



Commission on Human Rights of the Philippines
Inputs to the Working Group on Business and Human Rights
on the role of national human rights institutions in facilitating access to effective
remedy for business-related human rights abuses
15 June 2019

1. The Commission on Human Rights of the Philippines (hereinafter the Commission)¹ submits its responses to the questionnaire of the Working Group on Business and Human Rights, which aims to contribute to the discussion on the role of NHRIs in facilitating access to effective remedy, as well as the two-day global consultation being convened by the Working Group on 10-11 October 2019, relative to Resolution 38/13 entitled “Business and human rights: improving accountability and access to remedy.”
2. This submission utilized the Commission’s own documentation of independent monitoring activities and statements which were subjected to the internal deliberations of the Commission En Banc. It also took into consideration local and international reports from government, civil society, the media, and international non-government organizations.

Questionnaire

I. The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. **Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?**

Yes, the Commission on Human Rights of the Philippines (CHRP) has an implicit mandate in handling complaints concerning alleged business-related human rights abuses. This is pursuant to Article 13 Sec. 18 of the 1987 Philippine Constitution which states that the Commission on Human Rights has the power to “investigate on its own or on complaint by any party, all forms of human rights violations involving civil and political rights.” CHRP asserts that since human rights are by their nature interrelated, indivisible, and interdependent, business-related human rights abuses are included in the scope of its power to investigate.

Regarding civil and political rights, the CHRP is empowered to determine whether these have been violated, are being violated, or are threatened to be

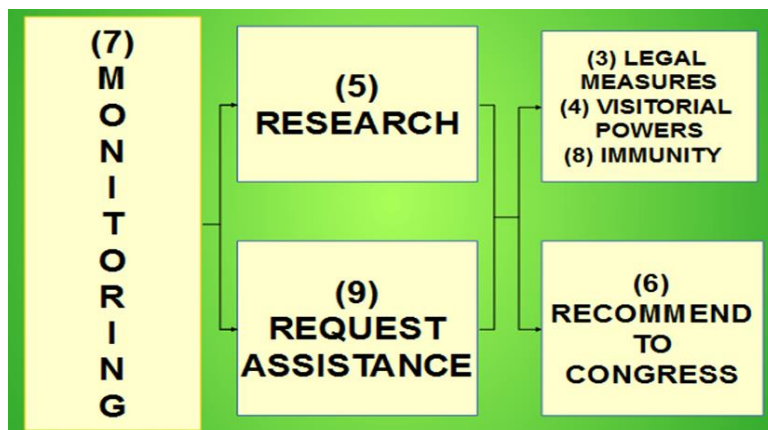
¹ As the National Human Rights Institution (NHRI) of the Philippines, the Commission on Human Rights has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. It has the responsibility to regularly report and monitor human rights situations and violations, and recommend steps in advancing the realization of human rights and dignity of all. The Commission has “A”-status accreditation from the Sub-Committee for Accreditation and a member of the Global Alliance of National Human Rights Institutions (GANHRI).

violated by state authorities, by agents of persons in authority, by private individuals acting on the instructions of or with the acquiescence of state authorities, or by armed groups. These investigations have the additional aims of identifying gaps, documenting the situation of marginalized / vulnerable sectors, and mapping out trends with a view to advise the government on necessary reforms to improve compliance with state obligations on human rights.

Regarding economic, social and cultural rights, the CHRP is empowered to determine whether these rights have been violated by state or non-state actors; to assess the situation of particular groups / communities / sectors; to determine the basic obligations of government on the matter, and the level of government compliance with international human rights standards; and to recommend and advise government of the appropriate legislative, administrative, judicial, and policy measures necessary to fully address these rights.

2. What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?

CHRP primarily offers its investigation and monitoring processes to communities that need to properly understand the factual circumstances of their cases.² The communities and vulnerable groups often do not have access to information that are lodged with other government offices and the companies involved. These investigation and monitoring processes are illustrated in the flowchart³ below:



If warranted, the facts gathered are then used to determine the legal measures available under Philippine law and the Rules of Court. Examples of these legal remedies are the Petition for Writ of Amparo and Petition for Habeas Corpus.

