and cannot, therefore, be held liable as a legal person. As a result, only the owner of the enterprise can be held responsible.

With respect to partnerships, the Civil Code provides that where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of co-partners, loss or injury is caused to any person not a member of the firm, or any penalty is incurred, the partnership is liable to the same extent as the partner so acting or omitting to act.<sup>29</sup> Under such circumstances, all partners are solidarily liable with the partnership.<sup>30</sup>

On the principle of mutual agency, the partnership, or every member of the partnership, is solidarily liable for torts committed by one of its members acting within the scope of the firm's business, even though they do not participate in, ratify, or have knowledge of such torts. This liability extends to a wrong committed by an employee or agent. The test of liability is whether the wrong was committed in behalf of the partnership and within the reasonable scope of its business. If it was so committed, the partners are all liable as joint tortfeasors. However, if the wrongful acts of a partner were done outside the scope of the partnership's business, innocent partners will not be held responsible.<sup>31</sup>

Where criminal acts are committed through the operation of the partnership, the partnership may, in a proper case, be held responsible for such acts to the same extent as the partner or partners

<sup>28</sup> *Mangila v. Court of Appeals*, 435 Phil. 870, 886 (2002)

<sup>29</sup> Civil Code, Art. 1822

<sup>30</sup> *Ibid.*, Art. 1824

<sup>31</sup> Esteban R. Bautista, *Treatise on Philippine Partnership Law*, 249 (1995)

committing them.<sup>32</sup> After all, the Civil Code does state explicitly that the partnership is liable for any penalty incurred by reason of any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of co-partners.<sup>33</sup> Obviously, however, this cannot apply where the only penalty that can be imposed is imprisonment.

As stated above, corporations have a legal personality separate and distinct from their owners, stockholders, or members. Consequently, complaints for damages can be directed against the corporation itself. On the other hand, directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation are liable jointly and severally for all damages resulting from such acts.<sup>34</sup>

The doctrine of piercing the corporate veil is well recognized in Philippine case law. While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. The doctrine applies only when corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is organized and controlled and its affairs are conducted in such a way as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. Moreover, to disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.<sup>35</sup>

The Supreme Court, in *Ching v. Secretary of Justice*,<sup>36</sup> recognizes two doctrines on corporate criminal liability. According to the Court, a corporation may be charged and prosecuted for a crime if the imposable penalty is a fine. Even if the statute prescribes both fine and imprisonment as the penalty, a corporation may be prosecuted and, if found guilty, may be fined. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty for it to be suffered by the officers, directors, or employees of the corporation, or other persons responsible for the offense, only those individuals will suffer the penalty. Corporate officers or employees through whose act, default, or omission the corporation commits a crime are themselves individually guilty of the crime. The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Most of the penal laws surveyed in this study are framed in this manner.

**2.1.2. Do organs of a business enterprise (e.g. owners - shareholders, partners, proprietors) face liability when their businesses breach laws?**

*See 2.1.1.*

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32 Ibid., 250

33 Civil Code, Art. 1822

34 Corporation Code, §31

35 *Rivera v. United Laboratories, Inc.*, G.R. No. 155639, April 22, 2009.

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36 G.R. No. 164317, February 6, 2006

**2.2. Do laws and/or regulations: (a) require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services, and (b) require individuals to ensure their business enterprises do so?**

There are many Philippine laws prohibiting conduct that would cause or contribute to adverse human rights impacts. Inasmuch as these laws apply to all persons, natural and juridical, within Philippine jurisdiction, business enterprises are required to comply with them.

Although these laws do not explicitly impose a positive obligation on individuals to ensure their business enterprises comply with these laws, penal clauses imposing criminal liability on the individuals responsible for managing the enterprise, such as corporate directors and managing partners, provide an impetus for these individuals to ensure that their businesses do not run afoul of the law. However, these penal laws do not reach beyond Philippine territory, and it is highly doubtful whether a Philippine company can be held liable for violations committed by it or its agents or subsidiaries overseas.

### **Labour**

Violations of workers' rights can result in civil, criminal, and/or administrative liability. Complaints against employers for violations of labour laws on security of tenure and labour standards are prevalent in the Philippines, with thousands of cases being filed each year. Consequently, many employers, including corporations and corporate officers, have been made to compensate workers whose rights have been violated.<sup>37</sup>

Under Article 288 of the Labour Code, violation of any provision declared to be unlawful shall be punished with a fine of PhP 1,000 to PhP

<sup>37</sup> Access to Justice: Human Rights Abuses Involving Corporations – Philippines, International Commission of Jurists, (2010)

10,000 (approximately \$24 USD to \$235 USD) or imprisonment of three months to three years, or both, at the discretion of the court. These penalties apply to acts such as unlawful withholding of wages,<sup>38</sup> retaliatory measures for filing complaints or testifying in proceedings relating to violations of conditions of employment,<sup>39</sup> discrimination against women employees,<sup>40</sup> violations of the right to self-organization,<sup>41</sup> and other acts falling within the definition of “unfair labour practice.”<sup>42</sup>

Aliens found guilty of any such violation considered unlawful under the Labour Code shall be summarily deported after service of sentence.<sup>43</sup> If the offense is committed by a corporation, trust, firm, partnership, association, or any other entity, the penalty shall be imposed on its guilty officer or officers.<sup>44</sup>

Employers who fail to comply with the country's minimum wage law<sup>45</sup> face stiffer penalties. Under the law, any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates shall be punished by a fine ranging from PhP 25,000 to PhP 100,000 (approximately \$585 USD to \$2330 USD) or two to four years in prison, or both, at the discretion of the court, without the benefits provided for under the Probation Law. In any event, the erring employer will also be liable for an amount equivalent to double the unpaid benefits owing to the employees. If the violation is committed by a corporation, trust, firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including, but not limited to, the president, vice-president, chief executive officer, general manager, managing director or partner.

<sup>38</sup> Labour Code, Arts. 111 and 116

<sup>39</sup> Ibid., Art. 118

<sup>40</sup> Ibid., Arts. 135-137

<sup>41</sup> Labour Code, Art. 246

<sup>42</sup> Ibid., Art. 247 & 248.

<sup>43</sup> Ibid., Art. 288

<sup>44</sup> Ibid., Art. 289

<sup>45</sup> Republic Act No. 6727, Wage Rationalization Act, as amended by Republic Act No. 8188



Republic Act No. 10151, which was signed into law in June 2011, repealed the Labour Code provisions prohibiting night work and introduced new articles in their stead imposing obligations on employers to provide night workers free health assessments, suitable first-aid facilities, safe and healthful working conditions, and alternatives to night work for female employees before and after they give birth. Any violation of the Act and the rules and regulations issued pursuant to its mandates shall be punished with a fine ranging from PhP30,000 to PhP50,000 (approximately \$700 USD to \$1,165 USD) or imprisonment of at least six months, or both, at the discretion of the court. If the offense is committed by a corporation, trust, firm, partnership, association or any other entity, the penalty shall be imposed on the guilty officer or officers.<sup>46</sup>

The Migrant Workers Act seeks to protect overseas Filipino workers from illegal recruitment and other abusive acts of recruiters and employers. The most serious violations can result in a fine of up to PhP 5,000,000 and life imprisonment.<sup>47</sup> The law punishes principals, accomplices, and accessories. In the case of juridical persons such as corporations, liability will attach to the officers having ownership, control, management, or direction of their business who are responsible for the commission of the offense and the responsible employees or agents.<sup>48</sup> One of the limitations of the Migrant Workers Act, however, is its failure to provide for extraterritorial reach. Thus, only acts committed in the Philippines are punishable under its provisions. Presumably to address this shortcoming, the law established a legal assistance fund amounting to at least one hundred million pesos (approximately \$2.4M USD) to be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress. The legal expenditures contemplated include the fees for foreign lawyers to be hired by the Legal Assistant for Migrant Workers Affairs to represent migrant workers filing charges against erring or abusive

employers abroad.<sup>49</sup>

### Land and Indigenous Peoples' Rights

The Constitution provides that urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.<sup>50</sup> Consistent with this mandate, the Urban Development and Housing Act of 1992 (also known as the Lina Law)<sup>51</sup> declares that eviction or demolition as a practice shall be discouraged. Eviction or demolition may be allowed, however, in the following situations:

- When persons or entities occupy danger areas such as railroad tracks and riverbanks, and other public places such as sidewalks and roads
- When government infrastructure projects with available funding are about to be implemented
- When there is a court order for eviction and demolition

The Lina Law also lays down a mandatory procedure for the execution of eviction or demolition orders involving underprivileged or homeless citizens. The procedure entails, among others, prior notice upon, and adequate consultations with, the affected persons; the presence of local government officials or their representatives during the eviction or demolition; and a prohibition of the use of heavy equipment except for permanent structures made of concrete materials.<sup>52</sup>

Any person who violates the provisions of the Lina Law can be imprisoned for up to six years and/or fined up to PhP 100,000. If the offender is a corporation, partnership, or other juridical entity, the penalty will be imposed on the officer or officers who caused the violation.<sup>53</sup>

Rights to agricultural land, on the other hand, cannot be discussed without considering the

46 Republic Act No. 10151, § 8

47 Republic Act No. 8042, § 7, as amended by Republic Act No. 10022

48 Ibid., § 6

49 Ibid., §§ 25 & 26, as amended by Republic Act No. 10022

50 CONSTITUTION, Art. XIII, § 10

51 Republic Act No. 7279

52 Republic Act No. 8371, § 28

53 Ibid., § 45

provisions of the Comprehensive Agrarian Reform Law (CARL).<sup>54</sup> Signed into law in 1988, the CARL established the Comprehensive Agrarian Reform Program whereby public and private agricultural lands are supposed to be redistributed to qualified farmer-beneficiaries.<sup>55</sup>

Among the acts prohibited by the CARL are the following:

- The ownership or possession, for the purpose of circumventing the provisions of the CARL, of agricultural lands in excess of the total retention limits or award ceilings by any person, natural or juridical, except those under

54 Republic Act No. 6657, as amended by Republic Act No. 9700

55 Republic Act No. 6657, § 22 provides:

The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

- agricultural lessees and share tenants;
- regular farmworkers;
- seasonal farmworkers;
- other farmworkers;
- actual tillers or occupants of public lands;
- collectives or cooperatives of the above beneficiaries; and
- others directly working on the land.

