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HUMAN RIGHTS CONCERNS ARISING FROM CORPORATE ACTIVITIES IN THE PHILIPPINES

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INTRODUCTION

1. The Philippines was gravely affected by the 1997 financial crisis that hit the region. In 1997, practically every sector of the economy suffered huge losses, and the country entered into a recession. The fall of the Peso particularly affected those companies heavily laden with foreign denominated debt; the burden of repaying these debts, bloated over 50 % in Peso terms due to devaluation, became even more untenable for un-hedged borrowers. By 1998, several transnational corporations shut down their operations in the country.¹ The following year, however, the recession appeared to have ended.² Corporations responded to the crisis generally in two ways: either they banded together or shrank their business operations. This response continues to date.
2. Philippine law defines a corporation 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.”³ A corporation is a juridical person “having the rights and relations, and the characteristic attributes of a legal entity distinct from that of the persons who compose it

¹ Among the TNCs that have closed their business operations in the Philippines are: Johnson & Johnson (Phils.) Inc; Warner Lambert (Phils.) Inc; Colgate Palmolive (Phils.) Inc; Van Melle (Phils.) Inc; Novartis Healthcare Philippines; Philips Electronics Inc; and Uniden Philippines.

² In 1998, the top 1000 corporations managed a 16.9 % rise in aggregate gross revenues, with aggregate net income up by 25 % following a 34.2 % plunge in 1997. Aggregate indebtedness expanded by 6.6%. The number of companies in the top 1000 corporations, however, that suffered from a heavy debt load (those with debt to equity ratios higher than 2-to-1) rose to 461 excluding 72 financial-related companies. 59 companies reported capital deficits. See “The Top 1000 in Crisis” : Business World Top 1000 Corporations, Volume 13, 1999.

³ Section 2, Corporation Code of the Philippines.

or act for it in exercising its functions.”⁴ In defining a corporation, three leading concepts are applied: the concepts of “a person,” “a collection of persons,” and “a franchise.”⁵

3. Under a policy to “attract, promote and welcome productive investments from foreign individuals, partnerships, corporations and governments,” Philippine law allows foreign entities to form and operate corporations in the country. Foreigners are allowed equity up to 100 % in domestic market enterprises, unless foreign ownership is prohibited or limited by the Constitution or existing law or the Foreign Investment Negative List.⁶ Foreigners are allowed to establish branch offices, representative offices, regional headquarters and regional operating headquarters under certain conditions. 225 of the country’s top 1,000 corporations in the country are foreign-owned.⁷

CORPORATE ACTIVITIES AND PRACTICES THAT ADVERSELY AFFECT HUMAN RIGHTS

4. Domestic and transnational corporations in the country engage in certain practices that adversely affect human rights. These practices are generally found within industries but sometimes cross industry borders. These practices are not necessarily born of the financial crisis; rather, in many cases, these practices have been existing for decades.

Corporate Practices and Labor Rights

5. The Philippine Supreme Court noted: “As even a cursory study of jurisprudence would show, companies ‘with vast operations’ are not immune from the temptation of circumventing Labor laws for the sake of profit.”⁸
6. Of the many corporate practices that both Labor-intensive and capital-intensive corporations in the Philippines undertake, perhaps the most injurious to Labor rights are those referred to as the “contractualization of Labor,” “flexibilization of Labor,” and establishment of “run-away” shops.

⁴ SEC Opinion dated 8 July 1992, Mr. Robert L. Gottier citing 1 Fletcher Cyc. Corp., Sec. 1 : Rosario N. Lopez, Corporation Code Annotated, Volume 1; *see also* SEC Opinions dated January 18, 1993, Mr. Fred Cladera and June 18, 1993, Mr. Roger G. Mercado : Lopez, Corporation Code Annotated.

⁵ A corporation is an ideal person having the rights, duties and powers prescribed by law. A corporation aggregate is a collection of many individuals united into one body, under special denomination, having perpetual succession in an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual. A franchise is possessed by one or more individuals who submit as a body politic under a special denomination and are vested by the policy of the law with the capacity of perpetual succession and of acting in several respects, however numerous the association may be as a single individual. Lopez, Corporation Code Annotated.

⁶ Foreign Investments Act of 1991, as amended by Republic Act 8179, and Implementing Rules and Regulations of Republic Act 7042. A “domestic market enterprise” is an enterprise which produces goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistently export at least 60 % thereof. The “Foreign Investment Negative List” (FINL) is a list of areas of economic activity whose foreign ownership is limited to a maximum of 40 % of outstanding capital stock in the case of a corporation or capital in the case of a partnership. FINL consists of two lists, A and B, that contains the areas of economic activities reserved to Philippine nationals. List A contains those areas that do not allow any foreign equity; that allow up to 25 %, 30 % and 40 % foreign equity. List B contains those areas where foreign ownership is limited for reasons of security, defence, risk to health and morals, and protection of small and medium-scale enterprises. *See Second Regular Investment Negative List*, effective 24 October 1996.

⁷ TNCs in the top 1000 corporations are found in the following sectors: mining and quarrying (2); manufacturing (161); electricity, gas and power (6); construction (8); wholesale and retail trade (26); hotel and restaurants (6); transport, storage and communications (7); financial inter-mediation (7); real estate, and renting and business activities (2). Business World Top 1000 Corporations in the Philippines.

⁸ *Phillex Mining Corporation v. National Labor Relations Commission, et. al.*, G.R. No. 125132, 10 August 1999.

