

On Philippine Agribusinesses' Responsibility to Respect Human Rights: Empowering the Farmers and other Persons Working in Rural Areas

by

Atty. Jesus Gardiola Torres¹

Prefatory

Human rights are inherent to every human person. On this premise alone, it is correct to say that human rights subsist in any human activity. In this paper, we look into one of the Philippines' major economic activity, agriculture, and examine the interplay of rights-holders and duty-bearers through an evaluation of the country's recent state policies particularly in promoting agribusiness. We then clarify how human rights standards should be observed in the agricultural policy-making process and eventually move forward the discussion on the extent of agribusiness' responsibility to respect human rights, in line with the current debate at the international community on making human rights legally binding on businesses, particularly transnational corporations.

Statement and Background of the Problem

The current research is part of the plan to address the issues raised during the 5th Regional Meeting² on Human Rights and Agribusiness held in Puerto Princesa, Palawan, Philippines last November 5-6, 2015 that resulted to the adoption of what is called the "Palawan Statement",³ which provides, among others, that:

"Growing global concern about land grabbing and land investments is not being matched with mandatory controls and enforceable standards. There is growing inequity in the region both in terms of income and access to lands and forests. South East Asia lags behind other regions in terms of forest areas allocated for community forestry and lands securely recognized as belonging to indigenous peoples. Large-scale land allocations for timber plantations and agribusiness continue to be given priority over communities' rights, livelihoods and local food security. There is widespread corruption by corporate and government officials in land concessions and land titling. Despite notable advances in the evolution of voluntary standards, significant gaps remain in the framework of law for making human rights binding on agribusiness."

In the same 5th Regional Meeting, the participants narrated common causes of complaints attributed to the operations of agribusiness companies, such as:

- land grabbing and encroachment on ancestral domains and lands
- environmental degradation
- breach of contract
- unconscionable terms and conditions in agribusiness venture agreements

1 Atty. Jesus Gardiola Torres is currently the chief of the Economic, Social and Cultural Rights Center of the Commission on Human Rights of the Philippines (ESCRC-CHRP). He is a practicing lawyer who started working with CHRP in 2011, having hurdled the Philippine Bar Examination of 2010. He is a proud alumnus of the University of Perpetual Help College of Law (Biñan, Laguna Campus) and the De La Salle University College of Liberal Arts (Dasmariñas, Cavite Campus), where he has been at the top of his class. Atty. Torres' research interests include protection and promotion of economic, social and cultural rights, application of alternative modes of dispute resolution, settlement of land and social conflicts, environmental law, redress mechanisms and business and human rights.

2 The meeting was attended by 93 participants who were drawn from the South East Asian National Human Rights Institutions Forum (SEANF), UN Permanent Forum on Indigenous Issues and from supportive civil society and international organizations, including from Bangladesh, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines and Thailand. The meeting was convened by the Commission on Human Rights of the Philippines (CHRP) and the Coalition Against Land Grabbing (CALG) of Palawan, with the support of the Forest Peoples Programme (FPP) and the Rights and Resources Initiative (RRI).

3 Attached as Annex "A"

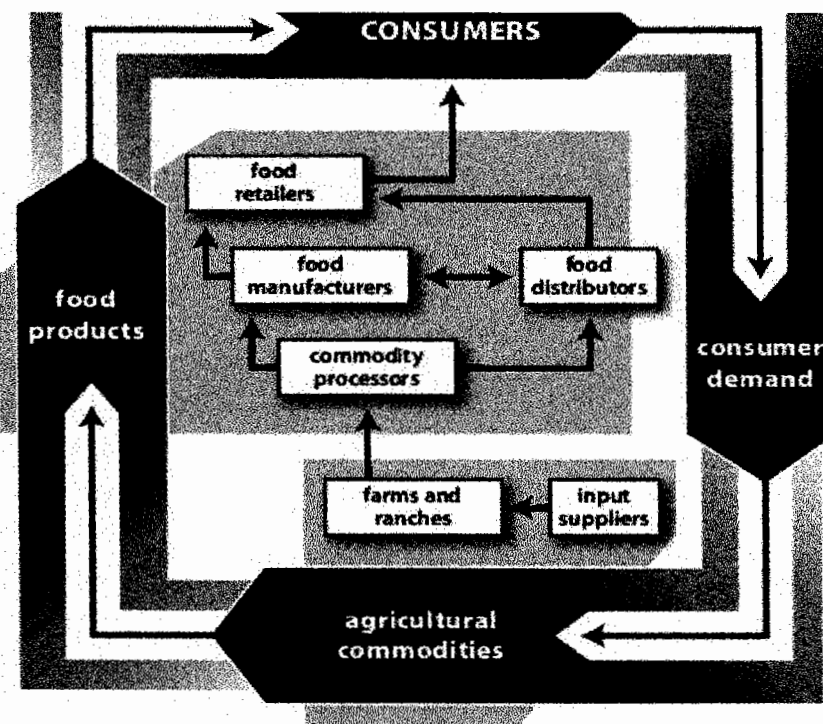
- corruption of government officials
- threats to one's personal security and freedom of movement
- circumvention of government processes, particularly those on obtaining free, prior and informed consent of indigenous peoples
- labor and social legislation issues, such as on child labor, nonpayment of minimum wage

Despite the fact that agribusiness is a legal economic activity in the Philippines, such reports of abuse and violations of human rights, not only in the country but elsewhere, would justify us to take another look on its impacts by applying human rights-based approach. The primary questions we seek to address are:

1. How is agribusiness regulated in the Philippines?
2. How do duty-bearers, who are major players in Philippine agribusiness, respect, protect, and fulfill human rights in their respective spheres of influence?
3. What are the complaints involving farmers and other persons working in rural areas?
 - Do complaints correspond to particular human rights?
 - Are the complaints justiciable?
 - Are there redress mechanisms in place to address the complaints?

Scope and Delimitation

It was in 1957 when two Harvard professors, Ray A. Goldberg and John H. Davis coined the term “agribusiness.”⁴ By definition, the agribusiness sector is engaged in the production and operations of a farm, the manufacture and distribution of farm equipment and supplies, and the processing, storage, and distribution of farm commodities. Agriculture (agricultural production and management) is clearly the core of agribusiness. It includes all the activities in the agricultural sector (as inputs) and some portions of the industrial/manufacturing and services sectors (for processing, distribution or consumption, and financing). Thus, the nature of work in agribusiness has a very wide scope from input production, farm operations and management, food/non-food processing, equipment and supplies manufacturing, trading, and retailing.⁵ *Figure 1*⁶ below illustrates the broad product flow in the global agri-food system:



4 Dy. R.T., et al. (2011) *The Business of Agribusiness: From the Roots to the Fruits*. University of Asia and the Pacific
 5 Department of Labor and Employment – Bureau of Local Employment (2012). *Industry Career Guide – Agribusiness*. <http://www.ble.dole.gov.ph/publication/ICG%20Agribusiness.pdf> (accessed February 11, 2016)
 6 Beierlein, J.G., et al. (2014) *Principles of Agribusiness Management Fifth Edition*. IL: Waveland Press, Inc.

Stated otherwise, Figure 1 shows the business relationships that comprise the system and illustrates what each of the companies do, or not do. The core of the system is with the companies that produce agricultural commodities. They supply the inputs such as feeds, seeds, fertilizer and credit to farmers and ranchers, who in turn run the farms. Commodity processors buy from the producers, selling their goods to food manufacturers and distributors. The food retailers serve as their final link to the consumers.

However, we concentrate our present efforts to inquire about the human rights situation in the agriculture sector as defined in the Agriculture and Fisheries Modernization Act of 1997 (Republic Act No. 8435, Section 4) to be the “*sector engaged in the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry, or fish, including the harvesting and marketing of such farm products, and other farm activities and practices.*” We focus our efforts as such because the agriculture sector has consistently comprised most of the poor Filipinos. They are among those who are left behind by development and thus considered marginalized. The fisherfolks and farmers have registered the highest poverty incidence⁷ in 2012, which are at 39.2% and 38.3% respectively.⁸ In addition, **Table 1**⁹ illustrates that the agriculture sector has the lowest average daily basic pay of wage from 2013 to 2015:

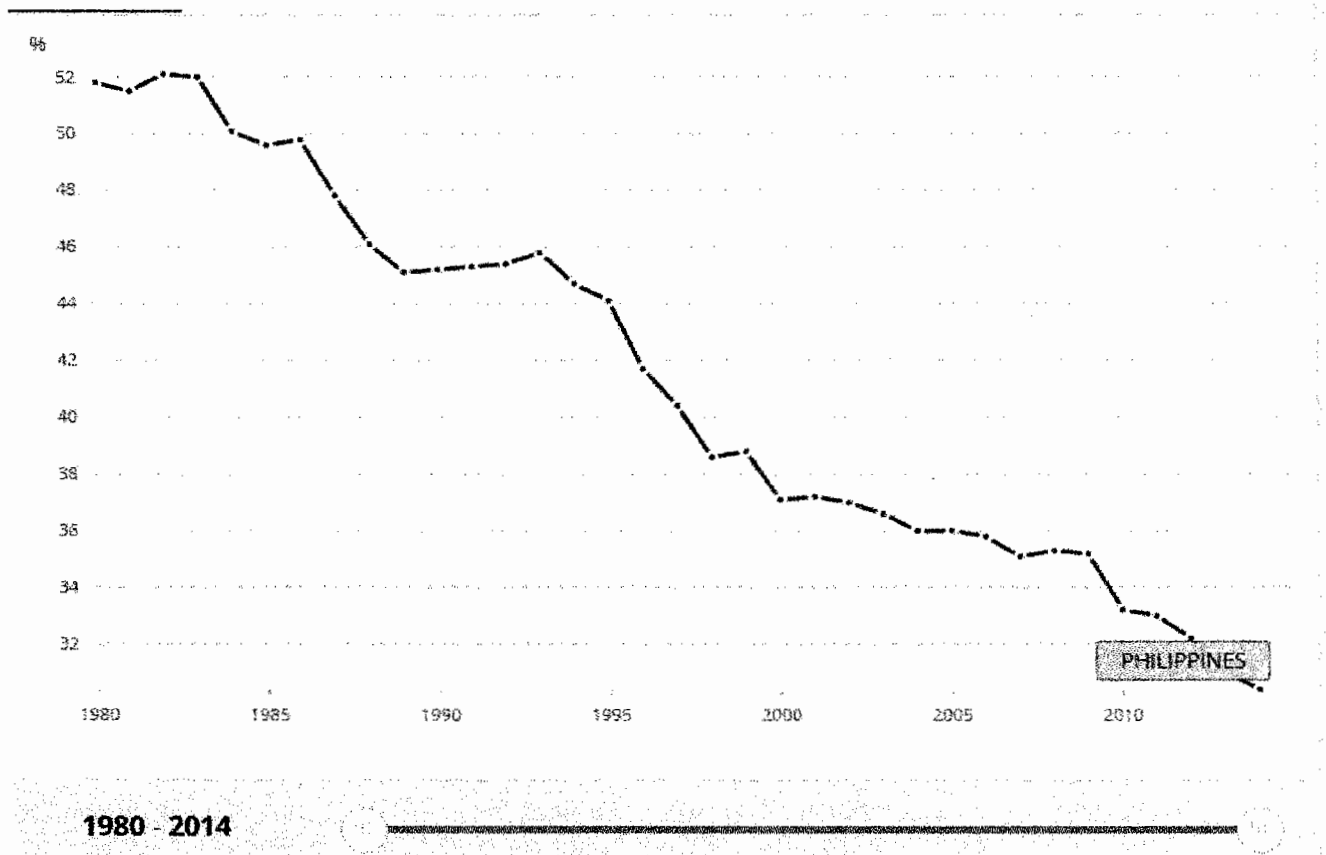
MAJOR INDUSTRY GROUP	2013	2014	2015
Agriculture	Php170.34	Php185.31	Php194.38
• Agriculture, hunting, and forestry	Php169.22	Php184.53	Php192.99
• Fishing and aquaculture	Php189.48	Php199.32	Php218.48
Industry	Php337.11	Php343.66	Php355.09
Services	Php403.00	Php422.15	Php432.15

7 Poverty incidence among Filipinos is the proportion of people below the poverty line to the total population. In 2012, the monthly poverty threshold (minimum income of a family of five in order to be considered “not poor”) is an average of Php8,022, and be able to cover a single family’s basic food and non-food needs. (Source: <http://www.gov.ph/report/poverty-incidence/>) (accessed August 17, 2016) In 2015, the poverty threshold is Php6,365 for a family’s basic food needs and Php9,140 to meet both basic food and non-food needs. (Source: <https://psa.gov.ph/content/poverty-incidence-among-filipinos-registered-263-first-semester-2015-psa>) (accessed: August 17, 2016)

8 Philippine Statistics Authority (July 4, 2014) Fishermen, farmers and children remain the poorest basic sectors. <https://psa.gov.ph/content/fishermen-farmers-and-children-remain-poorest-basic-sectors-0> (accessed August 15, 2016)

9 Presentation of Mr. Nheden Amiel Sarne of the National Economic Development Authority (NEDA) during the focus group discussion on human rights and agribusiness held at the Commission on Human Rights on August 17, 2016

Nevertheless, employment in the agriculture sector shows steady decline as demonstrated in **Table 2:**¹⁰



As per Table 2 above, Philippine agriculture employed the average of 31.96% from 2010-2014.

¹⁰ Employment in Philippine agriculture (% of total employment) Source: The World Bank <http://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=PH> (accessed August 17, 2016)

Despite the seeming declaration of government to promote agribusiness, agriculture's contribution to the gross domestic product is perceived to decline, as shown in **Table 3:**¹¹



Agriculture lags behind services and industry in terms of GDP contribution, as shown further in **Table 4:**

Year	Service Sector ¹² (%)	Industry Sector ¹³ (%)	Agriculture Sector (%)
2010	55.117	32.568	12.314
2011	55.932	31.347	12.721
2012	56.92	31.246	11.834
2013	57.609	31.153	11.238
2014	57.311	31.393	11.296
2015	58.844	30.89	10.267

11 Agriculture, value added (% of GDP) Source: The World Bank <http://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?locations=PH> (accessed August 17, 2016)

12 Services, valued added (% of GDP) Source: The World Bank <http://data.worldbank.org/indicator/NV.SRV.TETC.ZS?locations=PH> (accessed August 17, 2016)

13 Industry, value added (% of GDP) Source: The World Bank <http://data.worldbank.org/indicator/NV.IND.TOTL.ZS?locations=PH> (accessed August 17, 2016)

It is said that the figures show government's neglect of the agriculture sector and giving priority on the service and industry sectors. This is being related on how government implements agrarian reform and provision of support services to the farmers and fisherfolks.¹⁴ Others would argue, however, that the Philippines is gradually shifting from an agrarian to an industrial and service-oriented economy. Nevertheless, as mentioned earlier, this situation demonstrates that the agriculture sector is comprised of vulnerable and marginalized Filipinos who are left out in the so called development agenda.

It is within this context that the research is being pursued from May to November 2016, as regards the time frame. More so, it is when the Philippines elected a new president, and hence at a transitory period between the old and the new administrations. Then presumptive President Rodrigo Duterte announced¹⁵ his economic priorities as follows:

1. Continue and maintain the current macroeconomic policies. However, reforms in tax revenue collection (in the Bureau of Internal Revenue and the Bureau of Customs) efforts will be complemented by reforms within the bureaucracy of these tax collecting agencies.
2. Accelerate infrastructure spending by addressing, among others, major bottlenecks in the public-private partnership (PPP) program. Maintain the target of setting aside 5% of the country's gross domestic product to infrastructure spending.
3. Ensure attractiveness of the Philippines to foreign direct investments by addressing restrictive economic provisions in the Constitution and our laws, and enhancing competitiveness of the economy.
4. Pursue a genuine agricultural development strategy by providing support services to the small farmers to increase their productivity, improve their market access, and develop the agricultural value chain by forging partnership with agribusiness firms.
5. Address the bottlenecks in our land administration and management system.
6. Strengthen our basic education system and provide scholarships for tertiary education which are relevant to the needs of private sector employees.
7. Improve the income tax system to make it progressive to enable those who earn little to have more money in their pockets.
8. Expand and improve implementation of the conditional cash transfer (CCT) program.

Certainly, the new President is informed about the economic performance of his predecessor when he came up with the above guiding principles. Yet, as of this writing, the details on how the Duterte Administration would pursue these economic policies are still in the pipeline. The resource persons from the Department of Agriculture and the Department of Agrarian Reform who were invited to participate during the focus group discussions (July 28 and August 17, 2016) for this research stated that they are still reviewing the policies of the previous administration, particularly on agribusiness venture agreements. Significantly however, it would seem that both the Aquino and Duterte Administrations have mentioned agriculture as part of their economic agenda, albeit it was observed that Aquino sparsely mentioned any accomplishment on the agriculture sector during his last State of the Nation Address¹⁶ on July 27, 2015. Still, we mostly refer to the economic policies of the Aquino Administration from 2010 to 2016 in finding answers to our research questions.

