

1. Executive Summary

1. The fisheries provide a significant source of income and livelihood for millions of people worldwide. Asia has the highest numbers of fishers and fish farmers.¹ Notwithstanding, fishing communities are socially and economically vulnerable and their right to adequate food and nutrition (hereafter RTFN) and related rights are often threatened and/or violated due to insecure tenure rights (to land and water resources), lack of or inadequate access to health services, education, and other social protection measures, and abusive and exploitative working conditions.² In addition, in the face of destructive fishing, overfishing, and industrial pollution, fish stock is declining and causing irreparable degradation and damages to marine resources and ecosystems.³
2. This submission focuses on China's extraterritorial obligations (ETOs) vis-à-vis the RTFN and related rights of fisherfolks in Zambales and Pangasinan/Philippines, Banka Island/Indonesia, and Colombo/Sri Lanka.⁴ The selected cases show the impact of China's non-compliance with its ETOs on economic, social, and cultural (ESC) rights, specifically the RTFN of fishers and fish workers worldwide. Breaches of territorial state obligations of the Philippines, Indonesia, and Sri Lanka, while identified, are not referred to in the submission.
3. During its previous UPR in December 2015, China received recommendations relating to its ETOs. Bangladesh and South Africa recommended China to "continue its international cooperation to contribute to the development of the world economy"⁵ and "strengthen international cooperation with other countries on poverty reduction, the realization of the MDGs and good governance"⁶, respectively.
4. In the framework of the envisioned „Belt and Road (BRI) initiative”,⁷ China is increasing its regional cooperation and engagement with countries along the “Belt” – one overland and one maritime across Eurasia, Africa, and Oceania. Specifically, in South East and South Asia, China is building its ties with the countries through trade, investment, and aid. China has signed 14 bilateral agreements with the

¹ FAO. 2016. The State of World Fisheries and Aquaculture 2016. Contributing to food security and nutrition for all. Rome. p. 5 and 32.

² United Nations, General Assembly, Interim report of the Special Rapporteur on the right to food, A/67/268 (8 August 2012), pp. 6-9.

³ Ibid.

⁴ While the focus is on China's extraterritorial state obligations, this does not imply that Philippines, Indonesia and Sri Lanka have respected, protected and fulfilled the RTFN of the concerned communities. In contrary, the analyses show that violations have also occurred due to the breaches of their human rights obligations.

⁵ United Nations, General Assembly, Report of the Working Group on the Universal Periodic Review, China, A/HRC/25/5 (4 December 2013), Para 186.248.

⁶ Ibid. Para 186.250.

⁷ According to the China's Vision and Actions on Jointly Building Belt and Road, "(T) the Belt and Road Initiative aims to promote the connectivity of Asian, European and African continents and their adjacent seas, establish and strengthen partnerships among the countries along the Belt and Road, set up all-dimensional, multi-tiered and composite connectivity networks, and realize diversified, independent, balanced and sustainable development in these countries." National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization. "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road". Available at: http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html

Philippines in November 2017,⁸ and Indonesia's priority on maritime policy has been central in Indonesia-China relations since 2015.⁹ Sri Lanka also features predominantly in the 21st Century Maritime Silk Road, one of the two mega projects of the BRI. China and Sri Lanka have established a strategic cooperative partnership in 2013, focusing on increased cooperation in economy, trade, agriculture, and finance.¹⁰ The impact of China's engagement on the RTFN and related rights of the local population is yet to be assessed; however, there are already some implications as detailed in the selected case studies.

5. Three case studies show how China has breached its obligation to respect the RTFN, the right to work and the right to education of the fishers in Zambales/Pangasinan by denying access to the fishing ground which is crucial for the realization of the RTFN of the fishers. China has also breached its obligation to protect the RTFN and the right to water of the small-scale fishers of Banka Island by failing to regulate the activities of a private corporation PT Mikgro Metal Perdana (PT MMP) and to ensure that it does not harm human rights. Furthermore, China has breached its obligation to respect the RTFN, the right to housing, the right to work, and the right to a healthy environment of fishers in Colombo/Sri Lanka by failing to refrain from measures causing a detrimental impact on the environment and the related livelihood of fisherfolk.
6. The recommendations of the submitting organizations can be found on page 12 of this submission.

