



Mahesti Hasanah

Between the domination of transnational companies and its discourse on business and human rights

Contract farming and banana small farmers in the Davao Region (The Philippines)

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BETWEEN THE DOMINATION OF TRANSNATIONAL
COMPANIES AND ITS DISCOURSE ON BUSINESS AND
HUMAN RIGHTS:
CONTRACT FARMING AND BANANA SMALL FARMERS IN
THE DAVAO REGION
(THE PHILIPPINES)

FOREWORD

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- Hasanah, Mahesti *Between the Domination of Transnational Companies and Its Discourse on Business and Human Rights: Contract Farming and Banana Small Farmers in the Davao Region (The Philippines)*, Supervisor: Ryan Jeremiah D. Quan, Manila University. Master's Programme in Human Rights and Democratisation in Asia Pacific (APMA), coordinated by Mahidol University.

- Nyemba, Chisomo *Right to Data Privacy in the Digital Era: a Critical Assessment of Malawi's Data Privacy Protection Regime*, Supervisor: Akinola E Akintayo, University of Lagos. Master's Programme in Human Rights and Democratisation in Africa (HRDA), coordinated by Centre for Human Rights, University of Pretoria.

This publication includes the thesis *Between the Domination of Transnational Companies and Its Discourse on Business and Human Rights: Contract Farming and Banana Small Farmers in the Davao Region (The Philippines)* written by Mahesti Hasanah and supervised by Ryan Jeremiah D. Quan, Manila University.

BIOGRAPHY

Mahesti successfully enrolls the Master's degree in Human Rights and Democratisation from Mahidol University Thailand in July 2019. Her academic interests range from business and human; political economy; and women's rights. Her current occupation is working at her undergraduate alumni as a researcher at Research Center for Politics and Government (PolGov), Department of Politics and Government, Universitas Gadjah Mada.

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ABSTRACT

This research examined violations towards small farmers' rights over banana plantations – with the emphasis that the farmers held their agreements with transnational agribusiness corporations in Santo Tomas and Compostela Valley, Davao Region, Mindanao, the Philippines. By focusing on the right to work and the right to enjoyment of safe and healthy work conditions, the study was intended to enrich the existing literature reviews on contract farming (CF). The scholars in this field have explored this issue through many different approaches; however, perspective highlighting the farmers' rights is still infrequently investigated. By using a case study method, the research focused on the implementation process of CF and its impact in the production cycle of small growers. The study conducted interviews and focus group discussions with eight small farmers, two academics, two non-governmental organisations (NGOs) and one journalist and analysed government document policies, and had direct observation of several key events in the field.

The research revealed that the companies governing the small farmers or growers as well as workers affect their social, economic and political aspects. Trans-national companies (TNCs) are controlling the market and the production chain through their subsidiaries or affiliation companies by rejecting the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), obligating them to respect the rights regardless of their size, sector, operational context, ownership and structure. However, since the UN Guiding Principles can be sorted as soft law, the companies do not have an obligation to follow it. Instead, the companies are considered to be violating the right to work and right to the enjoyment of just and safe working conditions of the small farmers and workers. The violations included unfair contract signing, low payment on rented land, minimum wage and unhealthy working conditions. However, as CF is no single phenomenon, it was observed that the small farmers and workers had three strategies in gaining their rights over these domineering companies. They fought using formal and non-formal ways to demand the companies respect and fulfil their rights. This research should be able to strengthen the argument that companies are controlling the small farmers and workers under the CF system through social, economic and political aspects.

Key words: Banana, Contract farming, Farmers' rights, Socio-economic and political control, Philippines

TABLE OF ABBREVIATIONS

ARBs	Agrarian reform beneficiaries
AVA	Agribusiness venture arrangement
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CARPER	CARP Extension with Reforms
CBA	Community based agreement
CF	Contract farming
DAR	Department of Agrarian Reform
DARPO	DAR Provincial Office
DOLE	Department of Labour and Employment
FGD	Focus group discussion
FAO	United Nations Food and Agriculture Organization
FT	Fair trade
GC	General Comment
HRW	Human Rights Watch
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
NAEC	National AVA Evaluation Committee
NAP	National action plan

TRANSNATIONAL COMPANIES, BUSINESS AND HUMAN RIGHTS

NDC	National development corporation
NEDA	National Economic and Development Authority
NEH	Nader & Ebrahim S/O Hassan Phils, Inc
NHRI	National human rights institutions
NLSA	National Land Settlement Administration
NGOs	Non-governmental organisations
OHCHR	United Nations Human Rights Office of The High Commissioner
OSH	Occupational safety health
PARC	Presidential Agrarian Reform Council
PARPO	Provincial Agrarian Reform Officer
PBGEA	Pilipino Banana Growers & Exporters Association
PPE	Personal protective equipment
PSA	Philippines Statistic Authority
RA	Republic Act
TNCs	Transnational companies
UDHR	Universal Declaration of Human Rights
UMA	Unyon Ng Mga Manggagawa Sa Agrikultura
UN	United Nations

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1.

INTRODUCTION

1.1 BACKGROUND

This research will examine small farmers' rights and the dynamics among the farmers in terms of facing the contract farming (CF) system in banana plantations in Mindanao, Philippines. CF has influenced the livelihood of small farmers in many ways, both with its positive and negative impacts. Numerous research has been carried out exploring this theme to prove the influence. By using a human rights-based approach to business, this study will analyse the responsibility of the companies and the small farmers. Furthermore, the study will investigate the phenomenon by using the control approach in CF in order to understand the dynamics of its implementation and understand the endeavour of the small farmers in the banana industry. By combining two methods, the study will not only see the implementation process but also examine the system from the small farmers' side. Henceforth, this research will be contributing to as well as enriching the studies on the CF system.

CF is a globalised mechanism linking small farmers or small growers to a national or transnational company.¹ Since it is a global phenomenon, its complex mechanism involves many actors in economic production; they are companies, government, international donor organisations,

¹ Sachiko Miyata, Nicholas Minot and Dinghuan Hu, 'Impact of Contract Farming on Income: Linking Small Farmers, Packers, and Supermarkets in China' (2009) 37(11) World Development 1781 <www.fao.org/uploads/media/Impact%20of%20contract%20farming%20on%20income%20linking%20small%20farmers%20packers%20and%20supermarkets%20in%20China.pdf> accessed 27 August 2018; Lotte Isegar, Niels Fold and Thobias Nsindagi, 'The Post-Privatization Role of Out-growers' Association in Rural Capital Accumulation: Contract Farming of Sugar Cane in Kilombero, Tanzania' (January 2018) 18(1) Journal of Agrarian Change 196 <<https://onlinelibrary.wiley.com/doi/pdf/10.1111/joac.12197>> accessed 27 August 2018.

middlemen and small farmers in the process of the production chain.² By using vertical integration, the small farmers have a strategic position since they are the main actor producing the commodities. Therefore, it is interesting to see how the CF system has affected their lives in order to examine farmers' rights in the implementation process of it.

This research was carried out in Santo Tomas and Compostela Valley, Davao Region, Mindanao, the Philippines since the industry has a significant and strategic position in the region. The Davao Region was known as the top exporter of bananas in 2016, which valued approximately \$84.85 million.³ As the top banana exporter of the Philippines,⁴ the Davao Region has a vast banana plantation, in total 10,180.05 hectares,⁵ with various farming types. Independent growers cultivated some ranches and others were developed by multinational or corporate-banana producers' companies.⁶ As a result, every change in the Davao Region will affect the dynamics of the banana industry in general. A significant change on banana industry occurred during the administration of President Gloria Macapagal-Arroyo, from 2001 to 2010. Originally, the banana buyers flocked to Davao and bought the harvested bananas directly from the farmers. This activity was then stopped due to its alteration on the banana industry configuration and the fact that it was threatening the big four banana industry actors, ie Dole, Unifrutti, Del Monte and Sumifru,⁷ each of which are vast multinational companies. The Davao Region's valuable contribution to

² Sukhpal Singh. 'Role of the State in Contract Farming in Thailand: Experience and Lessons' (August 2005) 22(2) Institute of Southeast Asian Studies (ISEAS) ASEAN Economic Bulletin 217 <www.jstor.org/stable/25773854> accessed 17 June 2018; Sukhpal Singh, 'Contract Farming System in Thailand' (31 December 2005-6 January 2006) 40(53) Economic and Political Weekly 5578 <www.jstor.org/stable/4417611> accessed 25 June 2018; Anh Tru Nguyen, Janet Dzator, and Andrew Nadolny, 'Does contract farming improve productivity and income of farmers?: a review of theory and evidence' (2015) 49(6) The Journal of Developing Areas 531 <<https://muse.jhu.edu/article/586781>> accessed 27 August 2018; Songsak Sriboonchitta and Aree Wiboonpoongse, 'Overview of Contract Farming in Thailand: Lessons Learned' (2018) 18(1) Journal of Agrarian Change 196 <www.fao.org/uploads/media/ADB1%20contract%20farming%20thailand.pdf> accessed 27 August 2018.

³ Jennie P Arado, 'Banana is Davao Region's top export commodity in 2016' (*Sunstar Philippines*, 18 September 2017) <www.sunstar.com.ph/article/164837> accessed 19 December 2018.

⁴ Cha Monforte, 'Price plunge of cavendish bananas in black market baffles Davao growers' (*Business Mirror*, 23 November 2017) <<https://businessmirror.com.ph/price-plunge-of-cavendish-bananas-in-black-market-baffles-davao-growers/>> accessed 19 December 2018.

⁵ *ibid.*

⁶ *ibid.*

⁷ *ibid.*

the banana industry is not only immense for its economic values but also from a human rights perspective, particularly small farmers' rights, as the industry is noteworthy for the nation since it also involves the CF system. As one of the aims of the CF, the small farmers have a chance to join the global market through the system. However, we need to see the impact of this bridge programme to the small farmers' lives.

CF affects the small farmers' livelihood, specifically on an economic basis. Some studies reveal that the small farmers have gained positive impacts from CF since this contract type was facilitated to increase their income and productivity.⁸ However, many debates on its implementation have also arisen. CF, which should be accommodating the small farmers, went the wrong direction, because it strengthened the role of more prominent farmers, most of them members of the CF association and the company itself. CF supports the more prominent farmers to legitimise and secure their businesses because they are considered as the critical points of the contractual process.⁹ CF can be considered unfair for small farmers, from the drafting process of the contract to the implementation. As a result, it creates numerous problems among the small farmers (ie bank loans and lower prices than in the market), which generate an assumption that CF is exclusive for small farmers due to no negotiation being offered at the beginning. It indicates that the companies turn over all of the risks to small farmers as stated in the contract. In other words, CF perceptibly affects the small farmers' rights.

As one of the actors, small farmers played an essential role in the development of the CF system, and henceforth, it is crucial to investigate the system from their side by understanding how they were affected and were responding to the system. In the next section, the research will explain the research methods of the study, consisting of the research questions, the scope of research, data collection and analyses, hypothesis, the essential values of the study and the ethical concerns of the study.

⁸ Ruchira Shukla and others, 'Attitude of banana farmers towards contract farming in South Gujarat, India' (2011) 45(4) Agricultural Research Communication Centre 331 <<https://arccjournals.com/journal/indian-journal-of-agricultural-research/ARCC764>> accessed 27 August 2018; Nguyen and others (n 2).

⁹ Carlos Oya, 'Contract farming in Sub-Sahara Africa: a survey of approaches, debates and issues' (2012) 12(1) Journal of Agrarian Change 1; Miyata, Minot and Hu (n 1); Isegar, Fold and Nsindagi (n 1).

1.2 RESEARCH QUESTIONS

The research questions of the study are:

1. How does the transnational companies (TNCs)-controlled CF system affect the rights of the small banana farmers of Santo Tomas and Compostela Valley, in Davao Region?
2. What are the remedies for the small banana farmers whose rights are affected by the CF system?

1.3 OBJECTIVES OF RESEARCH

1. The study is investigating the relationship between small banana farmers with the agricultural companies, at the banana plantations in Santo Tomas and Compostela Valley, Davao Region, Mindanao.
2. The study is investigating the dynamics of the small farmers claiming its right both in a formal and informal method in Davao Region, Mindanao.

1.4 RESEARCH METHODS

This part explains how this research was conducted by describing where and how the data was collected. The study is a case study research of small farmers at the banana plantations in Santo Tomas and Compostela Valley, Davao Region, Mindanao. The small farmers in this study are the farmers with a plantation area less than three hectares whose agreement of CF is for at least three years. The research focuses on:

- The implementation process of CF, comprising an observation on the harvest time, commodity picking time by the company, accessing the production materials as provided by the company; and
- The impact of CF in the production cycle of small growers by analysing the observation results.
- Then, the research has four ways of collecting the data:

1. *In-depth interviews and focus group discussion (FGD)*. This was done with small farmers who have less than three hectares area of a field and who are in agreement with the CF for three years. The interview was done with eight small farmers who have agreements with the

companies and two leaders of the workers union, while the FGD was done in different villages with 11 small growers with the same contract as well. The three hectares as a minimum area is determined in reference to the Comprehensive Agrarian Reform Program (CARP) or RA 6657 in the Philippines, adjusting the size of the farmers' plantation area as well as regulating the length of a prior contract. The aims of this stage are to collect the information about their experiences in the CF system related with their background to sign up the system; the entry process; the agreement making process; the implementation process which refers to access to technology, market and payment process; their experiences when they meet the companies and the state; and their testimony on the system, including their future projection of the system. The FGD, which was only conducted for the farmers, was done before in-depth interviews since the FGD's result is to provide some critical issues and it can identify potential and informative informants for further discussions.

2. *In-depth interviews with the scholars, non-governmental organisations (NGOs) activists and journalists.* In this part, the researcher has cross-checked the information gathered from the field and other information related to the state and the companies in the broader context in the Philippines.

3. *Examining the government documents/policies and news.* It is essential to identify the legal foundation of the CF system in the Philippines. The government regulation is perceived as the government reaction or response towards the CF system. Examination of the regulation can contribute to the analyses part of this study.

4. *Direct observation of critical event from 8 to 15 April 2019.* This activity aimed to understand the small farmers' life and behaviour under the CF system as well as to validate the information gathered in the FGD and in-depth interview. The observation was done when the small farmers performed their activities in the field (ie when they were using fertiliser or at harvest time); to monitor their social life in the village; when they meet the representatives of the companies and state; and when they sign up to the NGOs activities (if any). Furthermore, the researcher has documented certain notes and several photos, and also interacted with the small farmers in the field.

The research is held in qualitative methods implementing a case study approach. The techniques were in line with the research questions 'how' and 'what', seeking an answer about causalities between

agribusiness companies and small farmers' lives under the CF system in Santo Tomas and Compostela Valley, Davao Region, Mindanao. As Ariadne Vromen¹⁰ argues that 'qualitative (including case study) researchers focus on a single or very few cases/examples to be able to gain an in-depth understanding of their research subject', the objects of the research had specific aims to explain detailed outcomes from eight banana farmers signing up the CF system for at least three years whose three hectares farm is in Santo Tomas and Compostela Valley, Davao Region, Mindanao, the Philippines. The research understands that CF is not a single phenomenon, hence it is essential to conduct an in-depth interview and observation to investigate the patterns and the relationship of the object in the implementation process of the CF system. The methods do not only guide to answer the research questions but also present the techniques in data collection.

1.5 SCOPE OF RESEARCH

The scope of the research is:

- The small farmers who have less than three hectares of banana farm plantation and who signed up to the CF system for at least three years in Santo Tomas and Compostela Valley, Davao Region, Mindanao;
- The implementation process of the contract; and
- The impact of the contract on the farmers regarding the right to work and the right of the enjoyment of just and favourable conditions through social, economic and political control.

1.6 VALUES OF RESEARCH

There are two reasons as to why this research is vital. First, it is to strengthen Vellema's¹¹ framework on a study on the CF phenomenon in

¹⁰ Ariadne Vromen, 'Qualitative methods' in Vivien Lowndes, David Marsh and Gerry Stoker, *Theory and methods in political science* (Palgrave and Macmillan Publisher Limited 2018) 243.

¹¹ Sietze Vellema, *Making contract farming work? society and technology in Philippine transnational agribusiness* (Shaker Publishing 2002).

the banana plantation in Mindanao. Secondly, it is to enrich the literature review of CF from the human rights approach. Most of the research on CF had only analysed the case from an economic perspective (the farmers' income or their productivity), a governance perspective (the policy and role of the government in CF) or a networking perspective (CF linking the small farmers to global market).

1.7 ETHICAL CONCERNS

To implement the 'Principles of Research Ethics for Human Rights Research' as well as to guarantee that this research would not harm another party, the researcher prepared six rules while collecting the data in the field. First, before entering the area, the researcher should learn the nature of the small farmers' society and their culture. Hence, the researcher can adjust and recognise their concerns. Second, the researcher practiced respectful questions to the small farmers, eg avoiding judgmental questions and avoiding discrediting questions. Third, the researcher tested the interview questions to other interlocutors, eg the lecturers or classmates. Fourth, the researcher provided and explained about informed consent to small farmers and other resource persons about the aim of research and their participation in the study. The informant's consent is given to guarantee their data, especially for those asking for rights of privacy, anonymity and confidentiality, which also generates the fifth step. If the farmers were scared to participate in the research and had any suspicion that it will cause them trouble, the researcher will have agreed with them to keep their data and information safely. Sixth, the researcher asked for their permission before taking pictures, recording the discussion, etc. Lastly, the researcher asked the local NGOs to afford assistance in the field in order to face language barriers with the small farmers.

2.

LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

This chapter examines the literature review from previous studies and the conceptual framework used in this research. Firstly, the chapter explains various studies related to CF in general and studies in the Philippines as one of the important countries in the programme. Furthermore, the literature review provides intersection issues between CF and farmers' rights in different countries to show the lack of existing studies. In the second part, the chapter explains the conceptual framework from the domination of TNCs, which is not in line with business and human rights principles. Also, related to the second question, the conceptual framework also explains the farmers' responses in the CF. This part can be perceived as a guidance to understand the remedies among the small farmers or growers as well as workers.

2.1 LITERATURE REVIEW

2.1.1 Contract farming studies in the Philippines and expedition of the banana industry in Mindanao

The banana industry in Mindanao has been developing for decades. Previously, banana exports had only gained a small amount compared to sugar and coconut production of the Philippines, but in 1969-1980, it earned about US\$650 million in foreign exchange and surpassed the previous two main agricultural products.¹² The development of the

¹² Peter Krinks, 'Rural transformation under peripheral capitalism: the Philippines banana export industry' (1983) 31 *PSR* 101 <www.jstor.org/stable/23901942?seq=1#metadata_info_tab_contents> accessed 11 July 2019.

banana was started in late 1960, and over the preceding thirty years, half of the banana plantations used to be occupied by small farmers were dominated by migrant-settlers.¹³ At that time, the farmers planted diverse crops, which included their basic foodstuffs, such as rice, maize, fruits, abaca, coffee and coconuts. For selling, the farmers cooperated with local merchants or with dealers from urban areas. Furthermore, Krinks¹⁴ explains that the stimulus program of Philippines' banana industry was raised by President Garcia in 1985, giving its access to the Japanese market since then. At the time, Taiwan and Ecuador were the central imported banana countries. However, in the positive waves of Japanese incomes, the government liberalised imports, and in 1960 it allowed a trial import of bananas from all interested resources. As a result, the primary beneficiaries were Taiwan growers and the Japanese importing firms by having an increased volume in banana imports.

The reason Mindanao became the central area of the banana industry is clearly its strategic geographical conditions. According to Vellema, Borrás and Lara,¹⁵ there are two reasons why Mindanao was very attractive to the American government and its business leanings. Firstly, the environmental condition of Mindanao is fertile, and its location makes it typhoon-free.¹⁶ Secondly, the American government assumed that the land in Mindanao is owned by public due to no Western-style title showing any land ownership over the area. Hence, many corporates, both transnational and national, were attracted and the government supervised to acquire vast tracts of land,¹⁷ highlighting the cooperation between the Philippines and international entrepreneurs.¹⁸ However, the Filipino growers were handicapped by poor quality due to the popular varieties grown by unsophisticated techniques while the products sought to link with Japanese importers. Furthermore, it was the Japanese entrepreneurs establishing the banana industry in Mindanao, capturing 85% of the Japanese market. Nevertheless, American corporations were dominated by the global banana market.

¹³ Krinks (n 12) 102.

¹⁴ *ibid.*

¹⁵ Sietze Vellema, Saturnino M Borrás and Francisco Lara Jr, 'The Agrarian Roots of Contemporary Violent Conflict in Mindanao, Southern Philippines' (2011) 11(3) *Journal of Agrarian Change* 298 <www.tni.org/files/Vellema%20Borrás%20and%20Lara%20JAC%202011.pdf> accessed 31 August 2018.

¹⁶ *ibid* 306. See also Krinks (n 12) 103.

¹⁷ Vellema, Borrás and Lara Jr (n 15) 306-307.

¹⁸ Krinks (n 12) 103.

They are Castle and Cooke of Hawaii, United Fruit Company of Boston and Del Monte of San Francisco.¹⁹ These three companies also operated in Mindanao in terms of extending their market share, particularly in the Japanese market. Hence, since the 1960s, Mindanao became an essential area of the global banana industry by enticing TNCs through its proper geographic conditions.

From the states' role in the banana industry, some studies show that they were happy and facilitated Mindanao to TNCs. Krinks²⁰ examines that the government created a benign condition for TNCs. For example, in 1964, the government made Davao Penal Colony, a prison reservation of 8,000 hectares, available to United Fruit Company.²¹ Another case is in the taxation concessions. Krinks²² explains that the government involved the industry as the recipient of investment incentives in the 1970s when the industry was overwhelmingly profitable. One example of this is the Tagum Agricultural Development Company which did not pay income tax on its profit from 1973 to 1976 which amounted to P39 million (about US\$5.5 million).²³ Furthermore, Krinks stresses that there was an interconnection and overlaps between bureaucrats, politicians and businessmen.²⁴ Hence, it is undoubtedly the government favouring the companies, then facilitating land acquisitions for banana plantations.

Aside from its historical perspective, the study also examines CF in the Philippines in general, in recent years. At least four studies have examined the CF system in Mindanao. First, Vellema studied the domination of the company in CF in Mindanao in 1999. Vellema examines the control from the company's management perspective. She is showing how the company dominating the farmer through formal to informal intervention. Second, Digal²⁵ uses the development

¹⁹ Krinks (n 12) 103.

²⁰ *ibid.*

²¹ *ibid.* 109.

²² *ibid.*

²³ *ibid.*

²⁴ D Simbulan, 'A study of Philippine socio-economic elite, 1946-63' (PhD dissertation, Australian National University 1966); VD Subramaniam, 'Export interest in the Philippines: a study in political dynamics' (PhD dissertation, University of the Philippines 1980); D Wurfel, 'Elites of wealth and elites of power, the changing dynamics: a Philippines case study' in *Southeast Asian Affairs* (Heinemann Educational Books 1979) 233.