Provided, however, that the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and provided, further, that actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

collective ownership by farmer-beneficiaries

- The forcible entry or illegal detainer by persons who are not qualified beneficiaries under the CARL to avail themselves of the rights and benefits of the CARP
- Any conversion by, any landowner of his/her agricultural land into any non-agricultural use with intent to avoid the application of this Act to his/her landholdings and to dispossess his/her bonafide tenant farmers
- The malicious and wilful prevention or obstruction by any person, association or entity of the implementation of the CARP<sup>56</sup>

Forcible entry into, or illegal detainer of, agricultural land by persons not qualified to be beneficiaries of the CARP can result in imprisonment for three years and one day to six years and/or a fine of PhP 50,000 to PhP 150,000.<sup>57</sup>

Landowners who convert their land to any non-agricultural use with the intent to avoid the application of the CARP, and those who maliciously and wilfully prevent or obstruct the implementation of the CARP can be imprisoned for six years and one day to 12 years and/or fined PhP 200,000 to PhP 1M.<sup>58</sup>

Similar to other penal laws, criminal liability in the case of a corporate offender will fall on the officer responsible for the offense.<sup>59</sup>

The Indigenous Peoples Rights Act of 1997<sup>60</sup> (IPRA) was enacted to protect indigenous peoples' rights to their ancestral lands and domains,<sup>61</sup> to self-governance and empowerment,<sup>62</sup> to cultural integrity,<sup>63</sup> and to social justice and human rights.<sup>64</sup> Under the IPRA's penal clause, any person who

56 Republic Act No. 6657, § 73

57 Republic Act No. 6657, § 74, as amended by Republic Act No. 9700

58 Ibid.

59 Republic Act No. 6657

60 Republic Act No. 8371

61 Ibid., §§ 4-12

62 Ibid., §§ 13-20

63 Ibid., §§ 29-37

64 Ibid., §§ 21-28

violates any of the IPRA's provisions, such as, but not limited to, those against unauthorized or unlawful intrusion upon any ancestral lands or domains, employment of any form of force or coercion against indigenous peoples, discrimination with respect to employment, exploration of archaeological sites of indigenous peoples for the purpose of obtaining materials of cultural value without the free and prior informed consent of the community concerned, and defacement, removal, or destruction of artefacts of great importance to the preservation of indigenous peoples' cultural heritage, shall be punished in accordance with the indigenous peoples' customary laws or, alternatively, imprisonment of nine months to 12 years and/or a fine of PhP 100,000 to PhP 500,000.<sup>65</sup> In addition, the offender shall be obliged to pay to the indigenous peoples concerned whatever damage they may have suffered as a consequence of the offense. If the offender is a juridical person, all its officers responsible for the offense, such as its president, manager, or head of office, will be criminally liable for it.<sup>66</sup> Any of these violations will also result in the cancellation of the juridical person's certificate of registration and/or license.<sup>67</sup>

### Environmental Protection

Established in 1978 by presidential decree,<sup>68</sup> the Environmental Impact Statement (EIS) System requires all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms, and other such entities to prepare, file, and include in every action, project, or undertaking which significantly affects the quality of the environment an environmental impact statement.<sup>69</sup> Under this system, no

<sup>65</sup> Ibid., § 72

<sup>66</sup> Ibid., § 73

<sup>67</sup> Ibid.

<sup>68</sup> Presidential Decree No. 1586

<sup>69</sup> An EIS must state the following in detail:  
the environmental impact of the proposed action, project or undertaking;  
any adverse environmental effect which cannot be avoided should the proposal be implemented;

person, partnership, or corporation is allowed to undertake or operate in any environmentally critical project or area<sup>70</sup> without first securing an

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alternative to the proposed action;  
a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and  
whenever a proposal involves the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

<sup>70</sup> Presidential Proclamation 2146 identifies Environmentally Critical Projects and Environmentally Critical Areas as follows:

- A. Environmentally Critical Projects
  - I. Heavy Industries
    - a. Non-ferrous metal industries
    - b. Iron and steel mill
    - c. Petroleum and petro-chemical industries, including oil and gas
    - d. Smelting plants
  - II. Resource Extractive Industries
    - a. Major mining and quarrying projects
    - b. Forestry projects
      1. Logging
      2. Major wood processing project
      3. Introduction of fauna (exotic-animals) in public/private forests
      4. Forest occupancy
      5. Extraction of mangrove products
      6. Grazing
    - a. Fishery Projects
      1. Dikes for/and fishpond development projects
  - III. Infrastructure Projects
    - a. Major dams
    - b. Major power plants (fossil-fuelled, nuclear fuelled, hydroelectric or geothermal)
    - c. Major reclamation projects
    - d. Major roads and bridges
- B. Environmentally Critical Areas
  - I. All areas declared by law as national parks, watershed reserves, wildlife preserves and sanctuaries;
  - II. Areas set aside as aesthetic potential tourist spots;
  - III. Areas which constitute the habitat for any endangered or threatened species of indigenous Philippine Wildlife (flora and fauna);
  - IV. Areas of unique historic, archaeological, or scientific interests;
  - V. Areas which are traditionally occupied by cultural communities or tribes;
  - VI. Areas frequently visited and/or hard-hit by natural calamities (geologic hazards, floods, typhoons, volcanic activity, etc.);
  - VII. Areas with critical slopes;
  - VIII. Areas classified as prime agricultural lands;
  - IX. Recharged areas of aquifers;

Environmental Compliance Certificate (ECC) from the government.<sup>71</sup> Any person, partnership, or corporation found violating this requirement or the terms and conditions of the ECC shall be punished by the suspension/cancellation of its certificate and/or a fine.<sup>72</sup> Under the Mining Act, any person who wilfully violates or grossly neglects to abide by the terms and conditions of the ECC and causes environmental damage through pollution may be penalized with imprisonment of six months to six years or a fine ranging from PhP 50,000 to PhP 200,000, or both, at the discretion of the court.<sup>73</sup>

The Clean Air Act declares the principle that “polluters must pay.”<sup>74</sup> Violations of the Clean Air Act are treated as crimes punishable by fine, imprisonment, or both. If the offender is a juridical person such as a corporation, the penalty will be imposed on the president, manager, directors, trustees, the pollution control officer, or the officials directly in charge of the operations that led to the violation.<sup>75</sup> Similarly, liability for a company’s violations of the Clean Water Act, which can result in fines of up to PhP 3M for each day of violation and/or imprisonment of up to 10 years, falls on the

- X. Water bodies characterized by one or any combination of the following conditions:
  - a. tapped for domestic purposes;
  - b. within the controlled and/or protected areas declared by appropriate authorities;
  - c. which support wildlife and fishery activities;
- XI. Mangrove areas characterized by one or any combination of the following conditions:
  - a. with primary pristine and dense young growth;
  - b. adjoining mouth of major river systems;
  - c. near or adjacent to traditional productive fry or fishing grounds;
  - d. which act as natural buffers against shore erosion, strong winds and storm floods;
  - e. on which people are dependent for their livelihood.
- XII. Coral reefs, characterized by one or any combination of the following conditions:
  - a. With 50% and above live coralline cover;
  - b. Spawning and nursery grounds for fish;
  - c. Which act as natural breakwater of coastlines.

71 Presidential Decree No. 1586, § 4

72 Ibid., § 9

73 Republic Act No. 7942, § 108

74 Republic Act No. 8749, § 2

75 Ibid., §§ 45-48

president, manager, and the pollution control officer or the official in charge of the operation.<sup>76</sup>

### Child protection

The Philippines has several pieces of legislation devoted to the protection of children, and a number of these are specifically aimed at preventing and punishing child abuse in the context of business.

Republic Act No. 9231 (“An Act Providing For The Elimination Of The Worst Forms Of Child Labour And Affording Stronger Protection For The Working Child”), which amended certain sections of the Child Abuse Law, regulates the employment of children and imposes obligations on their employers, violation of which can result in closure of the employer’s business and criminal liability in the form of fines and/or imprisonment.<sup>77</sup> For instance,

76 Republic Act No. 9275, §29

77 Republic Act No. 9231, §§ 2, 3, 5, & 6. Section 3 sets out the prohibition against the “worst forms of child labour” as follows: No child shall be engaged in the worst forms of child labour. The phrase “worst forms of child labour” shall refer to any of the following:

All forms of slavery, as defined under the “Anti-trafficking in Persons Act of 2003”, or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including recruitment of children for use in armed conflict; or

The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or

The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or

Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:

Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or

Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or

Is performed underground, underwater or at dangerous heights; or

Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or

Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or

Is performed in an unhealthy environment exposing the child to

where a child below the age of 15 is employed in public entertainment or information through cinema, theatre, radio, television, or other forms of media, the employer must “ensure the protection, health, safety, morals and normal development of the child,” “institute measures to prevent the child’s exploitation or discrimination,” and “formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.”<sup>78</sup> The employment of children as models in “any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its by-products, gambling, or any form of violence or pornography” is forbidden.<sup>79</sup> In the case of corporate violations, the penalties will be imposed on the board of directors/trustees and officers, including the president, treasurer, and secretary who participated in or knowingly allowed the violation.<sup>80</sup>

Aside from prohibiting the production, sale, publication, and possession of child pornography, the Anti-Child Pornography Act of 2009<sup>81</sup> also requires certain business enterprises to take positive steps to report violations and prevent the proliferation of child pornography. Failure to take these steps can itself amount to a crime.

Internet service providers (ISPs) have a duty to notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) within seven days from obtaining knowledge of facts and circumstances indicating that any form of child pornography is being committed using its server or

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hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or

Is performed under particularly difficult conditions; or

Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or

Involves the manufacture or handling of explosives and other pyrotechnic products.”

78 Ibid., § 2

79 Ibid., § 5

80 Ibid., § 6

81 Republic Act No. 9775

facility. They are also required to install technology or software to ensure that access to or transmittal of any form of child pornography will be blocked or filtered. ISPs who knowingly, wilfully, and intentionally violate these duties face fines of up to PhP 2M and revocation of their license to operate.<sup>82</sup>

Mall owners/operators and owners or lessors of other business establishments have a similar duty to notify the PNP or the NBI within seven days of gaining knowledge of facts and circumstances indicating that child pornography is being committed in their premises. Where child pornography is publicly displayed within their premises, they will be conclusively presumed to have knowledge of it.<sup>83</sup> Photo developers, information technology professionals, credit card companies, and banks have a duty to report any suspected child pornography materials or transactions to the proper authorities within seven days from discovery thereof.<sup>84</sup> Those found guilty of wilfully and knowingly failing to comply with this obligation can be penalized with fines of up to PhP 3M, revocation of their licenses to operate, and immediate closure of their establishments.

Internet content hosts may not host any form of child pornography on their internet addresses. The failure of the internet content host to remove child pornography within 48 hours of receiving notice that child pornography is hitting its server will be considered conclusive evidence of wilful and intentional violation of the law. Like the other business enterprises identified above, internet content hosts have a duty to report the presence of any form of child pornography, as well as the particulars of the person maintaining, hosting, distributing, or in any manner contributing to such internet address, to the proper authorities, and preserve such evidence for purposes of investigation and prosecution by the relevant authorities. Upon the request of the proper authorities, internet content hosts must also furnish the particulars of users who gained or attempted

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82 Ibid., §§ 9 & 15(k)

83 Ibid., § 10 & 15(l)

84 Ibid.

to gain access to an internet address that contains child pornography. An internet content host who knowingly, wilfully, and intentionally violates these duties can be penalized with imprisonment, a fine of up to PhP 3M, revocation of its license to operate, and immediate closure of its establishment.<sup>85</sup>

### Trafficking

Under the Anti-Trafficking in Persons Act of 2003,<sup>86</sup> it is unlawful for any person, natural or juridical, to commit any of the following acts:

- To recruit, transport, transfer; harbour, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;
- To introduce or match for money, profit, or material, economic or other consideration, any person or any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;
- To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage;
- To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
- To maintain or hire a person to engage in prostitution or pornography;
- To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;
- To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and
- To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.
- To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
- To produce, print and issue or distribute unissued, tampered or fake counselling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
- To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;
- To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;

<sup>85</sup> Ibid., §§ 11 & 15(j)

<sup>86</sup> Republic Act No. 9208

- To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;
- To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and
- To knowingly benefit from, financial or otherwise, or make use of, the labour or services of a person held to a condition of involuntary servitude, forced labour, or slavery.

