

Good morning. I am honored to appear today before the Philippines Commission on Human Rights.

My name is Marcos Orellana. I am the director of the Environment and Human Rights Division at Human Rights Watch. Human Rights Watch is an independent, international organization that defends the rights of people worldwide. We investigate human rights abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch has done research and advocacy on human rights issues in the Philippines for more than 25 years. My area of expertise is public international law, having lectured and published in the field for more than 20 years.

The case before you has great significance for millions of people who are, and will be, impacted by climate change. It also has great significance for humanity's sense of justice and responsibility towards the totality of life on the planet.

In the time available to me, I will speak about two questions that directly concern the responsibilities of carbon majors—the largest companies producing crude oil, natural gas, coal, and cement who are also the world's biggest greenhouse gas emitters—for human rights impacts resulting from climate change. The first question: What are the responsibilities of business enterprises under the United Nations Guiding Principles on Business and Human Rights? The second, what are the key elements of the recent advisory opinion on human rights and the environment rendered by the Inter-American Court of Human Rights?

### **I. The Responsibilities of Business Enterprises under the United Nations Guiding Principles on Business and Human Rights**

The first question concerns the corporate responsibility to respect human rights. Back in 2011 the UN Human Rights Council adopted, by consensus, the UN Guiding Principles on Business and Human Rights. These Guiding Principles reflect high-level agreement after decades of debate at the international level over the human rights responsibilities of business enterprises. One of the key achievements of the Guiding Principles was *precisely* their ability to gather political consensus at the United Nations.

The UN Guiding Principles guide the implementation of the “Protect, Respect and Remedy” framework that the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie, presented to the Human Rights Council in 2008. Under this framework, governments have obligations to protect against corporate-related human rights abuses, business enterprises have responsibilities to respect all human rights, and victims are entitled to an effective remedy. Concise as it is, this framework reflects international legal developments in the field of business and human rights.

The UN Guiding Principles firmly establish corporate responsibility to respect human rights. Corporations are expected to take proactive steps to ensure that they do not cause, or contribute to, human rights abuses within their global operations, and respond to human rights abuses when they occur.

For example, Human Rights Watch has investigated several instances where companies have been responsible for human rights abuses. We have documented how illegal logging in Indonesia jeopardized the sustainability of forest use and global efforts to combat climate change. We have also reported how the Porgera mine of Canada's Barrick Gold mining company in Papua New Guinea dumped 14,000 tons of liquid mining waste daily into a nearby river. Earlier this year we exposed human rights abuses and forced labor in Thailand's fishing industry. These and many other cases of abuse highlight the importance of the corporate responsibility to respect rights.

The key tool in the UN Guiding Principles to operationalize the responsibilities of businesses with respect to human rights is due diligence. Human rights due diligence is a process to identify, prevent, mitigate, and account for companies' impacts on human rights. Companies are thus expected to establish and implement effective screening, monitoring, and response mechanisms that permit continual analysis of human rights risks. Specific steps that corporations should take to fulfill their human rights due diligence responsibility is to conduct a risk assessment, prevent or mitigate that risk, and ensure access to a remedy when they have caused or contributed to the harm.

Corporate human rights due diligence should address all internationally recognized rights. This is because companies can and do interfere with the realization of a wide spectrum of human rights.

That said, some rights will be more relevant than others, depending on the particular industries and circumstances. In the case at hand, the issue of the responsibilities of carbon majors for human rights impacts resulting from climate change, particularly involves the right to a healthy environment, the right to life, the right to health, the right to property, and the right to food.

The impact of a company's activities on human rights may relate to its direct operations, its supply chains, and its products and services. In the case at hand, carbon majors have conducted activities that result in the concentration of greenhouse gases in the atmosphere, which in turn causes global climate change.

The corporate responsibility to conduct adequate human rights due diligence extends beyond corporations' direct operations to include their global supply chains. Individual companies' global supply chains often involve large numbers of suppliers or subcontractors, including some who are part of the informal sector. Due diligence does not involve limitations based on nationality or location of suppliers.

For more than two decades, Human Rights Watch has documented human rights abuses in the context of global supply chains. We have documented hazardous child labor in tobacco farming in the United States and Indonesia. Earlier this year we exposed human rights and environmental abuses in the supply chains of jewelry companies, including forceful displacement of indigenous peoples from their lands and pollution of waterways and soils with toxic chemicals.

Under the UN Guiding Principles, companies should ensure that their business activities, including throughout their supply chains, do not cause, benefit from, support, or engender human rights abuses.