2. Legal Framework on China's Extraterritorial Obligations

7. States' obligations do not stop at their national borders. The principle of the universality of human rights requires States to respect, protect and fulfill human rights beyond their borders in certain situations. These Extraterritorial Obligations (ETOs) of States are based on different sources of international human rights law.
8. Articles 55 and 56 of the Charter of the United Nations stipulate that all members pledge to take joint and separate actions in cooperation with the UN to achieve universal respect for human rights and fundamental freedoms for all. The Universal Declaration of Human Rights (UDHR) further sets out in Article 22 a duty of international cooperation for the realization of ESC rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2 (1) emphasizes international cooperation and assistance as an appropriate means for the realization of the ESC rights. The International Covenant on Civil and Political

⁸ Ministry of Foreign Affairs of the People's Republic of China. Joint Statement between the Government of the People's Republic of China and the Government of the Republic of the Philippines (2017/11/16). Available at: www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1511299.shtml

⁹ Ministry of Foreign Affairs of the People's Republic of China. Joint Statement on Strengthening Comprehensive Strategic Partnership between the People's Republic of China and The Republic of Indonesia (2015/03/27). Available at: http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1249201.shtml

¹⁰ Ministry of Foreign Affairs of the People's Republic of China. China and Sri Lanka. Available at: www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/gjlb_663354/2782_663558/

Rights (ICCPR) further elaborates the individual and joint obligations of States to respect human rights, at home and in other countries.

9. CESCR General Comment (GC) No. 24 on State Obligations under the ICESCR in the Context of Business Activities, issued in 2017, clearly spells out States' ETOs with regard to business entities, and requires State Parties to "take the necessary steps to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (...), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant" (para 26). Furthermore, GC No. 24 also addresses the need for remedy, and calls on State Parties to "take steps to (...) redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the States where the harm occurs are unavailable or ineffective" (para 30).
10. Several Treaty Bodies such as the ICESCR, ICCPR, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) have pronounced numerous recommendations emphasizing various human rights obligations of States towards persons outside their borders.¹¹
11. The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (Maastricht Principles),¹² drafted by 40

¹¹ See for ex, 2014 Concluding Observations: India, UN Doc. CEDAW/C/IND/CO 4 - 5 (24 July 2014) and 2015 Concluding Observations: Switzerland, UN Doc. CRC/C/CHE/CO/2-4 (26 February 2015). For a compilation of UN Pronouncements on Extra-Territorial Obligations, see Global Initiative for Economic, Social and Cultural Rights, Working Paper Human Rights Law Sources: UN Pronouncements on Extra-Territorial Obligations. Concluding Observations, General Comments and Recommendations, Special Procedures, UPR Recommendations, July 2015. General Recommendation No. 34 on the Rights of Rural Women (2016), CEDAW, U.N. Doc. CEDAW/C/GC/34, para 62 (c); General Comment No. 3, The Nature of States Parties Obligations (1991), CESCR, U.N. Doc. E/1991/23, para. 14.; General Comment No. 14, The Right to the Highest Attainable Standard of Health (2000), CESCR, U.N. Doc. E/C.12/2000/4, para 35; General Comment No. 12: The Right to Adequate Food (Art. 11) (1999), CESCR, U.N. Doc. E/C.12/1999/5, para. 27; Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights (2011), CESCR, U.N. Doc. E/C.12/2011/1; General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights (2013), CRC, U.N. Doc. CRC/C/GC/16; Concluding Observations on the sixth periodic report of Canada, CESCR, 57th Session (2016), U.N. Doc. E/C.12/CAN/CO/6; Concluding Observations on the fifth periodic report of Norway, CESCR, 51st Session (2013), U.N. Doc. E/C.12/NOR/CO/5; Concluding Observations on the combined fourth and fifth periodic reports of India, CEDAW, 58th Session (2014), U.N. Doc. CEDAW/C/IND/CO/4-5; Concluding Observations of the Committee, Canada, CERD, 17th Session (2007), U.N. Doc. CERD/C/CAN/CO/18; Concluding Observations on the sixth periodic report of Sweden, CESCR, 58th Session (2016), U.N. Doc. E/C.12/SWE/CO/6; Concluding Observations on the combined eighth and ninth periodic reports of Sweden, CEDAW, 63rd Session (2016), U.N. Doc. CEDAW/C/SWE/CO/8-9; Concluding Observations on the fourth periodic report of Austria, CESCR, 51st Session (2013), U.N. Doc. E/C.12/AUT/CO/4; Concluding Observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, CESCR, 58th Session (2016), U.N. Doc. E/C.12/GBR/CO/6; Concluding Observations on the fourth periodic report of France, CESCR, 58th Session (2016), U.N. Doc. E/C.12/FRA/CO/4; General Comment No. 15, The Right to Water (2003), CESCR, U.N. Doc. E/C.12/2002/11; General Comment No. 22, The Right to Sexual and Reproductive Health (2016), CESCR, U.N. Doc. E/C.12/GC/22; General Comment No. 23, The Right to just and favourable conditions of work (2016), CESCR, U.N. Doc. E/C.12/GC/23; Statement on public debt, austerity and the International Covenant on Economic, Social and Cultural Rights (2016), CESCR, U.N. Doc. E/C.12/2016/1; Guiding Principles on Extreme Poverty and Human Rights, Special Rapporteur on Extreme Poverty and Human Rights, UN Doc. A/HRC/21/39, 90 (b), 99, 102; Report of the Special Rapporteur on the right to food, Olivier De Schutter, Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge, A/HRC/13/33/Add.2, para. 5; Special Rapporteur on the Right to Food, Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5; Report of the Independent Expert on the promotion of a democratic and equitable international order, A/HRC/33/40.

