



**ELAW**

Environmental Law Alliance Worldwide

U.S. Office: 1412 Pearl St. | Eugene, OR 97401 | (541) 687-8454 | [elawus@elaw.org](mailto:elawus@elaw.org) | [www.elaw.org](http://www.elaw.org)

Honorable Chairman Jose Luis C. Gascon  
and Fellow Commissioners  
Commission on Human Rights  
SAAC Bldg., UP Complex  
Commonwealth Ave.  
Diliman, Quezon City  
Philippines

7 November 2016

Honorable Chairman Gascon and Honorable Commissioners Dumpit, Pimentel-Gana,  
Tanodra-Armamento, and Cadiz:

We congratulate you for opening an investigation into the potential human rights violations suffered by Filipinos who have been impacted by the changing climate and ocean acidification.

Communities in the Philippines and around the world are suffering grave injustices. Scientists have confirmed that the severe changes to the global climate are due to human activities – including production and use of fossil fuels. Some entities and individuals have profited greatly by selling these resources, while others are suffering the damages.

It is appropriate and just for this Honorable Commission to open an investigation into human rights violations suffered by citizens of the Philippines. If the Commission does not undertake this investigation, who will? The human rights impacts are serious, and to leave citizens of the Philippines with no one willing to hear their complaints would harm Filipinos and create a terrible precedent for people everywhere who are suffering climate injustices.

The damages caused by climate change, including grave human rights violations, are unique in that they are caused by the actions of entities situated in many countries, yet the impacts are being felt at varying degrees around the world. There is no single institution that is the proper forum for victims to lodge complaints. Instead, addressing this global crisis will require a variety of institutions, including your Commission, to identify appropriate remedies for impacts that are being felt locally. The Commission on Human Rights is best situated to assess the violations of human rights of Filipinos. If the Commission should determine it does not have the authority to undertake this investigation, victims will not be heard and human rights violations will continue unchecked.

The U.S. office of the Environmental Law Alliance Worldwide (ELAW), which advises a global network of public-interest lawyers, has been researching climate justice issues for years. We submit the following materials to the Commission in the hope that this information may assist you in your investigation.

## **I. The Petition**

In May of this year, Greenpeace Southeast Asia and others petitioned the Commission requesting an investigation into the human rights implications of climate change and ocean acidification, and the role of forty-seven named companies in possible violations of Filipinos' human rights.

This Commission decided to open an investigation. On 21 July 2016, Commissioner Cadiz signed an Order giving the forty-seven companies named in the petition (the Respondents) forty-five days to submit Comments or Answers.

## **II. Respondents' Comments and Answers**

The Business & Human Rights Resource Center invited Respondents to share their responses to the Commission publicly by submitting the responses for publication on the Center's website (<https://business-humanrights.org/>). To date, the Center has published nine comments from Respondents. The comments can be found at: <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts>.

The most encouraging response comes from BHP Billiton. We applaud BHP Billiton for clearly and publicly stating:

BHP Billiton recognises that climate change is one of the most important global challenges that this generation faces and there is no simple solution. For hundreds of years, hydrocarbons such as coal, oil and gas, have played a critical role in providing the energy and resources required to support the demands of growing populations and deliver global economic and social development, with an accompanying significant increase in anthropogenic GHG emissions.

And also:

BHP Billiton accepts the assessment of climate change science by the Intergovernmental Panel on Climate Change (IPCC), which has found that warming of the climate is unequivocal, the human influence is clear and physical impacts are unavoidable. The IPCC states that addressing climate change will require substantial and sustained reductions in greenhouse gas emissions. To achieve this, there must be collective action across government, business and society.

Finally, we appreciate BHP Billiton recognizing the link between climate change and human rights:

BHP Billiton recognises the multiple dimensions of the challenges posed by climate change, including the potential direct and indirect impacts of climate change on the realisation of human rights.

BHP Billiton's response available at: <https://business-humanrights.org/sites/default/files/documents/20160908%20Philippines%20CHR%20Petition%20BHP%20Billiton%20ResponseFinal%28002Statement%29.pdf>.

In addition to these strong statements, comments provided to the Center include challenges to the Commission's jurisdiction over the entities (see, ConocoPhillips and Anglo American responses) and its authority to fulfill some of the relief sought by the Petitioners (see, BHP Billiton response).

