

P E T I T I O N

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

Prefatory Statement

“Ito na lang ba ang aming kauuwian—ang magbilang, o mapabilang, sa mga biktima ng climate change?”¹

In asking for available remedies, Ms. Derek Cabe² raised this concern at the Forum on Human Rights and Climate Change organized by the Honourable Commission on Human Rights (Commission or CHR) in cooperation with Greenpeace Southeast Asia on May 12, 2015.

The Petitioners trust that the Honourable Commission understands the context of this question, considering the abundance of country statistics and reports of disaster-related casualties. For example, despite forecasts and warnings provided days in advance, super-typhoon Yolanda killed more than 6,000 people, affected millions of others, and devastated areas in central Leyte in 2013. According to the World Bank, the EMDAT disaster database shows that between 2000 and 2008, weather-related disasters accounted for 98% of all people affected and 78% of all the people who died due to

¹ English translation: *Will this be our fate---to just count the victims of climate change or be counted among them?*

² Ms. Cabe is a representative of Nuclear Free Philippines (Bataan).

disasters in the Philippines.³ The World Bank also stated that annually the country has to spend 0.5% of its GDP on natural disasters.⁴ Between 1998 and 2009, the country had to deal with costs of up to US\$24.3 billion (23.9% of GDP) due to storms, exposing 12.1 million people.⁵

The various possible factors contributing to the occurrence of super-typhoons like Yolanda and other extreme weather events now include human-induced climate change. Natural variability is now occurring on top of, and interacting with, background conditions that have already been altered by long-term climate change. According to scientific experts, “[w]hile natural variability continues to play a key role, climate change has shifted the odds and changed the natural limits, making certain types of extreme weather more frequent and more intense.”⁶

In the era of climate change, the Petitioners feel that the real value of the statistics and reports of disaster-related casualties has not been given adequate expression. The real life pain and agony of losing loved ones, homes, farms—almost everything—during strong typhoons, droughts, and other weather extremes, as well as the everyday struggle to live, to be safe, and to be able to cope with the adverse, slow onset impacts of climate change, are beyond numbers and words.

Climate change interferes with the enjoyment of the Filipinos’ **fundamental rights**. Hence, the Petitioners demand accountability of those contributing to climate change.

³ C. Ancheta, J. Bojo, V. Dato, J. Heister, M. Kariuki; J. Morton, Z. Trohanis, J. Tuyor, M. Villaluz, F. Virtucio, S. Wedderburn, Y. Zhang, Yabei. *A strategic approach to climate change in the Philippines*. World Bank, 6, <http://documents.worldbank.org/curated/en/2010/04/15198885/strategic-approach-climate-change-philippines> (last accessed on Apr. 20, 2016).

⁴ *Id.*

⁵ IPCC, 2014: *Climate Change 2014: Impacts, Adaptation, and Vulnerability*. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Small Islands [Barros, V.R., C.B. Field, D.J. Dokken, M.D. Mastrandrea, K.J. Mach, T.E. Bilir, M. Chatterjee, K.L. Ebi, Y.O. Estrada, R.C. Genova, B. Girma, E.S. Kissel, A.N. Levy, S. MacCracken, P.R. Mastrandrea, and L.L. White (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 688, at 1638.

⁶ Climate Communications, Overview: Current Extreme Weather & Climate Change, <https://www.climatecommunication.org/new/features/extreme-weather/overview/> (last accessed on Sept. 15, 2015).

A recent research endeavour, undertaken by Mr. Richard Heede of the *Climate Accountability Institute*, quantified and traced “for the first time the lion’s share of cumulative global CO₂ and methane emissions since the industrial revolution began to the largest multinational and state-owned *producers* of crude oil, natural gas, coal and cement.”⁷ These producers are collectively known as the ‘Carbon Majors,’ and the same term shall be used in this Petition. The investor-owned, i.e., publicly traded, Carbon Majors, some of which have operations or a presence in, or a substantial connection to the Philippines, are listed in Table 1. This research has undergone an update since then, with a summary of these results now included below in Table 2.

Table 1: Investor-owned Carbon Majors⁸ 1751-2010

⁷ R. Heede, *Carbon Majors: Accounting for Carbon and Methane Emissions 1854-2010, Methods and Results Report* (Apr. 7, 2014), <http://climateaccountability.org/pdf/MRR%209.1%20Apr14R.pdf>, at 5 (last accessed on June 15, 2015) at 5 [hereinafter *Methods and Results Report*]. Note that there are other reports concerning corporate GHG emissions. See J. Moorhead & T. Nixon, *Global 500 Greenhouse Gases Performance 2010-2013: 2014 Report on Trends* (Dec. 2014), <http://www.bsdconsulting.com/bsd-files/news-downloadable-pdfs/global-500-greenhouse-gases-performance-trends-2010-2013.pdf> (last accessed on June 15, 2015).

⁸ *Methods and Results Report*, *supra* note 7, at 29.

