

Republic of the Philippines
COMMISSION ON HUMAN RIGHTS
Diliman, Quezon City

GREENPEACE SOUTHEAST ASIA
(PHILIPPINES), PHILIPPINE RURAL
RECONSTRUCTION MOVEMENT,
SENTRO NG MGA NAGKAKAISA AT
PROGRESIBONG MANGGAGAWA, DAKILA,
PHILIPPINE ALLIANCE OF HUMAN RIGHTS
ADVOCATES, PHILIPPINE HUMAN RIGHTS
INFORMATION CENTER, MOTHER EARTH
FOUNDATION, ECOWASTE COALITION
350.ORG EAST ASIA, NAGKAKAISANG
UGNAYAN NG MGA MAGSASAKA
AT MANGGAGAWA SA NIYUGAN,
ASIAN PEOPLES' MOVEMENT
ON DEBT & DEVELOPMENT,
ALLIANCE OF YOUTH ORGANIZATIONS
AND STUDENTS-BICOL, PHILIPPINE MOVEMENT
FOR CLIMATE JUSTICE, NUCLEAR FREE BATAAN
MOVEMENT, VON HERNANDEZ,
FR. EDWIN GARIGUEZ, NADEREV “YEB” SAÑO,
AMADO GUERRERO SAÑO, CARLOS CELDRAN
ANGEL AQUINO, JUAN MANUEL “KOKOI” BALDO,
LIDY NACPIL, BENJAMIN ACERON,
ELMA REYES, LAIDY REMANDO,
RICHARD LOPEZ, CONSTANCIA LOPEZ,
LERISSA LIBAO, GLORIA CADIZ,
TARCILA M. LERUM, ROY N. BASTO
VERONICA V. CABE,

Petitioners,

-versus-

Case No.: CHR-NI-2016-0001
Petition 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

CHEVRON (US), EXXON MOBIL (US),
BP (UK), ROYAL DUTCH SHELL
(NL), CONOCO PHILLIPS (US),
PEABODY ENERGY (US), TOTAL (FR),

CONSOL ENERGY (US), BHP BILLITON (AU), ANGLO AMERICAN (UK), RWE (DE), ENI (IT), RIO TINTO (UK), ARCH COAL (US), ANADARKO (US), OCCIDENTAL (US), LUKOIL (RU), ROSNEFT (RU), SASOL (ZA), REPSOL (ES), MARATHON (US), HESS (US), GLENCORE (CH), ALPHA NATURAL RESOURCES (US), FREEPORT MCMORAN (US) ENCANA (CA), DEVON ENERGY (US), BG GROUP (UK), WESTMORELAND MINING (US), SUNCOR (CA), KIEWIT MINING (US), NORTH AMERICAN COAL (US), RAG, (DE), LUMINANT (US), LAFARGE (FR), HOLCIM (CH), CANADIAN NATURAL RESOURCES (CA), APACHE (US), MURRAY COAL (US), UK COAL (UK), HUSKY ENERGY (CA), HEIDELBERGCEMENT (DE), CEMEX (MX), ITALCEMENTI (IT), MURPHY OIL (US), TAIHEIYO (JP), OMV GROUP (AT).

Respondents.

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CONSOLIDATED REPLY

Petitioners, by the undersigned legal representatives, respectfully state:

PREFATORY STATEMENT

Hindi lang problemang pangkapaligiran ang climate change, ito rin ay isyu ng katarungang panglipunan. Pinalalala ng climate change ang paghihirap ng mga mamamayan at inilalagay sila sa lalong kapahamakan. Kaya mahalagang papanagutin ang may mga pinakamalaking responsibilidad sa paglubha ng climate change¹. -Renee Karunungan, DAKILA Philippine Collective for Modern Heroism, one of petitioners

¹ English translation in essence: *Climate change isn't just an environmental issue it's also a social justice issue. It exacerbates poverty and makes people even more vulnerable to disasters. It is crucially important to us that those most responsible for making climate change worse are held to account.*

On 21 July 2016, the Honorable Commission enjoined respondent Carbon Majors to file their respective comments or answers within forty-five (45) days from receipt of the *Petition*. Fourteen (14) out of the forty-seven (47)² respondents submitted answers or comments to the *Petition*. Regrettably, the majority of the respondents turned down the opportunity to engage with the petitioners and the Honorable Commission in addressing the climate crisis. Further, almost³ all of the respondents that submitted a comment or answer refused to accept the *Petition* and order, or asked to be removed from the proceedings, or for the proceedings to be dismissed, primarily on procedural grounds. As will be shown, respondents' comments or answers are without merit.

The independent non-profit Business & Human Rights Resource Centre (BHRRC) invited all respondents to share comments and answers submitted to the Commission in accordance with the 21 July 2016 *Order*. Eleven (11) companies volunteered their positions. One company declined to respond. Four (4) of the companies that responded to the BHRRC also submitted a comment or answer to the Honorable Commission. In total, twenty-one (21) companies have engaged to some degree with the *Petition*.

While the petitioners welcome the official answers and comments to the *Petition* that triggered this national public inquiry, they contend that respondents, by seeking the dismissal of the *Petition* on procedural grounds and technicalities, are missing the point of this proceeding.

This is a *Petition* that invokes the Honorable Commission's investigatory, recommendatory, and monitoring powers to prevent or curb further violations of petitioners' and all Filipinos' constitutionally-protected human rights resulting from the impacts of climate change. It presents neither a criminal lawsuit that requires *corpus delicti* and proof beyond reasonable doubt, nor a civil case for damages that demands direct or proximate causation. The national public inquiry is not a judicial proceeding.

The subject matter of the *Petition*—human rights infringements in the context of climate change—is well within the scope of authority of the Honorable Commission. Climate change, as defined by the United Nations Framework Convention on Climate Change (UNFCCC), refers to “a change

² Of the listed 51 entities in Annex “C” to the *Petition*, only 47 were notified due to acquisitions, termination of existence, and becoming a subsidiary of a state-owned company because the petition focuses only on investor-owned companies. Please see Annex “A” to the *Consolidated Reply* for a list of respondents that submitted answers, comments, and statements to the petitioners and/or Business and Human Rights Resource Centre.

³ Rio Tinto understands that the national public inquiry is “fact-finding and non-adversarial in nature.” Rio Tinto London Ltd, *Letter Ad Cautelam and without Submission to Jurisdiction to Commission Cadiz* dated 10 October 2016, Business & Human Rights Resource Centre, 19 October 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts>, last accessed on 06 February 2017.

of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods.”⁴

A peer-reviewed study has clearly established that respondent Carbon Majors have significantly contributed to cumulative worldwide emissions of industrial CO₂ and methane, mainly through the production of fossil fuels.⁵ When used as directed, the carbon emissions from the respondents’ products cause climate change and result in harms that have a disproportionate impact on vulnerable countries, communities, and people. Likewise, it has been authoritatively proven that the exercise and full enjoyment of the human rights of the Filipinos are affected due to the impacts of climate change.

In a recent paper, US scientist Kevin Trenberth said:

“The climate is changing: we have a new normal. The environment in which all weather events occur is not what it used to be. All storms, without exception, are different. Even if most of them look just like the ones we used to have, they are not the same.”⁶

According to the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA), “[c]limate change is happening now. Evidence being seen support the fact that the change cannot simply be explained by natural variation.”⁷

While extreme weather events do not have a single cause, there are various contributing factors. Human-induced climate change is one of those factors. The warming caused by carbon dioxide is increasing the probability and intensity of extreme weather events.

In practical terms for the petitioners, climate change-fuelled extreme weather events may mean “rice and corn farms, as far as the eye can see, are flattened,”⁸ as it occurred during super typhoon Lawin (Haima) in Isabela and Cagayan provinces, only days after the strong typhoon Karen (category

⁴ *United Nations Framework Convention on Climate Change*, 09 May 1992, 1771 U.N.T.S. 107 (entered into force on 21 March 1994), Art. 1(2).

⁵ Heede, R. (2014). *Tracing anthropogenic CO₂ and methane emissions to fossil fuel and cement producers, 1854-2010*, *Climatic Change*, January 2014, vol. 122(1): 229-241; <http://link.springer.com/article/10.1007/s10584-013-0986-y?view=classic>, last accessed on 08 February 2017.

⁶ Trenberth, K., Fasullo, J., and Shepherd, T. (2015). *Attribution of climate extreme events*. *Nature Climate Change* 5, pp. 725–730, doi:10.1038/nclimate2657. See also, Trenberth, K., *Amicus Curiae Declaration* dated 07 November 2016, on file with the Honorable Commission.

⁷ Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA). *Climate Change in the Philippines*, available at <http://pagasa.dost.gov.ph/index.php/climate-change-in-the-philippines#introduction>, last accessed on 06 February 2017.

⁸ The Guardian, *Super typhoon Haima causes widespread destruction in Philippines*, available at <https://www.theguardian.com/world/2016/oct/19/philippines-high-alert-super-typhoon-haima-hits-country>, last accessed on 06 February 2017.

4) had already saturated Luzon's soil late last year. A local Mayor explained, "the problem is, our rescuers here are unable to go out and help"⁹ because they themselves needed help. Before farmers could even recover from Lawin's ravage, another super typhoon (Nina) hit the country before the year ended. For Filipinos, this is what the new normal is shaping up to look like.

When they are not facing super typhoons, farmers and fisherfolks in Alabat Island in Quezon province and Verde Island in Batangas deal with wilting coconut and vegetables and dwindling fish catch because "*mas mainit na ang tag-init at mas mainit na ang dagat*" (summers and seas are hotter).¹⁰

Finally, a study found children voluntarily working even under harsh conditions to help their families recover from poverty that was exacerbated by super typhoon Haiyan in 2013.¹¹ Haiyan killed more than 6,300 people and displaced four (4) million others, worsening poverty in the central Philippines.¹²

Accordingly, the petitioners, made up of farmers, workers, concerned Filipino citizens and local non-profit organizations, do not have the luxury of time and resources while respondents debate procedural and technical issues.

It should trouble the Honorable Commission that despite the hardship and injustice faced by the people on the frontlines of climate change, the respondents appear to be using traditional court tactics to delay the proceedings, by raising unwarranted procedural and technical issues. The respondent Carbon Majors should not be allowed to worship at the altar of technicalities. Nevertheless, the petitioners' *Consolidated Reply* rebuts these arguments presented in the companies' responses.

The petitioners will not accept silence from the other respondents and will continue to press for answers. Those that have chosen to ignore or avoid this national public inquiry may face reputational risks and, ultimately, lose the opportunity to be a part of the solution—an opportunity that this Honorable Commission is kindly affording to these companies.

⁹ *supra.*, note 8.

¹⁰ See recorded interviews of farmers from Alabat and Verde Islands, Exhibits "A" and "B" of the *Petition*.

¹¹ Available at [www.alnap.org/pool/files/b1df71bc-9204-4a41-afeb-7ca36fba6a6c-\(1\).pdf](http://www.alnap.org/pool/files/b1df71bc-9204-4a41-afeb-7ca36fba6a6c-(1).pdf), last accessed on 08 February 2017.

¹² *Child Protection and Education Cluster Joint Needs Assessment - Philippines* (2014), available at [http://www.alnap.org/pool/files/b1df71bc-9204-4a41-afeb-7ca36fba6a6c\(1\).pdf](http://www.alnap.org/pool/files/b1df71bc-9204-4a41-afeb-7ca36fba6a6c(1).pdf), last accessed on 08 February 2017.

Well-meaning climate change and human rights commitments require more than just text on a website. They should inspire hope that a breakthrough can be achieved and demonstrate that meaningful action is being implemented today. All of the respondents must engage in the national public inquiry and live up to their climate change and human rights commitments, or if they don't have any yet, make meaningful commitments now.

I.

ISSUES AND ARGUMENTS RAISED BY THE RESPONDENTS IN THEIR RESPECTIVE RESPONSES TO THE PETITION

A. Issues and arguments raised in the responses received by the Petitioners

1.1. Respondents generally contend that: (a) the Honorable Commission did not acquire “personal and subject matter jurisdiction”; (b) the *Petition* fails to state a “cause of action”; (c) the element of “causation” is non-existent; and (d) the No-Harm Principle or the *Trail Smelter* case is inapplicable.

1.2. With regard to their argument that the Honorable Commission lacks “jurisdiction,” respondents allege that:

- a. There was improper service of the *Petition* and *Order* requiring respondents to comment/answer, and service was not made to a resident agent;
- b. Some of them were not particularly named in the *Petition*, as the entities identified in the package from, and *Order* of, the Honorable Commission, caption, and tables in the *Petition* and annexes, were not legal entities or not the registered corporate names of the respondents;
- c. Some of them were not registered/domiciled in the Philippines and/or transacting/doing business in this jurisdiction;
- d. The Honorable Commission’s “jurisdiction” is with respect to investigations on human rights abuses involving only civil and political rights;
- e. The rights invoked by the petitioners, specifically environmental rights, do not fall under civil and political rights;

- f. The petitioners cannot rely on the *UN Guiding Principles* and *Maastricht Principles*, as they are non-binding;
- g. The Honorable Commission is not a quasi-judicial body— it has no quasi-judicial or adjudicative power;
- h. The Congress, through the enactment of the Human Security Act, expressly acknowledges that the Honorable Commission’s “jurisdiction” is confined only to violations of civil and political rights;
- i. The Congress does not consider the Honorable Commission to have any jurisdiction over environmental, climate change, or socio-economic and cultural matters, considering that the Honorable Commission was not included among the government agencies composing the advisory board of the Philippine Climate Change Commission (CCC). Further, by taking cognizance of the case, the Honorable Commission usurps the functions of the CCC; and
- j. Respondent Peabody Energy Corporation (“Peabody”) is precluded under the U.S. Bankruptcy Code from responding to the Honorable Commission’s *Order* and the *Petition*, and from participating in the present proceedings.

B. Issues and arguments raised in the responses received by the Business & Human Rights Resource Centre

1.3. With respect to the responses received by the Business & Human Rights Resource Centre (“BHRRC”), except respondent Rio Tinto, all others similarly question the Honorable Commission’s “jurisdiction” and that the confidentiality rules prevent respondents from disclosing their response to the *Petition*. Some of the respondents also argue that their positions on climate change and human rights are adequate.

Please see **Annex “A”** for a list of respondents that submitted answers and comments to the petitioners and the Business Human Rights Resource Centre.

1.4. As will be discussed below, respondents’ issues and arguments are unmeritorious and even contrary to the Philippine Constitution and applicable domestic and international laws, rules, and jurisprudence.

II.
REFUTATIONS TO RESPONDENTS’
RESPECTIVE RESPONSES TO THE PETITION
(Responses received by the Petitioners)

2.1. Notably, the crux of respondents’ opposition, as reflected above, concerns procedural matters, specifically the issue on personal and subject matter “jurisdiction.” Hence, the petitioners find it prudent to tackle them first.

2.2. To save paper and avoid unnecessary repetition of counter-arguments and discussion, the petitioners presently respond to respondents’ issues and arguments collectively, topically, and sequentially.

A. The strict interpretation of the concept of jurisdiction, which requires acquisition of personal and subject matter jurisdiction before hearing and deciding a case, is not applicable to the Honorable Commission, which has a special mandate under the Constitution.

2.3. As early as the case of *Herrera v. Baretto and Joaquin*,¹³ the Supreme Court defined jurisdiction as the power to hear and decide cases.¹⁴ Jurisdiction is the power with which courts are invested with the power of administering justice, that is, for hearing and deciding cases. For a court to have authority to dispose of a case on the merits, it must acquire jurisdiction over the subject matter and the parties.¹⁵

2.4. The noticeable error in respondents’ position is their strict interpretation and blanket application of the concept of jurisdiction, such that the Honorable Commission was placed in the same footing as that of a court of law, which needs to acquire jurisdiction over the subject matter and parties before it can hear and decide a case.

2.5. The Honorable Commission is not a court of law. Thus, the term jurisdiction, as defined above, should not be construed and applied in the current inquiry. The framers of the Constitution intended this interpretation to hold, as could be gleaned from their deliberations—

“MR. DE LOS REYES: And may I offer an amendment of [*sic*] Commissioner Nolleto that **instead of**

¹³ 25 Phil. 245 (1913)

¹⁴ *Herrera v. Baretto and Joaquin*, *supra.*, note 13.

¹⁵ *Republic Planters Bank v. Molina*, 166 SCRA 39 [1988].

using the word ‘JURISDICTION’ which might be confused with the jurisdiction of the regional trial courts, the municipal courts, we put ‘AUTHORITY’. I think that will be a more appropriate term in defining the scope of the work of the commission. Is that acceptable to Commissioner Nollado?

xxx

MR. DE LOS REYES: So, it will be ‘AUTHORITY’ instead of ‘JURISDICTION’.

THE PRESIDENT: Is that acceptable?

MR. NOLLEDO: I will accept the amendment, Madam President.

MR. SARMIENTO: The amendment is accepted, Madam President.”¹⁶ (Emphasis supplied)

2.6. When the Honorable Commission exercises its “jurisdiction,” or authority to be more precise, it acts according to its special investigatory, recommendatory, and monitoring mandate, **not as a court of law** that needs to acquire -- in its technical sense -- jurisdiction over the person and subject matter before it can hear and decide a legal controversy.

2.7. As will be discussed below, the Honorable Commission has the authority to take cognizance of the *Petition* and proceed with the national public inquiry.

B. The Honorable Commission has authority to conduct national public inquiry concerning the respondents.

B.1. The service of the *Petition* and *Order* requiring respondents to comment is proper and sufficient considering the nature of the current proceedings, which is primarily investigative -- not prosecutorial or judicial -- in character.

2.8. At the outset, it must be emphasized that the current inquiry is not judicial, but chiefly investigative in character. Hence, the rigid and exacting construction of the legal concept of “jurisdiction,” as explained, is inapplicable to the *Petition*.

¹⁶ Deliberations of the Constitutional Commission in the creation of the Commission on Human Rights, Sponsorship Remarks of Commissioners Sarmiento and Garcia, pp. 167-168, as found in *Human Rights Legislative Agenda Resource Book*, available at <http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2013/03/HR-Legislative-Agenda-Resource-book-1.pdf>, last accessed on 01 January 2017.

2.9. Respondents Apache Corporation (hereinafter, “Apache”),¹⁷ ConocoPhillips,¹⁸ ExxonMobil Petroleum & Chemical Holdings, Inc. Philippine Branch (hereinafter, “ExxonMobil”),¹⁹ Marathon Oil Corporation (hereinafter, “Marathon Oil”),²⁰ Shell Company of the Philippines, Limited and Royal Dutch Shell PLC (hereinafter, “Shell”),²¹ and Taiheiyo Cement Corporation (hereinafter, “Taiheiyo”)²² argue as to the alleged improper service of the Honorable Commission’s *Order* dated 21 July 2016 and improper extraterritorial service of summons.

