



# RED FLAGS

LIABILITY RISKS FOR COMPANIES  
OPERATING IN THE PHILIPPINES

This document is the locally-adapted RED FLAGS Liability Risks for Companies  
Operating in High-Risk Zones published by International Alert and Fafo



The **Red Flags** are an indispensable tool alerting companies to risks that may contribute to serious human rights abuses -- enabling them to change their plans before harm occurs.

Professor John Ruggie,  
UN SRSG for Business & Human Rights

The legal liabilities of a company operating internationally are not limited to domestic laws in the countries where it operates. Laws at home and in third countries may also apply. As new international standards are incorporated into national laws, courts are taking a more expansive view of legal responsibility. It is thus imperative to know more about the web of liability and exercise due diligence.

Companies, their board members, executives, or employees, can all be held accountable for corporate and individual actions. Liability can also arise when crimes are committed by others, such as business partners and security providers. Crimes committed near company operations by others may also generate liability.

Even inaction may result in liability. Ignorance is no defense. Industry codes of conduct and international guidelines are useful signposts, but they may not be sufficient to ensure that companies steer clear of these liabilities.

## Why Red Flags?

A Red Flag is a warning of heightened risk. This document is an attempt to communicate, in simple, clear terms, the nature of liability risk based on research into recent case law. 'Liability risk' is operationally defined as potentials for litigation.

The Red Flags seek to help companies in the Philippines avoid participation in human rights abuses and be accountable in cases where they are liable. Company compliance officers, legal counsels, risk analysts and others involved in risk management will find this a useful guide. It may also be useful for communities who seek to better understand their rights in relation to claim-making and negotiation.

Learn about activities and cases that should raise a 'red flag' warning of potential legal risk and the need for urgent action. **These cases are drawn from Philippine and international law, but this document does not constitute legal advice.** Further inquiries may be sent to the International Alert Philippines office.



# RED FLAGS

## 1 Expelling people from their communities

The threat or use of violence to force people out of their communities can be a crime under international law. A company may face liability if it has gained access to the site on which it operates, where it builds infrastructure, or where it explores for natural resources, through forced displacement.

Indigenous peoples are often vulnerable to displacement from their ancestral lands because of the weak recognition and legal enforcement of their rights. Under the Indigenous Peoples Rights Act (IPRA) of 1997, indigenous cultural communities have the right to own and possess their ancestral domains, which shall be protected by the State. They cannot be relocated without their free, prior, and informed consent (FPIC). Where relocation is considered necessary as an exceptional measure, indigenous peoples shall be guaranteed the right to return to their ancestral domains as soon as the grounds for relocation cease to exist. When return is not possible, as determined by agreement or through appropriate procedures, they shall be provided with land of equivalent quality and legal status to the land they previously occupied, suitable to provide for their present needs and future development.

*The Philippines Commission on Human Rights (CHR) recommended the withdrawal of the Financial and Technical Assistance Agreement (FTAA) of a mining company operating in Northern Luzon after the Commission's investigation found that the company illegally demolished about 200 houses in the community accompanied by excessive violence and brutality by its privately-hired security guards. Indigenous peoples rights were alleged to have been violated with the company fencing off large sections of roads and pathways of the 17,626 hectares of mineral lands under the FTAA, restricting the community's social and economic activities. The Committee on National Cultural Communities of the Philippine Congress also conducted its own investigation in 2008, and saw that the company did not follow the required FPIC process, violated indigenous people's rights, and failed to report its FTAA to Congress, as required by law.*

## 2 Forcing people to work

Companies using people working against their will through threat or use of violence may face liability. The use of such labor by a joint venture partner or state security forces may also pose a liability risk.

Republic Act 9208 otherwise known as Anti-Trafficking of Persons Act of 2003 penalizes (a) trafficking of persons; (b) acts that promote trafficking of persons; and (c) qualified trafficking of persons. Forced labor and slavery is defined in the Act as the extraction of service from any person by means of enticement, violence, intimidation, use of coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage, or deception.

*In 1993, the National Bureau of Investigation (NBI) and the Department of Labor and Employment (DOLE) raided a sardine factory where minors were allegedly being forced to work under hazardous conditions. The minors claimed that they were not permitted to go out of the factory premises and communicate with their family. They said that they were padlocked in a small storage room, and those who broke the rules were beaten up, denied food, and subjected to verbal abuse. The company was ordered to shut down, but in another raid 100 children workers were discovered in equally degrading conditions. The company was later charged with forced labor, slavery, and child abuse.*



## 3 Handling questionable assets

Receiving funds that may have been associated with criminal activities exposes companies and individuals to legal risks. Holding, managing, or hiding such funds, including funneling suspicious funds into legitimate financial channels, may result in prosecution and lawsuits.

