An Introduction to the

BUSINESS AND HUMAN RIGHTS

Framework for Media Practitioners

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This publication was produced by the Philippine Legislators' Committee on Population and Development Foundation, Inc. (PLCPD) with support from ICCO Foundation. Unless indicated, the contents of this primer do not necessarily reflect the official position of ICCO Foundation.

Philippine Legislators' Committee on Population and Development Foundation, Inc. (PLCPD)
3/F AVECSS Building, #90 Kamias Road cor. K-J St., East Kamias, Quezon City 1102 Philippines
Tel. nos. (+632) 709 6480 • (+632) 436 2373
Email: plcpdfound@plcpd.org.ph
Website: http://www.plcpd.org.ph
Executive Director: Romeo C. Dongeto
Writer: Jayson H. Cainglet
Editor: Ma. Aurora O. Quilala
Book and cover design: Dodie Lucas

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On April 24, 2013, a poorly constructed building housing five garment factories in Savar, Bangladesh collapsed, trapping thousands of workers in the rubble.

As responders frantically rummaged through the rubble, they not only unearthed thousands of dead and injured workers, but also remnants of clothing bearing the names of some of the biggest US, Canadian, and European labels and retailers, including Benetton, Wal-Mart, and JC Penney.

More than a thousand workers were killed and another 2,500 injured in the collapse of the Rana Plaza building, now dubbed as the worst disaster in the global garment industry.[i]

The tragedy unraveled the slave-like conditions of workers toiling in the garment sweatshops in Rana Plaza, of whom 80 percent were young women aged 18-20 years. These women worked on a

standard shift of 13 to 14.5 hours for 90 to 100 hours a week with just two days off a month.

Young “helpers” meanwhile, earned 12 cents an hour while “junior operators,” 22 cents an hour (for a total of US$10.56 a week). Senior sewers received 24 cents an hour (for a total of US$12.48 a week).

What was more appalling was the fact that the deaths could have been prevented as visible cracks in the factory walls already foretold the building’s imminent collapse.

In fact, on the day of the collapse, more than 3,000 workers reportedly refused to enter the Rana Plaza building for fear of the structure’s instability. The building’s owner however, hired gang members to beat the workers into entering the factory. The managers of the five factories meanwhile, threatened workers that they would not be paid for the entire month if they did not report for work. The physical abuse,

coupled with the prospect of not being able to feed their children, left the workers with no choice but to work that day, not knowing that it would be their last.[ii]

The tragedy also underscored the failure of the international labels involved to monitor the working conditions in the factories to which they outsource. No less than 32 US, Canadian, and European labels and retailers outsourced garments to the five Rana Plaza factories. All of them enjoyed enforceable protection of their trademark in their own countries while the workers who produced their clothes had no legal protection at all.

Sadly, the tragedy at Rana Plaza is not an isolated incident. The abominable conditions suffered by the garment workers there are becoming all too common throughout the developing world. As global brands continue their search of the lowest wage and least regulation, they have increasingly located their production in developing countries. This preference of

big brands for outsourcing to developing nations is driven by the desire to maximize revenues and lower production costs in order to edge out the competition.

As developing countries have become a huge and integral part of the global supply chain, the media in these countries face a similarly huge challenge to monitor and report on business activities—not only on how these impact on the economy, but also of their complex interrelationship with the global market, outsourcing practices and third party labor brokers, and most importantly, on the rights of the workers and the community.

The growth of the global supply chain

The history of the global manufacturing industry had shown a trend for manufacturing jobs to shift to the cheapest labor market. In the 1960s and 1970s for instance, cheap labor and automation in Japan displaced jobs in the US. In the 1980s, manufacturing shifted to cheap labor in Mexico, and in the 1990s, to China.

Today, manufacturing jobs are shifting to growing economies like India and Vietnam, and to other countries in South America and in Asia. For instance, 84 percent of the global production of printed circuit boards is now happening in Asia.[iii]

It's not hard to see why. Aside from cheap labor, developing countries offer much more for global brands eager to make vast profits. For one, governments in these poor countries often fail to regulate the workplaces that become part of the global brands' supply chain. Such countries either have weak labor laws or are unable to enforce these. The rights of workers are also not recognized. On top of that, workers are even prevented from organizing unions and engaging in collective bargaining with employers to negotiate for more humane wages. All these result in the routine violation of basic safety and health standards, and human rights in many of such workplaces.

