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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a Filipinas

Informe del Relator Especial sobre la promoción y la protección de los derechos humanos en el contexto del cambio climático, Ian Fry* **

Resumen

El Relator Especial sobre la promoción y la protección de los derechos humanos en el contexto del cambio climático, Ian Fry, realizó una visita a Filipinas, por invitación del Gobierno, del 6 al 15 de noviembre de 2023. Durante los diez días que duró su visita, el Relator Especial se reunió con diversos funcionarios gubernamentales y con representantes de entidades de las Naciones Unidas, organizaciones de la sociedad civil y organizaciones y comunidades de Pueblos Indígenas. Visitó el área metropolitana de Manila (incluida Valenzuela), Leyte (Tacloban, Abuyog y Baybay) y la provincia de Iloilo (incluida Calinog). Filipinas es uno de los países más vulnerables del mundo a los efectos del cambio climático, lo que tiene graves repercusiones para el disfrute de los derechos humanos. Durante la visita, el Relator Especial se centró en las pérdidas y daños, los desplazamientos causados por el cambio climático, la mitigación del cambio climático, los litigios, la justicia intergeneracional y la legislación en materia de cambio climático, el trato que reciben los defensores de los derechos humanos ambientales y la igualdad de género. En el presente informe, el Relator Especial observa que, si bien el Gobierno ha elaborado numerosas políticas y leyes relacionadas con el cambio climático, su aplicación sobre el terreno es claramente insuficiente. También observa que la agenda de desarrollo, en particular la expansión de minas, presas hidroeléctricas y proyectos de recuperación de tierras, supone un riesgo habida cuenta de la altamente frágil situación ambiental del país. El Relator Especial está profundamente preocupado por el trato que reciben los defensores de los derechos humanos ambientales, en particular los que son miembros de Pueblos Indígenas. Formula numerosas recomendaciones, entre otras cosas sobre la legislación y las políticas, los proyectos de desarrollo, los desplazamientos causados por el cambio climático y el trato que reciben los defensores de los derechos humanos ambientales.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó.

** La oficina pertinente presentó este informe a los servicios de conferencias fuera de plazo por motivos técnicos ajenos a su voluntad.



La visita fue realizada por el anterior titular del mandato, Ian Fry. Dado que dimitió el 7 de diciembre de 2023, con efecto inmediato, el informe lo presenta la actual titular del mandato, Elisa Morgera.

Anexo

Informe del Relator Especial sobre la promoción y la protección de los derechos humanos en el contexto del cambio climático, Ian Fry, acerca de su visita a Filipinas

I. Introduction

1. Pursuant to Human Rights Council resolution 48/14, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, undertook an official visit to the Philippines from 6 to 15 November 2023, at the invitation of the Government. In that resolution, the Special Rapporteur was mandated to raise awareness on the human rights affected by climate change, especially of persons living in developing countries particularly vulnerable to climate change, and encourage increased global cooperation in that regard.

2. During the 10-day visit, the Special Rapporteur met with the Secretary of Foreign Affairs, the Secretary of Environment and Natural Resources and the Secretary of Justice, as well as with officials from the Climate Change Commission, the Department of Social Welfare and Development, the Department of Finance, the National Economic and Development Authority, the Department of Agriculture, the Department of Science and Technology, the Philippine Atmospheric, Geophysical and Astronomical Services Administration, the Department of Health, the Department of the Interior and Local Government, the Philippine Commission on Women, the National Commission on Indigenous Peoples, the Council for the Welfare of Children, the National Commission of Senior Citizens, the Office of Civil Defense, the National Youth Commission, the National Council on Disability Affairs, the Commission on Human Rights and various local government units. He also met with representatives of a number of United Nations entities and the diplomatic corps, as well as with representatives of civil society organizations and organizations of Indigenous Peoples and with people living in relocated communities. All those with whom the Special Rapporteur met provided invaluable information on the impact that climate change was having on the enjoyment of human rights in the Philippines.

3. The Special Rapporteur thanks the Government of the Philippines for its invitation to visit the country and for the cooperation provided to him before and during the visit. He also thanks the communities that he visited for welcoming him and for their frank comments about their circumstances. Many of these brave and resilient individuals live in constant fear of intimidation and violence. He wishes to thank the many civil society organizations that facilitated meetings and were able to provide important information on human rights and climate change in the Philippines. He also thanks the United Nations in the Philippines for its valuable support.

4. In the current report, the Special Rapporteur builds on his preliminary observations,¹ which were shared at a press conference on 15 November 2023.

