

In the Name of Climate Change: How *Leghari v Federation of Pakistan* Is Instrumental to the Pursuit of the Right to Life in the Philippines

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Abstract

Climate change is a phenomenon that has pushed the public to turn to the government for solutions. After all, the government has the mandate of protecting the right to life. Despite the adverse effects of climate change, the steps taken by the Philippine government have been surprisingly meagre. As the people continue to experience the wrath of environmental changes, they have not been adequately empowered. *Leghari v Federation of Pakistan* provides a framework on how an ordinary person can resort to a legal remedy before a domestic court. The *Leghari* case suggests how an effective response to climate change can be secured through the judicial branch of the government. It identifies the government's duties regarding climate change and notes the delay in assuming functions, to the detriment of the public. In the Philippines, the bridge connecting the right to life and climate change is far from completion. As an example of 'climate change litigation', the *Leghari* case can be applied by analogy in the Philippines, which is facing threats to the existence of communities. The Philippine government has tried to alleviate the impact of climate change through its agencies and strategies, but to no avail. In this respect, it can be held accountable for failing to protect the right to life.

Introduction

Climate change is a global reality. The constant fear of higher temperature, rising sea level, and destruction of communities has left humanity searching for answers. Reasonably, the public expects that the government should enact mechanisms to resolve this problem. After all, the government has the mandate of protecting the right to life.

Climate change mitigation and adaptation measures have been adopted in the Philippines. Still, government action falls short in protecting the right to life. Trapped in a cycle of dealing with climate change and finding ways to survive, Filipinos continue to struggle with inadequate delivery of basic services. With all of the powers enjoyed by the State, it is rather unusual that at this point, steps have been preliminary. Acknowledgment

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that climate change is a serious issue does not suffice. The absence of concrete State action has deprived the people of an opportunity for empowerment.

Given this predicament, one can look at the decision of the Lahore High Court in *Ashgar Leghari v Federation of Pakistan*¹ for guidance. The principles developed in this case provide a framework on how ordinary Filipinos can resort to a legal remedy before a domestic court. *Leghari* suggests how an effective response to climate change can be secured through the intervention of the judiciary. Furthermore, the doctrines in *Leghari* shed light on a legal process to identify the government's responsibilities and shortcomings undermining the right to life.

The magnitude of climate change cannot be considered as a purely domestic matter, especially if conditions have been aggravated by government inaction. In a global sense, the perpetration of the violation of the right to life contravenes international conventions. Inasmuch as the Philippines is a trusted player in the international sphere, the country has not lived up to its commitment to covenants to which it is a party. Instead of stabilising international norms and shared sentiments, the Philippines seems to be heading in the opposite direction.

The first part of the paper discusses the situation of the Philippines in the midst of the climate change phenomenon. It further enumerates the actions taken by the government to address community challenges and environmental destruction. The next portion of the paper explains the advantages and disadvantages of 'climate change litigation,' a judicial remedy that is gaining prominence in the legal profession. It also examines several cases demonstrating a trend towards increasing resort to judicial proceedings for relief. Thereafter, the paper examines the key points in the *Leghari* case and applies them to the Philippines. The last section of this paper lays down the arguments that can be raised to hold the government responsible for allowing the effects of climate change to persist. It identifies particular instances where the State did not fulfil its domestic and international obligations with respect to the right to life.

I. With the Philippines Suffering from the Ill-Effects of Climate Change, the Government Created the Corresponding Framework of Response

Climate change denotes 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.'² The effects of climate change on different aspects of the society cannot be taken lightly. Climate change affects 'lives, livelihoods, health, ecosystems, economies, societies, cultures, services and infrastructure.'³ Environmental impact makes it difficult for individuals to survive.⁴

¹ Lahore High Court, W.P. No. 25501/2015, 4 September 2015.

² Article 1(2), UN General Assembly, *United Nations Framework Convention on Climate Change*, (1992) 1771 UNTS 107.

³ Intergovernmental Panel on Climate Change, 'Climate Change 2014: Synthesis Report, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' (2015), 124.

⁴ Kalin, W, "Displacement Caused by the Effects of Climate Change: Who will be Affected and What are the Gaps in the Normative Framework for their Protection" in Scott Leckie, Ezekiel Simperingham and Jordan Bakker, *Climate Change and Displacement Reader* (Earthscan 2012).

The Philippines is no stranger to the negative effects of climate change. In the long-term climate risk index, the country is ranked fourth among States most affected by climate change.⁵ From 1951 to 2010, temperatures have increased by 0.64 degrees Celsius, an average of 0.01 degrees Celsius every year.⁶ On top of the twenty typhoons experienced every year,⁷ the Philippines was at the centre of the strongest tropical cyclones in 2013. Typhoon Haiyan left 6,300 people dead, over 3 million families affected, more than 1 million houses damaged, and over PhP95,000,000,000.00 worth of economic loss.⁸ Recently, typhoons with intensities of Category 4 or higher have hit the Philippines in the span of one week. This was only the third time since 1950 that consecutive typhoons of such degree smashed the country.⁹

The World Bank declared that between 2000 and 2008, weather-related disasters in the Philippines accounted for around 98% of all people affected by disasters and 78% of all deaths.¹⁰ In the agricultural sector, the quantified impact of climate change to the Philippines is in the amount of PhP12,000,000,000.00 per year.¹¹ The destruction to agricultural products is caused by typhoons, drought and floods. The impact of climate change also goes into the capacity to produce. It has been shown that the gross production value of Philippine agriculture decreases by USD 19.21 million for every one-degree Celsius rise in temperature.¹²

As a response to the problems of increasing temperature, storm surge, and agricultural destruction, Republic Act No. 9729¹³ was enacted. Under this statute, the Climate Change Commission was established as the policy-making body of the government on climate change matters.¹⁴ It consists of the President of the Philippines, serving as Chairperson, and three Commissioners. Its advisory board is composed of the heads of various executive departments and government agencies, as well as representatives from local government units and the private sector.¹⁵ Among the key departments constituting the advisory board are the Department of Environment and Natural Resources, Department of Agriculture, Department of Health, and the Department of Science and Technology.¹⁶

Pursuant to its functions, the Climate Change Commission formulated the National Framework Strategy on Climate Change. The framework strategy was intended to enhance

⁵ Kreft, S and others, 'Global Climate Risk Index 2016: Who Suffers Most from Extreme Weather Events? Weather-related Loss Events in 2014 and 1995 to 2014' (2015), 6.

⁶ Climate Change Commission, 'National Climate Change Action Plan 2011-2028' (21 November 2011), 2.

⁷ Asian Disaster Reduction Center, 'Information on Disaster Risk Reduction of the Member Countries' (*Asian Disaster Reduction Center* 2008), at <adrc.asia/nationinformation.php?NationCode=608> (accessed 18 November 2017).

⁸ National Disaster Risk Reduction and Management Council, 'Final Report re Effect of Typhoon "Yolanda" (Haiyan)' (6-9 November 2013), 3-5.

⁹ Griffiths, J, Belinger, J, and Westcott, B, 'Typhoon Haima: Philippines Hit by Second Storm in a Week' (*CNN*, 20 October 2016), at <edition.cnn.com/2016/10/18/asia/typhoons-haima-philippines/> (accessed 18 November 2017).

¹⁰ Sustainable Development, East Asia and Pacific Region, World Bank, 'A Strategic Approach to Climate Change in the Philippines' (27 January 2010), 5, at <siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/PHCCSNJan27final.pdf> (accessed 18 November 2017).