Entity	2010 emissions MtCO ₂ e	Cumulative MtCO ₂ e	% cumulative global, 1751-2010
1. Chevron, USA	423	51,096	3.52%
2. ExxonMobil, USA	655	46,672	3.22%
3. BP, UK	554	35,837	2.47%
4. Royal Dutch Shell, Netherlands	478	30,751	2.12%
5. ConocoPhillips, USA	359	16,866	1.16%
6. Peabody Energy, USA	519	12,432	0.86%
7. Total, France	398	11,911	0.82%
8. Consol Energy, Inc., USA	160	9,096	0.63%
9. BHP Billiton, Australia	320	7,606	0.52%
10. Anglo American, UK	242	7,242	0.50%
11. RWE, Germany	148	6,843	0.47%
12. ENI, Italy	258	5,973	0.41%
13. Rio Tinto, UK	161	5,961	0.41%
14. Arch Coal, USA	341	5,888	0.41%
15. Anadarko, USA	96	5,195	0.36%
16. Occidental, USA	109	5,063	0.35%
17. Lukoil, Russian Federation	322	3,873	0.27%
18. Sasol, South Africa	113	3,515	0.24%
19. Repsol, Spain	126	3,381	0.23%
20. Marathon, USA	59	2,985	0.21%
21. Yukos, Russian Federation *	-	2,858	0.20%
22. Hess, USA	61	2,364	0.16%
23. Xstrata, Switzerland	214	2,223	0.15%
24. Massey Energy, USA	91	2,199	0.15%
25. Alpha Natural Resources, USA	182	2,149	0.15%
26. Cyprus Amax, USA *	-	1,748	0.12%
27. EnCana, Canada	84	1,695	0.12%
28. Devon Energy, USA	93	1,690	0.12%
29. BG Group, UK	97	1,543	0.11%
30. Westmoreland Mining, USA	46	1,530	0.11%
31. Suncor, Canada	89	1,407	0.10%
32. Kiewit Mining, USA	59	1,295	0.09%
33. North American Coal, USA	40	1,181	0.08%
34. Ruhrkohle AG, Germany	-	1,138	0.08%
35. Luminant, USA	33	1,049	0.07%
36. Lafarge, France	61	1,044	0.07%
37. Holcim, Switzerland	62	1,008	0.07%
38. Canadian Natural Resources	93	958	0.07%
39. Apache, USA	97	951	0.07%
40. Talisman, Canada	62	925	0.06%
41. Murray Coal, USA	59	796	0.05%
42. UK Coal, UK	19	794	0.05%
43. Husky Energy, Canada	42	665	0.05%
44. Nexen, Canada	36	651	0.04%
45. HeidelbergCement, Germany	31	587	0.04%
46. Cemex, Mexico	27	551	0.04%
47. Italcementi, Italy	24	463	0.03%
48. Murphy Oil, USA	27	418	0.03%
49. Taiheiyo, Japan	10	402	0.03%
50. OMV Group, Austria	45	346	0.02%
Total:	7,628	314,811	21.71%

Right column compares each entity's cumulative emissions to CDIAC's global emissions 1751-2010.
* not extant; production and emission quantified for these entities but not attributed to extant entities.

Table 2: Investor-owned Carbon Majors 1751-2013

Entity	Cumulative MtCO₂e 2010	Cumulative MtCO₂e 2013	% cumulative global, 1751- 2013
Chevron	51.096	52.247	3.34%
ExxonMobil	46.672	48.557	3.10%
BP	35.837	37.251	2.38%
Royal Dutch Shell	30.751	32.171	2.06%
ConocoPhillips	16.866	17.553	1.12%
Peabody Energy	12.432	13.869	0.89%
Total	11.911	12.884	0.82%
Consol Energy, Inc.	9.096	9.254	0.59%
BHP Billiton	7.606	8.649	0.55%
Anglo American	7.242	7.478	0.48%
Arch Coal	5.888	6.766	0.43%
ENI	5.973	6.634	0.42%
RWE	6.843	6.472	0.41%
Rio Tinto	5.961	6.248	0.40%
Anadarko	5.195	5.517	0.35%
Occidental	5.063	5.392	0.34%
Alpha Natural Resources	2.149	4.847	0.31%
Lukoil	3.873	4.740	0.30%
Rosneft		4.153	0.27%
Sasol	3.515	3.875	0.25%
Repsol	3.381	3.524	0.23%
Marathon	2.985	3.182	0.20%
Xstrata	2.223	3.177	0.20%
Yukos	2.858	2.858	0.18%
Hess	2.364	2.525	0.16%
Devon Energy	1.690	2.015	0.13%
EnCana	1.695	1.940	0.12%
BG Group	1.543	1.830	0.12%
Cyprus Amax	1.748	1.748	0.11%
Suncor	1.407	1.645	0.11%
Westmoreland Mining	1.530	1.642	0.10%
Kiewit Mining	1.295	1.427	0.09%

Apache	951	1.287	0.08%
North American Coal	1.181	1.283	0.08%
Lafarge	1.044	1.232	0.08%
Canadian Natural Resources	958	1.208	0.08%
Holcim	1.008	1.197	0.08%
Luminant	1.049	1.161	0.07%
Ruhrkohle AG	1.138	1.138	0.07%
Talisman	925	1.106	0.07%
Murray Coal	796	1.085	0.07%
UK Coal	794	844	0.05%
Husky Energy	665	800	0.05%
HeidelbergCement	587	677	0.04%
Cemex	551	630	0.04%
Italcementi	463	544	0.03%
Murphy Oil	418	503	0.03%
OMV Group	346	471	0.03%
Taiheiyo	402	427	0.03%
Massey Energy	2.199	-	0.00%
Nexen	651	-	0.00%
Total:	314.811	337.662	21.57%

To date, a number of the investor-owned Carbon Major companies have changed and may continue to change. Yukos has ceased operations and other investor-owned companies have acquired Xstrata, Massey Energy, Cyprus Amax, and Talisman. Nexen became a wholly owned subsidiary of a state-owned company. Rosneft has been added to the list.

The Carbon Majors findings are of serious importance and consequence to the Philippines due to the country's high vulnerability to the impacts of climate change. The findings call attention to the role of the Carbon Majors because these producers contribute a significant portion of the estimated emissions of greenhouse gases. According to the IPCC, continued emission of these gases "will cause further warming and long-lasting changes in all components of the climate system, increasing the

likelihood of severe, pervasive, and irreversible impacts for people and ecosystems.”⁹

The Carbon Majors should be held accountable for violations or threats of violations of Filipinos’ rights (a) to life; (b) to the highest attainable standard of physical and mental health; (c) to food; (d) to water; (e) to sanitation; (f) to adequate housing; and (g) to self-determination resulting from the adverse impacts of climate change. Special attention should be paid to marginalized and disadvantaged people and communities particularly vulnerable to the effects of climate change, including women, children, persons with disabilities, those living in extreme poverty, indigenous peoples, and displaced persons; as well as the right of Filipinos to development. The workers and workers’ organizations among the Petitioners also seek accountability for the human rights implications of climate change on the workers’ health, labour productivity, work environment and safety, and job protection.¹⁰ One potential way to determine the level of responsibility of an individual Carbon Major is by identifying the company’s share in the estimated global industrial emissions of carbon, and when it is supposed to have allegedly acquired knowledge of its products’ harmful effects, including the impacts on the climate, ecological balance, and people’s health, or was informed of those impacts.¹¹

*Hindi po makatarungan na magbilang na lamang kami, o mapabilang sa susunod na statistics, ng mga biktima ng climate change.*¹² This Petition seeks vindication of Filipinos’ rights through a comprehensive investigation into the responsibility of the Carbon Majors for violations or threats of violations of human rights resulting from the impacts of climate change.