II. Climate change in the Philippines

5. The Philippines comprises approximately 7,000 islands, most of which can be characterized as mountainous terrain bordered by narrow coastal plains. Due to its geographical location and topography, the Philippines is exposed to different types of extreme weather events, such as typhoons, floods, landslides and droughts. Its narrow coastal plains are particularly vulnerable to rising sea levels, erosion, droughts, monsoon rains and changes in sea surface temperatures. The Philippines is one of the countries in the world most

¹ See the Special Rapporteur's end-of-mission statement, available at <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/statements/2023-eom-sr-climate-philippines-en.pdf>.

vulnerable to the impacts of climate change. On average, 20 tropical typhoons per year enter the Philippine Area of Responsibility, with about 8 or 9 of them crossing the Philippines. Since 2009, the Philippines has experienced a number of highly destructive extreme weather events. In 2013, Super Typhoon Haiyan (Yolanda) became one of the most intense and deadly tropical typhoons ever recorded. It caused more than 6,300 deaths, although some claim that the true number was much higher. Rising temperatures are likely to lead to more floods, landslides and stronger typhoons in the region. In some parts of the country, the intensity and frequency of rainfall events are increasing; in others, they are decreasing. The Philippines is considered to be a climate change hotspot, where major hazards, high exposure and a high concentration of vulnerable people coincide. In such hotspots, the impacts of global climate change have profound social implications, threatening human health and well-being, destabilizing assets, stressing coping capacities and response infrastructure and substantially increasing the number of socially, economically and psychologically vulnerable individuals and communities.

6. Rapid urbanization and the proliferation of informal settlements have increased vulnerabilities, in particular among poor households migrating from rural areas. Lower-income households often reside in areas more exposed to the risks of climate change. As a consequence, climate change has a significant impact on poor households. The rights to food, water and sanitation, education and health care are affected. As a result, many of those who live just above the poverty line cycle in and out of poverty.²

7. The Government has a number of initiatives to prepare for the impacts of climate change, support communities after climate change events and reduce greenhouse gas emissions. It has established a Climate Change Commission, which works with the Department of the Interior and Local Government to identify climate change expenditure through a process known as Climate Change Expenditure Tagging. Local government units and communities develop local climate change action plans.

III. Key thematic issues for the visit

8. In the light of the Special Rapporteur's previous reports to the Human Rights Council and the General Assembly, he was particularly interested in the following key issues:

- (a) Loss and damage and the impacts of climate change on human rights;
- (b) Climate change displacement and the extent to which people are being displaced in the Philippines and overseas due to climate change events;
- (c) Climate change legislation, litigation and intergenerational justice;
- (d) Protection of environmental human rights defenders;
- (e) Gender-sensitive responses to climate change.

9. Many of the impacts of climate change are being experienced by communities, and the Special Rapporteur was interested in investigating community actions to defend human rights, including the right to a clean, healthy and sustainable environment, and how these environmental human rights defenders are being treated. Other issues arose during the visit. They include the impacts of new mitigation technologies, such as dams, and the human rights implications of mining for the minerals needed for the renewable energy industry.

IV. Community visits to observe climate change impacts

10. The Special Rapporteur visited a number of communities that had suffered climate change and related impacts.

² See Rajib Shaw and others, "Asia", in *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Working Group II contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, ed. by Hans-Otto Pörtner and others (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2022).

A. Manila, the Bataan Shipping and Engineering Company compound and Manila Bay

11. The Special Rapporteur visited Manila City Hall, where he was shown the disaster response control centre. He then visited a community in Manila Bay, within the Bataan Shipping and Engineering Company compound. This is a small area of land with an informal settlement. It is very low-lying land, which is subject to storm surges and flooding by extreme high tides. Despite its vulnerability, the community is keen to remain and has put in place various evacuation measures for times of adverse weather. Some members of the community claimed that the Government was engaging in “hot demolition” by deliberately lighting fires to burn down houses and force people to move. Others suggested that the fires were due to irregular electricity connections. One of the main concerns for the community was the continued dredging of Manila Bay. Some expressed concern that the dredging project would worsen chronic flooding in the capital and surrounding provinces, damage marine life and affect the livelihoods of already struggling fisherfolk who had used to be able to catch fish and harvest shellfish in Manila Bay. The marine habitat has been destroyed by the dredging. The Special Rapporteur observed a small plot of mangroves at the end of the compound, the planting of which had reportedly been funded by the Department of Environment and Natural Resources.

12. Land reclamation and dredging are likely only to increase the vulnerability of Manila Bay to the impacts of storm surges. While there is supposed to be a moratorium on dredging in Manila Bay, it does not appear to be enforced. Many sand mining dredgers were observed in the bay during the Special Rapporteur’s visit. The development of Manila International Airport will only increase the bay’s vulnerability to the impacts of storm surges. The dwindling fish catch in coastal areas affected by the airport project reflects a violation of the right to food of local fishing communities. The National Federation of Small Fisherfolk Organizations in the Philippines, the largest federation of fisherfolk in the Philippines, reported that dredging in Cavite had restricted fishing areas, leading to potential arrests for “illegal fishing” when fisherfolk worked in waters outside their municipalities. According to reports, around 700 families were evicted as a result of the airport project, with approximately half reportedly receiving no compensation. The communities report that the consultation process preceding the displacement was coercive and poorly executed.

13. Large areas of mangroves will need to be cleared to make way for the airport. Mangroves play a critical role in protecting the coast from storm surges, as they dissipate the energy. These operations are already affecting the marine ecosystem, biodiversity, fish productivity and the livelihoods of the communities around Manila Bay.

14. The Special Rapporteur heard testimony that, in the city of Bacoor alone, more than 700 fishing and coastal families were already displaced as a result of a 420-hectare reclamation project being carried out by the local government unit and a major fishing corporation known as the Frabelle Fishing Corporation. The displaced fisherfolk were relocated to an area where they cannot depend on their traditional livelihoods and have no nearby access to basic social services.