### **III. There Should Be No Question About The Commission's Authority To Undertake This Investigation.**

Several of the Respondents that publicly shared comments and answers are challenging the Commission's jurisdiction over the Respondents and their activities, as well as questioning whether the Commission has the authority to grant the relief sought in at least the first and fifth prayers for relief.

These challenges are misplaced. The Commission has initiated an *investigation* into the Respondents' roles in harming and posing harm to the human rights of Filipinos. There should be no question that the Commission has the authority to investigate violations of human rights, regardless of whether the entities violating human rights reside within the Philippines or whether the actions impacting Filipinos took place inside or outside of the country.

This authority is found in the Constitution of the Republic of the Philippines itself, which declares the Commission "shall have the . . . powers" to "[i]nvestigate, on its own or on complaint by any party, all forms of human rights violation involving civil and political rights." The Constitution of the Republic of the Philippines (1987) (hereinafter Constitution) Art. XIII, sec. 18(1).

It must be reiterated that the Commission is not starting a formal adjudicative proceeding. It is opening an *investigation* and granting the Respondents an *opportunity* to be heard.

In a document posted on the Business & Human Rights Resource Center's website, a representative of ConocoPhillips explains to the Center that the company has legally challenged the Commission's activity "including a challenge to the jurisdiction over ConocoPhillips given [the company's] lack of operations in the Philippines."

If the Commission determines that it needs to respond to the jurisdictional challenges, there is no question that the Commission has jurisdiction over the Respondents and their actions.

Whether the Respondents are operating in the Philippines has no impact on the Commission's authority to investigate their activities and the impact of those activities that are felt by Filipinos. Again, this is not a formal court proceeding, but even if it was, the Commission has jurisdiction over the activities of these companies, even if the activities take place outside the borders of the country.

The statement made by ConocoPhillips implies that it is arguing either that the Commission has no authority over entities that do not reside in the Philippines or that the Commission is improperly attempting to exercise extraterritorial jurisdiction. On the contrary, the Commission is operating within its territory to investigate actions that impact Filipinos, which is better described as exercising jurisdiction over entities and actions that *affect* the territory and people of the Philippines.

A 2006 report by the United Nations International Law Commission provides information on work addressing extraterritorial jurisdiction. *Report of the International Law Commission on the work of its fifty-eighth session* (available at: <http://legal.un.org/ilc/reports/2006/>).

Annex V provides a clear overview of principles related to extraterritorial jurisdiction, tracing back to a 1927 decision by the Permanent Court of International Justice (PCIJ), *The Case of the S.S. "Lotus"* (Government of the French Republic v. Government of the Turkish Republic), Permanent Court of International Justice (Judgment No. 9, Twelfth (Ordinary) Session (1927)). The Lotus case concerned a criminal proceeding initiated in a Turkish court following a collision between a French ship and a Turkish ship on the high seas that resulted in eight Turkish sailors and passengers dying. The PCIJ considered whether courts in Turkey had jurisdiction to hear the case.

In addition to declaring "what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies," the PCIJ recognized that there is *no prohibition* to "a State exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad." *The Case of the S.S. "Lotus,"* at p. 19. The PCIJ explained that to take any more restrictive view:

would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this certainly is not the case under international law as it stands at present. Far from laying down a general prohibition . . . , it leaves them . . . a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

*Id.*

The PCIJ continued: “[A]ll that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.” *Id.* The PCIJ ultimately determined that the commencement of criminal proceedings in Turkey against a French national for an action taken outside Turkish territory did not come in conflict with principles of international law. *Id.* at p. 32.

Reflecting on the Lotus case, the UN International Law Commission report says: “the Court distinguished between the exercise of jurisdiction by a State outside its territory and the *exercise of jurisdiction by a State within its territory with respect to persons, property or acts outside its territory*. The Court indicated that States have broad discretion with respect to the exercise of jurisdiction in the latter sense[.]” Annex V, pp. 230-231 (*emphasis added*). The situation before the Commission reflects the latter situation.

The report explains that later decisions (after the Lotus decision) have helped shape “principles of jurisdiction which may be asserted under contemporary international law in order to justify the extraterritorial jurisdiction of a State[.]” Annex V, p. 231. While a few of these principles could be asserted by the Commission to defend its authority to investigate violations of human rights of Filipinos, the one that most clearly applies here is the *effects doctrine*.

The report describes the *effects doctrine* as “jurisdiction asserted with regard to the conduct of a foreign national occurring outside the territory of a State which has a substantial effect within that territory. This basis . . . does not require that an element of the conduct take place in the territory of the regulating State.” Annex V, para. 12. This principle squarely applies to the investigation currently before the Commission.