⁹ IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, pp. 151, Summary for Policymakers, at 8.

¹⁰ For more information on climate action as a trade union concern, see, ITUC Frontlines Briefing, Climate Justice: There are No Jobs on a Dead Planet, Mar. 2015, <http://www.ituc-csi.org/ituc-frontlines-briefing-climate?lang=en> (last accessed on Sept. 15, 2015).

¹¹ A recent peer-reviewed article concluded that “major investor-owned fossil energy companies carry significant responsibility for climate change.” P. Frumhoff, R. Heede, & N. Oreskes, *The Climate Responsibilities of Industrial Carbon Producers*, CLIMATIC CHANGE, 132 Climatic Change 157 (2015). Available at <http://link.springer.com/article/10.1007%2Fs10584-015-1472-5>.

¹² English translation: *It is unjust that we end up simply counting the victims or becoming victims ourselves of climate change.*

Jurisdiction of the Commission

The human rights violations or threats of violations that are the subject of this Petition include the rights of the Filipinos (a) to life; (b) to the highest attainable standard of physical and mental health; (c) to food; (d) to water; (e) to sanitation; (f) to adequate housing; (g) to self-determination; and (h) 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.

While the adjunct rights to health¹³ and to a balanced and healthful ecology,¹⁴ known collectively as environmental rights, are not listed under the Bill of Rights, they are included in the subject of this Petition. The exchange between Commissioners Bennagen and Nolledo during the deliberations of the 1986 Constitutional Convention supports the general idea that environmental rights are included in the complete concept of human rights.¹⁵ Their importance is explained in *Oposa v. Factoran*:

As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present

¹³ CONST. art. II, § 15.

¹⁴ CONST. art. II, § 16.

¹⁵ Sub-Committee on the Rules of Procedure for Environmental Cases, Rationale to the Rules of Procedure for Environmental Cases, 59-60, paragraph 3, Apr. 2010.

generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life.¹⁶

This Petition is therefore within the scope of the Commission’s jurisdiction under Rule 2 of the Omnibus Rules of Procedure of the CHR, to wit:

Rule 2. Scope of CHR jurisdiction

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;

¹⁶ *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792.

- 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.

Section 2. The Commission on Human Rights shall monitor the Philippine Government's **compliance with international human rights treaties and instruments** to which the Philippines is a State party. This includes, but is not limited to, the actions taken by the Government, the manner and/or means of implementation or application of the human rights related laws, principles, norms and standards, in relation to the State obligations to respect, protect and fulfil the human rights of all persons within the Philippines, as well as Filipinos residing abroad.

Corollary thereto, **the Commission on Human Rights, in line with its role as a national human rights institution, 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.** (Emphasis ours)¹⁷

The Philippines is a signatory to and/or has ratified various international human rights instruments listed in Annex "A."

¹⁷ Commission on Human Rights, The Omnibus Rules of Procedure of the Commission on Human Rights, i-ii, Apr. 2012.

In 2008, the Human Rights Council adopted Resolution 7/23, which states that climate change “poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.”¹⁸ The link between human rights and climate change was further clarified in the 2009 report of the Office of the High Commissioner for Human Rights (OHCHR) of the United Nations. The report categorically states that, “there exists broad agreement that climate change generally negatively effects the realization of human rights.”¹⁹ The 2009 OHCHR report also “stresses the importance of accountability mechanisms in the implementation of measures and policies in the area of climate change and requires access to administrative and judicial remedies in cases of human rights violations.”²⁰

In October 2014, the Special Procedures of the UN Human Rights Council issued a joint letter on the implications of climate change for human rights, which stated in part:

[W]e call on the State Parties to the United Nations Framework Convention on Climate Change (UNFCCC) to ensure full coherence between their solemn human rights obligations and their efforts to address climate change, one of the greatest human rights challenges of our time.

A safe, clean, healthy and sustainable environment is indispensable to the full enjoyment of human rights, including rights to life, health, food, water and housing, among many others.... The most recent report of the Intergovernmental Panel on Climate Change (IPCC) brings into sharp focus the grave harm that climate change is already causing, and will continue to cause, to the

¹⁸ Human Rights Council Res. 7/23, U.N. Doc. A/HRC/7/78, July 14, 2008, at preambular para. 1.

¹⁹ United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, Tenth Session, Jan. 15, 2009 at 23, <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Study.aspx> (last accessed on June 15, 2015).

²⁰ *Id.* at 27.

environment on which we all depend. There can no longer be any doubt that climate change interferes with the enjoyment of human rights recognized and protected by international law.²¹

In May 2015, the Climate Vulnerable Forum, chaired by the Philippines, submitted a memorandum and three independent reports to Ms. Christiana Figueres, Executive Secretary of the UNFCCC Secretariat. The independent reports are appended herewith as Annexes “B,” “B-1,” “B-2,” and “B-3” respectively. Based on the reports, the Climate Vulnerable Forum found that the UNFCCC target of limiting global temperature rise to 2°C is “‘inadequate,’ posing serious threats to fundamental human rights, labour and migration and displacement, among other factors.”²² The Petitioners believe that the findings in the report on labour underscore the need for a comprehensive strategy on a “just transition” for workers and communities to ensure everyone is a part of the sustainable economy and benefit from decent and green jobs.²³

The propriety of this Petition is 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 Council, the nations participating in the Climate Vulnerable Forum, and the Government of the Philippines.