¹¹ Climate Change Commission, *supra* nt 6, 7.

¹² Dait, JMG, "Effect of Climate Change on Philippine Agriculture" (2015) 4(9) *IJSR* 1922, 1923.

¹³ Climate Change Act of 2009 (Philippines).

¹⁴ *Id.*, s 4.

¹⁵ *Id.*, s 5.

¹⁶ *Ibid.*

the adaptation of the country's ecosystems and communities to climate change.¹⁷ The Commission also drafted the National Climate Change Action Plan 2011-2028, which, in essence, determined the country's strategic direction in resolving climate change. Specifically, the government prioritised food security, water sufficiency, environmental and ecological stability, human security, climate-smart industries and services, sustainable energy, and knowledge and capacity development.¹⁸

The global impact of climate change bolstered the Philippines' resolve to address the problem on an international level. Aside from being a party to the United Nations Framework Convention on Climate Change,¹⁹ the Philippines submitted its instrument of acceptance of the Doha amendment to the Kyoto Protocol on 13 April 2016.²⁰ It has likewise expressed its commitment to the Paris Agreement, a convention, which seeks unified action on climate change by keeping the global temperature at a certain level and by extending assistance to States in furtherance of their respective national goals. Since the pre-condition of fifty-five State Parties representing fifty-five percent (55%) of the total greenhouse gas emissions²¹ have been met, the Paris Agreement entered into force on 4 November 2016, with the Philippines having ratified the Paris Agreement on 23 March 2017.²²

II. The Worsening Impact of Climate Change Is Triggering Resort to Litigation for Relief

Given the dire consequences of climate change, people anticipate a viable response from the State. At the domestic level, cases have been filed in an attempt to secure a clean environment, an enumeration of which will be discussed in detail later. Meanwhile, the aforementioned Republic Act No. 9729 was premised on a recognition of the 'vulnerability of the Philippine archipelago and its local communities, particularly the poor, women, and children, to potential dangerous consequences of climate change.'²³ Frustrations culminated during the United Nations Framework on Climate Change's 19th Conference of Parties. During the conference, Naderev Saño, the Philippines' lead negotiator, launched a hunger strike to urge delegates to take concrete measures against climate change.²⁴

While the framework is already in place, the Philippine government is suffering from a serious gap in the enactment of statutes and implementation of policies related to climate change. Inasmuch as the people would like to take the initiative, they cannot pre-empt matters that are within the domain of the government. For large-scale and long-term

¹⁷ Climate Change Commission, 'National Framework Strategy on Climate Change' (2010), 5.

¹⁸ Climate Change Commission, *supra* nt 6, 6.

¹⁹ The Philippines submitted its ratification acceptance to the Convention on 2 August 1994.

²⁰ United Nations Treaty Collection, '7.c. Doha Amendment to the Kyoto Protocol: Doha, 8 December 2012' (*United Nations*, 2017), at <treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XXVII-7-c&chapter=27&clang=_en> (accessed 18 November 2017).

²¹ Article 21(1), United Nations Framework Convention on Climate Change, *Adoption of the Paris Agreement* (2015).

²² United Nations Framework Convention on Climate Change, '7.d Paris Agreement: Paris, 12 December 2015' (*United Nations*, 2017), at <treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXVII-7-d&chapter=27&clang=_en> (accessed 19 November 2017).

²³ Climate Change Act of 2009 (Philippines) s 2.

²⁴ Smith, M and Cullinnane, S, 'Philippine Delegate Refuses to Eat Until Action on Climate Change Madness' (*CNN*, 12 November 2013), at <edition.cnn.com/2013/11/12/world/europe/poland-philippines-sano-cop/index.html> (accessed 29 November 2017).

solutions, the private sector is hampered and can only wait for the public sector to take positive actions.

Left without a direct remedy against the concerned government officials, the people can look to the participation of the judiciary to fill the void. In this regard, climate change litigation is a remedial concept that offers both potential and advantages. Firstly, it serves as a 'catalyst for legislative and executive action.'²⁵ Secondly, climate change litigation enhances decision-making. Through this legal process, the government becomes more conscientious when considering all possible environmental issues attached to an undertaking.²⁶ Climate change litigation serves as a means to uncover inadequacies of existing statutes, rules and regulations, which warrant the introduction of appropriate amendments.²⁷

Broad State recognition of climate change litigation remains to be seen.²⁸ A major roadblock on the expansion of climate change litigation is establishing a causal link between climate change and the threat to right to life.²⁹ Paramount attention must be placed on the right to life, given that the enjoyment of other rights, such as the right to property, is ultimately hinged on the ability of a person to exist.³⁰ After all, the right to life is formatively linked to natural law, or the set of rights that are by definition 'inherent in human nature, outside and above positive law, binding on State, rights with a superior legal nature, that are universal, the same always and forever.'³¹

In addition, given that the effects of climate change transcend national boundaries, it becomes more difficult to ascertain the party from which proper relief can be sought.³² Even the mere identification of available judicial remedies poses a hurdle to the development of this field.³³

The foregoing considered, the foundation of climate change litigation is slowly emerging as an avenue to shape progress.³⁴ Cases in other jurisdictions illustrate the growth. In *Urgenda Foundation v The State of Netherlands*,³⁵ petitioner Urgenda Foundation filed a class

²⁵ Preston, B, "Climate Change in the Courts" (2010) 36 Monash U L Rev 15, 21, citing Joseph Sax, *Defending the Environment: A Handbook for Citizen Action* (Knopf 1971), xviii, 152, and Brian Preston, 'The Role of Public Interest Environmental Litigation' (2006) 23 EPLJ 337, 339.

²⁶ Preston, B, "The Influence of Climate Change Litigation on Governments and the Private Sector" (2011) 2 Climate L 485, 487, citing Joseph Sax (n 25), 111-112.

²⁷ *Ibid*, citing Preston, "The Role of Public Interest Environmental Litigation" (n 25), 339-340.

²⁸ Preston, B, 'Climate Change Litigation (Part 1)' (2011) 1 *Carbon & Climate Law Review* 3, 4.

²⁹ Jaimes, V, "Climate Change and Human Rights Litigation in Europe and the Americas" (2015) 5(1) *Seattle Journal Environmental Law* 165, 195.

³⁰ See *Secretary of National Defense v. Manalo*, 568 SCRA 1, 38-39 (2008) [Supreme Court of the Philippines], where the Highest Court noted that the right to life implies a life lived without fear that the ruler will unreasonably violate his/her person and property. Also, security in life implies legal and uninterrupted enjoyment of life, including the right to exist.

³¹ Pavel, N, "The Right to Life as a Supreme Value and Guaranteeing the Right to Life" (2012) 4 *Contemp Readings L & Soc Just* 970, citing Jean Rivero, *Les libertés publiques*, Tome 1, *Les droits de l'homme* (Presses Universitaires de France 1991), 23.

³² Aminzadeh, S, "A Moral Imperative: The Human Rights Implications of Climate Change" (2006-2007) 30(2) *Hastings Int'l & Comp L Rev* 231, 233, citing Hari Osofsky, 'The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance' (2005) 83 *Wash U L Q* 1789, 1802.

³³ Nyinevi, C, "Universal Civil Jurisdiction: An Option for Global Justice in Climate Change Litigation" (2015) 8(3) *J Pol & L* 135, 135.