During the early part of its existence, CHRP issued orders of injunction against the then “Export Processing Zone Authority,”⁴ among other state actors, commanding it to desist from committing further acts of demolition, terrorism, and harassment against farmers groups therein. However, EPZA sought judicial recourse from the Philippine Supreme Court and questioned CHRP’s power to issue orders of injunction. CHRP anchored its injunction orders on its constitutional mandate to provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection. Unfortunately, the Supreme Court ruled that CHRP has no power to issue orders of injunction, as stated in the case of

² See Commission on Human Rights of the Philippines, Citizen’s Charter *available at* <https://chr.gov.ph/citizens-charter/> (last accessed 13 June 2019).

³ The numbers indicated in the chart refer to the paragraphs under Sec. 18, Art. XIII of the 1987 Philippine Constitution.

⁴ Now called the Philippine Economic Zone Authority starting 1995.

EPZA vs. CHRP, G.R. No. 101476⁵ promulgated on April 14, 1992. CHRP is only a fact-finding institution and not a quasi-judicial body. The said ruling is still observed to this day.

Still, CHRP asserts that it is not precluded by law or jurisprudence to file and pursue a court action for injunction and other judicial or quasi-judicial remedies, instead of CHRP issuing the injunction order in the exercise of its own mandate. The complaining parties must go to the courts and quasi-judicial forums (e.g., the Department of Agrarian Reform, the National Commission on Indigenous Peoples, or the National Labor Relations Commission, to name a few).

Yes, these remedies have been effective. To illustrate, the CHRP performed its mandate as a non-judicial redress mechanism, or a mediator in the Tampakan Copper-Gold Mining Project of Sagittarius Mines, Inc. (SMI) case. There was a dispute over the mining operations of SMI company on the ancestral lands of the B'laan indigenous peoples. A mother and her two sons from the B'laan tribe were killed in a military operation. The military claimed that the mother and her children were "collateral damage" as they were in pursuit of the husband and father of the victims who was charged with murder of an employee of SMI.

- 3. Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.**

CHRP is not a quasi-judicial forum, hence it could only do fact-finding. CHRP does not have a mandate to compel companies to do certain acts or to restrain them from acting. An example of this is the National Inquiry on Climate Change (NICC),⁶ where the CHRP is conducting a fact finding inquiry. More details are provided in question 8.

- 4. Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?**

Yes, CHRP specializes in the rights and concerns of women, LGBTQIA, children, workers, indigenous peoples, persons with disabilities, internally displaced persons, among others. For this purpose, CHRP established and strengthened in 2016 the following specialist centers:

- Economic, Social and Cultural Rights Center
- Crisis, Conflict and Humanitarian Protection Center
- Child Rights Center
- Gender Equality and Women's Human Rights Center

CHRP is currently establishing its first migrants' human rights observatory, which will look in to, among its objectives, labor rights and human rights violations against Filipino Overseas Workers (OFWs) committed by recruitment agencies and business enterprises in destination countries.

- 5. What gender-sensitive and gender-responsive measures your NHRI take in dealing with cases of alleged business-related human rights abuses?**

⁵ EPZA vs. CHRP, G.R. No. 101476, available at https://lawphil.net/judjuris/juri1987/apr1987/gr_1_59603_1987.html (last accessed May 23, 2019).

⁶ Commission on Human Rights of the Philippines, National Inquiry on Climate Change, available at <https://chr.gov.ph/nicc-2/> (last accessed 13 June 2019).

The CHRP has developed the Gender Ombud Guidelines to deal with gender-sensitive cases in the context of business.⁷ The Commission also conducts gender and development audit and Gender Ombud training to enhance the capacities of its employees as well as communities.

6. What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?

The CHRP, in brief, has three (3) primary mandates: first is the human rights protection, which includes witness protection, fact-finding investigations, evaluation of investigation reports and recommendation of appropriate actions in the form of resolution; second is the human rights promotion, which includes education and popularization of human rights; and third is the furtherance of human rights policy, which includes working with other government agencies to make policies of the government more human rights-sensitive. These functions are likewise being performed in the context of business and human rights.