²⁵ Larry N Digal, 'Contractual arrangements in agriculture (Mindanao)' *Agricultural contracts in Mindanao: the case of banana and pineapple* (2007) Discussion Paper Series No 2007-24.

approach to study the links between the multinational companies with domestic ones and researches their character, problem, opportunity and sustainability. Even though Digal finds some inequality in the contracts, the analysis sees it as part of challenges needed to be done to sustain the system. Next, Rosete²⁶ looks at the political economy of smallholders in Mindanao in terms of incorporation with agribusiness companies and land acquisition. Rosete²⁷ reveals that the small farmers, called agrarian reform beneficiaries (ARBs), are struggling under the contract system both economically and institutionally. Last, the newest study from UMA in 2009, with an imperialist framework, examines how the transnational agribusiness companies expanded their plantations and its business under the agribusiness venture arrangement (AVA) scheme in Mindanao. By using the human rights-based approach in business, this study attempts to strengthen Vellema's framework from the small farmers' experiences as well as to see the different aspects of UMA's work. Furthermore, this study will complement Digal's and Rosete's work by analysing the remedy process of the small farmers in order to answer the unequal and imperfect system of CF.

In conjunction with collecting the previous studies on CF in Mindanao, the research also examines other works related to CF and small farmers' rights in general. The study categorises the literature reviews into two parts. The classification is to examine the strengths and weaknesses of the research about CF.

2.1.2 Contract farming and small farmers

Four key issues were raised by the studies on CF and small farmers. The four problems were tied in with different perspectives and results regarding investigating CF in some areas in the world. Furthermore, it shows that as a global phenomenon, it has various impacts, the process of implementation, small farmers' participation in the system, the practice of the companies and the role of farmers' associations.

First, the studies investigate the impact of CF on small farmers from a business perspective. One of the primary purposes of CF is to meet

²⁶ Alfredo R Rosete, 'The Political Economy of Smallholder Incorporation and Land Acquisition' (Doctoral dissertation, University of Massachusetts 2016) <https://scholarworks.umass.edu/dissertations_2/802> accessed 27 November 2018.

²⁷ *ibid.*

global demand with small farmers in developing countries ranging from countries in Africa to Asia. Since it was first used during the 1970s, a study of CF shows that it has a positive trend regarding increasing small farmers' economy.²⁸ Sáens-Segura, D'Haese and Ruben²⁹ argued that in Costa Rica 'contract[s] improve certainty for small-scale producers and hence increase their willingness to invest'. Aside from the level of production, several studies focused on the income and gross margins. Miyata, Minot and Hu³⁰ revealed that the CF scheme is effective in Shandong province, China due to its farmers' contracts, both on a big and small scale, which could help the farmers to earn more money than a non-contract farmer. Similarly, Birthal, Joshi and Gulati³¹ found that the gross margin of dairy contract farmers in India was higher than independent dairy farmers. In some areas with some particular conditions, CF has a significant impact on farmers' income, although some areas also brought in several conflicting results.

Second, the studies examine how CF links small farmers with big companies, ranging from national to TNCs. As a structural scheme, CF proves that small farmers can be involved in the global market, although their participation can be considered indirectly and only taking across several chains, the system might offer an alternative market to small farmers. Oya³² argues that CF is 'vertical integration

²⁸ N Minot, 'Contract farming and its effect on small farmers in less developed countries' (1986) Michigan State University Working Paper no 31/1986; David Glover and Ken Kusterer, *Small farmers, big business: contract farming and rural development* (Palgrave Macmillan 1990); Sietze Vellema, 'Agribusiness control in Philippines contract farming: from formality to intervention' (1999) 8 International Journal of Sociology of Agriculture and Food 95-110; Roehlano M Briones and Ivory Myka R Galang, *Linking small farmers to modern markets: the role of contract farming* (May 2014) Policy Notes Philippine Institute for Development Studies No 2014-09.

²⁹ Fernando Sáenz-Segura, Marijke D'Haese and Ruerd Ruben, 'Contract Farming in Costa Rica: A Case Study on Contracts in Pepper Farming, Case Study #6-6 of the Program: 'Food Policy For Developing Countries: The Role Of Government In The Global Food System'' (Cornell University 2007) <<https://ecommons.cornell.edu/handle/1813/55692>> accessed 31 August 2018.

³⁰ Sachiko Miyata, Nicholas Minot and Dinghuan Hu, 'Impact of Contract Farming on Income: Linking Small Farmers, Packers, and Supermarkets in China' (2009) 37(11) World Development 1781 <www.fao.org/uploads/media/Impact%20of%20contract%20farming%20on%20income_%20linking%20small%20farmers_%20packers_and%20supermarkets%20in%20China.pdf> accessed 27 August 2018 1788.

³¹ PS Birthal, PK Joshi and A Gulati, 'Vertical coordination in high value commodities: implications for the smallholders' (2005) International Food Policy Research Institute: Markets, trade, and institutions of division discussion paper no 85.

³² Carlos Oya, 'Contract farming in Sub-Sahara Africa: a survey of approaches, debates and issues' (2012) 12(1) Journal of Agrarian Change 2. See also Dugal (n 25).

between agricultural producers and buyers (exporters, agro-processing companies or retailers at the end of the value chain)³³. Miyata, Minot and Hu³³ conducted interviews in Shandong province, China and confirmed with the small farmers and packers that there is an increasing coordination with domestic and foreign supermarket chains to distribute their product to the consumer. The finding is strengthened by other studies, revealing that CF provides a mechanism for incorporating both small and low-income farmers to the market economy.³⁴ It seems that the studies' findings detail that CF needs structural adjustments to link small farmers to the global market since it involves the state and companies.

Third, the studies elaborate on the participation of small farmers in the CF system. There is debate among scholars regarding whether CF is accessible to small farmers. Miyata, Minot and Hu³⁵ argue that there were no bias between a more significant level of small farmers' participation in CF; instead, the selection in the CF process is said to be more related to and corresponded with the location of the field and labour availability. Conversely, Singh³⁶ thinks the CF in Thailand is biased given that the companies prefer to work with larger growers, and exclude the small growers from the system. As a result, they lose the opportunity to gain the benefit of CF. Parallely, Guo, Jolly and Zhu find that larger farmers have higher participation than small farmers.³⁷ Oya³⁸ argues that participation of smallholders is to open change for the large-scale capitalist farming in development. Furthermore, Oya³⁹ says that in Kenya, the agricultural chain relies on large-scale estate production, which has thousands of employees. As a summary, it shows that CF is biased due to the fact that it is supporting the big farmers rather than the small ones.

³³ Miyata, Minot and Hu (n 30) 1784.

³⁴ Glover and Kusterer (n 28); N Key and D Runsten, 'Contract farming, smallholders, and rural development in Latin America: the organization of agroprocessing firms and the scale of outgrower production' (1999) 27(2) *World Development* 381.

³⁵ Miyata, Minot and Hu (n 30) 1788.

³⁶ Sukhpal Singh, 'Role of the State in Contract Farming in Thailand: Experience and Lessons' (August 2005) 22(2) *Institute of Southeast Asian Studies (ISEAS) ASEAN Economic Bulletin* 217 <www.jstor.org/stable/25773854> accessed 17 June 2018 5584.

³⁷ H Guo, RW Jolly and J Zhu, 'Contract farming in China: supply chain or ball and chain?' (Paper presented at 15th Annual World Food and Agribusiness Symposium, IAMA, Chicago, 25-26 June 2005) cited by Miyata, Minot and Hu (n 30) 1782.

³⁸ Oya (n 32) 13.

³⁹ *ibid.*

Fourth, the studies tell the abusive business practices of the companies. Delforge⁴⁰ provides a story of small farmers who had their right to work and rights to get information violated by the company. For example, the company had delayed their payment without confirmation to each of the small farmers, the company does not provide an obligation on the standard wage, the company also does not offer them any health insurance and the company signs contracts year-to-year while small farmers are committed more than that given that they have a bank loan for five to ten years.⁴¹ Similarly, Digal⁴² finds the same situation on banana and pineapple farms in Mindanao. Digal⁴³ argues there is inequality in the contract process, ranging from limited access to markets and distorted information both for output prices and quality of inputs by contractors. Besides, Glover and Kusterer strengthened this argument by arguing that there is an unbalanced power in CF.⁴⁴ They explain that even after the distribution of risk and its specific provisions were implemented, it could not guarantee the implementation given that the distribution of risk strongly related with many other factors, eg bargaining power, alternative availability and access to information. The authors address the factors of small farmers who have problems with risk allocation. When signing up to the contract system for the first time, the small farmers were not aware of any risks since the contract seems less risky than their traditional order, hence they accept any probable risks arising from the contract system.⁴⁵ The studies reveal that many violations in the CF system were caused by both weak regulations as well as inadequate control in the implementation process, particularly regarding the companies' activities.

The violation does not only come from the state and companies, but also the farmers' associations. Isegar, Fold and Nsindagi⁴⁶ explain about

⁴⁰ Isabelle Delforge, 'Contract farming in Thailand: a view from the farm' in *Occasional Papers 2 A Report for Focus on the Global South* (CUSRI Chulalongkorn University 2007) <<https://focusweb.org/pdf/occasional-papers2-contract-farming.pdf>> accessed 9 August 2018.

⁴¹ *ibid* 6 and 22.

⁴² Digal (n 25).

⁴³ *ibid* 32.

⁴⁴ Glover and Kusterer (n 28) 130-131.

⁴⁵ *ibid* 131.

⁴⁶ Lotte Isegar, Niels Fold and Thobias Nsindagi, 'The Post-Privatization Role of Out-growers' Association in Rural Capital Accumulation: Contract Farming of Sugar Cane in Kilombero, Tanzania' (January 2018) 18(1) *Journal of Agrarian Change* 196 <<https://onlinelibrary.wiley.com/doi/pdf/10.1111/joac.12197>> accessed 27 August 2018.

the fallacies of sugar cane out-growers' associations in Kilombero, Tanzania. Ideally, the associations become middle actors linking global companies and out-growers, both big and small growers. However, the authors found that the associations were influential entrepreneurs who control not only knowledge of the systems and the network but also the infrastructures, and the role as mediator turned into private capital accumulation.⁴⁷ The authors also acknowledge that the government plays a vital role in strengthening the associations by creating the regulations, giving it a more significant change to uphold their position.⁴⁸ The authors highlight the impact of sugar cane that 'has entitled new labor relations in the area, and that land is changing hands becoming concentrated among fewer individuals while landless or near-landless households are losing their sources of subsistence and income'.⁴⁹ From this case, we can see that there is a tendency of the farmers' associations to use their position to accumulate their capital, instead of being an intermediary.

For the workers with a union, the literature shows a different story. The workers' union has an essential role in the CF system. Rehber's⁵⁰ argue that the union in the United States (US) is to auctions in favour of farmers as a bargaining cooperative or known community based agreement (CBA) as a representation of the workers. Rosete⁵¹ explains that the union has more power with the investors since the union could pool resources for hiring lawyers, appeals to authorities in city centres and mobilise for interventions in municipal agrarian reform offices. Aside from formal matters, the union also has roles in collective bargaining agreements, eg negotiating wage increases and other benefits.⁵² However, the role of the union is also perceived as one of the critics of CF since it creates proletarianisation among farmers' lands and labour.⁵³

The studies about CF and small farmers show that many scholars examine the phenomenon from different approaches, regarding the economic and structural factors and participation of small farmers in

⁴⁷ Isegar, Fold and Nsindagi (n 46) 210.

⁴⁸ *ibid* 211.

⁴⁹ *ibid* 210.

⁵⁰ Erkan Rehber, *Contract farming: theory and practice* (The ICFAI UP 2007) 69.

⁵¹ Rosete (n 26) 22.

⁵² *ibid* 35. See also Digal (n 25) 64.

⁵³ Rehber (n 50) 107.

the system. Additionally, the researchers also studied CF and farmers' rights, granting that although most of them did not use the term 'farmers' rights', they examine the violation of it in the CF scheme. Regarding object studies, from the literature reviews aforementioned, only a few of them implemented it in the Philippines, in Mindanao in particular, in their research. Hence, it is crucial to examine the phenomenon in small farmers' rights to enrich the existing studies as well as strengthening the research of Digal⁵⁴ on the Mindanao areas.

2.1.3 *Small farmers and farmers' rights*

There are two issues on the violated rights elaborated in this study about small farmers and farmers' rights, ie the rights to land and the rights to health. These issues show how the CF system can seriously affect small farmers' livelihoods. Moreover, the literature explains that the violations involve other actors in the process.

First, the rights to land. Keqin⁵⁵ explains that to the farmers, the land is the fundamental guarantee of their livelihood and the only capital on which they depend to build wealth. Farmers and land are one entity, they go hand in hand with each other. However, modernisation brings many effects and dynamics on land ownership of farmers. The government has a vital role in these issues as it is responsible for setting a barrier to protect and fulfil the land rights of the farmers. However, Keqin⁵⁶ found that the Chinese government controls the land and the development process in rural areas through administrative power.⁵⁷ Besides, many local governments in China turn out as land finance, controlling the land either to rent or to sale, and the activity becomes their larger moneybag.⁵⁸ Similarly, Menguita-Feranil finds that the government provides some assistance for the investor, such as through giving data about suitable land and giving subsidies for small farmers who allow

⁵⁴ Digal (n 25).

⁵⁵ Wang Keqin, 'Restoring Private Ownership of Rural Lands to Safeguard the Basic Rights of Farmers' in Erroi P Mender and Sakunthal Srighanthan (eds), *Confronting Discrimination and Inequality in China* (University of Ottawa Press 2009) <www.jstor.org/stable/pdf/j.ctt1ckpdk1.9.pdf?refreqid=excelsior%3A08a1209a0dad85595a70ec3f94cce6cd> accessed 14 November 2018.

⁵⁶ *ibid* 73-75.

⁵⁷ Keqin (n 55).

⁵⁸ Keqin (n 55) 74.

the investors to access their land.⁵⁹ Oya⁶⁰ explains the impact of CF on land grabbing is mostly on displacement. In the end, CF influences the dynamic of land acquisition directly and indirectly.

Most scholars reveal that land acquisition occurs due to several reasons and it affects the small farmers. Oya⁶¹ argues that from works of literature, expansion of CF became one of the main reasons for land acquisition. Furthermore, Keqin⁶² explained eight fundamental problems of the expropriation of farmers' land, as follows: (1) illegal expropriation; (2) use of violence; (3) lack of compensation; (4) low compensation; (5) retention of settlement; (6) chaotic resettlement arrangements; (7) greater poverty and (8) deception. These impacts on land-deprived farmers are harming the farmers and creating much discrimination. Keqin⁶³ states that 'most farmers have become a social refugee, having been rendered landless, jobless, and without social security'. This argument is strengthened with a statistic in China that in 2003, there were 60% of land-deprived farmers who were living under extreme poverty.⁶⁴ For small farmers, the land is not only capital but also is their livelihood and their identity.

Second, the rights to health. Aerial spraying has been a repressed issue for farmers for decades, in the Philippines it began in 1997⁶⁵ and in India in 1970.⁶⁶ The impact is not only dangerous for the environment but also for farmers and their families. By discussing the modernisation, the companies and support by the governments, it is justified that western science disrupted farmers' traditional farming systems hence causing damage to the environment.⁶⁷ Aerial spraying

⁵⁹ ML Menguita-Feranil, 'Contradictions of palm oil promotion in the Philippines' in O Pye and J Battacharya (eds), *The Palm Oil Controversy in Southeast Asia: A Transnational Perspective* (Institute of Southeast Asian Studies 2013).

⁶⁰ Oya (n 32) 23.

⁶¹ *ibid* 23.

⁶² Keqin (n 55) 72.

⁶³ *ibid* 78.

⁶⁴ *ibid*.

⁶⁵ Lisette J Nikol and Kees Jansen, 'The Philippine controversy over aerial spraying of pesticides: a timeline of selected developments, 1997-2016' (2018) 31 *Rural Sociology* DOI: <<https://doi.org/10.18174/442444>> accessed 29 January 2019.

⁶⁶ Dr S Rajendran, 'Environment and health aspects of pesticides use in Indian agriculture' in Martin J Bunch, V Madha Suresh and T Vasantha Kumaran (eds), *Proceedings of the third international conference on environment and health* (University of Madras and Faculty of Environmental Studies, York University 2003) <www.yorku.ca/bunchmj/ICEH/proceedings/Rajendran_S_ICEH_papers_353to373.pdf> accessed 29 January 2019.

⁶⁷ Nikol and Jansen (n 65) 3.

creates a significant impact on farmers both in short- and long-term damage, including removing their traditional farming system.

The issues were not only contested in the Philippines,⁶⁸ but also in other countries such as Argentina,⁶⁹ Costa Rica⁷⁰ and India.⁷¹ The companies held control over the pesticide spraying and it was also stated in their contract.⁷² In this case, the farmers cooperated with NGOs on this issue, starting from indirect action, such as to convey the message about the dangers of pesticide, to striking a direct pressure, through gaining a legal endorsement and lobbying.⁷³ Rajendran⁷⁴ highlights that a vast amount of pesticide has been used in the Indian market-oriented farming system. Palis and others⁷⁵ and Warburton, Palis and Pingali⁷⁶ reveal an astonishing fact that the farmers in the Philippines believe that pesticide is not endangering their health as long as they use appropriate equipment. In fact, in the field, they found that companies did not even provide the right materials and the farmers were willing to buy personal protective equipment (PPE).⁷⁷ The willingness of some farmers to provide their equipment raised a dilemma that the NGOs and other farmers, who were also affected, sought to tackle.

The studies on the rights to land and rights to health have one same explanation. They examine that CF influences the dynamics of both of them, either turn out positive or negative and have been caused by modernisation along with the government who have a strategic role in deciding the mechanism of both systems. However, the rights to land

⁶⁸ Nikol and Jansen (n 65) 3.

⁶⁹ F Arancibia, 'Challenging the bioeconomy: the dynamics of collective action in Argentina' (2013) 35(2) *Technology in Society* 79.

⁷⁰ DK Barraza, B Van Wendel De Joode Jansen and C Wesseling, 'Social movements and risk perception: unions, churches, pesticides and bananas in Costa Rica' (2013) 19(1) *International Journal of Occupational and Environmental Health* 11.

⁷¹ Rajendran (n 66).

⁷² Jaye de la Cruz and Kees Jansen, 'Panama disease and contract farming in the Philippines: Towards a political ecology of risk' (2017) 18(2) *Journal of Agrarian Change* 249 <<https://onlinelibrary.wiley.com/doi/full/10.1111/joac.12226>> accessed 7 June 2019.

⁷³ Nikol and Jansen (n 65) 15-16.

⁷⁴ Rajendran (n 66) 356.

⁷⁵ Florencia G Palis and others, 'Our farmers at risk: behaviour and belief system in pesticide safety' (2006) 28(1) *Journal of Public Health* 43 Doi:10.1093/pubmed/fdi066 accessed 29 January 2019.

⁷⁶ H Warburton, FG Palis and PL Pingali, 'Farmer perceptions, knowledge, and pesticide use practices' in Prabhu L Pingali and Pierre A Roger (eds), *Impact of pesticide on farmer health and the rice environment* (Kluwer Academic Publisher 1995) <http://horizon.documentation.ird.fr/exl-doc/pleins_textes/pleins_textes_7/divers/2/010005409.pdf> accessed 29 January 2019.

⁷⁷ *ibid* 92; Palis and others (n 75) 46.

and the rights to health are not enough to explain the dilemma between small farmers and globalisation. One of the approaches to see this complexity is to see their relationship, regarding who has more power in the system and how they respond and adjust to each other to protect and fulfil their rights. Nevertheless, an equal opportunity, as one of the spirits of CF and guaranteed by the law, needs to be a highlight in this context. It is because the studies show that the implementation of CF could not guarantee the small farmers' rights and lead to violations of the two aforementioned rights. Lastly, in line to fill the gap from the studies, this research is addressing the importance of using the small farmers perspective, hence, we can understand the CF system completely.

2.2 CONCEPTUAL FRAMEWORK

2.2.1 Contract farming in business and human rights framework

In CF, the critical process is to link small farmers, who produce the commodities, with the companies, which facilitate in several levels of the global market, by supervising the state. CF has several stages in order to link the small farmers and the companies, ranging from standardising the farmer's equipment, as usually the farmers need to improve their instrument set to be modernised to meet the companies' requirements; contract agreement as the most essential stage given that at this stage the small farmers and the companies might need to specify their details, such as the characteristics of the product, period, forms of management assistance, payment method etc; and implementation process of contract. These three stages are only one of the models of the contract, given that the CF system has several types, as stated in the table below. Based on Eaton and Shephard,⁷⁸ there are five types of CF:

⁷⁸ Charles Eaton and Andrew W Shepherd, 'Contract farming: Partnerships for growth: a guide' FAO Agricultural Service Bulletin No 145 (Food and Agriculture Organization of The United Nations 2001) 44-46 <www.fao.org/docrep/014/y0937e/y0937e00.pdf> accessed 21 August 2018.

*Table 1 Types of contract farming*⁷⁹

Structure-model	Sponsors	General characteristics
Centralised	Private corporate sector State development agencies	Directed CF. Famous in many developing countries for high-value crops. Commitment to provide material and management inputs to farmers.
Nucleus estate	State development agencies Private/public plantations Private corporate sector	Directed CF. Recommended for tree crops, eg oil palm, where technical transfer through demonstration is required. Popular for resettlement schemes. Commitment to provide material and management inputs to farmers.
Multipartite	Sponsorship by various organisations, eg State development agencies State marketing authorities Private corporate sector Landowners Farmer cooperatives	Common joint-venture approach. Unless excellent coordination between sponsors, internal management difficulties likely. Usually, contract commitment to provide material and management inputs to farmers.
Informal developer	Entrepreneurs Small companies Farmer cooperatives	Not usually directed farming. Common for short-term crops; ie, fresh vegetables to wholesalers or supermarkets. Typically minimal processing and few inputs to farmers. Contracts on a simple registration or verbal basis. Transitory in nature.
Intermediary (tripartite)	Private corporate sector State development agencies	Sponsors are usually from the private sector. Sponsor control of material and technical inputs varies widely. At time sponsors are unaware of the practice when illegally carried out by large-scale farmers. Can have negative consequences.

⁷⁹ Eaton and Shepherd (n 78) 56.

Referring to Eaton and Shepherd, the Philippines government acknowledge all types of the contract through its regulation, DAR Administrative Order No 09 on 'Revised Rules and Regulations Governing Agribusiness Venture Arrangements (AVAs) in Agrarian Reform Areas' on 13 December 2008, which I will explain further in chapter four. Nevertheless, in the field study, the centralised type is the standard contract that applies between the small farmers and the companies. As a result, the deal happens directly between the companies and the small farmers, while the state commits to providing strong regulations and mechanisms to guarantee the rights for both entities as explained in the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) below. Another impact of this type is that small farmers' rights are vulnerable to being violated due to the fact that the state has limited space to do a direct intervention. However, the UN Guiding Principles regulates several mechanisms to ensure the small farmers' rights in the business, including in the CF process.

In the CF system, the governments have an essential role in protecting and providing remedies for small farmers, as mentioned in the UN Guiding Principles. The first responsibility of the state is to protect human rights, ranging from preventing, investigating, punishing and redressing the violations through effective policies, legislation, regulations and adjudications.⁸⁰ Furthermore, the state needs to ensure all business enterprises domiciled in its territory respect human rights.⁸¹ In the CF context, the state should ensure the multinational companies, which have direct agreements with the small farmers, respect the small farmers' rights throughout their operations. As the duty bearers, the state should provide mechanisms directly to protect the small farmers as well as ensure the business enterprises respect the farmers' rights at the same time.

Detailing the responsibility of the state in CF, Glover and Kusterer⁸² explain that local government can support the small farmers through creating a scheme that restrict companies from owning vast amounts of land and creating a vertical integration to avoid unfair prices and other abusive practices. Furthermore, Eaton and Shepherd⁸³ explain that the state has

⁸⁰ UN Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (UN Guiding Principles) HR/PUB/11/04 (United Nations 2011).