Violators can be penalized with fines of up to PhP 5M and/or a prison term of up to 20 years.<sup>87</sup> If the offender is a corporation, partnership, association, club, establishment or any other juridical person, the penalty will be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or knowingly permitted or failed to prevent its commission. In addition, the registration and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. Significantly, the law expressly provides that the owner, president, partner, or manager of the establishment shall not be allowed to operate similar establishments under a different name.<sup>88</sup>

Like the Migrant Workers Act, the Anti-Trafficking Law is silent on extraterritoriality. However, Filipino victims of trafficking are expressly considered “Overseas Filipinos in Distress” and, as such, may avail of free legal assistance when they press charges abroad.<sup>89</sup>

87 Republic Act No. 9775, § 10

88 Ibid.

89 Ibid., § 24

## Corruption

Philippine anti-corruption laws, as far as private individuals and entities are concerned, have remained mostly static since the passing of the Anti-Graft and Corrupt Practices Act<sup>90</sup> in the 1960s and the Plunder Law<sup>91</sup> in 1991. Before then, the only criminal laws against corruption were the Revised Penal Code provisions on crimes committed by public officers, Article 212 of which addresses corruption of public officials and punishes any person who bribes a public officer<sup>92</sup> or gives the officer gifts by reason of his or her office<sup>93</sup> with a fine and/or imprisonment. Under the Revised Penal Code, the public officer or employee on the other side of the transactions contemplated in Article 212 can be prosecuted in the Philippines for violating the Code even though the transaction took place outside Philippine national territory.<sup>94</sup> However, this extraterritorial reach (which counts as one of the only five exceptions to the rule that Philippine penal laws apply only to crimes committed within the country)<sup>95</sup> does not extend to private individuals or entities.

The Anti-Graft and Corrupt Practices Act makes it unlawful for “any person” knowingly to induce or cause a public official to commit any of the

90 Republic Act No. 3019

91 Republic Act No. 7080

92 Revised Penal Code, Art. 210

93 Ibid., Art. 211

94 Ibid., Art 2 (4)

95 Ibid., Art 2. *Application of its provisions.* — Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

Should commit an offense while on a Philippine ship or airship  
Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands

Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the presiding number;

While being public officers or employees, should commit an offense in the exercise of their functions; or

Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

corrupt practices defined in the Act.<sup>96</sup> The Plunder Law punishes persons who participate with public officers in the commission of plunder, such as business associates, with life imprisonment.<sup>97</sup> Although both laws indicate that the word “person” includes natural and juridical persons “unless the context indicates otherwise,”<sup>98</sup> a corporation or other juridical person cannot be prosecuted under these statutes, as the only penalties imposed on the offender are imprisonment and perpetual disqualification from holding public office.<sup>99</sup>

### Civil liability

Business enterprises and the individuals running them may also be held civilly liable under the Civil Code’s provisions on quasi-delicts (torts), human relations, and nuisances.

In its chapter on human relations, the Civil Code declares that every person must, in the exercise of his rights or in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.<sup>100</sup> The Civil Code also binds persons to respect the dignity, personality, privacy, and peace of mind of other persons. Vexing or humiliating another for his or her religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition can give rise to a cause of action for damages, prevention, and other relief.<sup>101</sup>

An action for damages can also be brought against any person who, contrary to law, wilfully or negligently causes damage to another,<sup>102</sup> or wilfully causes loss or injury to another in a manner that is contrary to law, morals, good customs, or public policy.<sup>103</sup>

Notably, non-state actors can be held liable for damages when they directly or indirectly obstruct, violate, or in any manner impede the civil and political rights of another, such as the freedom of speech and religion, the freedom from arbitrary or illegal detention, the right against deprivation of property without due process of law, the right to equal protection, and other rights protected under the Constitution’s Bill of Rights.<sup>104</sup> It has been observed, however, that this particular provision has yet to be invoked or relied upon in any significant manner.<sup>105</sup>

The Civil Code’s provisions on quasi-delicts, the Philippines’ version of torts, can also be used as a basis for an indemnity suit against a natural or juridical person who causes damage to another. Article 2176 defines quasi-delicts as follows: “Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict...”

The obligation imposed by Article 2176 is demandable not only for one’s own acts or omissions, but also for those of persons for whom one is responsible.<sup>106</sup> Thus, under Article 2180, owners and managers of an establishment or enterprise are responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. In order to avoid liability under this provision, the owner or manager must prove that he or she observed “all the diligence of a good father of a family to prevent damage.”<sup>107</sup>

The Civil Code’s provisions on nuisances are of particular relevance to the rights to health and the environment. A nuisance, as defined by the Civil Code, is any act, omission, establishment, business, condition of property, or anything else which injures

96 Republic Act No. 3019, § 4, in relation to § 3

97 Republic Act No. 7080, § 2

98 Republic Act No. 3019, § 2(d); Republic Act No. 7080, § 1(c)

99 Republic Act No. 3019, § 9(a); Republic Act No. 7080, § 2

100 Civil Code, Art. 19

101 Ibid., Art. 26

102 Ibid., Art. 20

103 Ibid., Art. 21

104 Ibid., Art. 32

105 Access to Justice: Human Rights Abuses Involving Corporations – Philippines (2010), 7.

106 Civil Code, Art. 2180

107 Ibid., The diligence of a “good father of a family” is the standard of ordinary due diligence in the Civil Code.



or endangers the health or safety of others; annoys or offends the senses; shocks, defies, or disregards decency or morality; obstructs or interferes with the free passage of any public highway or street, or any body of water; or hinders or impairs the use of property.<sup>108</sup>

A nuisance is either public or private. A nuisance is considered public if it affects a community or neighbourhood or any considerable number of persons, although the extent of the annoyance, danger, or damage upon individuals may be unequal. Any other nuisance that does not fall within this definition is classified as a private one.<sup>109</sup> The distinction between private and public nuisances determines what remedies may be availed of. Public and private nuisances can be the subject of a civil action or abatement without judicial proceedings, but only a public nuisance can lead to criminal prosecution.<sup>110</sup>

### **2.3. To what extent, how, and by whom have the laws and/or regulations identified in Question 2.3 above been enforced by the State?**

According to the DOJ's 2010 Annual Report,<sup>111</sup> 976 cases of human trafficking have been filed since 2003. Of the 976 cases, 85 had been archived and 190 had been dismissed, dropped, or withdrawn. As of 2010, prosecutions had resulted in 39 convictions and two acquittals.

In its most recent Universal Periodic Review (UPR) Report,<sup>112</sup> the Philippine Government stated that the number of convictions had risen to 66 by December 2011.<sup>113</sup> However, there was no mention of the status of the several hundred more cases that were pending at the close of 2010.

108 Civil Code, Art. 694

109 Ibid., Art. 695

110 Ibid., Arts. 699 & 705

111 <http://www.doj.gov.ph/files/2010Annual.pdf>

112 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Philippines (Philippines UPR Report), A/HRC/WG.6/13/PHL/1.

113 Ibid., 14.

Recent Government measures to combat trafficking in persons highlighted in the UPR Report include the following:

- Department of Justice Circular No. 49 issued on 25 June 2010, and No. 57 on 29 July 2010, directing Prosecutors to prioritize and fast-track the resolution and trial of trafficking in persons cases, with further instruction to oppose Motions designed to delay the prosecution, and with the prohibition to dismiss cases on grounds of affidavits of desistance executed by the victims or his/her guardians;
- Department of Interior and Local Government-Department of Justice-Department of Social Welfare and Development Joint Memorandum Circular No. 2010-1 issued on 18 October 2010, on the creation of Local Committees on Anti-Trafficking and Violence Against Women and their Children to establish and strengthen local structures to collaboratively address the problems of trafficking in persons and violence against women and children, through policies and legislations;
- Memorandum of Agreement on 18 October 2010 by the Department of Interior and Local Government with the Blas Ople Policy Centre and Training Institute, Visayan Forum Foundation, Inc., Association of Child Caring Agencies of the Philippines and the Philippine Centre for Islam and Democracy, to better coordinate anti- trafficking in persons efforts of the government with that of civil society and private groups.<sup>114</sup>

The Supreme Court, for its part, issued in October 2010 a circular<sup>115</sup> directing all trial courts nationwide to expedite and prioritize the disposition of trafficking in persons cases.<sup>116</sup>

114 Ibid.

115 OCA Circular No. 151-2010 Re: Speedy Disposition of Cases For Violations of Republic Act No. J9208 (The Anti- Trafficking In Persons Act Of 2003) or Trafficking in Persons Cases

116 Philippines UPR Report, 14-15.

From January to August 2011, the NCIP reported five cases of human rights violations due to land conflict, including the May 17 killing of Agta tribal leader Armando Maximino in Casiguran, Aurora Province. The violations included harassment, intimidation, and displacement of indigenous people by government security forces in Tanay, Rizal Province; Iriga City; and Bayog, Zamboanga del Sur Province. The NCIP referred these cases to the CHR, PNP, and OPAPP; all were under investigation at the close of 2011. Other NGOs reported the use of security forces to protect mining and other private interests in indigenous areas.<sup>117</sup>

The government has imposed fines and instituted criminal prosecutions for child labour violations in the formal sector, such as in manufacturing. DOLE has also exerted efforts to remove child workers from hazardous situations. From January to September 2011, DOLE conducted four operations involving the removal of 24 child labourers.<sup>118</sup> In the same year, labour inspectors made 1,843 checks on company compliance with general labour and working standards and found 140 to have violations.<sup>119</sup>

Despite the existence of penal sanctions in the minimum wage law, violations of minimum wage standards and the use of contract employees to avoid the payment of required benefits continued in 2011. During the year the DOLE, through its Bureau of Working Conditions, inspected 30,727 firms: 10,049 were found to have violated core labour standards, 6,066 of which were found to be out of compliance with minimum wage rates.<sup>120</sup> The government also continued to place financial sanctions on, and bring criminal charges against, domestic recruiting agencies found guilty of illegal recruitment. For example, in May 2011 the POEA cancelled the recruitment license of Great World International Management, Inc., and in August the DOJ filed cases against three suspected recruiters

from the firm who reportedly recruited women illegally to work as domestic workers in Kuwait.<sup>121</sup>

In 2008, the Pollution Adjudication Board (PAB) ordered several companies to pay fines amounting to 9.7 million pesos for violating the Clean Water Act.<sup>122</sup>

It has been observed, however, that despite the considerable number of penal laws applicable to business enterprises, criminal complaints against corporations and their officers remain rare; much rarer are actual convictions where corporate officers have been imprisoned or fined.<sup>123</sup>

### **3. Is the State periodically assessing the adequacy of the laws and/or regulations identified in Question 2 above, and addressing any gaps?**

Most of the laws discussed above provide for “periodic review” by the State. However, it is not clear how, and how often, if at all, these laws are actually reviewed.