2.10. Significantly, what is only required for any investigation proceeding, such as this *Petition*, is that the due process of law is met or, succinctly put, the parties to the investigation are given the opportunity to be heard. For this purpose, **Section 10, Rule 7 of the Omnibus Rules of the Commission** states:

“Section 10. Due Process in Public Inquiry - Any person implicated in the complaint for or report of human rights violations shall:

- a. be accorded due process;
- b. be given due notice of the CHR processes in his/her case;
- c. be apprised of the investigative mandate of the CHR;
- d. be apprised of the nature and cause of the human rights complaint/report against him;
- e. be given copy of said complaint or report; or summary thereof, subject to the provision of Rule 4, Section 15 (d)²³
- f. be given the opportunity to be heard and defend himself/herself;
- g. be assisted by a competent counsel of his/her choice;
- h. be given opportunity to present his/her own witnesses or have compulsory processes to produce reluctant witnesses to testify;
- i. to present and submit evidence to support and defend his/her case, and/or have compulsory processes for the production of relevant documents;
- j. be treated with respect and dignity in all phases of the investigative proceedings before the CHR.”²⁴

¹⁷ Letter dated 12 September 2016 (*Ad Cautelam Comment on Petition*), pp. 5-6 thereof.

¹⁸ *supra.*, note 17, pp. 5-6.

¹⁹ *Motion to Dismiss Ad Cautelam* dated 13 September 2016, p. 4.

²⁰ *Ad Cautelam Comment on the Petition*.

²¹ *Motion to Dismiss Ex Abundanti Ad Cautelam* dated 09 September 2016, No. II (A[1]), pp. 58-61 and No. II (B[1]), pp. 66-65.

²² See its *Motion to Dismiss*.

²³ Section 15 (d), Rule 4 of the *Omnibus Rules of the Commission*: The material allegations in the complaint, answer, comment, and in the counter-affidavits, as the case may be.

²⁴ Section 10, Rule 7 of the *Omnibus Rules of the Commission*

2.11. All the foregoing was, or will be, accorded to the respondents once the public hearings commence.

2.11.1. More particularly, the respondents were duly notified of the proceedings, furnishing them a copy of the *Petition*, and giving them the opportunity to respond -- as some did mostly through their respective counsels -- with their version of facts, applicable laws, and evidence.

2.11.2. Furthermore, the Honorable Commission expressed its investigative mandate during its press conference held on 08 December 2016. The recorded video of the event is available on BHRRC's website.²⁵

2.12. Thus, respondents' heavy reliance on the application of technical rules of procedure -- particularly on the Supreme Court's pronouncement in *Palileo, et al. v. Planters Development Bank*,²⁶ which found that service and filing of pleadings by courier is improper -- is misplaced.

2.12.1. In *Palileo*, the case refers to a **judicial proceeding**, a complaint for specific performance and/or sum of money and damages with prayer for the issuance of writs of preliminary attachment and preliminary injunction, **not an investigation**, such as this case. Strict adherence to the rules of procedure in a judicial proceeding is, generally, observed given that the rights and obligations of the parties are adjudicated and the court may award damages or specific reliefs.

2.12.2. The Supreme Court's strict application of the rules in the particular case of *Palileo* is not without a valid reason. The pleading that was **filed and served** through private courier in said case is a **critical document** -- an *Omnibus Motion for Reconsideration and for New Trial* -- which will establish and direct the fate of the parties therein, particularly petitioners Palileo, et al.

2.12.3. Finally, in *Palileo*, **both filing to the court and service to the lone** opposing party (Planters Development Bank) were made through a courier. In the present case, the *Petition* was **filed** personally to the Honorable Commission -- a recognized mode of filing under the *Omnibus Rules of the Commission* -- though service of the copies thereof to **forty-seven (47) respondents** was made through courier. Indeed, the

²⁵ BHRRC's website, available at <https://business-humanrights.org/en/philippines-commission-on-human-rights-announces-public-hearings-of-fossil-fuels-firms-over-climate-human-rights-impacts>, last accessed on 08 February 2017.

²⁶ G.R. No. 193650, 08 October 2014.

difference is palpable that it would not require further disquisition.

2.13. Interestingly, even the rules relied by some of the respondents, i.e. **Section 14, Rule 15 of the Rules of Court**, allow the extraterritorial service of summons “**in any other manner the court may deem sufficient.**”

“Section 15. *Extraterritorial service.* — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, **or in any other manner the court may deem sufficient....**”²⁷

2.14. Here, **the Honorable Commission deemed sufficient the service of *Petition and Order*, which required respondents to respond within forty-five (45) days to the *Petition*, through courier.** What is important is that the parties were served with the *Petition* and *Order*, fully apprising them of this case and giving them the opportunity to be heard, as respondents did when they filed their respective responses to the *Petition*.

2.15. Given the foregoing discussion, the argument as to service through respondents’ registered agent in the Philippines must, likewise, necessarily fail.

B.2. For investigation purposes, respondents are impleaded in the *Petition* as corporate groups and as they are publicly known.

2.16. In the letter dated 02 September 2016 sent by respondent Chevron Corporation (hereinafter, “Chevron”), through its managing counsel, for the stated purpose of returning the copies of the *Petition* and the Honorable Commission’s *Order*, respondent Chevron avoided providing a meaningful response by claiming that “the package does not indicate a

²⁷ Section 14, Rule 15 of the *Rules of Court*.

particular Chevron entity for which delivery is intended” and “no entity that this address is authorized to receive any communication and/or process for and on behalf of any entity identified anywhere in the papers.”²⁸

2.17. In the letter dated 09 August 2016 sent to the legal representatives of the petitioners, PricewaterhouseCoopers (PwC) explained that it is the liquidator of UK Coal Production Limited and claimed that the *Petition* does not refer to UK Coal Production Limited and was addressed to UK Coal, which is currently not a legal entity. Hence, PwC requested confirmation of who is the relevant party to receive the documents.²⁹

2.18. The petitioners identified the respondents, the investor-owned Carbon Majors, as **corporate groups that are significant contributors to climate change**, as recognized by peer-reviewed research conducted by Mr. Richard Heede.³⁰ The *Petition* and the annexes refer to the name of the parent entity or entities of the Carbon Majors because, in general, the accounts of a corporate group are consolidated under the name of the parent entity or entities, “in accordance with the rules of the jurisdiction in which the parent is incorporated or listed for trading on a stock exchange.”³¹ Many of the respondents are integrated energy companies, such as Chevron Corporation,³² and this is reflected by the Carbon Majors research, which primarily collected company production data from publicly available sources, such as annual reports in the collections of public and academic libraries, filings with the U.S. Securities and Exchange Commission, compilations in published literature, and company histories.³³

²⁸ See Chevron’s letter dated 02 September 2016.

²⁹ UK Coal’s letter dated 09 August 2016, sent by its liquidator, PwC.

³⁰ Heede, R. (2014). *Tracing anthropogenic CO₂ and methane emissions to fossil fuel and cement producers, 1854-2010*, *Climatic Change*, January 2014, vol. 122(1): 229-241; <http://link.springer.com/article/10.1007/s10584-013-0986-y?view=classic>, last accessed on 08 February 2017.

³¹ ClientEarth’s amicus submission dated 21 November 2016, p. 46, available at <https://business-humanrights.org/en/amicus-briefs>, last accessed on 08 February 2017.

³² Chevron Corporation, with its subsidiaries, conducts business worldwide. Chevron’s 2015 Annual Report: [“Chevron is one of the world’s leading integrated energy companies. Our success is driven by our people and their commitment to getting results the right way — by operating responsibly, executing with excellence, applying innovative technologies and capturing new opportunities for profitable growth. We are involved in virtually every facet of the energy industry. We explore for, produce, and transport crude oil and natural gas; refine, market, and distribute transportation fuels and lubricants; manufacture and sell petrochemicals and additives; generate power and produce geothermal energy; and develop and deploy technologies that enhance business value in every aspect of the company’s operations.” See <https://www.chevron.com/annual-report/2015>, last accessed on 06 February 2017.

In 2014, Chevron Corporation, stated: “Chevron is one of the world’s leading integrated energy companies, with subsidiaries that conduct business worldwide. The company is involved in virtually every facet of the energy industry. Chevron explores for, produces, and transports crude oil and natural gas; refines, markets, and distributes transportation fuels and lubricants; manufactures and sells petrochemical products; generates power and produces geothermal energy; provides energy efficiency solutions; and develops the energy resources of the future, including biofuels. Chevron is based in San Ramon, Calif.” See <http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-newsArticle&ID=1994131>, last accessed on 06 February 2017 (Emphasis added).

³³ Heede, R. (2014). *op cit.*, at supplementary materials, data sources.

2.19. While the *Petition* and the Honorable Commission's *Order* are directed at Carbon Major's parent entities, the subsidiaries are also implicated. The headquarters and principal office addresses were provided in Annex "C" of the *Petition*. Additionally, the petitioners provided in the same annex the addresses of related entities appearing to exist in the Philippines.³⁴ It should be abundantly clear to the companies listed in the *Petition* and Annex "C" thereof, including parent entities and subsidiaries, that they are the intended recipients of the *Petition* and must engage in a coordinated manner as corporate groups in the investigation.

2.20. Nevertheless, the *Omnibus Rules of the Commission* allows the naming or identifying of the respondents **even in the course of investigation**.³⁵ The petitioners, therefore, encourage respondents Chevron, i.e. Chevron Corporation, and UK Coal, i.e. UK Coal Production Limited, through the PwC, to volunteer their companies' names, as registered or preferred, and other information, and cooperate with the Honorable Commission in this national public inquiry.

2.21. Otherwise, respondents can expect that the petitioners will not stop and will seek for the truth through means allowed under the *Omnibus Rules of the Commission* and special rules of national public inquiry, or based on the wise discretion of the Honorable Commission. It is unacceptable that respondents excuse themselves from an important investigation into their human rights responsibility arising from climate change, based on technicalities.

B.3. The Honorable Commission's broad investigative mandate encompasses the Carbon Majors' corporate groups, regardless if there are entities registered or domiciled or transacting or doing business in the Philippines.

2.22. Respondents Apache,³⁶ CEMEX S.A.B. de C.V. (hereinafter, "Cemex"),³⁷ ConocoPhillips,³⁸ Marathon Oil,³⁹ Peabody Energy Corporation (hereinafter, "Peabody"),⁴⁰ Repsol, S.A. and Repsol Oil & Gas Canada Inc. (hereinafter, "Repsol"),⁴¹ Shell,⁴² Taiheiyo,⁴³ on their part, raise the

³⁴ See Annex "C" to the *Petition*.

³⁵ "The party shall be identified as a respondent when the person is named/identified as such in the complaint or in the course of investigation. . . ." (Section 12, Rule 4 of the *Omnibus Rules of the Commission*)

³⁶ *Letter* dated 12 September 2016 (*Ad Cautelam Comment on Petition*), No. II, pp. 2-3 thereof.

³⁷ *Entry of Special Appearance with Motion to Dismiss* dated 14 September 2016, No. 19, p. 16, thereof.

³⁸ *Letter* dated 12 September 2016 (*Ad Cautelam Comment on Petition*), No. II, pp. 2-3 thereof.

³⁹ Marathon's *Ad Cautelam Comment on Petition*.

⁴⁰ *Special Appearance and Motion to Dismiss* dated 15 September 2016, No. 4, p. 2 and No. 5, p. 3 thereof.

⁴¹ *Special Appearance and Motion to Dismiss* dated 22 September 2016, pp. 3-7 thereof.

⁴² *Motion to Dismiss Ex Abundanti Ad Cautelam* dated 09 September 2016, No. II (B), pp. 61-65 thereof.

⁴³ Taiheiyo's *Motion to Dismiss*.

argument that the Honorable Commission did not acquire “jurisdiction” over respondents either because they were not registered or domiciled in the Philippines, or they were not transacting or doing business in this jurisdiction.

2.23. In the national public inquiry, the Honorable Commission is not acting as a court, rather, as an investigatory body that is empowered under the Constitution and its own rules to make factual findings, formulate appropriate recommendations to the Congress, and initiate proper actions before pertinent government agencies/offices and courts. Hence, any reference to the technical rules of procedure, especially the supposed need of acquiring personal jurisdiction over the respondents, should not be determinative. All stakeholders, including respondents herein, should instead support the Honorable Commission in its inquiry to identify their articulated “commitments” and plans and assess whether they meaningfully address climate change, respect human rights, and prevent the foreseeable harm going forward.

2.24. It must be underscored that the requirement of due process of law in the context of the national public inquiry is to give all persons/entities who/which will be affected by the outcome of the current proceedings the opportunity to be heard and present their opinions. This is clear from the terms of the *Omnibus Rules of the Commission* which states that, “all stakeholders and civil society groups concerned shall be given the opportunity to engage in the process”⁴⁴ and that the national public inquiry “allows for the participation of the affected parties and sectors.”⁴⁵

2.25. As will be discussed below, the Honorable Commission has authority to investigate businesses, regardless of where they are registered/domiciled or doing/transacting business, if it is believed that human rights harms are occurring in the Philippines. Respondents, which are neither registered/domiciled in the Philippines nor doing/transacting business herein, must participate in the investigative proceedings in order to demonstrate their corporate responsibilities to respect human rights and to take meaningful action on climate change.

2.26. This opportunity to participate in the proceedings and, possibly, affect the findings of the Honorable Commission complements the fact-finding and non-adversarial nature of the national public inquiry.⁴⁶ Hence, respondents’ arguments with respect to procedural technicalities and personal jurisdiction are unmeritorious.

⁴⁴ Section 4, Rule 5 of the *Omnibus Rules of the Commission*.

⁴⁵ Section 2, Rule 7 of the *Omnibus Rules of the Commission*.

⁴⁶ Section 2, Rule 7 of the *Omnibus Rules of the Commission*.

2.27. In any event, the respondents' complex corporate structure does not prevent the Honorable Commission from conducting a thorough investigation with the aim to prevent further human rights harms going forward. In accordance with international norms and standards, all businesses enterprises, "regardless of their size, sector, location, ownership and structure," have the responsibility to respect human rights.⁴⁷

2.28. Further, the Honorable Commission's investigation requires consideration of the entirety of respondents' activities, including the activities of Carbon Major parent entities and subsidiaries. For purpose of this human rights investigation, the **enterprise theory of corporate personhood** is useful in assessing the activities of a corporate group as a unit, as opposed to the activities of parent entities and subsidiaries as separate legal entities.⁴⁸ The theory is a response to the formalistic approach which "ignores the economic reality of the relationship between parent corporations and their subsidiaries."⁴⁹ The relationships formed by corporate groups are often "an interconnected web of corporations that function toward a unified goal."⁵⁰

2.29. The *OECD Guidelines for Multinational Enterprises*, a comprehensive code of responsible business conduct that was multilaterally agreed and governments are committed to promoting,⁵¹ support the application of the enterprise theory. The 2011 update to the Guidelines explicitly state that the OECD principles "extend to enterprise groups" and "compliance and control systems should extend where possible to these subsidiaries."⁵²

2.30. For the purpose of this investigation, the Honorable Commission may adopt an approach that will allow it to assess the global activities of the respondents, which currently have a central purpose of producing and selling fossil fuels for profit, and the cumulative impact of these activities on the Philippines. With climate change matters, the parent company, unless otherwise stated by the respondents, sets "top line strategic decisions regarding emissions intensity of products, capital allocation and

⁴⁷ Guiding Principles, principle 14, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, last accessed on 06 February 2017 [hereinafter Guiding Principles].

⁴⁸ Dearborn, M. (2009). *Enterprise Liability: Reviewing and Revitalizing Liability for Corporate Groups*, California Law Review, Vol. 97, Issue I, p. 210, available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1152&context=californialawreview> (citing Gower, L.C.B. *The Principles of Modern Company Law*, p. 213 K.W. Wedderburn & O. Weaver eds. 3d ed. 1969), last accessed on 06 February 2017.

⁴⁹ *Id.*, p. 209 (citing Adolf A. Berle, Jr., *The Theory of Enterprise Entity*, 47 COLUM. L. REV. 343) 343 [1947])

⁵⁰ *Id.*

⁵¹ *OECD 2011 Guidelines for Multinational Enterprises* (2011), p. 3, available at <https://www.oecd.org/corporate/mne/48004323.pdf>, last accessed on 06 February 2017.

⁵² *supra.*, note 51, p. 19, 22.

the mix of energy sources in a company's portfolio,"⁵³ and, therefore, controls and/or influences the activities of its subsidiaries. The Honorable Commission must not -- by sheer attempt of these corporations to avoid scrutiny of their responsibilities -- concede its authority over the respondents.

C. The Honorable Commission has authority to conduct a national public inquiry on the subject matter of the *Petition*.

C.1. The *Petition* invokes infringements of civil and political rights—the very rights enshrined in the Constitution, Omnibus Rules of the Honorable Commission and the International Covenant on Civil and Political Rights.

2.31. The human rights enumerated in the *Petition*, including environmental rights, are the very essence of the civil and political right to life -- the violations or threats of violations of which the Honorable Commission is duty-bound to investigate.

2.32. International jurisprudence and instruments are replete with pronouncements regarding the right to life as embracing the right to a healthy environment and other rights mentioned in the *Petition*.⁵⁴

2.33. In the Philippines, the Supreme Court in the recent cases of *Henares, Jr., et al. v. Land Transportation Franchising and Regulatory Board, et al.*⁵⁵, *Metropolitan Manila Development Authority, et al. v.*

⁵³ ClientEarth's amicus submission dated 21 November 2016, p. 48, available at <http://www.documents.clientearth.org/wp-content/uploads/library/2016-11-21-amicus-curiae-brief-presented-by-clientearth-re-national-inquiry-on-the-impact-of-climate-change-on-the-human-rights-of-the-filipino-people-ce-en.pdf>, last accessed on 08 February 2017. In general, it appears that parent companies often take responsibility for climate change on behalf of their organization. This can be seen in corporate disclosures on climate change to investors. CDP provides a "global disclosure system" for companies to manage their environmental impacts and for investors or purchasers to access environmental information for use in financial decisions. Investors can request information from companies through CDP's climate change questionnaires. The climate change questionnaire asks companies, "[w]here is the highest level of direct responsibility for climate change within your organization?" See CDP, *Climate Change 2016 Information Request*, available at <https://www.cdp.net/en>, last accessed on 08 February 2017.

⁵⁴ See cases of *T. Damodhar Rao v. Municipal Corporation of Hyderabad*, *Shantistar Builders v. Narayan Khimalal Totame*, *Subhash Kumar v. State of Bihar*, *M.C. Mehta v. Union of India*, *Forum, Prevention of Environment and Sound Pollution v. Union of India*, and *Centre of Environmental Law v. Union of India*, *Shehla Zia v. WAPDA, P.L.D.* and *West Pakistan Salt Miners Labour Union v. Industries and Mineral Development*, *Mohiuddin Farooque v. Bangladesh*, *Gbemre v. Shell Petroleum Dev. Co. Nigeria Ltd.*, *Sawhoyamaya Indigenous Community v. Paraguay* and *Yakye Axa Indigenous Community v. Paraguay*. See also Environmental Law Alliance Worldwide (ELAW), amicus curiae brief, which discusses these cases succinctly, dated 07 November 2016, on file with the Honorable Commission and also available at <https://business-humanrights.org/en/amicus-briefs>, last accessed on 08 February 2017.