7. “Contractualization of Labor” refers to the practice of hiring workers on short-term⁹ successive contracts of employment with or without gaps and then re-hiring these same workers to perform essentially the same tasks for which they were initially hired. The purposes behind this practice are to preclude the acquisition of tenurial security by workers and to evade the application of Labor laws. Workers under contract are paid minimum wage and are not entitled to the rights and benefits of regular workers.¹⁰
8. In countless cases, the Supreme Court has ruled that an employee is considered a regular employee when s/he has been hired to perform activities usually necessary or desirable in the business of the employer and has rendered at least one year of service—whether continuous or broken.¹¹ Despite this, contractualization continues unabated.
9. Sometimes, companies establish learnership or apprenticeship programs, whereby companies hire apprentices or learners for about five months, and pay them 75 % of minimum wage. Thereafter, companies hire these learners or apprentices on a probationary period. As the probationary period ends, so too does the period of employment. In this way, companies enjoy the services of non-regular workers for close to one year, without having to pay the wages and benefits of regular workers.
10. “Flexibilization of Labor,” also called flexibility employee development, refers to the right of employers to transfer employees from one department or position to another. The Supreme Court has recognized this practice as a prerogative of management.¹² But this prerogative is not absolute and is subject to abuse. On several occasions, flexibilization has been used to target employees whom management considers “trouble-makers” and to constructively dismiss them. On other occasions, this practice has been used to bust a union, by transferring union organisers or key union officials to other areas of the production process, thereby making it physically difficult for the organiser or official to continue undertaking union activities.
11. Related to contractualization and flexibilization of Labor is the establishment and operation of “run-away shops” that are set up away from the main factory to continue production, even if the main factory is under a strike. In the garments industry, subcontractors often function as run-away shops in times of strikes.
12. Many companies in the country do not comply with Labor standards, nor remit social security contributions, nor comply with wage orders and mandated benefits. Although companies may deduct these benefits from its employees’ wages, sometimes deductions are not remitted because companies use these funds to augment the financial requirements of their operations. While non-remittance of social security contributions and non-compliance with wage orders are punished by a fine or imprisonment or both, at the discretion of the courts, companies still engage in these practices. In its cost benefit analysis, corporations believe that it is cheaper to pay the fines imposed for these acts¹³ rather than comply with the requirements of the law.
13. As a result of the financial and economic crisis that enveloped the country, and in response to globalization in order to increase competitiveness, many corporations also adopted the practices

⁹ Under Philippine Labor laws, a person may undergo a probationary period not to exceed 6 months and 1 day, thereafter the persons must be entitled to all benefits, rights and privileges of a regular worker.

¹⁰ Contractual workers may not form nor join unions, they are not bound to the terms and conditions of a collective bargaining agreement, they are not entitled to the mandated yearly service incentive leave, nor to sick or vacation leaves with pay. While contractual workers are, by law, entitled to social security benefits and to the payment of a pro-rated 13th month pay, many corporations dispense with these entitlements, and contractual workers have no legal protection to enforce these entitlements.

¹¹ *Salinas, et. al. v. National Labor Relations Commission, et. al.*, G.R. No. 114671, 24 November 1999.

¹² *Castillo v. National Labor Relations Commission, et. al.*, G.R. No. 104319, 17 June 1999.

¹³ Fines range from Peso 5,000 to Peso 20,000 which are negligible corporate expenses.

of shortened work hours, rotation and reduction of benefits, and instigated mergers and acquisitions. In recent months, several banks and manufacturing firms have merged their operations. Mergers have resulted in the loss of employment by employees deemed redundant in the merged corporation. Today, some 10 million Filipinos—one third of the country's Labor force—lack employment, being completely unemployed or underemployed.

14. Perhaps the most compelling—and injurious—corporate practice in the Philippines today is the widespread bribery of union officials, union lawyers, regulatory and enforcement bodies and the courts. Even progressive or radical union officials and union lawyers are alleged to have received bribes from companies that are strike-laden, in order to end the strike, or to quiet Labor unrest that may exist in the company. In the end, workers suffer from the bribery and corruption that exists in the business community.

Corporate Practices and the Right to Health

15. In a country where health care is very expensive, and outside the reach of the average citizen, the introduction of health maintenance organizations (HMOs) in the early 1980s was warmly welcomed. HMOs were seen as the vehicles whereby comprehensive health care would become more affordable for the millions of rank-and-file employees and their dependants. This is no longer the case today, mainly because of general corporate practices within the HMO industry. These corporate practices are largely propelled by the dual needs to capture a greater share of the market and to cut down corporate costs. Yet HMOs in the Philippines appear to have conveniently forgotten that “human lives cannot be compensated for by any plan which professes to provide adequate health care while at the same time denying the best services available on purely economic reasons.”¹⁴
16. Corporate practices within the HMO industry that adversely affect the right to health include the following:
 - Limiting the choice of doctors available to patients in accredited hospitals, reducing diagnostic protocols and adopting cheaper treatment protocols without regard for the consequences of cost cutting. Related to this is the practice of requiring physicians to submit their decisions to the HMO for approval and/or refusal to provide care because of additional costs. This is widespread within the HMO industry, with profit being placed above the safety, welfare and good health of patients. “As it is, HMO executives and clerks make life and death decisions based on real, perceived or imagined policies without much care for the repercussions on the lives of patients.”¹⁵
 - Maintaining an antiquated system of recording professional services rendered by health professionals resulting in late and/or non-payment of fees to health professionals and hospitals. Linked to this is the practice of adopting pre-set rates with health care providers on the promise of increased work volume in exchange for drastic cuts in professional fees. As a result, many medical professionals and major hospitals, have disengaged themselves from the HMO system, thus depriving patients of good quality medical services.
 - Low level of actuarial competence in the HMO industry, resulting in huge underwriting losses, and eventual closures of HMOs, to the detriment of its subscribers, accredited

¹⁴ Edgardo N. Clemente, *Health Economics: Cost-cutting frenzy grips US HMOs (Will RP health maintenance firms be far behind?)*: Business World, 13 June 1997.

¹⁵ Edgardo N. Clemente, *Health Economics: PMS, PHA to lead fight against HMOs*: Business World, 21 November 1997.

health professionals and hospitals. Already, two HMOs have collapsed in the past year and a few more are expected to collapse in the near future.