14 Bajpai, P. (Sep. 18, 2015) Emerging markets: Analyzing the Philippines' GDP <http://www.investopedia.com/articles/investing/091815/emerging-markets-analyzing-philippines-gdp.asp> (accessed August 17, 2016)

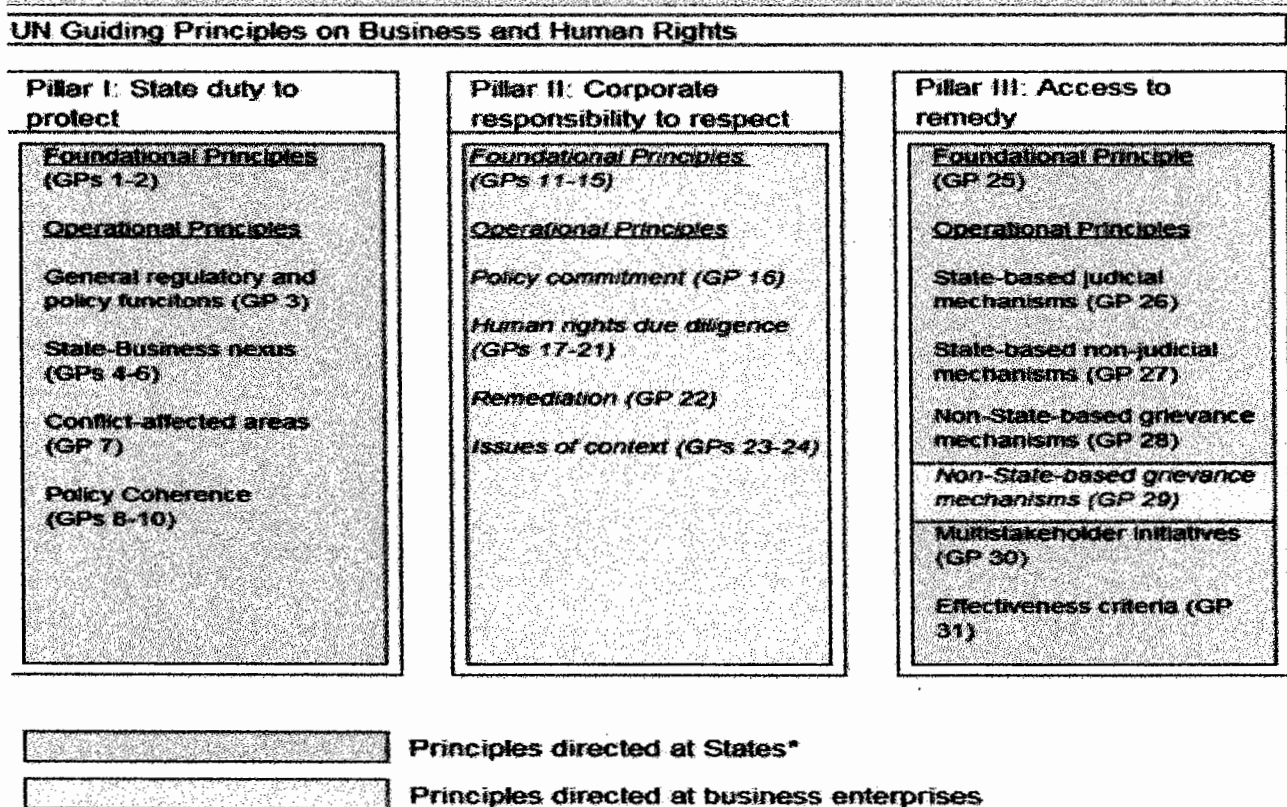
15 Mara Cepeda (May 16, 2016) Transition team bares Duterte's 8-point economic agenda <http://www.rappler.com/nation/politics/elections/2016/132850-duterte-8-point-economic-agenda> (accessed October 5, 2016)

16 Source: Official Gazette of the Republic of the Philippines <http://www.gov.ph/2015/07/27/english-president-aquino-sixth-sona/> (accessed October 5, 2016)

Developing a Methodology and Framework for Analysis

In general, this research provides a baseline situationer of Philippine agriculture as a sector from the lens of human rights standards and contributes to the efforts of the Commission on Human Rights of the Philippines in developing a framework for the national action plan on business and human rights, taking into account its diverse experience as a national human rights institution in protecting and promoting human rights. Significantly, it was observed during the 4th Regional Meeting on Human Rights and Agribusiness held last November 4-6, 2014 in Yangon, Myanmar, that “in Indonesia, Malaysia and the Philippines, efforts are being made to develop national action plans on the implementation of the Guiding Principles on Business and Human Rights.”¹⁷

The first official endorsement for states to develop and adopt this national action plan was made by the United Nations Working Group on Business and Human Rights in its March 14, 2013 report¹⁸ to the Human Rights Council. It recommended that states, when implementing the thirty-one Guiding Principles on Business and Human Rights (GPs on B&HR),¹⁹ “consider elaborating a national plan of action on implementation to define responsibilities at the national level, identify resource requirements and mobilize relevant actors, building on lessons learned from such experiences in other countries.” The GPs on B&HR is the realization of the world's vision to create a global human rights standards for businesses, primarily through the efforts of then UN Secretary General Kofi Annan. In 2005, he appointed Professor John Ruggie as special representative for B&HR, who is now credited for crafting the GPs, expounding on the Protect-Respect-Remedy Framework as illustrated in **Figure 2**:²⁰



* Principles 30 and 31 are directed at both States and business enterprises

17 Yangon Statement on Human Rights and Agribusiness in Southeast Asia (Nov. 6, 2014) <http://www.forestpeoples.org/sites/fpp/files/news/2014/11/Yangon%20Statement%20on%20Human%20Rights%20and%20Agribusiness%20in%20Southeast%20Asia.pdf> (accessed Oct. 6, 2016) – attached as Annex “B” herewith

18 Report (A/HRC/23/32) of the Working Group on the issue of human rights and transnational corporations and other business enterprises (March 14, 2013) http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-32_en.pdf (accessed October 6, 2016)

19 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (HR/PUB/11/04) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed Oct. 6, 2016)

20 Guidance on National Action Plans on Business and Human Rights (Dec. 2014) [http://www.ohchr.org/Documents/Issues/Business/UNWG %20NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG%20NAPGuidance.pdf) (accessed Oct. 6, 2016)

In his book “Just Business”,²¹ Ruggie himself explained that the Protect-Respect-Remedy Framework addresses what should be done, while the GPs tell us how to do it. The Framework and the GPs rest on three pillars. The first is the state duty to protect against human rights abuses by third parties including business enterprises, through appropriate policies, regulation and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to effective remedy, both judicial and nonjudicial. Each pillar is an essential component in an interrelated and dynamic system of preventive and remedial measures: the state duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse. It is believed that the challenge now is to translate the GPs into binding human rights obligations for non-state actors such as business, hence the need for states to develop the national action plan on how to do it.

Whenever relevant, the present research is informed with the toolkit²² developed by the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR) for the development, implementation and review of state commitments to B&HR frameworks. Annex 4 of the toolkit presents a national baseline assessment template coupled with some indicators to guide the process of evaluating the human rights situation of a country and determine the gaps to be addressed through legal and policy reforms that will be included in the national action plan. Nevertheless, the subject template has not included indicators for Pillar 2 on business' responsibility to respect. This is suitable for the present research as agribusiness companies have not yet been engaged at this phase. Still, reference to “The Corporate Responsibility to Respect Human Rights: An Interpretative Guide”²³ is also made. A gap is identified by comparing the actual and immediately perceived acts and omissions of the duty-bearers to specific human rights standards, which is provided through the primary references in so far as the present study is concerned.

The three main questions posited at the beginning of this paper are crafted to correspond to the Protect-Respect-Remedy Framework. Here, we seek to know the situation of business regulation of the Philippine agriculture sector, then moving on to compare the situation with the ideal standards set in the GPs in terms of structures, process and outcome. Thereafter, we show the impacts of the acts and omissions of business and government to the communities where they directly operate, by surveying the complaints that surface in related literature and during focus group discussions (July 27, August 17, August 18, September 27-28, 2016).²⁴ Data from CHRPs records are also examined. By communities, we refer to both indigenous peoples (IPs) and non-IPs as well. Actual cases are cited to serve as examples of relevant points being raised in the specific contexts that are being discussed. It is our intention to present here the status quo, from which progressive improvement is being sought.

Legal and Policy Framework Regulating Philippine Agribusiness:

1. How is agribusiness regulated in the Philippines?

There is no single law or policy in the Philippines that covers all the regulations pertaining to Philippine agribusiness in its entirety. General laws and policies on the regulation of business are thus applicable. For example, a company who would want to engage in agribusiness would have to consider obtaining the necessary registration records, permits, and other legal requirements categorized for registration, regulatory and operational purposes, as shown in **Table 5**²⁵ hereunder:

21 Ruggie, J. (March 25, 2013) *Just Business: Multinational Corporations and Human Rights*. W. W. Norton & Company

22 National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks (June 2014) <http://icar.ngo/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf> (accessed Oct. 6, 2016)

23 Office of the High Commissioner for Human Rights (2012) *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*. (HR/PUB/12/02) UN:Geneva and New York

24 Notes of the focus group discussions are attached herewith as Annexes “C”, “D”, “E”, and “F”

25 Based on the notes provided by Mr. Mariz Agbon, President of the Philippine Agricultural and Development Corporation (PADCC, now defunct) during an interview by Atty. Torres on July 2013

GOVERNMENT AGENCY/OFFICE	DOCUMENT/S
A.) <u>REGISTRATION REQUIREMENTS:</u>	
<ul style="list-style-type: none"> Securities and Exchange Commission 	<ul style="list-style-type: none"> Registration of Corporations and Partnerships Registration of Foreign Corporations
<ul style="list-style-type: none"> Department of Trade and Industry 	<ul style="list-style-type: none"> Registration of Business Name for Single Proprietorship
<ul style="list-style-type: none"> Local Government Unit 	<ul style="list-style-type: none"> Barangay Clearance for Business Permit Purposes Municipal/Sanitary Permit Building Permits/Civil/Structural Permits Location Clearance/Business Permit in the localities where the business will be established Governor's Clearance
<ul style="list-style-type: none"> Bureau of Internal Revenue 	<ul style="list-style-type: none"> Tax Identification Number Certificate of Registration Application for Authority to Use Computerized Accounting System or Components Thereof/Loose-Leaf Book of Accounts Application for Registration Information Update
<ul style="list-style-type: none"> Social Security System 	<ul style="list-style-type: none"> Employer Registration
<ul style="list-style-type: none"> Philippine Health Insurance Corporation 	<ul style="list-style-type: none"> Employer Data Record
<ul style="list-style-type: none"> Department of Labor and Employment 	<ul style="list-style-type: none"> Alien Employment Permit
<ul style="list-style-type: none"> Bureau of Fire Protection 	<ul style="list-style-type: none"> Evaluation Clearance – Fire Safety Permit
<ul style="list-style-type: none"> Philippine Economic Zone Authority 	<ul style="list-style-type: none"> Permit to locate (if applicable) Registration with other Investment Promotion agencies for Availment of Incentives (for Ecozone locators only)
<ul style="list-style-type: none"> Bangko Sentral ng Pilipinas 	<ul style="list-style-type: none"> Registration of Foreign Investments for Purposes of Capital Repatriation and Profit Remittances
<ul style="list-style-type: none"> Authorized Agent Banks 	<ul style="list-style-type: none"> Opening of Letter of Credit Information Sheet for first-time exporters
B.) <u>REGULATORY REQUIREMENTS:</u>	
<ul style="list-style-type: none"> Department of Environment and Natural Resources 	<ul style="list-style-type: none"> Environmental Compliance Certificate Environmental Impact Assessment Certification of Non-Coverage Waste Water Discharge Permit Permit to Operate – Air Pollution Source and Control Installation Hazardous Waste Generator ID Pollution Control Accreditation/Appointment Permit to Construct/Operate Pollution Control
<ul style="list-style-type: none"> Department of Agrarian Reform 	<ul style="list-style-type: none"> Agribusiness Venture Agreements Land Use Conversion Permit
<ul style="list-style-type: none"> National Water Resources Board 	<ul style="list-style-type: none"> Certification of Water Availability Water Permit Application

<ul style="list-style-type: none"> • Bureau of Immigration 	<ul style="list-style-type: none"> • Philippine VISA • Philippine Special Work Permit • Special Investor's Resident VISA • Alien Certification of Registration
<ul style="list-style-type: none"> • National Commission on Indigenous Peoples 	<ul style="list-style-type: none"> • Certificate of Precondition (Free, Prior and Informed Consent)
C.) OPERATIONAL REQUIREMENTS:	
<ul style="list-style-type: none"> • Board of Investments 	<ul style="list-style-type: none"> • Registration for Availing of Incentives under Executive Order No. 226
<ul style="list-style-type: none"> • Philippine Ports Authority 	<ul style="list-style-type: none"> • Clearance to Develop Private Port Facility • Payment of Wharfage Fees/ Exemption from Payment
<ul style="list-style-type: none"> • Bureau of Customs 	<ul style="list-style-type: none"> • Certificate of Accreditation as Importer • Client Profile Registration System • Registration of Customs Bonded Warehouse • Export Declaration (Authority to Load)
<ul style="list-style-type: none"> • Securities and Exchange Commission 	<ul style="list-style-type: none"> • General Information Sheet • Audited Financial Statement • Amendments of Articles of Incorporation/ Partnership/ By - Laws
<ul style="list-style-type: none"> • Social Security System 	<ul style="list-style-type: none"> • Employment Report • Contribution Collection List • Contribution Payment Return
<ul style="list-style-type: none"> • Bureau of Internal Revenue 	<ul style="list-style-type: none"> • Annual Registration Fee • Expanded Withholding Tax Return • Withholding Tax Return on Compensation • Final Withholding Tax Return • Fringe Benefits Tax Return • Annual Information on Return on Creditable Income • Taxes Withheld (Expanded) /Income Payments Exempt from Withholding Tax • Annual Corporate Income Tax Return • Annual Information Return for Withholding Tax on Compensation and Final Withholding Tax • Quarterly Corporate Income Tax Return
<ul style="list-style-type: none"> • Philippine Economic Zone Authority 	<ul style="list-style-type: none"> • Audited Financial Statement, Income Tax Return, etc. • Registration of Business/Expansion for Incentives

Each of these government agencies is implementing the different generally applicable laws, rules and regulations that an agribusiness company must comply with, and which corresponds to different stages of its supply chain, i.e. "from farm to fork". From a human rights framework, Table 5 serves as mapping of the specific agencies of government that have important role to play in protecting and promoting human rights.

Specific sub-sectors of Philippine agribusiness, such as based on crops or plants produced, are required to abide with several other rules and regulations that are being administered by certain specialized government agencies. For example, companies involved in the palm oil industry must coordinate with the Philippine Coconut Authority (PCA).²⁶ PCA is mandated by Presidential Decree No. 1468 or the Revised Coconut Industry Code to formulate and adopt a general program of development for the coconut and other palm oil industry in all its aspects. Its Manual of Operations²⁷ would show that one of its frontline services is to collect accreditation fee on coconut seednuts/seedlings producers and oil palm nurseries, which accreditation is valid either for one or two years, depending on the need of the producers. PCA also processes applications for “*Certificate of Inspection & Verification for Land Use Conversion*” for lands planted with coconut, which is related to its exclusive authority²⁸ to grant permit for the cutting of coconut trees. However, a review of PCA's accomplishment reports from 2010 to 2014, as posted in its official website²⁹ do not contain data on how it implemented such mandate pertaining to the palm oil industry. It would also appear that PCA's regulatory powers over the palm oil industry are not clearly defined in contrast with the coconut industry. Notably, this has been the observation of civil society³⁰ who asserted that the PCA believes that it is only through the leadership of the private sector that the palm oil industry can be catapulted to sustained growth. Thus for the past years, promotion and expansion of the industry has largely been propelled by investors (owners and heads of palm oil mills/processors and oil palm growers/planters) and with support from other government bodies such as the Department of Trade and Industry (DTI), the Department of Agrarian Reform (DAR), the Department of Agriculture (DA) and also Local Government Units in the provinces of Sultan Kudarat, North Cotabato, Maguindanao, Agusan, Bukidnon, Bohol and Palawan, among others.

Regulation of agribusiness may be exercised by government on the basis of law, which takes into account that the locality where operations would be made has peculiar characteristics imbued with public interest. For example, Republic Act No. 7611 or the "Strategic Environmental Plan (SEP) for Palawan Act" was enacted to protect Palawan, and created the Palawan Council for Sustainable Development (PCSD). PCSD's composition varies and corresponds to the issues and concerns it confronts. There are however mandated members, such as:

- the Representatives from the two districts of Palawan in the House of Representatives (the lower house of the Philippine legislature)
- Governor of Palawan
- Deputy Director General of National Economic and Development Authority
- Undersecretaries of Department of Environment and Natural Resources
- Department of Agriculture
- Mayor of Puerto Princesa City
- President of League of Municipalities of Palawan
- President of Liga ng mga Barangay
- representatives from the Office of the President
- Palawan Provincial Board
- Non-Government Organizations
- Military
- business
- tribal sectors and the
- Philippine National Police-Provincial Command.