⁸¹ *ibid* 3.

⁸² Glover and Kusterer (n 28) 10.

⁸³ Eaton and Shepherd (n 78) 29.

two leading roles in CF. Firstly, the states' responsibility in the enabling and regulatory role which can be done by a) suitable laws of contract and other bills as well as an efficient legal system; b) governments needing to be aware of the possible unintended consequences of regulations and avoiding the tendency to overregulate; c) governments providing services such as research and, sometimes, extension. Secondly, governments can take steps to bring together agribusiness and suitable farmers. From the explanation, we can understand that the governments should have a comprehensive plan, including policies and law mechanisms to protect, respect and provide access to remedies to the small farmers.

Apart from the government, companies are obligated to respect the rights of the small farmers, as known as the second pillar of the UN Guiding Principles. The companies should have policies and processes to implement the human rights standards, including their policy commitment to meet their responsibility to respect human rights; to adopt the due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and to take a method to enable the remediation of any adverse human rights impacts they cause or to which they contribute.⁸⁴ Moreover, the due diligence part is one of the indicators to see whether the companies have a comprehensive system for the respect of human rights; I will explain more on this issue in chapter 3. In the context of CF, companies are not only a middle actor who connects the small farmers with the global market, but they are also the one setting the standards as well as the quality of the products. This means the companies have a wide range of roles managing the land and indirectly the small farmers itself. Hence, the UN Guiding Principles here have an essential role to respect and guarantee the small farmers' rights due to the fact it covers the obligation of the companies starting from preventive action to its post-operations.

Access to remedy, which also known as the third pillar of the UN Guiding Principles, is an essential obligation for the state to ensure small farmers are able to gain their rights in the implementation process of the contract, and for the companies which will be explained in chapter 3 later. The guiding rules should take appropriate steps through judicial, administrative, legislative and other mechanisms to provide access to

⁸⁴ UN Guiding Principles (n 80) 15-16.

those affected by the abuse of practices,⁸⁵ Moreover, the state should attend the process not only through procedural but also in substantive aspects, such as holding a discussion session to counteract or make good violations of human rights that have happened.⁸⁶ In terms of CF, the remedy is vital for small farmers given that they are actively involved in production as a business partner of the companies. Also, for the Davao Region, the remedy could help the small farmers in terms of negotiating with the companies under a top-down nature of the centralised contract that applied there. Furthermore, as guaranteed in the UN Guiding Principles, the remedy is not only through a legal mechanism but also a non-judicial mechanism,⁸⁷ which is more accessible for the small farmers to participate in the contract process. In the end, the remedy process in CF is a crucial stage for the small farmers to utilise their role in the system.

CF is not a single phenomenon due to its influences by the dynamics of state and companies. Delforge⁸⁸ examines that the contract is emerging with a political agenda, hence, it is crucial to define contract farmers' rights and non-contract farmers. Delforge⁸⁹ categorises it into three parts: 1) the rights of contract farmers must be reflected in every action and position of CF issues; 2) CF issues cannot be separated from global crises of the agricultural sector; 3) it is essential to build alternative discourse as a non-contract farmer and produce food in a non-industrial way. Sawaengsak and Gheewala⁹⁰ explain the rights of sugarcane in terms of the CF system in Nakhon Ratchasima province, Thailand. They examine four categories of rights:

1. Forced labour: it finds that labour in sugarcane production has a high workload, particularly at harvesting season, which exceeds the basic regulation that workers should not exceed 48 hours per week and have minimum one day off every seven days. The labour conditions are getting worse due to the fact that 'wages paid' is lower than the government regulation, which stated minimum wage should be 300 THB/day.

⁸⁵ UN Guiding Principles (n 80) 27.

⁸⁶ *ibid.*

⁸⁷ *ibid* 28-30.

⁸⁸ Delforge (n 40) 6.

⁸⁹ *ibid.*

⁹⁰ Wanchat Sawaengsak and Shabbir H Gheewala, 'Analysis of social-economic impacts of sugarcane production: a case study in Nakhon Ratchasima of Thailand' (2017) 142 *Journal of Cleaner Production* 1169 <www.sciencedirect.com/science/article/abs/pii/S0959652616313129?via%3Dihub> accessed 27 August 2018.

2. Working conditions: aside from exceeded working hours, only a small portion of the workers in the sugarcane productions join an association. It is because either ‘they did not perceive the need or were not aware of it.’⁹¹ Additionally, the Thailand government recognise the right to freedom of association.⁹² On health and safety issues, it shows favourable circumstances due to the fact that all of the farms provides safety gear and first aid kits, and gives them health and safety training annually.
3. Discrimination: large sugarcane growers have strict regulations on foreign workers, which limited their mobility. However, equality of wages both for males and females is entirely appropriate. Unfortunately, they do not have sufficient explanations about what kind of movement of the sugarcane growers and provide a clear indicator of proper wages accepted by foreign workers.
4. Cultural heritage: sugarcane growers acknowledge that their land used to grow rice and cassava, and they tend to increase the sugarcane area every year. Furthermore, other issues are ‘land rights’, particularly illegal land and occupation, which is caused by investors buying property without adequately consulting or compensating the landowner. However, the land rights issue in Davao is quite different. The companies occupy land based on unfair contracts.

From the UN Guiding Principles, it is clear that the primary farmers’ rights that need to be protected and respected in the CF system are the rights to work. The ultimate goal of the CF system is to give better access to small farmers to work in the global market through intermediary systems, eg the governments, the agribusiness companies, exporters and packagers companies. The protection of the rights is defined from the preconditioning to the implementation of the system through various levels of policies both from the government and the companies. Moreover, the different nature of contracts also influences the level of protection given that every type has a varying degree of risk, which I will explain in the next section.

⁹¹ Sawaengsak and Gheewala (n 90) 1174.

⁹² *ibid.*

2.2.2 *Contract farming as distribution of risk*

Ideally, the ‘contract functions as a catalytic vehicle to entice these farmers toward risk-taking behavior’, according to Sáens-Segura, D’Haese and Ruben.⁹³ Furthermore, the authors explain that contracts can also be an insurance device; an incentive; and for market information.⁹⁴ In other words, the agreement has a vital role to guarantee the rights of farmers due to the fact it has several functions for reducing the risks.

In line with Sáens-Segura, D’Haese and Ruben, Glover and Kusterer⁹⁵ stated that ‘contracting is fundamentally a way of allocating the distribution of risk between the firm and its growers’. However, they stressed that the distribution of risk strongly depends on various factors, such as bargaining power, possibilities of other options and access to information. Glover and Kusterer⁹⁶ explain that tomato farmers in Ecuador experience this situation. At first, because they do not have enough information about CF in the long term, they thought that the system was the best alternative for them and they agreed to accept the risks given by the companies. In the third year, they realised that the agreement was too risky for them as they rely on the system both for their income and their debt payment as well, in fact, they earn much money in the ‘honeymoon’ period, in the early first and second years.⁹⁷ Furthermore, Glover and Kusterer⁹⁸ reveal the reason companies are favoured to work with small farmers is because ‘they have less power or influence, and less ability to involve troublesome government officials, agencies, and lawyers in the event of a contractual dispute’. Moreover, Honduras shows that founded farmers organisations are one of the attempts to respond to the unsatisfied contract. However, the various backgrounds of farmers with different issues become one which impedes that organisation.⁹⁹ Many factors need to be considered to have a fair distribution of risk in the system. However, the governments and the companies have obligated to create a fair process, such as to provide information and discussion sessions and also to conduct effective regulations, as well as to protect and respect the farmers’ rights in the system.

⁹³ Sáens-Segura, D’Haese and Ruben (n 29) 8-9.

⁹⁴ *ibid.*

⁹⁵ Glover and Kusterer (n 28) 3.

⁹⁶ *ibid.*

⁹⁷ *ibid* 132.

⁹⁸ *ibid* 134.

⁹⁹ *ibid* 143.

2.2.3 *Inequality of contracts and companies' domination*

CF is an unequal system. Feder¹⁰⁰ argues that many contracts are *contratos leoninos* or a one-sided agreement binding the farmers with many terms and obligations, but the companies are able to loosely abrogate it. Many cases might show how the companies hold a higher position and stronger bargaining power rather than small farmers. Furthermore, Clapp¹⁰¹ argues that many scholars do not recognise the inequality of CF as they assume that a contract appears from two equal actors who have equal autonomy, but, in fact, the contract never defines the independence for farmers which reflected by daily practice.

The contract itself is biased. The arrangement reflects the companies' needs by providing what farmers should do daily, but it does not guarantee whether the farmer's action will meet the company's desire or not.¹⁰² CF is a proletarianisation of farmers as well. CF does not only control the quality and amount of production, but also controls beyond the farmers themselves, including their land and their labour. Clapp¹⁰³ argues that CF is a representation of disguised proletarianisation as 'it secures the farmer's land and labor while leaving him with formal title to both'. Deborah Sick¹⁰⁴ researched small farmers' rights in terms of fair trade (FT) in Costa Rica. Sick examined small-scale coffee producers and found that FT systems create problems as they do not adequately address small producers' needs. The provision of contracts, however, do not necessarily reflect the day-to-day events.¹⁰⁵

In the modern world, CF is one way to control the commodity chain involving the small farmers. Immanuel Wallerstein¹⁰⁶ explains that the world economy was built from capitalist hegemony by regulating the market and state sovereignty. One of their strategies is the control over commodity chains, such as goods, money-capital, labour-power; and CF is one of the representatives of labour-power to manage their capital

¹⁰⁰ Ernest Feder, *Strawberry imperialism: an enquiry into the mechanism of dependency in Mexican agriculture* (Institute of Social Studies 1977).

¹⁰¹ Roger A Clapp, 'The moral economy of the contract' in Peter D Little and Michael J Watts (eds), *Living Under Contract* (The University of Wisconsin Press 1994) 80.

¹⁰² *ibid* 80-81.

¹⁰³ *ibid* 81.

¹⁰⁴ Deborah Sick, 'Coffee, Farming Families, and Fair Trade in Costa Rica: New Markets, Same Old Problems?' (2008) 43(3) *Latin America Research Review* 193 <www.jstor.org/stable/20488155> accessed 13 November 2018.

¹⁰⁵ Clapp (n 101) 81.

¹⁰⁶ Immanuel Wallerstein, *The modern world-system I: capitalist agriculture and the origins of the European world-economy in the sixteenth century* (University of California Press 2011).

accumulation. He says:

the capitalist world-economy was built on a worldwide division of labor in which various zones of this economy (that which we have termed the core, the semi-periphery, and the periphery) were signed specific economic roles, developed different class structures, used consequently different modes of labor control, and profited unequally from the working of the system.¹⁰⁷

This argument is strengthened by Went,¹⁰⁸ who argues that ‘capitalism is expanding and causing major changes in the structure, cohesion, and functioning of the world economy. These changes are leading to a more intense interweaving of economies, with increased interdependence as a result’. CF brings forward modernisations to farmers, but in fact, the modernisation requires the contract as a tool to control the farmers.

To show how the contract works, Vellema¹⁰⁹ conducted three dimensions of control in CF based on research in asparagus weeding. This will be used as a framework for this study, as will be discussed below.

Table 2 Three dimensions of control in contract farming¹¹⁰

Dimension	Meaning and practice
Technical control	Regulating-guiding-manipulating biological processes. Managing natural conditions. Designing technical methods to control weeds. Engineering farming practices.
Organisational or managerial control	Commanding-managing-administering people’s behaviour. Organising farmworkers and recruiting labour. Monitoring financial flows and production costs. Changing the areas of responsibility. Advising and supervising growers by technicians.
Socio-economic and political control	Regulating social processes. Creating consensus. Dominating people’s work. Directing people’s decisions. Differentiating between growers.

¹⁰⁷ Wallerstein (n 106) 162.

¹⁰⁸ R Went, *Globalization: neoliberal challenge, radical response* (Pluto Press with the International Institute for Research and Education (IIRE) 2000) 22.

¹⁰⁹ Vellema (n 28) 100.

¹¹⁰ *ibid.*

Furthermore, Glover and Kusterer¹¹¹ argue that six problems can be applied to investigate the relationship between CF and small farmers:

1. Small farmers face competition with producers who adopted new technology while the farmers are facing barriers to adopt it due to the risk and cost;
2. Input supply, such as fertiliser and other agrochemicals, is inadequate in least developed countries;
3. Agricultural extension is frequently weak, and as a result neither public and private sector is well positioned to provide it;
4. Access to credit is difficult;
5. Local markets for high-value perishable goods tend to be very thin and thus highly volatile; and
6. Inaccessible international market due to the fact it needs specific channels.

Additionally, based on Clapp's argument¹¹² which says that in contract, the domination of company has a legal power to retain seed, crop and inputs.

2.2.4 Small farmers' adaptation or reaction

One thing that we need to remember is that a violation is not a single process, but a dual process by understanding the small farmer as active actors in the CF system. The contract system is not only developing the agricultural companies, but also the small farmers themselves, although it tends to be in negative ways. Clapp¹¹³ argues that the unequal partnership beneath the contract has been resulting in open conflicts:

1. CF may provide a vehicle for technology transfer and local accumulation that the farmers gain genuine autonomy from the processor; they may be able to leave the contract without ill effect.
2. The farmers may become not autonomous but increasingly dependent, and that relationship may be recognised for the exploitative one it can be.¹¹⁴

¹¹¹ Glover and Kusterer (n 28) 9.

¹¹² Clapp (n 101) 80.

¹¹³ *ibid* 81.

¹¹⁴ Glover and Kusterer (n 28) 3.

Furthermore, Clapp¹¹⁵ finds that many farmers continue the contract due to the fact that it is a realistic option. Similarly, farmers from Peru are aware that having a link with a company is a privilege which allows them to have access to credit, technology and a tight market.¹¹⁶ From this case, it seems that CF can transform farmers' lives, but actually, it proves that CF as a free and independent bargain among two equivalent actors is incorrect.¹¹⁷

Small farmers have taken several steps to face the CF system, not only regarding internal problems of the contract but also on derivate problems which have followed. Delforge¹¹⁸ explains the farmers have several ways to attempt to solve their problems: first, by discussing their issues regarding CF with other farmers; and second, by the farmers striving to meet the companies, but they have always either failed to do so or do not dare to speak with companies in the monthly meeting, as they have weak bargaining powers. Regarding the labour process and social relations within the households, Carney¹¹⁹ provides a case of Gambia in terms of farmers' attempts to get a fair irrigation system for rice in CF. The rice irrigation system allows the heads of households to control land and labour responsibilities in the community among women. Furthermore, these women invoke their rights to get equal access in their language and customs, hence, they can negotiate and demand their right to get fair compensation for their labour in the time of cultivation.¹²⁰ From the case, Carney shows that CF influence social relations and labour processes in a community. It also indicates that the affected community transforms in terms of adjustment with the unfair system.

An action of small farmers can create another reaction in the community. Daddieh¹²¹ examines palm oil contract farmers in Côte d'Ivoire, Africa. Daddieh explains that several reasons, such as expensive fertiliser, low productivity, increasing labour wages and deteriorating price, meant the farmers diverted the palm nuts to the open market where the cost can be double the government's offer. Furthermore, other smallholders take

¹¹⁵ Clapp (n 101) 81.

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

¹¹⁸ Delforge (n 40) 21.

¹¹⁹ Judith A Carney, 'Contracting a food staple in the Gambia' in Peter D Little and Michael J Watts (eds), *Living Under Contract* (The University of Wisconsin Press 1994).

¹²⁰ *ibid.*

¹²¹ Cyril Kofie Daddieh, 'Contract farming and palm oil production in Côte d'Ivoire and Ghana' in Peter D Little and Michael J Watts (eds), *Living Under Contract* (The University of Wisconsin Press 1994).

other actions, such as diversion, destruction and neglecting their farm. However, due to the fragmentary nature of the action, it had a small effect and it did not change the government's structure on palm price.¹²² From the case, we can see that small farmers' reactions relate to each other; their dynamics are influenced by each other. In other words, the way small farmers respond to CF might differ due to the multiple reasons affecting society in general.

Similar with the Philippines, the countries in the aforementioned cases, including Peru, Thailand, Gambia and Côte d'Ivoire, Africa, are developing countries where their people rely heavily on agriculture. The implementation of CF in those countries shows that the unequal partnership constantly occurs in many ways, for instance, in transfer technology, credit and markets. In line with CF in the Philippines, the agriculture companies are the ones with privilege by establishing the contract, while the small farmers are the ones who accept the final draft. Furthermore, the reactions of the aforesaid small farmers also demonstrates that their protests could spread and influence others, the labourers and their community, affected by the unfair system. While in the Philippines, it even indicates that the community in general is also aware and tends to cooperate with the small growers, however, the study will examine this matter in chapter five.

2.2.5 Investigating violation of farmers' rights in Mindanao and their dynamics

This study understands that the state should ensure the business enterprises respect the farmers' right in the CF system. Furthermore, according to the literature review, the CF system tends to be biased as political phenomena.¹²³ It is suggesting that it perceives the contract to be a tool to control small farmers in the global agribusiness within a system, in which the small farmers enter the system as a grower for the companies. The state, who should protect the small farmers, also control and favour the companies through their regulations and its systems. However, a contract should acknowledge farmers' rights as explained in UN treaties and the UN Guiding Principles which regulate the state to protect the farmers' rights in the CF process in general, including ensuring the companies protect the rights through their policies and mechanisms. As

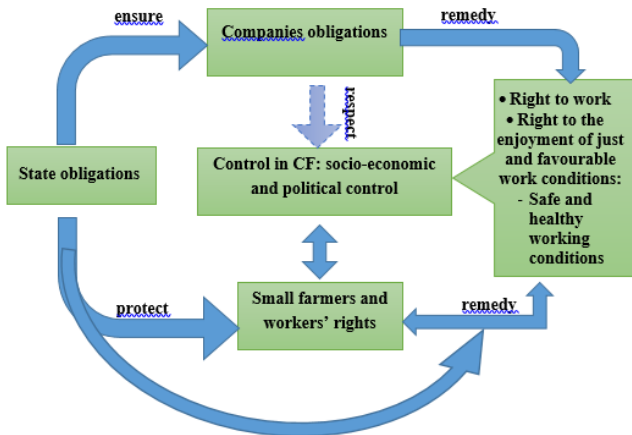
¹²² Daddieh (n 121) 206-207.

¹²³ Clapp (n 101); Delforge (n 40); Sáens-Segura, D'Haese and Ruben (n 29).

duty barriers, the state has obligations to watch over both small farmers and companies whether they are in the right direction or not.

This research borrows several indicators to examine the phenomenon from previous studies. The research will apply a concept of control from Vellema¹²⁴ in table 2.2 to investigate the implementation of farmers' rights in the CF system. Firstly, the focus of the farmers' rights in the study is on the right to work and right to the enjoyment of just and favourable work conditions, which will be further explained in chapter 3. Furthermore, by understanding the responsibility of the companies and the state, in chapters 3 and 4, the study will identify how they should be respecting and protecting the farmers' rights as mandated in the UN Guiding Principles. Next, the study will examine the implementation process of CF by the small farmers from socio-economic and political control in terms of the right to work and right to the enjoyment of just and favourable work conditions. In the end, the study aims to show how the companies control the implementation process of the contract as well as to show their violations to small farmers' livelihoods.

Figure 1 Conceptual framework



Source: Analyses of the author (2019)

¹²⁴ Vellema (n 28) 100.

Further aims of the research are to examine how the small farmers reacted to the CF system in Mindanao. As aforesaid, it is also essential to see the dynamics of small farmers and its social context to get a better understanding of the system. Many scholars have been studying these issues, and the result shows that in some areas, the small farmers tend to continue the contract, although they are harmful to the system, and the way they react to it influences the community in general.¹²⁵ By using the right to work and the right to the enjoyment of just and favourable work conditions and using the three-level control of Vellema, the research will investigate the small farmers' dynamics in a banana plantation in Mindanao to respond the system and to gain their rights.

¹²⁵ Glover and Kusterer (n 28); Carney (n 120); Clapp (n 101); Delforge (n 40).

3.

UNDERSTANDING THE POSITION OF CONTRACT FARMERS AND COMPANIES IN LAW: RESPONSIBILITY TO RESPECT HUMAN RIGHTS, RIGHT TO WORK AND RIGHT TO THE ENJOYMENT OF JUST AND FAVOURABLE WORK CONDITIONS

As mentioned in the literature review in the previous chapter, several forms of CF were conducted by more than one company in the community. Consequently, some farmers might have different problems with the companies. To understand each responsibility of both companies and farmers, this chapter examines three issues. Firstly, the right to work and the right to the enjoyment of just and favourable work conditions in international laws as well as national laws in the Philippines to get the picture of the farmers' position. Then, the chapter examines the obligation of the companies to respect human rights as well as discussing the nature of the UN Guiding Principles itself. It is essential to understand the character of the principles, hence we can draw the line between the concept of companies' obligations and the reality. Lastly, in order to keep the issue grounded in the Philippines, the chapter talks about the state's policies in those two matters. Additionally, the explanation helps to understand the influence of each entity in the implementation process of CF, mainly to seek their role on social, economic and political aspects.

3.1 UNDERPINNING THE RIGHT TO WORK AND RIGHT TO ENJOYMENT OF JUST AND FAVOURABLE WORK CONDITIONS

Right to work is one of the fundamental rights which is acknowledged in several international covenants, such as the Universal Declaration of Human Rights (UDHR)¹²⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹²⁷. By ratifying the ICESCR on 7 June 1974,¹²⁸ the country agrees to follow the rules and holds responsibility on the covenant. In other words, the Philippines must adopt and implement the ICESCR in its national regulations, including the right to work and right to the enjoyment of just and favourable work conditions, which will be explained later.

Right to the enjoyment of just and favourable work conditions is embedded in the right to work, which should be adopted and implemented constantly. It is stated in article 23(1) of UDHR that ‘everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment’. Then, it is also guaranteed in the ICESCR in article 6(1) which states ‘the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right’. The two articles show that the right to work has several elements which comprise just and favourable work conditions, and all of them need to be guaranteed by the state and to be applied for every citizen.

Aside from international treaties, the rights are also stressed in the UN General Comment (GC) No 18 of 2005 on ‘The Right to Work’. The GC vigorously addresses the importance of the right to work as ‘essential for realizing other human rights and forms an inseparable and inherent part of human dignity’.¹²⁹ The acknowledgment is strengthened by regulation of each party, starting from states and private enterprises.

¹²⁶ UN General Assembly, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) <www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf> accessed 1 March 2019.

¹²⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No 18: The Right to Work (Art 6 of the Covenant)’ (6 February 2006) E/C.12/GC/18 para 1 <www.refworld.org/docid/4415453b4.html> accessed 22 May 2019.

¹²⁸ OHCHR, ‘State national action plans on business and human rights’ (OHCHR) <www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> accessed 17 July 2019.

¹²⁹ CESCR, ‘General Comment No 18 (n 127).