Nonetheless, from the number and substance of amendatory laws and supplemental regulations issued after the enactment of these laws, it can be gathered that the country’s laws on labour, child protection, and the environment are being reviewed with a view to addressing gaps.

One example is the recent enactment of Republic Act No. 10151 (An Act Allowing the Employment of Night Workers, repealing articles 130 and 131 of the Labour Code), which removes regulations that can be seen as sexual discrimination in the work force. This is particularly relevant in view of the country’s burgeoning BPO and call centre industry, where night work is common.

117 See [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186301](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186301)

118 Ibid.

119 Ibid.

120 Ibid.

121 Ibid.

122 See [http://emb.gov.ph/pab/template/PABHits\\_4firms.htm](http://emb.gov.ph/pab/template/PABHits_4firms.htm)

123 Access to Justice: Human Rights Abuses Involving Corporations – Philippines (2010), 11.

The Mining Act of 1995, which presently faces “unprecedented opposition from a broad cross-section of society,” including indigenous communities, schools, church groups, environmental groups, and armed rebels in the countryside for having “opened the floodgates to widespread plunder of [the country’s] natural wealth, unprecedented environmental degradation, and worsening human rights violations”<sup>124</sup> is also being reviewed with a view to its possible repeal and replacement.

One gap that appears to have at times escaped the country’s lawmakers’ notice, however, relates to fines, the potential deterrent effect of which declines as years pass and potential offenders’ ability to pay increases. One example is the fine for committing certain acts, such as the unlawful withholding of wages, prohibited by the Labour Code, a law passed in 1974. The maximum fine that can be imposed under the Labour Code is PhP 10,000, which is measly compared to laws of more recent vintage, such as the Wage Rationalization Act of 1996, which imposes a minimum fine of PhP 25,000 up to a maximum of PhP 100,000 on employers who fail to comply with the country’s minimum wage law.

#### **4. Is the State using corporate governance measures to require or encourage respect for human rights?**

In the Philippines, corporate governance is understood to be the framework of rules, systems, and processes in the corporation that governs the performance by the Board of Directors and management of their respective duties and responsibilities to the stockholders.<sup>125</sup> The

124 See <http://www.minesandcommunities.org/article.php?a=11579>

125 SEC Memorandum Circular No. 6, Series of 2009, Revised Code of Corporate Governance. The Code applies only to “registered corporations and to branches or subsidiaries of foreign corporations operating in the Philippines that (a) sell equity and/or debt securities to the public that are required to be registered with the [Securities and Exchange] Commission, or (b) have assets in excess of Fifty Million Pesos and at least two hundred (200) stockholders who own at least one hundred (100) shares each

Philippines has yet to use corporate governance measures to unequivocally require or encourage respect for human rights. Nevertheless, the Revised Code of Corporate Governance<sup>126</sup> promulgated in 2009 does contain some provisions that may be interpreted as implying a duty to respect human rights, at least insofar as these rights have been translated into domestic law enforceable against non-state entities.

For instance, the Code imposes a duty on the Board of Directors to ensure the corporation’s faithful compliance with all applicable laws, regulations, and best business practices.<sup>127</sup> To this end, the Board is required to appoint a Compliance Officer who shall monitor the corporation’s compliance with the code and other applicable rules and regulations, report violations to the Board, recommend disciplinary action on parties responsible for any violations, and the adoption of measures to prevent their repetition.<sup>128</sup> It is also the Board’s duty to identify sectors in the community in which the corporation operates or are directly affected by its operations, and formulate a clear policy of accurate, timely, and effective communication with them.<sup>129</sup> Another duty of the Board is to identify key risk areas and monitor these with due diligence to enable the corporation to anticipate and prepare for possible threats to its operational and financial viability.<sup>130</sup> Such risks may also entail reputational and financial risks related to negative human rights impacts. The Board also has a duty to establish and maintain an alternative dispute resolution system in the corporation that can amicably settle not only intra-corporate disputes, but disputes between the corporation and third parties as well.<sup>131</sup> This duty can easily be linked to the access to remedy in the UN Guiding Principles.<sup>132</sup>

of equity securities, or (c) whose equity securities are listed on an Exchange; or (d) are grantees of secondary licenses from the Commission.”

126 Ibid.

127 Ibid., Art. 3 (F)2(c)

128 Ibid., Art. 3 (M)(i)

129 Ibid., Art. 3 (F)2(e)

130 Ibid., Art. 3 (F)2(g)

131 Ibid., Art. 3 (F)2(j)

132 According to the Guiding Principles on Business and Hu-

Covered corporations<sup>133</sup> face a fine of not more than PhP 200,000 (approximately \$4,800 USD) for every year that they are found, after notice and hearing, to have violated the provisions of the Code, without prejudice to other sanctions that the SEC may be authorized to impose under the law.<sup>134</sup>

#### **4.1. Is the State requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights?**

##### **4.1.1. What are the general legal due diligence obligations that directors have to comply with?**

A director owes a three-fold duty to the corporation – to be diligent, to be loyal, and to be obedient. The duty of obedience imposes on the directors the obligation to act only within the corporate powers, on pain of liability for damages unless they acted in good faith and with due diligence. Because of this duty, directors should furthermore not assume to act alone in situations where the law has given the stockholders the power of final approval.<sup>135</sup>

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man Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms. One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

133 As stated above, the Code applies only to “registered corporations and to branches or subsidiaries of foreign corporations operating in the Philippines that (a) sell equity and/or debt securities to the public that are required to be registered with the [Securities and Exchange] Commission, or (b) have assets in excess of Fifty Million Pesos and at least two hundred (200) stockholders who own at least one hundred (100) shares each of equity securities, or (c) whose equity securities are listed on an Exchange; or (d) are grantees of secondary licenses from the Commission.”

134 Revised Code of Corporate Governance, Art. 11

135 Jose Campos Jr. & Maria Clara Lopez-Campos, *The Corporation Code: Comments, Notes and Selected Cases*, Vol. 1, at 641

Even in cases where directors have acted within their powers, liability may still arise if they have not observed due diligence or have been disloyal to the corporation. Under Section 31 of the Corporation Code, “directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.”

The degree of care and diligence required of directors is usually that which persons prompted by self-interest generally exercise in their own affairs.<sup>136</sup> In determining whether reasonable diligence has been exercised, the particular circumstances of each case, such as the nature of the business are an important factor. Thus, a director of a bank is usually held to a higher degree of diligence than that of an ordinary commercial corporation.<sup>137</sup>

Aside from being held liable for damages, directors who have been grossly negligent or have fraudulently mismanaged the corporation may be removed by the stockholders.<sup>138</sup> They may also be held criminally liable under Section 144, which makes “[v]iolations of any of the provisions of [the] Code” punishable by a fine and/or imprisonment.

##### **4.1.2. Do directors have specific legal obligations to consider their business enterprises’ human rights impacts in carrying out their duties?**

No.

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(1990)

136 *Ibid.*, 643

137 *Ibid.*

138 Corporation Code, Section 28

**4.1.3. Do directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?**

No.

**4.1.4. Have any of the directors' duties identified above been enforced by the State in relation to business-related human rights abuses?**

As stated earlier, violations of any of the provisions of the Corporation Code, including those setting out the duties of directors, can result in criminal liability. It is not clear whether the State has ever enforced these duties by means of criminal prosecution. As a practical matter, however, it is highly unlikely that directors would be penalized under the penal provision of the Corporation Code, as there is a plethora of more specific crimes with which they can be charged for their part in business-related human rights abuses.

**4.1.5. Has the State provided non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties, and/or (b) the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?**

No.

**4.2. Does the State require or encourage business enterprises to communicate their human rights impacts, as well as any action taken to address those impacts?**

Business enterprises are generally not required or encouraged to communicate their human rights impacts or any action taken to address them. As discussed above, however, there are a few exceptions. Companies engaged in activities which significantly affect the quality of the environment are required to submit Environmental Impact Statements. Also, the boards of directors of corporations covered by the Revised Code of Corporate Governance are required to identify sectors in the community in which the corporations operate or are directly affected by their operations, and formulate a clear policy of accurate, timely, and effective communication with them, which could very well be construed as including human rights impacts.

**4.3. Is/are the country's stock exchange regulator(s) taking steps to require or encourage business enterprises listed on the stock exchange to respect human rights? If so, what are these steps?**

No.

**5. Has the State adopted other non-binding measures to foster corporate cultures respectful of human rights?**

**5.1. Is the State implementing any non-binding initiatives requiring or encouraging business enterprises to respect human rights?**

**Labour**

DOLE has been working with industry players to develop a guide on responsible outsourcing practices to include compliance with labour standards, observance of due process, consultations with affected workers, provision of unemployment or transition benefits, and voluntary dispute settlement mechanisms. As a result of these efforts, industry tripartite councils have been established

and tasked to formulate Codes of Good Practices in the fields of broadcasting, education, transport, electronics, business process outsourcing, medical tourism, and mining.<sup>139</sup>

## Environment

Through the Philippine Environment Partnership Program (PEPP), a partnership program with industries, in cooperation with the other environment-related agencies, the DENR aims to support industry self-regulation towards improved environmental performance. The PEPP provides a package of incentives and reward mechanisms to industries in effective voluntary self-regulation and improved environmental performance.<sup>140</sup>

In December 2010, the DENR recognized 16 companies for their exemplary environmental performance and awarded them a DENR Official Seal of Approval. The award came with relaxed reportorial requirements as to frequency of submission, longer validity of permits, and simplified requirements for securing an Environmental Compliance Certificate for expansion projects.<sup>141</sup>

### 5.2. Is the State providing guidance to business enterprises on how to respect human rights throughout their operations?

DOLE has been particularly active in this regard. In 2008, for example, the DOLE issued the Policy Guidelines Governing the Occupational Safety and Health of Workers in the Call Centre Industry.<sup>142</sup> Other than this, the State does not appear to be providing any sort of guidance to other businesses on how to respect human rights.