26 PCA Manual of Corporate Governance (Sept. 10, 2014)

<http://www.pca.da.gov.ph/pdf/disclosure/corpgovernancemanual030315.pdf> (accessed Oct. 14, 2016)

27 PCA Manual of Operations <http://www.pca.da.gov.ph/pdf/disclosure/manualofoperations2016.pdf> (accessed Oct. 14, 2016)

28 Section 6, Republic Act No. 8048 or the Coconut Preservation Act of 1995, amended by R.A. No. 10593 (2013)

29 PCA Annual Report (published Oct. 28, 2015) <http://pca.da.gov.ph/index.php/2015-10-23-07-35-38/annual-reports> (accessed Oct. 14, 2016)

30 Villanueva, J, Colchester, M., Chao, S, et al. (July 2011) Oil Palm Expansion in South East Asia: Trends and Implications for Local Communities and Indigenous Peoples. Forest Peoples Programme, Perkumpulan Sawit Watch <http://www.forestpeoples.org/sites/fpp/files/publication/2011/11/oil-palm-expansion-southeast-asia-2011-low-res.pdf> (accessed Oct. 14, 2016)

Agribusiness companies that intend to conduct operations in Palawan must secure SEP Clearance, pursuant to PCSD Administrative Order No. 6, as amended, Series of 2008.³¹ The nature of SEP Clearance is explained by the Supreme Court in the case of Villanueva, et al. vs. Palawan Council for Sustainable Development, et al.,³² the issue being whether or not PCSD is a quasi-judicial body. The Supreme Court ruled in the negative and said:

*“In issuing a SEP Clearance, the PCSD does not decide the rights and obligations of adverse parties with finality. **The SEP Clearance is not even a license or permit. All it does is to allow the project proponent to proceed with its application for permits, licenses, patents, grants, or concessions with the relevant government agencies.** The SEP Clearance allows the project proponent to prove the viability of their project, their capacity to prevent environmental damage, and other legal requirements, to the other concerned government agencies. The SEP Clearance in favor of PLMDC does not declare that the project proponent has an enforceable mining right within the Municipality of Narra; neither does it adjudicate that the concerned citizens of the said municipality have an obligation to respect PLMDC’s right to mining. In fact, as seen in Section 5 of AO 6, the **PCSD bases its actions, not on the legal rights and obligations** of the parties (which is necessary in adjudication), but on **policy considerations, such as social acceptability, ecological sustainability, and economic viability of the project.**” (Emphasis underscoring ours)*

However, the Supreme Court recognized the power of PCSD to impose appropriate penalties. As such, regardless of not being a license or permit, non-compliance with the requirement to obtain SEP Clearance and the commission of such other prohibited acts³³ enumerated in PCSD A.O. No. 6, Series of 2008, would necessitate the imposition, pursuant to Section 24 therein, of the following penalties:

- Suspension of Project Operation – For committing any of the prohibited acts defined under Section 23, the PCSD may call the attention of the permitting agency to suspend the operation of the project, or in case of inaction by the permitting agency the PCSD may file the appropriate legal action against the former.
- Cancellation of Permit – For committing any of the prohibited acts defined under Section 23, the PCSD may call the attention of the permitting agency to cancel the permit issued to the project, or in case of inaction by the permitting agency, the PCSD may file the appropriate legal action against the former.
- Termination of Project Operation – For violation of Section 23.3 the PCSD shall immediately terminate the project operation.
- Cancellation of SEP Clearance – For committing the prohibited act under Section 23.1 the PCSD may cancel the SEP Clearance.
- Fine – In addition to the penalties under Sections 23.1 to 23.4, the PCSD shall impose the penalty of fine in the amount not less than fifty thousand pesos (P50,000) for every violation.

31 Revised Guidelines in the Implementation of the SEP Clearance System, Amending PCSD Administrative Order No. 6, Series of 2000, and PCSD Resolution No. 03-208, issued pursuant to the rule-making power of PCSD under R.A. No. 7611

32 G.R. No. 178347, February 25, 2013 http://www.lawphil.net/judjuris/juri2013/feb2013/gr_178347_2013.html#rnt33 (accessed Oct. 14, 2016)

33 Section 23. Prohibited Acts. The following acts are prohibited under this Order: 23.1 Non-compliance or violation of any of the terms and conditions of the SEP Clearance or PCSD Certificate of Accreditation; 23.2 Construction of any structure or conduct of any activity without the required SEP Clearance or PCSD Accreditation in an area which such activity may be allowed under the Environmentally Critical Areas Network (ECAN); 23.3 Construction of any structure or conduct of any activity without the required SEP Clearance or PCSD Accreditation in an area which such activity may not be allowed under the ECAN; 23.4 Operating any project or undertaking without the required SEP Clearance or Certificate of Accreditation

The Department of Agriculture performs significant role during the negotiation stage of agribusiness venture agreements, particularly if the proponent is a private company, while the Department of Trade and Industry-Board of Investments has the mandate to scrutinize the validity of the proposal of the private company. By virtue of Administrative Order No. 29 series of 2012,³⁴ the Department of Agriculture has re-activated its “clearinghouse mechanism” that applies for agribusiness projects with cost below One Billion Pesos (Php1,000,000,000.00), especially if funded from government coffers. The said mechanism deals with investment evaluation processes, such as financial analysis, economic, analysis, environmental analysis and social analysis. This includes the issues on sustainability and triple bottom-line.³⁵ On the other hand, projects with cost of One Billion Pesos (Php1,000,000,000.00) and above must undergo NEDA process known as Investment Coordination Committee (ICC) Approval Process.³⁶

DA Administrative Order No. 29 series of 2012 set the criteria in reviewing, evaluating and approving projects and programs, such as the following:

- completeness of submitted project documents and other requirements;
- use of correct, accurate and recent of data, information and assumptions;
- consistency with the following: (i) Philippine Development Plan (PDP), (ii) Public Investment Program (PIP) for the agricultural and fisheries sectors, (iii) the Agricultural and Fisheries Modernization Plan (AFMP), (iv) commodity and support service roadmaps, (v) sector and regional priorities/thrusts; and/or (vi) other goals, developmental thrusts/pronouncements and plans/programs of the national government particularly the DA;
- responsiveness to various emerging national/international issues/concerns (e.g., climate change, global trade order, gender equality, displacement of/impacts on marginalized/special sectors, private sector participation, etc.);
- viability of project/program being proposed in terms of applicable feasibility indicators (e.g., technical, socio-economic, financial, economic, market/ demand, organizational, etc.).

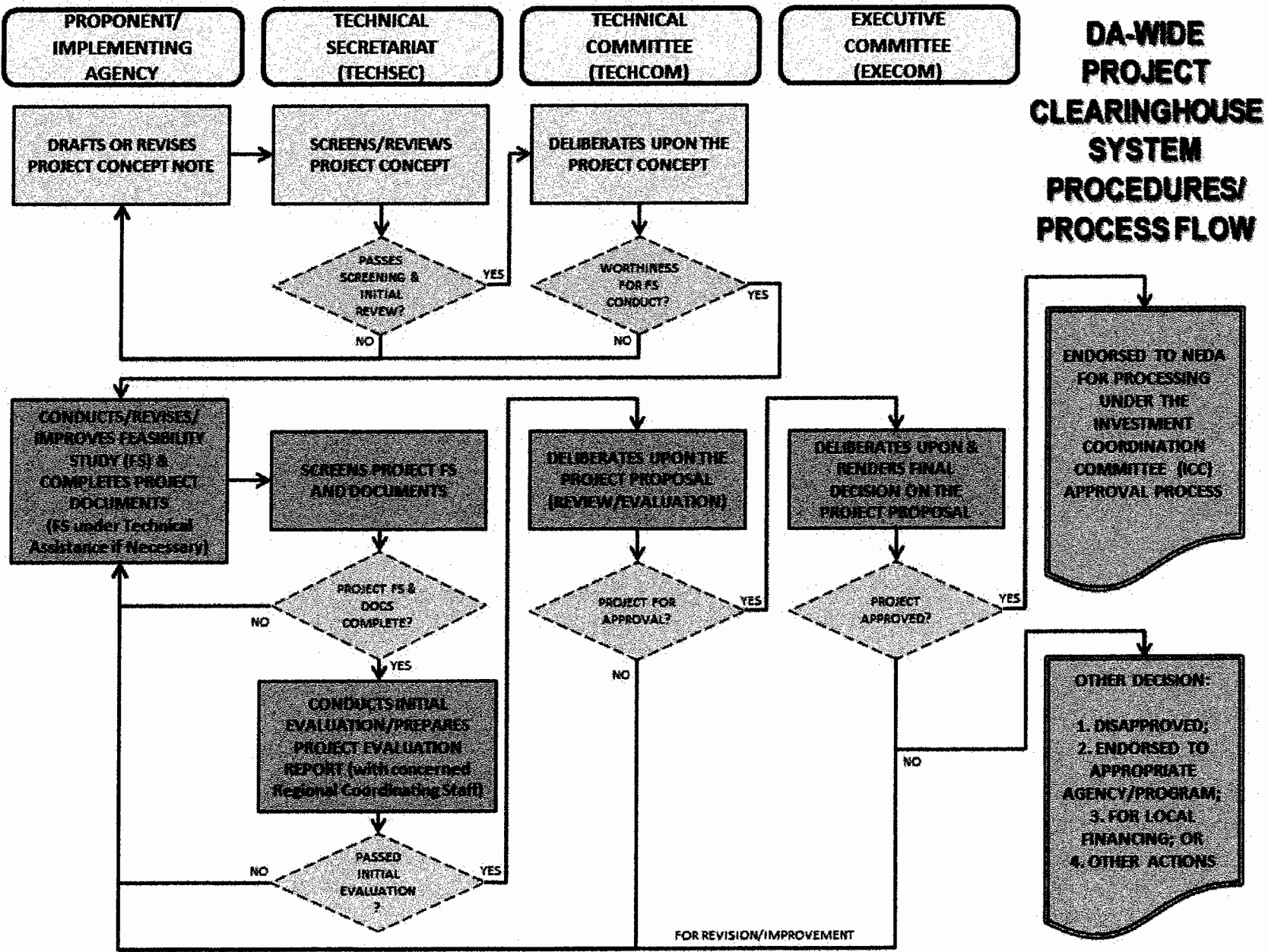
Figure 3 shows the process flow for the DA clearinghouse system, and how it links with the NEDA process.

34 Subject: Reactivation and reconstitution of the DA-wide project Clearinghouse System (issued Nov. 29, 2012) <http://clearinghouse.da.gov.ph/index.php/about/the-guidelines> (accessed Oct. 28, 2016)

35 Statement of Mr. Sarne, NEDA during the August 17, 2016 focus group discussion

36 Investment Coordination Committee – National Economic Development Authority <http://www.neda.gov.ph/investment-coordination-committee/> (accessed Oct. 28, 2016)

Figure 3. DA-wide Project Clearinghouse System.



NEDA has issued set of guidelines³⁸ on project evaluation to ensure their technical, financial, economic and social merits. The guidelines are organized into eight (8) sections. Sections II to VI cover the procedures in undertaking the financial, economic, technical, social and institutional evaluation of programs and projects. Section VII provides the steps in undertaking a sensitivity analysis of the selected parameters. The evaluation of technical assistance components of projects is detailed in Section VIII. Section IX describes the procedures in conducting public consultations on programs and projects, and provides that public consultations regarding programs/projects will only be undertaken after they have been determined to be economically viable, in order to save on time and resources.

As per the NEDA guidelines, The following aspects may be considered in the qualitative assessment of the social benefits of the program/project:

- **Income Distribution.** The extent to which the income of the poorest sector of the rural population is improved as a result of the program/project may be quantified. Reference must be made to the relative improvement in comparison with other groups in the country.
- **Employment.** The extent to which the program/project reduces underemployment may be assessed. This may be quantified in terms of work years created by the program/project, with distinction made between permanent employment and employment during the investment or construction phase. The number of jobs created may be compared with the expected increase in the labor force of the program/project area.
- **Access to Land.** If the program/project includes a land settlement or land reform element, the distribution of land rights with and without the program/project should be demonstrated.
- **Internal Migration.** It may be useful to note the possible effect of the program/project on rural-urban migration.
- **Nutrition and Health.** If the program/project is located in an area where serious nutrition or health problems exist, or if the program/project is directed toward groups with nutrition and health deficiencies, the expected effects of the program/project on these problems might be mentioned. In some cases, the effect on nutrition may be quantified in the daily intake of calories in protein that is expected as a result of the program/project.
- **Other Indicators of the Quality of Life.** Some programs/projects may have a significant effect on the quality of rural life through improvements in access to domestic water supplies, electricity, schools, and other facilities. These may be mentioned and the quantities of the new amenities noted.

It would appear that the NEDA guidelines are designed after taking into account human rights standards.

38 Source: <http://www.neda.gov.ph/wp-content/uploads/2013/10/ICC-Project-Evaluation-Procedures-and-Guidelines-as-of-24-June-2004.pdf> (accessed Oct. 28, 2016)

The general law on contracts, as found in the Philippine Civil Code, regulates the privity between and among the key players of agribusiness. Contracts are the key modes by which businesses are pursued. In agribusiness, there are at least seven contractual arrangements or schemes that the government, through the Department of Agrarian Reform (DAR), recognized as stated in its Administrative Order No. 09-06, Series of 2006. Collectively called as “Agribusiness Venture Agreements”³⁹ (or AVAs). They are as follows:

- Build-Operate-Transfer – AVA scheme wherein the investor builds, rehabilitates or upgrades, at his own cost, capital assets, infrastructure and facilities applied to the production, processing and marketing of agricultural products and operates the same at his expense for an agreed period after which the ownership thereof is conveyed to the agrarian reform beneficiaries (ARB) who own the land where such improvements and facilities are located.
- Joint Venture Agreement – AVA scheme wherein the ARBs and investors form a joint venture corporation to manage farm operations. The beneficiaries contribute the use of the land held individually or in common and the facilities and improvements, if any. On the other hand, the investor furnishes capital and technology for production, processing and marketing of agricultural goods, or construction, rehabilitation, upgrading and operation of agricultural capital assets, infrastructure and facilities.
- Lease Agreement – AVA scheme wherein the beneficiaries bind themselves to give the former landowner or any other investor general control over the use and management of the land for a certain amount and for a definite period.
- Management Contract – AVA scheme wherein the ARBs hire the services of a contractor who may be an individual, partnership or corporation to assist in the management and operation of the farm for the purpose of producing high value crops or other agricultural crops in exchange for a fixed wage and/or commission.
- Marketing Agreement – AVA scheme wherein the investor explores possible markets/buyers for the ARB’s produce and in turn receives commission for actual sales. It is distinct from the direct marketing arrangement/contracts of ARBs or their cooperative/association wherein the regional/provincial marketing assistance officer of DAR helps or assists in the sale and marketing of ARBs produce to a regular market, e.g., institutional buyers such as Cargill Philippines or San Miguel Corporation for yellow/hybrid corn.
- Production/Contract Growing/Growership – AVA scheme wherein the ARBs commit to produce certain crops which the investor buys at pre-arranged terms (e.g., volume, quality standard, selling price). This may come in the form of production and processing agreements.
- Service Contract – AVA scheme wherein the ARBs engage the services of a contractor for mechanized land preparation, cultivation, harvesting, processing, post-harvest operations and/or other farm activities for a fee.

According to DAR, 75% of all AVAs are lease agreements, while 24% are growerships.

The latest DAR issuance⁴⁰ on the matter defines AVA as a contract entered into by an ARB or group of ARBs, or such juridical entities of ARBs owning the awarded land involved, on the one hand, and an investor, on the other, which involves the:

- possession of the land
- management of the operations of the farming of the land
- control/distribution of the produce of the land, for a period of more than two cropping seasons;
- commitment of the owners to produce certain crops, at a determinable quantity, for a period of more than two cropping seasons
- such other arrangements similar to the above mentioned

39 DAR A.O. No. 09-06 defines AVA as entrepreneurial collaboration between agrarian reform beneficiaries and investors to implement an agribusiness venture involving lands distributed under the Comprehensive Agrarian Reform Program.

40 Chapter 2, Section 2, DAR A.O. No. 4, Series of 2016 issued on May 27, 2016. This recent A.O. explicitly repeals DAR A.O. No. 09, Series of 2006 and A.O. No. 02, Series of 2008

Simple transactions of purchase of inputs or sale of crops or products, insofar as they are not linked to any of the above mentioned enumeration, is not considered AVA. This means that AVA's extent is on large scale production.