⁵⁵ G.R. No. 158290, 23 October 2006.

*Concerned Residents of Manila Bay, et al.*⁵⁶, and consolidated cases of *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.*⁵⁷ and *Central Visayas Fisherfolk Development Center (FIDEC), et al. v. Secretary Angelo Reyes*⁵⁸ has repeatedly reaffirmed the doctrine laid down in *Oposa, et al. v. Factoran, Jr. et al.*⁵⁹, which practically articulates the same import as that of the afore-cited international jurisprudence and instruments.

2.34. As espoused by Fr. Bernas, one of the most respected constitutionalists in this jurisdiction, “with respect to the right to life, it is not just a protection of the right to be alive, or to the security of one’s limb against physical harm. **The right to life is the right to a good life.** The importance of the quality of living finds stronger emphasis in *Article XIII*, on social justice, and even the life of the unborn finds protection in the *1987 Constitution*.”⁶⁰

- i. **Assuming *arguendo* that the human rights invoked in the *Petition* -- with the exception of the right to life -- are purely economic, social, and cultural rights, the Honorable Commission still has authority to conduct the investigation under the Constitution and Section 2, Rule 2 of its *Omnibus Rules*.**

2.35. The Honorable Commission is empowered to provide appropriate legal measures for the protection of human rights of all persons within the Philippines under the Constitution [Art. XIII, Section 18(3)]⁶¹; to recommend to Congress effective measures to promote human rights and provide for compensation to victims of human rights violations and their families [Art. XIII, Section 18(6)]⁶²; and to monitor the Philippine Government’s compliance with international treaty obligations on human rights [Art. XIII, Section 18(7)]⁶³. Unlike Section 18(1)⁶⁴, Sections 18(3), (6) and (7) are not limited to civil and political rights— they refer not only to civil and political rights, but also economic, social and cultural rights (including environmental rights).

⁵⁶ G.R. Nos. 171947-48, 18 December 2008.

⁵⁷ G.R. No. 180771, 21 April 2015.

⁵⁸ G.R. No. 181527, 21 April 2015.

⁵⁹ G.R. No. 101083, 30 July 1993.

⁶⁰ Bernas, J.G. (2003). *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 ed.; Manila: Rex Book Store, p. 110.

⁶¹ Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection.

⁶² Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families.

⁶³ Monitor the Philippine Government’s compliance with international treaty obligations on human rights

⁶⁴ Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights

2.36. Also, the Honorable Commission was empowered by the Constitution⁶⁵ to “adopt its operational guidelines and rules of procedure.” In fulfillment of said constitutional directive, the Honorable Commission issued its *Omnibus Rules*⁶⁶. **Section 2, Rule 2** thereof specifically provides that, in line with its role as a national human rights institution, the Honorable Commission “**shall also investigate and monitor all economic, social and cultural rights violations and abuses, as well as threats of violations thereof**, especially with respect to the conditions of those who are marginalized, disadvantaged, and vulnerable,” as most of the petitioners herein. Likewise, **Section 3, Rule 7** of the *Omnibus Rules of the Commission* states that the subject of public inquiry includes “human rights cases and/or issues involving civil and political, or economic, social, and cultural rights which are of domestic and/or international implication/importance”

2.37. Respondent Shell argues that the Honorable Commission’s “unilateral attempt to extend its jurisdiction to socio-economic rights by means of its rules of procedure is invalid and unconstitutional.”⁶⁷ According to respondent Shell, it is only the Congress that has authority to expand the Honorable Commission’s jurisdiction to hear cases other than human rights violations involving civil and political rights.⁶⁸

2.38. Respondent Shell terribly misses the point. At the risk of sounding repetitious, **unlike Section 18(1), Sections 18(3), (6) and (7) are not limited to civil and political rights— they refer not only to civil and political rights, but also economic, social and cultural rights (including environmental rights), and the authority of the Honorable Commission to set its “operational guidelines” was, according to Fr. Bernas, adopted in lieu of authority to ‘set its own priorities’ in order to avoid the suspicion that the Commission might narrow the scope of its investigations to military violations of human rights only.**⁶⁹

2.39. This is not merely semantics, or a play of words. The framers of the Constitution intended not to restrict or limit the Honorable Commission’s investigatory, recommendatory, and monitoring powers. Effective investigation, monitoring, and development of recommendations entail a comprehensive, holistic, and integrated approach. This is because human rights is multi-faceted and denotes universality -- it is not singular,

⁶⁵ Section 18(2), Article XIII of the *Constitution*.

⁶⁶ *Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance* (“Omnibus Rules of the Commission), April 2012, available at http://www.chr.gov.ph/MAIN%20PAGES/about%20us/PDF/FINAL_APPROVED_8.31.2012.pdf, last accessed on 06 February 2017.

⁶⁷ No. I (E), pp. 29-33 of respondent Shell’s *Motion to Dismiss Ex Abundanti Ad Cautelam* dated 09 September 2016.

⁶⁸ *supra.*, note 67.

⁶⁹ Bernas, J.G. (2003). *op cit.*, p. 1226.

but rather encompasses a broad array of rights that include the rights invoked in the *Petition*.

2.40. With this discussion, there is no point in belaboring on respondent Shell's citation of cases, declaring: "administrative issuances must not override, but must remain consistent with the law they seek to apply and implement."⁷⁰

2.41. At any rate, in refusing to have its hands tied and bearing in mind the universality, indivisibility, interrelatedness, and interdependence of human rights, as discussed, the Honorable Commission⁷¹ issued **CHR Resolution No. A95-096**,⁷² which positively avowed for, as one of its operational priorities, "investigative monitoring of incidents and/or conditions obtaining in the country which are violative of concerns in both areas of civil and political rights **and** economic, social, and cultural rights."⁷³

2.42. **CHR Resolution No. A95-096** invoked the international principles that "human rights is concerned with issues in both areas of civil and political rights, and economic, social, and cultural rights founded on internationally accepted human rights obligations to which the Philippine Government is a state party."⁷⁴

2.43. Significantly, **CHR Resolution No. A95-096** paved the way for the so-called "**investigative monitoring**" function which the Honorable Commission applies when it deals with human rights complaints involving economic, social, and cultural rights ("ESCR").⁷⁵ A careful perusal of the records of the Honorable Commission "since 2000 to present, especially those coming from the regional offices, show various investigations and legal interventions conducted to promote and protect ESCR. The records reveal an assortment of ESCR violations, such as the right to education, **right to health, right to ecology**, right to housing, right to just and favorable conditions of work, right to social security, domestic violence against women and children, among others."⁷⁶

2.44. One case in point is when the Honorable Commission, through the Assistance and Visitorial Office and the CHR Region III Office, conducted an "investigative monitoring" on the complaints filed regarding toxic wastes within the Clark Air Base area, when the United States Bases

⁷⁰ No. I (E), pp. 29-33 of respondent Shell's *Motion to Dismiss Ex Abundanti Ad Cautelam*.

⁷¹ Through its then Chairperson (Sedfrey Ordoñez)

⁷² December 1995

⁷³ *CHR Mandate over Economic, Social, and Cultural Rights (ICESCR)*, p. 6, available at http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/PHL/INT_CESCR_NGO_PHL_41_9912_E.doc, last accessed on 01 January 2017.

⁷⁴ *CHR Mandate over Economic, Social, and Cultural Rights (ICESCR)*, *Id.*, p. 6.

⁷⁵ *CHR Mandate over Economic, Social, and Cultural Rights (ICESCR)*, *Id.*, p. 7.

⁷⁶ *supra.*, note 75.

left the Philippines in 1992, which tremendously affected the water system and caused health problems to the residents of the area due to contaminations of drinking water by heavy metals, such as mercury and nitrates.⁷⁷ The Honorable Commission, at that time, did not shy away from its constitutional duty; thus, it conducted investigations over the said complaints, prepared reports, and referred the matter to the appropriate agencies for action.⁷⁸

2.45. Another pertinent case is *In Re: Displacement Complaint of Residents of Didipio, Kasibu, Nueva Vizcaya*,⁷⁹ which involves large-scale mining operations of a foreign-owned company in the Philippines. The Honorable Commission did not think twice in taking cognizance of the case. The Honorable Commission, in the same case, even unanimously resolved to:

“1. Recommend to the government under the new administration to look into the issues presented herein and consider the probable withdrawal of the FTAA granted to the foreign company in view of the gross violations of human rights it has committed;

2. Require all concerned agencies, particularly the NCIP, the DENR-MGC, the PNP and the AFP, to submit reports to the Commission on Human Rights regarding concrete actions they have taken to respect, protect and fulfill the rights of the affected community in Didipio, within 30 days from receipt of this resolution;

3. Request the same agencies to continue monitoring the human rights situation in Didipio with the view in mind that all reports of violations be verified and acted upon;

4. Advise the OGPI to consider the findings above and conduct a policy re-orientation on the conduct of mining operation taking into conscious account the observance of human rights of the community involved;

5. Direct the CHR Region II to actively advocate for the human rights of the affected community and to take every step possible to avoid the occurrence of further violence and oppression.”⁸⁰

2.46. Notably, this Honorable Commission has established a **Center for Economic, Social, and Cultural Rights**, which serves as the focal point for all programs, activities, and projects of the Commission in relation to

⁷⁷ *CHR Mandate over Economic, Social, and Cultural Rights (ICESCR)*, *Id.*, p. 7.

⁷⁸ *supra.*, note 77.

⁷⁹ CHR-H-2008-0055 (SPL. Report), available at <http://198.23.173.74/chr/wp-content/uploads/Reso-2011-004-Displacement-Complaint-of-Didipio-Nueva-Vizcaya---Jan-10-2014.pdf>, last accessed on 13 January 2017.

⁸⁰ *supra.*, note 79.

business and human rights, the United Nations Sustainable Development Goals (SDG), and the Right to Development (with special focus on vulnerable and disadvantaged sectors).⁸¹ The creation of this center lends credence to this Honorable Commission's authority and thrust to promote and protect not only civil and political -- but also economic, social, and cultural -- rights.

2.47. In any event, the Honorable Commission's broad mandate is sanctioned by the Constitution, and is reinforced by the *Principles relating to the Status of National Institutions*, known as the **Paris Principles**, adopted by the United Nations General Assembly in 1993.⁸²

2.48. The **Paris Principles** states that National Human Rights Institutions (NHRIs) "shall be given as broad a mandate as possible."⁸³ Further, the directive of the Sub-Committee on Accreditation (SCA) General Observations, which aim to guide the interpretation and implementation of the **Paris Principles**, is telling—

“A National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should: extend to the acts and omissions of both the public and private sectors; . . . provide the authority to address recommendations to public authorities, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues.”⁸⁴

2.49. Finally, the **Paris Principles** also decreed that a NHRI shall have the responsibility to produce reports and recommendations “on any matters concerning the promotion and protection of human rights,” including “[a]ny violation of . . . human rights which it decides to take up.”⁸⁵ This responsibility, according to SCA General Observation, is broad as to afford the public the protection of a wide range of international human rights which include -- but are not limited to -- civil, political, economic, social, and cultural rights.⁸⁶

⁸¹ CHR's Specialized/Thematic Human Rights Program, available at <http://198.23.173.74/chr/what-does-the-commission-do/specialized-thematic-human-rights-program/>, last accessed on 01 January 2017.

⁸² ELAW's *amicus curiae* brief dated 07 November 2016, pp. 13-14; see *G.A. G.A. Res. 134, U.N. Doc. A/RES/48/134* (20 December 1993), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>, last accessed on 01 January 2017.

⁸³ ELAW's *amicus curiae* brief, p. 14; see *G.A. G.A. Res. 134, U.N. Doc. A/RES/48/134, Id., Principle 2*.

⁸⁴ ELAW's *amicus curiae* brief, p. 14; see Sub-Committee on Accreditation General Observations, G.O. 1.2, available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf>, last accessed on 01 January 2017.

⁸⁵ ELAW's *amicus curiae* brief, p. 14; *Id.* at *Principle 3(a)(ii)*.

⁸⁶ ELAW's *amicus curiae* brief, p. 14; *Id.* at SCA General Observations, G.O. 1.2 (ii).

2.50. The Honorable Commission has a top (“A”)⁸⁷ accreditation status reflecting its full compliance with the *Paris Principles*.⁸⁸ There is no reason at this point not to maintain this status, especially with the recent announcement that the Philippines will honor the *Paris Agreement*.⁸⁹ As a matter of fact, the petitioners highly laud the Honorable Commission’s noble work of commencing this national public inquiry against respondent Carbon Majors, as this exhibits its desire to maintain its top accreditation status as NHRI, and its actions will set a positive example for NHRIs around the world.

C.2. The Honorable Commission’s authority to investigate all forms of human rights violations is unequivocal, and in line with the intention of the framers of the Constitution and the principle of universality, indivisibility, interdependence, and interrelatedness of human rights.

2.51. The intention of the framers of the Constitution is to make the Honorable Commission evolving and responsive to the calls of time, and considering that human rights are universal, indivisible, interdependent, and interrelated.⁹⁰ Pertinent portions of the deliberations of the 1986 Constitutional Commission which unequivocally convey this intent are as follows:

“*MS. AQUINO*: xxx

This is where I would like to differ partly with the committee when it seems to focus on political cases only. It is askew; it is a bit off mark. When we speak of countries in the Third World, like the Philippines, **we speak of human rights as something that is basic, something that pertains to a right to life, shelter, food, and decent standards of living.** It is essentially the assertion of our clamor for dignity to human life. It is born out of a collective struggle of the Filipino people against a neo-colonial history. xxx”⁹¹ (Emphasis supplied)

⁸⁷ Global Alliance of National Human Rights Institution (GANHRI), *Chart of the Status of National Institution, Accreditation status as of 05 August 2016*, available at http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf, last accessed on 01 January 2017.

⁸⁸ ELAW’s *amicus curiae* brief, p. 14; see International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights, *Directory of Institutions - Asia Pacific*, available at <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/Asia-Pacific.aspx>, last accessed on 01 January 2017.

⁸⁹ Ramos, M. *Duterte to Sign Paris Climate Pact*, 08 November 2016, available at <https://globalnation.inquirer.net/149132/duterte-to-sign-paris-climate-pact>, last accessed on 01 February 2017.

⁹⁰ *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>, last accessed on 01 January 2017.

⁹¹ *Deliberations of the Constitutional Commission on the investigatory powers of the Commission on Human Rights*, p. 729, *op cit.*, pp. 68-69.

“MS. ROSARIO BRAID: Madam President, my colleagues. **I am inclined to agree with Commissioner Aquino. Although I feel that the legal and political aspects are important, I would like to see human rights in a broader context.** I feel that the approach here is, to use the analogy in medicine, more curative than preventive. **Perhaps such a commission, if it were elevated to a constitutional commission, should concern itself more with the environment, the historical, cultural, socio-economic conditions that have fomented this state of attitudinal and value orientation towards violence. . . .”**⁹²
(Emphasis supplied)

“MR. MONSOD: Madam President, I was just wondering whether we can think about the issue a little more in this sense, that we can see over the next few years, maybe in five or ten years, given the structural problems of the economy—the poverty, and maldistribution of income and so on—the structure of political power in the country, there will be problems of human rights in the foreseeable future. Personally, **I would like to see this kind of commission expand its horizons beyond crimes involving political beliefs. Perhaps over time this could take into consideration the wider view of human rights, social and economic rights, the educational aspects—the research into the deeper reasons for all kinds of human rights violations. In other words, the creation of a constitutional commission is a signal of the importance of human rights, but the more immediate problems are these crimes involving political beliefs. But this does not mean that this commission cannot be expanded in its scope later on.** I do not see any point in time where our country will not need a Commission on Human Rights, given the **very wide spectrum of human rights** that are really attainable or, at least, what we would like to attain over the years.

So personally, **I would like to see not a closed definition of the functions of this commission, but a slight opening so that if we do solve the immediate problems, we can go into these other problems.”**⁹³
(Emphasis supplied)

“MR. MONSOD: No. We would like it to be constitutional creation because we could feel the problems of human rights particularly in the next few years. We foresee in the foreseeable future that we will have more problems of human rights, even in the narrow sense of the political and civil rights. **But we also foresee that over time as we become more developed, as our institutions function normally, the scope of this commission, since it**

⁹² Deliberations of the Constitutional Commission on the investigatory powers of the Commission on Human Rights, p. 735, *op cit.*, p. 78.

⁹³ Deliberations of the Constitutional Commission on the investigatory powers of the Commission on Human Rights, p. 738, *op cit.*, p. 82.

is a constitutional body, can be enlarged to include social and economic rights. It can include the concepts proposed by Commissioner Rosario Braid in looking into the causes of the violations of human rights, both in their narrow and broad senses. Therefore, it has a place in the Constitution because the horizon for its functions is well beyond the immediate problems.

MR. MAAMBONG: xxx

MR. MONSOD: Yes, and it can expand its scope as the need and circumstances arise because human rights is a very broad concept. The only reason we are limiting this concept now and trying for very modest objectives at this time is because we do not like the committee to dilute its efforts at this time when there are very real and concrete problems that have to be addressed.”⁹⁴ (Emphasis supplied)

2.52. The eminent constitutionalist, Fr. Joaquin G. Bernas, one of the delegates in the 1986 Constitutional Commission, affirms the foregoing intention of the framers of the Constitution. Thus, in his book, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, Fr. Bernas wrote—

“The scope of its investigation is ‘all forms of human rights violations involving civil and political rights,’ whether committed by public officers or by civilians or rebels. **Every effort was made to ensure that the phraseology of the provision did not suggest that only military violations were within the scope of the Commission’s authority.** Simon, Jr. v. Human Rights Commission has held, moreover, on the basis of Constitutional Commission debates and Section 18(1) that the Commission can only protect ‘civil and political rights’ as distinct from less traditional social and economic rights. **Note, however, that the reason for these modest objectives was the desire of the 1986 Constitutional Commission not to overburden the Commission during its initial years. The limitation does not exclude the possibility of expanding the Commission’s scope later – as in fact Section 19 specifically allows.**”⁹⁵ (Citations omitted; Emphasis supplied)

2.53. Likewise, Fr. Bernas categorically pointed out that, “**the authority [of the Honorable Commission] to set its ‘operational guidelines’ was adopted in lieu of authority to ‘set its own priorities’ in order to avoid the suspicion that the Commission might narrow the**

⁹⁴ Deliberations of the Constitutional Commission on the investigatory powers of the Commission on Human Rights, p. 743, *op cit.*, pp. 94-95.