Firstly, the GC explains that the state parties are obligated to **respect** the right to work by ‘refraining from denying or limiting equal access to decent work for all persons’, including marginalised people; the state obligates to protect the right to work by adopting legislation to ensure equal access and providing training in order to ensure that ‘privatization does not undermine workers’ rights’; and that the state should fulfil the right to work from providing and facilitating to promoting the right through its national legal system.¹³⁰ The GC regulates the state position to set a provision both for ensuring the right to work for everyone, as well as to set a rule for the companies for their necessary activities. The obligation is essential in the implementation of CF, particularly on the centralised model like in Santo Tomas and Compostela Valley. It is because the state has a limited power to be directly involved in preparing the contract, it has to set a rule that could guarantee as well as help the companies to provide the right to work to be equally accessible for everyone. In other words, the GC provides a cooperation mechanism between the state and the companies through a set of rules to ensure the implementation of the right to work.

Unlike the state’s obligations, the private enterprises’ responsibilities are examined in paragraph 52 of the GC along with other entities, for instance individuals, local community, trade unions, civil society and private sector organisations. Furthermore, the GC states that ‘Private enterprises – both national and multinational – while not bound by the Covenant, have a particular role to play in job creation, hiring policies, and non-discriminatory access to work’. Additionally, they agree to ‘conduct their activities on the basis of legislation, administrative measures, codes of conduct and other appropriate measures promoting respect for the right to work, agreed between the government and civil society’. One of the weaknesses of the GC is that there is no clear separation of the responsibility for companies with other entities, which somehow create ambiguities due to the fact that their roles or impacts for the society is varied, for example with the local community. However, the GC highlights the check and monitoring process for the companies’ operation by obligating them to coordinate with the state and civil society.

¹³⁰ CESCR, ‘General Comment No 18 (n 127) paras 23-28.

As mentioned earlier, the right to work needs to be examined through another right, that is the right to the enjoyment of just and favourable conditions of work which is regulated in article 7 of the ICESCR. It states that the states parties should recognise everyone under several indicators:

1. Remuneration which provides all workers, as a minimum, with:
 - i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - ii. A decent living for themselves and their families in accordance with the provisions of the ICESCR;
2. Safe and healthy work conditions;
3. Equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
4. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Furthermore, since the ICESCR regulates in the general sense, the UN produced GC No 23 of 2016 on the right to just and favourable conditions of work.¹³¹ This part will examine the first three points of article 7 of ICESCR and how they relate to small banana farmers in Santo Tomas, Davao del Norte, and Nabunturran, Compostela Valley.

Firstly, the GC No 23 states that remuneration or wage or salary should be a reasonable amount which can cover health insurance, housing, food allowances, on-site affordable children facilities and vulnerable situations.¹³² This part also highlights that there must be equal remuneration for everyone,¹³³ including agricultural workers who were often excluded from access to basic services and often face severe socioeconomic disadvantages.¹³⁴ This issue is highlighted by the General

¹³¹ International Covenant on Economic, Social and Cultural Rights (ICESCR) art 7.

¹³² UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)' paras 7 and 23 (7 April 2016) E/C.12/GC/23 <www.refworld.org/docid/5550a0b14.html> accessed 22 May 2019.

¹³³ *ibid* para 7.

¹³⁴ *ibid* para 47(h).

Conference of the International Labour Organization (ILO) on Equal Remuneration Convention of 1951¹³⁵ along with the Recommendation of 1951 No 90 by providing appropriate actions on the implementation process. Subsequently, the experts' interpretation of ILO stressed the vital role of the state, employers and workers' organisations to share responsibility in terms of applying an effective way of the equal remuneration principles.¹³⁶

Secondly, the GC No 23 examines the importance of safe and healthy working conditions both in formal and informal branches of economic activities.¹³⁷ Furthermore, the GC addresses that the state should establish a policy which prevents 'accidents and work-related health injury by minimizing hazards in the working environment' and ensures the participation of all entities, ranging from workers, employers, to representative organisations.¹³⁸ In this matter, the employers or normally the representation of private enterprises are tied to follow the rules and to participate in a monitoring system created by the states.¹³⁹ Comparable with an equal remuneration, the safety and health issues are also stressed by the General Conference of the ILO on 'Occupational Safety and Health Convention of 1981 No 155'. The convention explains that health implies mental and physical, which relates to safety and hygiene at work in the workplace, directly or indirectly controlled by an employer.¹⁴⁰ Aside from providing indicators for the states' policy and national implementation, the convention also explains the responsibility of employers in order to ensure that 'so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of

¹³⁵ International Labour Organization (ILO), 'Convention concerning discrimination in respect of employment and occupation' C111 (adopted 25 June 1958, 42nd ILC session Geneva, entered into force 15 June 1960) <www.ilo.org/dyn/normlex/en/f?p=NORMLEX_PUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312256:NO> accessed 22 May 2019.

¹³⁶ Constance Thomas and Yuki Horii, 'Equality of opportunity and treatment in employment and occupation' in International Labour Organization, *Fundamental rights at work and international labour standards* (International Labour Office 2003) <www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087424.pdf> accessed 13 June 2019.

¹³⁷ CESCR, General Comment No 23 (n 132) paras 25-26.

¹³⁸ *ibid* para 25.

¹³⁹ *ibid* para 29.

¹⁴⁰ International Labour Organization (ILO), 'Convention concerning occupational safety and health and the working environment' C155 (adopted 22 June 1981, 67th ILC session Geneva, entered into force 11 August 1983) art 3 <www.ilo.org/dyn/normlex/en/f?p=NORMLEX_PUB:12100:0::NO::P12100_ILO_CODE:C155> accessed 22 May 2019.

protection are taken'.¹⁴¹ Furthermore, the ILO produced the C184 on Safety and Healthy in Agriculture Convention, 2001 (No 184). This convention strengthens the international tools to protect the agricultural livelihood. It indicates that in the CF context, the companies are allowed to use chemicals, such as pesticide, as long as they provide protective gear for the workers.

Thirdly, the GC No 23 guarantees an equal opportunity for everyone 'through fair, merit-based and transparent processes that respect human rights'.¹⁴² Specifically, the GC No 23 obligates the private sector to adopt relevant legislation produced by the states parties, for instance, comprehensive non-discrimination legislation, laws on guaranteeing equal treatment in hiring, promotion and termination, also on adopting regular surveys in order to monitor changes in their business process.¹⁴³ Aside from being responsible for respecting rights, business enterprises are obligated to 'remedy or cooperate in its remediation through legitimate processes that meet recognized standards of due process' in terms of any abuse of the right as a result of their actions.¹⁴⁴ This matter is closely related to article 2(2) of the ICESCR which guarantees non-discrimination in any field of the covenant. Furthermore, GC No 20 of 2009 on 'Non-discrimination in economic, social and cultural rights (art 2, para 2, of the ICESCR)' examines the states' obligations in order to tackle down formal and substantive discrimination¹⁴⁵ and to guarantee non-discrimination of property statues, including real property, named land ownership or tenure.¹⁴⁶ Additionally, since the Philippines ratified the C100¹⁴⁷, it should follow the ILO expert on implementation of the convention, mainly to ensure the substantive fields of application covering access to training, occupation, employment, and terms of and conditions of employment.¹⁴⁸

¹⁴¹ ILO (n 140) art 16 para 2.

¹⁴² CESCR, General Comment No 23 (n 132) para 31.

¹⁴³ *ibid* para 33.

¹⁴⁴ *ibid* para 76.

¹⁴⁵ *ibid* para 8.

¹⁴⁶ *ibid* para 25.

¹⁴⁷ It stands for ILO Convention No. 100 on 'Equal Remuneration Convention' in 1951. International Labour Organization (ILO), Equal Remuneration Convention' C100 (adopted 29 June 1951, 34th ILC session Geneva) <www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100> accessed 15 July 2020.

¹⁴⁸ Thomas and Horii (n 136) 2003.

From the explanation above, we can see that the right to the enjoyment of just and favourable work conditions has to be defined in detail for workers, which means it influences all aspect of their life. The implementation of this right guarantees the fundamental right of workers, for instance, fulfilment of economic perspective could lead to fulfilment on social aspects through housing and food allowances. Also, specifically, the GC No 23 of 2016 highlights inclusion for agricultural workers, giving them a political status to seek responsibilities of agribusiness companies to respect their rights. However, the GC also examines the chemical issues by providing duties for the state and employers. As the agrarian workers are highly exposed to chemicals, safe and healthy working conditions as well as proper equipment can be pretty essential for them. The last point is on non-discrimination principles in work. As explained in the previous paragraph, equality in the working process has impacted the political and economic aspects in terms of participation in the transparency process for example. Furthermore, the GC also stresses property issues, particularly on land ownership and tenure, by obligating the state to protect it as it is susceptible to discrimination. Overall, the implementation of this right is essential for the workers in general given that it could affect their overall wealth.

3.2 INTERSECTION OF BUSINESS AND HUMAN RIGHTS: UN GUIDING PRINCIPLES AS A SOFT LAW AND NECESSITY RULE

In this section, the paper highlights the role of business enterprises in human rights matters based on the UN Guiding Principles. Their obligations are examined in the principles, as mentioned earlier in the conceptual framework, but this time, the focus will be only on the business enterprises' responsibility. The first foundation is mentioned in the preamble of the UDHR that 'every individual and every organ of society' is called upon to promote and to respect human rights, and the business enterprises are no exception to this. It means the business enterprises hold an equal responsibility to respect human rights to the same degree as other entities. However, the business' obligation has a different level of implementation, stated specifically in the UN Guiding Principles. It starts from its article 11, which states 'Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved'.

Furthermore, ‘the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate (...) It exists over and above compliance with national laws and regulations protecting human rights’, explain the UN Business and Human Rights Working Group in their official commentary.¹⁴⁹ From this, we can understand that the business enterprises do not only hold the human right principles, but they should be implementing them in their operating systems ranging from offices to field areas, to be parallel with international as well as national laws. Here, the states hold an essential role in establishing a human rights mechanism as a foundation for business’ operation. Supervised by the state, the business enterprises are obligated to respect human rights in their operations. The cooperation between the state and the companies here is arguable in the outreach of a human rights discourse due to fact that the UN Guiding Principles are a soft law which only provides the standards to be followed.

All of the agribusiness companies in the banana industry in Davao possess equal responsibilities to respect human rights. As the UN Guiding Principles are non-binding, the respect for human rights is tied to another stronger international law. The business enterprises’ obligations to respect human rights at least to a minimum recognition come from the International Bill and International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work,¹⁵⁰ and applies equally to ‘all of the enterprises regardless of their size, sector, operational context, ownership, and structure’.¹⁵¹ For the CF case in Davao, it is not a surprise that agribusiness companies own more than one subsidiary to manage substantial banana plantations, growers or workers. Also, according to articles 12 and 14 of the UN Guiding Principles, those subsidiaries companies are no exception to respecting human rights; as long as they are undertaking business operations, they are tied to international laws, including the ILO’s standard. Here, the ILO becomes a vital organisation given that it has been acknowledged globally, hence it can face the boundaries of the UN Guiding Principles challenge in terms of international law’s discourse. Moreover, for the

¹⁴⁹ UN Office of the High Commissioner for Human Rights, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (UN Guiding Principles) HR/PUB/11/04 (United Nations 2011).

¹⁵⁰ *ibid* art 12.

¹⁵¹ *ibid* art 14.

Philippines itself, it has ratified several of the ILO's conventions.

In terms of detailing the roles of the business enterprises, article 15 of the UN Guiding Principles states three primary responsibilities to respect human rights in its policies and process. They are:

1. A policy commitment to meet their obligation to respect human rights.

- First of all, the business enterprises should make a commitment statement which stipulates all of its business partners should respect human rights, and it should be reflected in operational policies and procedures.¹⁵² In terms of consistency and accountability, the policy statement should be publicly available, which means it needs to communicate actively to all its production networks, even the contractual relationship's partners.¹⁵³

2. Human rights due diligence process should identify, prevent, mitigate and account for how they address their impacts on human rights.

- Due diligence is one of the essential processes of human rights due to the business enterprises' obligation to establish a comprehensive process of the whole of its activities. The process should cover any adverse human rights impacts that are caused or contributed by companies' activities both directly and indirectly; it should address the risk of severe breaches of human rights as well in the context of its operations; and it should recognise that human rights risks might change along with its operations.¹⁵⁴ Due diligence obligates the business enterprises to gauge human risks in terms of identifying and mitigating through effective integration and appropriate actions which are based on suitable qualitative and quantitative indicators.¹⁵⁵ Lastly, the business enterprises are also required to address their human rights impacts by informing or providing information regularly formally to affected stakeholders and publicly to its other intended audiences, for instance, individuals or groups who are impacted and investors.¹⁵⁶

¹⁵² UN Guiding Principles (n 149) art 16.

¹⁵³ *ibid.*

¹⁵⁴ *ibid* art 17.

¹⁵⁵ *ibid* arts 18-20.

¹⁵⁶ *ibid* art 21.

3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

- The business enterprises are obligated to provide or cooperate in remediation through a legal process or grievance mechanisms when they are identified as having caused or contributed to an adverse human right impact.¹⁵⁷ In this stage, the business enterprises might cooperate with the judicial mechanism for alleged crimes.¹⁵⁸

Considering article 15 of the UN Guiding Principles, it is clear that it is not only identifying responsibilities for business enterprises but also providing a comprehensive mechanism to adopt and implement human rights values on their activities, for instance on the due diligence and remedy processes.

The aforementioned explanation shows that the UN Guiding Principles provides not only a set of standards but also a process template for the business entities on how to embed respect for human rights on their activities and relationships, as acknowledged by Ruggie.¹⁵⁹ Indeed, Augenstein¹⁶⁰ also discussed the use of the UN Guiding Principles by explaining the relationship between regional mechanisms in the European Union and the principles. Furthermore, Dumbuya¹⁶¹ acknowledges that the UN Guiding Principles makes a crucial contribution to changing attitudes of both the state actors and business entities in terms of respecting human rights. For example, after an accident involving about 45 mineworkers in South Africa in 2002, the UN Guiding Principles were used in the preliminary discussions with the state and the TNCs, which resulted in improvement of favourable conditions and consideration of the educational welfare of children of

¹⁵⁷ UN Guiding Principles (n 149) art 22.

¹⁵⁸ *ibid.*

¹⁵⁹ John G Ruggie, “For the Game. For the world.” FIFA and Human Rights’ (Harvard Kennedy School-Corporate Responsibility Initiative 2016) <www.hks.harvard.edu/centers/mrcbg/programs/crj/research/reports/report68> accessed 29 July 2019.

¹⁶⁰ Daniel Augenstein, ‘Negotiating the hard/soft law divide in business and human rights: the implementation of the UNGPs in the European Union’ (May 2018) 9(2) Global Policy 254 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/1758-5899.12530>> accessed 29 July 2019.

¹⁶¹ Rashid Dumbuya, ‘Corporate Responsibility to Respect Human Rights: Is the UN Guiding Principles on Business and Human Rights Up to the Task or is There a Need for a Treaty on Business and Human Rights?’ (2014) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2541420> accessed 29 July 2019.

the victims.¹⁶² Some states have started to take concrete action in line with the UN Guiding Principles. For instance, Sierra Leone in West Africa established a National Minerals Agency in 2013 which promotes and implements as well as ensures compliance with human rights in the mineral sector.¹⁶³ As a set of standards, the UN Guiding Principles could bring a significant impact to states in protecting human rights and using its power to influence the corporations to respect human rights in every single activity.

The foremost criticism on the UN Guiding Principles is its nature as soft law. Shelton¹⁶⁴ explains that soft law means ‘international instruments – other than a treaty – that contain non-binding principle, norms, standards, or other statements of expected behavior’. However, flexibility appears as the main advantages of soft law. It is because it ‘enables governments to manoeuvre efficiently, thereby allowing responses to problems or changing circumstances as needed’.¹⁶⁵ In other words, as the UN Guiding Principles are non-binding, it could use by governments either for supporting TNCs or protecting the small farmers’ rights. Human Rights Watch (HRW) criticised the UN Guiding Principles for setting a lower bar than other international standards, which leads to problems. According to the report by HRW, many companies see the principles incorrectly as a definitive standard for human rights practices.¹⁶⁶ In terms of the approach issue, HRW have three criticisms:¹⁶⁷

1. The UN Guiding Principles do not have any mechanism to ensure compliance or to measure implementation, and they cannot require companies to do anything at all;
2. Companies can reject the principles altogether without consequences or publicly embrace them while doing absolutely nothing to put them into practice; and

¹⁶² Dumbuya (n 161).

¹⁶³ *ibid.*

¹⁶⁴ D Shelton, ‘Normative hierarchy in international law’ (2006) 100(291) *Am J Int Law* 319, 319-320 cited by Barnali Choudhury, ‘Hardening soft law initiatives in business and human rights’ in Jean J du Plessi and Chee Keong Low (eds), *Corporate governance codes for the 21st century: international perspective and critical analyses* (Springer International Publishing 2017) 191.

¹⁶⁵ Choudhury (n 164) 192.

¹⁶⁶ Chris Albin-Lackey, ‘Without Rules: A Failed Approach to Corporate Accountability’ (Human Rights Watch 2013) <www.hrw.org/sites/default/files/related_material/business.pdf> accessed 29 July 2019.

¹⁶⁷ *ibid.*

3. The principles do not explicitly insist that governments regulate companies with the requisite scope and rigor; they also fail to push governments hard enough to ensure that companies respect human rights.

The non-binding and voluntary nature of the principles challenges the critical value of human rights in business, which requires consistent international standards and ensures corporations comply with the rights wherever they operate. In other words, the UN Guiding Principles might provide an international standard, but it needs much work in order to ensure the corporations keep on the track of the principles. Also, it still takes time to combat the violations of human rights in the field.

Despite the influence of the policy in general, the UN Guiding Principles provide the business enterprises with influences in social, economic and political aspects. Firstly, a communication of the business commitment could impact on the social relationships between the companies and farmers, and among the farmers itself. Then, the due diligence process could have impacts on the nature of the contract in terms of economic value, between companies and growers or farmers. Lastly, the remedy process is a highly political arena as it does not only involve the state but also it is essential both for companies and farmers. In the end, the UN Guiding Principles do not only establish the mechanisms for the business enterprises to respect human rights, but also provide the social, economic and political aspects to influence it. The vagueness of the UN Guiding Principles challenge the human rights value. Furthermore, it could reduce the implementation of the rights themselves and give more opportunities to only some actors, such as the agribusiness companies in the CF system.

3.3 NATIONAL REGULATIONS ON BASIC RIGHTS IN WORK CONDITIONS

In terms of integrating with international law, the Philippines government guarantees the right to work in several policies. Even though the Philippines constitution of 1987 does not state the right to work directly, it regulates the rights of labour in article 13(1), which says:

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Additionally, the constitution strengthened the right to work through labour in article 8(3), which guarantees full protection of workers both in the country or overseas, organised and unorganised, and promotes full employment and equality of employment opportunities for all, right to self-organisation, security of tenure, humane conditions of work, workers' participation in policymaking and recognition of the relationship between workers and employers in terms of just share in the fruits of productions and the right of enterprises. From this article, the state is not only required to be non-discriminatory on economic matters but also to regulate property rights for people, which for small farmers could be an assurance for their land ownership. These paragraphs are politically essential for small farmers and agriculture workers in general.

As agriculture is one of the vital aspects in the Philippines, the constitution regulates the right of farmers in article 8(4) and (5) which details rights on agrarian matters. Article 8(4) examines that the state shall undertake and establish the right of farmers as well as regular farmworker who are landless 'to receive a just share of the fruits', also 'the State shall respect the right of small landowners'. Meanwhile, in article 8(5), the state highlights the rights of entities in agrarian matters as follows:

The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperative, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

This special section on agrarian rights are the foundation to seek responsibility from the state and business enterprises. This section also examines that the small landowners, small farmers and farmworkers are an equal partner in business processes who have rights to participate in the entire operations of agrarian matters. Therefore, their political and economic aspects are guaranteed by the constitution in terms of

participation and investment in a business. Furthermore, participation also has an impact on their social aspect as it involves other workers, farmers and companies as well, which influence the nature of the interaction. The guarantees of the constitution on agrarian issues become a necessary legal foundation for small farmers and workers to participate in the business process with dignity.

In order to ensure the implementation process, the Department of Labour and Employment (DOLE) recognises the workers' fundamental rights on their official website.¹⁶⁸ The site starts with the acknowledgement of equal work opportunities for all by highlighting the state's responsibility to 'protect labor, promote full employment, provide equal work opportunity regardless of gender, race or creed; and regulate employee-employer relations'. Aside from that, the DOLE also examines safe working conditions, stating:

Employers must provide workers with every kind of on-job protection against injury, sickness, or death through safe and healthful working conditions (...) Hazardous jobs are those which expose the employee to dangerous environment elements, including contaminants, radiations, fire, poisonous substances, biological agents and explosive, or dangerous processes or equipment including construction, mining, quarrying, blasting, stevedoring, mechanized farming and operating heavy equipment (...)

The DOLE recognition goes deeper into regulating the relationship between employee and employer, which is essential to ensure as well as to keep accountability of the rights' implementation. Meanwhile, the guarantee of safe working conditions is vital for agrarian entities due to the fact that their jobs are always exposing them directly with chemicals, such as pesticides which has both short term and long-term effects. In the end, the acknowledgement of fundamental rights by DOLE clarifies the position of agrarian entities on business processes that as a part of chain-productivity, their fundamental rights should be respected and fulfilled.

In terms of safe and healthy working conditions, the government produced Republic Act (RA) No 11058 of 2018 on 'An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Thereof', later on known as occupational safety

¹⁶⁸ DOLE, 'The workers basic rights' (DOLE Bureau of Working Conditions) <www.bwc.dole.gov.ph/index.php/forms?layout=edit&id=85> accessed 22 May 2019.

and health (OSH) law. This law does not only provide guidance for the workers' right in general, but it also stresses the penalties for the employer if found to be violating the rights. Aside from representing international law, it seems that this law has a stronger influence for the business as it has several penalties, and the simple one is the employer should be paid one hundred thousand pesos (P100,000.00 or around US\$1955).¹⁶⁹ Furthermore, according to the Office of the UN High Commission for Human Rights (OHCHR), the Philippines is establishing its 'National Action Plans (NAP) on Business and Human Rights'.¹⁷⁰ The NAP is essential as it is a representation that the Philippines apply the UN Guiding Principles. The guidelines are soft law which only provides guidance and NAP is one of the products from it. Then, the progress is a good sign that not only for the state but also for the small farmers as it can strengthen their rights in the business process.

3.4 CONCLUSION

As mentioned in several international laws, the right to work and the right to the enjoyment of just and favourable work conditions are essential in the business process, especially relevant to CF which involves many TNCs. Related with the role of the companies in human rights, the UN Guiding Principles has provided a set of standards and mechanisms for them to embed the rights in the business process. Even though there is no clear distinction on business' responsibilities with other communities, the UN General Comments stress the remedy process to accommodate the problem of companies, partner, workers and even the state which might be occurring in the business process. Also, the more crucial issue of the UN Guiding Principles is its nature as a soft law and, hence, it is voluntarily applicable. This can be problematic given that it enables the state and the companies to avoid or even to reject the concept, which further creates problem in the implementation. It shows that the Philippines has comprehensive laws to protect farmers' rights. The acknowledgment of national laws of the Philippines shows that small farmers, small landowners and agricultural workers

¹⁶⁹ Republic Act 11058, Code of Practice 2018, s 28.

¹⁷⁰ CESCR, General Comment No 18 (n 127).

have equal rights to participate in the industrial process followed by their fundamental rights that should be respected by the companies. Various rights on economic matters through participation or fulfilment on basic social needs represent that the state guarantees the agrarian entities' dignity on economic, social and political aspects. However, the subsequent question is how the state uses its power to influence the TNCs in the banana industry to respect and implement the principles? The question should be raised since an unenforceable commitment is simply not enough to protect human rights.¹⁷¹

¹⁷¹ Albin-Lacky (n 166).