AVAs presuppose the situation when ARBs are already working on the agricultural lands awarded to them, and they need support services for seed, irrigation, capital, technology, facilities and other farm inputs. DAR issued the initial regulation covering AVAs through DAR Administrative Order (DAO) No. 02, Series of 1999 with subject “*Rules and Regulations Governing Joint Economic Enterprises in Agrarian Reform Areas.*” Significantly, the framework for joint economic enterprises under this administrative order ideally provides:

*“Agrarian reform means not just the redistribution of lands to farmers and farmworkers who are landless, but includes the totality of factors and support services designed to lift the economic status of the beneficiaries. The State is primarily mandated and hereby reaffirms its commitment to provide support services to agrarian reform beneficiaries. Nonetheless, **to ensure adequate support services, there is a need for greater private sector participation, both civil society and business, in the development of agrarian reform areas.** This shall be **facilitated through agribusiness partnerships** otherwise known as Joint Economic Enterprises, between beneficiaries and investors. **These partnerships or arrangements, which will involve distributed lands, shall be at the option of beneficiaries.** Their availability **does not mean government will cease to provide agrarian support services.** They are merely alternatives that beneficiaries may consider to sustain the operations of distributed farms, or to make their lands productive, thus enable them to enjoy the benefits of agrarian reform.”* (Emphasis ours)

This framework is essentially maintained in the succeeding DAR regulations of AVAs, such as DAO No. 09-06, Series of 2006 and the recent one being DAO No. 04, Series of 2016.⁴¹ This latter regulation reiterated DAR's primary responsibility to safeguard the ARBs' interests all throughout the AVA contract process, i.e. (a) negotiation; (b) contract signing; (c) review and approval; (d) continuous monitoring; (e) amendment, renegotiation, revocation. Some of DAR's specific duties as per DAO No. 04 are shown in **Table 6**:

STAGE OF CONTRACTING	REFERENCE/ SECTION	PROVISION OF DAO NO. 04, S. 2016	REMARKS
Entering into AVA	Sec. 5 – Multiple Individual Owners, Agent an Option	In crafting the Special Power of Attorney (SPA), it is recommended that the ARB-Owners consider whether or not they want the DAR to be an Observer during the negotiation conferences. If sought by the ARBs, it is the duty of the DAR Provincial Office (DARPO) to assist the ARBs in the crafting of the SPA, but the substance thereof must be collectively decided solely by the ARBs. In all instances, whether the SPA was executed with or without the assistance of the DARPO, the Agent of the ARBs shall submit at least one original copy of the SPA to the DAR. The DAR may, on its own initiative, through a petition, or as the circumstances may warrant, look into whether or not the ARB-Owners who signed the same gave their free, informed consent.	In case the proposed AVA involves several awarded lands covered by individual CLOAs, or tracts of land covered by a Collective CLOA, the affected ARB-Owners have the option to designate, elect, or appoint an Agent, through a written Special Power of Attorney (SPA), to negotiate a possible AVA with an investor. The obvious purpose is for efficient negotiation.

41 As of July 29, 2016, the new Secretary for Agrarian Reform, Rafael Mariano, issued a directive to hold in abeyance the implementation of DAO No. 04, Series of 2016. He intended to conduct further consultation on the new regulation issued by his predecessor in office, Virgilio delos Reyes. It was issued when the new Duterte Administration was about to assume office on June 30, 2016. (Source: <http://news.pia.gov.ph/article/view/1141469666421/sec-ka-paeng-temporarily-puts-on-hold-implementation-of-rules-on-agri-business-venture-agreements->) (accessed Oct. 14, 2016)

Initiation and Pre-Negotiation	Sec. 8 – Initiating Official Negotiation Process	In case an ARB Negotiation Unit (ANU) and an investor agree to start negotiating for an AVA, the parties shall submit their intention in writing to the DAR Provincial Office which has jurisdiction over the pertinent landholding. The parties will undertake to wait for the DAR Advisory to Proceed with Negotiations (DAPN) before proceeding with their first negotiation meeting.	- The term “ARB Negotiation Unit” (ANU) is used in the regulation to indicate that the owners of the awarded land has the ultimate authority whether or not to enter into an AVA. Said owners are the principal bargaining unit. (Sec. 3) - Pre-Negotiation Conference is convened by DAR simultaneous to the conduct of the assessment of facts and the capacity building measures for the ARBs. (Sec. 11)
Initiation and Pre-Negotiation	Sec. 9 – Ensuring the Transparency between the parties	Upon receipt of the written intent to negotiate and its attachments, the DARPO will immediately assess the information submitted by the ARB-Owners with respect to their tenurial status, and the investors with respect to themselves.	DAR Advisory to Proceed with Negotiation shall be appended with a list of mandatory provisions in the AVA as enumerated in Sec. 15. Thereafter, the parties may schedule their Negotiation Conference meetings.
Initiation and Pre-Negotiation	Sec. 10 – Improving the Bargaining Power of ARBs and smallholder farmers	DAR, by itself, or through other private or public entities which will be funded by the DAR through a capacity building fund, shall provide the ARB-Owners: (a) business and legal advice and consultation; (b) data and information with the purpose of strengthening the bargaining power of the ARBs and smallholder farmers.	
Negotiation	Sec. 13 – The Negotiation Conference Sec. 14 – Consensus and Reports	Should one or both the parties request the DAR to observe the proceedings, the DARPO shall act only as an impartial and neutral observer during the conference. At the option of the ANU and upon their written request, the DAR, through the Provincial Agrarian Legal Assistance Unit (hereafter referred to as the ALA team), may render free legal assistance to them. Should the DAR be invited as observer, the DARPO shall report to both parties the summary of discussions.	Sec. 15 of DAO No. 04, S. 2016 provides mandatory provisions of agribusiness venture agreements.
Execution	Sec. 17 – No Execution without PARPO Permit Sec. 18 – Submission of Proposed AVA to DARPO	No AVA may be executed until the parties have obtained a Permit to Execute the AVA (PTE) or a Permit to Execute the AVA and Observations (PEO) from the PARPO. Parties must submit five copies of the proposed written AVA to DARPO together with Application for PTE accomplished by both parties.	- Permit to Execute the AVA (PTE) or a Permit to Execute the AVA and Observations (PEO) is issued after DAR's review of the proposed AVA. - Sec. 21 illustrates the difference between PTE and PEO. In case the PARPO determines that the proposed AVA does not violate Section 15 on the mandatory provisions, is faithful to what has been negotiated, and the ANU has not exceeded the parameters provided in the

			<p>SPA, he/she shall approve the application by issuing the PTE. However, if the DARPO was invited as an Observer in the Negotiation Conference and the PARPO determines that while the proposed AVA does not violate Section 15 hereof, the provisions therein is not in keeping with what has been negotiated, he/she shall still approve the application by issuing a PEO. The PEO shall detail the observed discrepancies between what was stated in the negotiations vis-a-vis what is written in the AVA.</p> <p>- In case the PARPO finds that the proposed AVA violates Section 15, he/she shall deny the Application for PTE in writing and furnish one copy of the same to each party. Both parties may decide to amend the AVA by adding the required provision or removing the violating provision. If they disagree with the PARPO, they may file an ALI case with the Regional Director. (Sec. 21)</p> <p>- Therefore, it would seem that no PTE or PEO would be issued based only on the ground that Section 15 is violated.</p>
Execution	Sec. 19 – Verification Conference among ARBs	In case the ANU is the Agent of the ARB-Owners/AR Cooperative, the former must explain to the latter the contents of the AVA and its consequences through a Verification Conference. The DAR is required to attend the said Conference. In case the DARPO was invited as an observer in the Negotiation Conference, the Observer Team shall also give a report to the ARB-Owners/AR Cooperatives. While the Agent is primarily responsible for explaining the consequences of the AVA to the ARB-Owners/AR Cooperatives, this fact does not prohibit the DAR from explaining such matters to them, if warranted.	Significance of Verification Conference among ARBs is stated in Section 19.
Execution	Sec. 20 – Review of the AVA	In case the DARPO was invited as an Observer in the negotiations, the DARPO Observer Team shall also review the proposed AVA. The Observer Team shall review the AVA to determine that (1) its contents contain what has been agreed	DARPO is expected to act on the Application for PTE within 90 days from receipt thereof. (Sec. 22)

		upon during the negotiation process and that nothing that has been agreed upon were left out from the written draft; and that (2) the Agent acted within the parameters of its authority under the provisions in the SPA, if applicable. Upon the completion of review, it shall forward the proposed AVA to the PARPO together with its written report and observations.	
Approval of the AVA	Sec. 24 – Three Copies of the Signed AVA to be submitted to DAR	Three original copies of the signed AVA must be submitted to DARPO. The DARPO shall immediately undertake to determine that the signed AVA is the same as that it has reviewed in issuing the permit. Once this has been verified, which in no case must be later than fifteen days from submission thereof, the PARPO shall issue a Certification that it contains the same provisions as that reviewed prior to its execution, and recommend for its approval. The Certification, together with one original copy of the AVA and such number of photocopies equivalent to the number of members of the PARCCOM, shall be transmitted to the PARCCOM.	PARC may delegate, through a Resolution, its authority to approve AVAs to the pertinent DAR Regional Directors. In case the parties disagree with the decision of the Regional Director, he/she/it/they may appeal the said Resolution to the PARC. (Sec. 28)
Approval of the AVA	Sec. 27 – Certification of Approval and Effectivity	PARPO shall issue the Certification not later than three business days from receipt of the PARC Resolution approving the AVA.	This refers to PARPO's Certification issued to both parties that the AVA has been registered and is recognized as valid.
Dispute Resolution	Sec. 30 – Primacy of Mediation and Conciliation	Mediation and conciliation shall be the first mode of resolving any disputes between the parties of the AVA. Upon complaint by the ARBs or the investor, the DAR shall call both parties to a mediation/conciliation conference to see if the issue can be resolved amicably. Amendment of particular provisions of the AVA may be a solution to problems, and the DAR shall not act to hinder this possible solution unless such amendment is in violation of any law.	Jurisdiction for cases involving specific performance or extinguishment of an obligation under, or for the nullification, annulment, or revocation of, the AVA shall be with the DAR Adjudication Board. (Sec. 31)

According to Section 15, DAO No. 04, S. 2016, the mandatory provisions in an AVA are the following:

1. The consideration of the AVA, the determination of which must consider several factors which must include the following:

1.1 land amortization value per hectare per year, multiplied by the number of hectares and the number of years of the life of the AVA;

1.2 annual real property tax per hectare, multiplied by the number of hectares and the number of years of the life of the AVA; and

1.3 in case of lease AVAs, the increase of annual consideration on the basis of the annualized Core Inflation Rate most recently published by the Bangko Sentral ng Pilipinas.

The above mentioned factors however must not be the only factors in determining the annual consideration.

2. A period for renegotiation of the AVA which should start not earlier than three (3) years, or in case the primary crop is a perennial one, one (1) year, from the end of the term of the AVA.

3. That failure to renegotiate or agree to an extension shall result in the immediate and actual cessation of the relationship created under the AVA.

4. An express statement that both parties obligate themselves to uphold the provisions of the labor law and such rules and regulations issued pursuant thereto in the implementation of the AVA.

5. An express statement that both parties agree that any issue or dispute arising from the AVA, or such questions pertaining to its validity, shall be threshed out through a mediation/conciliation proceeding first before the filing of an action.

6. The AVA and the employment contracts of the investor with its employees (including ARB-owners who may be hired as a result of the AVA) shall be separate, distinct and independent from one another, such that the termination of the employment shall not affect the terms of the AVA, and, conversely, the expiration or termination of the AVA shall not cause the automatic termination of the employer-employee relationship between the employees and the investor.

7. In the case of AVAs involving lease of agricultural land, the terms and conditions pertaining to the improvements introduced by the investor over the land leased, such as, among others, the manner by which such improvements may be retained or removed at the termination of the lease and/or the manner of its valuation by such date.

8. Provision by the investor of a program for technology and farm management training for the ARBs.

9. The date of effectivity of the AVA must not be earlier than the date of its approval by the PARC or the Regional Director, as the case may be.

10. Furthermore, the AVA may not contain the following provisions:

- i. an automatic extension or re-enactment of the AVA;
- ii. unilateral take-over of the investor over the possession or management of the land;
- iii. non-payment of rentals on the ground of crop failure due to natural calamities and/or force majeure, in case of lease AVAs; and
- iv. transfer of ownership of the land.

11. Finally, the AVA may not contain any provision that is contrary to an agrarian or any other law.

Prescinding from the above, it appears that the government has taken steps to regulate AVAs, but then the first regulation came late when DAR issued its Administrative Order No. 2 Series of 1999 only on October 01, 1999, several years after the effectivity of CARP. Such belated issuance came after DAR's conscious realization that the ARBs did not have capital to work on the fields they now owned. They do not have viable source of credit, forcing them to go to monopolistic creditors that charge high interest rates, and even leasing back the lands to their former landlords. Admittedly, there are other problems that emerged, prompting the government to develop new regulations seemingly to address them. During the 16th Congress (2013-2016), Cong. Teddy Brawner Baguilat, legislative representative of the lone district of Ifugao, among other lawmakers of the lower House of Philippine Legislature, filed House Bill No. 5161, titled "*An Act Regulating the Establishment and Implementation of Agribusiness Venture Agreements (AVA) in Agrarian Lands.*"⁴² The explanatory note appended on the bill cites the case of onerous contract on the agribusiness venture arrangement (AVA) between the Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) and Lapanday Foods, Inc. in Davao Oriental. We quote in part Cong. Baguilat's notes as follows:

42 Attached herewith as Annex "G"

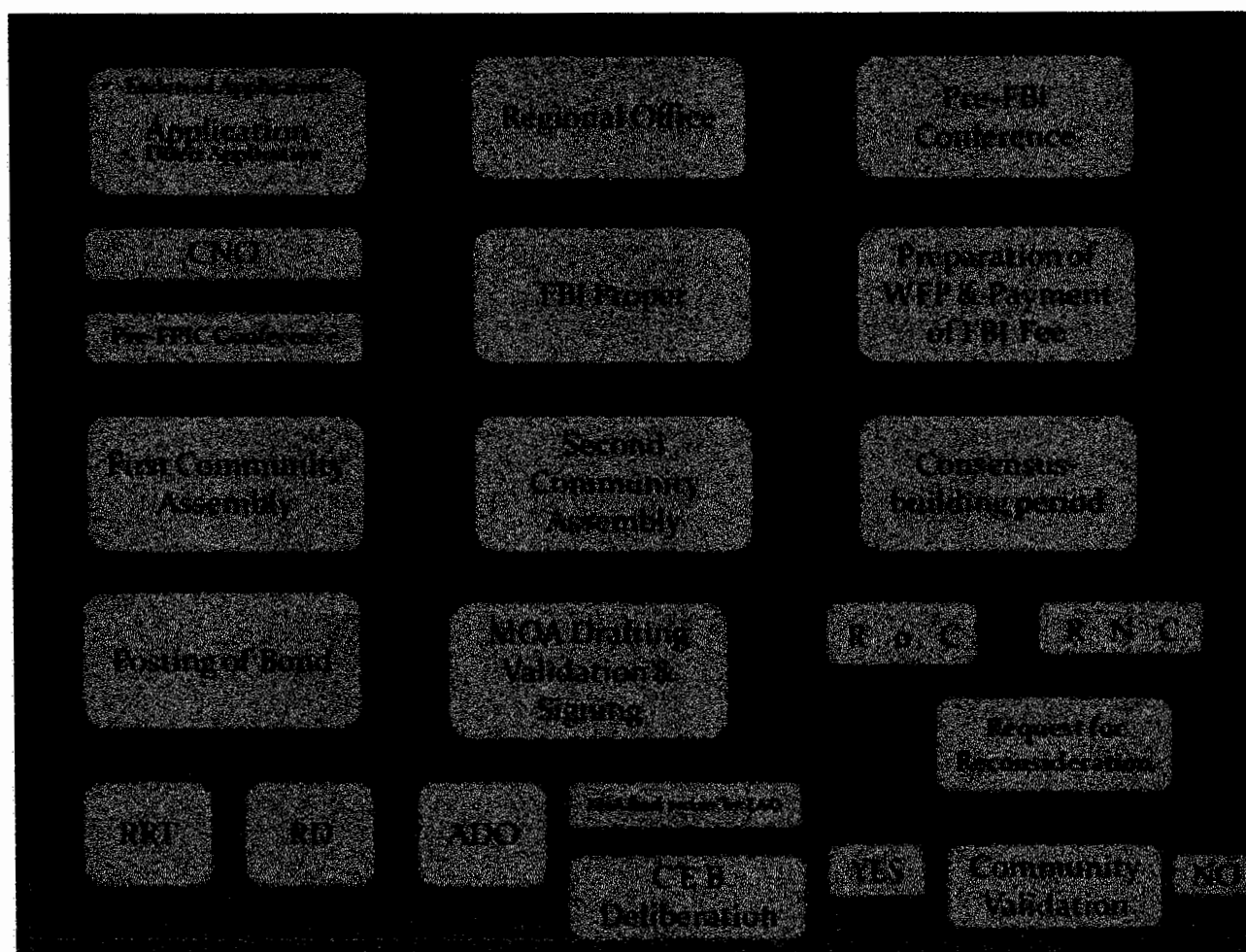
“The case of HARBCO reveals the plight of many ARBs who may still own the land awarded to them on paper, but in actual practice, have lost control and access to it by the takeover of their land’s management by supposed partner agribusiness corporation.