139 See <http://www.nmp.gov.ph/frames/pdf/President's%2022-Point%20Agenda%20on%20Labour%20and%20Employment.pdf>

140 See <http://emb.gov.ph/pepp/index.html>

141 See [http://emb.gov.ph/pepp/awarding/news%20release\\_PEPP%20Awarding%20Dec172010.pdf](http://emb.gov.ph/pepp/awarding/news%20release_PEPP%20Awarding%20Dec172010.pdf)

142 See <http://bwc.dole.gov.ph/userfiles/file/DC%2001-08.pdf>

## 6. Is the State taking steps to require or encourage business respect for human rights in its own relationships and dealings with businesses?

### 6.1. Does the State require or encourage State-owned or controlled business enterprises to respect human rights?

State-owned or controlled business enterprises (commonly referred to in the Philippines as Government-owned or –controlled corporations, or GOCCs) are required to obey laws protecting human rights. However, GOCCs with original charters, i.e., those not incorporated under the Corporation Code (and presumably performing governmental -- as opposed to proprietary -- functions) are not covered by the Labour Code, but, rather, the Civil Service Law and regulations issued by the Civil Service Commission, which do not permit civil servants to stage strikes.

At any rate, there is no indication that the State requires or encourages these enterprises to conduct human rights due diligence or take any special measures geared towards human rights protection or promotion.

### 6.2. Does the State require or encourage businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights?

As above, there is no indication that the State requires or encourages these enterprises to conduct human rights due diligence or take any special measures geared towards human rights protection or promotion.

**6.3. When services that may impact upon the enjoyment of human rights are privatized, is the State taking steps to ensure that the business enterprises performing these privatized services respect human rights?**

There is no indication that the Philippines is taking steps to ensure that business enterprises performing privatized services respect human rights.

**6.4. Does the State require or encourage respect for human rights in carrying out public procurement?**

The Philippines is not a party to the WTO General Procurement Agreement. Public procurement in the country is regulated by the Government Procurement Reform Act<sup>143</sup> (Procurement Act). It applies to the procurement of infrastructure projects, goods, and consulting services by all branches and instrumentalities of government, including government-owned and/or -controlled corporations and local government units.<sup>144</sup>

Although the Procurement Act contains no language specifically requiring or encouraging respect for human rights in public procurement, it does establish principles of transparency and equal opportunity, as well as a system of accountability where public officials and private parties can be investigated and held liable for their actions relative to the procurement process and the implementation of procurement contracts.<sup>145</sup> The Procurement Act also provides for public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that contracts are awarded in accordance with law and that they are performed strictly according to specifications.<sup>146</sup>

In 2004, the President of the Philippines issued Executive Order No. 301 (EO 301) calling for the establishment of a Green Procurement Program in all government departments, offices, and agencies. EO 301 requires these government bodies to establish their own Green Procurement Programs that (1) promote a culture of making environmentally-informed decisions, especially in the purchase and use of products, (2) include environmental criteria in public tenders “whenever possible and practicable,” (3) establish specifications and requirements for products and services to be considered environmentally advantageous, and (4) develop incentive programs for suppliers of environmentally advantageous products or services.<sup>147</sup>

The progress of this Green Procurement initiative has been observed to be slow.<sup>148</sup> In January 2012, however, the Department of Environment and Natural Resources (DENR) joined other agencies in launching a green public procurement project to promote the use of environmentally friendly products and services in the supply chain.<sup>149</sup>

The launch was capped with the signing of a memorandum of understanding (MOU) for the “Pilot Project for the Implementation of Green Public Procurement among selected Government Institutions.” The MOU was signed by representatives of the DENR, the Department of Budget and Management (DBM), the Department of Trade and Industry (DTI), the Department of Energy (DOE), the Department of Science and Technology (DOST), the Philippine Centre for Environmental Protection and Sustainable Development, Inc. (PCEPSDI); the Philippine Economic Zone Authority (PEZA); the Development Academy of the Philippines (DAP); the Quezon City local government, and the International Green Purchasing Network (IGPN).<sup>150</sup>

143 Republic Act. No. 9184

144 Ibid., § 4

145 Ibid., § 3

146 Ibid.

147 Executive Order No. 301 (s2004), § 1

148 See <http://www.manilatimes.net/index.php/opinion/5164-green-philippines>

149 See <http://www.gov.ph/2012/01/13/denr-joins-other-government-agencies-in-green-procurement-program/>

150 Ibid.

Under the MOU, the DENR, DBM, PEZA, DTI, DOST, DOE, and Quezon City will undergo training on Green Procurement and enlist the participation of all officials, related offices, businesses, and other stakeholders involved in their supply chains. The PCEPSDI, DAP, and IGPN will conduct training on Green Public Procurement, eco-labelling, and other sustainable consumption and production tools, and assist the participating government institutions in developing their respective Green Procurement Programs.<sup>151</sup>

The DENR Secretary expressed the hope that the project would “encourage more companies, especially small and medium enterprises, to shift to environment-friendly business practices, provide choices by making green products and delivering green services not only for the government’s supply chain but for every consumer in the country as well.”<sup>152</sup>

**7. Is the State taking steps to support business respect for human rights in conflict-affected and high-risk areas?**

**7.1. Is the State engaging with business enterprises operating in conflict-affected and high-risk areas in relation to identifying, preventing and mitigating the human rights-related risks of their activities and business relationships?**

There is no indication that the Philippines is engaging with business enterprises operating in conflict-affected and high-risk areas in relation to identifying, preventing and mitigating the human rights-related risks of their activities and business relationships.

**7.2. Is the State providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risks of human rights abuses, including gender-based and sexual violence?**

There is no indication that the Philippines is providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risks of human rights abuses

**7.3. Is the State denying access to public support and services for business enterprises operating in conflict-affected and high-risk areas that they are involved with human rights abuses and refuse to cooperate in addressing the situation? Are there laws, regulations and/or policies that have the effect of doing so?**

There is no indication that the Philippines is denying access to public support and services for business enterprises operating in conflict-affected and high-risk areas that are involved with human rights abuses and refuse to cooperate in addressing the situation.

**8. Is the State taking steps to ensure coherence in its policies domestically and internationally such that it is able to implement its international human rights obligations?**

**8.1. Is the State taking steps to ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates?**

In the field of child protection alone, the Philippines has at least three inter-agency bodies tasked with the coordination and monitoring of the implementation of the country’s child protection laws that have a

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.



nexus with business: the Inter-Agency Council Against Trafficking (IACAT), the Inter-Agency Council Against Child Pornography (IAC-ACP), and the Committee for the Special Protection of Children (CSPC).

The CSPC is principally responsible for coordinating and monitoring the investigation and prosecution of cases involving violations of R.A. No. 7610 and other child-related criminal laws.<sup>153</sup> Chaired by the Secretary of Justice and co-chaired by the Secretary of Social Welfare and Development, the CSPC has the following members:

- Chairperson of the Commission on Human Rights
- Secretary of Foreign Affairs
- Secretary of Labour and Employment
- Secretary of Tourism
- Secretary of the Interior and Local Government
- Secretary of Health
- Secretary of Education
- Commissioner of Immigration
- Director of the National Bureau of Investigation
- Chief of the Philippine National Police
- Prosecutor General
- Three representatives of non-government or private organizations working and/or advocating for the protection of children.<sup>154</sup>

The CSPC has the following responsibilities:

- Establish a system of collecting periodic reports from member agencies on cases filed before them including the status of such cases
- Request member agencies and other government instrumentalities to address specific issues brought to the Committee's attention that require immediate action

- Coordinate with other inter-agency councils and other similar structures and mechanisms for synchronization and harmonization of actions on the legal protection of children
- Develop and/or recommend policies and guidelines to address gaps and issues identified in the investigation and prosecution of cases as well as in the legal protection of children
- Formulate a uniform protocol for capacity-building of duty bearers and other stakeholders with emphasis on multi-disciplinary approach
- Call upon non-member agencies for assistance when necessary in the exercise of its functions and duties<sup>155</sup>

The IACAT was created by virtue of the Anti-Trafficking in Persons Act of 2003. It is composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson, and the following members:

- Secretary, Department of Foreign Affairs;
- Secretary, Department of Labour and Employment;
- Administrator, Philippine Overseas Employment Administration;
- Commissioner, Bureau of Immigration;
- Director-General, Philippine National Police;
- Chairperson, National Commission on the Role of Filipino Women; and
- Three representatives from NGOs, with one representative each from among the sectors representing women, overseas Filipino workers, and children, with a proven record of involvement in the prevention and suppression of trafficking in persons.

<sup>153</sup> Executive Order No. 53 (s2011)

<sup>154</sup> Ibid., § 3

<sup>155</sup> Ibid., § 4

The IACAT has the following powers and functions:

- Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- Promulgate rules and regulations as may be necessary for the effective implementation of the Anti-Trafficking in Persons Act
- Monitor and oversee the strict implementation of the Anti-Trafficking in Persons Act
- Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;
- Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of the Anti-Trafficking in Persons Act;
- Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;
- Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement the Anti-Trafficking in Persons Act
- Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas

Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;

- Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
- Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;
- Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of the Anti-Trafficking in Persons Act.<sup>156</sup>

Aside from establishing the IACAT, the Anti-Trafficking in Persons Act also mandates other government agencies to implement programs for the prevention of human trafficking and the protection and rehabilitation of trafficked persons.<sup>157</sup>

<sup>156</sup> Republic Act No. 9208, § 21

<sup>157</sup> Republic Act No. 9208, § 16: Programs that Address Trafficking in Persons. - The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs; Department of Foreign Affairs (DFA) - shall make available its

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resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs. The DFA shall take necessary measures for the efficient implementation of the Machine Readable Passports to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents. It shall establish and implement a pre-marriage, on-site and pre-departure counselling program on intermarriages.

Department of Social Welfare and Development (DSWD) - shall implement rehabilitative and protective programs for trafficked persons. It shall provide counselling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centres and programs for intervention in various levels of the community.

Department of Labour and Employment (DOLE) - shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labour recruiters.

Department of Justice (DOJ) - shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.

National Commission on the Role of Filipino Women (NCRFW) - shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women's issues.

Bureau of Immigration (BI) - shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counselling requirement as provided for in this Act.

Philippine National Police (PNP) - shall be the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. It shall closely coordinate with various law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. It shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.

Philippine Overseas Employment Administration (POEA) - shall implement an effective pre-employment orientation seminars and pre-departure counselling programs to applicants for

The Inter-Agency Council Against Child Pornography (IAC-ACP) was created by the Anti-Child Pornography Act.<sup>158</sup> It is composed of the Secretary of the DSWD and the following as members:

- Secretary of the Department of Justice
- Secretary of the Department of Labour and Employment
- Secretary of the Department of Science and Technology
- Chief of the Philippine National Police
- Chairperson of the Commission on Information and Communications Technology
- Commissioner of the National Telecommunications Commission
- Executive Director of the Council for the Welfare of Children
- Executive Director of the Philippine Centre for Transnational Crimes
- Executive Director of the Optical Media Board

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overseas employment. It shall likewise formulate a system of providing free legal assistance to trafficked persons.

Department of the Interior and Local Government (DILG) - shall institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons.

