

Overcoming Oligarchy? The UN's Guiding Principles on Business and Human Rights in the Philippines. (中文)

中文 (Chinese translation)

In October 2018, armed gunmen opened fire on a group of sugar plantation workers while they ate their evening meal inside makeshift tents at Hacienda Nene, a 90-acre sugar plantation in Sagay City on the Philippine island of Negros. They killed nine people including three women and two children.

At the time of the killings, the 'Sagay 9', as the victims have become known, were engaged in a practice called *bungkalan* whereby workers occupy idle land and collectively cultivate food crops. This practice is common during the six-month 'dead' season between planting and harvest, when there is little plantation work available and plantation workers face hunger, malnutrition and even death, forcing them to seek alternate livelihoods. It is also a common form of protest by poor workers and farmers against widespread landlessness, the poverty it causes, and the Philippine government's ineffectiveness in promoting land reform in the face of landowner resistance.

Two weeks after the Sagay 9 killings, Benjamin Ramos, a lawyer representing the families of the murdered workers, was also gunned down as he stood outside a public plaza in Kabankalan City, Negros.

It is widely believed that military and police-backed private armies hired by local plantation owners were behind the killings in both cases. But, to date, no-one has been held to account for either killing.

In the case of the Sagay 9, the police and military were quick to blame figures linked to the New People's Army, the armed wing of the Communist Party of the Philippines, in an apparent attempt to deflect attention from their own role and justify increased militarisation of the region. For his part, President Rodrigo Duterte, a figure who is well known for his disdain for human rights and for instigating and inciting the slaying of thousands of suspected drug dealers and users as part of his

so-called 'war on drugs', responded by inciting further violence against poor workers and farmers. While his office condemned the Sagay 9 and Ramos killings, he warned that state security forces would arrest people occupying land and shoot them if they resisted violently.

A Wider Problem

The Sagay 9 and Ramos killings are not isolated incidents. Extra-judicial killings related to business activities are a widespread and long-standing problem in the Philippines. According to Global Witness, an international human rights and environmental NGO which published a major report on business and human rights in the Philippines last year, the country 'has consistently recorded the highest number of killings in Asia of people who oppose illegal logging, destructive mining or corrupt agribusiness'. In 2018, it says, the country had the highest number of such killings *in the world*. Both multinational and domestic business groups have been implicated in these killings.

At the same time, the activities of such business groups are also linked to a range of other human rights violations besides extra-judicial killings. These include the harm caused to the health and livelihoods of local communities because of air and water pollution, deforestation, and other forms of environmental damage stemming from business activity; and violations of workers' rights. They also include a failure to deliver justice for victims of business-related human rights abuses. When such abuses have occurred, authorities have rarely conducted proper investigations or prosecuted those responsible, as the Sagay 9 and Ramos cases illustrate. According to Global Witness, the country has an impunity problem and is justifiably ranked 'among the worst in the world in terms of access to justice and rule of law.'

The problem of business-related human rights abuses has been particularly acute in sectors such as agriculture, forestry, mining, and tourism where issues of land ownership, land use, labour rights and environmental destruction are pronounced. These issues are a major source of tension between business owners on the one hand, and local workers, farmers, and residents, on the other, often leading to protests by the latter. When business owners believe that such protests infringe their property rights or threaten the profitability of their enterprises, violence can ensue. In many cases, this is because business owners operating in cahoots with local politicians, bureaucrats, military and police officials hire private armies to intimidate, harass or even murder protesting workers and farmers and human rights

activists.

Many human rights activists have expressed concern that the incidence of business-related human rights abuses in the country has increased sharply during the COVID-19 pandemic. In June this year, for instance, a group of Philippine environmental, indigenous, and human rights NGOs signed a global report condemning governments and mining companies for taking advantage of the pandemic to silence dissent while people's attention is diverted elsewhere.

Enter the UNGPs

To address the problem of business-related human rights abuses in the Philippines, the United Nations has called on the Philippine government and the Philippine business community to implement the UN's *Guiding Principles on Business and Human Rights* (UNGPs). Endorsed by the UN's Human Rights Council in 2011, the UNGPs are a set of global guidelines aimed at reducing the human rights risks associated with business activity. They propose that states have a duty to *protect* people against human rights abuses including by businesses; businesses have a *responsibility* to respect the human rights of others; and both have an obligation to ensure that victims of human rights abuses have access to effective *remedies*. According to the UNGPs, these guidelines 'apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure'.

This 'protect, respect, and remedy' framework represents a departure from the previously dominant notion of corporate social responsibility (CSR) and associated UN initiatives such as the Global Compact, which leave it up to companies to voluntarily determine how to behave in a socially-responsible manner. In particular, as legal scholar Anita Ramasastry has pointed out, this framework differs from CSR in its aim of '(1) a universal human rights yardstick for all business concerns, (2) a renewed emphasis [on] a proactive role for the state, and (3) enhanced access to remedy for victims of human rights abuses linked to corporate conduct.'