7. How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?

CHRP forms inter-agency working groups to address complaints that require the expertise and mandate of different government agencies. CHRP mostly engages the judiciary only through the procedures laid down under the Rules of Court, i.e. the filing of the appropriate pleadings.

The CHRP also collaborates with other judicial or non-judicial remedial mechanisms through the following:

1. Issuing resolutions and referring cases to appropriate government agencies and tribunals;
2. Assisting in filing petitions in courts;
3. Providing financial assistance to human rights victims;
4. Monitoring of cases filed in courts; and
5. Conducting investigation and receiving pieces of evidence

8. Can your NHRI deal with alleged business-related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and exchange of information or a cooperation arrangement with counterparts in other States)?

CHRP is a member (APF representative) of the GANHRI Working Group on Business and Human Rights. The Working Group is a platform where NHRIs can exchange information and strategies in monitoring and addressing business-related human rights abuses. CHRP contributes to the joint statements and submissions of the Working Group to the Human Rights Council and the UN Forum on Business and Human Rights.

The CHRP also conducted the National Inquiry on Climate Change, which is the first case with a transnational dimension that CHRP has been addressing since 2016. CHRP heard the testimonies of international experts on climate science. It

⁷ Commission on Human Rights of the Philippines, CHR Gender Ombud Guidelines: Promoting Gender Equality and Women's Empowerment Under the MCW (RA9710) and Related Laws, Resolution CHR (IV) No. AM-2015-093, 21 April 2015 available at <http://chr.gov.ph/wp-content/uploads/2018/09/CHR-Gender-Ombud-Guidelines.pdf> (last accessed 13 June 2019).

also requested the assistance of the Global Alliance of National Human Rights Institutions (GANHRI) and the Asia Pacific Forum of NHRIs (APF). APF submitted an amicus brief to CHRP, which could be downloaded through this link: <http://www.asiapacificforum.net/resources/amicus-brief-human-rights-and-climate-change/>

In relation to this, the Commission conducted community-based dialogues and data gathering in areas mostly affected by Typhoon Haiyan, conducted consultations with local and international experts, engaged with local and international non-government organizations. Findings and report of the inquiry will be released by the last quarter of 2019.

9. Is your NHRI involved in any initiatives to stimulate effective multi-stakeholder grievance mechanisms to strengthen access to remedy for business-related human rights abuses?

Yes, the CHRP exercises its bridging role by bringing the representatives of government agencies, other stakeholders and different sectors of society in inter-agency meetings, community based dialogues, fora, workshops, among others in addressing business-related human rights abuses. The Commission also established and maintained linkages and partnerships with civil society organizations in promoting human rights in the context of business.

10. Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?

The government has announced the crafting and release of a national action plan on business and human rights, however, the copy is not made available to the CHRP and civil society organizations.

II. Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy in business-related human rights abuses? How could these challenges or limitations be overcome?

Critical challenges or limitations are as follows:

- CHRP is not a quasi-judicial forum, hence it could only do fact-finding. CHRP does not have the power to compel companies to do certain acts or to restrain them from acting.
- There are practical barriers such as wide area of jurisdiction of the CHRP regional offices, geographical constraints to reach a complaining community (e.g., Semirara Island Case) and inadequate number of human resources with expertise on business and human rights.
- Involvement of high-ranking government officials in acts or omissions that violate the rights of the communities, who often have their way with or backing of the legal system making their actions appear legitimate

To address these, CHRP is pursuing the following actions:

- Advocate for the passage of the CHRP charter, or the law that would give it more powers to ensure the protection and promotion of human rights
- Provide continuous capacity-building programs to CHRP's key personnel
- Enhance its partnership and linkage with government agencies and civil society

organizations, including business enterprises

2. What additional challenges has your NHRI faced in dealing with complaints with a transnational dimension (e.g., exploitation of migrant workers, or cross-border environmental pollution)?