¹² ETO Consortium. Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. Available at: www.etoconsortium.org/nc/en/main-navigation/library/maastricht-

international law experts from the world over, and former members of international human rights treaty bodies, clarify the ETOs on the basis of standing international law. The Maastricht Principles, for example, prohibit direct interference by States that nullifies or impairs the enjoyment of ESC rights outside their territories (Principle 20) and require States to take necessary measures to ensure that non-State actors (e.g. TNCs and other business enterprises) do not nullify or impair the enjoyment of ESC rights (Principle 24).

12. The Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004), adopted by FAO Member States, including China, urge the States to avoid and refrain from conducting any activity that may hinder the progressive realization of the right to food of the population of other countries. The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication call for States to work together to ensure that the tenure of small-scale fishing communities granted is protected, specifically in situations of shared waters and fishery resources (para 5.19).
13. On the RTFN of fishers, the former Special Rapporteur on the Right to Food has called upon States to “refrain from taking measures, including large-scale development projects, that may adversely affect the livelihoods of inland and marine smallscale fishers, their territories or access rights, unless their free, prior and informed consent is obtained, and ensure that courts protect such rights; and conduct ex-ante assessments of extractive industry projects, such as sand extraction, operated by private entities in order to evaluate the possible negative human rights impacts on local fishing communities”.¹³
14. China is a State Party to the ICESCR, the CEDAW, and CRC, and a Signatory to the ICCPR. As such, and in consideration of the above, China has the ETO to respect the ESC rights, including the RTFN, by refraining from actions that may impair the ESC rights of the population outside of its territory. In addition, China has the ETO to protect the ESC rights abroad by ensuring that business entities domiciled in China do not nullify or impair the ESC rights of population abroad. Finally, China has the ETO to cooperate in the fulfillment of ESC rights extraterritorially.

principles/?tx_drblob_pi1%5BdownloadUId%5D=23 See also the Commentary to the Maastricht Principles which includes the legal sources for each principle. Olivier De Schutter et al., Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. Available at: http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=63

¹³ United Nations, General Assembly, Interim report of the Special Rapporteur on the right to food, A/67/268 (8 August 2012). Para 61 C.

3. China's Compliance with its Extraterritorial Obligations

3.1. *The Philippines – Scarborough Shoal – Violation of Fishers' Right to Food and Nutrition due to Chinese Blockade*