On the authority to exercise jurisdiction over investor-owned Carbon Majors to determine whether they have breached their responsibility to respect human rights, the Guiding Principles on Business and Human Rights (Guiding Principles)²⁴ recognizes that corporations have a responsibility to

²¹ M. Addo, et al., *A New Climate Change Agreement Must Include Human Rights Protections for All*, Oct. 17, 2014 at 1, <http://srenvironment.org/wp-content/uploads/2014/10/Letter-to-UNFCCC-FINAL> (last accessed on Apr. 16, 2016).

²² Climate Vulnerable Forum, *20 Nations Call to Strengthen 2 Degrees Climate Goal*, May 1, 2015, <http://www.thevcf.org/20-nation-forum-questions-unfccc-2-degrees-goal/> (last accessed on June 15, 2015).

²³ See T. Kjellstrom, et al, *Ruby Coast Research Centre, Climate Change and increasing heat impacts on Labor Productivity*, Apr. 25, 2015, <http://www.thevcf.org/wp-content/uploads/2015/05/labour.pdf> (last accessed on Apr. 20, 2016).

²⁴ United Nations Human Rights Council, *Report of the Special Representative of the Secretary General*

respect human rights, which arises from a “global standard of expected conduct applicable to all businesses in all situations.”²⁵ The commentary under Principle 11 states:

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.²⁶

The Human Rights Council unanimously endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.²⁷ According to the Guiding Principles, corporations bear a responsibility to respect human rights,²⁸ and “[s]tates should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”²⁹

States have obligations with respect to human rights, both within their territories and extraterritorially, based on international law. Specifically, states have extraterritorial obligations (ETOs) to respect, protect and fulfil human rights abroad. The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights

on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Seventeenth Session, Mar. 21, 2011, <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf> (last accessed on Apr. 20, 2016) [hereinafter Guiding Principles].

²⁵ United Nations-Office of the UN High Commissioner, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2012 at 13-14, http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf (last accessed on Apr. 20, 2016) [hereinafter *Interpretive Guide*].

²⁶ Guiding Principles, *supra* note 24, at ¶ 11.

²⁷ United Nations Human Rights Council, *Resolution Adopted by the Human Rights Council: 17/4 Human Rights and Transnational Corporations and Other Business Enterprises*, Seventeenth Session, July 06, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/4 (last accessed on Apr. 20, 2016).

²⁸ Guiding Principles, *supra* note 24, intro ¶ 6.

²⁹ Guiding Principles, *supra* note 24, ¶ 2.

provide guidance and legal grounds for the effective implementation of ETOs.³⁰ With respect to the regulation of corporations, international human rights treaty bodies monitoring implementation of treaties on civil and political rights,³¹ economic, social and cultural rights,³² the rights of the child,³³ and on racial discrimination³⁴ have all confirmed that States must

³⁰ 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> [hereinafter Maastricht Principles]. In 2011, a group of international legal experts developed the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. According to the Center for International Environmental Law: “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. However, the Principles do not create new legal norms. Rather, they articulate the current state of international law regarding ETOs, reflecting many of the conclusions drawn by international tribunals, U.N. treaty bodies, and Special Procedures. In particular, the Maastricht Principles provide a basis for conceptualizing the application and implementation of ETOs in order to secure more effective protection of human rights from third-party violations.” Center for International Environmental Law, Written Statement to Open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights, A/HRC/WG.16/1/NGO/3, July 2, 2015, at 14. Available at: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session1/A.HRC.WG.16.1.NGO.3.pdf>.

³¹ United Nations Human Rights Committee, Concluding Observations on the Sixth Periodic Report of Germany, 106th Session, November 12, 2012, ¶ 16. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DEU/CO/6&Lang=En.

³² United Nations Committee on Economic, Social and Cultural Rights, Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social, and Cultural Rights, Forty-Sixth Session, May 20, 2011 at para. 5-6. Available at <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.2011.1-ENG.doc>; United Nations Committee on Economic, Social, and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health, Twenty-Second Session, Aug. 11, 2000, at ¶ 39. Available at http://www.nesri.org/sites/default/files/Right_to_health_Comment_14.pdf; United Nations Committee on Economic, Social, and Cultural Rights, General Comment 15: The Right to Water, Twenty-Ninth Session, Jan. 20, 2003, ¶ 33. Available at <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94>; United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations: Finland, December 17, 2014, at ¶ 10. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/FIN/CO/6&Lang=En; United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations on the Second Periodic Report of China, Including Hong Kong, China, and Macao, China, June 13, 2014, at ¶ 13. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FCHN%2FCO%2F2.

³³ United Nations Committee on the Rights of the Child, General Comment 16: On State Obligations Regarding the Impact of the Business Sector on Children’s Rights, Apr. 17, 2013, at ¶¶ 43-46. Available at http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-16_en.doc [hereinafter General Comment 16].

³⁴ United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations: United States of America, Session 72, Feb. 2008, at para. 30. Available at

take necessary measures to prevent their corporations from interfering with the enjoyment of human rights both within their territory and in other countries and to take action, separately, and jointly through international cooperation, to realize human rights universally.³⁵

There is also ample justification for any State to act on transboundary and global matters like climate change, where harmful activity is taking place in one country, and the negative impacts are being suffered in another. According to the 2011 OHCHR report on human rights and the environment, “[o]ne country’s pollution can become another country’s environmental and human rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries.”³⁶ These issues are of particular importance in the environmental context, in the light of the number and intensity of transboundary and global environmental threats to the full enjoyment of human rights.