³⁴ Aminzadeh, *supra* nt 32, 232.

³⁵ The Hague District Court, C/09/456689, 24 June 2015.

suit, grounded on the inadequate protection provided by the government with respect to climate change. Following the European Court of Human Rights' statement that 'human rights law and environmental law are mutually reinforcing,'³⁶ The District Court in The Hague directed the government to reduce greenhouse gas emission by 25% by the end of 2020, instead of the policy direction of 14-17%.³⁷

Similarly, in *Foster v Washington Department of Ecology*,³⁸ the respondent Department of Ecology denied petitioner Our Children's Trust's request that CO₂ emissions reduction be set at 4% annually and 80% from 1990 levels by 2050. Subsequently, the Superior Court ordered the Department of Ecology to issue the emissions reduction rule, in view of the urgency brought about by climate change.³⁹

In particular, *Budayeva v Russia*⁴⁰ demonstrates how the State has been held accountable for failing to provide access to information that would have prepared the people for a disaster. In that case, residents of Tyrnauz, where mudslides have been recorded annually, lodged an application with the European Court of Human Rights. They claimed that the government should be held accountable for the death and destruction caused by a series of mudslides in July 2000. In ruling that there was a violation of the right to life and that there must be an award of non-pecuniary damage, the European Court of Human Rights cited the government's failure to take measures to resolve the mudslide problem as grounds,⁴¹ as well as taking note of the inadequate information campaign on the imminent danger.⁴² While *Budayeva* did not specifically tackle climate change, the frequency of mudslides during summer⁴³ suggests a correlation between rising temperature and the likelihood of mudslides.

The Philippines has its own share of environmental cases. In *Oposa v Factoran*,⁴⁴ petitioners sought the cancellation of timber licences, grounded on the detrimental effects of deforestation. The Philippine Supreme Court acknowledged the legal standing of petitioners, consisting of minors, on the basis of 'inter-generational responsibility' with respect to the right to a balanced and healthful ecology.⁴⁵ A similar case would be *Metropolitan Manila Development Authority v Concerned Residents of Manila Bay*.⁴⁶ Affected residents sought the issuance of a court order for the government to rehabilitate the polluted Manila Bay. The Supreme Court ruled that the Metropolitan Manila Development Authority and other government agencies are bound to comply with their statutory duties of protecting the bay and that they are precluded from opting not to assume their roles.⁴⁷ Finally, there is a pending petition filed by Greenpeace Southeast Asia and Philippine Rural Reconstruction

³⁶ *Id.*, [4.48], citing Council of Europe, *Manual on Human Rights and the Environment* (2nd edn, Council of Europe Publishing 2012), 30-31.

³⁷ *Urgenda Foundation v The State of Netherlands* (n 35), [5.1].

³⁸ Superior Court of the State of Washington for King County, No. 14-2-25295-1 SEA, 19 November 2015.

³⁹ *Id.*, 5.

⁴⁰ European Court of Human Rights, Chamber Judgment, Application No 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008).

⁴¹ *Id.*, 4.

⁴² *Ibid.*

⁴³ *Id.*, 1.

⁴⁴ 224 SCRA 792 (1993) [Supreme Court of the Philippines].

⁴⁵ *Id.*, 802-803.

⁴⁶ 574 SCRA 661 (2008) [Supreme Court of the Philippines].

⁴⁷ *Id.*, 672-673.

Movement before the Commission on Human Rights.⁴⁸ Premised on the significant contribution of the so-called ‘Carbon Majors’⁴⁹ to greenhouse gas emissions, petitioners seek to hold these corporations responsible for violation of the right to life, right to the highest attainable standard of physical and mental health, right to food, right to water, right to sanitation, right to adequate housing and right to self-determination.⁵⁰

To be clear, the aforementioned Philippine cases are substantially different from the subject of this paper. In *Oposa*, the issues pertained to the propriety of a class suit and the duty to preserve nature for the next generation. On the other hand, the present paper will tackle the deleterious effects of climate change and how the government can be held accountable for violating the right to life, the paramount importance of which will be demonstrated in the following section. In *Metropolitan Manila Development Authority*, the issue revolves around pollution and the discretion of the government to clean the environment. The present paper amplifies the mandate of the government to address climate change. In the Greenpeace petition, redress is sought against private companies, not the government. Additionally, the petition was filed before the Commission on Human Rights, which is an investigatory body and not a court.⁵¹ In contrast, the present paper will contemplate a court action against the State and a determination of the rights and duties of the concerned parties. Due to these distinctions, the present paper will draw parallels to the *Leghari* case as a method of uncovering the deficiencies of the Philippine government in its response to climate change.

III. *Leghari v Federation of Pakistan* Can Serve as a Legal Framework Against the Philippine Government

The focus of the paper is the aforementioned *Leghari v Federation of Pakistan*. Petitioner Ashgar Leghari, an agriculturist, instituted public interest litigation before the Lahore High Court. The petitioner questioned the lack of action on the part of the Federal Government of Pakistan in meeting climate change issues and the supposed threats to water, food and energy security of Pakistan which infringe on the right to life. He added that no significant progress has been accomplished from the time the 2012 National Climate Change Policy and the Framework for Implementation of Climate Change Policy (2014-2030) were formulated.⁵²

Ruling in favour of petitioner, the Lahore High Court acknowledged the challenges posed by climate change, emphasising a shift from Environmental Justice to Climate Change Justice. The Lahore High Court held that climate change makes the protection of the citizen’s fundamental right more imperative. According to the Court, the right to life, which includes the right to a healthy and clean environment, as well as the right to human

⁴⁸ Greenpeace Southeast Asia and Philippine Rural Reconstruction Movement, ‘Petition to the Commission on Human Rights of the Philippines Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change’ (22 September 2015), at <columbiaclimatelaw.com/files/2016/12/Wentz-and-Burger-2016-12-Submission-Case-No.-CHR-NI-2016-0001.pdf> (accessed 18 November 2017).

⁴⁹ ‘Carbon Majors’ refers to the largest multinational and state-owned producers of crude oil natural gas, coal and cement. In the petition, Chevron USA, Exxon Mobil USA, Royal Dutch Shell Netherlands, and Conoco Phillips USA were among those identified as part of ‘Carbon Majors.’

⁵⁰ Greenpeace Southeast Asia and Philippine Rural Reconstruction Movement (n 48), 5.

⁵¹ *Cariño v Commission on Human Rights* 204 SCRA 483, 492 (1991) [Supreme Court of the Philippines].

⁵² *Leghari v Federation of Pakistan*, *supra* nt 1, 2.

dignity, should be read in conjunction with the concept of sustainable development, the precautionary principle, inter- and intra-generational equity and the idea of public trust. On this score, it noted the delay of the government in implementing the Framework of Climate Change Policy (2014-2030). Such inaction on the part of the State was viewed as a violation of the fundamental rights of the people.⁵³

Pursuant to the Lahore High Court decision, the concerned federal government ministries, consisting of the Ministry of Climate Change, Ministry of Planning Development and Reform, the National Disaster Management Authority, and the Ministry of Water and Power, among others, were directed to nominate their respective climate change focal person. The government ministries were likewise instructed to identify adaptation action points that can be achieved by December 31, 2015. Lastly, the Lahore High Court expressed the need for the creation of a Climate Change Commission.⁵⁴ The doctrines set forth by the Lahore High Court can be used as guidelines for a successful claim against the Philippine government. The author regards *Leghari* as a landmark and fairly recent decision that validates the trend towards climate change litigation. The applicability of *Leghari* to the Philippines is premised on the absence of a counterpart Philippine case addressing the issue of climate change in relation to the shortcomings of the government. It is also predicated on stark similarities in the antecedent between the two countries, in terms of the impact of climate change, the right adversely affected, and the shortcomings of the government to protect the people from further harm, which are set forth below. The discussion starts from the concept of the right to life, in the context of climate change. While the right to life is supported by legislation, laws are not fully implemented. The next portion enumerates specific examples where the Philippine government's efforts to protect its people from the adverse effect of climate change have been inadequate.