15. Situated in the South China Sea, Scarborough Shoal is a triangle-shaped chain of reefs and rocks. It has a perimeter of 46 km, covering an area of 150 Km², including an inner lagoon. Scarborough Shoal and its surrounding area are traditional rich fishing grounds, and generations of fishers from the neighboring countries – Vietnam, China, and Taiwan - have fished in and around Scarborough Shoal.¹⁴ It is also a disputed territory claimed by several States including the Philippines and China.
16. At the beginning of 2012, Philippines increased inspections in Scarborough Shoal due to reported incidences of Chinese vessels harvesting endangered marine species such as giant clams and corals using destructive methods. As a response, China expanded its surveillance and law enforcement vessels, leading to a series of stand-offs between the two parties in April/May 2012. By June, China anchored vessels and tied them together and built fences across these vessels with a rope, virtually creating a “no fishing” zone in waters. The Filipino fishers were barred from entering the lagoon of Scarborough Shoal.¹⁵ The fishers reported that Chinese coast guard vessels fired water cannons at them as they tried to venture close to the shoal.¹⁶ Even before the 2012 incidences, fishers have reported cases in which good quality fish were forcibly taken by some Chinese fishers.¹⁷ Since the initiation of the arbitration case (see below), China has also conducted several massive reclamation projects and construction to turn submerged reefs into artificial islands for hosting military structures and equipment.¹⁸
17. In 2013, the Philippines filed a case before the Permanent Court of Arbitration in The Hague, seeking a ruling on its right to the Spratly Island (which includes Scarborough Shoal) in the South China Sea. Of the 15 submissions the Philippines made to the Tribunal, the submission No. 10 requested the Tribunal to adjudicate that: “China has unlawfully prevented Philippines fishermen from pursuing their livelihoods by interfering with traditional fishing activities at Scarborough Shoal”.¹⁹ In July 2016, the Arbitral Tribunal pronounced its Award and decided in favor of the Philippines and ruled, among others, that fishers from the Philippines and China had traditional fishing rights at Scarborough Shoal and that these rights were restricted by China.²⁰
18. The Tribunal also condemned China's land reclamation projects and its construction of artificial islands at seven features in the Spratly Islands, concluding that it had

¹⁴ The South China Sea Arbitration Award of 12 July 2016 (SCSA), SCSA, para 761. The Award can be found online: <https://pca-cpa.org/en/cases/7/>

¹⁵ Ibid, para 764-765; para 767-769.

¹⁶ In an interview with fishers from Scarborough Shoal conducted by FIAN Philippines in February 2018.

¹⁷ Ibid.

¹⁸ SCSR, para 1128-1129, 1140, 1177-1178, 1181.

¹⁹ SCSA, para. 112(B) (10).

²⁰ SCSA, para 814.

caused “severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species”.²¹

19. Chinese blockage and denial of access to marine resources have had a detrimental impact on the RTFN of thousands of fisherfolk in Zambales and Pangasinan who exclusively depend on fishing and fish related activities for their livelihood. Prior to 2012, fishers freely fished in the rich fishing grounds of Scarborough Shoal. Fish was abundant and fishers – who ventured out to see and who worked for fishing fleets – were able to generate stable income to feed themselves and their families adequately. They could also send their children to school.²²
20. Since 2016, after President Duterte’s official visit to China in October, Filipino fishers are allowed to fish again, however only outside the lagoon. At present, Chinese vessels are guarding the entrance of the lagoon, preventing the entrance of all Filipino vessels and fishers. Fishers, however, claim that due to strong water current, it is almost impossible to catch fish. Many of them have started to search for alternative sources of livelihood; while some have undergone vocational training, others were provided small boats for municipal fishing by the local government units. According to local fishers, however, municipal waters have been depleted due to mining operations in Zambales and pollution generated by the coal-fired power plant in Masinloc, Zambales.²³ Having no alternative sources of livelihood, many fishers return to Scarborough Shoal, entering the lagoon secretly and putting their lives at risk.
21. Today, fishers and their families eat less in quality and quantity compared to previous years when they had unrestricted access to marine resources in Scarborough Shoal. Consumption of protein through meat and diverse vegetables has become rare. Instead of three meals per day, fisher families have only two meals or even less. The average income of a fisher family is at present 200 PHP (equivalent to 3,84 USD) a day for a 5-6 person household, compared to 500 – 1000 PHP (9,59 USD – 19,19 USD) in previous years. In the search for an alternative livelihood, some fishers work as tricycle drivers or migrated to cities to work as construction workers. Those who fish in the nearby municipal waters are able to catch fish only sufficient for viand and not enough to sell on the market to make additional earnings. Few women have sought alternatives sources of income (e.g. as household helpers). Many fishers also depend on the relatives who can provide some financial support and others stretch their meager benefit obtained through the government program of the Conditional Cash Transfer Program (ca. PHP 600 – 1000 (around 11,5 USD to 19,2 USD) per two months). Due to lack of income, many parents can no longer afford to send children to school.²⁴

²¹ SCSA, para 983

²² In an interview with fishers from Scarborough Shoal conducted by FIAN Philippines in February 2018.

²³ See for ex. Brigden, K and Santillo, D. Hazardous Emissions from Philippine Coal-fired Power Plants Heavy metal and metalloid content of fly ash collected from the Sual, Mauban and Masinloc coal-fired power plants in the Philippines. (Greenpeace, 2002) Available at: www.greenpeace.org/seasia/th/Global/seasia/report/2008/2/hazardous-emissions-ph-coal-plants.pdf

²⁴ In an interview with fishers from Scarborough Shoal conducted by FIAN Philippines in February 2018.