- Inadequate briefing of HMO sales force and price commission compensation scheme. Subscribers are sought, at whatever cost, in order for the sales force to receive a commission. Thus, exclusions, limitations and procedures are not explained to prospective subscribers; neither are potential adverse risks represented to prospective subscribers. These practices often result in out-of-pocket payments by subscriber members who have to live with various exemptions, exclusions and non-coverage that are discovered only when they get sick.
 - Reliance on HMO physicians (mostly general practitioners) as “gatekeepers” or “control valves” to reduce the need for a patient to secure the services of specialists. This may result in sub-optimal or sub-standard care given to patients with medical problems best seen and treated by specialists, not general practitioners.
17. Also of particular concern is the practice of indiscriminate dumping and disposal of corporate wastes that severely threaten the life, public health, safety and welfare of the citizens, as well as damage the environment.
 18. In March 1996, the Philippines suffered the worst disaster in the mining industry. About 3 million metric tons of mine wastes from Marcopper Mining Company¹⁶ were dumped into the Boac River and its tributaries; more than 3,000 residents in several nearby barangays were displaced. Tests by the Department of Science and Technology revealed that water in the affected rivers and tributaries contained copper, zinc phosphates and sulphates that are lethal if taken in large doses; tests also confirmed the presence of cadmium, lead, mercury, arsenic and cyanide. Tests by the Department of Health (DOH) on blood and urine samples of affected residents revealed the presence of zinc, copper, lead and sulph-hemoglobin which reduces the blood cells and oxygen carrying capacity of the circulation system leading to anaemia. Already, at least 110 residents suffer from pernicious anaemia and aplastic anaemia. The DOH also found that at least two of every three residents had blood tainted with substances not normally present in the human body. At least 7 persons died because of exposure to the mine tailings.
 19. Administrative charges were filed against officials of the Department of Environment and Natural Resources (DENR); the Ombudsman later suspended 2 officials without pay for gross negligence. Criminal charges were filed against 4 Marcopper officers for violation of the Water Code, the Pollution Control Law of 1976, the Philippine Mining Act of 1995 and reckless imprudence resulting in damage to property under the Revised Penal Code. The status of these cases is unknown.
 20. Steps were taken by the DENR to cancel the environmental clearance certificate and mining lease of Marcopper, in the wake of the disaster. Marcopper admitted responsibility for the disaster, and claimed to have spent millions of dollars in clean-up operations of the now biologically dead Boac River, and compensation for damages to nearby residents. Despite this, however, several cease and desist orders were issued against the corporation in 1996 and 1997. These orders were not implemented; by 1998, Marcopper resumed its mining operations.
 21. Dumping of mine wastes is by no means limited to Marcopper. The Maricalum Mining Corporation in Sipalay, Negros Occidental, was also found to have dumped mine tailings into nearby agricultural lands. DENR subsequently issued a closure order against the corporation, but the corporation challenged the order in court. The corporation continues its mining operations

¹⁶ At the time of the dumping incident, Marcopper was partly owned by Placer Dome, a Canadian company that owned 40 % of the shares of stock. After the dumping incident, Placer Dome sold its shares.

to date. United Paragon Mining Corporation in Camarines Norte was found to have exceeded the allowable levels of cyanide in its wastewater discharge; the DENR ordered this corporation to stop its operations.

22. Indiscriminate dumping of wastes occurs across industries. The semi-conductor industry produces tons of waste laden with heavy metal-solvent residues; the chemical and petro-chemical industries produce waste laden with non-degradable and toxic chemicals. Hospitals, food manufacturers, processors, pharmaceuticals and even funeral parlours also contribute to mounting tons of infectious and hazardous waste. The DOH recently reported that 62 hospitals (35 % of all Metro Manila hospitals) had unsatisfactory waste disposal systems that failed to meet established waste management standards.
23. But waste is not only produced domestically; it is now imported. The importation of toxic wastes by Philippine corporations is a relatively new corporate activity in the country. In November 1999, Sensei Enterprises caused the importation of 122 container vans of what it labelled “recyclable waste” from Japan. Upon inspection, more than 600,000 tons of the waste were toxic, coming from Japanese hospitals and industry. Charges are being readied against the corporation, and arrangements have been made with the Japanese government to re-export the waste back to Japan.

Corporate Practices and the Right to Life

24. The shipping and transport industry in the Philippines has perhaps contributed to the most life-threatening incidents in the country. Overloading of passenger ships, buses, and other transport vehicles is a common and general practice throughout the nation. Overloading has contributed to massive loss of lives on ship and bus accidents that have occurred in recent times. Overloading continues despite the fact that Philippine law and jurisprudence is crystal clear on the role and responsibility of common carriers.¹⁷
25. In 1987, the MT Vector and the MV Doña Paz collided in the open sea. All crewmembers of MV Doña Paz died; of the estimated 4,000 passengers, many of whom were not included in the passenger manifest, only 24 survived. Survivors and relatives of the dead passengers consequently sued Vector Shipping Company, Caltex (Phils.) Inc. (which chartered MT Vector), and Sulpicio Lines, Inc. One suit, a class suit with over 3,000 claimants, filed before both American and Philippine courts, is pending to date.¹⁸
26. The Doña Paz tragedy was followed by a succession of sea accidents, again with passenger lines overloading ships. The latest incident occurred on Christmas eve 1999, when MV Asia South Korea owned and operated by the Trans-Asia Shipping Lines, Inc., sank, killing 54 passengers. The passenger manifest listed about 600 passengers, but the total number of survivors exceeded 711, excluding the 54 dead passengers. The Maritime Industry Authority subsequently suspended all passenger roll-on roll-off vessels (12 vessels) of Trans-Asia Shipping Lines. The suspension order was lifted against 6 vessels, but Trans-Asia’s certificate of public convenience, provisional

¹⁷“Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported to them according to all the circumstances of each case. A common carrier is bound to carry the passengers as far as human care and foresight can provide, using the utmost diligence of very cautious people, with due regard for all circumstances.” J. Cezar S. Sangco, *Torts and Damages* (5th Edition). Volume 1, Quezon City: JMC Press Inc. 1993, p. 26, citing Articles 1733 and 1755, Civil Code and *Pal v. Court of Appeals*, 106 SCRA 391.

¹⁸ One of these cases was decided by the Philippine Supreme Court only in 1999; the Court categorically ruled that the charterer (Caltex (Phils.) Inc.) is not liable for damages under Philippine maritime laws; *Caltex (Philippines) Inc. v. Sulpicio Lines, Inc., et. al.*, G.R. No. 131166, 30 September 1999.

authorities and special are temporarily suspended. Charges are currently being prepared against the shipping line.