Republic Act 9160 or the Anti-Money Laundering Act (AMLA) of 2001 defines laundering as the process of bringing or transacting the proceeds of an unlawful activity to make them appear to have originated from legitimate sources. 'Unlawful activity' refers to any act or omission or combination thereof involving such activities as kidnap for ransom; drug trafficking; bribery and graft; plunder; robbery and extortion; illegal gambling; piracy on the high seas; qualified theft; swindling; and smuggling. Other unlawful activities are violations of the Electronic Commerce Act of 2000; hijacking, arson and murder; fraudulent practices and other violations of the Securities Regulation Code of 2000; and, felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

*A senior officer of a large Philippine bank turned state witness in the impeachment trial of former President Joseph Estrada in 2001. The bank officer provided evidence to substantiate allegations that the former president kept a multimillion-peso account under an alias, an account believed to have been funded with proceeds from illegal gambling (jueteng). The Officer's testimony was used as evidence in the plunder case filed with the Philippine Sandiganbayan anti-graft court, which pronounced Estrada guilty as charged. This testimony and those of others later shaped the enactment of the AMLA.*

## 4 Making illicit payments

Any significant off-the-book financial transaction may create legal liabilities under laws against corruption or bribery. Charges may be brought outside the country or where the transaction had taken place. Even where corruption is a common occurrence, a liability risk remains.

Republic Act 3019 or the Anti-Graft and Corrupt Practices Act provides that it shall be unlawful for any person to knowingly cause any public official to commit offenses that constitute corrupt practices. Relevant offenses include (a) influencing another public officer to perform an act violating duly promulgated rules and regulations; (b) directly or indirectly requesting or receiving gifts or benefits for himself or for any other person in connection with any transaction with the Government, such as securing permits or licenses; (c) causing any undue injury to any party, including the Government, or giving any private party unwarranted benefit or preference in the discharge of administrative or judicial functions; and (d) directly or indirectly becoming interested, for personal gain, in any transaction requiring the approval of a board, panel, or group of which s/he is a member.

*The Philippine government filed a civil suit in a U.S. court in 1988 against American company Westinghouse Electric Corporation, alleging that the company paid \$17 million in bribes for a contract to build the \$2.2-billion nuclear power plant in Bataan. The Philippine prosecutor claimed that Westinghouse and its affiliate, Burns and Roe, funneled millions to then President Marcos's Swiss bank accounts through a Marcos associate. This associate was alleged to have ensured that the contract would be awarded to the company. The U.S. Justice Department and the Securities and Exchange Commission investigated the allegations, but filed no charges. Though the court and the Swiss Federal Supreme Court acquitted Westinghouse and its affiliate in 1993, the reputation of a leading American brand was damaged.*



## 5 Engaging abusive security forces

The use of disproportionate force by government or private security forces acting on behalf of a company can create liabilities for the company itself. These liabilities may arise even where the actions of the security forces (e.g., killing, beating, abduction, rape) were neither ordered nor intended by the company. Legal risks may be greater where security forces have a history of abusive conduct.

The Philippine Constitution declares that paramilitary groups, private armies, and other unauthorized armed groups should be dismantled. Administrative Order 275 of 2009 established a commission to dismantle private armies of political clans, among others. Pending bills in Congress disallow private armies and mete stiffer penalties for violators. The proposed legislation seeks to penalize not just the leaders and members of a private armed group but also its protectors, financiers, and suppliers.

*A fully-owned subsidiary of a British corporation entered into a joint-venture with the Philippines National Development Corporation to develop an 8,000-hectare oil palm plantation in Agusan del Sur in the 1980s. The company hired a local, clan-based paramilitary group as its security force. The company came under fire in the United Kingdom after an international NGO accused the company of land grabbing and violent abuses, including rape, intimidation, harassment, extortion, and summary executions perpetrated by the security force. The public outcry imperiled the company's British and World Bank development loans and later pushed the British government to rethink its role in the project and to pressure the company to change its security force.*

## 6 Trading goods in violation of international sanctions

A company may be held liable for buying, selling, or transporting products, commodities, or assets originating from or going to a country, group, or individual under international sanctions. While the most common embargo is on arms, sanctions are being imposed on commodities, such as diamonds and timber, and on financial assets.

The Human Security Act of 2007 penalizes the illegal possession, manufacture, acquisition, or disposition of firearms, ammunitions, or explosives, toxic substances, and other hazardous and nuclear waste by any person or business without permission from the government. Violations of the Act can result in charges of terrorism, with up to 40 years of imprisonment as punishment. Under the Philippine Revised Penal Code, a person can also be criminally liable either as accomplice or accessory.