“In the midst of recurring calls to cease CARP implementation and give way to agricultural investments by private corporations, there is mounting concern that ARBs must retain possession and ownership of the lands awarded to them under the program and contribute to rural development. The pressure comes from domestic and foreign agribusinesses, which are directly leasing and/or managing agricultural lands at the risk of the ARBs losing control over their land.

The HARBCO case further validates the need to strengthen the existing policies on AVAs to address and prevent similar cases that compromise the tenure security of ARBs from occurring in the future.”

Regulation of AVAs is made first through administrative modes, as what the Department of Agrarian Reform has done, and which is now supplemented by efforts from the Legislature.

There are laws that protect specific sectors such as the indigenous peoples and small-holder farmers. The Indigenous Peoples Rights Act (Republic Act No. 8371, enacted on October 29, 1997) is one of the most lauded piece of legislation ever enacted in the Philippines. Its provisions on “Free, Prior and Informed Consent” (FPIC) have been the most relevant reference for regulating agribusiness, especially within the context of engaging indigenous cultural communities in such venture. The process flow for FPIC is presented in **Figure 4**⁴³ below:



43 Based on the presentation of Mr. Frederick William Crespillo, Jr. from the Ancestral Domains Office, National Commission on Indigenous Peoples, delivered during the focus group discussion held on August 18, 2016

During the August 18, 2016 focus group discussion, the National Commission on Indigenous Peoples (NCIP) said that there are 57 certification precondition (16% of the total) issued for forestry related projects and agro-industrial projects, mostly palm oil plantations as of January 2016.

The process starts after the concerned government agency forwards the application to the NCIP to verify if the project will be located on an ancestral domain (AD). Thereafter, the application is forwarded to the NCIP Regional Office that oversees the area. The regional director (RD) will form the Field Based Investigation (FBI) Team. They will conduct a conference together with the IP community, IP elders, and the applicant. If after the field investigation, the FBI Team finds out that the area is not within AD, they make a report and recommend for the issuance of a Certificate of Non-Overlap (CNO). However, if the land is within the AD, the FBI Team recommends for the undertaking of the FPIC process. The applicant will be informed and Pre-FPIC Conference will follow through.

During the Pre-FPIC Conference, the FBI Team will prepare the Work and Financial Plan (WFP). Questions will be clarified during the Pre-FPIC Conference. It is during the first community assembly when the IP elders and leaders will be identified or recognized. A discussion of their rights will then be made. During the second community assembly, the applicant presents the project to the community. The IPs thereafter conduct their own activity, such as consensus building. They are given enough time to discuss the pros and cons of the project, before deciding whether or not to allow it.

If the project is not allowed, the IPs will issue the Resolution of No Consent (RNC). The Proponent will be given the copy of the Resolution, and he will be given the chance to request for reconsideration. If the project is approved, the IPs will issue the Resolution of Consent (ROC). Negotiations begin, which may eventually lead to the execution of the Memorandum of Agreement (MOA) that would be signed by the IP leaders, NCIP and the proponent. The proponent shoulders all the costs appurtenant to the FPIC process. Documents will be processed and forwarded to the Regional Review Team (RRT). They are tasked to review all the documents. The regional director (RD) endorses the documents to Ancestral Domain Office (ADO) in the NCIP Central Office. The MOA signed by the parties will be forwarded to the Legal Affairs Office (LAO), which presents copied thereof to the NCIP Commission En Banc (CEB) for approval. If approved, a Certificate of Precondition (CP) will be issued. A copy of the Certificate will be given to the endorsing government agency.

R.A. No. 6657, as amended by R.A. No. 9700, provides that ancestral domains and lands are excluded from CARP coverage. More so, R.A. No. 8371 (IPRA), Section 52 (i) provides the process of delineation of ancestral domains and lands, as follows:

“The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed.”

As such, agribusiness ventures in ancestral lands are not pursued within the framework of agrarian reform. Significantly, DAR suggests that CARP lands cover only 25% of lands under agribusiness. The remaining 75% are comprised of other legal regimes, pertaining to the IPs and other claimants of public land.

The Magna Carta of Small Farmers (Republic Act No. 7607) was enacted on June 4, 1992, thus antedating the recent international efforts towards the adoption of the universal declaration⁴⁴ on the rights of peasants and other people working on rural areas. **Table 7**⁴⁵ shows the rights and obligations of the small farmers, as follows:

Farmers' Rights	Farmers' Obligations
1. Support to price program	1. Establish farmers' organizations
2. Ensure market	2. Adopt recommended farm practices and inputs
3. Be covered with social security	3. Comply the terms and conditions in availing assistance
4. Avail credit system at minimal interest rates and minimum collateral requirements	4. Adopt recommended production and marketing strategies
5. Avail farm inputs and services	5. Provide reasonable prices and quality products
6. Be heard and represented in the government	6. Share labor and material resources to community-based activities
7. Be updated on market prices and demands, policies and farming practices	7. Meet local demand requirements to avert shortage that may necessitate importation
8. Benefit from natural resources	8. Participate in conservation, protection and development of national patrimony
9. Assume certain processing and marketing functions of government agencies	9. Pay all fees, license fees and taxes
10. Pursue appropriate education and skills development	10. Contribute to government insurance and social security programs
11. Avail technical assistance from government agencies	11. Undertake self-help community development projects

R.A. No. 7607 defines small farmer as a natural person dependent on small-scale subsistence farming as their primary source of income and whose sale, barter or exchange or agricultural products do not exceed a gross value of One Hundred Eighty Thousand Pesos (P180,000) per annum based on 1992 constant prices. The law does not distinguish a small farmer as between IPs and non-IPs. The law provides that it is the declared state policy to give highest priority to the development of agriculture such that equitable distribution of benefits and opportunities is realized through the empowerment of small farmers.

Certainly, the legal framework regulating agriculture has evolved with due consideration to the policy objectives of the government. According to the National Economic and Development Authority (2016),⁴⁶ the goals of agriculture, and agribusiness in particular, are the following:

- Raise productivity
- Achieve food security
- Increase incomes of small farmers
- Protect poor consumers from high prices

Stated otherwise, agriculture is perceived as the means through which said goals would be attained. Agriculture is not an end in and by itself.

⁴⁴ On September 27, 2012, the United Nations Human Rights Council adopted Resolution 21/19 during its 21st session, 37th meeting. Titled "Promotion and protection of the human rights of peasants and other people working in rural areas," the Resolution provides for the establishment of an open-ended intergovernmental working group (OEIWG) with the mandate of negotiating, finalizing and submitting to the Human Rights Council a draft United Nations declaration on the rights of peasants and other people working in rural areas, on the basis of the draft submitted by the Advisory Committee. This is the first official initiative on the part of the Human Rights Council to deliberate on the concept of land rights as human rights. Since then, the OEIWG held three sessions: on July 15-19, 2013; February 2-6, 2015; and May 17-20, 2016.

⁴⁵ World Agroforestry Centre (ICRAF-Philippines) (June 2009) Policy Brief: A Closer Look on the Magna Carta of Small Farmers in the Philippines. http://pdf.usaid.gov/pdf_docs/Pnadu403.pdf (accessed Oct 21, 2016)

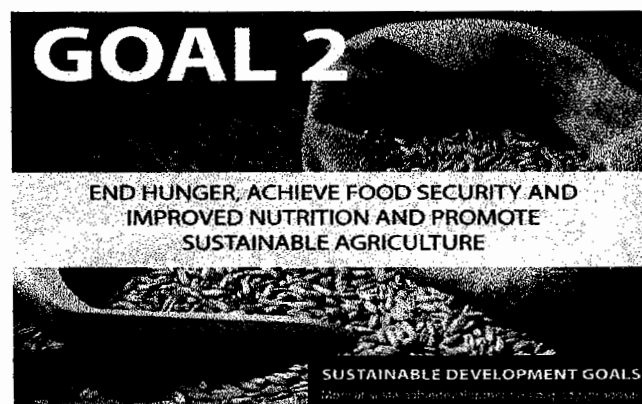
⁴⁶ NEDA presentation delivered by Mr. Nheden Amiel Sarne during the August 17, 2016 focus group discussion on human rights and agribusiness

They see at least two sustainable development goals (SDGs) that are relevant to serve as benchmark indicator in measuring the gap between the aspirations and the current status. The two SDGs are:

- Goal 1 – End poverty in all its forms everywhere through significant mobilization of resources including enhanced development cooperation and sound policy frameworks based on pro-poor and gender sensitive development strategies. More so, there must be efforts to address the multidimensional forms of poverty through the provision of equal rights to economic resources and access to basic services.



- Goal 2 – End hunger and malnutrition through sustainable food production systems and implement resilient agricultural practices that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality. It is also the objective to double agricultural productivity and incomes of small-scale food producers through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.



NEDA further asserts that given Philippine agriculture's potential in achieving the two SDGs, the following course of action is taken into account, as follows:

I. Promotion of area-based development as an over-all strategy, in contrast to commodity-based.

- Promote production diversification/intensification – the farmers must be knowledgeable with other farming methods, and not merely on what they have been accustomed to. As per data, a farmer that plants rice only, particularly the traditional variety, earns very little;
- Enhance investment in productivity-enhancing infrastructures and other support services such as on irrigation and post harvest facilities;
- Enhance provision of agricultural insurance and credit to farmers and fisherfolks;

- Strengthen commodity value chain through creation of environment that promotes greater private sector participation in agribusiness activities thru contract growing, joint venture agreements and other arrangements to boost private-public partnerships.

II. Enhance market and trade of Agriculture and Fisheries products

- Formulate action plan for the tariffication of rice;
- Enhance domestic product standards and facilitate compliance with international requirements;
- Maintain disease-free status in foot and mouth (FMD), avian influenza, and peste de petits ruminants (PPR);
- Develop and strengthen markets.

III. Fast-track agrarian reform program, and thus:

- Prioritize the resolution of cases involving landholdings to be covered and those being covered under the Land Acquisition and Distribution process of the Department of Agrarian Reform;
- Fast-track the subdivision of collective Certificates of Land Ownership Awards;
- Pass the proposed law extending the issuance of Notices of Coverage for private agricultural lands;
- Review existing provisions of the Comprehensive Agrarian Reform Program Law that are deemed restrictive such as those related to land ownership ceiling, lease of land and transfer of titles.

IV. Rationalize government budget for agriculture

- Irrigation (In 2014, irrigated lands stood at 57% remaining potential irrigable area stood at 1,708,063 hectares.) – NEDA proposes more budgetary allocation and investment for irrigation.
- Farm-to-market roads (FMRS) to reduce transportation cost;
- Post-harvest facilities (PHFs);
- Research and extension;
- Government financing guarantees;
- Agro-entrepreneurship program including enhancing trade and marketing services for agriculture and fishery produce and products (can be tied up/convergence program with the Department of Trade and Industry);

Human Rights Standards:

2. How do duty-bearers, i.e., major players in Philippine agribusiness, respect, protect, and fulfill human rights in their respective spheres of influence?

From a human rights point of view, the state and business are deemed to be the duty-bearers while the farmers and other people working in rural areas, whether IPs or non-IPs, and who are directly impacted by the companies operations, are the rights-holders in so far as the present discussion is concerned. The duty-bearers are artificial persons in law and have personalities separate and distinct from the individual natural persons comprising them. Being the duty-bearers, it is argued that both state and business have human rights obligations that nevertheless are not exactly the same in scope and context. The state's duties include respecting, protecting and fulfilling⁴⁷ human rights, which have been attributed with technical meanings, as follows:

- Obligation to Respect requires the state to refrain from interfering with the enjoyment of the human right. It prohibits the state from taking any action or imposing any measure that is contrary to the rights guaranteed in law. For this reason, it is sometimes referred to as a “negative” or “prohibitive” obligation.
- Obligation to Protect requires the state to actively prevent violations by other actors, such as businesses.
- Obligation to Fulfill requires the state to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of the right. This obligation can entail issues such as public expenditure, governmental regulation of the economy, the provision of basic public services and infrastructure, taxation and other redistributive economic measures.⁴⁸

On the other hand, the international context of the “business and human rights” agenda could be attributed to the efforts of human rights advocates to hold business enterprises as responsible to respect human rights. It is observed that such international thrust mostly highlights the potential of transnational corporations’ processes and operations in having impacts in the observance of human rights. As such, the key word is “accountability of business enterprises.” The United Nations Guiding Principles (herein referred to as “UNGP” for brevity) implementing the “Protect, Respect, and Remedy” Framework categorically described business enterprises’ responsibility to respect as follows:

“The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”⁴⁹*

The UNGP has further maintained that in order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;*
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*

47 Asia Pacific Forum & Center for Economic and Social Rights (January 2015) *Defending Dignity: A Manual for National Human Rights Institutions on Monitoring Economic, Social and Cultural Rights*.

48 Office of the United Nations High Commissioner for Human Rights (2005) *Economic, Social, and Cultural Rights: Handbook for National Human Rights Institution*. New York and Geneva

49 Principle 13 of the UNGP

(c) *Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.*⁵⁰

In order to further contextualize the UNGP, a review of the relevant laws on business enterprises and precedents in the Philippines is made and presented herein. In particular, they are applicable to agribusiness companies as well. According to the Corporation Code (Batas Pambansa Blg. 68, Sec. 2), a corporation is as an “*artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.*”

Philippine law allows corporations to both demand rights under domestic laws and, on the other hand, make them the objects of liabilities thereunder. For example, juridical persons are also entitled to the constitutional guarantee against unreasonable searches and seizures. The Supreme Court gave this pronouncement:⁵¹

“A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no constitutional immunities appropriate for such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected, under the 14th amendment,⁵² against unlawful discrimination.”

This point is being raised in order to show that it would seem Philippine law treats artificial persons, like corporations and partnerships, as rights-holders also.⁵³ They are after all comprised of human persons who have inherent and inalienable rights. As shown earlier, agrarian reform beneficiaries may form themselves into juridical entities, since in organizing a stock corporation, the Corporation Code did not require any minimum amount of authorized capital stocks. Instead, Section 13 thereof only provides that the paid-up capital shall be no less than Five Thousand Pesos (P5,000.00).

It must be noted that corporations in the Philippines come into being not merely by contractual relations among individuals. The theory of concession⁵⁴ in corporate law provides that a corporation cannot become as such by mere consent of the parties. There must be a law granting it an existence, and once granted, forms the primary franchise of the corporation. We now refer to the two types of franchise in Philippine corporate law: the *primary or corporate* franchise, and the *secondary or special* franchise.⁵⁵ Primary franchise is the right granted to individuals by the state to be and act as a corporation after its incorporation. On the other hand, secondary franchise is conferred by the state upon the corporation after its incorporation and not upon the individuals who compose it. This system of franchises shows that the state is ultimately responsible to ensure that corporations respect human rights, because corporations are creatures of the state. As such, the UNGP provides that in meeting their duty to protect, states should ensure that laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights.⁵⁶

50 Principle 15 of the UNGP

51 *Bache & Co. (Phil.), Inc. v. Ruiz*, 37 SCRA 823 (1971)

52 Equal Protection Clause under the United States Constitution adopted on July 9, 1868

53 Under prevailing jurisprudence in the Philippines, corporations could be awarded with moral damages arising from libel that falls under Article 2219(7) of the Civil Code, which expressly authorizes the recovery of moral damages in cases of libel, slander or any other form of defamation, and does not qualify whether the plaintiff is a natural or juridical person. Therefore, a juridical person can validly complain for libel or any other form of defamation and claim for moral damages. (*Filipinas Broadcasting Network, Inc. vs. Ago Medical and Educational Center-Bicol Christian College of Medicine*, G.R. No. 141994, January 17, 2005)

54 Villanueva, C.L. (2010). *Philippine Corporate Law*. Quezon City: Rex Printing Company, Inc.

55 De Leon, H.S. & De Leon, Jr. H.S. (2006). *The Corporation Code of the Philippines Annotated*. Quezon City: Rex Printing Company, Inc.

56 Principle 3 (b) of the UNGP

The Corporation Code is not the only law governing corporations and other business enterprises in the Philippines, albeit it is held to be the primary basis of any corporate entity's primary franchise. Section 4 of the Corporation Code provides that corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, supplemented by the provisions of the Corporation Code, insofar as they are applicable.

Sections 87 to 95 of the Corporation Code also allows the creation of non-stock corporations that may be formed or organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agriculture and like chambers, or any combination thereof. Technically, a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers.