B. Valenzuela

15. The Special Rapporteur visited the city of Valenzuela, including a model housing development project called Disiplina Village, which had been used to relocate people from informal settlements along the riverbanks. Various amenities, including a medical centre, community garden and fish farm, are provided within the development. The housing development project was built with funds provided primarily by the national Government and land provided by the Valenzuela local government unit. On the surface, the project appears to have been successful in relocating people from highly vulnerable coastal areas. Regrettably, due to the large entourage of people who accompanied the Special Rapporteur during his visit, including armed police, he was unable to have a real conversation with people about their thoughts on being resettled. He understood that not all occupants of the village came from informal settlements. Some government officials are also living in the housing project, thus defeating its purpose.

C. Tacloban, Leyte

16. The Special Rapporteur visited Tacloban and met with various officials from the local government unit. The staff of the local government unit informed the Special Rapporteur about the recovery efforts made after the city had been hit by Super Typhoon Haiyan (Yolanda) in 2013. At least 50 per cent of residences were destroyed and, officially, 6,000 people died, although civil society organizations suggest that the actual number is possibly three times higher. Survivors were initially provided with tents and, later, temporary housing. Some of the temporary housing remains standing. Certain areas of the city were declared to be danger zones, with the rebuilding of houses prohibited. Transitional shelters were created and permanent resettlement houses established. The local government unit indicated that it was undertaking a tree planting programme, including the planting of mangroves to increase the natural protection of the coastline. The local government unit said that the population of Tacloban had increased fivefold since Super Typhoon Haiyan.

17. The Special Rapporteur met with representatives of civil society organizations and community representatives who were survivors of Super Typhoon Haiyan. Some are still living in makeshift, “temporary” housing. It appears that some of the survivors of Super Typhoon Haiyan are still suffering the consequences of climate change. Long drought periods are affecting rural communities. Furthermore, extreme heat, which appears to be the norm, restricts the hours that farmers can work in their fields. This is also the case for fisherfolk, who have limited hours in which to fish because of the heat.

18. Residents of housing units built by the National Housing Authority reported significantly better access to education but worse access to health care and water than those living in non-governmental housing. Women reported significantly better education and health-care access than men. Employment and livelihood opportunities remain challenging for those from displaced households. Many people find themselves worse off after resettlement, reporting difficulty in finding and travelling to a job and not being able to make ends meet. Assessing their own livelihoods and employment after the typhoon, the residents of the National Housing Authority resettlement sites scored their condition significantly higher than their counterparts in non-governmental sites.

19. Durable solutions have not been found to ensure access to water and security of tenure. While residents suggested that they now lived with dignity and in permanent housing, many do not feel secure about their tenure. Those living in housing provided by the National Housing Authority are less likely to have rental or ownership paperwork for their housing unit. They pointed out that obtaining access to consistent, safe and affordable water sources was one of their biggest challenges.

D. Baybay and Abuyog, Leyte

20. The Special Rapporteur visited Baybay and met with the mayor of the city. Baybay was heavily affected by Tropical Storm Agaton (Megi) in April 2022, causing an unprecedented amount of rainfall. The heavy rainfall waterlogging the ground caused numerous landslides. The Special Rapporteur also visited Abuyog, which had been affected by landslides. The most affected area was the barangay of Pilar, where a large landslide swept away houses and caused a mini tidal wave when it reached the sea. This mini tidal wave destroyed houses and swept people into the sea. Several lives were lost due to the landslide.

21. The Special Rapporteur visited a number of temporary housing and transition housing projects: New Bahay, New Buaya, New San Francisco and New Pilar. They were developed by the International Organization for Migration, with support from the United States Agency for International Development. They were designed to provide temporary shelter away from areas at high risk of landslides. The houses are made of bamboo and timber, with iron roofs. Some people have made the temporary shelters their permanent homes. Children use the shelters for accommodation so that they have easy access to schools. While most community members were happy with their move, some of the settlements did not have an electricity supply. Others reported difficulties in returning every day to their usual workplace on the coast due to the high cost of transport. Some of the fisherfolk lamented the fact that their

traditional fishing grounds were now being plundered by residents of the neighbouring barangays, presumably because of the reduced presence of the fisherfolk who had had to move inland, to temporary housing. This is affecting their right to food. Permanent housing has also been provided to some families, although the relatively high cost of houses built with concrete blocks has limited the number of houses being built. The temporary shelters are undoubtedly saving lives, as they are being used to relocate people from high-risk areas. Nevertheless, there are disadvantages. Climate change has changed the lives of people permanently.

E. Iloilo, Calinog and the Jalaur mega dam project, Panay

22. The Special Rapporteur visited Iloilo, Calinog and the Jalaur mega dam project, on the island of Panay. The Jalaur dam has been proposed to provide irrigation water for various rural communities, fresh water for the city of Iloilo and hydroelectric power. The dam is still under construction. The dam is funded primarily by a loan from the Export-Import Bank of Korea, with a repayment period of 30 years and the possibility of extension for another 30 years.