Local government units (LGUs) - shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with DILG, Philippine Information Agency (PIA), Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community based initiatives which address the trafficking in persons. In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people's organizations (Pos), civic organizations and other volunteer groups.

158 Republic Act No. 9775

- Director of the National Bureau of Investigation
- Three representatives from children's nongovernmental organizations<sup>159</sup>

The IAC-ACP is charged with the following functions:

- Formulate comprehensive and integrated plans and programs to prevent and suppress any form of child pornography
- Promulgate rules and regulations as may be necessary for the effective implementation of this Act
- Monitor and oversee the strict implementation of this Act
- Coordinate the programs and projects of the various members agencies effectively address the issues and problems attendant to child pornography
- Conduct and coordinate massive information disseminations and campaign on the existence of the law and the various issues and problems attendant to child pornography
- Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on the action taken
- Assist in the filling of cases against individuals, agencies, institutions or establishments that violate the provisions of the Act
- Formulate a program for the reintegration of victims of child pornography
- Secure from any department, bureau, office, agency or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement the Act
- Complement the shared government information system relative to child abuse and exploitation and ensure that the proper

agencies conduct a continuing research and study on the patterns and schemes of any form of child pornography which form basis for policy formulation and program direction

- Develop the mechanism to ensure the timely, coordinated and effective response to cases of child pornography
- Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress any form of child pornography
- Adopt measures and policies to protect the rights and needs of the victims of child pornography who are foreign nationals in the Philippines
- Maintain a database of cases of child pornography
- Initiate training programs in identifying and providing the necessary intervention or assistance to victims of child pornography

Inter-agency cooperation also takes place in the area of workers' rights protection. Recently, the Department of Labour and Employment and the Departments of Interior and Local Government, Justice, and National Defence, Armed Forces of the Philippines, and the Philippine National Police signed the Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP, and PNP Relative to the Exercise of Workers' Rights and Activities, a historic document which all the signers said will promote workers right to freedom of association, collective bargaining, concerted peaceful actions, and other trade union activities.<sup>160</sup>

The Guidelines seek to ensure peace and order and security during labour disputes, while at the same time respecting the exercise of workers' and trade union rights in an environment free from violence, pressure, fear, and duress of any kind. It also outlines workers' and trade union rights relative

159 Ibid., § 20

160 See <http://www.dole.gov.ph/secondpage.php?id=2842>

to the exercise of freedom of association; during the conduct of AFP and PNP internal peace and security operations; modes of coordination between the DOLE, AFP, PNP, and local government units (LGUs) during labour disputes; remedies in cases of violation; and modes of monitoring and evaluation of the Guidelines' implementation.

The Guidelines require that members, personnel, and officers of the signatory agencies conduct themselves in accordance with the provisions of the 1987 Philippine Constitution; Labour Code of the Philippines, as amended; Republic Act No. 7160 or the Local Government Code of the Philippines; United Nations Universal Declaration of Human Rights; International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Labour Organization (ILO) Protocols and Recommendations and International Labour Standards, in particular ILO Convention on Freedom of Association and Protection of the Right to Organize (Convention No. 87) and Convention on the Right to Organize and Collective Bargaining (Convention No. 98); International Humanitarian Law (IHL); Presidential Memorandum No. 393; Joint Circular 2-91 (Directing the AFP and the PNP to Re-affirm their Adherence to the Principles of Humanitarian Law and Human Rights in the Conduct of Security/Police Operations); and President Benigno S. Aquino III's Social Contract with the Filipino People.

## **8.2. Is the State taking steps to maintain adequate domestic policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises?**

The Philippines has forged bilateral labour agreements with several countries with a view to ensuring protection of migrant workers' rights.<sup>161</sup>

<sup>161</sup> See [http://www.poea.gov.ph/lmi\\_kiosk/labor\\_agreements.htm](http://www.poea.gov.ph/lmi_kiosk/labor_agreements.htm)

The Philippines is internationally recognized for its high regard for its workers abroad. Its eminent priority on the protection of overseas workers is enshrined as one of the three pillars in Philippine foreign policy. Because of this, the Philippine government incorporates the promotion of the rights and welfare of overseas Filipino workers (OFWs) in its global affairs and bilateral relations.<sup>162</sup>

The efforts of the Philippine government towards protecting its citizens abroad are most visible during crisis situations when their lives are at risk. Recently, it has been active in evacuating Filipinos overseas in disaster-stricken areas in Japan and in conflict-ridden countries in the Middle East.<sup>163</sup>

The Philippine government provides an evaluation of labour-receiving countries based on the provisions in RA 10022 or the Amended Migrant Workers and Overseas Filipinos Act of 1995 that took effect in 2009. The amendment states that the Philippines shall allow "the deployment of OFWs only in countries where the rights of Filipino migrant workers are protected." It mandates the Department of Foreign Affairs (DFA) to certify countries that comply with any of the following guarantees for migrant worker protection, that the country:

- has existing labour and social laws to protect the rights of migrant workers;
- is a signatory to and/or ratifier of multilateral conventions, declarations or resolutions relating to the protection of migrant workers; and
- has concluded a bilateral agreement with the Philippines on the protection of the rights of OFWs.

<sup>162</sup> Andrea Chloe Wong, Protecting OFWs: An Assessment of the POEA Lists and its Labour Agreements, <http://philippinesintheworld.org/?q=node/1171>

<sup>163</sup> Ibid.

Based on these criteria, POEA released two Governing Board Resolutions classifying compliant and non-compliant countries. As of November 2011, there are a total of 125 compliant countries that have concrete measures to protect OFWs. Meanwhile, there are 41 non-compliant countries that have been included in the deployment ban due to their lack of protection guarantees. Some of these countries include conflict-affected countries such as Lebanon, Syria, Iraq, and Afghanistan.<sup>164</sup> The lists are considered important in determining which countries are generally safe or risky for OFWs. The deployment ban, in particular, is regarded as a significant attempt by the Philippine government to protect migrant workers from possible danger and abuse in non-compliant countries.<sup>165</sup>

Aside from classifying labour-receiving countries, the Philippine government also strives to forge more bilateral labour agreements (BLAs) to advance the social, economic, and legal interests of OFWs. The POEA has already tailor-made several draft BLAs to reflect the peculiar conditions and idiosyncrasies of each labour-receiving country. It has since signed several labour and maritime agreements with Bahrain, Canada, Japan, Jordan, Taiwan, and Norway among others.

However, analysts contend that these cannot be trumpeted as banner accomplishments. For one, not all of the top OFW destination countries have signed labour agreements with the Philippine government. Second, these labour agreements are more like memoranda of agreements that are merely statements of mutual cooperation regarding the recruitment of foreign workers. Moreover, the provisions in these agreements pertain mostly to social security matters that have few specifics on the issue of labour protection.<sup>166</sup>

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164 Ibid.

165 Ibid.

166 Ibid.

## **9. Is the State taking steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy?**

### **9.1. What are the legal and non-legal State-based grievance mechanisms available to those seeking remedy for business-related human rights abuses?**

The primary recourse against human rights abuses in the Philippines continues to be through the courts.<sup>167</sup> Most cases must be initiated either in the first level Municipal or Metropolitan Trial Courts (MTC), Municipal Circuit Trial Courts (MCTCs), or the Regional Trial Courts (RTC) distributed among thirteen judicial regions throughout the country.<sup>168</sup> Decisions of the MTCs/MCTCs may be appealed to the RTCs, whose decisions are in turn appealable to the Court of Appeals, and thence, to the Supreme Court, the court of last resort.<sup>169</sup>

Cases which make their way through the entire appellate process up to the Supreme Court typically take more than seven years until finally resolved, with cases lasting more than 10 years not considered unusual.<sup>170</sup>

Civil cases are brought by affected persons directly to the regular court of appropriate jurisdiction, either MTC / MCTC or RTC, usually determined by the cause of action and the amount sought to be recovered. The amount claimed also fixes the amount of filing fees to be paid at the time when the complaint is filed. The filing fees required by an initiatory complaint start from a low of PhP 1,000.00

167 International Commission of Jurists, *Access To Justice: Human Rights Abuses Involving Corporations - Philippines* (2010), 12.

168 Batas Pambansa Blg. 129, *The Judiciary Reorganization Act of 1980*.

169 Ibid; Constitution, Art. VIII, § 4

170 International Commission of Jurists, *Access To Justice: Human Rights Abuses Involving Corporations - Philippines* (2010), 12.

to any higher sum determined by the amount which is the subject of the claim.<sup>171</sup>

Parties usually go through institutionalized mediation processes, which are conducted for a fee of about Php 500.00, before going through a trial process that allows parties to present respective evidence to substantiate or refute claims.<sup>172</sup>

Interlocutory and final decisions of a judge may be brought through several levels of appeal, each one requiring the payment of fees of Php 3,000.00.<sup>173</sup>

A criminal action is commenced either by a complaint (a sworn written statement by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated) or by “information,” a written accusation signed by the prosecutor and filed with the court.<sup>174</sup>

In general, criminal court procedure consists of arraignment, trial, and the court’s judgment and sentencing.<sup>175</sup> Except where the right against double jeopardy would be violated, decisions may be brought on appeal to the Court of Appeals and ultimately to the Supreme Court. Like civil cases, each stage of appeal requires the payment of fees of approximately Php 3,000.00.

Criminal cases usually last for more than seven years from the filing of the complaint to the final decision of the Supreme Court.<sup>176</sup>

The Rules of Court exempt “indigent litigants” from payment of legal fees, including filing fees. To be declared indigent, a person has to execute an affidavit that (1) he/she and his/her immediate family do not earn a gross income double the monthly minimum wage of an employee and he/she does not own real property with a fair market value

(as stated in the current tax declaration) of more than PhP 300,000. A person who does not meet these requirements may nonetheless be allowed an exemption from paying legal fees upon a showing at a hearing that he/she has no money or property sufficient and available for food, shelter, and basic necessities for himself/herself and his/her family.<sup>177</sup> However, those allowed to litigate as indigents must shoulder other costs arising from litigation such as photocopying, mailing, notarial fees, and transportation expenses.

In recent years, the Supreme Court has instituted new measures to enhance access to justice in environmental cases. In 2008, the Supreme Court designated 117 regular courts across the country as “green courts” with jurisdiction over violations of environmental laws.<sup>178</sup> And in 2010, the Supreme Court issued the Rules of Procedure For Environmental Cases,<sup>179</sup> effectively placing the courts “near the frontlines of environmental protection.”<sup>180</sup> Among the innovations introduced by the new rules are the writ of continuing mandamus,<sup>181</sup> the environmental protection order (EPO), the use of the precautionary principle in deciding cases, citizen suits, the writ of *Kalikasan*,<sup>182</sup> and defenses against “SLAPP” suits. Except for continuing mandamus petitions, which can be filed only against government agencies or agents, these innovations can have a direct impact on environmental litigation against business enterprises.