⁹⁵ Bernas, J.G. (2003). *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 ed.; Manila: Rex Book Store, p. 1225.

scope of its investigations to military violations of human rights only. It was thought that ‘operational guidelines’ is a more neutral expression but, at the same time, is adequately flexible.”⁹⁶

2.54. In consonance with its constitutional mandate, this Honorable Commission adopted its own *Omnibus Rules*, which provide for the scope of its jurisdiction, to wit:

“**Section 1.** Pursuant to Sections 17 to 19, Article XIII of the 1987 Philippine Constitution, in relation to Executive Order No. 163, dated 5 May 1987, and relevant international human rights instruments, **the Commission on Human Rights shall take cognizance of and investigate, on its own or on complaint by any party, all forms of human rights violations and abuses involving civil and political rights,** to include **but not limited to** the following:

- a) **right to life;**
- b) right to liberty;
- c) right to security;
- d) right to respect for one’s dignity;
- e) freedom from slavery and involuntary servitude;
- f) freedom from torture, cruel, inhuman or degrading treatment and punishment;
- g) right to protection from enforced disappearance;
- h) freedom from arbitrary interference with one’s privacy, family, home, or correspondence;
- i) freedom from arbitrary arrest, detention or exile;
- j) freedom of movement and residence;
- k) freedom of thought, conscience and religion;
- l) freedom of the press, speech, opinion and expression;
- m) freedom from discrimination;
- n) right to marry and to found a family; and
- o) right to own property.”⁹⁷ (Emphasis supplied)

2.55. The *Petition* explicitly names the right to life, which is included in the above enumeration. Nonetheless, while the Honorable Commission enumerates many civil and political rights, the list is **not exclusive** and **does not preclude other rights**, such as the other rights mentioned in the *Petition*. These include the rights: (a) to the highest attainable standard of physical and mental health; (b) to food; (c) to water; (d) to sanitation; (e) to adequate housing; and (f) to self-determination of those particularly likely to be affected by climate change, including (1) women; (2) children; (3) persons with disabilities; (4) those living in extreme poverty; (5) indigenous peoples; (6) displaced persons; and (7) workers, as well as the right of Filipinos to development. The words “to include **but not limited to** the

⁹⁶ Bernas, J.G. (2003). *op cit.*, p. 1226.

⁹⁷ Section 1, Rule 2 of the *Omnibus Rules of the Commission*.

following. . . .” are indicative of this non-restrictive and non-exhaustive inventory of human rights involving civil and political rights.

2.56. In fact, as shown, the framers of the Constitution hesitated to define and enumerate human rights involving civil and political rights, acknowledging that the term is broad and evolving.

- i. **The Honorable Commission has the authority to investigate “environmental rights,” which are assumed to exist from the inception of humankind and inextricably linked to the general concept of human rights.**

2.57. The Supreme Court’s pronouncements in *Oposa, et al. v. Factoran, Jr. et al.*⁹⁸ were strongly echoed in the most recent cases of: (a) *Henares, Jr., et al. v. Land Transportation Franchising and Regulatory Board, et al.*⁹⁹; (b) *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al.*¹⁰⁰; and (c) the consolidated cases of *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.*¹⁰¹ and *Central Visayas Fisherfolk Development Center (FIDEC), et al. v. Secretary Angelo Reyes.*¹⁰²

2.58. In the *Rationale to the Rules of Procedure for Environmental Cases* (Administrative Matter [A.M.] No. 09-6-8-SC),¹⁰³ the Supreme Court acknowledged that, “[a] growing number of international instruments as well as national constitutions, domestic legislations and academic literature have recognized the **inextricable link between human rights and environmental rights.**”¹⁰⁴ The Supreme Court added that, “[i]t is significant to note that a fair amount of literature on the origins of environmental rights documents in parallel that **the ‘right to an adequate environment’ or what is collectively known as ‘environmental rights’ grew out of a human rights framework.**”¹⁰⁵

2.59. The propriety of this *Petition* is also supported by the recognition of the human rights implications of climate change by the UN Human Rights Council, Special Procedures of the UN Human Rights

⁹⁸ *Oposa, et al. v. Factoran, Jr. et al.*, G.R. No. 101083, 30 July 1993.

⁹⁹ G.R. No. 158290, 23 October 2006.

¹⁰⁰ G.R. Nos. 171947-48, 18 December 2008.

¹⁰¹ G.R. No. 180771, 21 April 2015.

¹⁰² G.R. No. 181527, 21 April 2015.

¹⁰³ Available at http://philja.judiciary.gov.ph/assets/files/pdf/learning_materials/A.m.No.09-6-8-SC_rationale.pdf, last accessed on 01 January 2017

¹⁰⁴ Citations omitted; Emphasis supplied; *Rationale to the Rules of Procedure for Environmental Cases*, *op cit.*, p. 50.

¹⁰⁵ *Rationale to the Rules of Procedure for Environmental Cases*, p. 50, available at http://philja.judiciary.gov.ph/assets/files/pdf/learning_materials/A.m.No.09-6-8-SC_rationale.pdf, last accessed on 01 January 2017 (Emphasis supplied).

Council, the nations participating in the Climate Vulnerable Forum, and the Government of the Philippines.¹⁰⁶

2.60. As a matter of fact, in issuing the *Rules of Procedure for Environmental Cases*,¹⁰⁷ the Supreme Court noted that “[t]he protection of environmental rights in a human rights context at a domestic level is not a new concept. Many countries around the world provide some protection of environmental rights within their human rights charters.”¹⁰⁸ The Supreme Court cited *Earthjustice’s 2005 Environmental Rights Report (Human Rights and the Environment)*, to wit:

“Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Of the approximately 193 countries of the world, there are now 117 whose national constitutions mention the protection of the environment or natural resources. One hundred and nine of them recognize the right to a clean and healthy environment and/or the state’s obligation to prevent environmental harm. Of these, 56 constitutions explicitly recognize the right to a clean and healthy environment, and 97 constitutions make it the duty of the national government to prevent harm to the environment. Fifty-six constitutions recognize a responsibility of citizens or residents to protect the environment, while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm. Twenty constitutions explicitly make those who harm the environment liable for compensation and/or remediation of the harm, or establish a right to compensation for those suffering environmental injury. Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment.”¹⁰⁹

2.61. The inextricable relationship of environmental and human rights calls for a holistic and integrated approach in the treatment of issues, contrary to the view of the respondents.

- ii. The Honorable Commission is duty-bound to protect and promote all forms of human rights found in international human rights and environmental agreements.**

¹⁰⁶ Please see discussion on this point in the *Petition* dated 09 May 2016, pp. 8-15.

¹⁰⁷ A.M. No. 09-6-8-SC

¹⁰⁸ *Rationale to the Rules of Procedure for Environmental Cases*, *supra*.

¹⁰⁹ *Earthjustice’s 2005 Environmental Rights Report (Human Rights and the Environment)*, available at http://earthjustice.org/sites/default/files/library/references/2005_ENVIRONMENTAL_RIGHTS_REPORT_rev.pdf, last accessed on 01 January 2017.

2.62. The Philippines and its agencies -- as duty-holders -- are obligated to protect and promote human rights and, thus, take necessary actions to prevent human rights abuses that occur within its territory, including with respect to abuses caused by businesses located outside its territory.¹¹⁰ Contrary to respondent Shell's arguments that there is no proper basis for the Honorable Commission to exercise jurisdiction over respondents,¹¹¹ the Commission is required to exercise its authority to investigate the acts of the respondents, in accordance with its power to monitor the Philippine Government's compliance with international treaty obligations on human rights.

2.63. All States have obligations under international law to respect, protect, and fulfill human rights, as recognized in **Section 2 of Rule 2 of the Omnibus Rules of Procedure**.¹¹² The obligation to respect human rights implies that States must refrain from interfering with, or curtailing the enjoyment of, human rights.¹¹³ The obligation to protect human rights, on the other hand, requires States to protect individuals and groups against human rights abuses, including by business enterprises.¹¹⁴ Meanwhile, the obligation to fulfill human rights denotes that they must take positive action to facilitate the enjoyment of fundamental human rights.¹¹⁵

2.64. These obligations arise from human rights treaties and agreements and other sources of international law.¹¹⁶ As a State that has endorsed the **Universal Declaration on Human Rights**¹¹⁷ and party to several human rights treaties -- including the **International Covenant on Civil and Political Rights ("ICCPR")**, the **International Covenant on Economic, Social and Cultural Rights ("ICESCR")**, the **Convention on the Rights of the Child ("CRC")**, the **Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW")**, and the **International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD")**¹¹⁸ -- the Philippines has assumed the

¹¹⁰ See De Schutter, O., Eide, A., Khalfan, A., Künnemann, R., Černič, J., Orellana, M., Seiderman, I., and Thiele, B., amicus submission dated 05 December 2016, p. 11, available at <https://business-humanrights.org/en/amicus-briefs>, last accessed on 08 February 2017.

¹¹¹ Respondent Shell's *Motion to Dismiss Ex Abundanti Ad Cautelam* and Letter D, p. 7.

¹¹² Section 2 of Rule 2 of the *Omnibus Rules of the Commission*; see also *The Corporate Responsibility to Respect Human Rights (An Interpretative Guide)*, available at http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf, p. 10, last accessed on 17 January 2017.

¹¹³ *The Corporate Responsibility to Human Rights (An Interpretative Guide)*, *Id.*, p. 10.

¹¹⁴ *supra.*, note 113.

¹¹⁵ *supra.*, note 113.

¹¹⁶ ClientEarth's amicus submission, *op cit.*, 22-27; De Schutter, O., et al., *op cit.*, pp. 3-4, on file with the Honorable Commission.

¹¹⁷ *UN General Assembly, Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

¹¹⁸ See *International Covenant on Civil and Political Rights*, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976; *International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 03 January 1976; *Convention on the Rights of the Child*, U.N. Doc. A/44/49 (1989), entered into force 02 September 1990; *Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. A/34/46, entered into force 03 September 1981; *International Convention on the Elimination of All Forms of Racial Discrimination*, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force 04 January 1969.

obligations to respect, to protect, and to fulfill human rights as described above.

2.65. As party to human rights treaties, the Philippines is subject to the interpretations of their monitoring bodies. Notably, the UN Human Rights Committee (the monitoring body for the ICCPR) has clarified that Parties to the ICCPR are under “positive obligations” to protect individuals “against acts committed by private persons or entities that would impair the enjoyment of Covenant rights.”¹¹⁹ The UN Human Rights Committee further states “[t]here may be circumstances in which a failure to ensure Covenant rights ... would give rise to violations by State Parties of those rights, as a result of State Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”¹²⁰

2.66. As such, States are required to protect human rights against violations and abuses arising from acts committed by private entities. In considering matters related to compliance with the ICCPR, the UN Human Rights Committee has “called on State Parties to ‘set out clearly the expectation that all business enterprises domiciled in its territory and/or subject to its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations’ as well as to ‘take appropriate measures to strengthen the remedies for people who have been victims of activities of such business enterprises operating abroad, as well as strengthen the safeguards to prevent people from becoming victims to these.’”¹²¹

2.67. These obligations are further recognized by the Philippines through its endorsement of international declarations and its signature or ratification of international environmental agreements that acknowledge the intrinsic relationship between human rights and environmental protection, including the **1972 Stockholm Declaration**¹²² and the **2015 Paris Agreement**,¹²³ among others.

¹¹⁹ UN Human Rights Committee, General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev1/Add.13, 26 May 2004, para 8.

¹²⁰ *supra.*, note 119.

¹²¹ *UN Human Rights Committee, Concluding Observations: Republic of Korea*, UN Doc. CCPR/C/KOR/CO.4 (October 2015).

¹²² The 1972 Stockholm Convention is highly relevant because it is the earliest internationally agreed upon statements connecting the right to life to environmental protection. The Preamble states: “Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself. *Principle 1* states: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, 16 June 1972 at Preamble, Principle 1, available at <http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503>, last accessed on 06 February 2017.

¹²³ *Adoption of the Paris Agreement, United Nations Framework Convention on Climate Change*, 12 December 2015, FCCC/CP/2015/L.9, available at <https://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>, last accessed on 06 February 2017.

2.68. These international environmental agreements further support the Honorable Commission's exercise of authority to investigate the human rights harms resulting from climate change and the ways in which the respondents have caused or contributed to these harms. For example, the *Paris Agreement* -- signed in April 2016 and ratified in December 2016 -- explicitly acknowledges that Parties should take human rights into account when taking climate action, e.g. mitigation and adaptation, to wit:

“*Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”¹²⁴

2.69. On 07 November 2016, President Rodrigo Duterte, pledged to honor the *Paris Agreement* after an almost unanimous vote by his Cabinet.¹²⁵ The commitments set forth in the *Paris Agreement* -- including the human rights reference -- provide clear policy reference to the Commission on the need to take human rights into account in all climate actions, thus strengthening petitioners' position that the Honorable Commission has the authority to conduct this national public inquiry.

2.70. In addition, for the reasons discussed below, the Honorable Commission has authority to investigate the acts of the respondent Carbon Majors based on the *territoriality principle* and, by extension, the *effects doctrine*. The United Nations International Law Commission in Appendix E to its 2006 Report (“ILC Report”) authoritatively summarizes the relevant principles of extraterritorial jurisdiction under international law.¹²⁶

2.71. As described by the International Bar Association, the “starting point for jurisdiction is that all states have competence over events occurring and persons (whether nationals, residents or otherwise) present in their territory. This principle, known as the ‘**principle of territoriality**,’ is the most common and least controversial basis for jurisdiction. In addition,

¹²⁴ *supra.*, note 123.

¹²⁵ Ramos, M. *Duterte to Sign Paris Climate Pact*, 08 November 2016, available at <https://globalnation.inquirer.net/149132/duterte-to-sign-paris-climate-pact>, last accessed on 08 February 2017.

¹²⁶ *Report of the International Law Commission on the work of its fifty-eighth session*, V, pp. 516-540, available at: <http://legal.un.org/ilc/reports/2006/>, last accessed on 06 February 2017.

states have long recognized the right of a state to exercise jurisdiction over persons or events located outside its territory in certain circumstances...”¹²⁷

2.72. The decision of the Permanent Court of International Justice (PCIJ) in the *S.S. Lotus*¹²⁸ case challenges the notion that a State cannot exercise jurisdiction over conduct that occurs beyond its territory. In this case, the PCIJ distinguished the exercise of extraterritorial jurisdiction from the exercise of jurisdiction over foreign acts that have caused harm within its territory. The PCIJ found that there is no general rule of international law that prohibits a “State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad.”¹²⁹ A 2006 *International Law Commission report* summarizes the case:

“The Court indicated that the jurisdiction of a State is territorial in nature and that a State cannot exercise jurisdiction outside its territory in the absence of a permissive rule of international law to the effect. However, the Court distinguished between the jurisdiction by a State outside its territory and the exercise of jurisdiction by a State within its territory with respect to persons, property or acts outside its territory.”¹³⁰

2.73. Regardless of whether respondents have operations in the Philippines¹³¹, the exercise of “jurisdiction” is justified given that several of these entities are conducting business outside, and potentially within, the country’s borders in a manner that is causing or contributing to human rights harms in the Philippines. For this reason, the Honorable Commission has the authority to investigate their acts under the territoriality principle discussed above.

2.74. Of equal importance, as it applies to all of the respondent Carbon Majors, the Honorable Commission could exercise “jurisdiction” under the “**effects doctrine**.”¹³² This doctrine provides that a state may assert jurisdiction “with regard to the conduct of a foreign national occurring outside the territory of a State which has a substantial effect within that territory.”¹³³ As an extension of the territoriality principle, the effects

¹²⁷ International Bar Association, *Report of the Task Force on Extraterritorial Jurisdiction* (February 2009), p. 11, available at <http://www.ibanet.org/Document/Default.aspx?DocumentUId=ECF39839-A217-4B3D-8106-DAB716B34F1E>, last accessed on 06 February 2017.

¹²⁸ *SS ‘Lotus’ (Government of the French Republic v. Government of the Turkish Republic)*, Permanent Court of International Justice, 1927 PCIJ (ser. A) No. 10.

¹²⁹ Citing to *SS Lotus* case, P.C.I.J. ser. A, No. 10, p. 16. For a more in depth discussion of the *S.S. Lotus* Case, please see ELAW’s amicus submission dated 07 November 2016, p. 5.

¹³⁰ Report of the International Law Commission on the work of its fifty-eighth session, V, pp. 520-521, available at: <http://legal.un.org/ilc/reports/2006/>, last accessed on 06 February 2017.

¹³¹ See Annex “C” to the *Petition* dated 09 May 2016 indicating that some of the respondent Carbon Majors may operate or operated, are or have been otherwise present through entities, in the Philippines based on the records of the Securities and Exchange Commission of the Philippines.

¹³² ELAW’s amicus submission, *op cit.*, p. 5.

¹³³ *Report of the International Law Commission on the work of its fifty-eighth session*, V, pp. 522, available at <http://legal.un.org/ilc/reports/2006/>, last accessed on 06 February 2017.

doctrine focuses on where the conduct's effects are felt, rather than where the conduct occurs. The effects doctrine serves as one of the bases of jurisdiction in several jurisdictions, including Australia (with the exception of Western Australia), Canada, the European Union, New Zealand, and the United Kingdom.¹³⁴

2.75. While human rights bodies in the home States of the respondent Carbon Majors could exercise jurisdiction over this matter, it would be impractical, if not impossible, to provide recourse for petitioners in this manner. Petitioners would have to file petitions in multiple foreign jurisdictions, imposing an extreme burden -- financial and technical -- on the petitioners. This piecemeal approach would also result in costly investigations with respect to the individual contributions of the respective Carbon Majors and the human rights harms they cause, rather than a cumulative assessment of the harms that petitioners are now suffering.

2.76. The **doctrine of necessity** permits the Honorable Commission to accept a complaint where there is no feasible alternative human rights forum in other countries, or where the petitioners may be reasonably expected to bring the action.¹³⁵ This doctrine has been adopted in many jurisdictions to ensure that victims are not denied access to justice, a core principle underlying international law. The rationale for this doctrine has been explained by a Canadian court of appeals as follows:

“The forum of necessity doctrine recognizes that there will be exceptional cases where, despite the absence of a real and substantial connection, the need to ensure access to justice will justify the assumption of jurisdiction... Where there is no other forum in which the plaintiff can reasonably seek relief, there is a residual discretion to assume jurisdiction.”¹³⁶

2.77. Given that the petitioners have raised their concerns regarding human rights violations that have occurred -- and are still occurring -- in the Philippines, the Honorable Commission is the most appropriate forum to undertake an investigation and issue findings as to how these violations can, and shall, be remedied.

2.78. The authority to exercise jurisdiction over the respondent Carbon Majors, based on the *territoriality principle* and the *effects doctrine*,

¹³⁴ Vanuatu Environmental Law Association and West Coast Environmental Law, *Taking Climate Justice into Our Own Hands: A Model Climate Compensation Act* (December 2015), pp. 17-18, available at http://static1.squarespace.com/static/565777bfe4b0509ba9e4f31e/t/5666fee5dc5cb481d318cb85/1449590501349/web_version_final.pdf, last accessed on 06 February 2017.