Despite the importance of the UN Guiding Principles in articulating corporate responsibilities, they are not a panacea. Critically, they lack any mechanism to ensure compliance or to measure implementation. This flaw of the Guiding Principles underlines the importance of the efforts currently underway at the Human Rights Council toward a binding international treaty on business enterprises and human rights that can help secure human rights accountability.

What's clear is that the UN Guiding Principles set an important benchmark for the expectations of society on the conduct of corporations with respect to human rights. Many of the standards in the Guiding Principles, although non-binding, are based on international human rights instruments. It is therefore incumbent upon national human rights monitoring mechanisms, such as the Philippines Commission on Human Rights, to ensure that the corporate responsibility to respect human rights is upheld.

The role and importance of human rights monitoring mechanisms, especially in cases involving emerging issues of international law, such as those raised by environmental threats, takes me to the second question.

## **II. The Inter-American Court's Advisory Opinion on Human Rights and the Environment**

The second question for me today concerns the Advisory Opinion on Human Rights and the Environment, published by the Inter-American Court of Human Rights in February. This opinion is highly significant for the case here, because it addresses both the extraterritorial dimensions of international human rights law and the human right to a healthy environment.

It bears recalling that the Inter-American Court, in addition to hearing cases of violations of the rights and freedoms guaranteed in the American Convention on Human Rights, can also provide opinions in response to questions presented by any member state of the Organization of American States. Advisory opinions by the Inter-American Court are legally relevant to all member states of the Organization of American States. This includes the United States, where several of the carbon majors are domiciled.

### **II.i. Factual Background of the Inter-American Court's Advisory Opinion**

A good place to start the analysis of the Inter-American Court's opinion is with the basic facts. While technically the advisory opinion is not a case, and therefore does not have a factual platform, the reality is that Colombia requested this opinion from the Court in 2016, expressing concerns about the threat posed by large-scale infrastructure projects in the Caribbean to the human rights of the islanders of the archipelago of San Andrés, located opposite Nicaragua in the Caribbean Sea.

In 2013, Nicaragua announced plans for a “grand canal” connecting the Pacific Ocean and the Caribbean Sea, though construction has not yet started. Serious questions have been raised about the potential environmental impact of the project.

The relevance of the advisory opinion extends beyond this specific factual background, however. In fact, the Court explicitly noted that the questions addressed in its advisory opinion are of importance to all the world's countries. That is because the questions before the Court concerned cutting-edge issues of international human rights law.

## ***II.ii. Extraterritorial Human Rights Obligations***

One key question the court grappled with was this: Since environmental harm often crosses state boundaries, does the American Convention protect persons affected by environmental harm coming from another country? The answer is yes: The court explicitly said that states' obligations under the convention extend to harms caused to people outside of their borders.

To reach this answer, the Court analyzed in detail the scope of application of the American Convention on Human Rights. The convention, in Article 1 entitled “Obligation to respect rights,” establishes the duty of states “to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.” The key element that determines the scope of this obligation is the term “jurisdiction.”

Jurisdiction is a multifaceted term in international law. It can refer to the legal competence of an international tribunal to hear and decide a case; it can also refer to the basis upon which a state may exercise power, control, or authority, such as the jurisdiction of a State to prescribe and enforce laws in its territory or in respect of its nationals.

In the context of the American Convention, a human rights convention, jurisdiction is the key that both defines and limits the obligation of the State, which is responsible to respect and guarantee the rights and freedoms of persons under its jurisdiction.

The Inter-American Court reasoned that the term jurisdiction in the American Convention is not identical to territory. In its analysis, the Court examined the case law of the UN Human Rights Committee, the European Court of Human Rights, and other international legal sources that have recognized instances in which extraterritorial conduct by the state involves the exercise of its jurisdiction.

The Court concluded that the term jurisdiction can encompass situations of extraterritorial conduct of the State. (78) The Court further established that, in respect of extraterritorial situations, a person is under the jurisdiction of a State where it exercises authority over the person or when the person is under its effective control, be it within or beyond its territory. (81)

The Inter-American Court next scrutinized: when does a person fall under the jurisdiction of the State in situations of transboundary environmental harm. The Court noted that the environmental pollution of one country can quickly become the environmental and human rights problem of another.