The Commission clearly has the authority to investigate the acts that have been raised in the petition.

#### **IV. The Commission Has The Authority To Address All Of The Prayers For Relief.**

BHP Billiton challenges the Commission’s authority to address prayers for relief one and five. Specifically, the company is challenging the Commission’s authority to:

Conduct an investigation into the human rights implications of climate change and ocean acidification and the resulting rights violations in the Philippines, and whether the investor-owned Carbon Majors have breached their responsibilities to respect the rights of the Filipino people. [Prayer 1]

Notify the investor-owned Carbon Majors and request submission of plans on how such violations or threats of violation resulting from the impacts of climate change will be eliminated, remedied and prevented in the future. [Prayer 5]

The company provides no basis for raising this challenge, nor could it. According to the Constitution of the Republic of the Philippines, the Commission has powers to investigate “all forms of human rights violations involving civil and political rights” and broad authority to “[p]rovide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection.” *Constitution*, Art. XIII, secs. 18(1), (3).

**A. The petition invokes civil and political rights as enshrined in the Constitution, the Commission’s Rules of Procedure, and the International Covenant of Civil and Political Rights (ICCPR).**

The petition alleges the violation of the following human rights: “(a) to life; (b) to the highest attainable standard of physical and mental health; (c) to food; (d) to water; (e) to sanitation; (f) to adequate housing; [and] (g) to self-determination . . . as well as the right of Filipinos to development.” Petition at p. 8. The Petitioners also point to violations of the rights “to health” and “to a balanced and healthful ecology,” identifying them as “environmental rights.”

The Constitution does not define civil and political rights. However, the Constitution authorizes the Commission to adopt “its operational guidelines and rules of procedure.” *Constitution*, Art. XIII, sec. 18(2). The Commission’s guidelines and rules of procedure include a non-exhaustive list of the civil and political rights that fall within its investigative jurisdiction. Among other rights, the list specifically includes two of the rights asserted by the Petitioners, the right to life, and the right to be free from discrimination. *The Omnibus Rules of Procedure of the Commission on Human Rights*. (April 2012) [*Omnibus Rules of Procedure*], Rule 2, sec. 1. This list is non-exhaustive and could include all of the rights raised by petitioners.

The International Covenant of Civil and Political Rights (ICCPR), the primary international treaty protecting civil and political rights, provides an authoritative list of civil and political rights. This list includes the following rights mentioned in the petition: the right to self-determination (Article 1), the right to equality and non-discrimination (Articles 2 and 26), the right to life (Article 6), and the rights of minorities (Article 27).

Finally, a 2015 report by the UN Office of the High Commissioner for Human Rights entitled “Understanding Human Rights and Climate Change” (available at <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>) also identifies the right to meaningful and informed participation as another civil and political right that could be harmed by the actions at the heart of the petition.

Accordingly, the petition alleges violation of several civil and political rights, bringing it squarely within the Commission’s jurisdiction.

## **B. The right to life inherently incorporates many of the other rights raised in the petition.**

Courts around the world, as well as international and regional human rights bodies, have determined the right to life encompasses the right to a healthy environment (or its equivalent) and other rights that are raised in the petition.

### **1. India**

For decades, courts in India have recognized the right to life inherently includes other rights, including the right to live in a healthy environment.

For example, in *T. Damodhar Rao v. Municipal Corp. of Hyderabad*, 1987 A.I.R (AP) 171 (available at <https://indiankanoon.org/doc/205063/>), the High Court of Andhra Pradesh considered whether a company (or its transferee) that legally owned land within an area designated by the city for recreation could build residential units on the land. The court held that constructing houses in the designated recreational area was contrary to the right to life protected under Article 21 of India's Constitution.

The court issued a mandamus to prohibit further construction and directed government authorities to demolish any structures that might have been built during the litigation. The court explained:

Examining the matter from the . . . constitutional point of view, it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Art. 21 of the Constitution embraces the protection and preservation of nature's gifts without [which] life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Art. 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Art. 21 of the Constitution. . . .

It, therefore, becomes the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance. . . . The object of reserving certain area as a recreational zone would be utterly defeated if private owners of the land in that area are permitted to build residential houses. It must, therefore, be held that the attempt of [the company and its transferee] to build houses in this area is contrary to law and also contrary to Art. 21 of the Constitution.