While the rule remains that a corporation has a personality separate and distinct from the individual stockholders, members, directors, or trustees who comprised it, an organization's acts and omissions are decided upon by those who are in control of the entity, and for which they would be held to account. Section 23 of the Corporation Code provides that corporate powers of all corporations formed under said law shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees, unless otherwise provided in the Corporation Code.⁵⁷ Section 23 of the Corporation Code is an expression of the doctrine of centralized management in corporate law, whereby the consent of the corporation in all contracts and transactions that it enters into as a party is effected through its board of directors. Stated otherwise, the corporation's consent is that of its board of directors.⁵⁸ Nevertheless, when members of the board and corporate officers act within the lawful scope of their authority, they do not become personally liable for such acts, which would otherwise be attributed as acts or omissions of the corporation, being a separate juridical entity. Section 31 of the Corporation Code provides when 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.

Certainly, in Philippine jurisdiction, the members of the board of directors have a three-fold duty: duty of obedience, duty of diligence, and duty of loyalty. Accordingly, the members of the board of directors (1) shall direct the affairs of the corporation only in accordance with the purposes for which it was organized; (2) shall not willfully and knowingly vote for or assent to patently unlawful acts of the corporation or act in bad faith or with gross negligence in directing the affairs of the corporation; and (3) shall not acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees.⁵⁹ On the other hand, there are other specific laws that would impose punitive sanctions on corporations and their responsible officers and directors. For example:

- The Comprehensive Agrarian Reform Law of 1988 (Republic Act No. 6657) as amended by Republic Act No. 9700 (2009), Section 25 provides that if the offender is a corporation or association, the officer responsible therefor shall be criminally liable.
- The Indigenous Peoples Rights Act (Republic Act No. 8371, October 29, 1997), Section 73 states that if the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license.

57 Take note that there are provisions of the Corporation Code that require the consent or ratification of the stockholders or members, even the approval of the government agency concerned, for a particular exercise of the corporate powers by the Board to be valid and effective. For example, Sec. 16 of the Corporation Code requires that *"any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, or the vote or written assent of two-thirds (2/3) of the members if it be a non-stock corporation... The amendment shall take effect upon its approval by the Securities and Exchange Commission..."*

58 Villanueva, C.L. (2010). Philippine Corporate Law. Quezon City: Rex Printing Company, Inc.

59 Strategic Alliance Development Corporation vs. Radstock Securities Limited, et al., G.R. No. 178158, December 4, 2009

- The Special Protection of Children Against Abuse, Exploitation, and Discrimination Act (Republic Act No. 7610, June 17, 1992), wherein Section 31(b) provides that when the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period.

Experts believe that the prevailing theory on corporate governance under the present Corporation Code is the doctrine of maximization of stockholder value, where the board of directors and management owe fiduciary duties to stockholders and to seek the maximum amount of profits for the corporation.⁶⁰ On the other hand, the Securities and Exchange Commission (SEC) appears to have changed that by virtue of SEC Memorandum Circular No. 9, Series of 2014 (dated May 6, 2014) that presently adopts a more encompassing definition of corporate governance (CG) as follows:

*“Corporate Governance – the framework of rules, systems and processes in the corporation that governs the performance of the Board of Directors and Management of their respective duties and responsibilities to stockholders **and other stakeholders which include, among others, customers, employees, suppliers, financiers, government and community in which it operates.**” (Emphasis supplied)*

It must be emphasized that SEC MC No. 9, S. 2014 amended SEC Memorandum Circular No. 6 Series of 2009 (took effect on July 15, 2009), otherwise known as the Revised Code of Corporate Governance,⁶¹ particularly the concept of corporate governance, which is formerly defined in this manner:

“Corporate Governance – 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.”

Certainly, SEC MC No. 9 presently amplifies the stakeholder theory in corporate governance, in contrast to SEC MC No. 6 that primarily considers the maximization of stockholder value. More emphatically, the current state of corporate governance is envisioned to be inclusive of other stakeholders, such as customers, employees, suppliers, financiers, government and community in which it operates. It appears that the government requires covered institutions to be wary of its operations' impacts both to its stockholders and stakeholders.

Still, one concept of corporate governance has remained, that is, transparency as the core essence thereof. The more transparent the internal workings of the corporation are, the more difficult it will be for management and dominant stockholders to mismanage the corporation or misappropriate its assets.⁶² The present rules, as per the 2014 amendment, require the extent of disclosure as follows:

*“It is therefore essential that all material information about the corporation which could adversely affect its viability or the interest of **its stockholders and other stakeholders** should be publicly and timely disclosed. Such information should include, among others, earnings results, acquisition or disposition of assets, off balance sheet transactions, **related party transactions**, and direct and indirect remuneration of members of the Board and Management.*

60 Villanueva, C.L. (2009). *The Law and Practice on Philippine Corporate Governance*. Quezon City: Central Book Supply, Inc.

61 The Revised Code of Corporate Governance applies 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. The Revised Code has the force and effect of law. A fine of not more than Two Hundred Thousand Pesos (P200,000) shall, after due notice and hearing, be imposed for every year that a covered corporation violates the provisions of the Code, without prejudice to other sanctions that the SEC may be authorized to impose under the law; provided, however, that any violation of the Securities Regulation Code punishable by a specific penalty shall be assessed separately and shall not be covered by the above mentioned fine.

62 Article 8, SEC Memorandum Circular No. 6 Series of 2009, otherwise known as the Revised Code of Corporate Governance

The Board shall therefore commit at all times to full disclosure of material information dealings. It shall cause the filing of all required information through the appropriate Exchange mechanisms for listed companies and submissions to the Commission for the interest of its stockholders and other stakeholders.⁶³ (Emphasis supplied as indicating the 2014 amendment)

Interestingly, a commentary was given under Principle No. 3 of the UNGP for laws and state policies to “provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.” Transparency and accountability are certainly human rights standards. Still, the actions taken by the Securities and Exchange Commission is again an administrative initiative that could ripen into a legislative undertaking similar to the intention of regulating agribusiness venture agreements through a duly enacted statute from Congress.

The SEC further provides guidance to covered institutions through issuance of the Philippine Corporate Governance (CG) Blue Print 2015⁶⁴ that serves as its road map for the next five years. Here, the SEC candidly admits that the Philippines faces the challenge to improve its corporate governance scores vis-à-vis its neighboring ASEAN countries to make investing in the Philippines more attractive. It cites the results of the 2010, 2012, and 2014 surveys conducted by Asian Corporate Governance Association (ACGA), which show that while there was a slight improvement in the 2014 vis-à-vis 2010 corporate governance scores for the Philippines, it can be noted that better corporate governance improvements were made by Malaysia, Thailand and India, as per **Table 8** hereunder:

Rank	Market	2010	2012	2014	Change fr 2012	Change fr 2010
1	Singapore	67	69	65	-4	-2
2	Hong Kong	65	66	64	-2	-1
3	Thailand	55	58	60	+2	+5
4	Japan	57	55	58	+3	+1
5	Malaysia	52	55	58	+3	+6
6	Taiwan	55	53	56	+3	+1
7	India	49	51	54	+3	+5
8	Korea	45	49	49	+0	+4
9	China	49	45	45	+0	-4
10	Philippines	37	41	40	-1	+3
11	Indonesia	40	37	39	+2	-1

According to SEC, the Philippines needs to catch up on the areas of CG enforcement, policy and regulatory environment, and as regards international generally accepted accounting principles. There should be significant improvements in disclosing and implementing a regime of effective enforcement and of quality accounting/auditing practices. Some of these sought-after improvements relate to takeovers and related-party transactions (RPTs).⁶⁵

Nevertheless, the SEC CG Blue Print explicitly mentioned “human rights” twice in the following context:

63 Article 8, SEC Memorandum Circular No. 9 Series of 2014 (dated May 6, 2014)

64 Securities and Exchange Commission (2015) Philippine Corporate Governance Blueprint 2015: Building a Stronger Corporate Governance Framework http://www.sec.gov.ph/wp-content/uploads/2015/01/SEC_Corporate_Governance_Blueprint_Oct_29_2015.pdf (accessed Oct. 21, 2016)

65 Ibid. page 7

First, in discussing the challenges and recommendations on effectively redressing violation of stakeholders' rights, the SEC said:

*“With regard to relations with creditors, suppliers, and contractors, dealings should always be conducted in a professional and objective manner, in line with the Code of Ethical Conduct that the company has formulated and adopted. In the **selection of suppliers and contractors**, both economic and non-economic factors, **such as environmental, social or human rights, should also be considered**. Creditor rights should also be protected by adopting policies for their proper and fair treatment.” (Emphasis ours)*

Second, as regards the recommendations about company objectives and non-financial information that would enhance disclosure in annual reports, the SEC stated:

*“**Information is not limited to financial matters**. Company objectives, mission, vision, core values, and strategic priorities (which the Board review annually) as well as other non-financial information also need to be disclosed. **In addition to their commercial objectives, companies are encouraged to disclose policies relating to business ethics, the environment, human rights, including where relevant within their supply chain, and other public policy commitments.**” (Emphasis ours)*

Nevertheless, the way the statements are phrased may give the impression of voluntary compliance rather than mandatory directive.

At any rate, relevant to a discussion on corporate governance and accountability is an emphasis on the rule on summons under Philippine civil procedure. Rule 14, Section 11, of the Rules of Court requires that when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. This rule on summons is important because a court of law generally acquires jurisdiction over the person of a defendant upon service of summons, and the cited procedure is pointing to such officers of a juridical entity for a valid service thereof.⁶⁶ On the other hand, when the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.⁶⁷ Clearly, the current state of procedural law in fine print is clear as to how private entities would initially be held to account, and that is in so far as service of summons is concerned.

As such, it is also important to note that Sections 127 and 128 of the Corporation Code require from a foreign corporation⁶⁸ the appointment of a resident agent as a condition precedent for the issuance of the license to transact business in the Philippines. A resident agent may be either an individual residing in the Philippines or a domestic corporation lawfully transacting business in the Philippines. Particularly for an individual resident agent, good moral character and sound financial standing are required. Furthermore, the foreign corporation applying for license to transact business must execute and file with the Securities and Exchange Commission a written agreement or stipulation, executed by the proper authorities of said corporation, consenting that service of summons or other legal processes may be made upon the Securities and Exchange Commission if at any time the foreign corporation shall cease to transact business in the Philippines, or shall be without any resident agent.

66 “The court’s jurisdiction over a defendant is founded on a valid service of summons. Without a valid service, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one’s right to due process.” (Manotoc vs. Court of Appeals, et al., G.R. No. 130974, August 16, 2006)

67 Rule 14, Section 12, Rules of Court

68 Corporation Code, “Section 123. Definition and rights of foreign corporations. – For the purpose of this Code, a foreign corporation is done, formed, organized or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state. It shall have the right to transact business in the Philippines after it shall have obtained a license to transact business in this country in accordance with this Code and a certificate of authority from the appropriate government agency.”

Accountability of foreign corporations under the present legal system of the Philippines requires further discussion, with the major points being as follow:

- In the main, a corporation only has legal status and existence in a country under whose laws the corporation is formed and organized. This is pursuant to the principle in corporate law that corporations are merely creatures of the state.
- A corporation which is deemed “foreign” in another state is generally without any legal status and existence therein, unless the foreign corporation performs certain acts, such as, under the Philippine Corporation Code, acquiring a license to transact business in the host state, a certificate of authority from the appropriate government agency, and the appointment of its resident agent, among others.
- In the case of *Agilent Technologies Singapore (PTE) Ltd. Vs. Integrated Silicon Technology Philippines Corporation, et al.*, G.R. No. 154618, April 14, 2004, the Supreme Court made this pronouncement:

“The principles regarding the right of a foreign corporation to bring suit in Philippine courts may thus be condensed in four statements:

(1) if a foreign corporation does business in the Philippines without a license, it cannot sue before the Philippine courts; *[but may be sued or proceeded against⁶⁹ in the Philippines - JGT]*

(2) if a foreign corporation is not doing business in the Philippines, it needs no license to sue before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction; *[and may be sued in the Philippines - JGT]*

(3) if a foreign corporation does business in the Philippines without a license, a Philippine citizen or entity which has contracted with said corporation may be estopped from challenging the foreign corporation’s corporate personality in a suit brought before Philippine courts; *[here, the foreign corporation may sue and may be sued in the Philippines – JGT]* and

(4) if a foreign corporation does business in the Philippines with the required license, it can sue before Philippine courts on any transaction. *[and can be sued also – JGT]”*

- The issue of whether or not a foreign corporation can sue or be sued in the Philippines is decided and resolved to a significant extent on the basis of whether the foreign corporation is “doing business.” The Corporation Code does not define the phrase “doing or transacting business,” and literatures point to the Omnibus Investments Code (Executive Order No. 226) and the Foreign Investments Act of 1991 (Republic Act No. 7042) for the definition that may be adopted for purposes of the Corporation Code.⁷⁰ Section 3(d) of R.A. No. 7042 provides:

69 Corporation Code, “Section 133. *Doing business without a license. – No foreign corporation transacting in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.*”

70 De Leon, H.S. & De Leon, Jr. H.S. (2006). *The Corporation Code of the Philippines Annotated*. Quezon City: Rex Printing Company, Inc.

“The phrase ‘doing business’ shall include soliciting orders, service contracts, opening offices, whether called “liaison” offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase “doing business” shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;” (Emphasis supplied)

In addition, Section 131(d) of R.A. No. 7160, or the Local Government Code of 1991, provides a more concise definition of business in this manner:

*“Business means trade or commercial activity **regularly engaged in** as a means of **livelihood** or with a view to **profit**.” (Emphasis supplied)*

On the other hand, the Implementing Rules and Regulations of the Foreign Investment Act (approved by the NEDA Board on July 9, 1996), stated other activities that are deemed as **not** doing business in the Philippines, in addition to those already enumerated under the Foreign Investments Act of 1991, to wit:

- The publication of a general advertisement through any print or broadcast media;
- Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;
- Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;
- Collecting information in the Philippines; and
- Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

A review of the stated instances deemed as “**not** doing business” shows a common denominator that by themselves the activities do not bring any direct receipts or profits to the foreign corporation.⁷¹ Nevertheless, these activities that are deemed as “not doing business” may be regarded as isolated transactions, especially when the element of continuity in the dealings and arrangements are lacking.

- No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent,

71 Villanueva, C.L. (2010). Philippine Corporate Law. Quezon City: Rex Printing Company, Inc.

the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.⁷² It has often been held that a single act or transaction may be considered as "doing business" when a corporation performs acts for which it was created or exercises some of the functions for which it was organized. We have held that the act of participating in a bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business in the Philippines. In this regard, it is the performance by a foreign corporation of the acts for which it was created, regardless of volume of business, that determines whether a foreign corporation needs a license or not.⁷³

- If a foreign corporation engages in business activities without the necessary requirements, it opens itself to court actions against it, but it shall not be allowed to maintain or intervene in an action, suit or proceeding for its own account in any court or tribunal or agency in the Philippines. The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts, otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts. The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the state's regulation. As we observed, in so far as the state is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the court's jurisdiction would violate the essence of sovereignty.⁷⁴ By sovereignty, the Supreme Court is likely referring to that of the state in which the corporation is created, as it noted that corporations have no legal status beyond the bounds of the sovereignty by which they are created.⁷⁵
- Human rights advocates gave a view as to the implication of excluding from the term "doing business" the act of "appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account," among others. Where a foreign corporation buys into a domestic corporation and exercises its rights as shareholder, it cannot be sued in Philippine courts inasmuch as it is not strictly "doing business" in the country. It is the domestic corporation that may be sued even if the foreign corporation(s) that owns its shares subsequently sells, assigns or otherwise disposes of its shares.⁷⁶
- In reality, to hold a foreign corporation accountable under Philippine laws is not easy. The same is true when the foreign corporation is being sought to account for human rights abuses, as seen in the case of the Marinduque Tragedy in 1996, where about 4 million metric tons of mine wastes from Marcopper Mining Company (Marcopper) were dumped into the Boac River in the island of Marinduque, displacing thousands of residents and killing the ecosystem. At the time of the incident, Marcopper was partly owned by a Canadian company, Placer Dome, which sold its shares after the dumping incident thereby dimming prospects of directly bringing it before Philippine courts.⁷⁷ Human rights advocates believe that shareholders and managers in foreign corporations could easily maneuver, either by creating a new corporation or transferring their interest into another one, which will eventually make it difficult if not impossible for victims of human rights abuses to claim reparation. The veil of corporate fiction is perceived as contributing to corporate impunity, and albeit Philippine case law allows the piercing of that veil, the victims of human rights abuse must be able to hurdle at least two obstacles:

72 *The Mentholatum Co., Inc. et al. vs. Mangaliman, et al.*, G.R. No. L-47701, June 27, 1941

73 *European Resources and Technologies, Inc., et al. vs. Ingenieuburo Birkhahn + Nolte, et al.*, G.R. No. 159586, July 26, 2004

74 *Avon Insurance PLC, et al. vs. Court of Appeals*, G.R. No. 97642. August 29, 1997

75 *Access to Justice: Human Rights Abuses Involving Corporations – Philippines* (2010). International Commission Of Jurists: Geneva, Switzerland <http://icj2.wppengine.com/wp-content/uploads/2012/06/Philippines-access-justice-publication-2010.pdf> (accessed Oct. 21, 2016)

76 *Ibid.*

77 *Ibid.*

- The burden of proof is on the victim of human rights abuse to show and convince the court that the corporate veil must be pierced;
- Lack of proof of the link between the human right abuse and the complicity of the individual shareholder, director, trustee, or officer of the corporation, believed to be due to the highly secretive and confidential nature of corporate decision making;

Be that as it may, literatures suggest that, from an international perspective, businesses could become involved or implicated in gross human rights abuses as shown by the following broad categories:

- cases where companies and their managers and staff have been accused of being directly responsible for acts amounting to gross human rights abuses;
- cases where governments and state authorities have engaged companies to provide goods, technology, services or other resources which are then used (it is claimed) in abusive or repressive ways;
- cases where companies have been accused of providing information, or logistical or financial assistance, to human rights abusers that has, it is claimed, “caused” or “facilitated” or exacerbated the abuse. This group of cases frequently (though not always) arises out of situations where state security services have been called in to assist with the resolution of some dispute or conflict surrounding the business activities;
- cases where companies have been accused of being “complicit” in human rights abuses by virtue of having made investments in projects or joint ventures or regimes with poor human rights records or with connections to known abusers.⁷⁸

Stated otherwise, business enterprises could either be primary perpetrators or secondary perpetrators. They are secondary perpetrators if they are complicit with other actors, such as the state. The concept of corporate complicity is recognized at the international level. In the succeeding discussions, information about cases involving agricultural workers and indigenous cultural communities are presented.