A. The Right to Life of Filipinos Is Placed in Danger Due to Climate Change

The right to life is an inherent right.⁵⁵ It is a right enjoyed by everyone regardless of origin and economic status, and a right that cuts across communities and represents a national concern. Furthermore, it contemplates a 'supreme right from which no derogation is permitted even in times of public emergency which threatens the life of the nation.'⁵⁶ In the Philippines, the Constitution sets forth that the 'State values the dignity of every human person and guarantees full respect for human rights.'⁵⁷ More specifically, the right to life is entrenched within the Constitution: 'No person shall be deprived of life, liberty, or property without due process of law.'⁵⁸ The right to life takes numerous forms. In relation to climate change, the right to life implies a positive duty for States to protect the environment,⁵⁹ which

⁵³ *Id.*, 7-8.

⁵⁴ *Id.*, 8.

⁵⁵ Article 6(1), UN General Assembly, *International Covenant on Civil and Political Rights* (1966) 999 UNTS, 171 (ICCPR).

⁵⁶ UN Human Rights Committee, *General Comment No. 6: Article 6 (Right to Life)*, 16th session, UN Doc HRI/GEN/1/Rev.1 at 6 (1994) (30 April 1982), [1].

⁵⁷ 1987 Constitution (Philippines) art 2, s 11.

⁵⁸ 1987 Constitution (Philippines) art 3, s 1.

⁵⁹ Bach, T, "Human Rights in a Climate Changed World: The Impact of COP21, Nationally Determined Contributions, and National Courts" (2015-2016), 40(3) *Vt L Rev* 561, 562, citing John Knox, 'Greening Human Rights' (*Open Democracy*, 14 July 2015), at <opendemocracy.net/openglobalrights/john-knox/greening-human-rights> (accessed 19 November 2017).

means a freedom from environmental factors that may cause harm to the people. There is a valid reason to integrate the right to life with the environment: the protection of the environment is essential to the well-being and enjoyment of the right to life of an individual.⁶⁰

In *Leghari*, the Lahore High Court identified alterations in the climate system of Pakistan. It observed that ‘these climatic variations have primarily resulted in heavy floods and droughts, raising serious concerns regarding water and food security.’⁶¹ As elucidated by the Lahore High Court, the people were impeded from enjoying the right to life, a right that is supposed to be guaranteed under the Constitution.⁶² In a similar manner, climate change in the Philippines highlights the degradation of the environment and deprivation of the right to life. Strong typhoons and extreme rainfall deny Filipinos a sense of safety in their own homes. Accordingly, rising temperature and agricultural shortage hinder stable access to daily sustenance. As communities deal with the effects of climate change, their very source of livelihood hangs precariously. The totality of the conditions places Filipinos’ lives at risk, as they become more prone to sickness and worse, closer to death.

Invoking the right to life is closely linked to the concept of self-preservation. Self-perpetuation is a theme that has existed since time immemorial, with both self-preservation and self-perpetuation remaining independent of the existence of a government or a legal system.⁶³ They are fundamental in character, serving as guiding principles for the survival of men and women. The essence of the right to life is so basic that its protection is of paramount importance.

On this score, the right to life in both the Philippines and Pakistan constitutes a fundamental freedom that is far from being realised. Although this is a global concern, for these two States in particular, the deprivation of the right to life intersects with the negative implications of climate change.

B. The Adverse Effects of Climate Change in the Philippines Can Be Attributed to the Government and the Functions Attached to Its Agencies

The impact of climate change can be attributed to the Philippine government. Despite a general framework strategy and an action plan, key agents of the State have not assumed their respective functions in accordance with their mandate. The aforementioned *Metropolitan Manila Development Authority v Concerned Residents of Manila Bay* is a concrete example of how the Philippine Supreme Court called on the various agencies of the government to perform their duties pertaining to the environment. Regardless of the reasons for inaction, the government can be easily identified as the party instrumental for the absence of initiative in combating climate change, to the detriment of the people. To be clear, climate change is not created by the State. However, notwithstanding the phenomenon and the prevalence of its impact, the government has failed to take relevant positive action. Aggravating the situation is the fact that government obligations with respect to the environment did not emerge simply because of climate change awareness.

⁶⁰ UN General Assembly, *Declaration of the United Nations Conference on the Human Environment*, UN Doc A/Conf.48/14/Rev.1 (1973) (16 June 1972), [1-2].

⁶¹ Lahore High Court, W.P. No. 25501/2015, 4 September 2015, 6.

⁶² *Id.*, 7.

⁶³ 224 SCRA 792 (1993) [Supreme Court of the Philippines], 805.

The State's functions have constitutional underpinnings that are intended to withstand the test of time and current demands. For one, the State has the mandate to 'protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.'⁶⁴ For another, it has the duty 'to protect and promote the right to health of the people.'⁶⁵ The mandate of the State in relation to the environment has an international character. Under the International Covenant on Civil and Political Rights, States are bound to ensure the rights as set forth in the convention,⁶⁶ one of which being the right to life. Thus, the State is expected to take positive action, in the form of laws and measures, to accomplish its legal obligations.⁶⁷

In *Leghari*, the Lahore High Court pointed out that the Framework for Implementation of the National Climate Change Policy is not the end goal of the government. Rather, the Framework should set the tone for future planning. The High Court also noticed that no substantial action has been taken by the government to implement the Framework. On this ground, the High Court expressed the need for effective protection of the fundamental rights of the people.⁶⁸

In the Philippines, the duties of the State in relation to climate change are positive in character, pursuant to the policy of 'protecting the climate system for the benefit of humankind, on the basis of climate justice or common but differentiated responsibilities and the Precautionary Principle to guide decision-making in climate risk management.'⁶⁹ Additionally, the State is bound to realise its policy of allowing the ecosystem to adapt to climate change, ensuring food production, and promoting sustainable economic development.⁷⁰ More importantly, the State is bound to reduce the adverse effects of climate change and maximise its benefits, to adopt an approach that favours the impoverished in climate change efforts, and one that institutionalises government initiatives for proper coordination during the implementation of climate change projects.⁷¹

Similar to *Leghari*, the foregoing ideals of the Philippine government have not come into fruition. The Philippine government has no one to blame but its own agencies for the continuing damage brought by climate change and for weak coordination in employing a holistic effort to the problem. The delineation of the functions of the departments under the Executive branch provides a clearer understanding of the government agencies directly involved in managing the risks of climate change. The Climate Change Commission is tasked to 'to coordinate, monitor and evaluate the programs and action plans of the government' relating to climate change.⁷² Furthermore, it has the duty to create an environment that integrates climate change mitigation and adaptation, formulate plans to mitigate greenhouse gas emissions, facilitate capacity building, and provide technical and financial assistance to research.⁷³ Furthermore, the Department of Environment and Natural

⁶⁴ 1987 Constitution (Philippines) Article 2, s 16.