27. Bus lines also engage in overloading. It is common to see passenger buses and jeepneys plying their routes with passengers literally hanging out of the sides of the vehicles. The reason for overloading on buses and jeepneys can be traced to the system of wage payment to drivers. Unlike drivers paid on a time basis, drivers in the Philippines are paid following the boundary system—a commission basis or per trip/quota basis. This means that drivers must get from one point to the next at the shortest possible time with the most number of passengers in order to earn their wages. This accounts for overloading and the haphazard manner of driving—direct threats to the safety and lives of their passengers.
28. The use of violence, threats, intimidation to break up protesters, strikers, picketers, on corporate premises continues. The latest incident occurred on 15 December 1999, at Silangan Farms, Inc., Barangay Butong, Quezon, Bukidnon. The chief security guard and other security guards of the corporation fired guns at farmers and members of the Quezon Manobo Tribal Association, killing two persons and wounding one other. A year earlier, the tribal association was granted an Ancestral Domain Claim by the DENR, covering 2,093 hectares of land that the Silangan Farms occupied. The corporation, however, secured a “status quo” order from the local courts, which they use to deny the Manobos their ancestral domain claim. Throughout 1999, the Manobos tried to reclaim their land by occupying it, but were unsuccessful. On 15 December 1999, some 1,000 Manobos tried to re-occupy their land at Silangan Farms after they were told that they would be demolished. Their actions were met with gunfire.
29. The Supreme Court has consistently ruled that a corporation is not liable for any illegal or harmful acts committed by security guards. “It is settled that where the security agency, ..., recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards or watchmen. Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency. ... The fact that a client company may give instructions or directions to the security guards assigned to it, does not, by itself, render the client responsible as an employer of the security guards concerned and liable for their wrongful acts or omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency.”¹⁹

Corporate Practices and the Right to Housing

30. There is an unprecedented housing backlog in the nation, with housing shortage estimated at 4 million. Recognizing this, government sought to encourage the establishment of low-cost or socialised housing for those least able to access housing. But, in doing so, and to encourage real estate developers to engage in socialised or low-cost housing, government enacted a law exempting them from the strict and stringent standards and requirements of construction contained in the Building Code.²⁰ These exemptions resulted in cutting costs and making housing packages more affordable. But current government building standards are not enough to ensure public safety as the Cherry Hills tragedy illustrates.
31. In August 1999, during heavy rains and a typhoon, a landslide occurred in Antipolo City; about 400 houses in Cherry Hills Subdivision collapsed; 58 residents were killed; countless injured. Cherry Hills Subdivision is a low-cost housing project developed by Philippine-Japan Solidarity,

¹⁹ *Soliman, Jr. v. Tuazon*, 209 SCRA 47, 50-51 (1992).

²⁰ Batas Pambansa 220.

Inc. (PHILJAS), a Filipino corporation with a foreign partner.²¹ PHILJAS claims it complied with all government regulations for constructing low-cost housing; PHILJAS also claimed the tragedy was a fortuitous event, an “act of God.” Government agencies, scientists and the general public disagree.

32. The landslide was caused by rainwater saturation of the soft surface rock of the hill, the upward movement of the water table or subsurface water, and the build-up of the water pressure on the weak subsurface rocks on the slope of the hill. But, engineering remedies could have prevented the disaster;²² unfortunately, engineering interventions are very costly. PHILJAS reportedly knew about the vulnerability of the area to landslides. PHILJAS even developed a 200-ft long, 15-ft wide and 10-ft deep trench in June 1999 to help engineers determine whether there was indeed ground movement on the site.
33. PHILJAS apparently did not conduct a geological survey; such survey would have shown that the ground beneath the subdivision is a former lakebed, thus not a stable housing site. Geologists claim that houses were crushed not only because the cliff collapsed but also because the subdivision’s entire foundation moved. Long-time residents said PHILJAS used filling material such as sand stones, silt stones, mud stones and clay which were extracted from the same mountain where the subdivision was constructed. Clay, geologists note, should not have been used as a filling material because it expands when mixed with water and acts as a lubricant between the natural ground and the houses.
34. It appears that PHILJAS did not undertake geo-technical and engineering tests when it designed and constructed the housing project. Questionable too is whether PHILJAS provided proper drainage systems. It seems PHILJAS did not use high quality structural steel sections for columns and beams in constructing the foundation of the houses.²³ These actions are expensive, and may have resulted in increased prices of the houses.
35. To cut costs, PHILJAS changed its housing design to accommodate more people in lesser space along the slope portion. The original housing plans were designed on 12 hectares of land, but houses were actually constructed on only 6 hectares, resulting in a cramped subdivision. The choice of the site, flawed engineering, design for the houses, alteration of the housing designs and lack of engineering interventions were among the practices adopted by PHILJAS that led to the collapse of the subdivision.
36. Immediately after the tragedy, the Ombudsman ordered a 6-month suspension of 21 environment, housing and local government officials initially found liable for the collapse of Cherry Hills. In December 1999, the Ombudsman ordered the dismissal of 5 of these officials for gross negligence; other officials were ordered suspended for inefficiency, incompetence and simple neglect of duty. Criminal complaints were filed against two PHILJAS executives for violation of the Subdivision and Condominium Buyer’s Protection Law; these are pending before the courts. Criminal charges of reckless imprudence resulting in homicide and damage to property were also filed against PHILJAS; these are pending at the Department of Justice.

²¹ Triangle Corp. of Japan, an investment company affiliated with Takara Bune Corp., which owns 40 % of PHILJAS.

²² Extra engineering interventions include using weep holes and drain pipes at the slope to divert the flow of rain water and building necessary subsurface drainage to relieve water pressure that usually builds up when there is heavy rainfall.

²³ Scientists believe that PHILJAS could have resorted to common methods to stabilise the soil such as providing reinforcing beams and foundations of houses, putting vegetation or landscapes to enhance soil stability in slopes, resetting the schedule of construction on blocks until the soil becomes compact enough.