The combination of such conditions results in the exploitation of workers

involved in various stages of production—from processing, manufacturing, warehousing, to transport. The exploitation also transcends industries—from the extractive sector as mining; agriculture as in oil palm, cotton, and tobacco plantations; to garments and electronics.

Indeed, despite the presence of International Labor Organization (ILO) standards, states fail to ensure compliance by legislating policies and enforcing measures to protect and advance workers' rights.

For instance, the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) documented "bleak working conditions" at factories in China manufacturing products for the world's biggest electronics brands such as Apple, Dell, Hewlett-Packard, IBM, Lenovo, Motorola, Nokia, Sony, and Toshiba, to name a few.[iv]

Employees in said electronics factories work excessive overtime and

live in crowded dorms. Such factories also employ underage workers. Often, these suppliers blatantly disregard the health of their workers by making them use hazardous chemicals in production for instance, AFL-CIO further reported.

Mere incident reports

Yet media reporting on the complex issue of a globalized business model, and on the interrelated issues of profits, workers' rights, health and safety, and labor policy has largely been confined to mere incident reports.

An example is a 2012 lawsuit filed by nearly 3,000 banana plantation workers in the Philippines against a leading multinational producer and marketer of fresh fruits and vegetables. The complaint stemmed from the alleged exposure of the plantation workers for more than 30 years to the agricultural chemical DBCP, ultimately causing health problems for the workers. The complaint was later dismissed by a Los Angeles superior court.

Despite the fact that the case covers health complaints of thousands of workers spanning three decades, the news reports that came out on the issue were extremely one-sided and simplistic. The reports merely contained quotes of the multinational firm's general counsel alluding to the lack of any scientific basis for the alleged injuries from DBCP, and to the utter lack of merit of the case.

And then in 2013, news organizations reported that a regional trial court in Marinduque province, also in the Philippines, dismissed a case filed by a group of fishermen against a multinational mining company for damages caused by 16 years of dumping tons of mine tailings into their fishing grounds.

While the reports mentioned the grounds for the complaint—damage to the health and livelihoods of residents as a result of the company's dumping of toxic wastes into the bay—such reports merely cited that the reason for the court's

dismissal of the case was the fact that the mining companies in question were foreign corporations, and therefore outside the scope of the court's jurisdiction.

The dismissal of the Calanacan case came despite the fact that it was only one of seven damage claims and environmental complaints filed against the same mining company by Marinduque residents.

These examples demonstrate how—despite the complex nature of such cases of abuse arising from corporate practices—media coverage has been limited to mere incident reports on such business activities as matters that are best left for labor arbitrators or local courts to decide on. The above examples also depict the government as mere third-party observers in business-related disputes.

In truth however, such are stories of corporate human rights abuses affecting entire supply chains, workers, labor organizations, and communities with

profound impact on a developing nation's economy and resources.

These cases also point to the primary responsibility of big businesses to respect and defend the rights of workers, and their accountability to remedy human rights abuses to which they contribute by providing compensation for workers.[v]

The challenge for the media in developing countries therefore, is how to go beyond spot reporting on these issues by providing the context, the causes and consequences, and the short-term and long-term impacts of such corporate practices, and by pointing where the accountability lies in cases of human rights abuses.

The "Business and Human Rights" Framework

The "Guiding Principles on Business and Human Rights," endorsed by the United Nations in 2011, provide a framework that the media can use in reporting on such

issues. The Guiding Principles contain the UN's "Protect, Respect and Remedy" Framework, which recognizes that respect for human rights, including workers' fundamental rights, is not a voluntary activity for companies but is central to their required due diligence.

> Simply put, a government cannot use the clout and influence of businesses as an excuse not to perform its duty to protect the human rights of its citizens. Neither can businesses use the governments' inadequacy as an excuse to avoid corporate responsibility to respect human rights.