⁶⁵ *Id*, Article 2, s 15.

⁶⁶ Article 2(1), UN General Assembly, *International Covenant on Civil and Political Rights* (1966) 999 UNTS 171 (ICCPR).

⁶⁷ Human Rights Committee, *supra* nt 56, 5.

⁶⁸ *Leghari v Federation of Pakistan*, Lahore High Court, W.P. No. 25501/2015, 14 September 2015, [9, 11].

⁶⁹ Climate Change Act of 2009 (Philippines), s 2.

⁷⁰ *Ibid*.

⁷¹ *Ibid*.

⁷² *Id*, s 4.

⁷³ *Id*, s 9(g), (h), (m), (n).

Resources is compelled to set up a climate change information management system and network.⁷⁴ The Department of Foreign Affairs similarly is required to recommend the ratification of international agreements pertaining to climate change.⁷⁵ The Department of Interior and Local Government further has to provide capacity-building projects for local government units with respect to climate change.⁷⁶ As a final example, government financial institutions are committed to giving preferential financial packages for programmes relating to climate change.⁷⁷

At first glance, the joint effort of the aforementioned agencies appears to be remarkable. It provides an assurance that there is a structured response to climate change. Despite the inter-agency participation in climate change policies, shortcomings unfortunately persist. While the response to climate change is strong on paper, implementation is a completely different matter. The absence of effective government tools has resulted in the failure to equip parties with sufficient skills to manage climate change risk.

i. The Philippines Is a Reluctant Party to the Paris Agreement

Although the Philippines is a signatory to the Paris Agreement, ratification took time to be concluded. The country's commitment to the Paris Agreement can be regarded as mere lip service. In its Intended Nationally Determined Contributions submitted to the United Nations Framework Convention on Climate Change, the Philippines committed to reduce greenhouse gas emissions by 70% come 2030. However, the mitigation contribution is dependent on aid, whether financial, technological or in terms of capacity building.⁷⁸ This is effectively a conditional commitment, which relies on external factors, not domestic efforts. Given the economic situation of the Philippines, and its status as a developing country, the government can easily justify its failure to comply with the commitment to reduce greenhouse emissions.

No less than the President of the Philippines initially declared an unwillingness to observe the country's pledge to contribute to climate change mitigation. According to President Rodrigo Duterte, since developed countries have benefitted from substantial emissions, other countries should be given an opportunity to industrialise as well. He then criticised the Paris Agreement for hindering the economic growth of developing countries.⁷⁹ It took an urging from his Cabinet before he eventually decided to uphold the agreement.⁸⁰ However, even then, the formalities for accession were not immediately finalised. The

⁷⁴ *Id.*, s 15(c).

⁷⁵ *Id.*, s 15(d).

⁷⁶ *Id.*, s 15(b).

⁷⁷ *Id.*, s 15(f).

⁷⁸ Republic of the Philippines, 'Intended Nationally Determined Contributions' (October 2015) 3-4, at <<http://www4.unfccc.int/submissions/INDC/Published%20Documents/Philippines/1/Philippines%20-%20Final%20INDC%20submission.pdf>> (accessed 19 November 2017).

⁷⁹ King, E, 'Philippines Won't Honour UN Climate Deal, Says President' (Climate Home, 18 July 2016), at <climatechangenews.com/2016/07/18/philippines-wont-honour-un-climate-deal-says-president/> (accessed 19 November 2017).

⁸⁰ Sabillo, KA, 'Duterte to Uphold Paris Agreement' *Inquirer* (Manila, 7 November 2016), at <globalnation.inquirer.net/148972/duterte-to-uphold-paris-agreement> (accessed 19 November 2017).

additional period of delay gave the President more time to slam the ‘industrialised countries’ for violating the agreement without facing sanction.⁸¹

Because the Philippines is an insignificant contributor to greenhouse gas emission, the direction of the State is to excuse itself from the obligations under the Paris Agreement. This is exactly the point raised by the High Commissioner of the Human Rights Council regarding the need to adopt positive measures to protect the right to life.⁸² Beyond simple words of support for a common cause, the Philippine government should perform positive acts, regardless of the degree of its contribution to global emission. The country’s expectation under the Paris Agreement was almost derailed by a contrary perspective. On this score, it can be argued that the Department of Foreign Affairs failed in making necessary, effective, and immediate recommendations for the country’s compliance with the Paris Agreement.

ii. Reductions of Greenhouse Gas and Carbon Dioxide Emissions Remain to Be Seen

The Philippines has not met its commitment on climate change risk management, based on its emission levels. As reported by the United Nations Climate Change Secretariat, the trend in recent years shows a steady rise of emissions in the Philippines.⁸³ In particular, carbon dioxide emissions from fuel combustion and greenhouse gas emissions saw a consistent increase from 1990 up to 2012. The percent of change in carbon dioxide emissions during this period is at a staggering 109.5%, or 3.4% growth annually. This figure is not in harmony with the Philippine government’s projected carbon dioxide emission reductions by 2015, 2020, 2025 and 2030.⁸⁴

The energy sector and gas account for the majority of the total emissions in the Philippines. Expectedly, energy production, in the form of imports and exports, rose in the same span.⁸⁵ Overall, while there was a slight reduction in total greenhouse gas emissions from 2010-2012,⁸⁶ it did not conclusively indicate whether the Philippines is on track to meet its targeted 70% reduction in greenhouse gas emissions by 2030.

Notably, the Philippines did not submit its emission reduction target for the second commitment period from 2013-2020.⁸⁷ Although the country signified its acceptance of the Doha amendment, the lack of reduction target tells a different story. Ideally, the Philippines should work hand in hand with other States, even if the country’s contribution to total greenhouse gas and carbon dioxide emissions is insignificant on a global scale. The implication of the Philippines’ attitude on this issue is that the government is not fully committed to reducing carbon emissions. The approach taken by the State on this matter is tantamount to the government consenting to the perpetuation of the global problem of

⁸¹ *Ibid.*

⁸² Human Rights Committee, *supra* nt 56, 5.

⁸³ United Nations Climate Change Secretariat, ‘UNFCCC Country Brief 2014: Philippines’ (1 October 2015).

⁸⁴ Climate Change Commission, *supra* nt 6, 27.

⁸⁵ United Nations Climate Change Secretariat, *supra* nt 83.

⁸⁶ European Commission, Joint Research Centre and Netherlands Environmental Assessment Agency, ‘Total Greenhouse Gas Emissions (kt of CO₂ Equivalent)’ (*World Bank*, 2016), at <data.worldbank.org/indicator/EN.ATM.GHGT.KT.CE?end=2012&locations=PH&start=1970&view=chart&year_high_desc=true> (accessed 19 November 2017).