¹³⁵ See e.g. Nwapi, C., *Jurisdiction by Necessity and the Regulation of the Transnational Corporate Actor*, (2014) 30(78) *Utrecht Journal of International and European Law* 24, available at <http://dx.doi.org/10.5334/ujiel.cb>, last accessed on 06 February 2017.

¹³⁶ *Van Breda v. Village Resorts Limited*, 98 OR (3d) 721 (2010).

is bolstered by the “no harm” principle, a widely recognized principle of customary international law.¹³⁷ Respondent Cemex challenges the status of the “no harm” principle as customary international law as well as the petitioners’ reliance on the *Trail Smelter* arbitration.¹³⁸

2.79. Under the “no harm” principle, States have to exercise due diligence in preventing harm by taking all measures possible to reduce the risk of significant transboundary harm. In the International Court of Justice (“ICJ”) decision in *Pulp Mills*, the ICJ found that this obligation “is now part of the corpus of international law relating to the environment.”¹³⁹ States must exercise due diligence in preventing “significant” transboundary harm.¹⁴⁰ Climate change arises as a result of conduct in all countries, and its effects are felt globally— as such, each State has to take steps to prevent it and protect its people from the catastrophic impacts. Therefore, the Philippines is responsible for taking the necessary steps to ensure that the Carbon Majors refrain from activities that are interfering with the rights of people in the Philippines.¹⁴¹

2.80. The Philippines, and the parties to the UNFCCC, have recognized the “no harm” applies to climate change.¹⁴² The “do no harm principle” was established in the *Trail Smelter* arbitration, in which an International Joint Commission handled a dispute concerning emissions from a Canadian facility that was believed to be causing harm in the United States. In a recent U.S. case concerning the same facility, a court found that it could apply U.S. law even though the polluting facility at issue is located

¹³⁷ The “no harm” principle is well recognized as customary international law that applies to all states. See Brownlie, I., *Principles of Public International Law*, (7th ed.) (2008), pp. 280, 285; Patricia Bernie, P., and Boyle, A., *International Law & the Environment*, (2nd ed.) (2002), pp. 104-105; Birnie, P., Boyle, A., and Redgwell, C., *International Law and the Environment* (3rd ed.) (2009), pp. 143-144. The International Court of Justice in several cases involving transboundary harm has confirmed the principle. ICJ, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p. 226 para. 29, Judgement, Case concerning the Gabcikovo-Nagymaros Project (*Hungary v. Slovakia*), ICJ Reports 1997, p.41, para.53. 12 ICJ, Judgement, Case concerning Pulp Mills on the River Uruguay (*Argentina v. Uruguay*), 2010 ICJ Reports 1, 38, para.101. 13 ICJ, Judgement, Case concerning Pulp Mills on the River Uruguay (*Argentina v. Uruguay*), 2010 ICJ Reports 1, 38, para.101; *Costa Rica v. Nicaragua*, Judgment, 18 December 2015, para. 101, available at <http://www.icj-cij.org/docket/files/152/18848.pdf>, last accessed on 08 February 2017.

¹³⁸ Respondent Cemex’s *Entry of Special Appearance with Motion to Dismiss* dated 14 September 2016, No. 34, p. 22, No. 35, pp. 22-23, and No. 35.2, p. 23.

¹³⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *op cit.*, para. 101, citing the *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, op cit.*, p. 242, para. 29. Confirmed in the joined cases *Costa Rica v. Nicaragua* and *Nicaragua v. Costa Rica* para. 104, 118.

¹⁴⁰ The case concerning Pulp Mills on the River Uruguay, *Argentina v. Uruguay*, ICJ 2010.

¹⁴¹ See *Petition* dated 09 May 2016, pp. 45-46.

¹⁴² The no-harm rule has been incorporated into international legal documents and policies. *United Nations Framework Convention on Climate Change*, Preamble 1771 UNTS 107; S. Treaty Doc No. 102-38; U.N. Doc. A/AC.237/18 (Part II)/Add.1; 31 ILM 849 (1992) [“Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”]; Principle 21 of the Stockholm Declaration; Principle 2 of the 1992 Rio Declaration on Environment and Development; Article 3 of the Convention on Biological Diversity; and Article 194(2) of the United Nations Convention on the Law of the Sea.

in Canada.¹⁴³ Similar to the U.S. Court, the Honorable Commission has the authority to investigate whether human rights harms are occurring in the Philippines as a result of the respondents' global operations and activities.

2.81. Drawing on existing laws and standards such as the “no harm” principle with a view to clarifying the obligations of States,¹⁴⁴ the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (“Maastricht Principles”) further support the Honorable Commission’s authority to conduct this national public inquiry, contrary to respondent Shell’s contention that the *Maastricht Principles*, as well as the *UN Guiding Principles*, are “not legally binding” and “not directed at private parties.”¹⁴⁵

2.82. The *Maastricht Principles* are premised on the global and universal nature of human rights and the notion that human rights are owed *erga omnes* to the international community as a whole.¹⁴⁶ The Principles specially say that they do not create new legal norms, but rather “articulate the current state of international law regarding extraterritorial obligations, reflecting many of the conclusions drawn by international tribunals, U.N. treaty bodies, and Special Procedures.”¹⁴⁷

2.83. The following principles support the Honorable Commission’s authority to investigate and monitor human rights abuses in the Philippines.

“**Principle 4** explains that “[e]ach State has the obligation to realize economic, social and cultural rights, for all persons within its territory, to the maximum of its ability”¹⁴⁸
...

Principle 25(a) of the Maastricht Principles indicates that: “States **must** adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: a) the harm or threat of harm originates **or occurs** on its territory... d) there is a

¹⁴³ Seck, S., amicus submission dated 12 November 2016, pp. 4-5, available at <https://business-humanrights.org/en/amicus-briefs>, last accessed on 08 February 2017; citing to *Pakootas v. Teck Cominco Metals, Ltd.*, 452 F 3d 1066 (9th Cir 2006), p. 1068 [“We hold that because CERCLA liability is triggered by an actual threatened release of hazardous substances; and – because a release of hazardous substances took place within the United States; – this suit involves a domestic application of CERCLA.”].

¹⁴⁴ De Schutter, O., et al.’s amicus submission, *op cit.*, p. 9.

¹⁴⁵ Respondent Shell’s *Motion to Dismiss Ex Abundanti Ad Cautelam*, No. I (F), pp. 34-55.

De Schutter, O., et al.’s amicus submission, *op cit.*, pp. 1103, 1142, 1166.

¹⁴⁷ Written statement submitted by Center for International

Environmental Law to the Office of the High Commissioner on Human Rights, U.N. Doc.

A/HRC/WG.16/1/NGO/3, p. 14, available at

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session1/A.HRC.WG.16.1.NGO.3.pdf>, last accessed on 06 February 2017.

¹⁴⁸ *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Human Rights Quarterly* (2012), Vol. 34, p. 1084, also available at http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23, last accessed on 11 November 2016.

reasonable link between the State concerned and the conduct it seeks to regulate” (emphasis added).¹⁴⁹

Principle 3 elaborates that “[a]ll States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially.”¹⁵⁰

Principle 37 requires states to “ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any state concerned must provide remedies to the victim.”¹⁵¹

2.84. The above relevant principles particularly state in explicit terms the Philippine state’s obligation to protect individuals in the Philippines and to prevent abuses of their human rights, specifically by respondents’ contribution to carbon emissions, occurring both within and outside the Philippines.

2.85. Respondent Carbon Majors are domiciled in many countries around the world, from the United States to South Africa to Australia. The corporate groups’ operations take place in an even greater number of countries. The products are sold and burnt in still a larger number of countries. Yet the harm at issue in this national public inquiry is occurring here, in this country, our home, the Philippines.

2.86. With the foregoing, it is beyond question that States are duty-bound to protect its people against human rights abuses -- and that the Honorable Commission is constitutionally tasked to investigate and monitor -- within their territory or jurisdiction, whether committed by State or non-State actors, including businesses, such as respondents herein. Thus, the Honorable Commission is indubitably well within its “jurisdiction” or authority to investigate based on the *Petition*.

2.87. However, respondent ExxonMobil asked why the government of the Philippines was not named as respondent in the *Petition* reasoning that all the obligations based on international laws and principles are obligations

¹⁴⁹ *supra.*, note 148.

¹⁵⁰ *supra.*, note 148.

¹⁵¹ *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 29 NETH. Q. HUMAN RIGHTS 578 (2011), available at <http://www.maastrichtuniversity.nl/web/Institutes/MaastrichtCentreForHumanRights/MaastrichtETOPrinciples.htm>, last accessed on 08 February 2017.

of the state and not of corporations;¹⁵² and if, indeed, one of the objectives of the *Petition* is for the Honorable Commission's exercise of monitoring power. In similar evasive tone, respondent LafargeHolcim argued that the petitioners must seek remedies from their national government, and not from the transnational corporations.¹⁵³ The objective of this *Petition* is precisely to activate a potential process whereby the Honorable Commission can help in the realization of the State of the Philippines' obligations to protect human rights of those within its jurisdiction from harmful corporate conduct.

D. Refutations to other “jurisdictional” matters raised by the respondents.

D.1. The petitioners are invoking this Honorable Commission's investigatory, recommendatory, and monitoring powers, as expressly conferred by the Constitution, and not its quasi-judicial function.

2.88. To emphasize, petitioners are invoking this Honorable Commission's **investigatory, recommendatory, and monitoring** powers as expressly conferred by the Constitution—

“(1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;

xxx

(6) Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;

(7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;

xxx.”¹⁵⁴

2.89. Contrary to the reasoning of respondents Cemex,¹⁵⁵ ExxonMobil,¹⁵⁶ and LafargeHolcim,¹⁵⁷ petitioners are not seeking this Honorable Commission's quasi-judicial power. The procedure upon which this national public inquiry would be carried out, according to the Honorable

¹⁵² Respondent ExxonMobil's *Motion to Dismiss Ad Cautelam* dated 13 September 2016, para. 18.

¹⁵³ Respondent LafargeHolcim's *Manifestation Ad Cautelam (Without Any Acceptance or Submission to Jurisdiction)* dated 15 September 2016 with attached letter from LafargeHolcim dated 13 September 2015, Letter C, p. 5 of the attached letter.

¹⁵⁴ Section 18, Article XIII of the 1987 Philippine Constitution.

¹⁵⁵ See Cemex's *Entry of Special Appearance with Motion to Dismiss* dated 14 September 2016, Letter C, p. 2 thereof.

¹⁵⁶ See ExxonMobil's *Motion to Dismiss Ad Cautelam* dated 13 September 2016, Nos. 31-32, pp. 9-10 thereof.

¹⁵⁷ See LafargeHolcim's *Manifestation Ad Cautelam (Without Any Acceptance or Submission to Jurisdiction)* dated 15 September 2016 with attached letter from LafargeHolcim dated 13 September 2015, Letter C, p. 5 of the attached letter.

Commission during its press conference held on 08 December 2016, is **non-adversarial** and **fact-finding in nature**, pursuant to *Section 2, Rule 7 of the Omnibus Rules of the Commission*.

“The investigative and inquiry proceedings of the CHR is fact-finding in nature, and non-adversarial.

Public inquiry shall generally be open to the public, transparent, and allows for the participation of affected parties and sectors.”¹⁵⁸

2.90. At any rate, without disregarding the applicable decision of the Supreme Court on the matter, the petitioners entertain misgivings as to the respondents’ conclusion that the Honorable Commission is not a quasi-judicial body, given the pertinent deliberations of the 1986 Constitutional Commission cited below:

“MS. AQUINO: After all the amendments have been approved and with the very liberal posture of the committee in terms of the spiritual endowments of the article, do we still want to be confined to the definition of this commission as an administrative body? Surely, we must provide some kind of a conceptual cohesion between the powers and the nature of the commission.

MR. SARMIENTO: I think Commissioner Aquino is now asking about the nature of the Commission on Human Rights because previously we said it was purely an administrative body. **But because of its new functions, it has acquired a new feature, a new character, so it is now a quasi-judicial body.**

MS. AQUINO: So this would necessarily require a readjustment in the functions and the concepts of the commission.

MR. SARMIENTO: Madam President, **considering the adjustments we made, the new powers we added, the commission will no longer be a purely administrative body; it will be a quasi-judicial body.**

MS. AQUINO: Thank you, Madam President.”¹⁵⁹
(Emphasis supplied)

2.91. The additional prosecutorial function given by the Congress to this Honorable Commission under *Section 55 of R.A. 9372*, otherwise known as the “*Human Security Act of 2007*,” as will be discussed below, seems to support its quasi-judicial function.

¹⁵⁸ Section 2, Rule 7 of the *Omnibus Rules of the Commission*.

¹⁵⁹ Deliberations of the Constitutional Commission on the investigatory powers of the Commission on Human Rights, p. 777, *op cit.*, pp. 152-153.

2.92. Nonetheless, whether or not this Honorable Commission is a quasi-judicial body is **beside the point**. Its authority to take cognizance of the *Petition* and investigate the subject matter therein has overwhelmingly been established by law, rules, international instruments, and jurisprudence.

D.2. The provision contained in the Human Security Act, specifying the Honorable Commission's role to give highest priority to investigations or prosecutions of violations of civil and political rights, did not curtail the Commission's constitutionally mandated investigative powers.

2.93. Respondent Shell concluded that the Congress “expressly acknowledged, in recent legislative acts, that the CHR’s jurisdiction is confined to violations of civil and political rights.”¹⁶⁰ Respondent Shell merely cited, although incompletely, *Section 55 of R.A. 9372*, otherwise known as the “*Human Security Act of 2007*.”

2.94. *Section 55* of the *Human Security Act of 2007* provides:

“**Section 55. Role of the Commission on Human Rights.** - The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act; and for this purpose, the Commission shall have the concurrent jurisdiction to **prosecute** public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, or detained for the crime of terrorism or conspiracy to commit terrorism.”

2.95. The afore-quoted provision is naught with any semblance of limiting the Honorable Commission’s broad investigatory, recommendatory, and monitoring powers. The legislative fiat merely speaks of “**priority**,” noting the primacy of civil and political rights, which need serious and urgent attention by this Honorable Commission due to the existing circumstances at that time where terrorist-related activities were at its height.

2.96. Moreover, the provision merely talks about the additional function of the Honorable Commission, specifically its **role in implementing the law**. On this score alone, respondent Shell’s argument fails.

2.97. What can be gathered from the above provision is the fact that the Congress even **expanded** the Honorable Commission’s powers to

¹⁶⁰ No. I (D), pp. 26 of respondent Shell’s *Motion to Dismiss Ex Abundanti Ad Cautelam*.

include **prosecution** of public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, or detained for the crime of terrorism or conspiracy to commit terrorism. What is the impact of this new or additional prosecutorial power to the investigative, recommendatory, and monitoring powers of the Honorable Commission? It is worthwhile to ponder upon this question, but it is not relevant to this *Petition*.

2.98. To underscore, this *Petition* was primarily lodged to request the Honorable Commission to exercise its investigatory, recommendatory, and monitoring powers to prevent or curb further violations of petitioners' and all Filipinos' constitutionally-protected human rights in the context of climate change.

D.3. The fact that the Honorable Commission was not included among the government agencies composing the advisory board of the Philippine Climate Change Commission (PCCC) did not preclude the Honorable Commission from conducting this national inquiry. Neither did the Honorable Commission, by taking cognizance of this case, usurp the jurisdiction of the PCCC.

2.99. In their respective responses,¹⁶¹ respondents Shell and LafargeHolcim argued against the Honorable Commission's evident investigatory, recommendatory, and monitoring powers. They claim that the Honorable Commission was not included among the government agencies composing the advisory board of the PCCC -- allegedly the government agency tasked to formulate the official Philippine positions on climate change negotiation issues and decision areas in the international arena -- hence, purportedly reflect that the Congress does not consider the Honorable Commission to have any jurisdiction over environmental, climate change, or socio-economic and cultural matters.¹⁶²

2.100. This argument is *non sequitur*. The fact that this Honorable Commission was not among those named in the law creating the PCCC (*Republic Act [R.A.] No. 9279*, as amended by *R.A. No. 10174*) neither dilute the Honorable Commission's constitutionally endowed investigatory, monitoring, and recommendatory powers, as discussed, nor preclude it from conducting this national public inquiry. The PCCC did not attain any sole "jurisdiction" over environmental, climate or socio-economic, and cultural

¹⁶¹ No. I (D), p. 26 of respondent Shell's *Motion to Dismiss Ex Abundanti Ad Cautelam* and Letter D, p. 5 of the attached letter to respondent LafargeHolcim's *Manifestation Ad Cautelam (Without Any Acceptance or Submission to Jurisdiction)* dated 15 September 2016.

¹⁶² *supra.*, note 161.

matters. In the same vein, the non-inclusion of any agency in any other government advisory body does not create exclusivity over mandates.

2.101. Respondents Shell and LafargeHolcim further argue, albeit erroneously, that the petitioners ask the Honorable Commission to usurp -- or alternatively, that the Honorable Commission usurped -- the functions of the PCCC.¹⁶³

2.102. There is **nothing** in the numerous enumerated powers and functions of the PCCC, as provided for in *Section 9 of R.A. 9729*, that gives it the **investigative power** similar to that given by the Constitution to the Honorable Commission. *Section 9 of R.A. 9729* provides:

“**Section 9. Powers and Functions of the Commission.** – The Commission shall have the following powers and functions:

(a) Ensure the mainstreaming of climate change, in synergy with disaster risk reduction, into the national, sectoral and local development plans and programs;

(b) Coordinate and synchronize climate change programs of national government agencies;

(c) Formulate a Framework Strategy on Climate Change to serve as the basis for a program for climate change planning, research and development, extension, and monitoring of activities on climate change;

(d) Exercise policy coordination to ensure the attainment of goals set in the framework strategy and program on climate change;

(e) Recommend legislation, policies, strategies, programs on and appropriations for climate change adaptation and mitigation and other related activities;

(f) Recommend key development investments in climate-sensitive sectors such as water resources, agriculture, forestry, coastal and marine resources, health, and infrastructure to ensure the achievement of national sustainable development goals;

(g) Create an enabling environment for the design of relevant and appropriate risk-sharing and risk-transfer instruments;

(h) Create an enabling environment that shall promote broader multi-stakeholder participation and integrate climate change mitigation and adaptation;

¹⁶³ See discussions on respondents’ respective responses, *Id.*, No. I (D), p. 26 (respondent Shell) and Letter D, p. 5 of the attached letter (respondent LafargeHolcim).