171 Ibid., 13; Rules of Court, Rule 141, § 4

172 Ibid.; Rules of Court, *See generally* Rules 1-39 & 141

173 Ibid.; Rules of Court, Rule 141, § 4

174 Rules of Court, Rule 110, §§ 3 & 4.

175 Rules of Court, Rule 110-127

176 International Commission of Jurists, *Access To Justice: Human Rights Abuses Involving Corporations - Philippines* (2010), 14.

177 *Algura v. City of Naga*, G.R. No. 150135, October 30, 2006

178 Supreme Court Administrative Order No. 23-2008, Re: DESIGNATION OF SPECIAL COURTS TO HEAR, TRY AND DECIDE ENVIRONMENTAL CASES

179 A.M. No. 09-6-8-SC

180 International Commission of Jurists, *Access To Justice: Human Rights Abuses Involving Corporations - Philippines* (2010), 15.

181 Continuing mandamus is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 4(c).

182 “*Kalikasan*” means environment or nature in Filipino.

An EPO is an order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve, or rehabilitate the environment.<sup>183</sup> It may issue upon rendition of judgment in a civil or criminal case, or in a special civil action for a writ of Kalikasan, and, where its issuance appears to be a matter of extreme urgency and the applicant stands to suffer grave injustice and irreparable injury, a temporary environmental protection order (TEPO) may be granted in the course of the proceedings. Unlike provisional injunctive relief in ordinary court proceedings, the TEPO's issuance is not conditioned on the posting of a bond.<sup>184</sup>

Under the new rules, standing and real-party-in-interest rules are relaxed, as any Filipino citizen in representation of others, including minors or generations yet unborn, may file a citizen suit to enforce rights or obligations under environmental laws.<sup>185</sup> Moreover, the payment of filing and other legal fees is deferred until after judgment, and may be charged against the judgment award.<sup>186</sup> This relieves the plaintiff of the burden of raising money for filing fees (which could prove prohibitive in environmental cases involving millions of pesos in damages) before setting a court case in motion.

The writ of Kalikasan is a remedy available to natural or juridical persons, entities authorized by law, people's organizations, non-governmental organizations, or public interest groups accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation, by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.<sup>187</sup>

183 RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 4(d)

184 *Ibid.*, Rule 2, § 8

185 *Ibid.*, Rule 2, § 5

186 *Ibid.*, Rule 2, § 12

187 *Ibid.*, Rule 7, § 2

No docket fees are required.<sup>188</sup> One of the more distinctive features of the writ of Kalikasan is that it forecloses resort to multiple stages of appeal or other forms of judicial review such as certiorari – a tactic often used to delay proceedings and prevent judgments from attaining finality – by requiring petitions for the writ to be filed only in the Court of Appeals or the Supreme Court.<sup>189</sup> One drawback to this, however, is that attendance at hearings may prove costly for petitioners and counsel who reside in areas far-removed from the nation's capital (where the Supreme Court is located) and the relatively few stations of the Court of Appeals.

One of the features of the new rules that should prove to be of crucial value to environmental litigation is the adoption of the precautionary principle, which states that when human activities may lead to threats of serious and irreversible environmental damage that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat.<sup>190</sup> Under the new rules, courts hearing environmental cases must apply this principle when there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect and give the constitutional right of the people to a balanced and healthful ecology the benefit of the doubt.<sup>191</sup> This principle should have the effect of skewing borderline decisions in favor of the plaintiff or petitioner in an environmental case, but whether this will be borne out in practice remains to be seen.

Finally, in a remarkable show of percipience on the part of the Supreme Court, the new rules established a ground for dismissal of trumped-up suits intended to harass plaintiffs and petitioners in environmental cases, namely, the SLAPP suit defence. "SLAPP" stands for Strategic Lawsuit against Public Participation. It is a term of art that refers to an action, whether civil, criminal, or administrative, brought against any person or entity with the intent to harass, vex, exert undue pressure

188 *Ibid.*, Rule 7, § 4

189 *Ibid.*, Rule 7, § 3

190 *Ibid.*, Rule 1, § 4(f)

191 RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 20, § 1



or stifle any legal recourse that such person or entity has taken or may take in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights.<sup>192</sup> In other words, a SLAPP is a lawsuit filed against a person or entity with the intent to dissuade that person or entity from commencing or pursuing legal action for environmental preservation. Under the new rules, a person faced with a SLAPP can have it dismissed by showing substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation, and rehabilitation of the environment, while the party filing the action assailed as a SLAPP must prove by a preponderance of evidence that the action is not a SLAPP and is a valid claim.<sup>193</sup> By this measure, the burden of proof that the action is legitimate (and not retaliatory or pre-emptive) is placed on the party filing the supposed SLAPP,<sup>194</sup> skewing the decision in favour of the defendant.

## Labour

Cases involving violations of labour rights such as unfair labour practices, illegal dismissal (unlawful termination), and unlawful lockouts are subject to compulsory arbitration.<sup>195</sup> The process begins with the lodging of a complaint before a labour arbiter. Decisions of labour arbiters may be appealed to the National Labor Relations Commission (NLRC), which reviews labour arbiters' decisions in divisions composed of three commissioners. Parties dissatisfied with the NLRC's decision must file a motion for reconsideration if they wish to open avenues to judicial review by the Court of Appeals

<sup>192</sup> Ibid., Rule 1, § 4(g)

<sup>193</sup> Ibid., Rule 6, § 3

<sup>194</sup> "Substantial evidence," which is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion," (Rules of Court, Rule 133, § 5) is the least demanding burden of proof known in the Philippines, and normally holds sway only in administrative proceedings where technicalities give way to expeditious resolution, whereas "preponderance of evidence" is a higher standard that usually applies in civil cases, where a party must show that his/her allegations are more likely true than not.

<sup>195</sup> Labor Code, Art. 217

and the Supreme Court. Once the NLRC issues a resolution on the motion for reconsideration, parties aggrieved by it may seek judicial review by filing a petition for certiorari in the Court of Appeals, which can nullify and reverse or modify the NLRC's decision upon a finding that the latter committed grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>196</sup> The Court of Appeals' decision may be appealed to the Supreme Court, but only on questions of law, as the Supreme Court is not a trier of facts.<sup>197</sup>

Experts and practitioners have commented on the length of time before labour cases are finally resolved. Typically labour cases filed with the NLRC may last upwards of five years from filing to disposition by the Supreme Court. Workers are often told of the slow pace of process and of the difficulty of sustaining cases in an attempt to convince them to accept early settlement of their claims, usually at much reduced terms.<sup>198</sup>

## 9.2. What barriers to access to remedy through these State-based grievance mechanisms have been reported?

The International Commission of Jurists published a study<sup>199</sup> in 2010 discussing access to justice in the Philippines in relation to corporate abuses of human rights and identifying principal obstacles to access to justice in this context. Its findings, insofar as they continue to hold true today, are reproduced below.

Prosecuting and maintaining a case in the Philippines is characterized by substantial expenses and costs, prohibitive to many potential litigants. A party in a litigation in the Philippines may face the following costs: (1) filing fees paid to the court;

<sup>196</sup> RULES OF COURT, Rule 65

<sup>197</sup> RULES OF COURT, Rule 45

<sup>198</sup> International Commission of Jurists, Access To Justice: Human Rights Abuses Involving Corporations - Philippines (2010), 20-21.

<sup>199</sup> International Commission of Jurists, Access To Justice: Human Rights Abuses Involving Corporations - Philippines (2010)

(2) attorney's fees; and (3) incidental expenses to maintain a case including costs of transportation, photocopying, mailing, notarization, and the like.<sup>200</sup>

Filing fees for a complaint depend on the nature of the case, the value of the subject matter involved, or the size of the demand made. The standards of indigence allow only for the poorest persons to be exempted from paying these fees.<sup>201</sup>

To cite an extreme application of the rule on filing fees in civil cases, the victims of abuse under martial law, when enforcing a favourable judgment rendered by a US court involving millions of dollars before Philippine courts, were assessed filing fees amounting to an incredible Php 472 million. It was only after six years that the litigants were allowed to file their claim with a reduced fee of Php 410.186. Even as the Marcos victims' experience is an exceptional case, filing fees remain to be significant obstacles to filing claims before courts.<sup>202</sup>

Apart from court fees, litigants pay the incidental costs, photocopying, transportation, mailing, etc. To illustrate the amount of photocopying expenses which are required on appeal, no less than seven copies of initiatory petitions filed with the Court of Appeals are required, each bearing annexes comprised of all relevant pleadings previously filed. These petitions should be verified, requiring costs for notarization of typically two or more documents. In addition, a number of copies must be filed with the court, as the adverse party or parties each must be furnished a copy of the petition plus annexes. Petitions filed with the Supreme Court, 17 copies are required and likewise must be verified and each must contain a complete set of any annexes. With all this, litigants typically have to spend about Php 3,500 just for photocopying expenses for filing with the Court of Appeals and more than Php 10,000 for a Supreme Court filing.<sup>203</sup>

200 Ibid., at 36

201 Ibid., at 37

202 Ibid.

203 Ibid.

Related to the issue of transportation is that of physical accessibility of courts. Litigants in remote areas of the Philippines have recounted the need to endure hours of hard travel just to attend a court hearing. This experience is so common that the Supreme Court launched a programme it called "Justice on Wheels" in late 2004 which involves a number of buses customized to serve as court rooms and mediation chambers. Even as it makes headway as a welcome innovation, especially for persons who have allegedly been unduly imprisoned, the programme has yet to provide a long term and sustained solution to lack of access to courts and judges in many parts of the country.<sup>204</sup>

Access to justice in the Philippines may thus be characterized as severely restricted by a fee charging system where litigants typically pay directly for the services of the judiciary through court and other fees. While exemptions are offered to indigent litigants, only the very poorest are saved from the fees and even then, not from expensive incidental costs of maintaining the suit.<sup>205</sup>

A related obstacle to obtaining justice is the sheer length of litigation before Philippine courts. Anecdotal evidence confirms that criminal and civil cases usually last in excess of five years until they reach the Supreme Court where cases may await final resolution for several more years. Usually the trial is not continuous, and hearing dates are usually separated by several months. Schemes to postpone hearings by parties and lawyers abound and include absences of parties, lawyers, or witnesses and filing of dilatory motions and pleadings. Interlocutory orders are also challenged before higher courts simultaneous with a call for the suspension of the proceedings at the lower courts while the challenge is pending.<sup>206</sup>

Beyond the amounts expended in the course of trial and appeal, the cost engendered by the protracted litigation is quite substantial. It is common that

204 Ibid.

205 Ibid., 39-40

206 Ibid., 40

parties prefer to enter into a settlement of the claims, regardless of objective merit, to avoid the long drawn out process of litigation.<sup>207</sup>

Also woven into the fabric of litigation in the Philippines is the corruption widely perceived by practitioners and reflected in indexes and surveys. Instances of corruption inherently evade documentation. Still, there are a few examples that have come to the public knowledge, giving hints of the true nature and scope of corruption in the Philippines.<sup>208</sup>