23. The Jalaur dam is a highly controversial project, as it is being constructed on ancestral land. It has displaced a number of Indigenous Peoples and rural communities. A number of members of Indigenous Peoples have been killed, allegedly by the military, because they did not approve of the dam project on their ancestral land (see the section below on environmental human rights defenders). While the dam is supposed to provide opportunities for increased food production as a result of irrigation, there are questions over the viability of the project. Sacred Indigenous sites will be submerged by the dam water.

24. The region is known for its geological instability and high rainfall events, leading to landslides. This could shorten the lifespan of the dam and could, in the worst-case scenario, result in a catastrophic failure of the dam. To date, no work has begun on the hydroelectric component of the dam. Questions have been raised about the overall greenhouse gas benefits of such a dam, as the dam water will inundate large areas of vegetation, leading to methane emissions. Organic matter entering the upstream catchment will contribute to further methane emissions. No provision has been made for fish ladders, so the dam will create a blockage for the migration of fish, which will have food security implications for upstream communities, even if the dam is stocked with newly introduced fish.

25. The Special Rapporteur met with the Mayor of Calinog and representatives of the Calinog local government unit. They have developed offsite housing for communities displaced by the dam. These offsite housing sites do not appear to fit with the traditional lifestyles of the Indigenous Peoples from the area affected by the dam. This type of social manipulation is not consistent with respecting the rights of Indigenous Peoples. The Special Rapporteur met with representatives of Indigenous Peoples while in the Calinog local government unit building. Most said that they were happy with the dam project, although the long history of intimidation by the military and presence of the military and police outside the meeting room made it difficult to elicit an honest response. The Special Rapporteur later heard from representatives of the Tumandok Indigenous people, whose lives have been turned completely upside down by the dam project. They were intimidated by the military into signing approval documentation and, if they declined, they were subjected to extreme human rights violations. Nine members of the Tumandok people who had opposed the dam project were executed by the military on 30 December 2020. Their traditional way of life has been destroyed by the dam project. Some of the representatives have been jailed and remain in prison on the basis of what appear to be trumped-up charges of illegal possession of firearms and explosives.

26. The Special Rapporteur also met with the Mayor of the city of Iloilo. Iloilo is highly vulnerable to typhoon impacts, in particular storm surges and high rainfall events that lead to flooding. The city has developed a number of adaptation projects to protect it from the impacts of typhoon damage. This includes major canal development and drainage work to increase water flows during heavy rainfall. Informal settlements and fishponds along the river have been removed, as it is claimed that they contributed to water contamination and slowed

the flow of water. Rainfall harvesting projects have been developed to meet the need for potable water during dry periods. Solar projects have been developed for schools and other buildings. The local government is considering the development of a “waste for energy” project. This needs to be carefully considered, as such projects lead to increased air pollution by a variety of toxic chemicals from the burning of soft plastics and other materials that cannot be recycled.

V. Thematic issues

27. In the Special Rapporteur’s initial preparations for the country visit, he defined a number of critical issues that he wanted to consider during his visit. They are listed above. While he was able to consider each of those issues, some issues became more prominent during the visit. The issue of protecting the rights of environmental human rights defenders came to the fore. That issue is closely linked with the climate change mitigation actions being taken by the Government. The Special Rapporteur therefore added climate change mitigation as an additional thematic issue. The present section contains a discussion of the thematic issues that he investigated, with emphasis on certain elements.

A. Loss and damage

28. The loss and damage caused by climate change events are enormous. For instance, the 2013 Super Typhoon Haiyan (Yolanda) was one of the most intense and deadly tropical typhoons ever recorded. It caused more than 6,300 deaths and economic damage of approximately 95 billion Philippine pesos (approximately US\$ 2.3 billion). The Special Rapporteur heard that Super Typhoon Haiyan had resulted in losses equivalent to 5 per cent of gross domestic product (GDP) and that, on average, 2 per cent of GDP was lost to disasters every season. According to the Organisation for Economic Co-operation and Development (OECD), Typhoons Ondoy, Pepeng, Sendong and Pablo led to over 3,000 deaths, affecting more than 10 million people and causing economic loss and damage amounting to approximately US\$ 5.7 billion.³ These are just a few examples of the costs of climate change impacts on the Philippines.

29. In response to these impacts, the Government of the Philippines has developed a number of financial instruments to address a portion of these costs. This includes the People’s Survival Fund, which was created under Republic Act No. 10174, amending Republic Act No. 9729 (also known as the Climate Change Act of 2009). The Government has developed the National Disaster Risk Reduction and Management Fund, which is used for disaster risk reduction, prevention and preparedness activities, including the training of personnel, as well as the procurement of equipment and capital expenditures. There is also the Disaster Risk Financing and Insurance Strategy. These are a few examples.

30. The loss and damage experienced by the Philippines are far greater than what the Government can afford to address properly. The parties to the United Nations Framework Convention on Climate Change have developed a loss and damage finance facility to help the most vulnerable countries to address the loss and damage that they experience. The facility should theoretically make large polluting countries pay for the costs that they are causing in vulnerable developing countries. An agreement on a new loss and damage finance facility was reached at the twenty-eighth session of the Conference of the Parties to the Convention, held in Dubai in November 2023.

³ Organisation for Economic Co-operation and Development, *Building Financial Resilience to Climate Impacts: A Framework for Governments to Manage the Risks of Losses and Damages* (Paris, 2022), p. 115.