(i) Formulate strategies on mitigating GHG and other anthropogenic causes of climate change;

(j) Coordinate and establish a close partnership with the National Disaster Coordinating Council in order to increase efficiency and effectiveness in reducing the people's vulnerability to climate-related disasters;

(k) In coordination with the Department of Foreign Affairs, represent the Philippines in the climate change negotiations;

(l) Formulate and update guidelines for determining vulnerability to climate change impacts and adaptation assessments and facilitate the provision of technical assistance for their implementation and monitoring;

(m) Coordinate with local government units (LGUs) and private entities to address vulnerability to climate change impacts of regions, provinces, cities and municipalities;

(n) Facilitate capacity building for local adaptation planning, implementation and monitoring of climate change initiatives in vulnerable communities and areas;

(o) Promote and provide technical and financial support to local research and development programs and projects in vulnerable communities and areas; and

(p) Oversee the dissemination of information on climate change, local vulnerabilities and risks, relevant laws and protocols and adaptation and mitigation measures.”¹⁶⁴

2.103. In fact, the PCCC, which is attached to the Office of the President, was primarily created as a **policy-making government agency**. *Section 4 of R.A. 9729* validates this position—

“**Section 4. Creation of the Climate Change Commission.** – There is hereby established a Climate Change Commission, It shall be attached to the Office of the President. The Commission shall be the sole **policy-making body of the government** which shall be tasked to **coordinate, monitor and evaluate** the programs and action plans of the government relating to climate change pursuant to the provisions of this Act. . . .”¹⁶⁵

2.104. Clearly, contrary to respondents Shell and LafargeHolcim's assertion of usurpation of PCCC's functions, the Honorable Commission

¹⁶⁴ R.A. 9729, otherwise known as the *Climate Change Act of 2009*.

¹⁶⁵ *supra.*, note 164.

was well within its authority -- far from abusing its powers -- when it entertained this *Petition* and launched a national public inquiry.

D.4. Section 362(a) of the *United States Bankruptcy Code* does not support respondent Peabody's request for the dismissal of the national public inquiry.

2.105. Respondent Peabody filed bankruptcy petitions for the majority of its entities in the United States Bankruptcy Court for the Eastern District of Missouri.¹⁶⁶ In its response to the *Petition* in this proceeding, the company claimed it is “precluded under the United States Bankruptcy Code from responding to the Honorable Commission’s *Order* and the *Petition*, and from participating in the present proceeding.”¹⁶⁷ It essentially claims that **Section 362(a)** of the *United States Bankruptcy Code* operates as a stay on the Honorable Commission’s proceedings.¹⁶⁸

2.106. **Section 362(a) of the *United States Bankruptcy Code*** is not applicable to the present proceeding and does not preclude respondent Peabody from responding to Honorable Commission’s *Order*, answering the *Petition*, and fully participating in the investigation. First, the automatic stay does not apply because the petitioners have not commenced or continued “a judicial, administrative, or other action or proceeding against the debtor,” or sought to “recover a claim against the debtor.”¹⁶⁹ Second, the automatic stay is inapplicable because the investigation is fact-finding and non-adversarial in nature and does not seek to adjudicate any issue of property rights that might otherwise be within the purview of the Bankruptcy Court.¹⁷⁰

2.107. In any event, in July 2016, a United States Bankruptcy Judge allowed citizen groups to continue with complaints to a regulatory body concerning respondent Peabody’s obligation to fully perform mine reclamation and environmental clean-ups during the bankruptcy proceedings.¹⁷¹ Similar to the citizen groups, the petitioners filed a *Petition* to the Honorable Commission, which has led to this fact-finding

¹⁶⁶ Peabody Energy, *Peabody Energy Chapter 11 Protection Information*, 13 April 2016, available at <http://www.peabodyenergy.com/content/2625/chapter-11-protection>, last accessed on 06 February 2017.

¹⁶⁷ Peabody Energy Corporation, *Special Appearance and Motion to Dismiss* dated 15 September 2016, para 6.

¹⁶⁸ *supra.*, note 167.

¹⁶⁹ 11 U.S.C. § 362(a)(1).

¹⁷⁰ 11 U.S.C. § 362(a)(2)-(8); See also United States’ Response to Citizen Groups’ Motion to Lift Automatic Stay to the Extent it Applies, In re: Peabody Energy Corporation, et al., Chapter 11 Case No. 16-42529-399, para. 15, available at <http://www.kccllc.net/peabody/document/1642529160608000000000029>, last accessed on 08 February 2017; [“The threshold question under Section 362(a)(3) is whether the act involves the property of the estate. See In re National Cattle Congress, Inc., 179 B.R. 588, 592 (Bankr. N.D. Iowa 1995)”].

¹⁷¹ *Environmental Law & Policy Center and Western Organization of Resource Councils v. Peabody Energy Corporation et al.*; Order Granting Motion of the Environmental Law & Policy Center and the Western Organization of Resource Councils for Relief from the Automatic Stay, 20 July 2016, Chapter 11, Case No. 16-42529-399.

investigation, and are not seeking to recover money or obtain possession of property. Therefore, the automatic stay is not applicable to the instant proceeding.

E. The *Petition* sets out ample scientific and legal grounds for the Honorable Commission’s investigation.

2.108. Respondents ExxonMobil and LafargeHolcim further argue that the *Petition* should be dismissed because, allegedly, it fails to state a cause of action against the respondents.¹⁷² At the outset, it is essential to recall the aim of the *Petition*: To request the Honorable Commission to “conduct an investigation into the human rights implications of climate change and ocean acidification and the resulting rights impacts in the Philippines.”¹⁷³

2.109. According to *Section 2, Rule 7* of the *Omnibus Rules of the Commission*, “the investigative and inquiry procedure of the [Commission] is fact-finding in nature, and non-adversarial.”¹⁷⁴ This differs from a civil action where a complaint must set out specific claims.¹⁷⁵ The respondents’ argument is not relevant to this inquiry procedure, which must be allowed to investigate the issue of responsibility first and foremost. The *Petition*, however, sets out ample scientific and legal grounds for the Commission’s investigation.

2.110. First, respondent Carbon Majors have contributed 337.7 Gt CO₂e, equivalent to **21.6% of estimated global industrial emissions** through 2013, fuelling the climate change impacts being experienced today and well into the future.¹⁷⁶

2.111. Second, the adverse impacts of climate change and ocean acidification have harmed or threaten to harm people and communities, on top of, or in addition to, damage resulting from natural disasters. These

¹⁷² Respondent ExxonMobil’s *Motion to Dismiss Ad Cautelam* dated 13 September 2016, p. 13; Respondent LafargeHolcim’s *Manifestation Ad Cautelam (Without Any Acceptance or Submission to Jurisdiction)* dated 15 September 2016 with attached letter from LafargeHolcim dated 13 September 2015, Letter C, p. 6 of the attached letter.

¹⁷³ *Petition* dated 09 May 2016, p. 61, available at http://www.greenpeace.org/seasia/ph/PageFiles/735232/Climate_Change_and_Human_Rights_Petition.pdf

¹⁷⁴ Section 2, Rule 7, *Omnibus Rules of the Commission*.

¹⁷⁵ A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. See *Zuniga-Santos v. Santos-Gran, et al.*, G.R. No. 197380, 08 October 2014.

¹⁷⁶ See Annex “F” to the *Petition*, available at <http://www.greenpeace.org/seasia/ph/press/releases/Worlds-largest-carbon-producers-ordered-to-respond-to-allegations-of-human-rights--abuses-from-climate-change/The-Climate-Change-and-Human-Rights-Petition/>, last accessed on 08 February 2017.

harms resulting from the impacts of climate change and ocean acidification affect the exercise and enjoyment of Filipinos' human rights.¹⁷⁷ A recent submission by Office of the High Commission on Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change similarly found that “[c]limate change and its impacts, including sea-level rise, extreme weather events and droughts have already inflicted human rights harms on millions of people.”¹⁷⁸

2.112. Third, the respondents have responsibility to: (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.¹⁷⁹

2.113. The *UN Guiding Principles* are clear that corporate responsibility “arises in relation to all human rights” and that there is an “agreement among states that environmental and climate harms interfere with the enjoyment of many internationally recognized human rights.”¹⁸⁰ The UN Special Rapporteur on Human Rights and the Environment has found that the three pillars of the *UN Guiding Principles* apply to all environmental human rights abuses, including impairments of human rights in relation to climate change.¹⁸¹

2.114. On one hand, states must protect human rights against business-related abuses; and, on the other hand, companies must respect

¹⁷⁷ For a detailed exploration of the human rights implications of climate change in the Philippines, see Sabin Center for Climate Change Law, Columbia Law School, *Submission in Support of the Petitioners* dated 16 December 2016, available at <https://business-humanrights.org/en/amicus-briefs>, last accessed on 08 February 2017..

¹⁷⁸ *Understanding Human Rights and Climate Change*, Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (2015), available at <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>, last accessed on 06 February 2017.

The amicus submission from the Sabin Center for Climate Change Law, Columbia Law School provides a detailed explanation of the impacts of climate change and how they interfere with the enjoyment of human rights and why non-state actors may be held accountable for this interference under international human rights law. Sabin Center for Climate Change Law, Columbia Law School, *op cit.*

¹⁷⁹ *Guiding Principles, op cit.*, Principle 13, p. 14.

¹⁸⁰ Seck, S., amicus submission, *op cit.*, p. 5 (citing Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment:

climate change, John Knox, 1 February 2016, A/HRC/31/52 (2016), para. 66, available at <http://ssrn.com/abstract=2729611>, last accessed on 08 February 2017.

¹⁸¹ Knox, J. Climate 2016 at para 66. See also *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, John H. Knox: Mapping Report, UNOHCHR, 25th Sess, UN Doc A/HRC/25/53(2014), United Nations Mandate on Human Rights and the Environment, para. 59, available at <http://srenvironment.org/wp-content/uploads/2014/03/A-HRC-25-53-clean-final-version-1.doc>, last accessed on 08 February 2017.

human rights.¹⁸² The requirements for businesses to respect human rights are typically incorporated at the domestic level.¹⁸³

2.115. Respondents Cemex and Shell challenge the petitioners' reliance on the *Guiding Principles*.¹⁸⁴ Respondent Shell erroneously claims that “the Guiding Principles is not a legally binding document; it does not create any legal obligations on States or private actors.”¹⁸⁵ The *Guiding Principles* “clarify and elaborate on the implications of relevant provisions of existing international human rights standards, some of which are legally binding on States, and provide guidance on how to put them into operation.”¹⁸⁶ The *Guiding Principles* “refer to and [are] derived from States' existing obligations under international law.”¹⁸⁷

2.116. Many of the respondent Carbon Majors participate¹⁸⁸ in the UN Global Compact. The *Guiding Principles* “reinforce the Global Compact and provide an authoritative framework for participants on the policies and processes they should implement in order to ensure that they meet their responsibility to respect human rights.”¹⁸⁹

2.117. While domestic laws may not always require companies to take specific measures to meet the responsibility to respect human rights, like conducting human right due diligence and the remediation of harm, it is still “necessary if a company is to know and show that it is meeting its responsibility to respect human rights.”¹⁹⁰ Further, the “[f]ailure to do so can subject companies to the ‘court of public opinion’—comprising employees, communities, consumers, civil society, as well as investors. [Thus,] there can be legal, financial and reputational consequences if

¹⁸² Guiding Principles, *Frequently Asked Questions about the Guiding Principles on Business and Human Rights*, p. 9, http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf, last accessed on 06 February 2017.

¹⁸³ See e.g. Office of the United Nations High Commissioner on Human Rights, *State National Action Plans*, available at <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>, last accessed on 08 February 2017. [“The UN Working Group strongly encourages all States to develop, enact and update a national action plan on business and human rights as part of the State responsibility to disseminate and implement the Guiding Principles on Business and Human Rights.”]

¹⁸⁴ Respondent Cemex's response, *op cit.*, para. 22-25; Respondent Shell's response, *op cit.*, p. 50.

¹⁸⁵ Respondent Shell's response, *op cit.*, p. 50.

¹⁸⁶ Guiding Principles, *op cit.*, p. 8.

¹⁸⁷ Guiding Principles, *op cit.*, p. 8. [“Furthermore, while human rights due diligence and the remediation of harm may not always be legally required, they are necessary if a company is to know and show that it is meeting its responsibility to respect human rights. Failure to do so can subject companies to the “court of public opinion”—comprising employees, communities, consumers, civil society, as well as investors. So there can be legal, financial, and reputational consequences if companies fail to respect human rights as set out in the Guiding Principles.” *op cit.*, p 9.

¹⁸⁸ United Nations Global Compact, *Our Participants*, available at <https://www.unglobalcompact.org/what-is-gc/participants>, last accessed on 08 February 2017.

¹⁸⁹ United Nations Office of the High Commissioner on Human Rights, *The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments* (July 2011; updated June 2014), available at https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf, last accessed on 06 February 2017.

¹⁹⁰ See Guiding Principles, *op cit.*, p. 9.

companies fail to respect human rights as set out in the Guiding Principles.”¹⁹¹ The instant *Petition* is case in point.

2.118. Fourth, respondent Carbon Majors are not fulfilling their responsibility to respect human rights through the extraction, production, and sale of products that, when used as directed, result in significant amounts of climate change-causing greenhouse gas emissions. They are also failing to act with due diligence in light of the known risks posed by climate change.¹⁹² Also, some of the respondents may be acting in contravention to their responsibilities by having, either directly or indirectly, intentionally undermined climate science and national and international actions on climate change.¹⁹³

Please see **Annex “B”** for an opinion by the Center for International Environmental Law (“CIEL”) explaining how newly acquired documents demonstrate that the oil industry was engaged in conduct contrary to international norms and standards the responsibility of business enterprises to respect and protect human rights. The national public inquiry presents an opportunity for the respondents to fulfill their responsibility to exercise due diligence and begin to assess the full extent of the human rights threats and harms being experienced by the petitioners.

2.119. By challenging the Honorable Commission’s authority to investigate or by not responding to the Commission’s *Order*, respondents are interfering with the petitioners’ legal right to access justice.¹⁹⁴ The national public inquiry presents an opportunity for the respondents to fulfill their responsibility to exercise due diligence and begin to assess the full extent of the human rights harms being experienced by petitioners.

E.1. The respondents have contributed to human rights impacts resulting from climate change.

¹⁹¹ *supra.*, note 190.

¹⁹² The amicus submission by Professor Seck discusses due diligence and human rights impacts assessments: “In light of existing knowledge about fossil fuels and climate change, a business as usual approach appears entirely inconsistent with the identification and prevention of human rights impacts following an effective due diligence process as contemplated by the UN Guiding Principles.” Seck, S., amicus submission, *op cit.*, p. 6. The amicus submission by Plan B proposes that “the appropriate questions for determining the responsibility of the carbon majors (on the basis that the carbon majors have obligations to respect the right to life) are as follows: (a) Were the carbon majors aware of the risks to life (and other rights caused by their activities)?; (b) If so, did they take reasonable steps to prevent those risks occurring?; and (c) Have their acts and / or omissions materially contributed to violations of the right of the Petitioners?” Crosland, T., Plan B’s amicus curiae brief, p. 27, available at <https://business-humanrights.org/en/amicus-briefs>, last accessed on 08 February 2017.

¹⁹³ See Annex “E” to the *Petition* (Publications on Fossil Fuel Industry Involvement in Undermining Climate Science and Action), available at <http://www.greenpeace.org/seasia/ph/press/releases/Worlds-largest-carbon-producers-ordered-to-respond-to-allegations-of-human-rights--abuses-from-climate-change/The-Climate-Change-and-Human-Rights-Petition/>, last accessed on 06 February 2017.

¹⁹⁴ See *Understanding Human Rights and Climate Change*, Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (2015), p. 3, available at <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>, last accessed on 06 February 2017.

2.120. Respondents are attempting to impose the standards of direct or proximate causation in establishing liability as if the human rights and climate change *Petition* is a criminal or civil lawsuit. For example, respondent LafargeHolcim states that the *Petition*: “does not identify the specific alleged acts that the LafargeHolcim respondents committed or are supposedly liable for, or their particular acts allegedly directly causing or directly linked to the prejudice claimed, and individual responsibility has not been alleged. [...] The LafargeHolcim respondents cannot be considered or jointly liable together with the other respondents, or be made responsible for the acts of any other respondents.”¹⁹⁵

2.121. As this is an investigation and not a civil proceeding concerning damages, the petitioners are seeking a determination of whether the respondent Carbon Majors have failed or are failing to fulfill their responsibility to respect human rights by having “contributed” to climate change and consequently to human rights infringements resulting from the impacts of climate change.

2.122. The first part of causation speaks to the relationship between the respondents’ conduct and the petitioners’ human rights impacts—specifically, whether the body of climate science is sufficiently developed to establish a connection between climate change and the particular harms suffered by the petitioners.¹⁹⁶

2.123. There is clear and unequivocal evidence that carbon emissions from the production and burning of fossil fuels are causing climate change, and the impacts of climate change -- such as sea-level rise, increased temperature, and extreme weather events -- are resulting in human rights impacts. The Honorable Commission should treat the findings of the *Intergovernmental Panel on Climate Change* (IPCC) as fact.¹⁹⁷ In the face of overwhelming body of evidence reported by the IPCC, the Honorable Commission should accept, based on the **best available science**, that the warming of the planet is already having and will continue to have significant impacts on the human rights of Filipinos.¹⁹⁸

¹⁹⁵ Respondent LafargeHolcim’s response, *op cit.*, p. 2.

¹⁹⁶ Gage, A. and Byers, M. (October 2014). *Payback Time? What the Internationalization of Climate Litigation Could Mean for Canadian Oil and Gas Companies*, p. 19, available at <http://wcel.org/sites/default/files/publications/Payback%20Time.pdf>, last accessed on 06 February 2017.

¹⁹⁷ IPCC, 2014: Summary for Policymakers. In: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, available at http://www.ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc_wg3_ar5_summary-for-policymakers.pdf, last accessed on 08 February 2017.

¹⁹⁸ ClientEarth’s amicus submission, p. 39; The Sabin Center amicus brief provides an extensive overview of climate science and associated human rights implications. Sabin Center’s amicus brief, pp. 4-23.

2.124. The IPCC has determined that for warming to stay below 2°C, “the total amount of carbon released through carbon dioxide emissions must be less than 1000 billion tonnes.”¹⁹⁹ Peer-reviewed research looking into the Carbon Budget has found that eighty percent (80%) of current coal reserves, a third of oil reserves, and half of gas reserves should remain unused from 2010 to 2050, in order to stay within the carbon budget and meet the 2°C warming.²⁰⁰ It is important to note that in relation to the temperature targets, the Climate Vulnerable Forum, under the leadership of the Philippines, has communicated that the target of limiting global temperature rise to 2°C is “‘inadequate,’ posing serious threats to fundamental human rights, labor and migration, and displacement, among other factors.”²⁰¹

2.125. The petitioners have sought an investigation into not just one corporate group, but groups of companies that carry the largest share of responsibility. Greenhouse gas emissions are “inherently fungible,” meaning that they are “mutually interchangeable in their environmental impact and their effect in the atmosphere, because it is the overall concentration of such greenhouse gases in the atmosphere that ultimately impacts anthropogenic warming.”²⁰² **Collectively and individually, the respondent Carbon Majors have made a significant, if not the most significant, corporate contribution to climate change leading to human rights harms in the Philippines.**

2.126. The second part of causation addresses the challenge of assigning legal responsibility for a problem caused by a large number of greenhouse gas producers. As discussed previously, strict application of legal rules governing liability is neither appropriate nor necessary in this national public inquiry proceeding, given that the Honorable Commission is acting as an investigative body.