Corporate Practices and the Rights to Food and to a Decent Standard of Living

37. In strategic industries such as oil—the backbone of the Philippine economy, and rice—the main staple of all Filipinos, corporate practices such as hoarding, price manipulation, and the operation of cartels and monopolies have disastrous effects on fundamental rights. It is important to note that higher prices of strategic products alone do not necessarily constitute a human rights problem. But the combination of higher prices, lower wages, and lower productivity could. This is the situation facing the country today.
38. Throughout 1999, three giant oil companies (Caltex, Shell and Petron) raked in billions of Pesos in profits. For the seventh time, in 8 months, prices of oil products were increased. Following the series of price increases in oil products, public transportation fares also increased. The series of oil price hikes produced a chain reaction of increases in production and operations costs, and in prices of commodities and services. The resulting raise in transportation fares also sparked a chain of additional increases in the cost of business operations and in the prices of goods and services.
39. After 26 years of state regulation, the oil industry was deregulated through Republic Act 8180. This law was successfully challenged as being constitutionally infirm in 1997.²⁴ Congress subsequently passed a new law, Republic Act 8479, which was also challenged before the Supreme Court. The Court upheld the validity of Republic Act 8479.²⁵ As a result, oil companies have the freedom to increase oil prices arbitrarily. And they do so, through price manipulation and cartel-like operations, as evidenced by the oil prices of different companies that differ with each other by only a few centavos. In the first case, the Supreme Court found that the oil industry was operating like an oligopoly.²⁶ Yet surprisingly, in the later case, the Supreme Court found no evidence of cartel-like operations and price manipulation in the oil industry.
40. Rice traders in the Philippines have also engaged in price manipulation; this is often accompanied by hoarding, particularly when there is a severe shortage of rice. Any drastic fluctuation in the price of rice can cause spillover effects on the rest of the economy. This, the country experienced in 1995. At the height of the 1995 rice crisis, when the price of rice reached Peso 80.00 per kilo,²⁷ government began a campaign against rice hoarders and profiteers. More than 300 business establishments were closed, and over 600 persons arrested. There emerged a rice cartel, reportedly composed of seven rice and grains businessmen, who control a major share of the market, and rule over the industry, engaging in hoarding and price manipulation.

Corporate Practices and Water Rights

41. Water is an essential ingredient in nutrition and therefore a basic component of the rights to food and to health. Many of the leading causes of infant mortality in the country are water-borne diseases, and diseases that are both preventable and curable. Only 69 % of the entire population have access to safe and potable water. The crux of the issue is whether a strategic and crucial service such as water provision should be placed in the hands of private corporations that are guided by profit, not social responsibility.
42. A few years ago, the provision of water services was a state responsibility. In an effort to raise funds to meet its bludgeoning budget deficit, government decided to privatise water services. Thus, in Metro Manila, the state-owned Metropolitan Waterworks and Sewage System (MWSS)

²⁴ *Lagman v. Torres*, G.R. No. 127867, 5 November 1997.

²⁵ *Garcia v. Corona, et. al.*, G.R. No. 132451, 17 December 1999.

²⁶ *Lagman v. Torres*, G.R. No. 127867, Resolution on Motion for Reconsideration of Decision, 3 December 1997.

²⁷ Up from an average price of Peso 10.25 per kilo.

entered into 25-year concession agreements with two companies. Water services in private hands were supposed to be improved; access to water was supposed to have been universal; water quality was to have been of such high standards.

43. This, however, did not occur with the privatization of the water service. Residents in Metro Manila suffered severe shortages of water, with water being rationed to less than an hour a day in some parts of the metropolis. Worse, the quality of the water was so bad that what often came out of water pipes was black, muddy, yellow, and stinky water. The Philippine food and drug authority tested the water and found that it contained faecal matter. Many residents complained of skin diseases and infections as a result of exposure to water. Key targets for improving water pressure, leakage control and widening the service area coverage were not met by the two concessionaires. To make matters worse, both water companies petitioned the MWSS for an increase in the price of water,²⁸ with one company asking for as much as 210 % increase. MWSS did grant an increase but it was below that applied for; the concessionaire appealed the decision and sought the creation of an arbitration panel.
44. Under the concession agreement, all disputes that cannot be resolved through consultation and negotiation will be resolved in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The UNCITRAL Rules call for the creation of an arbitration panel, headed by an appointee of the International Chamber of Commerce (a foreigner). The decision of the arbitration panel is final and binding on all the parties.
45. The arbitration panel convened, and subsequently held closed-door hearings in Manila in September 1999. The panel agreed to increase the price of water services in Metro Manila; the approved increase closely paralleled the increase sought by one of the two concessionaires. The increase takes effect in the year 2000.

Corporate Practices and the Right to Property

46. For many Filipinos, a bank is a stable institution—a safe and secure haven for one’s hard-earned savings. This attitude may no longer hold true today, with the collapse of 8 thrift banks, 18 rural banks and one commercial bank. Thousands of depositors were severely affected by the failures in the banking industry. Perhaps the most affected depositors were those of the Orient Commercial Banking Corp., the first commercial bank ordered closed by the Central Bank in more than 10 years. A group of depositors stand to lose 2.4 billion Pesos in uninsured deposits with the bank. At least 3 depositors suffered fatal heart attacks brought on by emotional distress at losing hard-earned funds.
47. Orient Bank is a commercial bank owned by a family with interests in retail, property development, banking, telecommunications, manufacturing, mining and hospital services. The Central Bank found that Orient Bank had Peso 6.1 billion in non performing loans, of which Peso 5.8 billion were determined to be “insider” loans or loans to the bank’s directors, officers, shareholders and other related interests (DOSRI).
48. Under general banking rules, commercial bank loans to DOSRI should not exceed 15 % of a bank’s total loan portfolio or 100 % of a bank’s adjusted net worth, whichever is lower. Violators of these rules face imprisonment and fines up to Peso 300,000.00.

²⁸ The application for an increase came in the form of extraordinary price adjustments arising from losses due to the devaluation of the Peso and the effects of El Niño.