B. Climate change displacement

31. According to the Internal Displacement Monitoring Centre, the Philippines ranks second for displacement, after China.⁴ Climate change events, such as floods, droughts and typhoon damage, appear to be a major driver of internal displacement in the Philippines. According to the Department of Social Welfare, around 10 million to 12 million people are displaced every year. The Government of the Philippines appears to be aware of the problem and has submitted an internally displaced persons bill to the Congress. The bill is aimed at providing protection for forcibly displaced persons and establishing preventive mechanisms in the context of disasters and climate change through a whole-of-government and community-based approach. From the consultations that the Special Rapporteur held, it emerged that there are serious concerns about trafficking in women and children who have been displaced due to climate change events. The Children Emergency Relief and Protection Act is used to address domestic trafficking in children. The Special Rapporteur was unable to ascertain whether the Government was effectively implementing the Act.

32. While information is available on the number of internally displaced persons, the Special Rapporteur was not able to ascertain the approximate number of persons who had emigrated as a consequence of climate change. As they are not defined as refugees under the Convention relating to the Status of Refugees, their legal protection is not assured if they leave the country. It is highly likely that women and children who have been displaced by the impacts of climate change are being trafficked beyond the borders of the country. The Government needs to develop a database of persons displaced across the national border due to climate change impacts so that it can monitor their fate and ensure that their rights are protected.

C. Climate change mitigation

33. As part of its efforts to meet its obligations under the Paris Agreement with regard to reducing greenhouse gas emissions, the Government of the Philippines, in collaboration with local governments, has developed and proposed a number of measures to reduce reliance on the use of fossil fuels. The Government's efforts to reduce the country's contribution to global greenhouse gas emissions are to be commended. However, the choice of mitigation projects is leading to a number of human rights violations. Strategic-minerals mining and hydroelectric dams are two key mitigation actions that have very clear human rights implications. Furthermore, proper planning is needed for the country to transition away from transport powered by internal combustion engines. These issues are discussed below.

1. Mining for strategic minerals

34. The global economic push to mine so-called strategic minerals (nickel, lithium, cobalt, copper, gold and other rare earth metals) for renewable energy (batteries and electric motors) is having a profound effect on the Philippines. There appears to be a mining boom in the country, with apparently minimal concern for the environmental, social and human rights consequences. Many communities with which the Special Rapporteur met, from both small and larger islands, are suffering human rights violations related to the mining industry.

35. The expansion of open-cut mining is a particular concern. Some people with whom the Special Rapporteur spoke recounted how they had been forcibly removed from their land. This is particularly the case for members of Indigenous Peoples. The practice appears to be widespread throughout the country. Unsound mining practices mean that freshwater supplies are being contaminated by toxic mine waste. Some mines use mercury in their operations, which leads to serious downstream health impacts for local communities. Some communities have witnessed a significant reduction in their water supplies because the water upstream is used for mining or escapes down mines and does not follow its previous catchment flows. It has been alleged that some downstream rural communities are facing a violation of their right to food and water because of the impact of the mines on the aquifer. Mining is also driving deforestation, which contributes to greenhouse gas emissions and creates geological

⁴ See <https://www.internal-displacement.org/countries/philippines>.

instability, resulting in landslides during high rainfall events. There are significant impacts on the biodiversity of these areas.

36. The communities with which the Special Rapporteur met expressed concern that mining operations had been “red-tagged” by the military (see the section below on environmental human rights defenders). Proper procedures for environmental impact assessments and free, prior and informed consent principles are being overridden by mining interests. There appears to be a high level of corruption associated with the granting of mining leases. While some local government officials have allegedly profited by taking bribes from mining companies, the Special Rapporteur was made aware that local government officials who had expressed concern about mining operations had been harassed by the military, and some had also been “red-tagged”.

37. On the positive side, the Mayors of both Baybay and Abuyog, Leyte, indicated that they had passed ordinances that placed 15-year moratoriums on mining. This is due to the high rainfall experienced in the region. This appears to be a highly responsible approach and reflects the fact that some regions are very conscious of the impacts of typhoons and the need to protect freshwater catchments.

38. Some of the communities with which the Special Rapporteur met said that they were not opposed to mining outright. Nevertheless, they wanted the correct environmental and social impact procedures to be undertaken, with appropriate free, prior and informed consent measures for Indigenous Peoples. Communities need to be properly informed of proposals and have the right of refusal if they think that the mining operation is against their interests. Mines should be developed in such a way that avoids deforestation, loss of biodiversity, contamination of waterways and destruction of sacred lands. This is possible if the proper mining practices are employed. Open-cut mining, with waste deposited in the water catchment, is unacceptable to communities in which livelihoods are contingent on the human right to clean water.

2. Hydroelectric dams

39. A number of hydroelectric dams have been built, are under construction or are in the planning stage across the country. These are designed to provide electricity and, in some cases, water for irrigation or drinking supplies. Many community members with whom the Special Rapporteur spoke, including members of Indigenous Peoples, were opposed to the development of hydroelectric dams. The dams have been developed without proper free, prior and informed consent and cause significant human rights violations.

40. Dams inundate land traditionally owned by farmers and members of Indigenous Peoples. They also affect the flow of rivers, depriving people of the enjoyment of their right to water. In a country such as the Philippines, which is geologically unstable and experiences a high frequency of typhoons, hydroelectric dams present a significant risk of disaster in the event of a breakage caused by an earthquake or unsound construction.