22. The action of Chinese military vessels and builders on these islands breaches China's extraterritorial respect-obligations towards Filipino fishers who have traditional fishing rights in these waters – according to the Arbitration Tribunal in The Hague alongside with Chinese fishers. Moreover, China is duty-bound under its extraterritorial protect-obligation to prevent its fishers from excluding Filipino fishers from fishing in these waters. Chinese failure to do so is tantamount to a violation of Filipino fishers' ESC rights, in particular their RTFN.

3.2. Indonesia – Sand Mining in Bangka Island/North Sulawesi threatens the Right to Food and Nutrition of Small-Scale Fishers

23. Situated off of the northeastern tip of Sulawesi, Bangka Island (or Pulau Bangka) lies in the heart of the “Coral Triangle” conservation site and is rich in marine biodiversity. It is also a home to several endemic species and marine mammals. The island's 2828 inhabitants (equivalent to 792 families) live in three villages - Desa Lihunu, Desa Kahuku, and Desa Libas – and their main sources of livelihood are traditional fisheries and small-scale farming.²⁵
24. In 2008, a mining permit was granted by the Head of the North Minhasa District to PT Mikgro Metal Perdana (PT MMP) to explore Bangka for iron ore. PT MMP is listed as one of the Foreign Capital Investment Companies of China and is a subsidiary of Aempire Resource Limited, a Hong-Kong based private corporation (estimated 720 million dollars in annual revenue) specialized in coal, ore and other minerals.²⁶ The permit, which was extended twice (July 2012 and September 2012) and expanded from an area of 1300 hectares to 2000 hectares to cover iron ore and other minerals (September 2012), grants PT MMP a concession area that covers nearly half of the island. The permit is a breach of Act No. 27/2007 on the Management of Coastal Areas and Small Islands, which states that priority should be given, among others, for the utilization of conservation, marine aquaculture, and sustainable marine and fisheries industry.²⁷
25. In January 2012, several residents of Bangka Island and individuals engaged in tourism sued the Head of the North Minahasa Regency and PT MMP in the Administrative Court of Manado to revoke the mining permit.²⁸ In August 2012, the lawsuit was rejected by the Court on the grounds that the filing deadline had surpassed.²⁹ The residents' group then appealed to the High Administrative Court of Makassar, which ruled in favor of the Bangka residents in March 2013, revoking the exploration permit and the extension granted.³⁰ The case was brought to the Supreme Court in Jakarta when the Head of the North Minahasa Regency and PT MMP rejected the decision of the High Administrative Court of Makassar. In September 2013, the Supreme Court of Indonesia dismissed the appeal filed and

²⁵ Information provided by KNTI, JATAM, and YSNM.

²⁶ <http://listings.findthecompany.com/1/271113823/Aempire-Resource-Limited>

²⁷ Amendment to Law No. 27/2007 on the Management of Coastal Areas and Small Islands (Law No. 1/2004 dated January 15, 2014), Art. 23

²⁸ Letter of Decree No. 162/2010.

²⁹ Verdict No. 04/G.TUN/2012/ PTUN.MDO.

³⁰ Verdict No. 165/B.TUN/2012/PT.TUN.Mks

called for the Minahasa Utara Regent to revoke and cancel the Mining Permit in Bangka Island.³¹ Despite the Supreme Court order, the then Minister of Energy and Mineral Resources issued an operation permit to PT MMP in July 2014.³² As a response, the residents of Bangka filed a complaint against the Minister for illegally issuing the operation permit disrespecting the Supreme Court judgment. The operation permit was then canceled by the Jakarta State Administrative Court in December 2015.³³