Therefore, extraterritoriality is not a bar to the Commission’s exercise of authority, considering the transboundary and global nature of climate change and other environmental problems and the associated human rights implications.

<http://www1.umn.edu/humanrts/CERDConcludingComments2008.pdf>; United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations: Canada, Session 17, May 25, 2007, at ¶ 17. Available at <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.18.doc>; United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations: Canada, Eighteenth Session, Apr. 4, 2012, at ¶ 14; United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations: Norway, Seventy-Eighth Session, Apr. 8, 2011, at ¶ 17.

Available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/NOR/CO/19-20&Lang=En; United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations: United Kingdom, Seventy-Ninth Session, Sept. 14, 2011, at ¶ 29. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/GBR/CO/18-20&Lang=En.

³⁵ See further O. de Schutter & A. Eide & A. Khalfan & M. Orellana & M. Salomon & I. Seiderman, Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 34 HUMAN RIGHTS QUARTERLY, 1084, 1101-1104, 1133-1145 (2012). Available at: <http://www.icj.org/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf> [hereinafter Maastricht Commentary].

³⁶ Human Rights Council, Analytical Study on the Relationship Between Human Rights and the Environment, Nineteenth Session, Dec. 16, 2011 at ¶ 65, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-34_en.pdf (last accessed on Apr. 20, 2016).

The Parties

Petitioners

The Petitioners are the following individuals and non-governmental organizations:

1. GREENPEACE SOUTHEAST ASIA (PHILIPPINES) is a non-profit civil society organization duly registered under Philippine laws in 2000. It aims to protect the Philippines and Southeast Asia from further ecological ruin and to serve as a beacon of awareness and action in the interest of environmental protection and sustainable development. Its office address is: Room 201 JGS Building, No. 30 Scout. Tuason, Bgy. Laging Handa, Quezon City.
2. PHILIPPINE RURAL RECONSTRUCTION MOVEMENT (PRRM) was founded in 1952 to be a mass movement for the emancipation of the Filipino peasant. Having pioneered a whole era of rural development and local democracy in the country, PRRM continues to make its contribution in building sustainable communities. It has its office address at 56 Mother Ignacia corner Dr. Lazcano St., Quezon City, Philippines.
3. DAKILA (Philippine Collective for Modern Heroism) is a group of artists, students, young professionals and development activists, creatively building a movement of heroism towards social transformation. Its office address is: Unit 3A Vs1 Bldg. Kalayaan ave Brgy Malaya Quezon City, Philippines.
4. SENTRO NG MGA NAGKAKAISA AT PROGRESIBONG MANGGAGAWA or SENTRO is a national labor center with 100,000 members nationwide. It is composed of 16 industry and sectoral federations operating in the formal and informal sectors, public and private sectors as well as among migrant workers. SENTRO espouses social movement unionism and aims to contribute

to the overall goal of liberating the working people from all forms of oppression. It is a founding member of NAGKAIISA, a broad coalition of trade unions and labor organizations in the Philippines. It is also a member of the Food Workers' International (IUF) based in Geneva and the International Trade Union Confederation (ITUC) based in Brussels. Its office address is: Workers' House, 94 Scout Delgado Street, Brgy. Laging Handa, Quezon City, Philippines.

5. MOTHER EARTH FOUNDATION is a non-stock, non-profit, and non-government organization duly registered under Philippine laws in 1998. It is actively engaged in addressing waste and toxic pollution, climate change, and other health and environmental justice issues. It is also best known for its community-based advocacy of zero waste. In its zero waste campaign, Mother Earth Foundation has established a model barangay, Barangay Fort Bonifacio with a 95% waste diversion rate, a model city, San Fernando City, Pampanga with a 73% waste diversion rate and is working with the province of Nueva Vizcaya to make it a model zero waste province in 2016. Its office address is: Unit 201 PhilDHRRA Building, 59 C. Salvador Street, Loyola Heights, Quezon City, Philippines.
6. ECOWASTE COALITION is a public interest network of community, church, school, environmental and health groups pursuing sustainable solutions to waste, climate change and chemical issues facing the Philippines and the world. Its office address is: Unit 329, Eagle Court Condominium, Matalino St., Quezon City, Philippines
7. NIUGAN or The Nagkakaisang Ugnayan ng Mga Magsasaka at Manggagawa sa Niyugan is a national federation of coconut farmers and farm workers organized under the laws of the Republic of the Philippines. The Federation was organized in Gumaca, Quezon on December 2000 and duly registered with the Securities and Exchange Commission (SEC), with registration no. A200018417 dated Dec. 12, 2000. The Federation's objectives are to develop the coconut industry and improve the living conditions of small coconut farmers and farm workers. Working for the realization of its objectives, the Federation

is engaged in organizing of coconut farmers, advocacy, capability building, sustainable agriculture practices, social enterprises and environmental protection. The Federation is operating in Quezon, Marinduque, Camarines Norte, Camarines Sur, Albay, Camiguin, and North Cotabato. Each province is represented by the chairman of the provincial federation. NIUGAN can be contacted at Philippine Rural Reconstruction Movement Headquarter, No. 56 Mother Ignacia Ave., cor. Dr. Lazcano St., Brgy. Paligsahan, Quezon City.

8. PHILIPPINE HUMAN RIGHTS INFORMATION CENTER (PhilRights) is a non-stock, non-profit organization duly registered with the Securities and Exchange Commission (SEC) since October 10, 1994. It is an associated NGO of the United Nations Department of Public Information (UN DPI) and has a special consultative status with the UN Economic and Social Council (UN ECOSOC). PhilRights has been part of the human rights movement and has been doing advocacy work through its research and information activities since its formation. Established through a resolution passed during the 7th National Congress of the Philippine Alliance of Human Rights Advocates (PAHRA) and formally constituted in July 1991, PhilRights serves as the research and information center of the alliance. It's office address is at 53-B Maliksi St. Barangay Pinyahan, Quezon City.