*Id.* at paras. 24-25.

In 1990, the Supreme Court of India recognized that rights to a decent environment, food, clothing, and reasonable accommodation are all included in the right to life. See *Shantistar Builders v. Narayan Khimalal Totame* [1990] 1 SCC 520 (available at: <http://elaw.org/india.shantistar.1990>). The Supreme Court declared:

Basic needs of man have traditionally been accepted to the three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual.

*Id.* at para. 9. Focusing on the right to a reasonable residence, which was at the heart of the case, the Court further explained, “a reasonable residence is an indispensable necessity for fulfilling the constitutional goal in the matter of development of man and should be taken as included in ‘life’ in Article 21[.]” *Id.* at para. 13.

In *Subhash Kumar v. State of Bihar*, 1991 A.I.R. SC 420 (available at <http://elaw.org/india.subhash.kumar.1991>), petitioner sought an order to prohibit discharge of coal washing waste from coal mines into the Bokaro River. Although the Supreme Court of India ultimately dismissed the case because it was improperly filed as a public interest case, it nevertheless proclaimed that the right to life found in Article 21 of the Indian Constitution includes “the right of enjoyment of pollution free water and air for full enjoyment of life.” *Id.* at para. 7

Indian courts have continued to interpret the right to life to include substantive environmental rights in more recent cases, as well. See, for example, *M.C. Mehta v. Union of India*, Writ Petition No. 182 of 1996 (2000) (available at <http://home.elaw.org/content/india-mc-mehta-v-union-india-wp-1821996-20000512-beas-river-case>); *Forum, Prevention of Env'n. & Sound Pollution v. Union of India*, Civil Appeal No. 3735 of 2005 (2005) (available at <http://home.elaw.org/content/forum-prevention-envn-sound-pollution-v-union-india-ca-37352005-20051028>); and *Centre for Enviro. Law v. Union of India*, Writ Petition No. 337 of 1995 (2013) (available at [http://home.elaw.org/system/files/Centre\\_For\\_Envir.\\_Law%2C\\_Wwf-I\\_vs\\_U\\_O\\_I\\_%26\\_Ors\\_on\\_15\\_April%2C\\_2013.PDF](http://home.elaw.org/system/files/Centre_For_Envir._Law%2C_Wwf-I_vs_U_O_I_%26_Ors_on_15_April%2C_2013.PDF)).

## 2. Pakistan

The Supreme Court of Pakistan has also found that the right to life includes substantive environmental rights.

In *Shehla Zia v. WAPDA*, *P.L.D.* 1994 S.C. 693 (available at <http://elaw.org/pk.shehla.zia.1994>), petitioners raised concerns about potential health risks from construction of high voltage transmission lines. In deciding the case, the Supreme Court of Pakistan noted, “Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with the law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or



animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice it to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations.” *Id.* at para. 12.

The Court continued on to find, “The Constitution guarantees dignity of man and also right to life under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. Such questions will arise for consideration which can be dilated upon in more detail in a proper proceeding involving such specific questions.” *Id.* at para. 14.

In *West Pakistan Salt Miners Labour Union v. Industries and Mineral Development*, 1994 S.C.M.R. 2061 (available at: <https://www.elaw.org/system/files/SC-1994-Salt-Miners-v.-Director-Industries-and-Mineral-Development.pdf>), the Supreme Court of Pakistan determined the right to life includes the right to clean water. Interpreting Article 9 of Pakistan’s Constitution, the Court stated, “the right to have water free pollution and contamination is [a] right to life itself. . . . The right to have unpolluted water is the right to every person wherever he lives.” The Court explained, “[t]he petitioners' demand here is the barest minimum. Water has been considered source of life in this world. Without water there can be no life. . . . Therefore, water, which is necessary for existence of life, if polluted, or contaminated, will cause serious threat to human existence. In such a situation, persons exposed to such danger are entitled to claim that their fundamental right of life guaranteed to them by the Constitution has been violated and there is a case for enforcement of fundamental rights by giving directions 'or passing any orders to restrain the parties and authorities from committing such violation.”

### **3. Bangladesh**

Articles 31 and 32 of Bangladesh’s constitution protect the right to life as a fundamental right. In *Mohiuddin Farooque v. Bangladesh* [1997] 17 B.L.D. (A.D.) 1 (available at <https://elaw.org/bd.farooque.FAP.1996>), the Supreme Court of Bangladesh determined the protection of the right to life “encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, and sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.”