26. Despite the legal victory, as of March 2018, PT MMP has cleared 30 hectares of customary forest area without the consent of the local indigenous community, destroyed 2.400m² of mangrove forest for a port establishment, and dismantled hills. Residential areas, forest, and farms were cleared to make room for mining support facilities that include a factory, a warehouse of explosives, fuel storage tanks, a camp for mining workers, and an unloading jetty-port to be used by PT MMP. Most of the 2000 hectares that were granted to PT MMP is located in the Limited Production Forest and thus designated for prevention of soil erosion and timber production, which requires that a special permit must be obtained from the Forestry Ministry through the North Sulawesi Governor prior to exploration activities. The activities conducted by PT MMP already show signs of environmental damage: Water pollution caused by mud and silt and pollution of a nearby river and large-scale mining associated with dynamite explosion and sedimentation will have the potential to permanently damage the ecosystem and biodiversity of Bangka Island.
27. The resistance of the Bangka Island residence was counter-reacted by the Police and a local security group. In February 2014, the police threatened to fire at local fishers if they decide to obstruct the loading and unloading of mining equipment to Bangka Island. In July 2014, local fishers celebrating their victory of the case at the Supreme Court were allegedly attacked by a local mining-backed “security group” who was mobilized by PT MMP. Seven fishers were injured. Almost at the same time, two residents were accused of damaging the equipment of PT MMP and are currently being tried in the Airmadidi District Court of North Minahasa District. According to YSNM, a local organization in Bangka Island, fabricated information about one community leader has been published on the website of PT MMP, allegedly in an attempt to delegitimize her protest against PT MMP.³⁴
28. The RTFN of local residents is severely threatened. For example, due to site clearance activities, water sources are contaminated and the quality of water is deteriorating. Local inhabitants complain that mud is visible in their drinking water and there is no drinking water available in dry seasons. The fish catch in the areas has halved - from an average of 20 kg per day to 10 (and little more sometimes) kg today. Many fishers are thus compelled to travel further to fish, spending, therefore,

³¹ Supreme Court Decision No. 291 K/TUN/2013.

³² Decree of Minister of Energy and Mineral Resources No. 3109 K/30/MEM/2014.

³³ Decision Number 271/B/2015/PT.TUN.JKT

³⁴ PT MMP. “JULL TAKALIUANG MAFIA BERKEDOK AKTIFIS“. Available at: pt-mmp.co.id/jull-takaliuang-mafia-berkedok-aktifis-detail-52282.html

more money on fuel and consequently less on food items. A few families are also facing challenges to send their children to school.³⁵

29. China breaches its extraterritorial protect-obligations towards the people of Bangka Island by failing to regulate PT MMP. While the measures taken by the highest Indonesian judiciary is to be welcomed, China fails to cooperate accordingly with these pronouncements contrary to what is required under cooperation in ICESCR Art. 2.1, to which China is duty-bound under treaty-law. Independent from Indonesia's stand on these issues, China has to desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of the ESC rights of the traditional people on Bangka Island and – by ignoring the environmental safeguards – of present and future generations. The RTFN is at particular risk. PT MMP is listed as a Foreign Capital Investment Company of China and is a subsidiary of the Hong Kong-based Empire Resource Limited. For this matter, China is in a position to regulate PT MMP in order to exercise its protect-obligations towards the Bangka people's enjoyment of their ESC rights.

3.3. Sri Lanka – The Colombo International Financial City (Port City) threatens the Right to Food and Nutrition of local fisherfolk

30. The Colombo International Financial City (CIFC)³⁶ (formerly called Colombo Port City) is a planned city in Colombo, Sri Lanka, on reclaimed land next to the Galle Face Green, an oceanside urban park. The CIFC is expected to be a city-on-the-sea, a financial center with shopping and office complexes, hotels, etc.³⁷ The project is the landmark of the infrastructure development program launched on the 17 September 2014, by then Sri Lankan President Mahinda Rajapaksa and the Chinese President Xi Jinping. It is supposed to develop Colombo into a financial hub, attract foreign investors and is part of the „Belt and Road (BRI) Initiative”.³⁸ Currently, the land reclamation has been 72% completed.³⁹ The first building is expected to be erected at the beginning of 2019.⁴⁰
31. In 2015, after the fall of the Rajapaksa government, the project was suspended due to adverse environmental impacts, e.g. water pollution, coastal erosion and flooding

³⁵ Based on the information gathered by KNTI, JATAM, and YSNM through interviews with Bangka fishers conducted in the past and in March 2018.

³⁶ CHEC PORT CITY COLOMBO (PVT) LTD. Website: “Building a World Class City for South Asia”. Available at: www.portcitycolombo.lk/about/

³⁷ Information according to Mr Dulip Jayawardene, a retired Economic Affairs Officer of the UN ESCAP, the main objective of the project is “to create not only a major maritime hub but also a harbour city for attracting major overseas private investors with tax holidays, etc.”