49. Also known as connected lending, DOSRI loans have been identified as the major culprit of bank failures in the 1980s to early 1990s. DOSRI loans are often cited as a key problem in developing countries. That the Central bank allows DOSRI loans implies there is nothing inherently wrong with it as long as borrowers are subjected to same conditions imposed on any third-party borrowers. But rules on insider lending are difficult to apply in cases where a shareholder or a senior management officer exerts substantial influence on a bank's operations.
50. It took 8 months for the Central Bank to finally decide to place Orient Bank under receivership; the 8-month bank holiday is reportedly the longest in the world. In December 1999, the Central Bank finally filed criminal suits against the principal shareholders and officers of Orient Bank for siphoning off billions of Pesos in bank funds that led to the collapse of the bank. Charges include 34 counts of falsification of commercial documents and a single charge of violating the General Banking Act, specifically the ceiling on DOSRI loans.

CORPORATE LIABILITY FOR HUMAN RIGHTS TRANSGRESSIONS UNDER PHILIPPINE LAW AND JURISPRUDENCE

51. Under Philippine law and jurisprudence, two doctrines govern corporate liability: the independent personality and piercing the veil of a corporate entity. Philippine jurisprudence has adopted the general rule that a corporation may not be made to answer for the acts or liabilities of its stockholders or those of legal entities to which it may be connected and vice versa. "It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. As a general rule, a corporation may not be made to answer for acts or liabilities of its stockholders or those of the legal entities to which it may be connected and vice versa."²⁹
52. The corporate fiction of independent personality may be disregarded under the doctrine of "piercing the veil of a corporate entity" if the notion of separate entity is used to defeat public convenience, justify a wrong, protect fraud or defend crime.³⁰ "The theory of corporate entity, in the first place, was not meant to promote unfair objectives or otherwise to shield them. This Court has not hesitated in penetrating the veil of corporate fiction when it would defeat the ends envisaged by law."³¹
53. Generally speaking, Philippine law and jurisprudence do not regulate corporate activity to ensure respect for human rights. Philippine law and jurisprudence treat some human rights transgressions as felonies or criminal offences, carrying penal and/or civil liability or as torts, delicts or quasi-delicts, carrying civil liability.³²

²⁹ *Palay, Inc. v. Clave*, 124 SCRA 638, 646 (1983), citing *Yutivo Sons Hardware Co. v. Court of Tax Appeals*.

³⁰ Jose N. Nollado, *Commercial Laws of the Philippines with Introductory Features*, National Book Store, Inc., Metro Manila, 1996 Reprint, p. 1; see also *Cease v. Court of Appeals*, 93 SCRA 483, 495-496 (1979), citing *Laguna Transportation Co. v. SSS*, *La Campana Coffee Factory Inc. v. Kaisaban ng mga Manggagawa sa La Campana*; *Emiliano Cano Enterprises Inc. v. CIR*, *McConel v. Court of Appeals*, *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, *R.F. Sugay & Co. v. Reyes*, *Gregorio Araneta, Inc. v. Tuason de Paterno*, *Commissioner of Internal Revenue v. Harrison Co.*, and *Koppel [Phil] Inc v. Yatco*. See also *Guerrero v. Court of Appeals*, 126 SCRA 109 (1983); *NAFLU v. Ople*, 143 SCRA 124 (1986); *Remo v. Intermediate Appellate Court*, 172 SCRA 405 (1989); *Cagayan Valley Enterprises, Inc. v. Court of Appeals*, 179 SCRA 218 (1989); *Tan Boon Bee & Co. Inc. v. Jarencio*, 163 SCRA 205 (1988); and *Telephone Engineering & Service Co. Inc. v. WCC*, 104 SCRA 354 (1981).

³¹ *Villanueva v. Adre*, 172 SCRA 876, 885 (1989), citing *Laguna Transportation Co., Inc. v. SSS*.

³² A quasi-delict is limited to negligent acts or omissions and excludes the notion of wilfulness or intent. Tort is much broader than quasi-delict because it includes not only negligence, but intentional criminal acts as well such as assault and battery, false imprisonment and deceit. *Baksh v. Court of Appeals*, G.R. No. 97336, 19 February 1993.

54. In general, a corporation cannot be held criminally liable. While the Supreme Court has recognized that “that there are various penal laws in the Philippine Islands which corporations as such may violate,” there is no provision in the law relating to practice and procedure in criminal actions governing corporations. Thus, absent such procedure and special processes for carrying out penal statutes against corporations, corporations may not be held criminally liable for any penal offence the corporation may commit.³³ In a later decision, the Court ruled that if the accused is a corporation, no criminal action can lie against it, whether such corporation is a resident or non-resident corporation.³⁴
55. While a corporation cannot be held criminally liable, its officers and members may be. A survey of Philippine law indicates that, as a general rule, corporations may be subject to fines but their officers may be subject to imprisonment, for various offences that may be committed by the corporation. These offences involve a whole range of corporate activities injurious to human rights.³⁵
56. A corporation may be held subsidiarily liable as an employer for the criminal acts of its employees in accordance with Article 103³⁶ of the Revised Penal Code. Civil liability includes restitution, reparation of damage caused, and indemnification for consequential damages.³⁷ The Supreme Court, however, has set certain requisites for an employer to be held subsidiarily civilly liable for the criminal acts of its employees. These are: (a) the employee committed the crime while in the discharge of his duties; (b) the employee is insolvent and has not satisfied his civil liability; and (c) the employer is engaged in some kind of industry.
57. A corporation may also be held solidarily liable for acts of negligence, omission or tortious acts committed by an employee under Philippine civil law. “When an injury is caused by the negligence of an employee, there instantly arises a presumption of law that there was negligence on the part of the employer either in the selection of the employee or in the supervision over him after such selection.”³⁸
58. Persons injured by corporate acts or activities may also resort to Article 21 of the Civil Code for damages arising from “untold number of moral wrongs which is impossible for human foresight to specifically enumerate and punish in the statute books.”³⁹

³³ *West Coast Life Insurance Co. v. Hurd*, G.R. No. 8527, 30 March 1914.