4.

STORY OF AGRIBUSINESS VENTURE ARRANGEMENTS IN THE PHILIPPINES: POLICIES, MINDANAO AS A PROMISED LAND AND AGRIBUSINESS COMPANIES IN THE BANANA INDUSTRY

The following part examines the evolution of CF in the Philippines, known as AVAs. The attempts of the state to regulate CF in the Philippines has a long journey, including land reform in terms of creating an effective system. In addition, Mindanao has a long history of its involvement in the CF system which attracts various agribusiness companies, most of them TNCs, including in Davao Region which known as the capital of bananas. The attempt of the Philippines government on AVAs makes them one of the competent exporter countries of bananas in the world.

4.1 THE FIRST ATTEMPT AND LAND REFORM AS A REASON FOR THE SMALL FARMER TO GET INVOLVED IN CONTRACT FARMING

As one of the top exporters of agricultural products, the Philippines needs to maintain its production through CF. The first attempt at CF was under the settlement programme between 1935-1946 which was introduced in the Philippines countryside, including Southern Mindanao.¹⁷² President Quezon established the National Land Settlement Administration (NLSA) to survey the land in Southern Mindanao and to supervise the settlement by developing the social infrastructure needed in the agricultural business, for instance, through providing irrigation systems.¹⁷³ At the first stage, the government provided land, technicians, a market as the businessman had not entered the area yet, as well as agricultural inputs and equipment on a credit scheme.¹⁷⁴ Whereas in the implementation process, the state, represented by NLSA, performed as

¹⁷² Sietze Vellema, *Making contract farming work? society and technology in Philippine transnational agribusiness* (Shaker Publishing 2002) 30.

¹⁷³ *ibid* 31.

¹⁷⁴ Vellema (n 172) 47.

the company whose authorities create contacts with the small farmers and define the products' requirement; and it acted as the intermediary between the small farmers and the buyers registered in the settlement process.¹⁷⁵ Nevertheless, after facing many problems in controlling the agricultural commodity, the control of the NLSA was declined and abolished in 1954 due to a reorganisation in government.¹⁷⁶ This stage brings us to a connection with the land reform in the CF system in the Philippines.

As time went by, the government came up with a different plan by involving land reform as part of a CF system. Land reform in the Philippines is essential since it becomes the foundation of farmers to engage. Besides, the political stability and economic development in the Philippines is heavily relied upon in the land reform issue.¹⁷⁷ As land has an essential role, the Philippines and colonial government have controlled it through various strategies. The Philippines gained its independence on 4 July 1946, from the US. Nevertheless, the colonial government still has influences on the new country, including on land issues. At first, land reform in the Philippines was complex and firmly rooted in the Spanish colonial period¹⁷⁸ given that it has many large plantation systems known as the Hacienda system. Moreover, the Philippines government is also rooted in the US administration.¹⁷⁹ In the beginning of Philippines' independence, the US government created the puppet government by ensuring Manuel Roxas as the first president of the Philippines who was obligated to preserving the continuity of colonial administration, particularly on landlord power.¹⁸⁰ The colonial government is aware that land is an essential resource for the Philippines as an agriculture country. Moreover, the influence of the US appears in the policy of land reform as well.

The Philippines land reform laws have evolved several times, in line with the nation's economic policy. The Philippines has implemented four major land reforms for rearranging rural property rights to advance the condition of agriculture workers since its independence in 1946.¹⁸¹ At

¹⁷⁵ *ibid* 47.

¹⁷⁶ *ibid* 47-48.

¹⁷⁷ Martin J Bunch, V Madha Suresh and T Vasantha Kumaran (eds), *Proceedings of the third international conference on environment and health* (University of Madras and Faculty of Environmental Studies, York University 2003) 353- 373 <www.yorku.ca/bunchmj/ICEH/proceedings/Abstract_Bunch.htm> accessed 29 January 2019.

¹⁷⁸ *ibid* 182.

¹⁷⁹ James Putzel, *A Captive Land: The Politics of Agrarian Reform in the Philippines* (Monthly Review Press and Ateneo de Manila UP 1992) 83.

¹⁸⁰ *ibid*.

¹⁸¹ Bunch, Madha Suresh and Vasantha Kumaran (n 177) 181.

first, the state guaranteed ‘the right of farmers and regular farmworkers to receive a just share of the fruits thereof’.¹⁸² Consequently, the government started the land reform by producing RA 1400 of 1995 under President Ramon Magsaysay; RA 3844 of 1963 under President Diosdado Macapagal; President Decree 27 of 1972 (PD27) under Ferdinand Marcos; the CARP of 1987 under President Corazon Aquino; and CARP Extension with Reforms (CARPER) in 2009 under President Gloria Macapagal Arroyo.¹⁸³ Additionally, CARP was as part of an incorporated plan on Philippines’ national economic development strategy under President Aquino in 1987.¹⁸⁴ The Philippines government understands that land issues cannot be distinguished from financial issues, henceforth they produce other regulations to strengthen the programme.

The land reform aims to distribute vast plantations to small farmers with the hope that it could be boost penetration of AVAs in the field. According to Presidential Decree (PD) No 27 of 1972, ARBs are the ‘tenant farmers, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size of five (5) hectares if not irrigated and three (3) hectares if irrigated’. Additionally, RA No 6657 of 1988 states that ‘the agrarian reform is founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof’. To strengthen the implementation, DAR produced Administrative Order (AO) No 02 of 2008 on ‘Guidelines Governing Lease of Lands under Agribusiness Venture Arrangements (AVAs) in Agrarian Reform Areas and the Determination of Lease Rental Thereof’. As a result, in 2017 there were 28,403 hectares of agricultural lands awarded to 34,572 qualified ARBs in the whole country.¹⁸⁵ For the Davao Region, there were 1,059 ARBs awarded an agricultural land with total areas of 793 hectares by DAR.¹⁸⁶ Since the farmers had owned the property, they had the freedom to manage their land, including joining the AVAs scheme.

¹⁸² Republic Act No 9700 (2009) s 1.

¹⁸³ Bunch, Madha Suresh and Vasantha Kumaran (n 177); Ramón M de Vera, ‘Land reform in Mindanao Philippines’ (Doctoral thesis, Universidad De Navarra 2015) <https://dadun.unav.edu/bitstream/10171/38524/1/Tesis_RamonDeVera.pdf> accessed 17 September 2018.

¹⁸⁴ Bunch, Madha Suresh and Vasantha Kumaran (n 177) 199.

¹⁸⁵ Philippine Statistics Authority (PSA), *Redistribution of Land: Report No 2018 – 8* (PSA Nov 2018) 1 <https://psa.gov.ph/sites/default/files/ais_redistributionofland_2018.pdf> accessed 27 April 2019.

¹⁸⁶ *ibid* 4-5.

4.2 AGRIBUSINESS VENTURE ARRANGEMENTS REGULATIONS

CF in the Philippines has comprehensive laws and systems which have been renewed or revised several times to align the system with the farmers and agribusiness companies itself. The regulation started on 6 October 1999 when the Department of Agrarian Reform (DAR) produced DAR Administrative Order (DA) No 02-99 on 'Rules and Regulations Governing Joint Economic Enterprises in Agrarian Reform Areas' facilitating partnerships between ARBs, including the holders of emancipation patents or certificate of land ownership awards, and private sector investments, including agricultural corporation. The introduction of AVAs appears in DAR Administrative Order No 09 on 'Revised Rules and Regulations Governing Agribusiness Venture Arrangements (AVAs) in Agrarian Reform Areas' on 13 December 2006. The law defines the AVA schemes in section 5, which still applies today:

1. Joint venture agreement: a scheme when ARBs and investors shall form a joint venture corporation to manage farm operations. ARBs shall contribute the land, both held individually or collectively, and the facilities and improvements, if any, while the investor shall furnish capital and technology for production, processing and marketing of agricultural goods, or construction, rehabilitation, upgrading and operation of agrarian capital assets, infrastructure and facilities.¹⁸⁷
2. Production/Contract growing/Growership/Marketing contract: a scheme wherein the ARBs commit to producing certain crops which the investor buys at a pre-agreed term (eg volume, quality standard, selling price) and maintain ownership of the land. While in the marketing contract, the ARB shall engage the service of an investor who will explore possible markets/buyers for his/her produce.¹⁸⁸
3. Lease agreement: a scheme wherein the ARBs shall bind themselves to give the former landowner or any other investor general control over the use and management of the land for a certain amount and a definite period.
4. Management contract: a scheme where the ARBs shall hire the services of a contractor who may be an individual, partnership or corporation to assist in the management and operation of the farm for producing high-value crops or other crops in exchange for a fixed wage and/or commission.¹⁸⁹

¹⁸⁷ DAR Administrative Order No 09 on Revised Rules and Regulations Governing Agribusiness Venture Arrangements (AVAs) in Agrarian Reform Areas (2006) s 5.1.

¹⁸⁸ *ibid* s 5.2.

¹⁸⁹ DAR Administrative Order No 09 (n 187) s 5.4.

5. Service contract: a scheme when the ARBs shall engage the service of a contractor for mechanised land preparation, cultivation, harvesting, processing, post-harvest operations and/or other farm activities for a fee.¹⁹⁰

6. Build-operate-transfer: a scheme wherein the investor may build, rehabilitate or upgrade, at his/her own cost, capital assets, infrastructure and facilities applied to the production, processing and marketing of agricultural products. He/she shall operate the same at his/her expense for an agreed period after which the ownership thereof is conveyed to the ARBs who own the land where such improvements and facilities located.¹⁹¹

Aside from providing defining of contracts, the law also regulates the National AVA Evaluation Committee (NAEC) and the Provincial AVA Task Force¹⁹² to watch and supervise the implementation, including the operating procedures as well as the law.¹⁹³ Moreover, the law manages how to revoke or cancel AVAs¹⁹⁴ and the expiration of the AVA contract.¹⁹⁵

The AVA laws in the Philippines indicates that the companies supposedly assist the small farmers to expose their product into a broader market. From the name of the first regulation in 1999, the state seems that it still did not have a clear plan for the joint economic support on the agrarian sector. It is important to remember that in 1999, the state had just finished the land reform where the small farmers were starting have the land, and at the time, there were many landlords who became politicians as well. The first policy could be seen as the long arm of the landlord to keep their power to maintain the land. Meanwhile, in the new regulation of 2006, the differentiation in the types of AVAs show that the investor has an essential role. They could act as the facilitator, suppliers, marketing until managing the plantation itself. Unlike the definition of CF from Eaton and Shepherd¹⁹⁶ focusing on characterising the sponsor and its role in general, the AVAs tend to concentrate on detailed responsibility of the small farmers and on what kind of activities

¹⁹⁰ *ibid* s 5.5.

¹⁹¹ *ibid* s 5.6.

¹⁹² *ibid* ss 8-11.

¹⁹³ *ibid* ss 11-13.

¹⁹⁴ *ibid* ss 19-21.

¹⁹⁵ *ibid* s 21.

¹⁹⁶ Charles Eaton and Andrew W Shepherd, 'Contract farming: Partnerships for growth: a guide' FAO Agricultural Service Bulletin No 145 (Food and Agriculture Organization of The United Nations 2001) 44-46 <www.fao.org/docrep/014/y0937e/y0937e00.pdf> accessed 21 August 2018.

done by the investors. Furthermore, the law tends to use the words ‘shall or commit’ for the ARBs and the word ‘may’ for the investors. It seems that the law is more demanding to the ARBs or the small farmers rather than to the investors. One more thing that should be highlighted is that the AVAs regulate all of the contracts as a formal agreement. On the one hand, it is useful to guarantee the small farmers rights, but on the other hand, it raises a question on how the state ensures the informal agreement is to be accommodated in the law. In the end, the AVA law provides several distinctions on the nature of agreements on how the small farmers could participate in the bigger market, nevertheless, the state needs to ensure the fairness of its implementation.

4.2.1 AVA process

In terms of the implementation process, the AVA has five methods. Based on DA No 06 of 2006, the UN Food and Agriculture Organization (FAO)¹⁹⁷ summarises five stages of AVA contract process. They are:

1. Contract negotiation

- The negotiation process involves the potential investor firms and ARBs themselves, either individually or cooperatives.¹⁹⁸ The process usually comes up with a discussion by agreeing on the duration of its contract under parameters: (1) crop or production cycle; (2) gestation period of the crop; (3) economic lifespan of existing primary and essential facilities/infrastructure (if any); (4) payback or recoup period of investments and (5) term of office of cooperative/association officers and board of directors (if applicable).¹⁹⁹ Furthermore, the FAO, in their particular work on AVA policy and implementation under the CARP in the Philippines, stresses the urgency on issuing contracts for the existing plantations. To sustain the farm operations, firms tend to bypass governance procedures of cooperatives, which is stated in DAR AO No 09 article V(11.1), and deal individually with the chairperson or the ARB directly.²⁰⁰ Another concern in the process is the nature of ARBs as new landowners who have different

¹⁹⁷ The UN Food and Agriculture Organization (FAO), ‘Multi-sectoral study on the agribusiness venture arrangement (AVA) policy and implementation under the comprehensive agrarian reform program’ (FAO 2016) 12-14.

¹⁹⁸ DAR Administrative Order No 09 (n 187) art II s 4.2.

¹⁹⁹ DAR Administrative Order No 09 (n 187) art II s 4.13.

²⁰⁰ FAO (n 197) 12.

paradigms and the privilege to make a decision for their land and livelihoods; as a result, many ARBs does not understand what their roles in these business agreements scheme are.²⁰¹

2. Contract signing

- Signing contracts of AVAs is not merely between the firm investor and ARBs but also involves the DAR. This step is needed in order to ensure the rights and welfare of ARBs, as well as its cooperatives, are protected, then subject to the review and favourable endorsement by the NAEC or the AVA-Task Force (TF) at the DAR Provincial Office (DARPO).²⁰² At the implementation stage, DAR does not have a proper record on AVAs because the DARPO did not submit the contracts regularly for consolidating and recording.²⁰³ As a result, the regulations on AVA that should get approval from the Provincial Agrarian Reform Program Officer (PARPO), as stated in DAR AO No 09 section 4.5, are excluded in reality.²⁰⁴

Figure 2 The AVA process²⁰⁵



²⁰¹ FAO (n 197) 12..

²⁰² DAR Administrative Order No 09 (n 187) art II s 4.6 .

²⁰³ FAO (n 197) 13.

²⁰⁴ *ibid.*

²⁰⁵ FAO (n 197) 12-14.

1. Review and approval by DAR

- Formally, the contracts are required to be reviewed, approved and monitored by DAR as stated in DAR AO No 09 article V(12). Additionally, the Department of Agrarian Reform Adjudication Board has the authority to undertake the ‘interpretation and enforcement of an agribusiness agreement or an agrarian dispute’ to respond to disagreements between parties as stated in section 3 of RA 6657.²⁰⁶ Furthermore, although the capacity of DAR personnel is limited to reviewing the validity and desirability of the AVAs,²⁰⁷ the law has mandated the engagement of DAR in the process, otherwise, the AVA contracts are null and void.²⁰⁸ Additionally, DAR AO No 09 article II(4.10) states that ‘The AVA shall be approved only if it guarantees the security of ownership and tenure of ARBs, and ensure an increase of their income’. In other words, the law regulates that all the AVA contracts must be a benefit for ARBs, not for the investors only, and continuing the ownership of ARBs itself.

2. Continuous monitoring by DAR

- DAR has several bodies to undertake the evaluation and tracking of AVAs’ implementation. Firstly, the NAEC has an obligation to formulate and prescribe appropriate indicators for evaluation; evaluate the AVA application; review and assess the recommendation on cancellation/revocation of the contract and recommend the PARC to approve or disapproval the AVA applications.²⁰⁹ Secondly, the National AVA Evaluation Committee-Technical Working Group has a task to evaluate or even provide recommendations and technical assistance for the NAEC in the final review of the AVA.²¹⁰ Thirdly, the AVA Task Force (AVA TF), which was created in the Department of Agrarian Reform Provincial Offices (DARPOS), has duties to undertake initial evaluation of AVA application and contracts; assess the business proposal, feasibility study and human resources development programme of the proposed AVA; appraise the organisational, technical and financial capability of investors; ascertain compliance to application procedures; undertake initial

²⁰⁶ FAO (n 197) 13.

²⁰⁷ *ibid.*

²⁰⁸ DAR Administrative Order No 09 (n 187) art II s 4.9.

²⁰⁹ *ibid* art IV s 8.

²¹⁰ *ibid* art IV s 9.

review/evaluation of petitions for cancellation of contract; maintain an updated database of all AVA applications and its implementation as well as submit periodic report to NAEC and conduct regular monitoring of all AVAs implemented in the province.²¹¹ As the core institutions of oversight, the AVA task force also mandates to check if there are any issues or problems in the arrangement, then they recommend dispute resolution process such as mediation or arbitration.²¹²

3. Amendment, renegotiation and revocation

- In line with protecting and providing a remedy for AVA parties, DAR regulates how to amend, or provides a mechanism for renegotiation, as well as revocation procedures. Any review or renegotiation of a contract of any parties should be for the following reasons: (1) extraordinary increase of inflation rate; (2) drastic change in price fluctuation on both input and output; (3) declaration of the areas as calamity or disaster areas due to force majeure and (4) other meritorious grounds.²¹³ Furthermore, the section also mandates that all renegotiated contracts have a supposed process under the same method of review and approval by the Presidential Agrarian Reform Council (PARC) or PARC Executive Committee (ExCom) and the Provincial Agrarian Reform Officer (PARO) as provided in this order.²¹⁴

The Philippines government has updated the AVA regulation to complete its scope as well as accommodate all of the interest of the parties. DAR AO 09 of 2008 provided the rules for lease arrangements and recommended a lease rental formula based on poverty threshold, maximum land award limit, land amortisation value and real property tax per hectare. Also, on 6 June 2016, the government produced DAR Administrative Order (AO) No 04-16 on 'Rules on Agri-Business Venture Agreements' which appears to stress the protection and the importance of social justice in AVAs' implementation.²¹⁵ The new law also regulates the

²¹¹ DAR Administrative Order No 09 (n 187) art IV s 10.

²¹² *ibid* art IV s 10.

²¹³ *ibid* art II s 4.14.

²¹⁴ *ibid* art II s 4.14.

²¹⁵ DAR Administrative Order (AO) No 04 on Rules on Agri-Business Venture Agreements (2016) s 1.1.

state to recognise and respect existing rights to land²¹⁶ and supervise the investment to strengthen the food security instead of jeopardising it.²¹⁷ In addition, the law also states several restrictions on AVAs (section 15.10), they are: (1) an automatic extension or re-enactment of the AVA; (2) unilateral take-over of the investor over the possession or management of the land; (3) non-payment of rentals on the ground of crop failure due to natural calamities and/or force majeure, in case of lease AVAs and (4) transfer of ownership of the land. Overall, the newer law protects the fundamental right of farmers, eg land rights, until the contracts' content and its implementation, which creates a chance for the remedy as well.

The Philippines government has comprehensive laws on AVAs evolving several times from the end of the 1990s to 2016. The last revision in 2016 is not only to respect and protect the rights of parties, including small farmers, but also to provide a remedy mechanism through amendment, renegotiation and revocation. The types of AVAs written in the law is an attempt to accommodate dynamics between various investments and ARBs on exports products. By having five stages of the process, the laws guarantee that all of the parties, including small farmers, have the same rights to be involved in the process and create a fair contract as well as a just implementation. In the end, the AVA laws in the Philippines are suitable with farmers rights principles in UN Guiding Principles.

In this part, the state examines their control over the AVA process. In line with ensuring their role in every stage and its accountability, the state involves its institutions from the city to the national level. Aside from this comprehensive mechanism, the state is responsible for their coordination as well. Also, it shows that the national level has a vital role in deciding AVAs in general, while the provincial level has tasks checking and monitoring the process. However, these systems create a dilemma. In the renegotiation process, for example, the last decision is from the PARC which is located in Manila while the problem, eg, violation on tax or land rights, and the small farmers are in another province. The transparency process for small farmers is needed in this matter. Furthermore, as mentioned in the FAO's work on AVAs' regulation, the small farmers may not know their rights and the laws, hence, the state is responsible for solving this problem as well. Unfortunately, there is no section about it in the laws.

²¹⁶ *ibid* s 1.7.1.

²¹⁷ DAR Administrative Order (AO) No 04 (n 215) s 1.7.2.

A comprehensive AVA policy seems not enough to guarantee farmers' rights in the plantation. My informants, the small farmers and workers, admitted that the government, from municipality to the provincial level, never respond to their complaints. However, for the municipality, for example, they will go to them if the companies have complained first. It indicates that what happened in Krinks'²¹⁸ study in 1983 where the government created benign conditions for TNCs is still happening. Furthermore, overlapping interest between the government, business people and politicians also happens in Davao Region. This is because some businessmen also place themselves as politicians and have bureaucratic positions at both the local and national level.²¹⁹ This situation brings ambiguities in the implementation. Also, we can see it relates to the weaknesses of the UN Guiding Principles. As mention by HRW, it does not have any mechanism to ensure compliance both for the state and the companies. Hence, the state only needs to provide the policy as one of the requirements in the UN Guiding Principles, but they do not have to have implementation measurements. In the end, it raises a question about the commitment of the state to protect farmers' rights.

4.3 MINDANAO AS A PROMISED LAND FOR AGRICULTURAL EXPORTS

Mindanao has remained exposed in the international market as a commercial plantation venture since in the American period. According to Vellema, Borras and Lara,²²⁰ there are two reasons why Mindanao was very attractive to the American government and its business clientele. Firstly, the environmental conditions of Mindanao are fertile and its location is typhoon-free.²²¹ Secondly, the American government assumed that the land in Mindanao is public owned as there was no

²¹⁸ Peter Krinks, 'Rural transformation under peripheral capitalism: the Philippines banana export industry' (1983) 31 PSR 101 <www.jstor.org/stable/23901942?seq=1#metadata_info_tab_contents> accessed 11 July 2019.

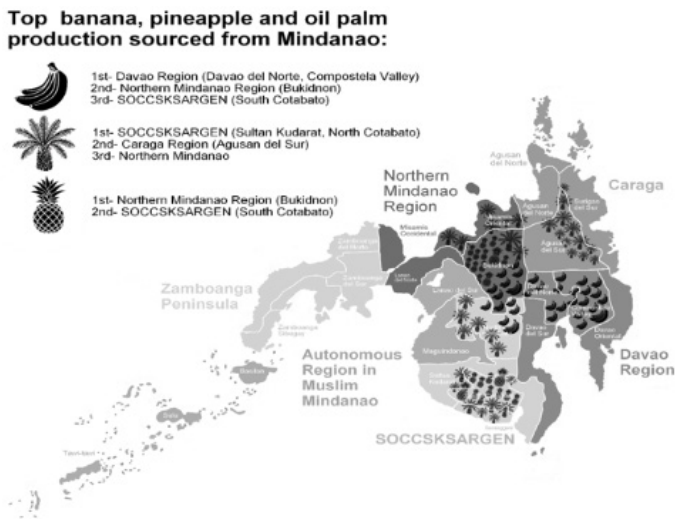
²¹⁹ Unyon Ng Mga Manggagawa Sa Agrikultura (UMA), 'Imperialist plunder of Philippines Agriculture: a research on the expansion of plantations through agribusiness venture arrangements in Mindanao' (UMA 2019).