⁸⁷ Annex B, *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, (1998) 2303 UNTS, 162.

climate change. Worse still, it validates the country's disregard for its international obligation of stabilising greenhouse gas concentrations at a level that prevents dangerous anthropogenic interference with the climate system.⁸⁸ This emphasises how the Philippines overlooks the Paris Agreement, specifically the obligation to undertake rapid reduction in greenhouse gas emissions.⁸⁹

iii. The People's Survival Fund Has Not Been Fully Utilised

Under the law, the People's Survival Fund is a special fund in the National Treasury of the Philippines, intended to support adaptation activities of local government units and communities.⁹⁰ Every year, the government is required to allot at least PhP1,000,000,000.00 to this fund.⁹¹ The distinct character of the People's Survival Fund lies in the non-reversion of the balance and amount appropriated to the general fund.⁹²

The People's Survival Fund was meant to reach far-flung areas of the Philippines and facilitate financing programs under the National Framework Strategy on Climate Change. Yet, there was considerable delay in its availability. For three years, beginning from the incorporation of amendments to the Climate Change Act in 2012,⁹³ potential beneficiaries had no clue as to when the People's Survival Fund would be activated.

Information dissemination on climate change and adaptation and mitigation measures is under the supervision of the Philippine Information Agency.⁹⁴ Local provision of information serves as the tool for communities to institute change in their areas.⁹⁵ However, those interested in utilising the People's Survival Fund have not taken full advantage of it. Local government units were not aware that the fund exists.⁹⁶ That even the highest elected official of a local government unit was not sufficiently apprised of government mechanisms, such as the People's Survival Fund, depicts a weak national government information campaign.

While other local government units may have an idea about the People's Survival Fund, they lacked sufficient information on the application process. Less than one hundred local government units have applied for the People's Survival Fund, where some of the applications did not proceed due to non-compliance with documentary requirements.⁹⁷ To

⁸⁸ Article 2, United Nations Framework Convention on Climate Change.

⁸⁹ Article 4(1), Paris Agreement.

⁹⁰ Climate Change Act of 2009 (Philippines), s 20.

⁹¹ *Id.*, s 19.

⁹² *Ibid.*

⁹³ An Act Establishing the People's Survival Fund to Provide Long-Term Finance Streams to Enable the Government to Effectively Address the Problem of Climate Change, Amending for the Purpose Republic Act No. 9729, Otherwise Known as the 'Climate Change Act of 2009', and for Other Purposes (Philippines).

⁹⁴ Climate Change Act of 2009 (Philippines), s 15(e).

⁹⁵ International Council on Human Rights Policy, 'Climate Change and Human Rights: A Rough Guide' in Scott Leckie, Ezekiel Simperingham and Jordan Bakker, *Climate Change and Displacement Reader* (Earthscan 2012).

⁹⁶ Rey, A, 'LGUs Frustrated Over Delayed Use of People's Survival Fund' (*Rappler*, 30 May 2015), at <rappler.com/move-ph/issues/disasters/94713-mayors-frustrated-over-people-survival-fund> (accessed 18 November 2017).

⁹⁷ Lagsa, B, '1,715 Towns and Cities Reminded of Available People's Survival Fund' (*Rappler*, 8 June 2016), at <rappler.com/move-ph/135785-climate-change-local-governments-survival-fund> (accessed 18 November 2017).

put things in perspective, there are 1,715 local government units all over the Philippines. Even with the nationwide effects of climate change, less than 10% of the total number of local government units tried to apply for the People's Survival Fund. The low turnout is alarming, to say the least. As of March 2016, 38 proposals have been submitted for funding. These proposals emanated from 19 local government units, one district representative, two local community organisations and one private citizen. Nine submissions, covering more than PhP450,000,000.00, have the potential to be approved.⁹⁸ The capacity of the People's Survival Fund has not been fully realised. Bearing in mind the serious impact of climate change, it is strange that the fund is still a work-in-progress. The nature of the matter, as well as the possible risks to the lives of Filipinos, have not convinced the government to act with resolve, by accelerating the application review and release of the funds requested.

iv. The Government Has Not Enacted Specific Measures to Address Climate Change

Formulating the National Framework Strategy on Climate Change and National Climate Change Action Plan is not the end of the government's duty of protecting the people's right to life. Actual fulfilment of the vision is the next phase of this function. Sadly, concrete action leaves much to be desired. On this score, the government has not taken the crucial step of crafting the statutes necessary to pursue the objectives set forth in the framework strategy and action plan.

One of the targets outlined in the framework strategy is the development of other efficiency measures towards a low carbon economy in the energy sector.⁹⁹ Priority is placed on enhancing energy efficiency and conservation, reinforcing energy infrastructure and diversifying energy sources.¹⁰⁰ Yet, the corresponding statute has not been enacted. The legislative bill¹⁰¹ is still being consolidated/substituted in the Report under the Energy, Ways and Means, and Finance Committees as of 2017.¹⁰² Had Congress enacted the statute, the State would have achieved an efficient and judicious utilization of energy.¹⁰³ Another bill that has not progressed relates to the increased uptake of alternative fuels.¹⁰⁴ Senate Bill No. 460 grants incentives for manufacturers, importers, and users of electric, hybrid and other alternative fuel vehicles.¹⁰⁵ In spite of this State target, the bill¹⁰⁶ providing incentives for

⁹⁸ Antonio Fernandez, 'People's Survival Fund: Overview and Status' (2016), at <slideshare.net/NAP_Global_Network/peoples-survival-fund-overview-and-status> (accessed 18 November 2017).

⁹⁹ Climate Change Commission, 'National Framework Strategy on Climate Change' (n 17), 22.

¹⁰⁰ *Id.*, 23.

¹⁰¹ Senate Bill No. 30, 17th Congress (Philippines) entitled 'An Act Institutionalizing Energy Efficiency and Conservation, Enhancing the Efficient Use of Energy, Granting Incentives to Energy Efficiency and Conservation Projects, and For Other Purposes.'

¹⁰² Senate of the Philippines, 'Energy Efficiency and Conservation Act' (*Senate of the Philippines*, 2017), at <senate.gov.ph/lis/bill_res.aspx?congress=17&q=SBN-30> (accessed 29 November 2017).

¹⁰³ Senate Bill No. 1531, 17th Congress (Philippines), s 2(a).

¹⁰⁴ Climate Change Commission, 'National Framework Strategy on Climate Change' (n 17), 24.

¹⁰⁵ Senate Bill No. 460, 17th Congress (Philippines), ss 5-8.

¹⁰⁶ Senate Bill No. 460, 17th Congress (Philippines) entitled 'An Act Providing Incentives for the Manufacture, Assembly, Conversion and Importation of Electronic, Hybrid and other Alternative Fuel Vehicles, For Other Purposes.'

vehicles using alternative fuel has not moved forward. It is still pending in the Committee on Ways and Means and Trade, Commerce and Entrepreneurship as of 2016.¹⁰⁷

The two bills demonstrate that the government has a long way to go before it can meet the objectives specified in the National Framework Strategy on Climate Change. The lack of enabling laws reduces the framework strategy into lofty aspirations. With no clear sight on how to execute these objectives, the government has settled with small victories in the form of a framework strategy and action plan, which are mere statements of intent and expressions of willingness to pursue a certain direction.

Verily, the inadequacy of government action symbolises the enduring struggle of Filipinos in dealing with climate change. Although the State is equipped with the resources and technical expertise to formulate a course of action, it has not implemented the necessary projects. Neither has the government manifested that it is taking climate change mitigation and adaptation measures seriously.