78 Zerk, J. (2013). Corporate liability for gross human rights abuses: Toward a fairer and more effective system of domestic law remedies.
<http://www.ohchr.org/documents/issues/business/domesticlawremedies/studydomesticlawremedies.pdf> (accessed October 30, 2016)

Gaps:

3. What are the complaints involving farmers and other persons working in rural areas?

- **Do complaints correspond to particular human rights?**
- **Are the complaints justiciable?**
- **Are there redress mechanisms in place to address the complaints?**

At this point, we further discuss and distill the findings of the gap analysis, which we pursue by applying the following complementary methods:

First, we review related literatures, both local and international; and

Second, we examine the corresponding complaints of human rights violations, with the theory in mind that such complaints result from gaps in the legal and policy framework, and that such complaints are proxies for gaps, hence the need to address them in the course of implementing or enhancing the same legal and policy framework under scrutiny. We also present some of the relevant efforts in the Philippine Congress to improve the legal framework on land use and to address the problems of hunger and poverty, with the idea that such bills manifest ways to fill in the gaps in the status quo. Complaints in the CHRP database are also presented, which indicate the discussion of the answers to the guide questions above.

The agriculture sector is often examined from the standards of economic, social and cultural rights (ESCR), particularly the human right to food. In this regard, we quote the Special Rapporteur on the Right to Food, Hilal Elver,⁷⁹ on her impression of the Philippine legal and policy framework to implement the right to food, as follows:

“The Philippines has adopted a wide range of policies and programmes to ensure the effective enjoyment of the right to food, as part of the right to an adequate standard of living. However, as evidenced in the present report, considerable challenges remain, particularly with regard to the increasing income gap between the rich and the poor and a lack of implementation in relation to legislation and right-to-food policies. Moreover, although the emergence of a free market economy has assisted with the impressive growth experienced by the country in recent years, this growth has not benefited all. While some parts of the country are being transformed, poverty remains very high and is becoming entrenched not only in rural areas but also in urban centres as the income gap widens. The situation is particularly difficult for those in remote areas and regions affected by conflict, as well as those living in extreme poverty and the unemployed. Given the significant role played by the agricultural sector, unsustainable export-oriented agro-industry, as well as large land acquisition projects for cash crops, should be avoided in order to protect smallholder farmers and maintain self-sufficiency. As one of the most vulnerable countries in the world to the adverse effects of climate change, the Philippines also faces a significant challenge in ensuring that its food sources are protected.”⁸⁰ (Emphasis ours)

For our purposes, we treat the Special Rapporteur's observations as complaints or protestations in so far as they are intended to rouse government action. This statement affirms that the impoverished status of the Filipino farmers, and fisherfolks, is a human rights issue. Stated differently, the Special Rapporteur pointed out the perceived gaps she uncovered, thereby rendering the following recommendations:

- Devise and adopt a national right-to-food framework law based on time-bound benchmarks and effective implementation plans for each region. The framework should also include the budgetary and fiscal measures necessary to ensure sustainability in the long term. Authorities and agencies responsible for implementation should be identified and appropriate monitoring

⁷⁹ Elver conducted a country visit to the Philippines on February 20-27, 2015.

⁸⁰ Report (A/HRC/31/51/Add.1) of the Special Rapporteur on the right to food on her mission to the Philippines (December 29, 2015) http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/51/Add.1 (accessed Oct. 31, 2016)

and accountability mechanisms established. The full and active participation of all actors concerned, including those most vulnerable to hunger, should be ensured;

- Expedite the Right to Adequate Food Bill and allocate the necessary budgetary and human resources for its effective implementation as a matter of priority;
- Ensure that efforts are made to pass the National Land Use and Management Act, the Agrarian Reform Extension Law and all other pending bills relating to the right to adequate food and nutrition;
- Ensure implementation of the agrarian reform programme under the Constitution of the Philippines and the Comprehensive Agrarian Reform Program, especially its provision on the right of rural women, as a matter of priority;
- Establish a programme to mitigate hunger and increase household income, for example, sustainable livelihood programmes for food producers such as smallholder agriculture and fisheries in the country within the framework of sustainability;
- Develop a clear programme on the development of smallholder agriculture and fisheries within the framework of sustainability. This should be coupled with adequate and appropriate public investment in support services for access to socialized credit, seeds, fertilizer, farm machinery and infrastructure such as farm-to market roads and post-harvest and irrigation facilities. Access to markets should be guaranteed;
- Produce guidelines through the Department of Agriculture to delineate municipal waters to protect the livelihoods of artisanal fisherfolk from commercial trawlers. The space occupied by fish cages in mariculture parks should not exceed what is prescribed by law, and fish cages exceeding the limit should be removed;
- Ensure that adequate basic social services, including food and drinking water, are made available to all indigenous peoples in the country to the maximum extent possible, as also recommended by the previous Special Rapporteur on the rights of indigenous peoples;
- Ensure women's participation in the development of a food security plan that ensures support for women having access to sustainable agriculture and community-based coastal resource management, and implement laws on women such as the Magna Carta of Women Act, including its section 20, on food security and productive resources;
- Implement campaigns to raise awareness among women of their rights to land, particularly in rural areas;
- Continue to invest in essential services with the aim of eradicating stunting as part of the national development plan, and consider establishing a specific unit within the national poverty agency to monitor child nutrition, with particular emphasis on child stunting;
- Ensure that the state budget reflects a commitment to children's rights by guaranteeing equitable and adequate allocation of resources for the provision of essential services for children, particularly in ensuring their right to healthy and nutritious food;
- Ensure that national legislation is in line with the obligations of the Philippines according to the Convention on the Rights of Persons with Disabilities and consider establishing a task force to identify the main principles and standards of the Convention that have yet to be incorporated into national legislation;
- Implement legislative provisions to ensure that children with disabilities, particularly those living in rural areas, have access to adequate food and nutrition;

- **Comply with the duty to protect individuals and communities against human rights abuses in the context of economic activities and ensure access to effective remedy for victims, particularly within the extractive industries. In addition, efforts should be made to ensure development of a range of strategies that enhance the country's ability to conserve and protect its environment and to empower local communities;**
- Prioritize vulnerability assessments, adaptation and mitigation financing and support for the urban poor, small farmers and coastal communities who are particularly vulnerable to the impact of climate change;
- Promote the conservation and management of agricultural biodiversity to ensure genetic diversity in order to sustain the natural resource base for farmer resilience, innovation and adaptation to climate change;
- Enforce environmental laws to protect watersheds, forests and rivers, which are the primary sources of food. Mechanisms to prevent soil erosion and flooding and to enrich biodiversity should be implemented;
- **Implement human rights impact assessments as a means of building trust between the authorities in charge of development projects and the affected communities. Such a process should be conducted in a transparent manner, with the provision of adequate information to affected communities; include the full consideration of all alternatives; and be undertaken prior to the launch of any project, rather than as a means to validate a project that has already commenced;**
- Consolidate existing social protection schemes, to diminish fragmentation and bureaucratic procedures and ensure that targeting methods are employed with the aim of progressively achieving universal coverage.

The Special Rapporteur cited two recommendations that we believe are the most relevant in the scope and context of the present study, i.e. *first*, the recommendation to protect individuals and communities against human rights abuses in the context of economic activities, such as agribusiness ventures, and to ensure access to effective remedy for victims, and *second*, the recommendation to implement human rights impact assessments as a means of building trust between the authorities in charge of development projects and the affected communities. Interestingly, the UNGP provides that while processes for assessing human rights impacts can be incorporated by businesses within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.⁸¹

Notably, two bills, among others, are often being mentioned by human rights bodies and special procedures in their concluding recommendations on how to realize economic, social and cultural rights in the Philippines, and which we consider most relevant in our present discussion. They are the National Land Use (NALU) Bill and the so called Zero-Hunger Bill. The recent concluding observations issued on October 7, 2016 by the Committee on ESCR further attest to this fact. The NALU Bill⁸² intends to solve the existing problems of overlapping land use by the formation of a single centralized government office, to be known as the National Land Use Commission under the Office of the President, that would coordinate the land use planning in both central and local government jurisdictions. It seeks to consolidate all existing laws on the matter and would divide land use into:

- Protection land use, referring to the utilization of land primarily for food, water and energy security, rehabilitation, conservation, and protection purposes for the promotion of the country's ecological and life-support systems;

81 Commentary on Principle 18 of the UNGP

82 Found via <https://www.senate.gov.ph/lisdata/1266710653!.pdf> (accessed Oct. 28, 2016)

- Production land use, pertaining to the direct and indirect utilization of land to general outputs resulting from the following activities, but not limited to: agricultural, fish, farming or aquaculture, timber production, agro-forestry, grazing and pasture, mining, indigenous energy resource development, industry and tourism;
- Settlements development is about improvement on existing formal and informal residential or housing settlements or any proposed development of certain areas for residential or mass housing purposes. It also involves the spatial distribution of population, identification of the roles and functions of key urban centers, determination of relationships among settlement areas, and the provision of basic services and facilities of identified major residential or housing settlement areas or growth centers. It is also concerned with the interrelationship of settlements as they develop and establish functional linkages based on their respective resource endowments and comparative advantages;
- Infrastructure development refers to the availability of supply of basic services and fostering of economic and other forms of integration necessary for producing or obtaining the material requirements of Filipinos, in an efficient, responsive, safe and ecologically friendly built environment. It covers sub-sectors of transportation, communications, water resources, and social infrastructure

The NALU Bill also seeks to establish by way of law a Network of Protected Areas for Agricultural and Agro-Industrial Development (NPAAAD). It declares that agricultural areas covered under the CARP are priority areas for agricultural development, which areas are generally deemed non-negotiable for conversion, especially if they are irrigated and irrigable lands, lands developed or possessing the potential for development of high value crops, and agricultural lands that are ecologically fragile and whose conversion will result in serious environmental problems. In reality, land conversion adversely affects the occupants, such as farmers, who are sought to be displaced. Provisions about just and humane eviction and demolition are stated in the NALU Bill, which requires mandatory public hearings and consultations. It would seem that eviction and demolition are not prohibited. Rather, the policy efforts are geared towards merely regulating eviction and demolition.

On the other hand, the Zero Hunger Bill⁸³ would seek to end hunger in the country in ten years, on the premise that hunger is inconsistent with human dignity and human rights. To measure the compliance, the Bill sets target indicators such as:

- percentage of development of ancestral lands;
- percentage of rural population with access to productive resources;
- share of budget spent on programmes aiming at creating access to productive resources;
- percentage of budget spent on agri-research, agri-extension, irrigation, training, technology, credits and rural development;
- percentage of rural female-headed households, or rural women, with legal title to agriculture land;
- percentage of public budget allocation for social transfer programmes to those unable to feed themselves;
- coverage of marginalized and disadvantaged population taking part in social transfer programmes;
- percentage of marginalized and disadvantaged population covered by a public nutrition supplement programme;
- percentage of population aware of available food and nutrition programmes; and
- coverage of school feeding programmes.

The Bill would also establish the Commission on the Right to Adequate Food as an attached agency under the Commission on Human Rights. In addition, the Bill intends to serve as the legal basis for the justiciability of the right to food, such that any public officer or employee who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of a person's rights

83 Text of the bill is found via <https://www.senate.gov.ph/lisdata/1877315901!.pdf> (accessed Oct. 28, 2016)

guaranteed therein, would be liable to said person for damages. Any violation of a provision of the framework act, whether committed by public or private actors, would similarly give rise to liability for damages. It is then declared a ministerial duty on the part of the government to ensure the enjoyment of the rights guaranteed in the framework act, and to perform the duties embodied in it. Appropriate cases may be filed before the courts to compel compliance with the provisions of the act. These cases will be without prejudice to liability for damages, as well as administrative liability that may be incurred.

There are other bills that are pending in Congress, such as the AVA Bill on the regulation of agribusiness venture agreements, as have been discussed earlier. Significantly, the current view in Congress is still to encourage the participation of the private sector in order to enhance the development and productivity of awarded lands under the Comprehensive Agrarian Reform Program (CARP). The bill limits its coverage to awarded lands distributed under agrarian reform laws, hence there seems to be no efforts yet on legislative regulation for AVAs involving such lands under legal regimes other than the CARP. It would put under the Presidential Agrarian Reform Council (PARC) the primary and exclusive jurisdiction to approve or revoke AVAs, while the Department of Agrarian Reform Adjudication Board (DARAB) would have jurisdiction over disputes involving interpretation and enforcement of AVAs' specific provisions. There is no law at the moment that specifically authorizes the PARC to approve or revoke AVAs. Administrative orders serve as legal bases for DAR, DARAB, and PARC to do so, such as provided in DAR Administrative Order No. 4, Series of 2016. Gaps in the regulatory framework, both pertaining to legal and policy domains, of Philippine agribusiness is primarily caused by the principle of autonomy in contract law, which provides that the parties have wide latitude to agree on any stipulations to include in their contract. With this, the continuing vulnerability and marginalization of farmers, whether IPs or non-IPs, demands that the state must render more effective protection of their rights. The state must clearly provide rules when the terms and conditions in contracts, such as in AVAs, contravene law, morals, good customs, public order and public policy.

There is also House Bill No. 115, with the short title "Indigenous Peoples and Local Communities Conserved Areas and Territories (ICCA) Act of 2016,"⁸⁴ which is said to implement the United Nations Convention on Biological Diversity, and that aims to fully realize cultural rights of the indigenous peoples. The bill provides that it shall be the policy of the state to recognize, promote and support the initiatives of local communities in establishing and maintaining ICCAs in key biodiversity areas (KBAs) within forestlands. It requires a system of recognition, registration, protection and promotion of covered lands, providing penalties to any act of desecration for such areas. The bill clarifies the mandates of the different government agencies, such as the Department of Environment and Natural Resources and the National Commission on Indigenous Peoples, among others, in the implementation of the bill's objectives. One of the motivations to pursue the ICCA Bill is the international recognition of Ifugao's *muyong*, viewed from different perspectives, either as a forest conservation strategy, a watershed rehabilitation technique, a farming system or an assisted natural regeneration (ANR) strategy.⁸⁵ Through the *muyong* system, the Ifugaos have aptly shown that ANR can be used effectively to transform woodlots into multiple-use centers without disturbing the pristine condition of the natural forest. It is expected that discrimination against indigenous knowledge of preserving natural resources would be diminished.

The legislative bills mentioned above certainly indicate that there are gaps in the legal and policy framework such that their passage are being sought. Significantly, the aforesaid bills provide penalties that may be imposed upon the officers of the corporation, partnership, association, or juridical entity responsible for said violation, except in the case of the Zero Hunger Bill and the AVA Bill, which have not yet made such explicit penal provision in the proposed texts as reviewed herein. Stated otherwise, the bills have the potential to serve as mechanisms by which human rights are respected, protected and fulfilled, even by businesses. It is proper to recall that the causes of discrimination, marginalization and vulnerability of farmers and other persons working in rural areas are the following:⁸⁶

84 Text of the bill is found via http://www.congress.gov.ph/legisdocs/basic_17/HB00115.pdf (accessed Oct. 28, 2016)

85 Butic, M. & Ngidlo, R. (2003) *Muyong forest of Ifugao: Assisted natural regeneration in traditional forest management* <http://www.fao.org/docrep/004/AD466E/ad466e06.htm> (accessed October 28, 2016)

86 Human Rights Council Advisory Committee (January 18, 2012) Final study on the advancement of the rights of peasants and other people working in rural areas. A/HRC/AC/8/6

- Repression and criminalization of movements protecting the rights of people working in rural areas
- Expropriation of land, forced evictions and displacement
- Absence of agrarian reform and rural development policies, including irrigation and seeds
- Lack of a minimum wage and social protection
- Gender discrimination

The recent concluding observation⁸⁷ issued by the Committee on Economic, Social and Cultural Rights urges the Philippines to take effective measures to address the challenges facing small-scale fishers and landless farmers to secure their livelihoods. The Committee recommends that the Philippines take all measures necessary to delineate municipal waters and coastal zoning and to improve the production of fishers guided by the Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication. It also recommends that the State Party take measures necessary to stop land-grabbing; and to facilitate the distribution of land to landless farmers, including through further extending the agrarian reform process launched with the Comprehensive Agrarian Reform Law of 1988, and ensure that women are not discriminated in land distribution.