The UN Framework allocates responsibility on governments to protect everyone within their jurisdiction, under international human rights law, from human rights abuses committed by business enterprises. This duty means that governments must have effective laws and regulations in place to prevent and address

business-related human rights abuses and ensure access to effective remedy for those whose rights have been abused.[vi]

In the same vein, the UN Framework also allocates responsibility on business enterprises to respect human rights wherever they operate and whatever their size or industry. This responsibility entails that companies must know their actual or potential impacts, prevent and mitigate abuses, and address the adverse impacts brought about by their business activities. In other words, companies must know and show that they respect human rights in all their operations.[vii]

The UN Guiding Principles on Business and Human Rights is a set of 31 principles directed at governments and business entities to spell out their duties and responsibilities to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities.[viii]

These guiding principles were developed by John Ruggie, then Special Representative of the UN Secretary General, upon the invitation of the UN Human Rights Council in 2005 on the pressing issue of human rights and transnational corporations and other business enterprises.[ix]

Protect, Respect and Remedy

The "Protect, Respect and Remedy" Framework under the UN Guiding Principles on Business and Human Rights are grounded in recognition of the following:

1. The duty of states to protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation and adjudication. It is the state that has the primary role in preventing and addressing corporate-related human rights abuses.[x]

As part of their duty to **protect against business-related human rights abuse**, states must take appropriate steps within their territory and/or jurisdiction to ensure that when such abuses occur, those affected have access to effective remedy through judicial, administrative, legislative or other appropriate means. Effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect.

2. The **corporate responsibility to respect human rights,** which means acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur. The term “responsibility” rather than “duty” is meant to indicate that respecting rights is not currently an obligation that international human rights law generally imposes directly on

companies, although elements of it may be reflected in domestic laws. It is a global standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility, and now affirmed by the Human Rights Council itself.

3. The need to develop realistic **access to remedy for victims of human rights abuses**. Companies still deny responsibility for establishing genuine grievance mechanisms with the intention to provide remedy, including financial compensation. Too many grievance mechanisms provide public relations, but sadly little else.

The Guiding Principles have also been endorsed by many companies, business organizations, civil society organizations, trade unions, national and regional institutions, and other stakeholder groups.

This has further solidified the status of the Guiding Principles as the key global normative framework for business and human rights.[xi]

Initiatives to Operationalize the UN Guiding Principles on Business and Human Rights

A number of initiatives and measures to operationalize the Guiding Principles on Business and Human Rights are currently underway at the global and domestic levels.

At the international level, the "Extractive Industries Transparency Initiative" or EITI is a global standard of transparency that requires extractive industries such as oil, gas, and mining, to publish what they pay to the government. It also requires governments to likewise publish what they collect from said industries. To date, 48 countries have signed up for, and are implementing the EITI.[xii]

Countries demonstrate their commitment to implement the EITI through

a policy or a decree. For instance, in the Philippines, President Benigno S. Aquino III signed Executive Order No. 147 on Nov. 26, 2013. The order created the PH-EITI multi-stakeholder group, which is mandated to complete the country's requirements to become a member of the global transparency initiative.

Companies in the extractive industries that have signed on to the PH-EITI accounted for at least PhP35 billion (US$790 million) in government revenue in 2012. The total was generated by 30 mining companies and six oil and gas firms, which submitted their tax data and other information to PH-EITI. Broken down, mining companies contributed PhP6.3 billion (US$142 million) in revenue while oil and gas companies remitted PhP29.01 billion (US$655 million).

Another initiative in the Philippines is the "Integrity Initiative," a private sector-led campaign aiming to strengthen

ethical standards in business. The initiative aspires for a level playing field where companies that do business with integrity enjoy competitive advantage in both government and private sector transactions. To achieve this goal, market players in the Philippines must adhere to common ethical standards. Through the principle of collective action, the initiative brings together businesses and industry associations to follow a common roadmap that institutionalizes integrity in all aspects of the business process.[xiii]

The Makati Business Club (MBC) and the European Chamber of Commerce of the Philippines (ECCP) serve as the Integrity Initiative's secretariat. The project started in December 2010 after the Philippines received a grant from Siemens[xiv] to implement Project SHINE. SHINE was a four-year project that set up an accreditation system for companies that consistently uphold integrity in their business process. Since 2010, various organizations and industry associations

have joined MBC and ECCP in taking an active role in promoting honesty and transparency in Philippine business.