²²⁰ Sietze Vellema, Saturnino M Borras and Francisco Lara Jr, 'The Agrarian Roots of Contemporary Violent Conflict in Mindanao, Southern Philippines' (2011) 11(3) Journal of Agrarian Change 298 <www.tni.org/files/Vellema%20Borras%20and%20Lara%20JAC%202011.pdf> accessed 31 August 2018 306.

²²¹ *ibid.*

Western-style title which shows the land ownership there, hence many corporates, both transnational and national, were attracted to it and the government supervised them to acquire vast tracts of land.²²² The government also established the National Development Corporation (NDC) in the 1930s to expand the agricultural development by assisting both national and international companies in lands acquisitions.²²³ For instance, NDC helped Del Monte to start their pineapple plantation in the 1930s and assisted Dole to get similar lease agreements in 1960s²²⁴ in Southern Mindanao. As a result, Dole was able to expand its products, particularly pineapples and bananas, which are mainly exported to Japan.²²⁵ Nowadays, Mindanao grows as the main agricultural area of the Philippines by producing various export products, and bananas are the top product (see figure 3).

Figure 3 Top productions from Mindanao²²⁶



²²² Vellema, Borrás and Lara Jr (n 220) 306-307.

²²³ *ibid* 32.

²²⁴ *ibid*.

²²⁵ *ibid* 49.

²²⁶ UMA (n 219) 26.

Institutionalising agribusiness in Mindanao is in line with another economic agenda in the Philippines, including through CARP and Comprehensive Agrarian Reform Law (CARL) as well. Mindanao has been involved in the agricultural modernisation of the Philippines government from time to time. Expansion of banana plantations for export reached its height under the Marcos government who moderated the concentration of land to support it.²²⁷ After the Marcos era, the Ramos administration implemented a comprehensive economic and technical modernisation by applying a composite agenda, agrarian reform, agro-industrialisation, global competitiveness and peace.²²⁸ Then under CARP in the administration of President Corazon Aquino, the pineapple plantations were the first area covered by the policy and it made the TNCs, such as Del Monte and Dole, pursue the land efficiently 'by leasing land from private owners or by offering contract to farmers'.²²⁹ Aside from that, the government also established the Mindanao 2000 Development Framework Plan (APRAAP 1995), which upheld the importance of a new agricultural policy.²³⁰ The matter of CARP and ARBs also appear in the Philippines Development Plan for 2007-2022 with an aim to expand the economic sector which engaged with agriculture, including increasing access in economic chances for small farmers.²³¹ Including various programmes means that CF gets support from other approaches of development, including distribution of right land, which makes its implementation consistent and smooth.

4.3.1 Davao as part of the exported banana industry

The Philippines government has implemented AVAs effectively and in 2018 it was ranked as the second-highest banana export country which shared \$1.5 billion or 11.1% of total banana exports worldwide.²³² The top five importing countries of Philippines banana exports are Japan (37.3%), China (35.9%), South Korea (13.5%), United Arab Emirates

²²⁷ Vellema (n 172) 41.

²²⁸ Vellema, Borras and Lara Jr (n 220) 310.

²²⁹ *ibid* 311-312.

²³⁰ Vellema (n 172) 41.

²³¹ National Economic and Development Authority (NEDA), 'Philippines development plan 2017-2022: abridged version' (NEDA 2017) 19-20 <www.neda.gov.ph> accessed 20 April 2019.

²³² Daniel Workman, 'Banana exports by country' (*World's Top Exports*, 22 April 2019) <www.worldstopexports.com/bananas-exports-country/> accessed 22 April 2019.

(3.7%) and Iran (3.2%).²³³ One thing that is important to be highlighted is that from 2.42 million metric tons of bananas in 2018, Davao Region was the highest producer by sharing 904.13 thousand metric tons or 37.3% of Philippines’ banana production.²³⁴ Hence, there is no doubt that Davao Region has an essential role in the Philippines’ banana industry by having 1,059 ARBs who were awarded an agricultural land with total areas of 793 hectares by DAR.²³⁵

Davao Region consists of five provinces; five-component cities; 43 municipalities and 1,162 barangays.²³⁶ By having a population of almost 4.9 billion, Davao Region is one of the most crowded areas in Mindanao.²³⁷ If we compare with the total ARBs, one-fifth of Davao’s population is ARBs who have agrarian land from DAR. Figure 4.3 shows that banana production is increased time to time. The Davao Region would preserve its position as banana capital in the Philippines.

Table 3 Total population by province as of 1 May 2015. Source (PSA-XI) 1-1 to 1-26.

Province/Highly Urbanised City	Population
Compostela Valley	736,107
Davao del Norte	1,016,332
Davao del Sur	632,588
Davao City	1,632,991
Davao Occidental	316,342
Davao Oriental	558,958
Total	4,893,318

²³³ Danny Santiago, ‘Philippines Bananas Exports by Country’ (*Philippines Around The World*, 22 April 2019) <www.philippinesaroundtheworld.com/philippines-bananas-exports-by-country/> accessed 22 April 2019.

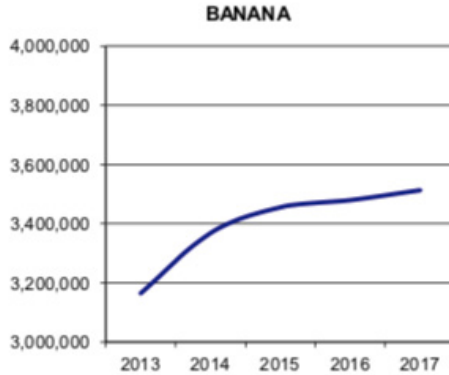
²³⁴ Philippine Statistics Authority (PSA), *Major Fruit Crops Quarterly Bulletin* October-December 2018 Volume 12 No 4 (PSA 2018) <https://psa.gov.ph/sites/default/files/Major%20Fruit%20Crops%20Quarterly%20Bulletin%2C%20October-December%202018_0.pdf> accessed 22 April 2019.

²³⁵ PSA, *Redistribution of Land: Report No. 2018 – 8* (n 185) 4-5.

²³⁶ Philippine Statistics Authority Regional Statistical Service Office XI (PSA-XI), *2018 Regional Social and Economic Trends Davao Region* (PSA-XI 2018) 10 <<http://rso11.psa.gov.ph/sites/default/files/attachments/2018%20RSET%20Davao%20Region.pdf>> accessed 25 April 2019.

²³⁷ *ibid* 208.

Figure 4 Production of bananas in the Davao Region (in metric tons)²³⁸



As a top producer of bananas, Davao Region had 92,65 hectares of crop area for bananas harvested in 2017.²³⁹ The research was conducted in Santo Tomas, Davao Del Norte. Fortunately, I had the opportunity to meet some growers from Nabunturan, Compostela Valley who protested in Davao City demanding Sumifru improve their wages, increase rent land and promote the contract workers to become regular workers. Santo Tomas is well known as a banana plantation area, as my translator said, ‘when you see a lot of banana trees along the road, then you will realise that you are already in Santo Tomas’.²⁴⁰ The fact has strengthened the data from Philippines Statistic Authority (PSA-XI) which stated that Provinces of Davao del Norte (46.5% of region’s production) and Compostela Valley (23.4%) remained as the primary producers of bananas in 2017.²⁴¹ The most famous varieties of the banana crop are Cavendish by having 85.81 thousand hectares in 2015, an increase of 2.0% from 2014. Davao Region produces 57.0% of the total Cavendish production.²⁴²

Understanding the AVA policy accurately, this part shows strategies of the Philippines government in the banana industry in Mindanao. The development policies since the 1990s until today keep Mindanao,

²³⁸ PSA-XI (n 236) 5-42.

²³⁹ *ibid* 3.

²⁴⁰ Interview with Mau, Davao resident (Davao City, 9 April 2019).

²⁴¹ PSA-XI (n 236) 5-1.

²⁴² Philippines Statistics Authority (PSA), *Crops Statistics of the Philippines: 2011-2015 (National and Regional)* (PSA November 2017). <<https://psa.gov.ph/sites/default/files/Crops%20Statistics%20of%20the%20Philippines%20-%20National%20and%20Regional%2C%202011-2015.pdf>> accessed 25 April 2019.

including Davao, as the primary producer of bananas. We can see how the state is favouring the agribusiness companies to invest and operate in Mindanao. The strategies are more advanced than before, as mentioned in the literature review. It shows that the government is not only supporting the financial matters, such as tax, but also integrating the privatisation of agriculture into the national economic plan of the Philippines. In other words, the development policies are about the number matters only and left behind is the empowerment issue or event protection of the small farmers' rights. Another interesting point to highlight is about the Japanese market, which is still the most profitable one today, the same as when Krinks²⁴³ studied it in 1983. It seems that the banana industry of the Philippines has the same pattern and development as it always goes into the same result and has had the same actors since the 1980s. In the end, the success of Mindanao as a leading producer of bananas is influenced by its proper geographic conditions and stimulus from the government, the same as in the past.

4.4 AGRIBUSINESS COMPANIES IN THE BANANA INDUSTRY IN MINDANAO

From my field trip in early April of 2019, I encountered several agribusiness companies in Santo Tomas, Davao del Norte, they are Nader & Ebrahim S/O Hassan Phils, Inc (NEH), Dole, Sumifru and the Marsman-Drysdale Group of Companies. Nevertheless, they are only a few from dozens of agribusinesses which operate in Mindanao, and most of them are TNCs (see table 4.2). Parallely, those companies have a community, namely the Pilipino Banana Growers & Exporters Association Inc, under Dana Corporate Offices, and it has an office in Davao City.²⁴⁴ It has established since 1974, with a task 'as the central coordinating agency for the development and the advancement of the banana export industry in the Philippines'.²⁴⁵ To date, it is consisted of 22 companies and their subsidiaries as well as their two affiliates operating in 15 provinces in Southern Philippines,²⁴⁶ nevertheless, they only mentioned 12 of 22 companies in their website (see table 4.2). Currently, the total production area covers 43,647 hectares or about 50% of the total area planted of Cavendish bananas in the whole Philippines.²⁴⁷

²⁴³ Krinks (n 218).

²⁴⁴ Pilipino Banana Growers & Exporters Association (PBGEA), 'Members' (PBGEA, 26 April 2019) <<https://pbgeabeif.com/members/>> accessed 26 April 2019.

²⁴⁵ *ibid.*

²⁴⁶ *ibid.*

²⁴⁷ *ibid.*

*Table 4 Members of Pilipino Banana Growers & Exporters Association (PBGEA)*²⁴⁸

No	Name of company	Explanation	Home countries of the companies	Market
1	Agrinanas Development Co, Inc	It is a subsidiary of Del Monte Fresh Produce (Philippines) ²⁴⁹	United States	No data available
2	Anflo Group of Companies (Philippines)	It is a grower of Del Monte Fresh (Philippines) Produce ²⁵⁰	Philippines	No data available
3	Del Monte Fresh Produce (Phil), Inc	It is the second-largest and most profitable subsidiary of Del Monte Pacific Ltd ²⁵¹	United States	United States, Europe and Asia countries
4	Delinanas Development Corp	A subsidiary of Del Monte Fresh Produce Philippines. The ownership is 75% foreign and 25% Filipino ²⁵²	Philippines	Asian countries and the Middle East
5	Dizon Group	It is a Philippines company ²⁵³	Philippines	Asian countries
6	DOLE Philippines, Inc	Itochu Corp of Japan acquired Dole Philippines in 2013 ²⁵⁴	United States	Asia countries
7	La Frutera, Inc	The ownership share is 51% Filipino and 49% foreign ²⁵⁵	Philippines	Asian countries and the Middle East

²⁴⁸ The list comes from the PBGEA website <www.pbgeaif.com/pbgeaif/members.php> accessed 26 April 2019. The explanation and the export countries are gathered from various sources and websites. Table created by the author.

²⁴⁹ Walter I Balane, 'Bukidnon SP intervenes in banana firm's closure, retrenchment' (Minda News, 10 February 2011) <www.mindanews.com/business/2011/02/bukidnon-sp-intervenes-in-banana-firm-s-closure-retrenchment/> accessed 27 April 2019.

²⁵⁰ Larry N Digal, 'Benefit diffusion and linkage development in the Philippine tropical fruits sector' (Closing the Productivity Gap, Asian Institute of Management, 27 June 2005) <<https://pdfs.semanticscholar.org/fac9/edc9283fe1b9e4fd55541684affa61c8b1e8.pdf>> accessed 27 April 2019.

²⁵¹ Stella A Estremera, 'DBP partners with banana firm to promote sustainable farming' Sunstar (Manila, 3 April 2018) <www.sunstar.com.ph/article/426272> accessed 27 April 2019.

²⁵² Regional Board of Investments, Autonomous Region in Muslim Mindanao (RBOI ARMM), 'Registered Firms', (RBOI ARMM, 26 April 2019) <www.rboi.armm.gov.ph/programs/registeredfirms#20> accessed 26 April 2019.

²⁵³ Dizon Farms, 'Who We Are' (Dizon Farms, 26 April 2019) <www.dizonfarms.net/about/> accessed 26 April 2019.

²⁵⁴ Itochu, 'Acquisition of Asian Fresh Produce Business and Worldwide Packaged Foods Business of Dole, World's Largest Producer and Marketer of Fresh Fruits and Vegetables' (Itochu, 25 December 2012) <www.itochu.co.jp/en/news/press/2012/1212251.html> accessed 26 April 2019.

²⁵⁵ RBOI ARMM (n 252).

No	Name of company	Explanation	Home countries of the companies	Market
8	Lapanday Foods Corporation	It is a wholly-owned subsidiary of Lapanday Holdings Corporation which has 15 bananas farms throughout New Corella, Santo Tomas, Kapalog, Tagum and Panabo ²⁵⁶	Philippines	China, Japan, Middle East and Korea
9	Marsman-Drysdale Group of Companies	It is a grower of Chiquita/ Unifrutti ²⁵⁷	Philippines	The Middle East
10	Mindanao Agri-Traders, Inc	It is a grower of Del Monte Fresh Produce (Philippines) ²⁵⁸	Philippines	No data available
11	Nader & Ebrahim S/O Hassan Phils, Inc	Nader & Ebrahim S/O Hassan (NEH) is a Bahrain company, which later opened NEH Philippines by cooperating with Paul Smits, a Dutch national businessman ²⁵⁹	Bahrain	The Middle East and the Far East
12	Tortuga Valley Plantation, Inc	It is a grower of Chiquita/ Unifrutti in the Philippines ²⁶⁰	United States	No data available
13	Tristar Group of Banana Companies	It is a banana production and exporting company which is wholly-owned by Filipino enterprises. The company roots under a Jesus V. Ayala (JVA) management corporation (JVAMC) which known as an umbrella company for agriculture companies in the Philippines ²⁶¹	Philippines	Japan
14	Sarangani Agricultural Co, Inc	It is a grower of Stanfilco, a division of Dole Philippines ²⁶²	United States	Japan
15	Sumifru Philippines Corp	It is an affiliate of a Japanese company, Sumitomo Corporation which produces, ships and markets bananas grown in Mindanao ²⁶³	Japan	Asian countries
16	Tagum Resources Agri-Industries, Inc	It is an agribusiness company of Hijo Resources Corp ²⁶⁴ which itself is a company with various business interest in leisure and tourism, agribusiness, property development and port operations ²⁶⁵	Philippines	Russia, China and the Middle East
17	Unifrutti Services, Inc	It is part of Chiquita company which based in Mindanao, and it is also known as one of the biggest foreign company in the Philippines ²⁶⁶	United States	China, Japan and South Korea, and the Middle East

Five of the PBGEA members classify as the significant exporters in the banana industry, they are Del Monte (Philippines) Produce, Stanfilco (a division of Dole Philippines), Sumitomo, Fresh Asia Produce Co International and Chiquita/Unifrutti.²⁶⁷ Furthermore, Digal²⁶⁸ explains that those companies have changed their operations systems from direct growing into contract growing due to the implementation of the CARL. However, as I mentioned in table 4, most of the growers are affiliated with the leading companies, or affiliated with other conglomerates in Mindanao and the Philippines in general, such as Anflo Group, Dizon Group and Tristar Group of Banana Companies. Moreover, the five companies have several subsidiaries of growers as part of their companies' structure, such as between Del Monte Fresh Produce (Philippines) and Agrinanas Development Co Inc, Delinanas Development Corporation, Mindanao Agri-Traders Inc; or between Chiquita/Unifrutti and Marsman-Drysdale Group of Companies, Tortuga Valley Plantation Inc. Lastly, there are also TNCs using this name, for instance, Nader & Ebrahim S/O Hassan Phils, Inc, which instead of being affiliated with another company grower, has a grower directly linked to the small farmers themselves. From table 4.2, it seems that the leading banana exporter could consist of several companies or affiliations, and only a few of those TNCs have a direct relationship with the small farmers or ARBs.

²⁵⁶ Lapanday, 'Where we are' (Lapanday, 15 Juli 2020) <www.lapanday.com> accessed 15 Juli 2020.

²⁵⁷ Digal (n 250) 6.

²⁵⁸ Alvin T Guanzon, 'NPA burns light plane of banana plantation' ([ManilaStandard.net](http://manilastandard.net), 26 August 2014) <<http://manilastandard.net/news/-provinces/155846/npa-burns-light-plane-of-banana-plantation.html>> accessed 27 April 2019.

²⁵⁹ Global Manufactures (GMDU), 'NEH Philippines Inc' (GMDU, 26 April 2019) <www.gmdu.net/corp-16.html> accessed 26 April 2019.

²⁶⁰ Digal (n 250) 6.

²⁶¹ Tristar Group of Banana Companies, 'Our Company' (Tristar, 26 April 2019) <www.tristar.com.ph/About%20Us.html> accessed 27 April 2019.

²⁶² Digal (n 250) 6.

²⁶³ Allan Nawal, 'AFP sends soldiers to "prevent chaos" at Japanese-owned banana plantation' (Rappler, 13 October 2018) <www.rappler.com/nation/214206-soldiers-deployed-sumifru-banana-plantation-compostela-valley> accessed 27 April 2019.

²⁶⁴ Estremera (n 251).

²⁶⁵ Hijo Resources Corporation, 'Industries' (Hijo Resources, 27 April 2019) <www.hijoresources.net> accessed 27 April 2019.

²⁶⁶ Julmunir I Jannaral, 'ARMM eyes best practices for ethical investments' (Manila Times, 8 March 2017) <www.manilatimes.net/2017/03/08/news/regions/armm-eyes-best-practices-ethical-investments/316178/> accessed 27 April 2019.

²⁶⁷ Digal (n 250) 5.

²⁶⁸ *ibid.*

The relationship between the companies influences the nuances of the contracts. Departing from Immanuel Wallerstein's²⁶⁹ world economy argument, the subsidiaries or affiliations companies demonstrated how a few TNCs control the market and the production chain. Also, for the banana CF in the Mindanao, having subsidiaries means more control for them. It could see for instance, when the TNCs set standards of the product and manage those small companies. Furthermore, the small farmers, as part of the banana industry, feel more pressure since usually the subsidiaries companies merely forward the leading companies' policy. This long chain control over subsidiaries companies, small farmers and plantations demonstrated Wallerstein's thought²⁷⁰ on control over commodity chains.

4.5 CONCLUSION

CF in the Philippines known as AVAs is related to the right to land for small farmers due to fact that the plantations used to control them are owned by a landlord. Hence, it is crucial to understand the land reform, which is represented in CARP or CARL, as it is legitimises the land rights of the small farmers so they can participate in the AVAs as a business actor. The implementation of land reform was caused by the failure of the first experience of CF, where the government tried to control every single stage of the process, including land rights.

The Philippines government has numerous policies on AVAs which regulates not only the land right of ARBs but also the content of the contract and its implementation process. Roughly, the laws urge all of the parties of AVAs to acknowledge and protect the existing rights, including the land rights of the small farmers. Moreover, the laws identified several provisions which might violate small farmers rights. In addition, the laws also manage an amendment or revocation of the contract, which is very helpful for the small farmers seeking a remedy. By providing the system and mechanism of remedy, the laws are in line with the UN Guiding Principles.

²⁶⁹ Immanuel Wallerstein, *The modern world-system I: capitalist agriculture and the origins of the European world-economy in the sixteenth century* (University of California Press 2011).

²⁷⁰ *ibid.*

The implication of AVAs in the Philippines makes Mindanao well known at the international level, especially among the agribusiness trans-national companies. Agri-products of Mindanao, specifically the banana, has been exposed since the colonial era, attracting many agribusiness companies, both national and international scale, to operate in the area. Also, Davao comes as the primary producer of bananas, which TNCs maintain most of the plantations. On the other side, the situation also makes the Davao population get their land rights title from DAR as part of CARP.

5.

CONTROLLING CONTRACT FARMING ON SOCIO-ECONOMIC AND POLITICAL ASPECTS: CONTESTING THE RIGHT TO WORK AND RIGHT TO ENJOYMENT OF JUST AND FAVOURABLE WORKING CONDITIONS ²⁷¹

“Yes, we know the contract because the growers are the ones who attended the meeting. Also, there was somebody, an attorney, who help us and guide us to decide which article we should agree to”²⁷²

This chapter will examine the implementation of banana CF in Davao Region, specifically in Santo Tomas and Compostela Valley. As part of the banana capitals, the people of those areas are highly involved in the contract system with the agribusiness companies. This chapter argues that there is unbalanced power between the agribusiness companies and the small growers as well as the workers, setting off several violations, through social, economic and political ways, on the right to work and the right to the enjoyment of safe and healthy working conditions. The chapter will start with a brief result of the field study; then it will go deeper into the implementation process through three subtitles, using Vellema’s framework on social-economic and political control; lastly, it will examine remedy actions undertaken by the small growers and the workers in order to respond to the system.

²⁷¹ All the name of informants in this chapter are not the real names.

²⁷² Interview with JO, Santo Tomas resident (Santo Tomas, Davao, 10 April 2019).

5.1 STORIES OF SMALL FARMERS/GROWERS AND WORKERS IN SANTO TOMAS AND COMPOSTELA VALLEY IN THE DAVAO REGION

JO used to be a small grower who had a contract with Sumifru for more than six years until a few years ago, she decided to stop and to obtain an independent grower. However, she is lucky enough to comprehend the contract and have an attorney to guide her given that my other ten informants have different experiences than her.

One of my findings from the field study is a centralised model as the standard type, an existing CF system both in Santo Tomas and Compostela Valley. It is direct CF where companies hold a commitment to provide material and management inputs to farmers, according to Eaton and Shepherd.²⁷³ However, in the field, in both areas, the centralised model is also divided into two types. Firstly, the companies rent the whole plantation, while the landowner becomes one of the workers and accepts the rent payment every year from them. This type is known as a production or growers contract as referred to in AVA policy in the Philippines. Secondly, the companies provide input and materials, and the small growers sell the products to them. JO's case falls into this category, while this type belongs to a lease agreement according to AVA policy. Furthermore, the centralised models in Davao Region also require standardisation from small growers in terms of the character of the product, period, management assistance, payment method etc and implementation process of the contract. However, how and why can they fall into one of these types?