### **4. Nigeria**

Sections 33 and 34 of Nigeria’s Constitution protect the fundamental right to life and dignity. In *Gbemre v. Shell Petroleum Dev. Co. Nigeria Ltd.* [2005] AHRLR 151 (available at <https://www.informea.org/sites/default/files/court-decisions/COU->

156302.pdf), the Federal High Court of Nigeria determined that an oil company's flaring of gas during petroleum exploration and production "is a gross violation of [the applicants'] fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution." *Id.* at para. 5.4.

## 5. Human Rights Institutions

International and regional human rights bodies have interpreted the right to life broadly, analyzing conditions related with health, housing, and food in connection with the right to life. These bodies have gone as far as finding violations of the right to life in connection with infringements on the rights to health, housing, and food.

As early as 1982, the UN Human Rights Committee (HRC) explained that the right to life "should not be interpreted narrowly," expressing its concern as "quite often the information given concerning [the right to life] was limited to only one or other aspect of this right." General Comment No. 6: Article 6 (Right to life), Para. 1 (available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6630&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6630&Lang=en)).

As its earlier General Comments (Nos. 6 and 14) on the right to life are from the 1980s, the HRC is currently in the process of drafting a new General Comment. In the Committee's own words, its purpose is to develop a General Comment that incorporates "later experience obtained in the review of State reports and communications and in the adoption of General Comments on related issues . . . to provide appropriate and authoritative guidance to States Parties and other actors on the measures to be adopted to ensure full compliance with the rights protected under this provision." See Human Rights Committee, *Procedure for the Adoption of the General Comment* (available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>).

As part of this process, in 2015, the HRC made public a draft General Comment. This draft states that the right to life requires positive measures "to protect life from all possible threats, including from threats emanating from private persons and entities." Draft General Comment No. 36 (available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> (under the section titled "Outcome")). The draft General Comment includes several paragraphs requiring action from States in connection with housing, health, malnutrition, and the environment in order to fulfill their obligations under the right to life. Following are the most relevant paragraphs from the draft General Comment about these issues. The HRC's statements are based on and supported by existing practice, and thus reflect current interpretation of this right:

The duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant . . . as well as from the specific duty to protect the right to life by law . . . . State parties are thus required to undertake positive measures in response to foreseeable threats to life

originating from private persons and entities, which do not impose on them unreasonable or disproportionate burdens . . . .

The duty to protect life also imposes on States parties a due diligence obligation to take long-term measures to address the general conditions in society that may eventually give rise to direct threats to life. . . . States parties should also take adequate measures to protect the environment against life-threatening pollution, and work to mitigate other risks associated with natural catastrophes, such as droughts. When adopting long-term measures designed to ensure the enjoyment of the right to life, States parties should aim to facilitate and promote adequate conditions for a dignified existence for all individuals. Long-term measures required for ensuring the right to life may include facilitating access by individuals to basic goods and services such as food, health-care, electricity, water sanitation, and [others]. Furthermore, States parties should adopt action plans for attaining long-term goals designed to realize more fully the right to life of all individuals . . . . States parties should also develop contingency plans designed to increase preparedness for natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, industrial pollution, radio-active accidents and cyber-attacks.

Draft General Comment No. 36, Para. 28 (*internal citations omitted*).

The African Commission on Human and Peoples' Rights (ACHPR) recently issued a General Comment echoing a broad interpretation of the right to life under the African Charter of Human and Peoples' Rights. General Comment No. 3 on the African Charter of Human and Peoples' Rights (General Comment No. 3) (available at [http://www.achpr.org/files/instruments/general-comments-right-to-life/general\\_comment\\_no\\_3\\_english.pdf](http://www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_english.pdf)). At the outset of the General Comment, the ACHPR cautions that the right to life “should not be interpreted narrowly. In order to secure a dignified life for all, the right to life requires the realisation of all human rights recognised in the Charter, including civil, political, economic, social and cultural rights and peoples' rights, particularly the right to peace.” General Comment No. 3, Para. 6.

Accordingly, General Comment No. 3 includes a section titled, “Interpreting the right to life broadly,” which claims:

The right to life should be interpreted broadly. The State has a positive duty to protect individuals and groups from real and immediate risks to their lives caused either by actions or inactions of third parties. . . . Such actions include, inter alia, preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies. . . .