IV. The Philippine Government Can Be Held Accountable for Its Inaction in Addressing Climate Change

After identifying the instances when the right to life was put in danger as a result of climate change and the weaknesses of the State and its agents, a case can be filed before the domestic court. The aim of this climate change litigation is to hold the government accountable for failing to protect the Filipinos' right to life. The case also intends to enjoin the government to adopt a concrete and prompt response to climate change. The discussion is premised on an affirmation of legal standing to file a case before Philippine courts. This legal standing will be closely linked to the corresponding cause of action against the State. Formulating the cause of action entails an examination of the policy direction of the government and establishing accountability. Compliance with the elements of legal standing, cause of action, and the specific mandate involved gives rise to the appropriate remedy before the court. It is in this regard that the proper party can seek a relief to compel the State and its agents to perform an act.

A. Filipinos Have Legal Standing to Sue Before the Court

An essential element for successful climate change litigation is standing to sue. Due to the overriding interests attached to climate change litigation, addressing the preliminary question of standing requires a lower quantum of proof.¹⁰⁸ Liberality in assessing legal standing is not uncommon in the Philippines. In the aforementioned *Oposa v. Factoran*,¹⁰⁹ the Supreme Court stressed the novelty of the environmental case in order to recognise the standing of minors, who represent the current and future generations. In other cases, the Supreme Court had the occasion to elucidate the procedural requirement of legal standing, clarifying that ordinary citizens can sue, even in the absence of direct injury. The case must demonstrate 'transcendental importance,' 'paramount interest,' or 'far-reaching

¹⁰⁷ Senate of the Philippines, 'Electric, Hybrid and Other Fuel Vehicles Incentives Act of 2016' (*Senate of the Philippines*, 2017), at <https://www.senate.gov.ph/lis/bill_res.aspx?congress=17&q=SBN-460> (accessed 29 November 2017).

¹⁰⁸ Mank, B, "Standing for Private Parties in Global Warming Cases: Traceable Standing Causation Does Not Require Proximate Causation" *Michigan State Law Review* (2012) 869, 918, citing *Comer v Murphy Oil USA*, 585 F.3d 855 (5th Cir. 2009), 864.

¹⁰⁹ 224 SCRA 792 (1993) [Supreme Court of the Philippines].

implications.¹¹⁰ Legal standing will also be acknowledged if the case relates to public expenditures. The case then takes the form of a taxpayer's suit, where the petitioner, invoking his or her capacity as taxpayer and premised on the injury to be caused by unlawful expenditure, asserts the legality of the government's use of public funds.¹¹¹

Thus, the potential litigation against the government can be instituted by an ordinary Filipino. For example, a farmer can invoke legal standing on the ground that said farmer has a personal and substantial interest in the subject climate change litigation such that a direct injury will be sustained.¹¹² To reiterate, the agricultural industry is one of the sectors that suffers the most damage due to climate change. The farmer's direct injury consists of loss of crops, which is the very source of livelihood.

People from other sectors can also invoke legal standing. With the broad impact of climate change, they have their respective accounts of the injuries incurred. Warmer temperature, floods, typhoons, and rising sea level cause detriment to communities. Legally speaking, each individual in the Philippines has a direct and specific interest in holding the State accountable for failing to adopt measures to protect the right to life.

The legal standing of a farmer and an ordinary Filipino can also be based on their capacity as taxpayers. An amount of PhP50,000,000.00 has been allocated under the Climate Change Act for the initial operating fund of the Climate Change Commission.¹¹³ For 2016, the budget of the Climate Change Commission for general administration, operations and projects is PhP64,946,000.00.¹¹⁴ Moreover, PhP1,000,000,000.00 is annually set aside for the People's Survival Fund.¹¹⁵ As a taxpayer, a farmer or an ordinary Filipino, each person has a stake in government spending. From the public character of the funds involved, the possibility of these large sums of money being left unused or even misused will contravene the proper disbursement of public funds.¹¹⁶

Another ground for leniency in determining legal standing in climate change litigation is the fact that the potential case is of paramount importance. The situation in the Philippines is a clear case of disregard by the government of its constitutional and statutory duties.¹¹⁷ As previously identified, various government agencies and instrumentalities have not fully assumed their functions with respect to climate change. The government's indifference to this environmental issue is a matter imbued with national interest, thus clothing the individual with proper standing to sue.

¹¹⁰ *Mamba v Lara*, 608 SCRA 149, 163 (2009) [Supreme Court of the Philippines], citing *David v Macapagal-Arroyo*, 489 SCRA 160 (2006) [Supreme Court of the Philippines].

¹¹¹ *League of Cities of the Philippines v Commission on Elections*, 571 SCRA 263, 305 (2008) [Supreme Court of the Philippines].

¹¹² See *Bayan Muna v Romulo*, 641 SCRA 244, 254 (2011) [Supreme Court of the Philippines], citing *Jumamil v Café*, 470 SCRA 475 (2005) [Supreme Court of the Philippines] and *Integrated Bar of the Philippines v Zamora*, 338 SCRA 81 (2000) [Supreme Court of the Philippines].

¹¹³ Climate Change Act 2009 (Philippines), s 21.

¹¹⁴ General Appropriations Act, Fiscal Year 2017 (Philippines), pt 27B.

¹¹⁵ Republic Act No. 10174 (Philippines), s 13.

¹¹⁶ See *Jacomille v Abaya*, 757 SCRA 273, 292 (2015) [Supreme Court of the Philippines], citing *Land Bank v Cacayuran*, 696 SCRA 861 (2013) [Supreme Court of the Philippines].

¹¹⁷ See *Francisco v Nagmamalalaskit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, 415 SCRA 44, 139 (2003) [Supreme Court of the Philippines], citing *Kilosbayan v Guingona*, 232 SCRA 110 (1994) [Supreme Court of the Philippines].

B. There Is a Cause of Action Against the Government

A cause of action is defined as ‘the act or omission by which a party violates a right of another.’¹¹⁸ It implies ‘facts which are stated entitling a complaining party to some judicial relief.’¹¹⁹ In the domain of climate change litigation, substantiating the violation of a right warrants an allegation against the government. Ultimately, the government is in charge of enacting measures to mitigate and adapt to the effects of climate change.

A perusal of the main priority areas of the Philippine government and the outcomes envisioned summarises the cause of action against the State. In principle, the government concentrates on: 1) food security, 2) water sufficiency, 3) environmental and ecological stability, 4) human security, 5) climate-friendly industries and services, 6) sustainable energy and 7) knowledge and capacity development. These seven priorities have their corresponding outcomes: 1) ensure availability, stability, accessibility, and affordability of safe and healthy food, 2) manage supply and demand, quality and conservation of water, 3) protection and rehabilitation of critical ecosystems, 4) reduce risks of people to climate change and disasters, 5) create sustainable consumption and production, 6) promote energy efficiency and conservation and 7) enhance knowledge on climate change.¹²⁰ After discussing in detail the living conditions of communities and the inadequacies of the government, there is sufficient basis to assert that the government has not accomplished significant progress to realise these seven priorities and outcomes. This intersection of the right to life and the State’s duties gives rise to a cause of action against the government.

Internationally, the Philippines has struggled to cope with climate change expectations, such that human rights protection is derailed. A formal communication from the Special Procedures mandate-holders of the Human Rights Council, which enumerated State duties with respect to climate change, captures the weaknesses of the Philippine government. The letter called for the promotion of human rights in climate change action, adoption of mitigation measures to reduce global emissions, use of adaptation measures to protect against harm and facilitation of access to information.¹²¹ The Philippine government has not attained the aspirations outlined in the letter. Its agencies continue to languish, figuring out how to enforce the objectives they undertook.