41. There appears to be a systematic programme of harassment to force communities to approve dam projects. Individuals who have expressed concern about the construction of dams have been harassed, “red-tagged”, assaulted by the military or even killed. A number of members of Indigenous Peoples have been killed, allegedly by the military, after objecting to mining developments on their ancestral lands.

42. While it is important to develop alternative sources of energy, they should not be developed at the expense of the community. There are other, less harmful ways of generating hydroelectricity without the need to construct large-scale hydroelectric dams. Alternatives include run-of-river power generation and off-river pumped hydro. Other, more sound sources of renewable energy and energy efficiency are also possible.

3. Just transition from internal combustion engine transport

43. It is important that, economically, the Philippines moves away from transport using internal combustion engines powered by fossil fuels. Nevertheless, it is also important that workers that provide such transport are given the opportunity for a just transition to affordable alternatives. The Special Rapporteur met with representatives of Solidarity of Drivers and

Operators' Organizations Nationwide, a federation of public transport groups and associations, who drive jeepneys. They expressed concern that they would not be able to afford new, electric community transport vehicles and that they would be deprived of their right to work. A careful strategic plan is needed to ensure that there is a just transition for those who use fossil fuel transport. This should include workers in fossil fuel transport maintenance.

D. Climate change legislation, litigation and intergenerational justice

44. The Government has introduced various pieces of legislation that relate to climate change. They include the Climate Change Act 2009. The Department of Environment and Natural Resources informed the Special Rapporteur that it could initiate legal action, including criminal complaints, in response to environmental harm. It is claimed that environmental courts play a crucial role, as they are specialized in handling cases brought under, inter alia, the Forestry Code, the Mining Act, the Fisheries Act and the Chainsaw Act. According to the Department of Environment and Natural Resources, 1,368 cases were decided between January and September 2023, with 2,621 cases remaining pending. Any citizen can file a lawsuit to protect the environment (a "citizen suit"), and environmental protection orders can be issued by courts to protect the environment. The precautionary principle has played a significant role in court cases. A writ of *kalikasan*⁵ can be filed on behalf of individuals whose right to a balanced ecology has been violated. For example, the Special Rapporteur was informed that the Supreme Court had issued a writ of *kalikasan* against the Department of Environment and Natural Resources, the Department's Mines and Geosciences Bureau and the mining firms Ipilan Nickel Corporation and Celestial Nickel Mining Exploration Corporation, citing the potentially irreparable environmental damage that the mining operations could cause and how that damage would put residents of Brooke's Point in peril.

45. There is a proposal for a climate accountability bill, which is pending review by the House Committee on Climate Change. The bill addresses some of the issues highlighted in the report of the Philippines Commission on Human Rights on climate change. In particular, it addresses the responsibility of "carbon majors". The Special Rapporteur encourages the adoption of this bill.

E. Treatment of environmental human rights defenders

46. According to Global Witness,⁶ the Philippines is now the deadliest country in Asia for land and environmental defenders. The Special Rapporteur was informed by one civil society organization that, in the previous three years, there had been 75 extrajudicial executions of environmental human rights defenders. Each civil society group with which the Special Rapporteur met explained how it was trying to ensure that the communities that it represented were able to enjoy their right to a clean, healthy and sustainable environment. That right has been recognized by the Human Rights Council⁷ and the General Assembly⁸ and is included in the Constitution of the Philippines. Environmental human rights defenders are opposing unsustainable land reclamation, hydroelectric dams, deforestation and mining. Each of these unsustainable activities has implications for climate change and human rights.

47. A number of individuals and organizations have faced human rights violations for their environmental activism. Some of them have been the subjects of allegation letters sent

⁵ The writ of *kalikasan*, or "writ of nature", is a unique legal remedy that provides for the protection of one's right to "a balanced and healthy ecology in accordance with the rhythm and harmony of nature" (Constitution, art. 2, sect. 16).

⁶ Global Witness, "Decade of defiance: ten years of reporting land and environmental activism worldwide", 29 September 2022.

⁷ Human Rights Council resolution 48/13.

⁸ General Assembly resolution 76/300.

by special procedure mandate holders.⁹ All the organizations with which the Special Rapporteur met have had members harassed, vilified, abducted or jailed, and some of their members have lost their lives. The Government, through the Philippines Defence Force and the National Task Force to End Local Communist Armed Conflict, has systematically “red-tagged” environmental human rights defenders and members of Indigenous Peoples. This is a clear violation of the right to freedom of expression and, for some, the right to life. The Special Rapporteur heard that various members of the clergy and humanitarian workers had been falsely accused under the Anti-Terrorism Act. They reported that their bank accounts had been frozen under terrorism financing provisions.

48. It appears that the National Task Force to End Local Communist Armed Conflict is using its powers to protect powerful economic interests in the country. This has nothing to do with anti-terrorism or anti-communism. The gross overreaction to people trying to defend their right to a clean, healthy and sustainable environment is totally unacceptable.