2.127. For the purpose of this investigation into the responsibility of the respondent Carbon Majors, the research made on these Carbon Majors demonstrate that the respondents have contributed to the human rights impacts resulting from climate change. As such, the Honorable Commission

¹⁹⁹ Carbon Brief (23 October 2013). *Carbon briefing: Making sense of the IPCC's new carbon budget*, available at <https://www.carbonbrief.org/carbon-briefing-making-sense-of-the-ipccs-new-carbon-budget>, last accessed on 06 February 2017 (citing IPCC, 2013: Summary for Policymakers); United Nations Environment Programme, *The Emissions Gap Report 2015: A UNEP Synthesis Report* (Nairobi: UNEP, 2015), xvi, available at http://uneplive.unep.org/media/docs/theme/13/EGR_2015_301115_lores.pdf, last accessed on 08 February 2017. See also ClientEarth's amicus submission, p. 35.

²⁰⁰ McGlade, et al. (08 January 2015). *The geographical distribution of fossil fuels unused when limiting global warming to 2 °C* *Nature* 517, pp. 187–190.

²⁰¹ Climate Vulnerable Forum (01 May 2015), *20 Nations Call to Strengthen 2 Degrees Climate Goal*, available at <http://www.thecvf.org/20-nation-forum-questions-unfccc-2-degrees-goal/>, last accessed on 08 February 2017; see the amicus submission by Our Children's Trust which focuses on the use of a “scientific prescription as the standard Carbon Majors and States need to meet in order to uphold the rights of children now and into the future for an environment free of the worst effects of climate change.” Our Children's Trust's *amicus curiae* brief dated 06 December 2016, available at <https://www.ourchildrenstrust.org/philippines/>, last accessed on 08 February 2017.

²⁰² ClientEarth's amicus submission, *op cit.*, pp. 42-43.

should look to the *UN Guiding Principles on Human Rights*, which “call for the application of a test of contributory causation, balanced by a standard of reasonableness.”²⁰³ The *Interpretive Guide to the Guiding Principles* provide further support, noting that a corporation may contribute to human rights impacts through its own activities— either directly or through some outside entity.²⁰⁴

2.128. In assessing the contribution of the respondents to human rights harms resulting from climate change, as discussed above, the Honorable Commission should reject a formalistic view of corporate personhood, as presented by some respondents,²⁰⁵ and instead take a practical and pragmatic approach of looking at corporate groups, e.g. parent entity or entities and subsidiaries, based on the enterprise theory. This approach will afford the Commission the opportunity to assess the overall contribution of the respondent Carbon Majors to the global problem that is having severe impacts on individuals in the Philippines.²⁰⁶

2.129. With this, the Honorable Commission has sufficient evidence of factual causation to issue a finding that the Carbon Majors impleaded in the *Petition* are responsible for their share of the climate change impacts and that they must take action to prevent further harm. The petitioners welcome the opportunity to engage in a more robust debate on legal grounds of this investigation, hoping that the respondents will engage meaningfully and address substantive matters during the public hearings.

F. The issue and remedies prayed for in the *Petition* are well within the Honorable Commission’s investigative function; facts and developments in climate science, law, and policy can be taken notice of by the Honorable Commission for practical reasons.

2.130. Respondent ExxonMobil contends that the reliefs prayed for by the petitioners go beyond the “limited authority” of the Honorable Commission to investigate or make findings of fact. Further, respondent ExxonMobil argues against the Honorable Commission’s potential adjudication of the parties’ legal rights and the act of taking official or

²⁰³ ClientEarth’s amicus submission, pp. 44.

²⁰⁴ Office of the United National High Commissioner on Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, pp. 46-49, available at http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf, last accessed on 06 February 2017.

²⁰⁵ Respondent ExxonMobil’s response, *op cit.*, pp. 7-14.

²⁰⁶ ClientEarth’s amicus submission, pp. 47-48.

administrative notice that, supposedly, has no basis in law or in the Commission's *Omnibus Rules*.²⁰⁷

2.131. Respondent ExxonMobil is mistaken. The statement of the issue and the reliefs prayed for in the *Petition* are properly within the coverage of a human rights investigation, specifically, a national public inquiry.

2.132. On one hand, “[t]he legal meaning of ‘investigate’ is ‘(t)o follow up step by step by patient inquiry or observation; to trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry; to inquire; to make an investigation (...),’²⁰⁸ A human rights investigation is a process of determining the particular human right violation, identifying the composite elements of the particular right, and making recommendations to protect the particular right.”²⁰⁹

2.133. The Asia Pacific Forum of National Human Rights Institution and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law describe a national inquiry, in particular, as follows:

“A national inquiry is a good means to address the most complex human rights situations that NHRIs confront. Whereas NHRIs may conduct public hearings into individual complaints, that process is quite narrow and confined to the specific facts of the particular complaints. A national inquiry, by contrast, addresses patterns of violation revealed by large numbers of complaints, or other information addressed to the NHRI, that require a comprehensive approach.

National inquiries address situations of human rights violations that affect the entire country or a significant part of it. This is a space dimension. There is also a time dimension. A national inquiry is a good means to handle an historic pattern of human rights violations, such as practices that have become embedded over many years or decades in the history and culture of the country and that are difficult to investigate on the basis of isolated individual actions.

The complexity of the situation being investigated requires that any response be undertaken by a significant number of different actors, not only the Government. The national inquiry process enables the identification of all

²⁰⁷ Respondent ExxonMobil's *Motion to Dismiss Ad Cautelam* dated 13 September 2016, Nos. 31-32, pp. 9-10.

²⁰⁸ *Cariño vs. CHR*, G.R. No. 96681, 02 December 1991.

²⁰⁹ Training Manual on Human Rights Monitoring, UN Office of the High Commissioner for Human Rights (2001)

those who have some past, present or future role in relation to the situation or some responsibility for its causes or consequences. It therefore permits findings and recommendations to be made in relation to all those who share responsibility.”²¹⁰

2.134. On the other hand, adjudication means: “[t]o settle in the exercise of judicial authority; to determine with finality. Synonymous with *adjudge* in its strictest sense;’ and ‘adjudge’ means: ‘to pass on judicially, to decide, settle or decree, or to sentence or condemn. . . . Implies a judicial determination of a fact, and the entry of a judgment.’²¹¹

2.135. In *Cariño v. CHR*²¹², the Commission was found to be devoid of power to “resolve on the merits” the legally contentious questions of “(a) whether or not the mass concerted actions engaged in by the teachers constitute and are prohibited or otherwise restricted by law; (b) whether or not the act of carrying on and taking part in those actions, and the failure of the teachers to discontinue those actions, and return to their classes despite the order to this effect by the Secretary of Education, constitute infractions of relevant rules and regulations warranting administrative disciplinary sanctions, or are justified by the grievances complained of by them; and (c) what where the particular acts done by each individual teacher and what sanctions, if any, may properly be imposed for said acts or omissions.”

2.136. Different from *Cariño v. CHR*²¹³ and respondent ExxonMobil’s view, this *Petition* asks the Honorable Commission to: (a) determine the particular human rights affected by the impacts of climate change, including the composite elements of those rights based on human rights laws, treaties, and standards; (b) look into the human rights responsibility of the respondents who were identified in the peer-reviewed study of Mr. Heede to have contributed a very significant amount of carbon emissions that caused climate change); (c) recommend actions to be taken by the governments of the Philippines and countries where respondents are headquartered, in order to protect the rights of those affected by climate change; and (d) request the respondents to submit acceptable plans and policies that will prevent further carbon emissions and, consequently, prevent future adverse effects on the human rights of the Filipino people and those sojourning in the country, resulting from the impacts of climate change.

²¹⁰ Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violations, Asia Pacific Forum of National Human Rights Institutions and Raoul Wallenberg Institute of Human Rights and Humanitarian Law, September 2012

²¹¹ *supra.*, note 210.

²¹² G.R. No. 96681, 02 December 1991.

²¹³ *supra.*, note 212.

2.137. In suggesting that the Honorable Commission takes administrative or official notice of policy and scientific developments related to climate change, petitioners were merely proposing a practical approach of fact-finding, and not a rule of evidence in adjudicating the legal rights of parties in a judicial proceeding.

2.138. For example, the petitioners are saying that the Honorable Commission should treat the findings of the Intergovernmental Panel on Climate Change (IPCC), a scientific body and intergovernmental organization set up by the United Nations Environment Programme and the World Meteorological Organization, as fact. The state of climate science as reported by the IPCC “is now sufficiently certain and reliable to demonstrate the world is endangered by carbon emissions.”²¹⁴ As noted by experts, the Honorable Commission can accept that climate change is having, and will continue to have, significant impacts on the human rights of the people of the Philippines, based on the overwhelming scientific evidence as reported by the IPCC.²¹⁵

III.

REFUTATIONS TO RESPONDENTS’ RESPECTIVE RESPONSES TO THE PETITION

(Responses received by the Business & Human Rights Resource Centre)

A. Overview of responses received by the Business & Human Rights Resource Centre (BHRRC).

3.1. The independent non-profit Business & Human Rights Resource Centre (BHRRC), a well-established and respected clearinghouse for information on business and human rights that is respected by companies, governments, civil society, media and investors,²¹⁶ invited forty-five (45) respondents to share responses submitted to the Honorable Commission in accordance with the 21 July 2016 Order. Eleven (11) companies volunteered their positions, one (1) company (Husky Energy)

²¹⁴ Estrin, D. *Limiting Dangerous Climate Change the Critical Role of Citizen Suits and Domestic Courts – Despite the Paris Agreement*, p. 7, available at

https://www.cigionline.org/sites/default/files/paper_no.101.pdf, last accessed on 03 February 2017. See *Urgenda Foundation v. the State of the Netherlands*, C/09/456689 / HA ZA 13-1396 (English translation), 24 June 2015, para 4.90, available at <http://www.urgenda.nl/documents/VerdictDistrictCourt-UrgendaVStaat-24.06.2015.pdf>, last accessed on 06 February 2017. [Hereinafter, Urgenda Verdict: “[S]ufficient causal link can be assumed to exist between the Dutch greenhouse gas emissions, global climate change and the effects (now and in the future) on the Dutch living climate. The fact that the current Dutch greenhouse gas emissions are limited on a global scale does not alter the fact that these emissions contribute to climate change. The court has taken into consideration in this respect as well that the Dutch greenhouse emissions have contributed to climate change and by their nature will also continue to contribute to climate change.”]

²¹⁵ ClientEarth’s amicus submission, p. 39.

²¹⁶ For more information about the Business & Human Rights Resource Centre, please see: <https://business-humanrights.org/en/business-human-rights-resource-centre-a-brief-description>.

declined to respond, and thirty-three (33) companies did not acknowledge the BHRRC's invitation. The written responses sent to BHRRC are publicly available on its website.²¹⁷

3.2. Four (4) of the companies that responded to the BHRRC -- ConocoPhillips, Peabody Energy, Repsol, and Rio Tinto -- also submitted responses to the Honorable Commission. The other seven (7) companies did not cooperate with the Honorable Commission's request.²¹⁸ However, the petitioners request the Commission to take cognizance of positions communicated to the BHRRC, as well as the non-response.

Please see **Annex "A"** for a list of respondents that responded to BHRRC.

3.3. The responses received by BHRRC raise four (4) primary issues, whether: (a) the Honorable Commission has jurisdiction over the companies; (b) the confidentiality rules apply to the national public inquiry procedure; (c) the companies' positions on climate change are adequate in light of the serious human rights risks posed to the petitioners; and (d) the companies' internal policies and procedures on human rights require their active participation in the national public inquiry. These four issues are discussed below.

B. The respondents' vague challenges to the Honorable Commission's jurisdiction are without merit.

3.4. Respondents ConocoPhillips and Rio Tinto London Ltd challenge the Honorable Commission's personal jurisdiction over the companies due to the lack of operations,²¹⁹ employees, projects, or operations in the Philippines.²²⁰ These issues have been addressed in the preceding section, and the arguments therein are repleaded in this section.

3.5. Respondent BHP Billiton contends that "certain of the prayers for relief in the *Petition* ask the Commission to adjudicate the petitioners' claims against the respondents, including BHP Billiton, which would appear

²¹⁷ Business & Human Rights Resource Centre, *Fossil fuel firms respond to petition before Philippines Human Rights Commission on human rights & climate impacts*, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts>, last accessed on 08 February 2017.

²¹⁸ The seven companies that responded to BHRRC but not to the Commission are: Anglo American plc, BHP Billiton; BP plc, Eni S.p.A., Freeport-McMoRan Inc, Glencore plc, and PJSC LUKOIL.

²¹⁹ ConocoPhillips, *Letter to Business & Human Rights Resource Centre* dated 19 October 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts>, last accessed on 06 February 2017.

²²⁰ Rio Tinto London Ltd, *Letter Ad Cautelam and without Submission to Jurisdiction to Commission Cadiz* dated 10 October 2016, Business & Human Rights Resource Centre, 19 October 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts>, last accessed on 06 February 2017.

to be beyond the Commission's powers and/or jurisdiction."²²¹ The petitioners invite BHP Billiton to submit a detailed response to the Honorable Commission describing its concerns with prayers 1 and 5 in the *Petition*. Argumentation on the important matters, such as this, should take place within the national public inquiry process.

C. Currently, there are no confidentiality rules to prevent respondents from disclosing their comments on and answers to the *Petition* because the Honorable Commission's national inquiry is a transparent and public proceeding.

3.6. Three (3) companies -- respondents Repsol,²²² Peabody Energy,²²³ and BP plc²²⁴ -- declined to share their responses sent to the Honorable Commission and petitioners with the BHRRC. Respondent Repsol and Peabody communicated that the *Omnibus Rules of the Commission* require confidentiality, but failed to cite to a particular rule. Respondent BP plc, on the other hand, stated that it "was not in a position to comment on an ongoing investigation."²²⁵

3.7. Contrary to the positions taken by respondents Repsol and Peabody, there are no confidentiality rules or agreements for the present proceeding. According to the *Omnibus Rules of the Commission*, "public inquiry shall generally be open to the public, transparent and allows for the participation of affected parties and sectors."²²⁶ While some companies may prefer the national inquiry to happen behind closed doors so their activities and influence are kept from public scrutiny, the success of this undertaking depends on open and active participation of all parties and stakeholders, who/which must actively cooperate with the Honorable Commission.

3.8. The urgency of the climate crisis and the significant threats posed to Filipinos and those residing in the country require a transparent and inclusive proceeding. Similar to other weighty matters taken on by the

²²¹ BHP Billiton's *Statement submitted to Business & Human Rights Resource Centre* dated 12 September 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts>, last accessed on 06 February 2017.

²²² Repsol S.A.'s *Letter to BHRRC* dated 08 November 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts/?dateorder=datedesc&page=0&componenttype=all>, last accessed on 06 February 2017.

²²³ Peabody's *Statement* dated 20 October 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts/?dateorder=datedesc&page=0&componenttype=all>, last accessed on 06 February 2017.

²²⁴ BP plc's *Letter to BHRRC* dated 10 October 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts/?dateorder=datedesc&page=0&componenttype=all>, last accessed on 06 February 2017.

²²⁵ BP plc, *op cit*.

²²⁶ Par. 2, Section 2, Rule 7 of the *Omnibus Rules of the Commission*.

Honorable Commission -- such as extrajudicial killings, displacement, and reproductive health -- the climate crisis is a human rights crisis of “domestic and/or international implication/importance.”²²⁷ The petitioners will continue to treat this proceeding, which is of great public interest in the Philippines and globally, as a transparent and inclusive process, and encourage the respondents to do the same.

D. There is inadequate information of whether respondents’ business models are aligned with the *Paris Agreement*.

3.9. The submissions to the BHRRC give the impression that many of respondents intend to take action to address climate change. Some have “committed to a safe and stable climate in which temperature rise is limited to under 2 degrees Celsius”²²⁸ in the *Paris Pledge for Action*. This raises two important issues for the Honorable Commission’s consideration.

3.10. First, the companies must show that their activities and plans match their stated positions. There is evidence that, if unchecked, the fossil fuel producers’ plans could contribute to overshooting the “politically-agreed”²²⁹ temperature goals of limiting global temperature rise to 1.5°C-2°C, as set out in the *Paris Climate Agreement*.²³⁰

3.11. Second, the petitioners are aware that major fossil fuel companies have known about the risks of climate change for decades, yet have continued a business-as-usual approach of extracting more and more fossil fuels to be sold and burned. Some even developed, or participated in, campaigns to deliberately sow confusion about climate science and block action to address climate change.²³¹

²²⁷ Sections 3, Rule 7 of the *Omnibus Rules of the Commission*.

²²⁸ *Paris Pledge for Action*, available at <http://parispledgeforaction.org/>, last accessed on 08 February 2017. A number of the respondents joined the pledge (see <http://parispledgeforaction.org/whos-joined/>, last accessed on 06 February 2017). See also UNFCCC, *Global Climate Action*, available at <http://climateaction.unfccc.int/>, last accessed on 08 February 2016 (captures the commitments to climate action by companies, cities, subnational, regions, investors, and civil society organizations).

²²⁹ “Politically-agreed” means that the temperature goals of 1.5 °C/ 2 °C that were agreed by state parties but not necessarily based on the best-available science. See Our Children’s Trust’s amicus submission dated 06 December 2016.

²³⁰ See McGlade, C. and Ekins, P., *The geographical distribution of fossil fuels unused when limiting global warming to 2 °C*, *Nature*, 08 January 2015, available at <http://www.nature.com/nature/journal/v517/n7533/full/nature14016.html>, last accessed on 06 February 2017. [“Our results suggest that, globally, a third of oil reserves, half of gas reserves and over 80 per cent of current coal reserves should remain unused from 2010 to 2050 in order to meet the target of 2 °C. We show that development of resources in the Arctic and any increase in unconventional oil production are incommensurate with efforts to limit average global warming to 2 °C.”]

²³¹ Union of Concerned Scientists (July 2015). *The Climate Change Dossiers*, available at <http://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>, last accessed on 06 February 2017; Annex “B” opinion by the Center for International Environmental Law; Annex “E” to the *Petition*.

3.12. The respondent companies' responses to BHRRC regarding climate change vary in terms of types and strength of commitments to reduce GHG emissions and support for climate policy and governance. Ten (10) companies address climate change in responses submitted to the BHRRC: Anglo America plc group, ConocoPhillips, Repsol, BHP Billiton, Eni, Glencore, Peabody, Rio Tinto London Ltd, BP plc, and PJSC LUKOIL. The petitioners invite the Honorable Commission to draw its attention to the climate change-related statements submitted to BHRRC.