In Santo Tomas, there is one village where most of the farmers have an agreement with NEH (Nader and Ebrahim s/o Hassan), a company owned by Bahrain and Dutch businessmen (see chapter 4). From a FGD on 9 April 2019, I found out that the small farmers do not know what is written in the contract given that it is written in English. The agreement was well-drafted by the company. The reason why they signed the contract was because they used to have a cooperative, however, it did not work well, and it owed a debt of 2,448,784.06 PHP (approximately 47,299.49 USD) to the company. As members of the cooperative, they

²⁷³ Charles Eaton and Andrew W Shepherd, 'Contract farming: Partnerships for growth: a guide' FAO Agricultural Service Bulletin No 145 (Food and Agriculture Organization of The United Nations 2001) 44-46 <www.fao.org/docrep/014/y0937e/y0937e00.pdf> accessed 21 August 2018.

were responsible for paying the debt as well. Then, the company offered a new contract to rent their land for 15 years to pay the debt which was deducted from their payments. Furthermore, the agreement states in article 3.3 of the ‘Lease Agreement’:

At the end of the term of this Agreement, the total outstanding loan of the Lessor amounting to **TWO MILLION FOUR HUNDRED FORTY-EIGHT THOUSAND SEVEN HUNDRED EIGHTY-FOUR and 06/100 PESOS (Php 2,448,784,06)** as of **Week 31, 2012**, is deemed fully paid.

For the rent payment, the company applies a gradual increase for 1.5 hectares which starts from 8,000 PHP (154,54 USD) in the first year until 16,700 PHP (322,60 USD) in the fifth year.²⁷⁴ For other small growers in Santo Tomas and Compostela Valley, the reason to join in the CF system is for financial reasons. They used to be rice farmers, however, after the companies came to their areas, they converted the paddy fields into banana plantations because the banana has a profitable market. However, the period of the contract varies from 25²⁷⁵ until 30 years.²⁷⁶

Aside from the debt, there are several reasons as to why the small growers are joining or even, worse, continuing the contract system. One of my informants explained that the main reason is the promise by the companies that she will gain a high profit.²⁷⁷ Then, after she signed the contract, her paddy field was converted into a banana plantation, while small growers in another area told me that they continue with a deal formerly signed by their husband or their mother or their family.²⁷⁸ In other words, they are the second generations who are forcefully tied with the contract. However, the length of the contract is different. For small growers for Compostela Valley, for example, their commitment is 25 years with Sumifru,²⁷⁹ and for some small growers in Santo Tomas, their contract with Marsman Company, a grower of Chiquita or Unifrutti, is for 30 years.²⁸⁰

²⁷⁴ Interview with EL, Santo Tomas resident (Santo Tomas, Davao Region, 10 April 2019).

²⁷⁵ Interview with MA, Compostela Valley resident (Davao City, Davao Region, 9 April 2019).

²⁷⁶ Interview with JU, Santo Tomas resident (Santo Tomas, Davao Region, 11 April 2019).

²⁷⁷ Interview with MA (n 275).

²⁷⁸ *ibid*; Interview with JU (n 276).

²⁷⁹ Interview with MA and ME, Compostela Valley residents (Davao City, Davao Region, 9 April 2019).

²⁸⁰ Interview with JU and VE, Santo Tomas residents (Santo Tomas, Davao Region, 11 April 2019).

Another story comes from workers in Santo Tomas who had faced a more complicated situation with NEH (Nader and Ebrahim s/o Hassan). The president of the workers union explained to me that they were still fighting to get acknowledgement from NEH. In the Philippines, the main requirement to be registered in the local government is an acknowledgement letter from the company, the place where the union works. It is considered an important thing given that if the company does not acknowledge them, the union could register in the government office and the workers would not have any bargaining power, known as CBA, in terms of discussing or demanding their rights.²⁸¹ Furthermore, he explains that the former company had acknowledged them and they got better assurances. Also, another impact from the new situation is that the contract is directly signed between the company and the workers individually as the CBA might not be applicable, hence, the union needs to work harder to ensure that all of the workers are fairly treated and receive their rights equally.²⁸²

Those stories are only a surface view of a more complex condition happening in the field. The next paragraphs examine the influence of the companies on the right to work and right to the enjoyment of favourable work conditions using Vellema's approach in social-economic and political control of CF.

5.2 IMPLEMENTATION OF CONTRACT FARMING IN SANTO TOMAS AND COMPOSTELA VALLEY

5.2.1 Non-transparent process on signing contracts: Right to equal opportunity in terms of access of information under the shadow of economic and political control

Both parties agree that the basis for the fixed rental, as described in section 4.1, is the Producing Area as identified by the Company's GPS survey, a copy of which is attached as Annex A hereof. In this connection, any advance/remittance of the rental payment made by the Company to the Lessor upon the execution of this agreement to conform with the result of the GPS surveys showing the actual Productive Area.

²⁸¹ Interview with EL (n 274).

²⁸² *ibid.*

The Company at all times during the term of this Agreement shall have the right to peaceably and exclusively possess, develop, use and operate on the Land as well as harvest the fruits/proceeds thereon, without any disturbance from the Lessor, his heirs, successors-in-interest, assignees, or from any other person.

This is one of the articles written in a contract between NEH and small growers in one of the villages in Santo Tomas. As written above, the agreement only details the rights of the company, while for the small growers, it briefly states about rent payment. Regardless, the growers do not know the contract and are unable to understand what is written on the contract, and in the FGD on 10 April 2019, they told me that the company approached them by going door to door to contact them and offered to sign the contract. At the time, the company came with a well-drafted deal ready to be signed. In other words, there was no discussion or even law advocates who were available to help them to understand the draft. The company did not give them an explanation of the contract's substance. This practice also happened in another village in Santo Tomas and Compostela Valley.²⁸³

The cases from Santo Tomas and Compostela Valley also demonstrates how inequality in the contract process influences the limitation of the growers in terms of access to information about their rights.²⁸⁴ The aforementioned process of entering into the contract shows that the company uses their position in terms of economy to dominate as well as directing small growers' decisions on signing the contract. In this case, the company also violated article 3(3) of the Philippines constitution, which guarantees equality of opportunities for all, including agrarian sectors. Furthermore, it violates the right to get equal treatment in land tenure, specifically the right to equal opportunity which promotes a transparent process that respects human rights.²⁸⁵ Transparent here means that both the company and the small growers should understand the substance of the contract. While the company, which has more economic resources as well as a better political position due to the fact it has a lawyer and

²⁸³ Interview with ME, Compostela Valley resident (Davao City, Davao Region, 9 April 2019); Interview with JU (n 276).

²⁸⁴ Larry N Digal, 'Contractual arrangements in agriculture (Mindanao)' *Agricultural contracts in Mindanao: the case of banana and pineapple* (2007) Discussion Paper Series No 2007-24.

²⁸⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)' (7 April 2016) E/C.12/GC/23 <www.refworld.org/docid/5550a0b14.html> accessed 22 May 2019.

understands the agreement, uses the debt of the cooperative which creates pressure psychologically for the small growers and makes their position very vulnerable. In the end, they signed the contract because they came with no other option, and personally, it seemed impossible for them to pay the debt, without considering their other rights.

While in the payment issue, the small growers feel the price is too low, and it is not enough to cover their needs. Referring to fair wages, a fair rent land should be a reasonable amount which covers basic needs, eg, housing, food allowances and tax deduction. As mentioned in the first section, the rent is 8,000 PHP (154,54 USD) in the first year until 16,700 PHP (322,60 USD). The low rent price and tax matters also happen at Sumifru at Compostela Valley, 'The Sumifru rent my land. Every year, for 1 ha, they pay 15,000 per year. Also, I have 4 ha now. My mother still paying the taxes every year. The Sumifru only [pay] 15,000 without the tax'.²⁸⁶

The amount, of course, excludes the loss of Panama diseases threat, which makes the small growers' rehabilitate the land for a while and lose their income. Additionally, the company handovers the tax payment to the small growers, which creates more problems for them. In the FGD, the small growers explained that in the first agreement, the arrangement of tax payment was 60% by the company and 40% by the growers, but now the growers are paying 100%. Furthermore, the taxes matter is written in the contract in section 8, which says:

all ordinary taxes, fees, assessments and other charges of similar nature and description presently assessed against the Land for, but not limited to the real property taxes and other assessment of similar nature, shall be for the sole and exclusive account of the Lessor as owner of the land. In case the Lessor fails to pay the high taxes on the Land, the Company may pay them for the account of the Lessor. However, the Company shall have the rights to deduct and payments referred to herein from the Lessor's rental payments.

In the event that the Land has unpaid property tax upon the execution of this Agreement, the same may be paid by the Company, on behalf of the Lessor. Any such payments made by the Company shall be deducted from remittance made or to be made by the Company to the Lessor.

Parallel with the contract, the companies are the ones who are properly responsible for the deal. That does not only restrict the movement of the

²⁸⁶ Interview with ME (n 283).

small growers to bargain with the company, but also controls their social decisions indirectly relating with the company, for instance, to join the union. The same informant told me that some growers are afraid to join the union given that they are worried the company will end their contract since they do not remember what is written in the agreement.

Different capacities between the companies and the growers influence the imagination of distribution of risk. Since the small growers cannot understand English, they do not have a vision about the tax matter. On the one hand, the company uses its political resources by having a better understanding of taxes and the substance of the contract to negotiate with the small growers. On the other hand, the small growers, who cannot comprehend the language and did not expect the tax, were only focused on the debt and signed the contract. As happen to tomato farmers in Honduras, access to information in contracts becomes an essential point in order to understand the system or else the farmers or growers will think that it is the best and only system with no alternative for them without really considering the risk provided by the companies.²⁸⁷ The case also strengthened Glover and Kusterer's argument²⁸⁸ that the small growers and farmers sign the contracts given that it is a realistic option on their version.

The contract process in Santo Tomas and Compostela Valley shows unbalanced power between the company and the small growers. The neglected access to information in the contract demonstrates how the company is regulating the social process to control the small growers in social and economic ways, as understood from Vellema's approach. Furthermore, this phenomenon also connects with Glover and Kusterer's²⁸⁹ argument by saying that the implementation due to the distribution of risk strongly relates with other factors, such as bargaining power, alternative availability and access to information. Language becomes the entry point to understand this connection. For the small growers, the distribution risk is the debt, while for the company, it has a broader meaning, particularly on the implementation process, which includes tax. In the end, access to information which closely relates to the imagination of distribution of risk for the small growers is the way the companies control them in the process of signing contracts.

²⁸⁷ David Glover and Ken Kusterer, *Small farmers, big business: contract farming and rural development* (Palgrave Macmillan 1990) 132.

²⁸⁸ *ibid* 3.

²⁸⁹ *ibid* 130-131.

5.2.2 Building a dependent relationship through control of the daily production process: Right to get equal remuneration and fair implementation

The non-transparent signing contract agreement is not only their problem. DOLE law mandates that all of the rights of the agribusiness chain-production should be respected and fulfilled in every process. Hence, it is essential to see the implementation process to see how the CF works.

It starts with how the small growers deal with the companies' domination in the price through the daily production process. From my field study, it was revealed that the companies ensure every stage of banana plantation, ranging from providing seeds, chemical and pesticide, to fertiliser usage;²⁹⁰ from the FGD some people even acknowledge that the company also provide the workers.²⁹¹ It sounds pretty good when the companies are actively helping the small growers with the input. Yet, it should be noted, that there is a significant interest behind those inputs as one of my informants told me:

The time when the grower put the product in packing house, the grower does not get any income because of the deduction of fertiliser, which is very overpriced, and another over price inputs. While the farmers need to consider the minimum wage of their workers. Right now, the company buys per box 180 pesos, but if bananas goes to other countries, it prices 1,200 per box. It is very different price. For example, she harvests 40 branches, and it will sell around 30,000, but after deduction, the farmers will get 3,000.²⁹²

The 3,000 earning is lower than the minimum standard of living. It is because the growers need to divide the money for their workers as well. The small growers harvest their plantation every two weeks, which means they need to save at least 3,840 PHP for 12 days of work from their workers.²⁹³ In other words, it is not enough for the growers to pay their workers. Additionally, even though the companies have the same

²⁹⁰ Interview with MA (n 275); Interview with JU (n 276).

²⁹¹ FGD with small farmers in Santo Tomas (Santo Tomas, Davao Region, 10 April 2019).

²⁹² Interview with PJ, Compostela Valley resident (Davao City, Davao Region, 9 April 2019).

²⁹³ As consideration, the daily wage of the workers in the Philippines is 320 PHP in reference to the DOLE policy.

standard on a set 14 kg for every box, they have different prices. From Sumifru, for example, they buy bananas per box for 150-180 PHP.²⁹⁴ While in Marsman, they buy the bananas for 340-400 PHP per box.²⁹⁵ Besides, other informants explained that DOLE buys the bananas at 170 PHP per box only.²⁹⁶ Unlike the market which has been upside down dynamically, the company applies for a fixed price for years. These conditions place the small growers in bad situations.

Aside from controlling the inputs, the companies also measure the quality by visiting the plantation every day in the morning or noon as well as monitoring the growers as explained below:

Checking and inspection, then the grower will tell the company representation if there is any banana sick, they the couch will tell to the company. Then the company will make sure that the growers are not lying.²⁹⁷

On the one hand, this monitoring is to maintain the quality of the product, which could bring benefits for both the entities. On the other hand, with the small income that they get, the small growers see it as another controlling system to them. For Clapp,²⁹⁸ the monitoring and ensuing steps done by the companies is seen as an attempt to establish an increasingly dependent relationship which later could be recognised for being exploitative.

In this situation, the concept of distribution risk upheld through the CF system, as argued by Sáens-Segura, D'Haese and Ruben²⁹⁹ as well as Glover and Kusterer,³⁰⁰ is not working. In light of their result in Costa Rica, Honduras and Ecuador, the small growers only get the risk and the profit from their plantation. Using Vellema's framework, companies being involving in the daily practices and controlling the banana price is part of their strategy of dominating people's work. This case also

²⁹⁴ Interview with MA (n 275).

²⁹⁵ Interview with JU and VE (n 280).

²⁹⁶ Interview with DE, Santo Tomas resident (Santo Tomas, Davao Region, 10 April 2019).

²⁹⁷ Interview with MA (n 275).

²⁹⁸ Roger A Clapp, 'The moral economy of the contract' in Peter D Little and Michael J Watts (eds), *Living Under Contract* (The University of Wisconsin Press 1994) 82.

²⁹⁹ Fernando Sáenz-Segura, Marijke D'Haese and Ruerd Ruben, 'Contract Farming in Costa Rica: A Case Study on Contracts in Pepper Farming, Case Study #6-6 of the Program: 'Food Policy For Developing Countries: The Role Of Government In The Global Food System'' (Cornell University 2007) <<https://ecommons.cornell.edu/handle/1813/55692>> accessed 31 August 2018.

³⁰⁰ Glover and Kusterer (n 287).

demonstrates one of the problems of investigating the relationship in CF that has been highlighted by Glover and Kusterer.³⁰¹ They explain that input supply, for instance, fertiliser and other agrochemicals, is always dominated by the company. From Santo Tomas and Compostela Valley, it shows that the small growers have a dependent relationship with the company, which influences their production price and their income in general. Finally, the domination in the daily production processes brings more profound impact to the small growers in terms of dependency on input supplies.

The companies' control is getting deeper and stronger when it is written in the contract. One of the small growers told me that:

I work in the company in the packing plant. One of the articles in the contract said that as a worker, you would be regular. The company promises that when they sign the contract, they will be a regular worker, but now I'm still a contract worker.³⁰²

Being a regular worker mean they get an assurance to work in the company as long as it still exists, and they will get better health insurance and wages as well. Regular workers usually get an annual contract, hence their protection is also different. Furthermore, she is happy that she gets a position in the company, even it is not her decision to work there. Also, in line with the right to work, the companies are in the right process by creating the job. However, it is not enough because there is no guarantee for regular work as promised in the first deal. Therefore, since there is no precise mechanism from the government, the informant chose to join the union to gain their right to work.

It seems that it is not enough for the companies to control the substance of the contract, they also control the deal physically. As explained by the president union from Compostela Valley:

I think the company keeps the contract. It is one of the ways of the company to treat them, and they can charge or find cases if they do not follow what was written in the contract, for instance, the farmers cannot sell the bananas outside the company. But they do that. Then it could be a case. However, it is also because the farmers do not have the contract.³⁰³

³⁰¹ Glover and Kusterer (n 287).

³⁰² Interview with ME (n 283).

³⁰³ Interview with PJ (n 292).

The companies are not only directing but also dominating the consensus by tiding it into formal legitimation. Clapp argues³⁰⁴ that in contracts, the domination of the companies has a legal power to retain the seed, crops and inputs. Moreover, it happens in the Santo Tomas and Compostela Valley. The companies dominate all of the processes in the implementation process by covering it with legal power; hence, the small growers do not find any ways to revoke the agreement. The companies combine structural and daily control to maintain their domination on socio-economic and political authority, as Vellema argues. Hence, the concept of the small growers as the equal partner is abused by the companies.

5.2.3 Hiding under the banana canopy as an escape way from aerial spray: The right to the enjoyment of safe and healthy work conditions

As one of the main elements in banana farming, it is crucial to know the situation the workers are in under the agribusiness company. The workers in Santo Tomas, for example, need to deal with a complicated system with both the local government and the company because their union is not acknowledged. It brings many problems for them. It starts with an uncertain working period as explained by the president of the union, 'We do not have a contract, as long as the banana still run, we still work'.³⁰⁵ Furthermore, the president told me that in the past the working contract was established between the company and the union under a CBA. The deal applied for every five years, then, there was a freedom period for the union to decide whether they still want to continue the contract or not. The impacts of this system were that the workers got better health equipment and a higher insurance payment. However, they would not get the same facilities with the new company, namely NEH, particularly on health matters.³⁰⁶ Furthermore, the workers union in Compostela Valley also face the same problem. Sumifru does not acknowledge the union, and if there any meetings, they would not invite the union members.³⁰⁷

The main problem here is the lack of acknowledgment of the union, leading to their weak position politically, as Vellema explained,

³⁰⁴ Clapp (n 298) 80.

³⁰⁵ Interview with EL (n 274).

³⁰⁶ *ibid.*

³⁰⁷ Interview with MA (n 275).

to bargain with the companies. As mentioned before in the literature review, union as bargaining cooperatives for farmers demand better rights for the workers and could pool resources for hiring lawyers for any formal legal case.³⁰⁸ Uncertain working periods and status puts the workers in vulnerable positions, for instance, they have more challenges when taking a loan from the bank. The case is similar to the small farmers in Thailand who face the same difficulties as them.³⁰⁹ Furthermore, unlike the association in Tanzania,³¹⁰ the union is taking on the role of mediator even in a very minimal way. For instance, the union is working together with NGOs to advocate their interest. However, while they are still fighting for acknowledgment, they need to deal with several serious problems which endanger their lives, particularly violations of the right to safe and healthy working conditions.

For the health issues, the workers are vulnerable due to exposure from aerial spray and incompatible PPE. Unfortunately, this is happening both in Santo Tomas and Compostela Valley under the management of NEH and Sumifru. Here is the explanation from the presidents of the union from those two places:

Yes, we work with our hands. The workers are just hiding under the leaves and banana tree, so they do not want to get the spray. Some of them are (...) burning because of chemicals. Going back to the previous employer, which had a safety regulation, the workers cannot go to the field within 2 hours, but the regulation is not implementing again. In Davao, the aerial is banned, but not here. We tried to ban it, but the company denied, they need the aerial spray so the work will be faster.³¹¹

They provide protection, but it is not good. The material is standard. That is why sometimes the workers work with their hands are exposed to the chemicals. However, in Davao, they ban it, but in Compostela Valley, it is still happening.³¹²

³⁰⁸ Digal (n 284); Erkan Rehber, *Contract farming: theory and practice* (The ICAFI UP 2007); Alfredo R Rosete, 'The Political Economy of Smallholder Incorporation and Land Acquisition' (Doctoral dissertation, University of Massachusetts 2016) <https://scholarworks.umass.edu/dissertations_2/802> accessed 27 November 2018.

³⁰⁹ Isabelle Delforge, 'Contract farming in Thailand: a view from the farm' in *Occasional Papers 2 A Report for Focus on the Global South* (CUSRI Chulalongkorn University 2007) <<https://focusweb.org/pdf/occasional-papers2-contract-farming.pdf>> accessed 9 August 2018.

³¹⁰ Lotte Isegar, Niels Fold and Thobias Nsindagi, 'The Post-Privatization Role of Out-growers' Association in Rural Capital Accumulation: Contract Farming of Sugar Cane in Kilombero, Tanzania' (January 2018) 18(1) *Journal of Agrarian Change*.

³¹¹ Interview with EL (n 274).

³¹² Interview with PJ (n 292).

Furthermore, they have been asking and attempting to discuss the improvement of PPE with the companies but they never comply with it.

What happened in both Santo Tomas and Compostela Valley shows that the companies failed to respect and fulfil an appropriate as well as a safe working conditions. Furthermore, the companies violated section 8 of RA No 11058 of 2017 on Occupational Safe and Health Law, regulating workers' right to PPE. In the health issues, we can see that the government neglects the workers given that they only banned the aerial spray in Davao City, the capital city not only for Davao Region but for Mindanao. As stated in the articles 8(3) and 8(5) of the constitution, the specific explanation on the agrarian subject, the state should guarantee full protection of workers both in the country or overseas. However, the state only protects the banana workers in Davao City, as a business and administrative centre of Mindanao. In the end, this weakness is profitable for the companies.

Another way to dominate the workers' work is through the meetings. One of the union presidents highlighted that the meeting with the company representation is only for talking about Panama disease,³¹³ as explained below:

They just talked about the Panama disease. There is still no cure for the Panama disease, so even DOLE they have to close down some of the plantations. DOLE is the number one brand. They close small and big plantations. In 126 ha the affected area is 30 ha. It has affected the work of the workers; in six days of work they only need to work in four days. Because of the Panama disease come from acidic soil. If you want to get rid of the disease, you need to rehab the land. Also, it takes months to rehab the land, even one year. They are expecting the company will close down in two years because of the Panama disease. It just the hunch, but they still think. They still can solve the problem.³¹⁴

³¹³ Panama disease is caused by the soil-inhabiting fungus species referred to as *Fusarium oxysporum forma specialis Cubense* (Garcia-Bastidas and others (2015) cited in Jaye de la Cruz and Kees Jansen, 'Panama disease and contract farming in the Philippines: Towards a political ecology of risk' (2017) 18(2) Journal of Agrarian Change 249 <<https://onlinelibrary.wiley.com/doi/full/10.1111/joac.12226>> accessed 7 June 2019). The only cure for this disease is to rehabilitate the land as experts still cannot find chemical or physical measures against it. The disease commonly attacks the Cavendish banana, the most common banana in Davao, by yellowing the banana leaves and longitudinal splitting of the plant's stem at the base, eventually leading to the wilting and collapse of the entire canopy (Cruz and Jansen). Garcia-Bastidas and others. 2015. First report on fusarium oxysporum f. sp. Cubense tropical race 4 associated with panama disease of banana outside Southeast Asia. *Annual Review of Phytopathology*, 98(5), pp. 269-288.

³¹⁴ Interview with EL (n 274).

The result of the action above is that the workers could not get clear information on Panama disease and it violates the workers' right to know about safety and health at work under section 6 of RA No 1158 of 2017. In fact, that the Panama disease is haunting their job makes the workers worry, especially for those who have a status as unregular workers. However, the discussion above shows that the company tends to focus on the diseases which threaten their profit rather than show concern about working conditions. Logically, the acidic soil could be threatening the workers' health as well. However, the companies never discuss it and drive the forum only on companies' interests.