³⁸ Ministry of foreign Affairs of the People's Republic of China. Xi Jinping and President Mahinda Rajapaksa of Sri Lanka Jointly Inspect China-Sri Lanka Port Cooperation Project, Promoting the Construction of the 21st Century Maritime Silk Road (2014/09/17). Available at:

www.fmprc.gov.cn/mfa_eng/topics_665678/zjpcxshzccygyslshdsschybdtkstmedfslkkydjxgsfw/t1192787.shtml

³⁹ CHEC PORT CITY COLOMBO (PVT) LTD. Website: “Building a World Class City for South Asia.” Available at: www.portcitycolombo.lk/#master-plan

⁴⁰ Information according to the Commonwealth Enterprise and Investment Council. Available at: www.cweic.org/new-financial-vision-establishing-international-financial-centre-sri-lanka/

and destruction of coral reefs and fishing grounds through sand and rock mining⁴¹. However, under the current government of President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe, a new tripartite agreement between the Minister of Megapolis and Western Development Champika Ranawaka, the Urban Development Authority (UDA) and the China Harbour Engineering Company (CHEC)⁴², a subsidiary of Chinese Government-owned China Communication Construction Company (CCCC)⁴³, was signed in 2016. Out of 269 hectares claimed by the Sri Lankan Government, 116 hectares are supposed to be handed over to CCCC on a 99-year lease basis. The government of Sri Lanka is also planning to enact a new legislation, namely the Colombo International Financial Centre Law (CIFC Law) which will govern the project with a separate jurisdiction, different from the one in the rest of the country.^{44 45}

32. Although the Colombo Port City has been in planning since 2011, no reliable information of this massive project was in the public domain.⁴⁶ Local communities, environmentalists, engineers, marine biologists and others have resisted the project from the very beginning fearing an adverse impact on marine ecology, environment and fishers' livelihood.⁴⁷ According to them, environmental impact assessments (EIAs) carried out are inadequate and incomplete, and thus most of the impacts are yet to be identified and quantified. The work (e.g. sand mining and ground leveling) that had already been conducted prior to the EIAs was illegal on the grounds of not carrying out a proper impact assessment of the project activities as required by the EIA legislation in Sri Lanka (Section 16 of the Coast Conservation Act as amended). The project was also criticized for its lack of transparency and irregularities.⁴⁸

33. According to UNICEF, almost one-third of children and one-quarter of women in Sri Lanka are affected by malnutrition in the country.⁴⁹ The organization also informs that around 29% of the children under the age of five are reported to be underweight and about 14% of these children are suffering from acute malnutrition.

⁴¹ Centre for Environmental Justice/Friends of the Earth Sri Lanka. Environmental Damage of the Colombo Port City Project. Distributed at the symposium organized by the Alliance against the Colombo Port city held on 27th January 2018 in Negombo.

⁴² China Communications Constructions Company Ltd. Website. Available at: www.en.ccccltd.cn

⁴³ Ibid

⁴⁴ Ministry of Megapolis & Western Development Sri Lanka. Government Signs Tripartite Agreement for Colombo International Financial City (Formerly Colombo Port City). Available at: megapolismn.gov.lk/web/index.php?option=com_content&view=article&id=88:government-signs-tripartite-agreement-for-colombo-international-financial-city-formerly-colombo-port-city&catid=9&Itemid=229&lang=en

⁴⁵ Government begins drafting separate legal framework for Financial City. Daily Mirror, Available at: www.dailymirror.lk/article/Govt-begins-drafting-separate-legal-framework-for-Financial-City-137762.html

⁴⁶ Critical analyses of Colombo Port City Project. Daily Mirror. Available at: [www.dailymirror.lk/63749/critical-analyses-of-colombo-port-city-project; CHEC PORT CITY COLOMBO \(PVT\) LTD. Website: Port City Where are we now? Available at: www.portcitycolombo.lk/press/2018/01/12/port-city-where-are-we-now.html](http://www.dailymirror.lk/63749/critical-analyses-of-colombo-port-city-project; CHEC PORT CITY COLOMBO (PVT) LTD. Website: Port City Where are we now? Available at: www.portcitycolombo.lk/press/2018/01/12/port-city-where-are-we-now.html)

⁴⁷ Mr. Jinadasa Katupotha, Emeritus Professor at the Department of Geography of the Faculty of Humanities and Social Sciences of the University of Sri Jayewardenepure, Ms Carmel Corea, Marine Biologist, Mr. Dulip Jayawardane, retired Economic Affairs Officer of the UN ESCAP and Sellakapu S. Upasiri de Silva, Former Construction Expert CFTC/UN, to name a few.