³⁴ *Time, Inc. v. Reyes*, 39 SCRA 303.

³⁵ See Republic Act 7610—Special Protection of Children Against Child Abuse, Exploitation and Discrimination, Republic Act 7877—Anti Sexual Harassment Act of 1995, the Magna Charta for Disabled Persons, the Corporation Code, Republic Act 7581—Price Act, Republic Act 7394—Consumer Act of the Philippines, Presidential Decree 1866, as amended—Illegal Possession of Firearms, Labor Code, Republic Act 7875—National Health Insurance Act of 1995, Republic Act 7641—Retirement Pay Law, Republic Act 8187—Paternity Leave Act of 1995, Republic Act 1161 as amended by Republic Act 8282—Social Security Law of 1997, Republic Act 6969—Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990, Presidential Decree 463—Mineral Resources Development Decree of 1974, Presidential Decree 1198 and Revised Rules and Regulations Implementing PD 1251 as Amended (DENR Administrative Order No. 85, Series of 1990).

³⁶ Article 103 of the Revised Penal Code provides for the subsidiary civil liability of other persons, including corporations engaged in any kind of industry, for felonies committed by their employees in the discharge of their functions.

³⁷ Article 104, Revised Penal Code.

³⁸ *China Air Lines, Ltd. V. Court of Appeals*, 185 SCRA 449, 459 (1990), citing *Layugan v. Intermediate Appellate Court*. “Under (Article 2176 of the Civil Code), all that is required is that the employee, by his negligence, committed a quasi-delict which caused damage to another, and this suffices to hold the employer primarily and solidarily responsible for the tortious act of the employee.”

³⁹ *Baksh v. Court of Appeals*.

59. In environmental litigation, foreign corporations not doing business in the Philippines may be sued for acts done against persons.⁴⁰ Environmental litigation in the Philippines involves civil actions and class suits, and is an emerging field of legal advocacy.
60. Philippine law and jurisprudence have a dichotomous way of viewing corporate liability for injuries to life and integrity of the person arising from acts or omissions of employees or agents of corporations. Under the Labor Code, for instance, Article 265 expressly prohibits employers from obstructing, impeding or interfering with by force, violence, coercion, threats or intimidation any peaceful picketing by employees during any Labor controversy or in the exercise of their rights. It also prohibits employers from aiding and abetting such obstruction or interference. The article provides for resort to appropriate civil and criminal action but mandates that if the act is at same time a violation of Revised Penal Code, a prosecution under the Labor Code shall preclude prosecution for the same act under the Revised Penal Code or vice versa.
61. The Supreme Court has held that a corporation is not liable for any illegal or harmful acts committed by security guards. This general rule, however, does not apply to schools and educational institutions.⁴¹ Neither does the general rule apply to common carriers.⁴²

CORPORATE SUPERVISORY, MONITORING, ADJUDICATION AND REGULATORY BODIES CREATED UNDER PHILIPPINE LAW

62. While various Philippine laws created bodies with monitoring, adjudication and regulatory powers, the efficacy of these bodies remains in question. Corruption and bribery are an almost standard feature in corporate relationships with these bodies. In informal discussions, Filipino businessmen claim that while they would prefer not to buy-off regulatory bodies—and courts, they are compelled to do so otherwise they stand to lose all disputes (even meritorious ones)

⁴⁰ E. Paras, *Comments on the Eules of Court*, Volume 1, p. 13.

⁴¹ In a series of cases, the Supreme Court has adopted a twin rationale for holding educational institutions, the president and the teachers liable for damage inflicted upon students of said institution. First, the Court has ruled that “persons exercising substitute parental authority are made responsible for damage inflicted upon a third person by the child or person subject to such substitute parental authority.” *Palisoc v. Brillantes*, 41 SCRA 548, 556-557 (1971). The second rationale for holding schools, the president and teacher-in-charge liable for injuries suffered by students is the existence of an implied contract between a school which accepts students for enrolment, and the students who are enrolled, on the other hand, which contract results in obligations for both parties. The Court ruled that acts which are tortious or allegedly tortious in character may at the same time constitute a breach of a contractual or other legal obligation. *PSBA v. Court of Appeals*, 205 SCRA 729, 733-734, 735-736 (1992).

⁴²“The law is clear in requiring a common carrier to exercise the highest degree of care in the discharge of its duty and business of carriage and transportation under Articles 1733, 1755 and 1756 of the New Civil Code. x x x The duty to exercise the utmost diligence on the part of common carriers is for the safety of passengers as well as for the members of the crew or the complement operating the carrier. And this must be so for any omission, lapse or neglect thereof will certainly result to the damage, prejudice, nay injuries and even death to all aboard.” *Philippine Air Lines, Inc. v. Court of Appeals*, 106 SCRA 391, 406-407 (1981). “The rationale of the carrier’s liability is the fact that ‘the passenger has neither the choice not control over the carrier in the selection and use of the equipment and appliances in use by the carrier.’ When a passenger dies or is injured, the presumption is that the common carrier is at fault or that it acted negligently. This presumption is only rebutted by proof on the carrier’s part that it observed the “extraordinary diligence” required in Article 1733 and the “utmost diligence of very cautious persons” required in Article 1755.” See *Landingin, et. al. v. Pangasinan Transportation Co., et. al.*, G.R. Nos. L-28014-15, 29 May 1970, citing *Necesito, et. al. v. Paras, et. al.*, 104 Phil 75. See also *Eastern Shipping Lines, Inc. v. Intermediate Appellate Court*, 150 SCRA, 464 (1987); *Air France v. Carrascosa*, 18 SCRA 166 (1966); *Lopez v. Pan American World Airways*, 16 SCRA 431 (1966); *Zulueta v. Pan American World Airways*, 49 SCRA 1 (1973); *Armovit, et. al. v. Court of Appeals, et. al.*, G.R. No. 88561, 20 April 1990; *Abeto, et. al. v. Philippine Airlines*, G.R. No. L-28692, 30 July 1982; *Gacal, et. al. v. Philippine Airlines, et. al.*, G.R. No. 55300, 15 March 1990; *Davila, et. al. v. Philippine Airlines*, G.R. No. L-28512, 28 February 1973; and *Nocum v. Laguna Tayabas Bus Company*, G.R. No. L-23733, 31 October 1969.

brought before these bodies. Corruption is often cited as among the barriers to investment in the country.

