

# Human Rights and Climate Change in the Philippines

Written by Ratchada Arpornsilp

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RATCHADA ARPORNSILP, APR 18 2019

In the past decade, we have seen the successful infiltration of human rights discourses into the conventionally physical science-dominated climate change debate and research. A series of key documents recognize this linkage, including the Human Rights Council (HRC) resolution, numerous reports by the Office of the High Commissioner for Human Rights, the UN Special Rapporteur on Human Rights and the Environment, the 4<sup>th</sup> and 5<sup>th</sup> Assessment Reports of the Intergovernmental Panel on Climate Change, and the Paris Agreement adopted at the 21<sup>st</sup> Conference of Parties to the UN Framework Convention on Climate Change – in addition to an emergence of other relevant studies. Such coupling seems to be perfect when bridging the disciplinary divide and giving more weight to human-faced repercussions of climate change. But why would the human rights approach be more effective in arousing urgency to combat climate change, compared with other framings such as economic loss, environmental catastrophe, resource conflicts, threats to international peace and security? What are the added values which human rights narratives and instruments bring to the table? In reality, the trailblazing is not rosy and may require a bit of rethinking.

We can reflect on these questions by observing the Philippine Commission on Human Rights (CHR). In December 2018, the CHR completed its three-year landmark inquiry of the petition submitted by a group of civil society organizations – led by Greenpeace together with typhoon victims and concerned citizens. The petitioners requested CHR to investigate the Carbon Majors' responsibility for human rights violations from climate change impacts. The Carbon Majors are transnational fossil fuel and cement companies – Chevron, Exxon Mobil, BP, Shell, among others – that are in top ranks of global CO<sub>2</sub> emitters. The full report is soon to be launched this year. In a statement, Commissioner Roberto Cadiz – who heads the investigation panel – pointed out that the CHR should be more idealistic in going beyond technical and jurisdictional challenges. Still, there are precautions the CHR must not shy away from in this innovative undertaking.

First, the nature of climate change exacerbates the complexity in tracing human rights abuses and the associated responsibility. Climate change is an effect multiplier which increases the risks, multiplying the probability and intensity of extreme weather events and environmental hazards, rather than directly creating them. Thus, tropical storms such as typhoon Haiyan are always classified as a natural phenomenon, not a human-created disaster. Disentangling the convergence of anthropogenic and natural causes of climate change impacts is highly implausible. This is not about calling for more evidence to prove clear causation and attribution of climate harms, rather an ethical question of how responsibility should be discerned.

Indeed, the Carbon Majors should be responsible for their actions in contributing to climate change. But, in practice, responsibility boils down to distributional equity – to what degree and how they should be held responsible. If this involves either curative or precautionary actions, the responsibilities should be fairly and proportionately distributed among different contributors. When moving along the commodity chain from sources to sectors, the electricity generation, transportation, manufacturing, and construction become the main players of fossil fuel uptake. A fair share of responsibilities must include the emission from these sectors into consideration.

As the effect multiplier, it also means that the climate-induced human rights violations are aggravated in countries which have poor human rights records. Looking at the substantive human rights concerns, the climate change worsens the rights to life, water, shelter, health, and other economic, social and cultural rights. In the Philippines, the

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water and sanitation crisis is a daily struggle for the poor, especially in slum dwelling. There, one out of ten people lacks access to safe water and sanitation facilities, already costing many casualties each day in a normal circumstance. At the attack of typhoon Haiyan, the situation was greatly deteriorated. Considering the issue of discrimination, the victims from the LGBT group were treated inferiorly than heterogenous families during the delivery of emergency response aid. Natural disasters have, needless to say, intensified these human rights predicaments. On the contrary, where the enjoyment of human rights standards is fulfilled, the abusive situations can be accommodated into the existing structure.

Moreover, even if the emissions ended now, the cumulative climate change impacts could linger for another 100 years. The temporal scale of the subsequent human rights infringements would be hardly traceable due to the long-term unpredictability of climate change. In this regards, what would be the normative justification and scientific proof to hold the Carbon Majors accountable for the repercussions that go beyond the compensation and restoration of past grievances?

Another concern is the intrinsic cleavage between the two regimes in perceiving the notion of rights. The ideas of property rights such as the rights to own carbon credits in communal forests and the right to development can be conflated. Many multinational corporations purchase and hold the rights to emit or carbon rights in the fictitious emission trading market facilitated by the climate regime. Yet, the international human right framework and mechanisms, constructed and evolved on the individualistic perception of basic rights and freedom, have not settled on how to squarely accommodate the collective rights which mostly conceptualize climate and environment as the global public goods. It remains doubtful whether the use of common language among the human rights practitioners and the climate change community has led to a mutual understanding of the term.

The CHR as the constitutionally-mandated National Human Rights Institution (NHRI) occupies a unique space to navigate the legal imperatives of a rights-based approach in climate politics. As it positively followed through the petition with its duty to inquire, the CHR has opened the neutral deliberative platform and worked to strengthen the enforcement of human rights safeguards in the voluntary climate regime.

Against all odds, the CHR has stretched its bound of extra-territoriality to chase the Carbon Majors in a remarkable way. Whereas the prevailing body such as the CHR is nationalized, the breach of human rights in the globalized era are borderless. The CHR therefore must acknowledge the limited terrain of human rights-climate change nexus and invest its restricted resources in strategic areas that can harvest stronger protection. In the state-centric human rights infrastructure, the government's compliance with its human rights duties and standards to regulate corporations should be the central focus. The CHR has the recognized mandate to ensure the Philippine government are obliged to its human rights commitments.

Rather than spending the energy to substantiate the causality of corporates' contribution to climate change which creates natural disasters, the CHR can straightforwardly frame the human right violations under the environmental agenda. Targeting the firms' pollution portfolio and their extractive activities in relation to the right to a clean and healthy environment, the CHR can monitor the compliance and report the breach in a more effective manner. Simultaneously, the CHR's continuous visibility can serve as the protection mechanism for the people standing up in defense of their environment who are living in specific precarity. The Philippines hold the highest extra-judicial killings of environmental human rights defenders in Asia. In places where environmental strife is extremely confrontational and where local activists determine to fight illegal logging and fishing on their own using the citizen's arrest law, they face with severe life-threatening repercussion.

The CHR's interests in human rights violations from climate and environmental concerns can neither be ad-hoc nor reactive to the complaints. By integrating into its normal operations, especially in partnership with other domestic and interantional actors, in the investigative reporting under the HRC's Universal Periodic Review process and in the thematic engagement of UN human rights treaty bodies, the CHR can shape the climate-relevant human rights monitoring and compliance. Human rights discourse with the backing of the international human rights regime has much to offer to address climate change. However, strategic calculations must be made in a way that optimizes and strengthens the existing capacities of human rights infrastructure.

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