⁴⁸ Transparency International Sri Lanka. Sri Lanka Governance Report 2014. Available at: www.tisrilanka.org/wp-content/uploads/2015/11/GOV2014.pdf, 11-12

⁴⁹ UNICEF, Malnutrition. Available at: www.unicef.org/srilanka/activities_1667.htm

34. Fish netted from the coastal waters, the cheapest fish on the market, provide two-thirds of the protein consumed by the population.⁵⁰ However, the sand mining for the construction of Port City will have important consequences on the coastal fishing industry, resulting in a deprivation of the population from obtaining essential protein. This obviously affects the poorest, who have limited resources to buy nutritious food. The impacts of CIFIC on the fishing community are already visible: Due to the sea erosion caused by mining sand, homes of the fishing villages are washed away and the places to park fishing boats are more limited.⁵¹
35. According to estimates, the number of fishers directly affected is in excess of 30,000 in Negombo⁵², a coastal region next to the project. The overall figure including those engaged in associated trades is estimated to be more than 600,000. Other losses of livelihoods include those fishers living nearby the site of the project and in the areas where the construction materials are extracted. Fishers who live along other coastal areas of Kammalthota to Rathmalana claim that their income has been already reduced due to the depletion of fish resources as a result of sand mining.
36. The number of fishers registered in the EIA is almost four times lower than it is in reality, according to which only 9000 fishers are supposed to get compensation. Hence, thousands of fishers and their families will be deprived of their livelihoods.
37. The construction working and the sand extraction will impact on the underwater rich biodiversity in both dredging Site and the project Site of the Port City. This will especially occur in the districts of Gampaha, Colombo, and Kalutara where the authorities identified 11 quarries from which supply the needed materials.
38. Going ahead with the project as described is in breach of Sri Lanka's territorial and China's extraterritorial human rights obligations: Both states must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of ESC rights, such as the fisher peoples' human right to feed themselves and the human right to a healthy environment. Such real risks exist and have not been properly assessed by both governments. The obligation mentioned is incumbent on China irrespective of the attitude of the Sri Lankan government and the fact that the victims live beyond China's borders⁵³ China is in a position to exercise its respect-obligations as the CCCC is a state-owned company— and a key party to the tripartite agreement of August 12, 2016. China, therefore, has to withdraw from this project or otherwise modify the project and show in a transparent way that there is no real risk of harm.

⁵⁰ Carmel L. Corea. Why the Port City is bad for the country. The Sunday Times, 12 June 2016. Available at : <http://www.sundaytimes.lk/160612/sunday-times-2/why-the-port-city-is-bad-for-the-country-196859.html>

⁵¹ Information obtained from People's Movement Against Port (PMAPC)/National Fisheries Solidarity (NAFSO – member of WFFP)

⁵² Ibid.

⁵³ Maastricht Principles on Extraterritorial Obligations in the area of ESCR, Principles 13, 14, 24, and 25.

4. Conclusions

39. The aforementioned case studies from the Philippines, Indonesia, and Sri Lanka are exemplary of how denying fisherfolks' access to traditional fishing grounds and failing to regulate corporations – both private and government-owned - that impair fishers' abilities to catch adequate amount of fish to ensure livelihood can impact the right to food and nutrition and associated ESC rights of fishers. In all three cases, China is in breach of its extraterritorial obligations as shown in paras. 22, 29, 38 above.
40. For this matter, the submitting organizations call upon the member states of the UN Human Rights Council to urge the Government of China to respect and protect ESC rights, in particular, the RTFN of fishers in the cases mentioned in the Philippines, Indonesia, and Sri Lanka by:
- Guaranteeing fishers' traditional fishing grounds in Scarborough Shoal in accordance with the Award issued by the Permanent Court of Tribunal;
 - Ordering and enforcing the withdrawal of the China-based company PT MMP from Bangka Island;
 - Ordering and enforcing the withdrawal of CCCC from (or any other Chinese participation in) from the Colombo International Financial City (CIFC) project as it stands in order to protect the livelihoods of fishers and local biodiversity;
 - Ratifying the Optional Protocol to the ICESCR as per recommendations of the previous UPR;
 - Strengthening its legislation governing the conduct of corporations registered or domiciled in China in relation to their activities abroad, including by requiring those corporations to conduct human rights and gender impact assessments prior to making investment decisions;
 - Adopting concrete measures, including a redress mechanism to facilitate access to justice for victims of human rights violations and ensure that judicial and administrative mechanisms are in place.