Given the role of the State in the enjoyment of a number of other rights which might, collectively, be constitutive of the condition of life, especially a dignified life, its progressive realisation of various economic, social and cultural rights will

contribute to securing a full and dignified life. Violations of such rights may in certain circumstances therefore also entail violations of the right to life.

General Comment No. 3, Paras. 41-43.

In the Americas, the Inter-American Court of Human Rights (IACtHR) has also taken a broad interpretation of the right to life. For example, in the cases of the Yakya Axa and Sawhoyamaxa indigenous communities in Paraguay, the IACtHR analyzed threats to both communities' living conditions in connection with alleged violations of the right to life. The community members were dispossessed of their traditional territories and lived in degraded conditions alongside a highway. As articulated by the IACtHR, the life of the community members was "characterized by unemployment, illiteracy, morbidity rates caused by evitable illnesses, malnutrition, precarious conditions in their dwelling places and environment, limitations to access and use health services and drinking water, as well as marginalization due to economic, geographic and cultural causes." Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Judgment of March 29, 2006 (Merits, Reparations and Costs), Para. 168 (available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_146\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf)).

The IACtHR asserted that the right to life "includes not only the right of every human being not to be arbitrarily deprived of his life, but also the right that conditions that impede or obstruct access to a decent existence should not be generated." Case of the Yakya Axa Indigenous Community v. Paraguay, Judgment of June 17, 2005 (Merits, Reparations and Costs), Para. 161 (available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf)).

The IACtHR stated:

One of the obligations that the State must inescapably undertake as guarantor, to protect and ensure the right to life, is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.

*Id.* at para. 162 (internal footnote omitted).

As part of its analysis of the right to life, the IACtHR went further and specifically addressed the impacts that the rights to health, food and access to clean water have on the right to "a decent existence" in the following manner:

Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity.

*Id.* at para. 167.

Ultimately, the IACtHR concluded that Paraguay violated “Article 4(1) [right to life] of the American Convention, in combination with Article 1(1) of that same Convention, to the detriment of the members of the Yakye Axa Community, for not taking measures regarding the conditions that affected their possibility of having a decent life.” *Id.* at para 176.

During the drafting a new General Comment about the right to life, the HRC received submissions from several States and organizations concerning the content and interpretation of this right. One of these submissions is a joint report from several internationally-recognized human rights coalitions. See International Network for Economic, Social and Cultural Rights (ESCR-Net), Social Rights Advocacy Centre, and The Global Initiative for Economic, Social and Cultural Rights, *Recognizing the Interdependence and Indivisibility of the Right to Life with ESC Rights* (June 12, 2015) (available at <http://globalinitiative-escr.org/wp-content/uploads/2015/06/ESCR-Net-SRAC-GI-on-Article-6.pdf>). This report explains how the HRC and domestic courts from different countries have all found that economic, social and cultural rights – such as the rights to health, housing and food – are also protected by the right to life. We encourage the Commission to read the full report as it provides a concise and updated explanation of this issue. For example, the report states:

Many other courts around the world have similarly recognized that protections of the right to life invariably overlap with protections of ESC rights. The Colombian Constitutional Court linked the protection of the right to health to the right to life in a series of decisions which have led to important systemic changes to the health care system in order to meet the needs of IDPs. Other courts around the world, including Argentina, Brazil, Bangladesh, Pakistan, Colombia, the United Kingdom, Mexico, Ecuador, El Salvador, Venezuela, Kenya, and South Africa have recognized that the right to life is inseparable from the right to access health care and other ESC rights.

*Id.* at p. 8. Accordingly, it should be clear that the right to life protected under the Philippines Constitution also protects many of the other rights raised in the petition including economic, social, and cultural rights.

**C. The Paris Principles advocate for national human rights institutions such as the Commission to have broad jurisdiction.**

As noted elsewhere in these materials, the Constitution of the Republic of the Philippines grants the Commission power to investigate all forms of human rights violations involving civil and political rights, to provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and to recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families. *Constitution*, Art. XIII, Sec. 18.

The broad scope of the Commission's mandate is reinforced by the Principles relating to the Status of National Institutions, known as the Paris Principles, adopted by the UN General Assembly in 1993. See G.A. Res. 134, U.N. Doc. A/RES/48/134 (20 December 1993) (available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>). As the honorable Commissioners are aware, the Commission has a top accreditation status reflecting its full compliance with the Paris Principles. See International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights, Directory of Institutions - Asia Pacific (available at <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/Asia-Pacific.aspx>).