There have been numerous instances of extrajudicial killings, enforced disappearances, torture and other acts of violence, as outlined in the report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, who visited the country in 2007. There is a wide range of agents responsible, from “death squads,” private armed groups, to elements of the country’s security forces. Human rights violations in the sector of labour are widely reported. Potential and actual trade unionists experience violence to discourage and stop union activities. In the area of agrarian reform, it has been noted that private security forces constrain the full implementation of reforms in rural areas. They are engaged by big landowners to suppress tenants and farmers from invoking their rights under agrarian laws. Private armed groups prevent the government from acquiring big haciendas for distribution to landless farmers and farm workers. In cases where land has already been awarded to farmer beneficiaries, private armed groups and paramilitary groups are able to prevent the award from being actually enforced.<sup>209</sup>

There are reports that indigenous people and local fishermen in Bugsuk in Southern Palawan, employed by a company in cultivating and harvesting pearls, were driven out by private armed groups. Similar instances of forcible evictions have taken place in other parts of Mindanao in relation to activities of

logging, mining, and large plantations. According to a report made to the US government by a human rights organization in the Philippines, a number of extrajudicial killings took place, belying the Philippine government’s claim that steps have been taken to improve the country’s human rights record. These include attacks against leaders of indigenous peoples for opposing mining activities. In another report made by a fact-finding mission to the Philippines, members of the Subanon indigenous peoples revealed that hundreds of armed security guards allegedly hired by a Canadian mining company were in checkpoints blocking access to their ancestral domains. The report refers to the claim that military operations were done jointly with other paramilitary forces and private security firms.<sup>210</sup>

Paramilitary groups, such as the Civilian Armed Forces Geographical Unit (CAFGU), are named in the report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, together with the formal military establishment in a significant number of killings.<sup>211</sup>

Apart from serious violent attacks, including instances of arbitrary killings and enforced disappearances, persons who choose to go up against corporations must also contend with harassment or SLAPP suits. In the Philippines, it is common for advocates, individuals and groups, and their supporters to face complaints in court filed or prompted by parties whose interests are threatened or otherwise affected by their advocacy.<sup>212</sup>

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207 Ibid.

208 Ibid.

209 Ibid., 42

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210 Ibid., 42-43

211 Ibid., 43

212 Ibid.

### 9.3. Are there laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms?

The Anti-Sexual Harassment Act of 1995<sup>213</sup> requires employers to create a committee on decorum and investigation of cases of sexual harassment.<sup>214</sup> Failure to do so can result in criminal liability for the employer.<sup>215</sup>

As discussed above, the Revised Corporate Governance Code also requires corporations to establish and maintain an alternative dispute resolution system in the corporation that can amicably settle not only intra-corporate disputes, but disputes between the corporation and third parties as well.

### 10. Is the State giving the country's National Human Rights Institution powers to enable it to contribute to the area of business and human rights?

The Philippines has a National Human Rights Institution called the Commission on Human Rights (CHR). As of December 2011, the CHR has kept its A status with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).<sup>216</sup>

The CHR is an independent, constitutionally created body with the following powers and functions:

1. Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
2. Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
3. Provide appropriate legal measures for the

<sup>213</sup> Republic Act No. 7877

<sup>214</sup> Ibid, § 4

<sup>215</sup> Ibid, § 7

<sup>216</sup> See <http://nhri.ohchr.org>

protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;

4. Exercise visitorial powers over jails, prisons, or detention facilities;
5. Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
6. Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
7. Monitor the Philippine Government's compliance with international treaty obligations on human rights;
8. Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
9. Request the assistance of any department, bureau, office, or agency in the performance of its functions;
10. Appoint its officers and employees in accordance with law; and
11. Perform such other duties and functions as may be provided by law.<sup>217</sup>

<sup>217</sup> Const. Art. XIII, § 18.

The CHR does not, however, have any prosecutorial or adjudicatory powers.<sup>218</sup> Thus, there is not much it can do on its own in terms of actual prevention, punishment, and redress of human rights abuses. Nevertheless, the CHR has on several occasions investigated and spoken out against business-related human rights abuses. It has investigated complaints from indigenous peoples regarding the conduct of mining operations within their ancestral domains without their prior consent and issued human rights advisories urging stakeholders to respect indigenous peoples' rights.<sup>219</sup> More recently, the CHR investigated an incident in which a 6-year old boy was made to simulate a striptease on a local television show.<sup>220</sup> The CHR condemned it as a criminal violation of children's rights and issued a press statement inviting the TV station and other stakeholders to a discourse on the rights and role of children in media.<sup>221</sup>

218 This was the essence of the Supreme Court's ruling in *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991:

The most that may be conceded to the Commission in the way of adjudicative power is that it may *investigate*, *i.e.*, receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights. But fact finding is not adjudication, and cannot be likened to the *judicial function* of a court of justice, or even a quasi-judicial agency or official. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function, properly speaking. To be considered such, the faculty of receiving evidence and making factual conclusions in a controversy must be accompanied by the authority of *applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law*. This function, to repeat, the Commission does not have.

219 CHR, "On the Recognition of the Ancestral Domain of Indigenous Cultural Minorities," (2001), available at <http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/abthr026-030.htm#ancestdom>, last viewed April 13, 2012.

220 Philippine Daily Inquirer, "Revillame treatment of dancing boy in tears criminal-CHR," (2011), available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20110330-328356/Revillame-treatment-of-dancing-boy-in-tears-criminalCHR>, last viewed April 13, 2012.

221 CHR, "CHR Invites TV5, all Media Stakeholders, Child Rights Experts, Advocates and the Public to Discourse on 'Rights and Role of Children in Media,'" (2011), available at [http://www.chr.gov.ph/MAIN%20PAGES/news/PS\\_28April2011\\_RnRof-Child.htm](http://www.chr.gov.ph/MAIN%20PAGES/news/PS_28April2011_RnRof-Child.htm), last viewed April 13, 2012.

The CHR has a weak mandate to investigate corporate-related human rights. This mandate is not expressly stipulated but implied through the PCHR's mandate of monitoring the Government's compliance with international treaties to which Philippines is a party. Nonetheless, CHR is generally active in investigating business-related human rights abuses. The CHR does not have strong investigative or enforcement powers for corporate-related human rights abuses either. If parties fail to follow CHR's recommendations, the CHR largely relies on the public to exert pressure on the perpetrators. The Philippines has an active local-level dispute resolution system – the Barangay Justice System (BJS), which is an alternative, community-based mechanism for the dispute resolution of conflicts. The CHR also utilizes these offices as a resource for human rights dispute resolution. Though there are over 7,000 barangay offices throughout the country, only 2,342 are functional to handle human rights issues. These offices are reportedly understaffed.<sup>222</sup>

## 11. What are the efforts that are being made by non-State actors to foster State engagement with the Framework and the Guiding Principles?

It appears that the Framework and Guiding Principles have not gained much traction in the Philippines. Although representatives from the University of the Philippines and NGOs participated in the consultations on the Framework,<sup>223</sup> little has been heard from State or non-state actors, such as human rights NGOs, on the subject.

222 See [http://baseswiki.org/en/National\\_Human\\_Rights\\_Commission,\\_Philippines#cite\\_ref-6](http://baseswiki.org/en/National_Human_Rights_Commission,_Philippines#cite_ref-6)

223 See <http://198.170.85.29/Report-Ruggie-consultation-Delhi-5-6-Feb-2009.pdf> and <http://www.valoresociale.it/detail.asp?c=1&p=0&id=310>

## Summary

At the time this report was prepared, the Philippine government had yet to make any statement readily available to the public with specific reference to the UN “Protect, Respect, and Remedy” Framework (“Framework”) or its Guiding Principles. Nevertheless, a survey of Philippine law does seem to support the proposition that, despite the apparent absence of any explicit recognition accorded to the Framework, the Philippines already does recognize an existing State duty not only to respect, but also to protect, human rights against abuses by non-state actors, including those committed by business enterprises.

The Philippine Constitution is rife with provisions recognizing and accepting the State’s duty to protect against human rights abuses, specifically with respect to those relating to workers, women, children, health, environment, and land. In at least one case, the Supreme Court of the Philippines has recognized that the State duty to protect includes protecting the right to equality in employment against non-state actors. Prevailing jurisprudential wisdom in the Philippines holds, however, that most of these constitutional provisions are not, by themselves, actionable in a court of law, and enabling legislation must be passed to make resort to the courts a viable option for redress and enforcement.

In the past few decades many laws have been passed to enable enforcement of constitutional provisions relating to human rights protection that might otherwise have been consigned to practical inefficacy. Most notable of these are laws seeking to protect rights relating to labour, indigenous peoples, children, human trafficking, and the environment by delineating rights and obligations of the government and private entities and individuals, and imposing administrative, civil, and criminal penalties for violations. These exist alongside a few civil and criminal code provisions, some of which were enacted more than half a century ago, that could still provide bases for causes of action against human rights abuses by non-state actors in a court of law.

By and large, Philippine laws may be resorted to for redress against human rights abuses by business enterprises and the individuals behind them. Civil and administrative liabilities in the form of damages and fines are imposed on businesses, incorporated or not, all the time, usually in cases involving labour and environmental law violations. Criminal statutes and provisions, however, have a decided tendency to emphasize individual responsibility, imposing liability on the actual individual perpetrators and higher-ups who may have directed or knowingly assented to violations. For violations committed by private individuals or entities, these laws do not have extra-territorial reach.

The proliferation of laws regulating private entities in recent years has contributed to the burgeoning bureaucracy in a government already swathed in red tape. There is no single agency tasked specifically with the responsibility for preventing and investigating human rights abuses. Redress can be had, if not primarily, then almost invariably and inevitably, through the courts. This process (which can, and often does, prove costly due to court and representation fees and litigation-related expenses), can take up to ten years before a final and irreversible conclusion can be reached.

The Philippines has a National Human Rights Institution in the form of the Commission on Human Rights (CHR). The CHR, however, has no prosecutorial or adjudicatory powers. Moreover, although the CHR does investigate business-related human rights abuses, it has no clear and unequivocal mandate to do so. The CHR can make recommendations to the parties involved or the government prosecutors, but it cannot direct the government’s prosecution arm to go forward with a case.

To its credit, the Philippine government has taken a proactive stance towards the protection of migrant workers and the fight against human trafficking. It appears to fall short, however, in terms of providing guidance (in the form of encouragement, incentive, or outright regulation) to Philippine businesses

operating overseas or in conflict-affected areas locally or abroad, on how to respect human rights, as there is no indication it is doing so. Corporate governance and social responsibility are other avenues that the Philippine government has yet to explore or exploit to the fullest to the end of human rights protection.

The Philippines, as it stands, has a fairly robust legal and regulatory framework that can address many human rights abuses by businesses. There are observable gaps, but none that cannot be bridged by the cooperation of government and business in the pursuit of respect for, and protection of, human rights.