The cause of the Panama disease, both in health and working insurance, should represent due diligence of its company as mandated in the UN Guiding Principles. It states that business enterprises are required to address their human rights impacts by informing or providing information regularly and formally to affected stakeholders and publicly to its other intended audiences, for instance, individuals or groups who are impacted and investors.³¹⁵ Additionally, the DOLE also regulates the basic standard of working conditions, which has the same values as the UN Guiding Principles. In other words, the actions of the companies violates the right to get information and the right to get safe working conditions.

The companies use the lack of political will of the state to maximise their production supported by their economic resources, yet disregard the workers' health. This action does not only violate the businesses' responsibility to respect the right of the workers but also violates the right to the enjoyment of just and favourable work conditions in terms of safe and healthy working conditions, which are guaranteed in article 7 of the ICESCR, the UN General Comment No 23 of 2016 and the General Conference of ILO on the same issue of 1981 No 155. Furthermore, the impact of the unsafe and unhealthy conditions is in the long-term period, causing a number of diseases and influencing the workers' life in general and socially.

³¹⁵ UN Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (UN Guiding Principles) HR/PUB/11/04 (United Nations 2011) art 21.

5.3 SMALL GROWERS OR FARMERS REACTION: THE REMEDY ACTIONS IN ORDER TO OBTAIN THEIR RIGHTS

5.3.1 *Utilise the formal channel as guarantees in the laws*

To guarantee the principles in the UN Guiding Principles, the small growers also have a right to make a case formally. Furthermore, in the Philippines the AVA law itself already regulates an amendment, renegotiation and revocation process of the contract under article II(4.14) of the DAR AO No 09 (see chapter 4). The law aims to protect and ensure a fair remedy for parties to AVAs, including the small growers through a comprehensive mechanism which involves the local government, namely the PARO.

To use the facilitates that are provided by the state, some small growers have attempted to negotiate with the companies through a formal channel. One of them is JU from Santo Tomas whose case went to court to change her latest contract from 30 years into five years. She explains the reason for her action as follows:

At first, my husband is the one who signed the contract for 30 years in 1989. But then he died. Then the company asked the wife to sign another contract for another 30 years. So I didn't know it. The company did not explain anything. Now, I made a case to change 30 years into 5 years. The case is still going on now.³¹⁶

JU can be considered to be the lucky one since she held and could comprehend her contract, hence, she could bring the case to court. Nevertheless, for some growers, they do not see the agreement as the company keeps it, hence, they have to wait or join the union to bargain with the company. While for workers, if they joint protests, they could be fired from the company as has happened in Compostela Valley. JU and VE, another small grower from Santo Tomas, really wanted to end the contract with the company, not only due to the low rent, but also the company, Marsman, dominates the land and does not allow them, the owners, to enter the area as long the contract is still on-going.³¹⁷ Additionally, similar with the workers and others growers, JU does not want to lose her land due to Panama disease, and if she allows the contract, the company will extract the area for 60 years, and she is terrified of it. Furthermore, JU's action to bring the case to court is

³¹⁶ Interview with JU (n 276).

³¹⁷ Interview with JU and VE (n 280).

supported by other growers and even the union; however, they cannot do many things due the required formalities. Now, JU's fighting area is in court. While the case is still on-going, the company is still paying the rent which is 15,000 PHP for 1.5 hectares.

From JU's case, three issues need to be considered: fair remuneration; a fair contract; and an equal opportunity to get information in terms of Panama disease. As explained in the UN Guiding Principles, the remedy process should be implemented both in procedural and substantive ways, and the company, as well as the state, should respect the process.³¹⁸ However, what JU has done is threatening the company. She said that there is one officer who force people to joint the contract, and the company also always ignores people's requests to have meetings.³¹⁹ It seems that the companies do not respect the remediation process, as obligated by the UN Guiding Principles in articles 22-25.

As Clapp argues, unequal partnerships beneath the contracts have been resulting in open conflicts,³²⁰ and JU is one from hundreds of small growers who dare to declare an open conflict with the companies by filling a lawsuit in the court. The unfair contract by blocking the information on the substance of the agreement brings her to another level. Furthermore, the case of JU influences the social relationship between the companies and other growers. Forcing people to stay in the contract, however, will make other growers see those who are neglected by the system. Furthermore, JU shows that as the equal partner in the CF system, she has the right to get fair treatment in the remedy process as guaranteed both in international and national laws.

5.3.2 *At night strategy*

'Some of them take the banana in the night, so that they can sell it outside the company. We steal the banana illegally. The price outside is higher'.³²¹

As mentioned before, the price from the companies is low, and some small growers recklessly attempt to deal with the high deduction as well as the workers' wages. MA told me that a mini plant³²² is the place

³¹⁸ UN Guiding Principles (n 315) 27.

³¹⁹ Interview with JU (n 276).

³²⁰ Clapp (n 298) 82.

³²¹ Interview with MA (n 275).

³²² From my field study I understand a mini-plant to be an independent company, usually a small company owned by local elites, which do the same activities as an agribusiness company but do not have a contract with the small growers. The mini plant buys the bananas from the growers based on the standard market price.

where they sell the illegal bananas.³²³ It sounds absurd when you know that they are the one who plants and maintain the banana plantation, yet they used the term ‘illegally’ to describe taking it. Furthermore, the same strategy also found in Santo Tomas, as explained below:

Some people block the cable and chop some trees. The choppers, the workers, are the one who did it from inside the plantation. As a result, there were 11 leaders sent to jail for two weeks by the company. However, after that, the police just release them freely.³²⁴

While in Santo Tomas, people are doing more extreme acts than in Compostela Valley by having cooperation with the workers, the choppers and involving many leaders as well. It shows that the small growers could do something big, and they are ready to face the consequences, including the police. If we look carefully, it appears that the police itself understands the position of the growers yet keeps them in jail as that is the formality to fulfil the requirements of the company.

There are similar patterns that the small growers use in Santo Tomas with farmers in Gambia, Africa.³²⁵ The action created by few growers turned into collective movements, in other words, affecting the community in general in terms of responding to the unfair system. It also demonstrates that there is an intersection of interest between the small growers and the workers to cooperate. This action proves Daddieh’s³²⁶ argument that several reasons influence the movement, and for the banana plantation context in Davao Region, those reasons start from low income, lack of access of information and lack of health insurance.

The actions of the small growers looks like that they are violating the contract. Frankly, to say, yes, they are. However, we need to examine the action from a more prominent framework as Vellema explains in the conceptual framework that social, economic and political factors are related to each other. This action resonated with the violations of their right to work done by the company. The political control through the unfair contract and the financial power through the low wages inspired people to take this action.

³²³ Interview with MA (n 275).

³²⁴ Interview with JU (n 276).

³²⁵ Judith A Carney, ‘Contracting a food staple in the Gambia’ in Peter D Little and Michael J Watts (eds), *Living Under Contract* (The University of Wisconsin Press 1994).

³²⁶ Cyril Kofie Daddieh, ‘Contract farming and palm oil production in Côte d’Ivoire and Ghana’ in Peter D Little and Michael J Watts (eds), *Living Under Contract* (The University of Wisconsin Press 1994).

5.3.3 *Start a new life as independent growers*

'I just want to continue by myself because the company will control the product. Also, the price is much lower. The company will intervene, and we will have the agreement'.³²⁷

That is one of the testimonies of an independent grower from Santo Tomas. DE prefers to maintain his one-hectare banana farm his way and sell it through a mini plantation near his house.³²⁸ A higher price is one of the main reasons as to why he chooses to do so. Furthermore, the independent grower phenomenon also happens in another village in Santo Tomas, 'There are many mini-plants here, over hundreds, and the owners are the villagers as well as growers. The price per box now is 340 pesos, but if the stock of banana only a little, it would be 400 pesos'.³²⁹

Here mini-plants have an essential role for the independent growers. Even though they do not have a formal agreement like with the agribusiness companies, they trust each other to keep the price higher. Furthermore, the mini plants are only small companies, they have several qualifications and a particular mechanism which need to be followed by the small growers. My informant explains that:

Yes, there are many requirements. One of the requirements is that I need to harvest in four leaves, and it is not dried. There are QI (Quality Inspectors), they checked the area and just gave the requirements. So, I only choose to sell in one mini plant. Because if I keep changing the mini plants, the price will go down.³³⁰

The fact that the independent growers are willing to follow the mini plants' mechanisms professionally shows that the contract system could work if each of the entities respects the rights and are transparent on the implementation. The independent growers understand that the requirements are essential to keep the quality, however, they have more freedom to choose and to buy the inputs as well as to maintain their own techniques. In other words, the traditional system could also be used in this system, as my informant explained to me.³³¹ Consequently, there

³²⁷ Interview with DE (n 296).

³²⁸ *ibid.*

³²⁹ Interview with JU (n 276).

³³⁰ Interview with DE (n 296).

³³¹ *ibid.*

are more small growers who are keen to end the contract and transform into independent growers, ‘Yes, there are more than one hundred independent growers. They had an agreement with the company a few years ago. However, the company paid much cheaper, hence, they did not renew the contract’.³³²

Aside from the positive points, there are also weaknesses as independent growers. DE explains to me that he does not provide any insurance for his workers, yet he gives the workers an appropriate daily wage and provide a bonus every year as a compliment.³³³ Additionally, what is happening in Santo Tomas and the Compostela Valley disproves the results of Sawaengsak and Gheewala³³⁴ in Nakhon Ratchasima province, Thailand. They found that from looking into the conditions of banana workers plantations, it was revealed that the independent growers tended to provide better safety conditions than the companies.³³⁵ Here, the safe and healthy working conditions are ignored by the small growers, even though they use the manual method for spraying the banana trees which makes them less exposed by the compound, but still, they are in the dangerous conditions. From my observation, they are aware of the dangers of the chemical, but they cannot do anything. In other words, the law from the ICESCR, the UN Guiding Principles, even from the DOLE, are not acknowledged by them. In the end, exposing themselves to the chemicals are the risks that they need to take.

Being independent growers has a lack of formality, yet, it has a fair remuneration and freedom to maintain the plantation. Additionally, the open system applied in the mini plant makes every grower own an equal opportunity to join as long as they are following the rules. In the end, the decision to be independent growers to acquire a decent living for themselves and their families fulfils the law under article 7 of the ICESCR.

³³² *ibid.*

³³³ *ibid.*

³³⁴ Wanchat Sawaengsak and Shabbir H Gheewala, ‘Analysis of social-economic impacts of sugarcane production: a case study in Nakhon Ratchasima of Thailand’ (2017) 142 *Journal of Cleaner Production* 1169 <www.sciencedirect.com/science/article/abs/pii/S0959652616313129?via%3Dihub> accessed 27 August 2018.

³³⁵ *ibid* 1174.

5.4 CONCLUSION

As part of the banana capital, many people in Santo Tomas and Compostela Valley are joining CF with the agribusiness companies. From my field study, it was revealed that some of the small growers had a pleasant experience, which means they have a lawyer and know all about the contract. However, this is a rare case because more small growers, and even the workers, have a very different experience. Starting from their reason to join CF, some small growers acknowledge that it is because they do not have any other option and the companies offer to clear their debt, hence many people were willing to sign a contract. Other small growers and workers said that the financial issue is their reason to work with the companies. Nevertheless, both in Santo Tomas and Compostela Valley there is the same type of contract, which is a centralised model. In this type, the deal is directly between the companies and the small growers or workers, while the government becomes a watchdog and is not involved directly in the process.

In the implementation of the contract, three issues resulted from this research. Firstly, there is a non-transparent process on contract signing, which violates the right to equal opportunity in terms of work information. The contract is written in English and most of the small growers do not comprehend the language use. As a result, the small growers do not notice about the tax issue, plus they do not know about the risks that they will face and how to solve them. Secondly, the companies build a dependent relationship through control of the daily production process, violating the right to get equal remuneration and proper implementation. The day-to-day control is done through input supplies for the small growers, eg fertiliser with higher prices, and through a direct visit to the plantation. The input supplies are related with the small growers' income given that it is automatically deducted from their harvest, and the net income is not enough for them to cover what they need, including paying the workers' wages. Thirdly, the workers are hiding under the banana canopy to escape from the aerial spray, violating the right to the enjoyment of safe and healthy work conditions. The health issue in CF is critical to discuss given that it is endangering the workers' life both in the short term and in the extended period. The lack of political will from the government, which only bans the aerial spray in Davao City which is also known as the capital and business centre, makes the companies take advantage of

the situation to faster their production cycle and gain more profit. As a result, the workers need to inhale and touch the chemicals with their bare hands. The case also shows that the unbalanced position between the companies and the small growers could influence their relationship at the social, economic and political level.

As CF is not a single phenomenon, the small growers and the workers have taken several actions to obtain their rights. Firstly, they bring a case of abusive action of the companies through the formal channels to court guaranteed in the law. Secondly, they enter their plantations at night, they cooperate with the workers as well and steal the bananas, undertaking what Scott³³⁶ called everyday forms of resistance. Later, they sell it in the mini plants which have a higher price and without any deductions. Thirdly, some of them are choosing to be independent growers working professionally with hundreds of mini-plants in their areas. The actions from the small growers and the workers show that they could do something which influences the companies in general. They are aware that as business partners of the companies, their rights should be respected and fulfilled by other business entities guaranteed by both national and international laws.

³³⁶ James C Scott, *Weapons of the weak: everyday forms of peasant resistance* (Yale UP 1985).

6.

CONCLUSION AND RECOMMENDATIONS

Throughout this study, the research has dealt with various issues regarding CF and its impact on small farmers as well as workers. By using case studies in Santo Tomas and Compostela Valley, the research demonstrates that there is unbalanced power between the agribusiness companies and the small grower or small farmers and the workers in the banana CF. The companies have obligations to respect the human rights but turn their positions into influence and control the right to work and right to the enjoyment of safe and healthy working conditions. To explain those two points further, the conclusion has four sections that summarise the five chapters.

a) Attempts to protect the farmers rights as well as control the business enterprises in the Philippines

To see the role of the Philippines government, the study examines the CF farming system as known as AVAs. Chapter 4 shows that the government has produced several laws regarding AVAs. The land reform laws, DAR AO 09 of 2008 and DAR AO No 04-16, allow the small farmers to participate in the system as well as draw the line in terms of the responsibility of the companies and the role of the state in every stage of the contract. One thing to be highlighted is the state addressing the fundamental rights of the small farmers, eg land rights and security of the farmers and workers, in the laws. However, the AVA laws tend to explain the companies' role rather than the small farmers. They can act as the facilitator, suppliers and marketing as well as manage the plantation itself.

Unlike the definition of CF from Eaton and Shepherd³³⁷ focusing on the characteristics of the sponsor and its role in general, the AVAs tend to concentrate on detailed responsibility of the small farmers and activities done by the investors. Furthermore, the law tends to use the phrase ‘shall or commit’ for the ARBs and use the word ‘may’ for the investors. It seems that the code is more demanding of the ARBs or the small farmers rather than of the investors.

Continuously, in term of the state’s control in favour of protecting the rights, the government has a comprehensive mechanism by involving various institutions ranging from the municipality provincial to the national level. Nevertheless, to reflect on the UN Guiding Principles, it lacks in implementation. The policy seems to indicate that the national institutions have more control in the regulations, decision and implementation processes, whereas the provincial government has tasks checking and monitoring the processes. However, this system creates a dilemma. In the renegotiation process, for example, the last decision is with the PARC located in Manila while the problem, eg violation of tax or land rights, and the small farmers are in another province. The transparency process for small farmers is needed in this matter. As explain by Glover and Kusterer and represented in the UN Guiding Principles, coordination from various levels of the government institutions is essential to ensure the protection of the small farmers in the field. As the UN Guiding Principles is soft law and voluntarily applicable, the state could adjust the policy and circumstances for a particular purpose. Also, in this case, instead of using its coordination to ensure the protection of the farmers’ rights, the state institutions attempt to control and gain more power over one another.

b) TNCs in the banana industry in Mindanao

The companies involved in the CF system in the Philippines have various backgrounds, some of them even belong to the biggest multinational agribusiness banana companies, eg Del Monte, Dole, Sumitomo and Chiquita/Unifrutti. Digal explains that those companies have changed their operations systems from direct growing into contract

³³⁷ Charles Eaton and Andrew W Shepherd, ‘Contract farming: Partnerships for growth: a guide’ FAO Agricultural Service Bulletin No 145 (Food and Agriculture Organization of The United Nations 2001) 44-46 <www.fao.org/docrep/014/y0937e/y0937e00.pdf> accessed 21 August 2018.

growing due to the implementation of the CARL. However, as mentioned in table 4.2, most of the growers are affiliated with the leading companies, or affiliated with other conglomerates in Mindanao and Philippines in general, such as Anflo Group, Dizon Group and Tristar Group of Banana Companies. Moreover, the five companies have several subsidiaries as growers as part of their structure, such as between Del Monte Fresh Produce (Philippines) and Agrinanas Development Co Inc, Delinanas Development Corporation and Mindanao Agri-Traders Inc. Lastly, there are also TNCs which uses its name, for instance, Nader & Ebrahim S/O Hassan Phils, Inc, instead of affiliating with another a company, their growers work directly with the small farmers. In the end, the relationship between the companies influence the nuances of the contracts.

The structure of the companies, centralised in the leading corporations, influences the dynamics of contract in the field and weakens the concept of human rights. As mentioned in the UN Guiding Principles, all form of business enterprises should respect and implement the human rights values regardless of their size, sector, operational context, ownership and structure. However, since the UN Guiding Principles is soft law, the companies are not obligated to follow it. Moreover, what happens in Mindanao shows that the small companies, consisting of subsidiaries or affiliations, have weak supervision on the small farmers' rights, particularly on the right to work and the right to the enjoyment of just and favourable work conditions. It is because most often, the TNCs/agribusiness companies as the leading companies have more control of their subsidiaries, for instance, to set standards for the products and manage those small companies. It also shows that companies can reject the principles altogether without consequences. Instead, the small farmers, as part of the banana industry, get the impact by feeling more pressure since usually the subsidiaries merely forward the leading companies' policy. This process demonstrates how the few TNCs control the market and the production chain through their subsidiaries or affiliations companies by rejecting the UN Guiding Principles while they still earn much profit.

c) Unbalanced relationship in the implementation process and its impacts on the small farmers and workers

Chapter 5 provides further discussion about the effects of CF on the banana industry in Santo Tomas and Compostela Valley, Davao Region. The contract system raises issues for the small farmers or growers and the banana plantation workers. The first issues arise from the implementation process of the banana CF, which has three significant

results. Firstly, a non-transparent process on contract signing, violating the right to equal opportunity in terms of work information. As the contract is written in English, the small growers do not notice about the tax issue, and they do not have knowledge about the risk that they will face and how to respond. Secondly, the company builds a dependent relationship through putting control on daily production processes which violates the right to get equal remuneration and proper implementation. The regular control is done through inputting supplies for the small growers and visiting the plantation every day, makes the small farmers or growers highly dependent on the companies in every decision made. The inputs supply from the companies also decreases their income while they also need to consider their workers' wages. Thirdly, the workers are hiding under the banana canopy as an escape away from the aerial spray, violating the right to the enjoyment of safe and healthy work conditions. The lack of political will of the government, which has only banned the aerial spray in Davao City, known as the capital and business centre, makes the companies utilise it in terms of gaining profit in the most effective way possible without considering the workers' livelihood. From this research, it shows that the implementation of CF is used by the companies to gain control over the small farmers or growers and the workers in many levels of their life. Moreover, this controlling process violates their right to work and their right to the enjoyment of safe and healthy work conditions in many ways.

In the end, the research in Davao Region shows a typology of banana companies, showing the soft aspect of the UN Guiding Principles. The minimum standards of wages and land rent of the companies are not enough to guarantee a decent living for the small farmers and workers. The low price on bananas shows the companies can avoid the principles of human rights in business relationships. The small farmers as part of the banana chain industry are entitled to get recognition for their rights. Moreover, in risk prevention or mitigation, the companies focus on the impact of Panama disease and its production. The companies are not concerned with workers' risk as well as their health issues. Furthermore, safe and favourable working conditions raise more critical problems. This issue could be tricky because the Philippines does not have a NAP on business and human rights yet, and companies do not have the sense to guarantee healthy and safe working conditions in the plantation areas. The practices of banana companies are not only harmful to their business partners, the small farmers and growers, but also still lack the ideal principle of responsible business.

d) Remedy actions from the small farmers and workers in Santo Tomas and Compostela Valley

As CF is not a single phenomenon, the research reveals that the small farmers or growers, as well as the workers, have been taking some actions to fight the unfair system. Firstly, the small farmers or growers bring the unfair contract with the companies to court using a formal channel which is guaranteed in the law. Secondly, the growers, who cooperated with the workers, steal the bananas at night, then they sell them to mini-plants with a higher price and without any deductions. Thirdly, they are starting a new system as independent growers who cooperate with over 100 mini plants located near to their plantation areas. The remedy actions taken by the small farmers or growers show that they can influence the banana CF process and the companies in general. Their actions show that they are aware of their rights and they demand the companies respect and fulfil them.

In conclusion, the research has been examining the way the companies control the small growers or farmers through the substance of the contract, daily implementation of it and domination of the workers' lives. Indirectly, the companies have the power on the right to work and right to the enjoyment of safe and healthy working conditions. The phenomenon is also influenced by the nature of the UN Guiding Principle as soft law, hence, it is not difficult for the state to ensure the companies show their respect for human rights through applying a more responsible business. Moreover, as Vellema argues, under CF the companies could influence the small farmers or growers by their social, economic, and political control.

e) Recommendations

In the light of the domination of agribusiness companies in Davao Region and in response to the UN Guiding Principles as soft law, the researcher wishes to make some recommendations which aim to propose policy change and to strengthen the concept of human rights for the corporations. If taken into consideration, they might bring some positive changes to approach for the state:

- *Accelerate the making of the Philippines National Action Plans (NAP) on Business and Human Rights as a real action to adopt the UN Guiding Principles*

One of the ways to transfer soft law into consideration is by producing regulations at the national level. Also, a NAP is the

instrument actively promoted by the UN. The NAP is an evolving policy strategy developed by the state to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles. Furthermore, the NAP should regulate due diligence as a mandatory scheme for agribusiness companies operating in the Philippines. The due diligence activities could be undertaken through a variety of issues, including the companies' reports on human right risks, impact and mitigation efforts. In this step, the National Human Rights Institutions (NHRI) are the leading state institution to work in this process. Furthermore, NHRI should be working hand in hand with business entities and civil society in terms of keeping the accountability, transparency and fair process accommodating the interests of each entity of CF.

- *Create a nexus monitoring programme consisting of multilateral institutions as a straightforward action to respond to the lack of measurement in the implementation process and broaden the concept of human rights*

The application should include independent actors who set standards toward a human rights programme in the whole process of CF, including enforcing fair agreements in the signing activity. Then, the monitoring body could help the state to push the companies towards better human rights practices. Every institution has a different interest and a different approach to deal with the companies. The diverse categories of the institutions also could widen the understanding of the human rights principles from different perspectives based on the actors in the programme. More institutions mean greater dissemination and socialisation processes. Henceforth, the companies could realise that the principles are not merely simply as a set of standards, but that it is complex and has more profound realisations related to many actors. In this programme, the government could involve the Secretary of Labor and Employment, the PARO, Occupational Safety and Health (OSH) Program by the Secretary of Labor and Employment of DOLE, the Pilipino Banana Growers and Exporters Association Inc and the farmers as well as workers unions.

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