The Paris Principles state that National Human Rights Institutions (NHRIs) "shall be given as broad a mandate as possible." See G.A. Resolution 48/134, Principle 2. The Sub-Committee on Accreditation (SCA) General Observations, which aim to guide the interpretation and implementation of the Paris Principles, further instruct:

A National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should: extend to the acts and omissions of both the public and private sectors; . . . provide the authority to address recommendations to public authorities, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues.

Sub-Committee on Accreditation General Observations, G.O. 1.2 (available at: <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf>).

The Paris Principles also indicate that a NHRI shall have the responsibility to produce reports and recommendations "on any matters concerning the promotion and protection of human rights," including "[a]ny violation of . . . human rights which it decides to take up." *Id.* at Principle 3(a)(ii). Regarding this responsibility, the SCA General Observations instruct: "The National Institution's mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent." SCA General Observations, G.O. 1.2(ii).

That Paris Principles also outline key methods of operation for NHRIs, directing them to "[h]ear any person and obtain any information and any documents necessary for assessing situations falling within its competence." *Id.* at Methods of operation para. (b). In their complaints-handling function, specifically, the SCA General Observations note that the process includes "[t]he ability to investigate complaints, including the power to compel the production of evidence and witnesses." SCA General Observations, G.O.

2.10. A recent UN General Assembly Resolution praises States that have “provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role.” G.A. Resolution 70/163, U.N. Doc. A/RES/70/163 (17 December 2015), Art. 20 (available at: [http://www.asiapacificforum.net/media/resource\\_file/General\\_Assembly\\_Resolution\\_NHRIs\\_2015.pdf](http://www.asiapacificforum.net/media/resource_file/General_Assembly_Resolution_NHRIs_2015.pdf)).

The Philippines Constitution and the Paris Principles unequivocally support this Commission’s decision to conduct an investigation into the impacts of climate change on the human rights of Filipinos.

## **V. Climate Change Is A Human Rights Issue**

There should be no question that climate change is a human rights issue. Any arguments claiming that climate change is not an appropriate topic for a human rights body should be disregarded.

The UN Office of the High Commissioner for Human Rights (OHCHR) describes many of the threats to human rights brought on by the changing climate. Among the many statements of the OHCHR that could help the Commission in this important investigation are the following:

- *The negative impacts of climate change are disproportionately borne by persons and communities already in disadvantageous situations owing to geography, poverty, gender, age, disability, cultural or ethnic background, among others, that have historically contributed the least to greenhouse gas emissions.*
- *A human rights-based approach . . . calls for accountability and transparency. It is not only States that must be held accountable for their contributions to climate change but also businesses which have the responsibility to respect human rights and do no harm in the course of their activities.*

The Commission will find these statements and other helpful information and resources including links to other international bodies that recognize that climate change is a human rights issue at:

<http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>.

In 2015, the OHCHR published a report, *Understanding Climate Change and Human Rights*, submitted to the 21<sup>st</sup> Conference of the Parties to the UN Framework Convention on Climate Change (available at <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>) that again declares that climate change is a human rights issue. This report explains how the following human rights can be impacted by climate change: the right to life, the right to self-determination, the right to development, the right to food, the right to water and sanitation, the right to health, the right to housing, the right to meaningful and informed

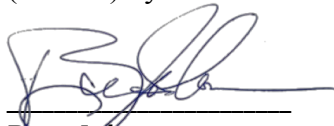
participation, the rights of those most affected by climate change, and the rights of future generations.

## **VI. Conclusion**

We commend the Commission for opening this important investigation into the potential human rights violations suffered by Filipinos who have been impacted by the changing climate and ocean acidification. We urge you to use your full powers of investigation and your broad discretion in granting relief.

We appreciate the opportunity to provide this information to the Commission and we welcome any questions or requests for additional information.

Submitted on behalf of the U.S. office of the Environmental Law Alliance Worldwide (ELAW) by:



Bern Johnson  
Executive Director

### **On the Submission:**

Staff Attorney, Jennifer Gleason  
Of Counsel, Pedro León Gutiérrez  
Staff Attorney, Elizabeth Mitchell  
Law Associate, Killian Doherty

U.S. Office  
Environmental Law Alliance Worldwide (ELAW)  
1412 Pearl Street, Eugene, OR 97401  
United States  
+1 (541) 687-8454  
bern@elaw.org