In approaching the question of jurisdiction and transboundary harm, the Inter-American Court relied on several grounds. First, it recalled the consistent case law of the International Court of Justice articulating the duty of states to avoid causing transboundary environmental harm. Second, it reaffirmed the duty of states to not to pose obstacles to other states to fulfill their human rights obligations. In this regard, the Court noted that activities within the jurisdiction of a state should not deprive another state of its capacity to ensure the enjoyment of human rights to persons in its jurisdiction.

That analysis led the Court to a crucial point: the state where the harm originates “is in a position to *prevent* transboundary harm that affects the enjoyment of human rights of individuals outside its territory” [emphasis added].

The conclusion of law that follows is plain: in a case of transboundary environmental harm that impacts on human rights, the persons whose rights have been violated are under the jurisdiction of the State of origin of the harm.

In other words, the principle laid out by the Inter-American Court is that a state may be responsible for extraterritorial human rights violations where there is a causal connection between an activity in its territory (or jurisdiction) and the transboundary environmental harm that impairs human rights.

Before analyzing the legal implications of this principle for corporate activities, I think it is worth highlighting that the Inter-American Court received a good number of amicus curiae briefs that helped it approach the questions put to it.

The analysis on jurisdiction and extraterritorial human rights obligations laid out by the Inter-American Court has direct implications for corporate responsibilities in respect of human rights. In addition to reiterating earlier pronouncements that businesses should respect human rights and be accountable for the negative human rights impacts of their activities, the Court’s opinion explored the extraterritorial dimensions of corporate responsibilities.

The Court examined decisions by the Committee on Economic, Social and Cultural Rights and by the Committee on the Elimination of Racial Discrimination and noted that: in respect of businesses registered in one state but that carry out activities outside of that state’s territory, there is a trend toward the regulation of said activities by the state of registration. This trend, the Court

opined, is positive because it would allow states to guarantee human rights of persons outside its territory.

In the end, the advisory opinion of the Inter-American Court of Human Rights makes an important contribution to clarifying human rights responsibilities for extraterritorial impacts. It explicitly underlined the notion that environmental degradation and the adverse impacts of climate change affect the effective enjoyment of human rights. Therefore, it comes as no surprise that the Court also extolled the importance of the right to a healthy environment.

### ***II.iii. The Right to a Healthy Environment***

The Inter-American Court of Human Rights proclaimed that, “A clean environment is a fundamental right for the existence of humanity.” The Court affirmed that the American Convention on Human Rights protects this right and for the first time, it explicitly outlined some of its key components.

For example, the Inter-American Court explained that the right to a healthy environment has both collective and individual dimensions. That is, it expresses a universal interest that is due to present and future generations, as much as its infringement also affects individuals. In that regard, the court noted that the right to a healthy environment is connected to other rights, such as the right to health, personal integrity and the right to life, among others.

Notwithstanding these inter-connections, the court clarified that the right to a healthy environment is autonomous. In the court’s reasoning, the autonomous character of the right to a healthy environment means that its content is distinct from the environmental dimensions of other rights. In that sense, the court highlighted that the right to a healthy environment protects the *elements* of the environment, such as forests, rivers, and seas.

The analysis of the Inter-American Court on the right to a healthy environment has the potential to unlock novel forms of understanding and using the law to address and redress the grave inequities suffered by individuals and communities exposed to environmental degradation. Climate change is a clear expression of inequity, as the most marginalized and vulnerable people on earth, the people who contributed the least to the climate problem, are those who stand to lose their lives and their hopes of a better future.

It thus comes as no surprise that the UN Human Rights Council included climate change in its agenda and warned that “climate change poses an existential threat for some countries.” One reason for the attention to the relationship between climate change and human rights is the recognition that climate change is having an uneven impact across the world. Climate change is imposing an increasing burden on governments, especially in countries with limited resources, in their efforts to protect vulnerable populations and realize human rights.

As a shield against inequity, the right to a healthy environment brings to light a sharper sense of human responsibilities toward our shared planet and its people.



The right also builds on the synergies between human rights and the environment to establish a stronger framework for accountability for deleterious activities that compromise the planet's vital signs.

In the end, the right to a healthy environment is about who we are as humans. The right enhances the appreciation of how humans are not isolated from, but depend on, the environment. It also amplifies human awareness on the interrelatedness of the web of life. The right to a healthy environment aids in fostering human consciousness and identity, and a culture of respect toward all living beings and nature, which ultimately translates into respect for one another. It is that basic moral truth, that we need to respect each other's rights, which lies at the heart of the human rights promise of a world free of want and fear.

Thank you for the opportunity to appear today to speak about the corporate responsibility to respect human rights and about interactions in the law on human rights and the environment.