3.13. Despite statements made by some respondents affirming commitment(s) to acting on climate change, conducting environmentally sustainable business practices, and/or respecting human rights, the petitioners are not convinced that their business operations and models are aligned with States' commitments in the *Paris Agreement* and international human rights law. Such an alignment would include a demonstration of business models aligning with the politically agreed goal of limiting global average temperature rise to 1.5-2.0°C.

E. Corporate human rights policies compel the respondents to actively participate in the investigation.

3.14. Many of the companies communicated positions on human rights to the BHRRC that should obligate these companies to actively participate in the national inquiry process -- rather than ignoring it -- or, worse, attempting to get it dismissed.

3.15. As noted above, seven (7) of the companies that responded to the BHRRC did not submit responses to the Honorable Commission, demonstrating a lack of respect for the Honorable Commission and its human rights mandate. Further, in disregarding the legitimate human rights concerns of the petitioners placed at risk by their contributions to climate pollution, it raises the question of whether these companies are fulfilling their responsibility to act with due diligence with regard to human rights as articulated in the *UN Guiding Principles*.

3.16. Six (6) companies addressed human rights in response to BHRRC's request: BHP Billiton,²³² Freeport-McMoRan Inc.,²³³ Glencore,²³⁴

²³² BHP Billiton, *Statement to BHRRC, op cit.*

²³³ Freeport-McMoRan Inc., *Statement to BHRRC* dated 10 October 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts/?dateorder=datedesc&page=0&componenttype=all>, last accessed on 06 February 2017.

²³⁴ Glencore, *Response to BHRRC* dated 10 October 2016, available at <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts/?dateorder=datedesc&page=0&componenttype=all>, last accessed on 06 February 2017.

Peabody,²³⁵ Repsol,²³⁶ and Rio Tinto.²³⁷ Three (3) of these companies, BHP Billiton, Freeport-McMoRan Inc, and Glencore did not respond to the Commission's *Order*. Respondents that claim to be committed to respecting human rights should, at the very least, answer the *Petition*.

**IV.
RESPONDENTS MUST SUBMIT PLANS
ON HOW HUMAN RIGHTS INFRINGEMENTS RESULTING FROM
THE IMPACTS OF CLIMATE CHANGE WILL BE ELIMINATED,
REMEDIED, OR PREVENTED IN THE FUTURE**

4.1. As observed, the information from respondents based on their submissions and published human rights statements and climate change commitments are not the plans and actions that petitioners envisioned as acceptable and adequate to address the human rights implications of climate change. To aid the Honorable Commission in the conduct of the national public inquiry, specifically the forthcoming public hearings, petitioners respectfully ask respondents to submit relevant information and evidence regarding their corporate commitments, plans and actions on climate change and human rights including, but not limited to:

- (i) all policies and procedures, associated with the companies' operations, products, and plans, on assessing, preventing, and remedying of human rights impacts resulting from climate change;
- (ii) all commitments and policies on climate change in order to demonstrate their alignment with States' commitments in the *Paris Agreement* and their human rights responsibilities;
- (iii) the energy and fossil fuel demand forecasts used to determine business strategy;
- (iv) strategies and plans for aligning their business operations with a world where global temperature increase is limited to 1.5°C or held to well below 2°C; and
- (v) company policies and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications on domestic climate related legislation and international policy including the companies' positions on specific climate related measures including: (a) climate science and research, (b) renewable energy targets; (c) vehicle fuel efficiency standards; (d) fossil fuel production and consumption subsidies including

²³⁵ Peabody, *Statement* dated 20 October 2016, *op cit*.

²³⁶ Repsol S.A., *Letter to BHRRC*, *op cit*.

²³⁷ Rio Tinto London Ltd, *op cit*.

tax breaks; (e) climate finance; (f) mitigation, (g) adaptation, (h) loss and damage, and other related measures.

4.2. At the appropriate occasion, petitioners reserve the right to move for a process to enable the presentation of a comprehensive analysis on the soundness of respondents' climate change and human rights commitments and the implementation of these.

EPILOGUE

The national public inquiry is happening at an opportune time—there are positive developments in the energy industry that are proving to be helpful in stalling carbon emissions from the energy sector, and a growing, global people's movement that is demanding fossil fuels be kept in the ground.

Solar energy generation, for example, grew by a third in 2015, making solar the fastest growing energy source and helping to reduce carbon emissions from the energy sector.²³⁸ At least one company has even come to the conclusion that fossil fuels will have to be kept in the ground in order to limit warming to the politically agreed levels.²³⁹

The youth pursuing climate justice in the U.S. will be going to trial against the government and fossil fuel defendant-intervenors. The judge in the proceeding wrote:

“I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society. Just as marriage is the ‘foundation of the family,’ a stable climate system is quite literally the foundation ‘of society, without which there would be neither civilization nor progress.’”²⁴⁰

Now it is this Honorable Commission's turn to make history. To date, 32,553 Filipinos have pledged their support for this historic crusade to champion human rights through climate justice. They are joined by 90,495

²³⁸ Note that the findings are from a BP plc report; See Renewable Energy Policy Network for the 21st Century. REN21. *Renewables 2016, Global Status Report*, available at <http://www.ren21.net/status-of-renewables/global-status-report/>, last accessed on 08 February 2017. [“The world now adds more renewable power capacity annually than it adds (net) capacity from all fossil fuels combined.” (p. 7); and “The solar PV market was up 25% over 2014 to a record 50 GW, lifting the global total to 227 GW. The annual market in 2015 was nearly 10 times the world's cumulative solar PV capacity of a decade earlier.” (p. 10)]

²³⁹ Total's *Integrating Climate Change to our Strategy*, available at http://www.total.com/sites/default/files/atoms/files/integrating_climate_into_our_strategy_eng.pdf, last accessed on 08 February 2017.

²⁴⁰ *Juliana v. United States of America, et al.*, Opinion and Order, Judge Aiken, Case No. 6:15-cv-01517-TC, 10 November 2016, available at <https://www.ourchildrenstrust.org/us/federal-lawsuit/>, last accessed on 08 February 2017.

international supporters. Now it is time for all of the respondents to welcome the inquiry and be part of the solution.

PRAYER

WHEREFORE, petitioners respectfully pray that the Honorable Commission on Human Rights:

- (a) **DENY** respondents' motions to dismiss and **PROCEED** with the national public inquiry, as scheduled; and
- (b) **CALL** on the respondents who responded to Business Human Rights Resource Centre and those who have not yet filed comment or answer to the *Petition* to cooperate in the present proceedings.

The reliefs sought in the *Petition* are likewise humbly reiterated, i.e. the Honorable Commission to take the following actions:

1. Take official or administrative notice of the investor-owned Carbon Majors' contribution to carbon dioxide emissions and the UN Guiding Principles on Business and Human Rights, conduct an investigation into the human rights implications of climate change and ocean acidification and the resulting rights impacts in the Philippines; and following the investigation, issue a finding on the responsibility of the investor-owned Carbon Majors for human rights threats and/or violations in the Philippines, resulting from climate change and ocean acidification;
2. Monitor people and communities acutely vulnerable to the impacts of climate change;
3. Recommend that policymakers and legislators develop and adopt clear and implementable objective standards for corporate reporting of human rights issues in relation to the environment, with special regard for current and future climate change impacts and GHGs associated with fossil fuel products;
4. Recommend that policymakers and legislators develop and adopt effective accountability mechanisms that victims can easily access in instances of violations or threats of violations in the context of climate change;

5. Notify the investor-owned Carbon Majors and request the submission of plans on how such violations or threats of violation resulting from the impacts of climate change will be eliminated, remedied, or prevented in the future; and
6. Recommend that governments, including the Philippines and other countries where the investor-owned Carbon Majors are domiciled and/or operate, enhance, strengthen, or explore new ways to fulfill the international duty of cooperation to ensure the Carbon Majors take steps to address the human rights implications of climate change.

Quezon City, 10 February 2017.

By:



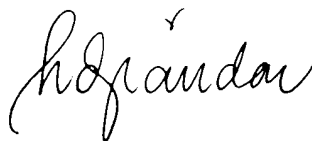
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PTR No. 0062474; 25 January 2017; Imus City
 MCLE Compliance No. V-0024552; 12 December 2016



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IBP Lifetime No. 02123
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MCLE Compliance V-002221; September 2016



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PTR No. 0996946; 16 January 2017; San Juan City
MCLE Compliance Certificate No. V-0016171; 30 March 2016

LIST OF ANNEXES

Annex “A”: List of Respondents that Submitted Answers and Comments to the Petitioners and Business Human Rights Resource Centre

Annex “B”: An Opinion of Center for International Environmental Law on Oil Industry Conduct and International Norms and Standards

Copy furnished:**1. Chevron**

Chevron Corporation
 c/o Kari H. Endries, Managing
 Counsel, Governance
 6001 Bollinger Canyon Road
 San Ramon, CA 94583
 USA

**Chevron Geothermal Services
 Co.**
 5/F 6750 Ayala Avenue, Makati
 City

Chevron Philippines Inc.
 6/F 6750 Building 6750 Ayala
 Avenue,
 Makati City

**Chevron Holdings Inc.
 Regional Operating
 Headquarters**
 35th Floor Yuchengco Tower,
 RCBC Plaza,
 6819 Ayala Avenue, Makati City

**Chevron Texaco Malampaya
 LLC**
 5/F 6750 Ayala Avenue, Makati
 City

Chevron Kalinga Ltd.
 5/F 6750 Ayala Avenue, Makati
 City

2. ExxonMobil

SyCip Salazar Hernandez &
 Gatmaitan
**Counsel for ExxonMobil
 Petroleum & Chemical
 Holdings, Inc.
 Philippine Branch**

3rd Floor SyCipLaw Center
 105 Paseo de Roxas
 Makati City 1226
 Metro Manila, Philippines

ExxonMobil Corporation
 5959 Las Colinas Boulevard
 Irving, Texas 75039-2298
 USA

3. BP

BP p.l.c.
 c/o Dominic Emry
 Vice President, Long-Term
 Planning and Policy
 1 St James's Square,
 London SW1Y 4PD
 United Kingdom

**Castrol Philippines Inc, formerly
 as BP Philippines Inc.**
 32nd Floor LKG Tower, 6801
 Ayala Avenue, Makati City

4. Royal Dutch Shell

Cruz Marcelo & Tenefrancia
**Counsel for Respondents The
 Shell Company of the
 Philippines, Limited,
 and Royal Dutch Shell**
 9th, 10th, 11th & 12th Floors, One
 Orion
 11th Avenue corner University
 Parkway
 Bonifacio Global City 1634
 Metro Manila, Philippines
 P.O. Box 3525 Makati Central

5. ConocoPhillips

SyCip Salazar Hernandez &
 Gatmaitan
**Counsel for Respondent
 ConocoPhillips Corporation**

3rd Floor SyCipLaw Center
105 Paseo de Roxas
Makati City 1226
Metro Manila, Philippines

6. Peabody Energy

Quisumbing Torres
**Counsel for Respondent
Peabody Energy Corporation**
12th Floor, Net One Center
26th Street Corner 3rd Avenue
Crescent Park West
Bonifacio Global City
Taguig City 1634
Philippines

7. Total

Total Philippines Corporation
c/o Oliver Jean
7th Floor, 11th Avenue Corner
Triangle Drive North Bonifacio,
Bonifacio Global City, Taguig
City
Philippines

Total SA

Tour Coupole
2, place Jean Millier
Arche Nord
Coupole/Regnault
92078 Paris La Défense Cedex
France

8. Consol Energy, Inc.

Consol Energy Inc.
CNX Center
1000 Consol Energy Drive
Canonsburg, PA 15317-6506
USA

9. BHP Billiton

BHP Billiton, Limited
Global Headquarters
BHP Billiton Centre

171 Collins Street
Melbourne Victoria 3000
Australia

BHP Billiton Plc
Global Headquarters
Neathouse Place
London SW1V 1LH
United Kingdom

**BHP Billiton Petroleum
(Philippines) Corporation**
14th Floor, The Pearlbank Centre,
146 Valero Street, Salcedo
Village, Makati City, 1227
Philippines

BHP Billiton (Philippines), Inc.
20/F Pearlbank Center, 146 Valero
St., Salcedo Village, Makati City
1227

10. Anglo American

Anglo American plc
c/o Jan Klawitter Principal
International Relations
Group Headquarters
20 Carlton House Terrace
London, SW1Y 5AN
United Kingdom

**Anglo American Exploration
(Philippines), Inc**
27th Floor, Tower 2, The
Enterprise Center, 6766 Ayala
Avenue Cor., Paseo de Roxas,
Makati City

11. RWE

RWE Konzern
Opernplatz 1
45128 Essen
Germany

12. ENI

ENI S.p.A.

Piazzale Enrico Mattei, 1
00144 Rome
Italy

13. Rio Tinto**Rio Tinto, plc**

c/o Matthew Bateson
Head of Environment and Legacy
Management
Health, Safety and Environment
6 St James's Square
London
SW1Y 4AD
United Kingdom

14. Arch Coal**Arch Coal, Inc.**

One CityPlace Drive, Suite 300
St. Louis, MO 63141
USA

15. Anadarko**Anadarko Petroleum Corporation**

1201 Lake Robbins Drive
The Woodlands, Texas 77380
USA

16. Occidental**Occidental Oil and Gas Corporation**

5 Greenway Plaza, Suite 110
Houston, Texas 77046-0521
USA

17. Lukoil**PSJC LUKOIL**

c/o Gennady Krasovsky
Deputy Corporate Secretary
11, Sretensky Boulevard, Moscow,
Russia, 101000

18. Sasol**SASOL Limited**

1 Sturdee Avenue
Rosebank
Johannesburg
South Africa
2196

19. Repsol

Quisumbing Torres
**Counsel for Respondents Repsol,
S.A., and Repsol Oil & Gas
Canada, Inc.**

12th Floor, Net One Center
26th Street Corner 3rd Avenue
Crescent Park West
Bonifacio Global City
Taguig City 1634
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20. Marathon

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105 Paseo de Roxas
Makati City 1226
Metro Manila, Philippines

Marathon Petroleum Corporation

Corporate Headquarters
539 South Main Street
Findlay, OH 45840
USA

21. Hess**Hess Corporation**

Hess Tower
1501 McKinney Street

Houston, TX 77010
USA

22. **Xstrata** – acquired by
Glencore

Glencore plc
Baarerstattstrasse 3
6340 Baar
Switzerland

23. **Massey Energy** – acquired by
Alpha Natural Resources

Alpha Natural Resources, Inc.
One Alpha Place
P.O. Box 16429
Bristol, VA 24209
USA

24. **Alpha Natural Resources**

Alpha Natural Resources, Inc.
One Alpha Place
P.O. Box 16429
Bristol, VA 24209
USA

25. **Cyprus Amax** - subsidiary of
a predecessor company, Cyprus
Amax Minerals Company

Freeport-McMoRan Inc.

333 N. Central Ave.
Phoenix, AZ 85004
USA

26. **EnCana**

EnCana Corporation
500 Centre Street SE
Calgary, AB T2G 1A6
Canada

27. **Devon Energy**

Devon Energy
Corporate Headquarters
333 West Sheridan Avenue
Oklahoma City, Oklahoma 73102-
5015
USA

28. **BG Group**

BG Group plc
100 Thames Valley Park Drive
Reading
Berkshire
RG6 1PT
United Kingdom

29. **Westmoreland Mining**

Westmoreland Coal Company
9540 South Maroon Circle
Suite 200
Englewood, CO 80112
USA

30. **Suncor**

Suncor Energy, Inc.
Corporate Head Office
Suncor Energy Inc.
150 6th Avenue S.W.
Calgary, Alberta T2P 3E3
Canada

31. **Kiewit Mining**

Kiewit Mining Group Inc.
Kiewit Plaza
Omaha, NE 68131
USA

32. **North American Coal**

**The North American Coal
Corporation**
5340 Legacy Drive Building I,
Suite #300
Plano, TX 75024-3141
USA

33. **Ruhrkohle AG** - renamed into
RAG Aktiengesellschaft

RAG Aktiengesellschaft
Shamrockring 1
44623 Herne
Germany

34. **Luminant**

Luminant Corporation
Energy Plaza
1601 Bryan Street
Dallas, TX 75201
USA

35. **Lafarge, merged with Holcim**

Gatmaytan Yap Patacsil Gutierrez
& Protacio,
**Counsel for Lafarge Holcim and
Lafarge Holcim Respondents**
30/F 88 Corporate Center
Sedeño cor. Valero Streets
Salcedo Village, Makati City 1227
Philippines

36. **Holcim, merged with Lafarge**

Gatmaytan Yap Patacsil Gutierrez
& Protacio,
**Counsel for Lafarge Holcim and
Lafarge Holcim Respondents**
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Sedeño cor. Valero Streets
Salcedo Village, Makati City 1227
Philippines

37. **Canadian Natural Resources**

**Canadian Natural Resources
Limited**
2100, 855 - 2 Street S.W.
Calgary, AB T2P 4J8
Canada

38. **Apache**

SyCip Salazar Hernandez &
Gatmaitan
**Counsel for Respondent Apache
Corporation**
3rd Floor SyCipLaw Center
105 Paseo de Roxas
Makati City 1226
Metro Manila, Philippines

39. **Talisman** – acquired by
Repsol

Quisumbing Torres
**Counsel for Respondents Repsol,
S.A., and Repsol Oil & Gas
Canada, Inc.**
12th Floor, Net One Center
26th Street Corner 3rd Avenue
Crescent Park West
Bonifacio Global City
Taguig City 1634
Philippines

40. **Murray Coal**

Murray Energy Corporation
46226 National Road
St. Clairsville, Ohio 43950
USA

41. **UK Coal**

**UK Coal Production Limited
c/o Michelle Gilks
PricewaterhouseCoopers LLP**
Benson House
33 Wellington Street
Leeds LS1 4JP
United Kingdom

42. **Husky Energy**

Husky Energy Inc.
707-8th Avenue SW
Box 6525, Station "D"

Calgary, Alberta T2P 3G7
CANADA

43. HeidelbergCement

HeidelbergCement AG
Berliner Straße 6
69120 Heidelberg
Germany

44. Cemex

Poblador Bautista & Reyes Law
Offices
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CEMEX S.A.B. de C.V.
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120 Rada corner Legaspi Streets,
Legaspi Village
Makati City 1229

**45. Italcementi, acquired by
HeidelbergCement**

HeidelbergCement AG
Berliner Straße 6
69120 Heidelberg
Germany

46. Murphy Oil

Murphy Oil Corporation
200 Peach Street

El Dorado, Arkansas 71730
USA

47. Taiheiyo

Cochingyan & Peralta Law Offices
Counsel for Respondent
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Valero Street
Salcedo Village Makati City, 1227
Metro Manila, Philippines

Taiheiyo Cement Philippines Inc
National Highway, South
Poblacion, San Fernando, Cebu,
Philippines

48. OMV Group

OMV Aktiengesellschaft
Trabrennstraße 6-8
1020 Vienna
Austria

49. Rosneft

Rosneft
26/1, Sofiyskaya Embankment,
117997,
Moscow
Russia