F. Indigenous Peoples

49. The Special Rapporteur met with representatives of Indigenous communities from across the country. All gave accounts of how Indigenous Peoples were being driven from their ancestral lands, in particular due to the development of large dams and mines. He heard that aerial bombings had been undertaken by the military, some apparently using phosphorous, in areas inhabited by Indigenous Peoples and Moro communities in Kalinga, Cagayan Valley, Lanao del Sur and Negros Occidental, causing irreversible damage to the environment and their livelihoods and homes.

50. The Special Rapporteur met with representatives of the Tumandok Indigenous people in Panay. On 30 December 2020, nine men belonging to the Tumandok community were executed by the military. In addition, 16 people were taken into custody, and some remained in jail during the visit. The only reason was that they had protested against the construction of the Jalaur mega dam project. The Tumandok are the stewards of their ancestral lands and the primary custodians of the environment. They have no interest in terrorism or communism and live in constant fear of further attacks by the military. At the time of writing, no one has appeared in court for the killing of the nine men. This is not an isolated incident. The Special Rapporteur heard accounts of other Indigenous communities being attacked by the military.

51. It is critical that the execution of the nine members of the Tumandok Indigenous people by the military, on the island of Panay, is properly investigated by an independent body and that those responsible for these extrajudicial killings are brought to justice. It is also critical that the relatives of those executed are properly compensated for their loss, even if the loss of a loved one cannot be properly compensated for.

52. The Special Rapporteur also heard concerns expressed by organizations of Indigenous Peoples about the National Commission on Indigenous Peoples. Allegations were made that the Commission passed information to the National Task Force to End Local Communist Armed Conflict about “communists” and “terrorists”. Those individuals were “red-tagged”. Others expressed concern that the Commission forced members of Indigenous Peoples to sign free, prior and informed consent agreements to allow dams and mines to go ahead through intimidation and without proper consultation. It was noted that the close connection between the Commission and the National Task Force, due to the dual role of the former Chair of the Commission, did not instil confidence that the Commission was an independent organization representing the interests of Indigenous Peoples. It was alleged that the former Chair had misused his position to falsely accuse certain members of Indigenous Peoples of being “communists” in various United Nations forums. The Special Rapporteur expresses the hope that the new Chair of the Commission will show a greater interest in Indigenous Peoples. Some organizations of Indigenous Peoples suggested to the Special Rapporteur that the Commission should be abolished. Others suggested that major reforms were required to

⁹ See, e.g., communications PHL 1/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25942>, and PHL 2/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27454>.

make it into an independent body, as originally intended, and to ensure that it properly represented the interests of Indigenous Peoples. One major reform suggested was to establish a grievance mechanism to enable members of Indigenous Peoples to make complaints about various development activities, such as mining, illegal logging and the construction of dams without proper free, prior and informed consent procedures.

G. Gender equality

53. It is well recognized that gender gaps and violence are magnified during times of climate change disaster and extreme weather. The Special Rapporteur heard personal accounts and reports from a number of organizations regarding this serious concern. Climate impacts aggravate existing general inequalities and undermine respect for societal and cultural norms.

54. It is recognized that women are more likely to be trafficked after a major weather event, in particular if they are displaced from their homes. From the Special Rapporteur's discussions with various organizations, it appears that there are significant issues around corruption, weak enforcement of anti-trafficking laws and other forms of gender-based discrimination. He met with a number of women affected by typhoons and other climate change events. Some have been relocated to transitional housing and tended to believe that their lives had improved, although some of the transitional housing units do not have an electricity supply, and others do not have easy access to fresh water, creating significant challenges for women in particular.

55. The Government has initiated a number of policies and programmes, such as the National Climate Change Action Plan, which includes provisions on building the adaptive capacities of both women and men and optimizing mitigation opportunities for gender-responsive and rights-based sustainable development. The resolution on the establishment of the Climate Change Commission provides for the mainstreaming of gender and development into all government actions related to climate change. The Government has developed landmark laws to provide for the mainstreaming of gender into the country's policies, programmes and other initiatives, including the Magna Carta of Women, which *provides* for the adoption of gender mainstreaming as a national strategy for gender and development, and Republic Act No. 9729 (the Climate Change Act), which provides for the inclusion of gender considerations in climate change plans, policies, programmes and projects.

56. Special attention must be paid to Indigenous women. The Special Rapporteur met with Indigenous women whose lives had been dramatically affected by various mitigation projects and military harassment and killings. The Government should implement general recommendation No. 39 (2022) of the Committee on the Elimination of Discrimination against Women on the rights of Indigenous women and girls and should include Indigenous women and girls in policymaking.

57. The Special Rapporteur met with a representative of the gender-diverse community who indicated that LGBTIQ+ persons were often disadvantaged and discriminated against in climate change disasters. Access to evacuation centres during a disaster was a particular issue for the gender-diverse community. Special consideration needs to be given to them. Their views need to be incorporated into mitigation, adaptation, disaster risk reduction and loss and damage planning.