The principle of territoriality in regard to the exercise of jurisdiction makes it more difficult for CHRP to deal with complaints with a transnational dimension particularly climate change concerns. Regarding issues concerning migrant workers, the CHRP closely works with the Department of Foreign Affairs of the Philippines and respective labor attachés, other national human rights institutions and civil society organizations. Currently, we have a cooperation agreement with the National Human Rights Committee of Qatar,⁸ we work closely with migrants rights networks in the country and abroad to monitor and assist in solving cases of human rights violations against migrant workers, as perpetrated by recruitment agencies and employers.

3. How has your NHRI dealt with complaints involving multiple victims?

The Commission through the Human Rights Centers Management Office, conducts community-based dialogues, fora, workshops, among others to deal with cases involving those who are experiencing multiple discrimination such as indigenous women, indigenous persons with disability, among others. This form of discrimination is usually aggravated by poverty.

It also has conducted national inquiries to address the issues through the provision of recommendations to the different government agencies, such as the National Inquiry on the Situation of the Filipino Indigenous Peoples, and on Climate Change.

4. What has been the experience of your NHRI in dealing with complaints concerning parent and subsidiary companies or the supply chain of a company?

The CHRP is directly involved in a climate justice petition against the carbon majors, having been considered the forum to conduct the National Inquiry on Climate Change. The petitioners include typhoon survivors, advocates and non-governmental organizations, including Greenpeace Southeast Asia implicating 47 investor-owned carbon producers including Chevron, ExxonMobil, BP, Shell, Total, BHP Billiton, Suncor, and ConocoPhillips over their role in "human-induced climate change"; that "interferes with the enjoyment of Filipinos' fundamental rights."

The CHRP is also lobbying with the Philippine government to support the passage of the Zero Draft Legally Binding Instrument in Regulating, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises in order to address this issue.

III. Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?

- CHRP spearheaded the formation of an inter-agency working group to address and

⁸ *Cooperation Agreement between the Commission on Human Rights of the Philippines and National Human Rights Committee of Qatar*, available at http://chr.gov.ph/chrp-nhrc-qatar-cooperation-agreement_english/

monitor the human rights situation in Semirara Island, Caluya, Antique due to threats of forced evictions against the community, resulting from coal mining activities

- CHRP assisted a family in Sicogon Island, Carles, Iloilo to secure a Writ of Amparo with the Court of Appeals while suffering harassment from owners and security guards of the company with business interest to develop Sicogon Island into a tourist destination to the detriment of the residents.
- CHRP represented a group of farmers in Hermosa, Bataan who faced criminalization while pursuing their claim for tenurial instruments under the Comprehensive Agrarian Reform Program of the government. The court acquitted the farmers from the criminal cases that the landowner company filed against them.
- CHRP assisted residents in Siniloan, Laguna who dwell in a forest reserve to obtain tenurial instruments from the Department of Environment and Natural Resources pursuant to the law, thus averting forced eviction.
- CHRP represented a person who was falsely charged with a crime by his previous employer-company, and was able to secure that persons' rights to liberty and to post bail.
- CHRP assisted the community in Bulan, Sorsogon to monitor the decision-making process whether or not the Municipal Government would allow quarrying and mining in their area. The community are bothered that the Municipal Government will pursue the quarrying. However, with the advocacy of the concerned citizens of Bulan and guidance of CHRP, the LGU eventually issued a Sangguniang Bayan resolution interposing objection to all large-scale, destructive and irresponsible quarrying and/or mining therein.
- The CHRP assisted a certain family to file a Petition for Writ of Amparo. The Writ of Amparo is a judicial remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. Another good practice was when the CHRP acted as mediator between the Tampakan Copper-Gold Mining Project of Sagittarius Mines, Inc. and B'laan indigenous peoples. This case involved a dispute over the mining operations of SMI company on the ancestral lands of the B'laan indigenous peoples. A mother and her two sons from the B'laan tribe were killed in a military operation. The military claimed that the mother and her children were "collateral damage" as they were in pursuit of the husband and father of the victims who were charged with murder of an employee of SMI. In the aftermath of the incidents of these killings, CHRP assumed the role of mediator with the help of the Bishop of the Diocese of Marbel. On two occasions, CHRP facilitated dialogues among the stakeholders, which included the military, tribal leaders of B'laan communities and the IP residents from the affected communities who were for and against the mining project, also with, support groups from local and national civil society organizations (CSOs) and the local officials from the three municipalities covered by the mining project.
- The CHRP pioneered the conduct of a national inquiry on climate change. The case is novel in its attempt to haul the respondent "carbon majors" in one "global petition" involving human rights. It sought to promote, as well, the notion that businesses have an obligation to respect human rights, as enunciated under the UN Guiding Principles on Business and Human Rights.
- The CHRP alarmed by the rampant violations of the freedom of association and the right to collectively bargain of the workers in the economic processing zone in the Philippines, the HRCMO through the Economic, Social and Cultural Rights Center conducted monitoring activities to assess the human rights situations of the affected workers and recommended feasible and appropriate interventions.