9. ASIA PACIFIC MOVEMENT ON DEBT AND DEVELOPMENT (APMDD) - (formerly Jubilee South - Asia Pacific Movement on Debt and Development) is a regional alliance of peoples' movements, community organizations, coalitions, nongovernmental organizations and networks. It works for social transformation in the areas of global and public finance, particularly debt and tax justice; climate justice; and natural resources. It holds its office at 34 Matiyaga St., Barangay Central, Quezon City.

10. NUCLEAR FREE BATAAN MOVEMENT (NFBM) is a grassroots-based environmental network in the province of Bataan that works for the promotion and protection of the environment through pro-active education and advocacy campaign. NFBM started in the 1970s at the

height of the dictatorship of Marcos regime and the construction of the first ever Nuclear power plant in the country. Since then, NFBM has pursued different forms of advocacy and actions to continuously remind the Filipino people, especially the younger generation of our historic struggle against the “monster of Morong” in Bataan and to continually make a mark on the public consciousness on the dangers of nuclear power energy and push for a sustainable, renewable energy for the people. Since the province has become a hub for coal power plants , NFBM has widened its advocacy to resist the use of fossil-fuel based energy and push for the alternative that is renewable energy and calling for climate justice. Its office address is: 1066-B, Emerald St., Taglesville, access road, Balanga City, Bataan.

11. AYOS BICOL is an alliance of youth organizations, student councils, out-of-school-youth and individuals that aims to form and realize the Bicol Youth Agenda. Its office address is: 402-A Lopez Residence 152 Maginhawa St. Sikatuna Village, Quezon City.
12. PHILIPPINE ALLIANCE OF HUMAN RIGHTS ADVOCATES (PAHRA) is a non-stock, non-profit alliance duly registered under the laws of the Philippines, with SEC No. ANO92-03505. It was established on August 9, 1986 in a Congress that was participated in by more than a hundred organizations from all over the Philippines. It was formed as an alliance of individuals, institutions and organizations committed to the promotion, protection and realization of human rights in the Philippines. PAHRA is the sole civil society representative in the Philippine Government’s Presidential Human Rights Committee (PHRC), and is an affiliate of the International Federation of Human Rights Leagues (FIDH). It is also a member of regional organizations like the Asian Forum of Human Rights and Development (FORUM-ASIA), and the Asian Network for Free Elections (ANFREL). It’s office address is at 53-B Maliksi St. Barangay Pinyahan, Quezon City.
13. 350.org East Asia is an international environmental organization that works to build a global grassroots movement to fight against global warming and the denial of climate change. By encouraging citizens to

action through publicizing the increasing levels of carbon dioxide in the atmosphere. The name 350.org comes from the research of NASA scientist Dr. James Hansen. He wrote in a scientific paper in 2007 that the level of carbon dioxide in the atmosphere should not be higher than 350 parts-per-million.

14. PHILIPPINE MOVEMENT FOR CLIMATE JUSTICE (PM CJ) is a broad movement consisting of 103 national networks/alliances and local organizations representing basic sectors, grassroots communities, the marginalized and most vulnerable, including women, indigenous peoples, fisher folk and coastal communities, farmers and rural communities, forest communities, formal and informal workers, environmental groups, urban poor, and others in the Philippines that aims to lead the joint struggles, campaigns and actions in putting forward the climate justice framework as a fundamental element of solving the climate crisis. Its office address is: 43 Matapat St., Barangay Pinyahan, Quezon City, Philippines.

- For the list of individual petitioners, please contact their Legal Representatives as listed above. -

As of April 21, 2016, the Petitioners had the support of 31,841 people who identified themselves as Filipinos. They pledged their support for this Petition on the Greenpeace Southeast Asia website. A webpage, greenpeace.org.ph/climatejustice, was created for expressions of support on June 5, 2015.

For procedural convenience and practical reasons, all of the herein named organizational and individual Petitioners may be collectively served with summons and other processes issued from this Honourable Commission at Greenpeace Southeast Asia No. 30 JGS Bldg., Sct. Tuason, Brgy. Laging Handa, Quezon City, addressed to their Legal Representatives.

Respondents

The investor-owned Carbon Major Respondents' company names, principal business addresses, and addresses of branch and/or regional offices, if any, in the Philippines, are listed in the Updated Annex "C." The Petitioners request that notices, summons and pleadings be sent to the Respondent Carbon Majors business addresses or through the national human rights institutions or institutional counterpart in the countries where the Carbon Majors are based.

Petitioners further request the Commission to seek the help of the UN Working Group on Business and Human Rights, the Office of the UN Special Rapporteur on Human Rights and the Environment, and the Office of the UN Independent Expert on the Right to International Solidarity to effect the cooperation of Respondent Carbon Majors in the investigation.

Statement of Facts

The Petitioners ask the Commission to take official or administrative notice of the scientific basis of this Petition concerning the human rights implications of climate change and ocean acidification and the estimated responsibility of the Carbon Majors.

In this section, first, there is a discussion of the Carbon Majors, followed by an overview of climate change and ocean acidification impacts and finally, personal statements of individuals describing how climate change impacts interfere with their human rights. See Updated Annex "D" for the details of the Carbon Major publications.

1. Carbon Majors

The Carbon Majors findings, based on peer-reviewed methodology, are found in three ground-breaking publications:

(1) Climate Accountability Institute, Press Release on Update of Carbon Majors Project, released in December 2014, appended as Annex “D-1;”

(2) Carbon Majors: Accounting for carbon and methane emissions 1854-2010 Methods and Results Report, released in 2013 and updated at the beginning of 2014, appended as Annex “D-2;” and

(3) Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010, published online in the journal *Climatic Change* in November 2013, appended as Annex “D-3.”