*A Philippine chemical distribution company has been investigated for indiscriminately selling highly unstable substances that go into improvised explosive devices (IEDs). Trading in these substances is monitored rigorously by INTERPOL and other international security agencies. Cases were filed against the company for deliberate failure to regulate the selling of these substances. This company was also linked to criminal activities involving IEDs in illegal fishing in the city where the firm was based and in nearby towns.*



## 7 Allowing use of company assets for abuses and other crimes

Company facilities and equipment used in the commission of crimes can create liability for the company, even if it did not authorize or intend such use of those assets.

The provisions of Philippine Criminal Law in Relation to Corporations applies to this case. In the Revised Penal Code, a crime can only be committed by a natural Person, and not juridical persons, such as corporations. If the punishment for a crime is imprisonment, a juridical person or an artificial being, such as a corporation, cannot be imprisoned. But, a corporation's directors, trustees, or officers may be held criminally and civilly liable, if found to have assented to the illegal act. A director, trustee, or officer of a corporation can be personally liable for his/her unlawful acts, both criminally and civilly. Under the Corporation Code of the Philippines, directors, trustees, or officers who wilfully and knowingly vote for or assent to patently unlawful acts of a corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation, or acquire any personal or pecuniary interest in conflict with their duty as directors or trustees shall also be liable jointly and severally for all damages resulting there from that is suffered by the corporation, its stockholders, or members, and other persons. The "doctrine of piercing the veil" of corporate entity, applies when the corporate fiction is used to defeat public convenience, justify a wrong, protect fraud, or defend a crime. It likewise applies when it is made as a shield to confuse legitimate issues, or where a corporation is the mere alter ego or business conduit of a person.

*A metal and steel fabricating company in Western Mindanao failed to implement strict regulations on the use of its machinery by employees. Upon investigation, the company's facilities were found to have been used in the illegal manufacture of firearms that were smuggled locally. The company management claimed that they were unaware of the criminal act. However, they were later charged as an accessory to the crime committed by some of their employees. A case has been filed against the company.*





## 8 Providing the means to kill

Business may face liabilities if they provide weapons or dual-use equipment to governments or armed groups who use those products to commit atrocities. This may be the case even where import and export regulations are fully respected.

The same rules falling under criminal law pertaining to corporations and the Human Security Act of 2007 applies to this red flag.

*A private company operating a vital public facility harnessed the government's paramilitary auxiliaries to protect their facilities and operations in a town in northwestern Mindanao. The transaction involved the provision of allowances, operational funds, and additional weapons to the armed unit to secure its properties and assets. In 2006, complaints of harassment, intimidation, and extortion were filed by town residents against the security group hired by the company. Despite local protests the company has yet to act on the complaints.*

## 9 Financing local and international crimes

Providing financial resources to those who commit international crimes may result in liability, if those resources substantially contribute to those crimes being committed. The risk of liability increases if the company persists in doing business with the violators, particularly once the violations become common knowledge.

The same rules falling within criminal law in relation to corporations and the Anti-Money Laundering Act of 2001 applies to this red flag.

*Investigations were made soon after the 1986 EDSA uprising about the links of Ferdinand Marcos to Saudi arms dealer Adnan Khashoggi. It was alleged that Khashoggi had helped Marcos loot the Philippine treasury, and that the nation's gold bars were sold through the Saudi businessman. An equally critical issue was whether the financial transactions between Marcos and Khashoggi included investments in the latter's arms trading business. These surfaced after documents in the case revealed that Khashoggi was the conduit for the arming of the Nicaraguan contras in the ill-fated Iran-contra deal, a controversy that beleaguered then US President and Marcos-ally, Ronald Reagan. The financial links to international crime continued to linger despite the 1990 acquittal of Imelda Marcos (Marcos' widow) and Adnan Khashoggi for racketeering and fraud by a US federal jury in Manhattan, New York.*







In Mindanao, key stakeholders from the business sector and civil society have signed a Memorandum of Understanding to promote the 'Red Flags' in business practices that could potentially lead to or exacerbate conflict.



**British Embassy  
Manila**

<http://ukinthephilippines.fco.gov.uk>

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If you are interested in being part of this initiative, please contact us at:

**International Alert**

**Philippines Programme**

105 Philippine Social Science Council  
Commonwealth Ave., Diliman  
Quezon City, 1101 Philippines  
Telephone/Fax +63 (0)2 352 3016  
Mindanao office +63 (0)82 226 3932  
Email [alertphil@international-alert.org](mailto:alertphil@international-alert.org)

**International Alert UK**

346 Clapham Road, London SW9 9AP  
United Kingdom  
Tel +44 (0)20 7627 6800  
Fax +44 (0)20 7627 6900  
Email [general@international-alert.org](mailto:general@international-alert.org)  
[www.international-alert.org](http://www.international-alert.org)

More information, including cases that illustrate the kinds of liabilities associated with particular Red Flags, can be downloaded from [www.redflags.info](http://www.redflags.info)

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