2. Are there good practice examples of your NHRI supporting the work of civil society and human rights defenders (including women human rights defenders) working to secure access to effective remedy for business-related human rights abuses?

Yes, human rights defenders in civil society are CHRP's sources of information on the ground. They provide feedback on their human rights situations. CHRP allotted a special funding for human rights defenders to facilitate social

mobilization.

CHRP is monitoring and advocating for several proposed legislations on human rights defenders filed at the House of Representatives and Senate. The CHRP, as Gender Ombud has played its part in highlighting women's human rights violations in relation to WHRDs. It has also initiated the establishment of a Gender-Based Violence Observatory aimed to collect accurate data including the trends in referral mechanisms in acting against GBV in the Philippines.

CHRP initiated the CSO-CHR Consultative Caucus for Human Rights (C4HR). It is a collaboration among human rights organizations and the CHRP to raise awareness of human rights as well as coordinate action among stakeholders to promote and defend these rights. We are also pushing for the enactment of the legislative measure protecting human rights defenders.

CHRP, likewise, ensures that there is free space within the Commission to accommodate the initiatives of civil society.

The CHRP will also be conducting an inquiry on the situation of Human Rights Defenders, scheduled on the third quarter of 2019.

3. Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?

The CHRP streamlined its process flow in dealing with complaints and improved its case and data management systems. It has also capacitated its investigators on the UNGP on Business and Human Rights to have a deeper appreciation of issues and concerns in the context of business. The Commission has established human rights desks.

4. What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?

1. Raise awareness on UN Guiding Principles on Business and Human Rights;
2. Ensure the inclusion in its mandates the power to investigate business-related human rights concerns;
3. Capacitate its employees to provide expeditious and effective services to its clientele;
4. Continue its advocacy to push for the crafting of the National Action Plan on Business and Human Rights; and
5. Maintain linkages and partnerships with civil society organizations in promoting human rights in the context of business.

5. How could NHRIs collaborate with regional and international human rights monitoring mechanisms (including the Universal Periodic Review) to facilitate access to remedy for business-related human rights abuses?

In CHRP, we have established a division, International Obligations Monitoring Division that facilitates programs and activities relating to regional and international monitoring mechanisms. As an A-status NHRIs, the Commission has participation and speaking rights in UN processes, particularly in the sessions of the Human Rights Council and the Treaty Bodies. Our reports are independent, and we can raise human rights issues directly with Charter-based and Treaty-based Bodies. Likewise, the Commission also engages with civil society organizations to further inform our preparation of independent monitoring reports.

The Global Alliance of National Human Rights Institutions (GANHRI) has a Working Group on Business and Human Rights, where the CHRP is the Asia-Pacific Representative. While the working group focuses mainly on information

exchange among NHRIs across regions, it has in some occasions put forward statements at the Human Rights Council and advocated for state-based non-judicial mechanisms such as NHRIs to facilitate access to remedy for business-related human rights abuses.

* These questions are designed to facilitate focused feedback. Please feel free to respond to all or selected questions as necessary.