As the human rights situation in the Philippines has deteriorated, the UN has grown increasingly forthright in its calls for government and business in that country to implement the UNGPs. In June this year, for instance, the UN Human Rights Commissioner released a damning report on the human rights situation in the Philippines which noted, among other things, that serious human rights 'issues arise

from the role of private mining and logging companies, infrastructure projects and large-scale agribusiness on ancestral lands, and in implementation of the land distribution programme for peasants'. To address these issues, it called on the international community to 'bolster implementation' of the UNGPs and carry out enhanced due diligence in its investment and development cooperation activities in the country.

Implementation of the UNGPs

So far, neither the Philippine government nor the country's business community has made much progress in implementing the UNGPs. For instance, the UN's Working Group on Business and Human Rights (the Working Group), the UN body responsible for promoting implementation of the UNGPs, has strongly encouraged states to 'develop, enact and update' a national action plan on business and human rights as a crucial first step towards implementation. The purpose of such plans is to outline a strategy by which states seek 'to protect against adverse human rights impacts by business enterprises in conformity with the [UNGPs].' But the Philippine government has failed to take even this preliminary step.

Between 2014 and mid-2016, when Benigno Aquino III was Filipino president, the Presidential Human Rights Committee, the United Nations Development Program, the Hanns Seidel Foundation (a German government-funded foundation with a strong commitment to human rights), the Philippines Commission on Human Rights, a Constitutionally-prescribed body with the authority to investigate human rights abuses), and various other organisations collaborated on a series of workshops, meetings, and consultations on business and human rights.[1] Such events engaged a range of stakeholders including government departments and agencies, business representative associations, individual enterprises, and environmental and human rights NGOs. Through these events, the Philippine government made significant progress towards the development of a National Action Plan on Business and Human Rights. Even in the early stages of Duterte's presidency, which began in mid-2016, it seemed that such an action plan would soon materialise.

But by early 2017, this work had virtually ground to a halt, as the Presidential Human Rights Committee became increasingly unresponsive to efforts by its former partners to bring their collaboration to fruition. In March 2017, the Committee announced that the Philippine government would henceforth focus on producing a new National Human Rights Action Plan, leaving the fate of a dedicated business and

human rights plan unclear. Sensing that the game was up, the UN Development Program and the Hanns Seidel Foundation have since largely disengaged from the business and human rights space in favour of other priorities, leaving the Commission on Human Rights as the only initial key member of the partnership still actively working on the development of a National Action Plan on Business and Human Rights.

The Commission on Human Rights has sought to keep the prospect of such a plan alive—as well as more generally advance implementation of the UN's business and human rights agenda in the Philippines—by trying to build a coalition supportive of the UNGPs. In 2019, for instance, it sponsored a series of meetings and workshops on business and human rights attended by figures from various human rights NGOs, academic institutions, employers' groups and private firms. One outcome of these events was the formation of a national Working Group on Business and Human Rights comprising representatives of a number of participating organisations.

At the same time, the Commission has sought ways of incorporating the UNGPs into national laws and regulations related to business activity. In 2018, for instance, it put a series of recommendations to the Philippine House of Representatives for changes to the country's Corporations Code, which was in the process of being amended. The effect of these changes would have been to 'mainstream' the UNGPs throughout the Code. But this effort was completely rebuffed. More recently, the Commission has sought to influence Securities and Exchange Commission regulations. It remains to be seen whether its efforts in this respect will be more successful.

Finally, and most spectacularly, between 2016 and 2019, the Commission held an inquiry into whether fossil fuel companies could be held legally responsible for the human rights effects of climate change in response to a petition by a group of NGOs and individuals led by Greenpeace Southeast Asia (Philippines). The petition, which invoked the UNGPs in its argumentation, reflected widespread concern about the horrific effects of extreme weather events, particularly typhoons, in the Philippines. In a landmark decision, the Commission sided with the petitioners, finding that the fossil fuel companies 'could be held legally and morally liable' for the effects of climate change, 'especially on vulnerable communities in the Philippines.' Some commentators have suggested that this ruling opens the way for litigation against fossil fuel companies. But again it remains to be seen whether this action produces meaningful change, particularly given the dysfunctional nature of the Philippines'

judicial system.

For its part, the Philippine business community's response to calls for it to implement the UNGPs has been similarly lacklustre. For instance, few Philippine businesses have incorporated the principles enunciated in the UNGPs into their corporate policies and practices, even in the case of large and prominent businesses listed on the Philippine Stock Exchange. A recent study of human rights disclosure among top-listed companies in ASEAN found that disclosure rates fall substantially below UNGP benchmarks throughout the region and particularly in the case of the Philippines. Most top-listed companies in the Philippines, the report's authors found, 'are operating without any kind of publicly available human rights blueprint'.