We now examine the reports in the CHRP database on cases involving agricultural workers and indigenous cultural communities as victims. Data show that the most number of cases involving agricultural workers and indigenous peoples are concentrated in Mindanao, particularly in the Zamboanga Peninsula (Region IX) and Caraga (Region XIII), respectively. The complaints are mostly about murder, harassment, and deprivation of property. The complaints correspond to violations of the basic rights to life, liberty, property, and security of person. The data corroborate the vulnerability of agricultural workers and indigenous communities as pointed out in other sources. *Table 9 and 10* below illustrate thus:

Table 9. Human rights violations by case type involving **agricultural workers** as victims (January 1, 2009 – October 24, 2016) per regional reports

Region	Number of Cases (Jan. 1, 2009 – Oct. 24, 2016)	Top HRV Case Types Filed (with number of cases)	Remarks/Rank of Region in terms of number of cases (1 st - 14 th)
1 – Ilocos	9	<ul style="list-style-type: none"> • Maltreatment – 2 • Abuse of authority – 1 • Enforced disappearance – 1 • Extortion – 1 • Threats – 1 	14 th (Tie)
2 – Cagayan	57	<ul style="list-style-type: none"> • Murder – 12 • Arbitrary arrest – 7 • Acts unbecoming of a public official – 5 • Arbitrary deprivation of property – 5 • Threats – 4 • Physical injuries – 4 (Not specified – 13)	8 th
3 – Central Luzon	44	<ul style="list-style-type: none"> • Murder – 7 • Torture – 3 	11 th

⁸⁷ Committee on ESCR (October 7, 2016) Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Philippines (E/C.12/PHL/CO/5-6)

		<ul style="list-style-type: none"> • Attempted murder – 3 • Agrarian conflict – 2 • Arbitrary deprivation of property – 2 (Not specified – 19)	
4 – LABARZON (Laguna, Batangas, Rizal, Quezon, Palawan)	48	<ul style="list-style-type: none"> • Harassment – 6 • Murder – 5 • Land conflict – 4 • Demolition – 4 • Ejectment – 3 (Not specified – 9)	10 th
5 – Bicol	58	<ul style="list-style-type: none"> • Murder – 19 • Torture – 8 • Request for financial assistance – 5 • Harassment – 3 • Physical injuries – 3 (Not specified – 23)	7 th
6 – Western Visayas	62	<ul style="list-style-type: none"> • Murder – 16 • Harassment – 4 • Frustrated murder – 3 • Robbery – 3 • Abuse of authority – 2 • Discrimination – 2 • Negligence – 2 (Not specified – 23)	6 th
7 – Central Visayas	19	<ul style="list-style-type: none"> • Illegal search – 6 • Arbitrary arrest and detention – 5 • Harassment – 2 • Invasion of privacy – 2 • Murder – 3 • Arson – 1 • Conduct unbecoming of police officer – 1 (Not specified – 4)	13 th
8 – Eastern Visayas	93	<ul style="list-style-type: none"> • Murder – 23 • Physical injuries – 12 • Arbitrary arrest and detention – 14 • Arbitrary deprivation of property – 4 • Enforced disappearance – 3 • Grave coercion – 3 • Homicide – 3 (Not specified – 23)	2 nd

10 – Northern Mindanao	54	<ul style="list-style-type: none"> • Murder – 13 • Harassment – 5 • Abuse of authority – 4 • Damage to property – 4 • Land conflict – 4 • Developmental aggression – 3 (Not specified – 10)	9 th
11 – Davao	73	<ul style="list-style-type: none"> • Murder – 30 • Harassment – 13 • Threat – 7 • Physical injuries – 6 • Coercion – 3 • Torture – 2 • Abuse of authority/conduct unbecoming of army officer – 2 (Not specified – 5)	4 th
12 – SOCCSKSARGEN (South Cotabato, Cotabato, Sultan Kudarat, Sarangani, General Santos)	71	<ul style="list-style-type: none"> • Murder/killing – 16 • Arbitrary arrest and detention – 8 • Arson – 7 • Torture – 7 • Abuse of authority – 5 • Harassment – 5 (Not specified – 11)	5 th
13 – CARAGA	83	<ul style="list-style-type: none"> • Request for legal assistance – 29 • Murder/killing – 21 • Discrimination – 17 • Land conflict – 15 • Abuse of authority – 14 • Damage to property – 9 • Developmental aggression – 9 • Threats – 8 • Conduct unbecoming of police officer – 7 • Grave misconduct – 7 (Not specified – 3)	3 rd
National Capital Region (NCR) - includes Cavite Province	9	<ul style="list-style-type: none"> • Demolition – 1 • Interruption of peaceful assembly – 1 • Invasion of privacy – 1 • Request for financial assistance – 1 • Robbery – 1 • Unlawful arrest – 1 (Not specified – 2; Others – 2)	14 th (Tie)

Cordillera Autonomous Region (CAR)	29	<ul style="list-style-type: none"> • Murder/killing – 8 • Torture – 3 • Agrarian conflict – 1 • Arbitrary deprivation of property – 1 • Demolition – 1 (Not specified – 10)	12 th
Total	815		<ul style="list-style-type: none"> • Average of about 102 cases for the last eight years • Region IX ranks 1st while NCR and Region I ranks last. • “Not Specified” means the regional report did not tag the specific case type

Note: There can be multiple case types in one case.

Source: MAREIS/Statistics/By Date of Complaint/By Victim/Breakdown of the Different Case Types of HRV Cases Filed With the CHRP Involving Agricultural Workers as Victims By Region

Table 10. Human rights violations by case type involving **indigenous cultural communities** as victims (January 1, 2009 – December 31, 2015) per regional reports

Region	Number of Cases (Jan. 1, 2009 – Dec. 31, 2015)	Top HRV Case Types Filed (with number of cases)	Remarks/Rank of Region in terms of number of cases (1st - 12th)
1 – Ilocos	3	<ul style="list-style-type: none"> • Illegal Mining – 1 • Negligence – 1 (Not specified - 1)	10 th (Tie)
2 – Cagayan	15	<ul style="list-style-type: none"> • Murder – 4 • Arbitrary deprivation of property – 2 • Abduction – 1 • Arbitrary arrest – 1 • Frustrated murder – 1 (Not specified – 2)	4 th
3 – Central Luzon	10	<ul style="list-style-type: none"> • Murder – 2 • Arbitrary deprivation of property – 1 • Coercion - 1 • Forced eviction – 1 (Not specified – 5)	7 th
4 – LABARZON (Laguna, Batangas, Rizal, Quezon, Palawan)	5	<ul style="list-style-type: none"> • Harassment/intimidation/ threat – 2 • Land conflict – 2 • Abuse of authority – 1 • Discrimination – 1 (Not specified – 1)	9 th (Tie)
5 – Bicol	0	<ul style="list-style-type: none"> • NONE 	12 th (Tie)

6 – Western Visayas	5	<ul style="list-style-type: none"> • Damage to property – 1 • Bombing – 1 • Threats – 1 • Illegal arrest – 1 • Physical injuries – 1 (Not specified - 2)	9 th (Tie)
7 – Central Visayas	1	(Not specified - 1)	11 th
8 – Eastern Visayas	3	<ul style="list-style-type: none"> • Child abuse – 1 • Torture – 1 (Not specified - 1)	10 th (Tie)
9 – Zamboanga Peninsula	16	<ul style="list-style-type: none"> • Murder – 6 • Threats – 3 • Coercion – 2 • Frustrated murder – 2 • Arson – 1 • Illegal confiscation of property – 1 (Not specified - 1)	3 rd
10 – Northern Mindanao	14	<ul style="list-style-type: none"> • Harassment – 4 • Developmental aggression – 3 • Child abuse/abduction of children – 2 • Damage to property – 2 • Killing – 2 • Agrarian/land conflict – 1 	5 th
11 – Davao	34	<ul style="list-style-type: none"> • Murder/killing – 14 • Abduction – 3 • Ambush/casualty – 3 • Harassment – 3 • Developmental aggression – 2 • Damage to property – 1 • Eviction/displacement – 1 (Not specified - 1)	2 nd
12 – SOCCSKSARGEN (South Cotabato, Cotabato, Sultan Kudarat, Sarangani, General Santos)	12	<ul style="list-style-type: none"> • Killing – 2 • Arbitrary deprivation of property – 1 • Demolition – 1 • Detention – 1 • Developmental Aggression – 1 (Not specified – 5)	6 th

National Capital Region (NCR) - includes Cavite Province	0	<ul style="list-style-type: none"> • None 	12 th (Tie)
Cordillera Autonomous Region (CAR)	6	<ul style="list-style-type: none"> • Rape – 2 • Arbitrary deprivation of property – 1 • Illegal arrest – 1 • Killing – 1 • Physical injuries – 1 (Not specified – 1)	8 th
Total	<u>169</u>		<ul style="list-style-type: none"> • Average of about 24 cases for the last seven years • CARAGA ranks 1st while NCR and Bicol regions ranking last. • “Not Specified” means the regional report did not tag the specific case type

Note: There can be multiple case types in one case.

Source: MAREIS/Statistics/By Date of Complaint/By Victim/Breakdown of the Different Case Types of HRV Cases Filed With the CHR Involving Indigenous Cultural Communities Victim By Region

In relation to this, the Philippine Palm Oil Industry Roadmap⁸⁸ (2014-2023) provides that it is in Mindanao where most of the available lands are deemed potential production areas, as shown in **Table 11** below:

Region	Area Planted (has)	Rank
RIVB – Mimaropa	16,300 (1.68%)	7 th
RIX – Western Mindanao	102,000 (10.46%)	6 th
RX – Northern Mindanao	154,000 (15.8%)	2 nd
RXI – Southern Mindanao	104,000 (10.7%)	4 th
RXII – SOCSKSARGEN	112,000 (11.5%)	3 rd
R XIII – Caraga	384,000 (39.4%)	1 st
ARMM	103,000 (10.6%)	5 th
Total	975,300 (100%)	

These data show the areas where activities of agribusiness companies, such as the palm oil industry, have impacts on human rights. The data serve as bases where to concentrate efforts in monitoring human rights situation. More specifically, CHRP records show the following cases, with agribusiness as context to wit:

- The situation in San Mariano, Isabela (Region II), where the bioethanol company named Green Future Innovation Incorporated (GFII) operates;

⁸⁸ Produced by Philippine Palm Oil Development Council, Philippine Coconut Authority, and the Department of Trade and Industry

- Palm oil expansion in Palawan (Region IV), where cause-oriented groups has demanded a moratorium on such expansion from the government;
- The palm oil industry in the Municipality of Opol, Misamis Oriental (Region X);
- Cases of child labor in oil palm plantations in Agusan del Sur (Region XIII), where Filipinas Palm Plantation Plantation, Inc. (FPPI) and Agusan Plantation, Inc. (API) operate.

The complaints of communities against agribusiness firms are land grabbing and encroachment on ancestral domains and lands; environmental degradation; breach of contract; unconscionable terms and conditions in agribusiness venture agreements; corruption of government officials; threats to one's personal security and freedom of movement; circumvention of government processes, particularly those on obtaining free, prior and informed consent of indigenous peoples; and labor and social legislation issues, such as on child labor, nonpayment of minimum wage. Such complaints pertain to justiciable causes of action, which may be brought to the proper forum such as the courts or the respective quasi-judicial agencies that are mandated to implement the applicable laws violated. Even the Human Rights Council would recommend that existing redress mechanisms should be availed by the marginalized and the vulnerable.⁸⁹ It recommends that:

“In the event of human rights violations, victims could make better use of existing national, regional and international monitoring mechanisms, possibly with the support of national and international non-governmental organizations and national human rights institutions. Regional and national monitoring mechanisms have already proven to be very useful for the implementation of the rights of people working in rural areas. New international instruments, such as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly in December 2008, will offer new possibilities for access to justice at the international level. And the Human Rights Council should consider creating a new special procedure to improve the promotion and protection of the rights of peasants and other people working in rural areas.” (Emphasis ours)

Still, there are practical barriers for the communities to pursue legal remedies, such as lack of competent legal assistance, inability to shoulder costs in preparing for the case and collecting evidence, threats from powerful government officials who are behind the illegal activities, among others.

On the other hand, the current efforts of the international community to finalize a declaration on the rights of peasants and other people working in rural areas is in itself the result of a gap analysis spearheaded in such universal extent.⁹⁰ To fill in the gap, the United Nations Human Rights Council has recommended that the right to land and other natural resources should be recognized in international human rights law. There is now a movement to make peasants and rural dwellers as a class that renders “Free, Prior and Informed Consent” particularly for development activities, regardless of their being part of indigenous communities. Recognition for other significant areas of human rights are being sought, such as the rural dwellers' rights to the means of production in the form of seeds and other farm inputs. The full text of the Draft Declaration as of May 2016 is attached herewith as Annex “H.”

⁸⁹ Human Rights Council Advisory Committee (January 18, 2012) op. cit., page 18

⁹⁰ On May 17 to 20, 2016, the third session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas took place in Geneva, Switzerland

Recommendations

In view of the foregoing premises, we recommend the following:

1. Considering that complaints of human rights violations involving agricultural workers and indigenous cultural communities as victims are concentrated in Mindanao, we reiterate Guiding Principle No. 7 of the UNGP, which provides:

“Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;

(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;

(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;

(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.”

2. In order to strengthen the legal and policy framework that would fully realize the human rights of peasants and other people working in rural areas, the Philippine government must seriously gather the inputs of all stakeholders, such as the agricultural workers, fisherfolks, indigenous peoples, forest dwellers, and agribusiness firms in supporting the passage of the Universal Declaration on the Rights of Peasants and other People Working in Rural Areas. Current laws, policies, and programs of the government pertaining to the agriculture sector indicates that peasants and other people working in rural areas are treated as a class *sui generis*, such that the current mechanism of obtaining “Free, Prior and Informed Consent” under the Indigenous Peoples Rights Act (R.A. No. 8371) could be adapted in a new law to protect their human rights. The Magna Carta for Small Farmers (R.A. No. 7607) must be amended to incorporate the respective provisions of the draft Universal Declaration.

3. Philippine laws on environmental impact assessments (P.D. No. 1586) must be reviewed to determine to what extent they are effective to protect and promote human rights of communities where agribusiness activities would be pursued. A law must be enacted to provide for a code of corporate governance based on human rights principles. Human rights obligations of both state and non-state actors must be implemented through mechanisms of corporate governance.

4. The Committee on Economic, Social and Cultural Rights recommended to the Philippines, as part of its concluding observations⁹¹ of the combined fifth and sixth periodic reports of the country, that it must take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights to facilitate the assessment of progress achieved by the State party in the compliance of its obligations under the Covenant for various segments of the population. This recommendation would also refer to the agriculture sector that comprises the poorest among the Filipinos. More so, the Philippines must ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

91. Adopted by the Committee at its fifty-ninth session (19 September – 7 October 2016)

5. Separate legislative agenda will be pursued to correspond to each human right. This is the trend in the legislature wherein there are several legislative bills that are being proposed to separately address the issues on the right to food, housing, education and health, among others. For example, land grabbing may be dealt with in a separate piece of legislation. Protection of the right to housing for peasants and other rural dwellers must certainly be included in amendments to the Magna Carta for Small Farmers. Suffice it to say however that there are policy efforts in the Philippines to impose legally binding obligations on juridical persons to respect human rights, albeit found in several laws. The challenge is to consolidate them.

6. There must be one comprehensive law to regulate agribusiness venture agreements (AVAs) that involve lands awarded to agrarian reform beneficiaries (ARBs) and those under different legal regimes, such as the public land patents or in ancestral lands. The terms and conditions of the AVAs must equitably benefit the farmers and rural workers. The law must provide that there is sharing of risks between investors and farmers-landowners. The allocation of risks to the contracting parties must be fair to insulate the farmers-landowners from financial hardships. A minimum lease rental should be set and the government should see to it that it is implemented. The primary objective of the AVA is to increase the income of the ARBs, but due to the very low lease rentals being given to their land, most are indebted to the investors to the point that ownership of the land is surrendered or collateralized. The term of the AVA shall not be more than ten years. If both parties decide to renew the contract, it shall be limited to another ten years. Twenty years is enough for the ARBs to learn the ropes of production and marketing, for them to become entrepreneurs and fully enjoy the benefits of their lands.