63. Raising concerns about corruption is Executive Order No. 60⁴³ placing the Securities and Exchange Commission (SEC) under the supervision, control and direction of the President. The executive order places under the President's supervision "all functions, administrative or otherwise, including the review of all matters not expressly appealable to the Court of Appeals." The SEC regulates all stock corporations and other corporate enterprises; it is a quasi-judicial body also tasked to regulate the securities market. This executive order puts into question SEC's independence, impartiality and integrity. It now becomes much easier for businessmen with access to the President to influence the outcome of disputes before SEC, including manipulation of the securities market.
64. Other problems plague regulatory bodies in the country. Chief among these are the lack of capability of regulatory bodies and the lack of clear-cut lines of responsibility among various regulatory bodies tasked to oversee essentially the same industries.
65. Lack of clear-cut lines of responsibility perhaps due to inconsistent laws has led to infighting between regulatory bodies—and ultimately non-performance or weak performance of functions. The supervision and regulation of HMOs, for instance, is almost non-existent, mainly because of the tug-of-war over jurisdiction between the Insurance Commission and the SEC. This dispute remains unresolved to date. Fudging in terms of monitoring responsibilities between the Coast Guard and the Maritime Industry Authority has caused operational and enforcement difficulties over the shipping industry, with one agency trading barbs against the other. In the end, the lack of clear-cut lines of responsibility make it almost impossible to determine which of the agencies failed to perform its mandated tasks. Thus, there is a need to rationalise the different laws to clarify which agency has supervisory and regulatory powers over which industry.
66. The lack of capability of regulatory and monitoring bodies is an almost standard feature of the different regulatory agencies in the country.
67. The Regulatory Office of the MWSS is supposed to function as an independent body, yet it reports to the MWSS board of trustees. Its tasks are dual: to ensure that the parties comply with the agreement and to resolve issues that may arise. Crucial to the performance of its tasks is its ability to verify independently the information that concessionaires provide; but it has a limited capability for monitoring the technical, financial and customer-related issues of concessionaires. To date, regulation has been limited to post audit activities of reports submitted to the office. But these reports are intermittent and the Regulatory Office is far too dependent on the information provided by the concessionaires. Tariff review is also part of the responsibilities of the Regulatory Office. But tariff review is based on costs that are again provided by concessionaires. Finally, the Regulatory Office is also mandated to define the parameters of exacting penalties when concessionaires fail to meet their service obligations. To date, no such parameters have yet been adopted—nor made public.
68. The Housing and Land Use Regulatory Board (HLURB) was created under Executive Order No. 90. It is mandated to exercise regulatory and quasi-judicial functions over unsound real estate business practices, complaints and disputes between buyers and owners and developers, and cases involving specific performance of contractual and statutory obligations between buyers and owners and developers. The Local Government Code, however, devolved to local government units the power to approve subdivision projects in their jurisdictional area—a power that used to belong to HLURB. As the collapse of Cherry Hills shows, neither the HLURB nor the local government unit had the capacity to monitor nor supervise the construction of the project to

⁴³ issued on 13 January 1999.

determine compliance with safety requirements. Building officials apparently were remiss in reviewing the blueprints of development plans. The Ombudsman ordered the dismissal of 5 officials from the environmental and housing regulatory bodies for failing to ensure that Cherry Hills Subdivision met state-set safety standards.

69. The Central Bank and the Monetary Board are tasked to monitor and regulate the activities of financial banks, institutions and intermediaries in the Philippines. Their reaction to the collapse of the Orient Bank, however, raised questions as to their ability to perform these tasks effectively. Both the Central Bank and the Monetary Board have been publicly criticized for their handling of the Orient Bank collapse.⁴⁴ Both bodies were also criticized for the “knee-jerk reaction” to the collapse of the different banks, and the untimely—often too late—reactions to bank failures.

VIABILITY OF DEVELOPING HUMAN RIGHTS STANDARDS, FOR CORPORATIONS IN THE PHILIPPINES

70. In the Philippines, it is important to adopt standards to balance corporate rights and powers with the rights and freedoms of others and with the reasonable demands of society. In balancing the rights and interests of corporations, individuals and society, limits must be set to the use of corporate power. These limits must conform to pre-established standards found in the international bill of rights, national constitutions, and international human rights law. Thus,
- Corporate activities and practices should not adversely affect recognized rights and freedoms.
 - Corporate activities and practices must be compatible with a democratic society; and
 - Corporate activities and practices should not be aimed at the destruction of any human right.
71. These rules are expressly provided for under Philippine law. Articles 19, 20 and 21 of the Civil Code provide that the exercise of a right is forbidden if it has no other purpose than to injure another. In the exercise of rights and the performance of duties, no one may abuse the rights of others.
72. A major difficulty arising from the adoption of such rules is the lack of understanding of human rights in the business community. The concept of social responsibility while relatively new has lost a lot of its meaning due to the economic crisis.
73. Several issues still need to be addressed to ensure the effectivity of human rights standards for corporations in the Philippines. These include:
- Should human rights standards and principles governing corporate activities be graduated or prioritised, i.e., higher standards for strategic industries and those industries serving the public welfare (transportation, communication, public utilities, etc.)?
 - Should human rights standards be adopted per industry. What standards, for instance, should govern real estate developers providing low-cost housing?

⁴⁴ The 8-month bank holiday raised questions about the “kid glove” treatment of the bank by the two bodies.

- What procedures or special processes need to be adopted to enforce the criminal liability of a corporation? What range of fines and/or damages will act as deterrence against corporate practices and activities that are harmful to human rights?
- What is the responsibility of the parent-corporation for acts injurious to human rights that may be committed by the branch office, representative office, regional headquarters or regional operating headquarters established in the Philippines?