The following are the main findings of the Carbon Major publications. They now reflect the most recent findings of the research, which is constantly being updated:

- 90 Carbon Major Entities, including the then 50 investor-owned Carbon Major companies, are responsible for an estimated 1,104 Gt CO₂e of cumulative world emissions of industrial CO₂ and methane, or 64.8% of all anthropogenic CO₂ between 1751 and 2013.³⁷
- Nearly one-third of all global industrial CO₂ from 1751 to 2013 are associated with the carbon fuels produced by the Top 20 fossil fuel companies.³⁸ The Top 20 fossil fuel investor-owned companies contributed 294.6 GtCO₂e, equivalent to 18.8% of

³⁷ Heede, R. 2015. Carbon Major Entities Cumulative Emission to 2013 Ranked, Climate Accountability Institute. February, 2015. Made available to Greenpeace Southeast Asia and Greenpeace International upon request in April 2016. Mr. Heede can also be asked to explain this update in the public hearing to be called by the Commission.

³⁸ *Id.*

the global historic emissions through 2013;³⁹ and

- The 49 investor-owned Carbon Major companies contributed 337.7 Gt CO₂e, equivalent to 21.6% of estimated global industrial emissions through 2013.⁴⁰

There has been one development with the Carbon Majors research, Richard Heede and Naomi Oreskes released a new paper entitled “Potential emissions of CO₂ and methane from proved reserves of fossil fuels: An Alternative Analysis.” The analysis suggests that, “investor concern should be focused on dissuading these corporations from further investment in fossil fuel exploration and development.”⁴¹

This Petition focuses on the responsibility of the investor-owned Carbon Major companies, the largest producers of crude oil, natural gas, coal, and cement. Acknowledging that the list of investor-owned companies includes cement producers, we recommend that the Commission prioritizes the fossil fuel producers (coal, oil, and gas) in its investigation of the Carbon Majors’ responsibility for climate change because the greenhouse gas emissions from fossil fuels is the main cause of climate change. Throughout the rest of this Petition, the term ‘Carbon Majors’ will refer solely to the existing investor-owned Carbon Majors producers listed in Tables 1 and 2.

The Petitioners have chosen to focus on the carbon producers, the Carbon Majors, rather than emitters, because there are just a few dozen producers, including companies putting fossil fuels on the market, that are largely responsible for and profiting the most from climate change, while taking very little, if any, action on climate change. As will be further explained in the discussion section, these producers are largely unregulated in terms of carbon emissions from their products. Also, there are examples of fossil fuel companies, either directly or through trade associations,

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Heede, R. and Oreskes, N. 2015. Potential emissions of CO₂ and methane from proved reserves of fossil fuels: An alternative analysis, *Global Environmental Change*, Volume 36, January 2016, pp.12-20, 19, <http://www.sciencedirect.com/science/article/pii/S0959378015300637> (last accessed on Apr. 19, 2016).

actively preventing action on climate change and renewable energy solutions by undermining the science and running campaigns aimed to confuse the public, appended as Annex “E.”

2. *Climate Change Impacts*

Climate Change is “a change in climate that can be identified by changes in the mean and/or variability of its properties and that persists for an extended period typically decades or longer, whether due to natural variability or as a result of human activity.”⁴² Figure 1 depicts both the natural greenhouse effect and human enhanced greenhouse effect. It is a widely accepted fact that “human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history.”⁴³ Carbon dioxide is acting on the climate like a “performance enhancing drug.”⁴⁴ According to a leading source of climate news, “[a]ll that extra energy in the atmosphere increases the probability and intensity of extreme weather events, making droughts, storms and wildfires...far more likely and far more destructive.”⁴⁵ The impacts of climate change can also be gradual and/or have a slow-onset.

The atmospheric concentrations of carbon dioxide, methane, and nitrous oxide have increased to levels unprecedented in at least the last 800,000 years. Carbon dioxide concentrations in the atmosphere have

⁴² *An Act Establishing the People’s Survival Fund to Provide Long-term Finance Streams to Enable the Government to Effectively Address the Problem of Climate Change, Amending for the Purpose* Republic Act No. 9729, Otherwise Known as “Climate Change Act” and for Other Purposes, Republic Act No. 10174, § 3, ¶ d (2011).

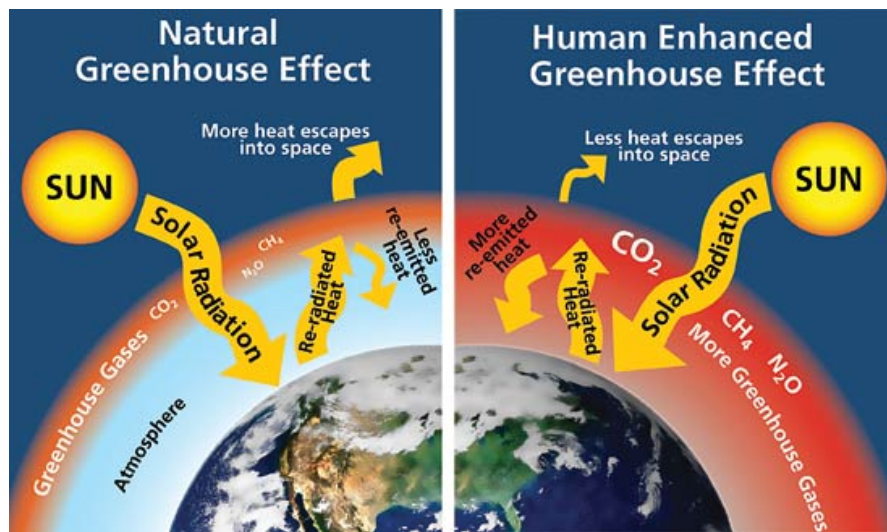
⁴³ IPCC, 2014: *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp., Summary for Policymakers at 2. Available at https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf (last accessed on June 15, 2015).

⁴⁴ Polar Bears International, *Climate Change*, <http://www.polarbearsinternational.org/about-polar-bears/climate-change> (last accessed on September 15, 2015).