The prevalence of climate change is not an unbearable burden that constitutes an excuse for the State’s disregard of its duties. The Philippine government’s failure to adopt effective measures is a departure from its international mandate of protecting the people against climate change-related threats to human rights. When a State ignores the principles set forth in the United Nations Framework Convention on Climate Change and the Paris Agreement, it likewise overlooks the essence of international cooperation as an obligation.¹²² This is tantamount to violations of other international instruments, which uphold the right

¹¹⁸ Rules of Court (Philippines) Rule 2, s 2.

¹¹⁹ Harris, S “What is a Cause of Action?” (1927-1928) 16(6) Cal L Rev 459, 467.

¹²⁰ Climate Change Commission, *supra* nt 6, 6.

¹²¹ Special Procedures Mandate-Holders of the Human Rights Council, ‘A New Climate Change Agreement Must Include Human Rights Protections for All’ (*United Nations Human Rights Office of the High Commissioner*, 17 October 2014) 3, at <ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf> (accessed 18 November 2017).

¹²² Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, A/HRC/10/61, 10th sess, Agenda Item 2 (15 January 2009), 99.

to life and affirm human dignity, such as the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

As aptly observed by the High Commissioner for Human Rights, accountability mechanisms in policy implementation should be installed. This mechanism should guarantee relief against human rights violations.¹²³ Establishing a cause of action under climate change litigation is an example of this accountability tool, thus bolstering the people's will to take a stand against insufficient government response to climate change.

C. Mandamus Lies Against the Government

Mandamus is a remedy to command the performance of an act within the powers of an office and equivalent to a public duty.¹²⁴ It is specifically directed at breaches of a statutory duty and aimed at compelling the performance of a discretionary power by an administrator.¹²⁵ In the Philippines, a petition for *mandamus* can be resorted to when an officer unlawfully neglects to perform an act specifically enjoined by law, or unlawfully excludes the enjoyment of a right and there is no other speedy remedy in the ordinary course of law.¹²⁶ Furthermore, *mandamus* is employed to require execution of a ministerial duty.¹²⁷ As jurisprudentially defined, a ministerial duty is one where an officer performs in a given set of facts, pursuant to the mandate of legal authority.¹²⁸

To understand a ministerial duty, reference should be made to pertinent laws and guidelines. The duties of the government are outlined in the Climate Change Act, while the specific targets set by the State are found in the National Framework Strategy on Climate Change and the National Climate Change Action Plan. The directive on the government has been clearly specified. Hence, the concerned government agencies and instrumentalities are bound to comply with their respective mandates. The State does not have discretion on whether or not to adopt measures on climate change and has the ministerial duty to give due attention to the provision of services to the public.

Given the failure of the government to perform its duty of formulating an effective response to climate change, the issuance of a writ of *mandamus* is warranted. To facilitate climate change proceedings, the Supreme Court issued the Rules of Procedure for Environmental Cases.¹²⁹ Although the scope of the rules does not explicitly include the Climate Change Act, the latter is subsumed in 'other existing laws that relate to the conservation, development, preservation, protection and utilisation of the environment and natural resources.'¹³⁰ In accordance with the general concept of *mandamus*, the Rules of Procedure for Environmental Cases has a counterpart section on writ of continuing *mandamus*.¹³¹ The writ is designed to address the government's unlawful neglect of a duty enjoined by law in relation to the enforcement of an environmental regulation or a right

¹²³ *Id*, 83.

¹²⁴ Benjafield, DG, 'Statutory Discretions' (1956) 2(1) *Sydney Law Review* 1, 2.

¹²⁵ Fowler, RJ, 'The Prospects of Judicial Review in Relation to Federal Environmental Impact Statement Legislation' (1977) 11(1) *Melb Univ L Rev* 1, 13, 16.

¹²⁶ Rules of Court (Philippines) Rule 65, s 3.

¹²⁷ *Angchangco v Ombudsman*, 268 SCRA 301, 306 (1997) [Supreme Court of the Philippines].

¹²⁸ *Heirs of Venturillo v Quitain*, 506 SCRA 102, 110 (2006) [Supreme Court of the Philippines], citing *Symaco v Aquino*, 106 Phil. 1130 (1960) [Supreme Court of the Philippines].

¹²⁹ A.M. No. 09-6-8-SC (Philippines).

¹³⁰ Rules of Procedure for Environmental Cases (Philippines), s 2.

¹³¹ *Id*, Rule 8.

therein. The relief available to the petitioner is a command to the government agency to perform the acts required of it. It also contemplates payment for damages incurred by said petitioner.¹³²

In relation to climate change litigation, the writ of continuing mandamus allows an aggrieved party to obtain a favourable order from government inaction. Accordingly, an ordinary Filipino will invoke the difficulty of dealing with the ill-effects of climate change as a premise for filing the petition, with allegations pointing to the State's disregard of its mandate under the Climate Change Act. The relief sought by the petitioner is for the concerned government agencies and instrumentalities to take action. After all, enforcement of the law is the primary function of these offices, which is ministerial in character and may be compelled by *mandamus*.¹³³

Pursuant to the writ of continuing *mandamus*, the court can direct the government to perform specific acts, such as: 1) enhanced coordination with local government units on the use of the People's Survival Fund, through the Climate Change Commission and Department of the Interior and Local Government, 2) further reduction of greenhouse gas emissions, through the Department of Environment and Natural Resources, Department of Science and Technology, and Philippine Atmospheric, Geophysical, and Astronomical Services Administration and 3) heightened information drive for Filipinos so that they can lobby for the passage of relevant bills on climate change priorities of the government, through the Philippine Information Agency and Department of Education. To monitor progress and ensure compliance, the court can require these agencies to submit periodic updates on the status of their accomplishments.¹³⁴

Conclusion

With the preparatory framework for climate change having been set, now is the right time to implement the policies of the government, in line with the State's direction of pursuing climate change adaptation and mitigation. However, the government is struggling to meet expectations. Considering the urgency attached to climate change, it comes as a surprise that various agencies and instrumentalities of the government have not been effectively prompt in their response. Years after the enactment of the Climate Change Act, the Philippines seems settled in continuing to identify guiding principles and priorities.

Climate change litigation offers an alternative remedy. Filipinos have the requisite legal standing to institute a case on the ground of violation of their right to life. The persistence of the adverse effects of climate change can be traced to the government's material lack of action in improving the conditions of communities. The distinct weak points of the government are identifiable, based on the statutory obligations of its agencies and instrumentalities. Finally, the procedural rules for climate change litigation represent the commitment of the judicial branch to facilitate legal battles for environment's sake.

The institution of a case against the State should not be regarded as detrimental to government administration. After all, non-governmental actors play integral roles in the development of climate change policies and implementation of measures.¹³⁵ Climate change

¹³² *Id.*, Rule 8, s 1.

¹³³ *Metropolitan Manila Development Authority v Concerned Residents of Manila Bay* (n 46), 671.

¹³⁴ Rules of Procedure for Environmental Cases (Philippines) Rule 8, s 7.

¹³⁵ Peel, J, "Climate Change Law: The Emergence of a New Legal Discipline", (2008) 32(3) *Melbourne University Law Review* (2008) 922, 968.

litigation provides an avenue for a meaningful discussion of possible deficiencies in the present framework. It may even lead to the introduction of other mechanisms that are equally, if not more, beneficial to the people and the environment. In the end, the entire proceedings concern the preservation of the right to life in the midst of climate change.

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