As noted above, some employer groups and firms have participated in Commission-sponsored activities related to business and human rights. Most notable in this respect have been the Employers Confederation of the Philippines, a body that represents big business as well as small and medium-sized enterprises, and First Philippine Holdings Corporation, a company with substantial interests in clean and renewable energy (among other sectors). But such organisations have often cast implementation of the UNGPs as a matter of voluntary action by businesses rather than one of corporate accountability for the negative effects of business activity. In so doing, they have served to reduce the UNGPs to a Corporate Social Responsibility initiative.

The Politics of Inaction

Why has the Philippines failed to make more significant progress in implementing the UNGPs?

There can be little doubt that Duterte's accession to the presidency has made it more difficult for the UN and its allies to promote implementation of the UNGPs, given his clear disdain for human rights and his role in the atrocities associated with the 'war on drugs'. The institutional design of the Commission on Human Rights, the key human rights institution in the country, has also been an important constraint on progress. Analysts point out that the Commission has no enforcement authority and few promotional powers, and that it has focused on a largely ineffective investigative strategy for defending rights. With this combination of attributes, it has lacked the required authority or influence to effectively promote the UNGPs in the face of inertia and opposition.

But the Philippines' inability to make significant progress in implementing the UNGPs has not simply been a matter of the quality of leadership or the institutional design of key human rights institutions. It has most fundamentally been a matter of the way power is distributed and organised in the country.

The Philippines is dominated by a powerful oligarchy which has enormous wealth, significant control over the means of violence, and privileged access to political authority. As political scientist Jeffrey Winters has pointed out, this oligarchy was well-established during the Spanish and American colonial periods and constituted the dominant political element in the period of electoral democracy that followed the end of the colonial period. It was dislodged from its position of political dominance when Ferdinand Marcos took power in the 1960s and subsequently established a dictatorship with military backing. Since the fall of Marcos in 1986, it has resumed this position of political dominance, operating successfully again within the context of electoral democracy. Perhaps most importantly, it has consolidated its economic position, gradually shifting out of declining sectors such as plantations, agriculture and manufacturing, where its wealth was long concentrated, and into emerging sectors such as energy, water and real estate, aided by government privatisation programs and a booming remittance economy.

According to Winters, this contemporary iteration of the Philippine oligarchy has been 'untamed' in the sense that, on the one hand, it has been 'more powerful than the laws' and prepared to use its wealth to 'block or bend legal outcomes or thwart enforcement' and, on the other hand, it has been unconstrained by dictatorial rule as during the Marcos years. In this context, it has had little interest in the rule of law, let alone protection of human rights specifically.

To be sure, there has been little, if any, open resistance to implementation of the UNGPs in the Philippines from members of the oligarchy or their representatives within government or the business sectors. As noted earlier, some of the country's main business representative associations and corporations have even participated in events on business and human rights sponsored by the Commission on Human Rights and sought to promote a particular form of the business and human rights agenda. But, in the context of untamed oligarchic rule, such open resistance has been unnecessary. With control over all institutions with real power—the presidency, the congress, and the judiciary—it has been enough for them to simply block human rights initiatives if they reach such institutions.

Looking Ahead

Duterte's term as president is expected to end in mid-2022. Under the Philippines 1987 Constitution, presidents cannot be re-elected for a second term. This opens up the possibility that Duterte may be replaced by a leader more sympathetic to human rights, although speculation is rife that Duterte will try to engineer the election of a family member or political ally as president or that he will run for the vice-presidency, ensuring his continued power.

Even if Duterte fades from the scene, the structural obstacles to change stemming from oligarchic domination of politics and the economy mean that the Philippines is unlikely to successfully implement the UNGPs—or otherwise significantly address the problem of business-related human rights abuses—at any point in the foreseeable future. Without Duterte there are still plenty of other sources of opposition to enhanced business accountability for human rights abuses.

In this context, one can expect that the Commission on Human Rights and its allies will achieve some notable changes in government and corporate policy and practice by continuing with its strategy of seeking to build a coalition of support for the UNGPs, promoting incorporation of the UNGPs into government laws and regulations when opportunities arise, and seeking to popularise the business and human rights agenda. But they are unlikely to transform the Philippines such that proper protection of individuals from business-related human rights abuses constitutes a new business-as-usual.

[1] PHRC, UNDP and HSF (2016) *Government Consultation-Workshop on the Development of the National Action Plan on Business and Human Rights (NAP-BHR): Documentation Report*.

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Image: *A worker cutting sugar cane. Credit: StevanBaird/Flickr*