VI. Conclusions and recommendations

58. **Climate change is having negative impacts on human rights in the Philippines, including the rights to water and sanitation, food, culture, education, a healthy environment, health, work and adequate housing. It is very evident that the Government has made efforts to address the impacts of climate change by developing a number of policies and pieces of legislation. The Government has launched a new National Adaptation Plan. These steps are to be commended.**

59. The clear message that the Special Rapporteur received, however, is that, while the Government has produced many policies and laws relating to climate change, there is a distinct lack of implementation on the ground. Furthermore, there is a development agenda being pursued by the Government that contradicts the highly fragile nature of the country. This includes the development of mines, hydroelectric dams and land reclamation projects. The dams and the mines are damaging important watersheds, which are crucial for ameliorating flooding and landslides. Constructing dams and mines in a geologically unstable country and a country highly prone to typhoons and extreme rain events is a recipe for disaster.

60. Of the local government units that the Special Rapporteur visited, most were trying to implement adaptation and disaster risk reduction projects to protect their communities, although some of these practices, such as forced relocation, are drastic and violate the rights of people to make their own choices about where they live. Nevertheless, some communities appeared to be reasonably happy with their relocation.

61. The Special Rapporteur was deeply troubled by the treatment of environmental human rights defenders, in particular members of Indigenous Peoples. The military's use of intimidation, harassment, abduction, prosecution, jail sentencing and extrajudicial killing based on trumped-up charges against human rights defenders is contrary to many of the country's international human rights obligations. It is a blight on the country and needs to be urgently addressed. It is evident that mining and dam construction companies and other project developers are having an undue and corrupt influence on the Government and the military. People live in fear of the military and its connection with corrupt officials and companies. Communities are being denied their right to defend their rights to a clean, healthy and sustainable environment. Furthermore, many of these projects are on Indigenous land. In all the cases relayed to the Special Rapporteur, mines and dams had been developed without the appropriately and correctly obtained free, prior and informed consent of the affected Indigenous Peoples. Any objection to these so-called development projects is met with harassment, bombing or killings by the military. Communities are being forced to sign approval documents through a process of intimidation. It is clear that the lack of control over the military and overreach by the military in the context of the Government's anti-communist agenda are having tragic consequences for people trying to peacefully defend their right to a clean, healthy and sustainable environment.

62. The Special Rapporteur visited the Philippines soon before the seventy-fifth anniversary of the adoption of the Universal Declaration of Human Rights. The Declaration recognizes the inherent dignity and the equal and inalienable rights of all members of the human family. The General Assembly enshrined the right to life in article 3 of the Declaration, which states that everyone has the right to life, liberty and security of person. Following the commemoration of the seventy-fifth anniversary of the Declaration, the Special Rapporteur strongly encourages the Government of the Philippines to take urgent and decisive measures to respect this right.

63. Much needs to be done to restore the international reputation of the Philippines as a fair and just nation. It is imperative that, as a country so vulnerable to the impacts of climate change, the Philippines take decisive action on climate change in a coordinated manner and initiate active policies to protect its population against the ravages of climate change and to protect environmental human rights defenders from human rights violations by the military.

64. The Special Rapporteur believes that the Government should implement the following recommendations to address some of his concerns:

(a) The Government should rapidly develop a strategic plan of implementation for all the climate change policies that it has developed. It needs to identify gaps in implementation and ways of addressing these and to develop gender-, age-, disability- and Indigenous-sensitive actions;

(b) The Government should revise its Climate Change Act and take on board the key elements proposed in the draft climate accountability bill. In this respect, the Government needs to take strong heed of the national inquiry on climate change report

of the Commission on Human Rights and hold “carbon majors” accountable for the greenhouse gas emissions for which they are responsible. This should include creating extraterritorial powers to hold accountable “carbon majors” outside the country;

(c) The Government should introduce and enforce a moratorium on all coastal land reclamation projects;

(d) The Government should undertake a major review of the development of projects to mine strategic minerals for renewable energy;

(e) The Government should develop a just transition policy for all climate change-related actions;

(f) The Government should develop means of analysing the number of people who have emigrated from the Philippines due to the impact of climate change;

(g) The Government should revoke the Anti-Terrorism Act and develop a truth and reconciliation process to allow people wrongly accused under the Act to seek redress for the harm that has been inflicted upon them by the misuse of its provisions;

(h) The Government should enact the human rights defenders bill;

(i) Reparations should be paid to communities, Indigenous Peoples and individuals who have been victims of human rights violations;

(j) The Government should disband the National Task Force to End Local Communist Armed Conflict, as it is abusing its powers and targeting environmental human rights defenders and members of Indigenous Peoples;

(k) A full independent investigation should be undertaken to investigate the past operations of the National Task Force to End Local Communist Armed Conflict;

(l) The proposed Commission on Human Rights inquiry on “red-tagging” should be strongly supported;

(m) A major judicial inquiry should be carried out to review all cases in which environmental human rights defenders have been prosecuted on trumped-up charges;

(n) Major reforms to the National Commission on Indigenous Peoples need to be implemented to ensure that it protects the rights and serves the interests of Indigenous Peoples. This would include the establishment of a grievance mechanism whereby members of Indigenous Peoples can make complaints against processes by which various developments, such as mining, illegal logging and dam construction developments, were approved;

(o) The Government should implement general recommendation No. 39 (2022) of the Committee on the Elimination of Discrimination against Women on the rights of Indigenous women and girls;

(p) The Government should enact the internally displaced persons bill and develop a strategy for its effective implementation. Such legislation could provide clearer guidance to government agencies and institutions on the provision of basic services for internally displaced persons.