On the part of the government, the Commission on Human Rights of the Philippines (CHR) has committed to harmonize business and human rights in the country by integrating this in its Strategic Plan for 2011-2016.

The Commission openly protested against reported human rights violations committed in the Tampakan Copper-Gold Project in South Cotabato province. In fact, during the launching of the Human Rights Impact Assessment of said mining operation in June 2013, the Commission's Chairperson, Loretta Ann Rosales, emphasized "the importance of holding extractive industries like mining accountable to international and domestic human rights standards."

The Commission also maintained in its June 2012 Submission to Universal

Periodic Review that in light of the government's expansion of concessions granted for mining, "vigilance must be exercised against more frequent violations, including displacement, violence against opponents of mining presence, and negative impact on the economic and cultural rights of indigenous peoples."

Aside from mining-related human rights violations, the Commission also condemned discriminatory and unfair retirement and maternity policies that the Philippine Airlines was imposing on its female flight attendants. It also hit the policy practiced by airlines of refusing service to persons with disabilities.

Even before integrating the framework in its strategic plan however, the Commission had already taken steps to investigate alleged human rights violations by business firms and recommended necessary actions to address such violations.

An example is CHR's probe into the reported harassment of residents of a village in Nueva Ecija province by the mining company OceanaGold Philippines in October 2009. Under then Chair Leila de Lima, Rosales's predecessor, CHR investigated the eviction by the police of a hundred indigenous people's families, according to reports by nongovernment organizations monitoring the area.

As a result of the probe, de Lima, and later on, Rosales, expressed and reiterated CHR's support for the locals to assert their right to their ancestral domain and resist the destruction of their homes brought about by OceanaGold's mining operations.

Earlier that same year, the Commission had also intervened successfully for the return of displaced Manobos—indigenous peoples in Surigao del Sur province in Southern Philippines—to their ancestral lands.

Making commitments matter

At the international level, the Rana Plaza tragedy and how it is playing out, could very well be a litmus test for the Business and Human Rights Framework, particularly for corporate accountability, supply chain scrutiny, and workers' rights around the world.

In the aftermath of the tragedy, some of the global brands involved readily made pledges to compensate the victims and their families. Many others denied any involvement in outsourcing their production to the factories in Rana Plaza, only to retract their statements later, in the face of irrefutable proof of their involvement.

As demands for compensation for the victims and their families heightened, the United Nations, through the International Labor Organization, had to intervene by acting as a neutral chair in forming the Rana Plaza Coordination Committee. The Committee developed "a comprehensive and independent process that would

deliver support to the victims, their families and dependents in a predictable manner consistent with international labor standards."

In late 2013, the process was agreed by representatives from the government, the garment industry both locally and internationally, trade unions and non-governmental organizations, and established through an agreement known as the "Rana Plaza Arrangement."[xv]

But the arrangement could not have come about without the public outcry and mounting pressure from the victims and stakeholders not only in the affected country, but more so from the developed nations that are the market countries of the brands involved—the consumers of the brands themselves.

Even with such global pressure, after more than two years, only 18 companies out of the 32 have pledged US$15.3 million in donations to the Rana Plaza

Trust Fund, out of the estimated US$40 million that is needed.

The unfolding of the Rana Plaza tragedy has also demonstrated the invaluable role that the media plays in putting the spotlight on corporate-related human rights abuses and the duty of these business enterprises to provide remedy or compensation for the victims. The plight of the victims and the refusal of the global labels involved to provide compensation to the victims were placed at the global center stage by local and international media, together with human rights advocates and labor groups.

As the victims and their families still await full compensation, the media continues to perform its role by staying with the story and directing attention to how the companies are fulfilling or reneging on their obligation to the victims. Equally important is how the media plays a role in distilling lessons from the tragedy and feeding these into efforts to improve

enforcement of regulations and protect human rights in order to prevent a similar tragedy from happening in the future.

Indeed, the media has a crucial role in scrutinizing whether governments fulfill their commitment to the Business and Human Rights Guiding Principles by way of institutionalizing and enforcing regulations. Similarly, the media also has a crucial role in scrutinizing whether employers have demonstrated their commitment to the framework by integrating respect for human rights in their everyday business operations.

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