⁴⁵ Stephen Lacey, *Climate Progress, Media Connecting The Dots On U.S. Storms, Heat And Wildfires: ‘This Is What Global Warming Looks Like’*, July 3, 2012, <http://thinkprogress.org/climate/2012/07/03/510481/media-connecting-the-dots-on-us-storms-heat-and-wildfires-this-is-what-global-warming-looks-like/> (last accessed on Sept. 15, 2015).

increased by 40% since pre-industrial times.⁴⁶ The observed warming in the climate system is unequivocal and so far the global mean of earth atmospheric near surface temperature has warmed by roughly 0.8 degrees during the period 1880-2012.⁴⁷

Figure 1: Natural Greenhouse Effect v. Human Enhanced Greenhouse Effect⁴⁸



Source: Will Elder, National Park Service

As an archipelagic nation, the Philippines is under severe threat of climate change. The country's inhabitants, nature, and infrastructure are

⁴⁶ Ciais, P., C. Sabine, G. Bala, L. Bopp, V. Brovkin, J. Canadell, A. Chhabra, R. DeFries, J. Galloway, M. Heimann, C. Jones, C. Le Quéré, R.B. Myneni, S. Piao and P. Thornton, 2013: Carbon and Other Biogeochemical Cycles. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA at 467.

⁴⁷ IPCC, 2013: Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA at 4-5.

⁴⁸ U.S. National Park Service, What is Climate Change, <http://www.nps.gov/grba/learn/nature/what-is-climate-change.htm> (last accessed on Sept. 15, 2015).

extremely vulnerable to the impacts of the changing climate and the associated weather extremes (e.g. tropical cyclones) and other natural hazards.⁴⁹ Of particular importance to the Petitioners is increased storm intensity in light of the recent devastating typhoons. While the annual frequency of tropical cyclones is generally projected to decrease or remain essentially unchanged in the next century in most regions - although the confidence in the projections is lower in specified regions than global projections - global mean tropical cyclone maximum wind speed and precipitation rates are likely to increase.⁵⁰ For a summary of past research on vulnerabilities and an overview of existing literature on climate change impacts in the Philippines authored by an independent researcher, see Annex “F”.

Petitioners from Alabat Island, Quezon Province, have provided personal statements describing how some of the climate change impacts affected the rights of Filipinos.

The Alabat Petitioners explain that in recent years they have been compelled to resettle their houses farther inland because the sea seems to have risen and eaten up the formerly vast shoreline. This was a decision that some of them made painfully for their own safety or to comply with a government order that they needed to obey even against their will. Some needed to brave the middle and high seas with their small to medium sized motorized *bancas*, often without navigation aids and equipment appropriate to the depth and distance of fishing, because fish catch in the municipal

⁴⁹ K. Emanuel, *Increasing Destructiveness of Tropical Cyclones over the Past 30 Years*, 436 NATURE, 686 (2005); H. Ueda & E.M. Hori, E. M. (2006). *Two Causes of the 2004 Hot Summer in East Asia*, 79(12) GEOGRAPHICAL REVIEW OF JAPAN, 715 (2006); K. Méheux & D. Dominey-Howes & K. Lloyd, *Natural Hazard Impacts in Small Island Developing States: A Review of Current Knowledge and Future Research Needs*, 40(2) NATURAL HAZARDS, 429 (2007); A.A. Yusuf & H. Francisco, *Climate Change Vulnerability Mapping for Southeast Asia*, 181(December) EAST, 1–19 (2009).

⁵⁰ Christensen, J.H., K. Krishna Kumar, E. Aldrian, S.-I. An, I.F.A. Cavalcanti, M. de Castro, W. Dong, P. Goswami, A. Hall, J.K. Kanyanga, A. Kitoh, J. Kossin, N.-C. Lau, J. Renwick, D.B. Stephenson, S.-P. Xie and T. Zhou, 2013: Climate Phenomena and their Relevance for Future Regional Climate Change. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA; W. Mei, S.-P. Xie, F. Primeau, J. C. McWilliams, C. Pasquero, Northwestern Pacific typhoon intensity controlled by changes in ocean temperatures. *Sci. Adv.* 1, e1500014 (2015).

waters appears to be declining. Farming, copra making, and backyard vegetable gardening have also been difficult, and recently, often unproductive. Incomes from these activities have not augmented Petitioners' meager and declining income from fishing. They have noticed that it has become warmer in their communities in the last few years. During these warmer years, the fish catch was decreasing, and some of their crops, coconuts and other vegetables had low yields, and of almost unmarketable quality. Their recorded interviews are hereby submitted as Exhibit "A".

In Verde Island Passage, climate change poses specific threats:

It is projected that climate change will cause rising sea levels, higher ocean temperatures, and more acidic waters. As the ocean largely regulates the climate, changes in ocean temperatures and currents are already altering the frequency, intensity, and distribution of storms, floods, heat waves, and the amount and distribution of rainfall. The unique biodiversity of the Verde Island Passage is at risk. In addition, the loss of biodiversity directly impacts its local communities, as their livelihoods are dependent primarily on tourism, fisheries, and agriculture, all of which are dependent on these threatened natural resources.⁵¹

Petitioners are also submitting the recorded interviews of some residents of Verde Island Passage as Exhibit "B" that describe their personal perspective of the effects of climate change in everyday life and livelihood and how these effects interfere with the enjoyment of their human rights.

⁵¹ R. Boquiren, G. Di Carlo, and M.C. Quibilan (Eds). 2010. *Climate Change Vulnerability Assessment of the Verde Island Passage, Philippines. Technical report*. Conservation International, Arlington, Virginia, USA, preface. Available at http://www.conservation.org/global/philippines/publications/Documents/ian_report_315_full_report_VA.pdf.

3. *Ocean Acidification*

Although this petition primarily discusses climate change, increased CO₂ emissions are also causing the acidification of the Earth's oceans, with potentially serious impacts. Ocean acidification is climate change's "evil twin."⁵² The emissions from fossil fuels produced and marketed by the Carbon Majors projects are therefore linked to both climate change and ocean acidification. The Petitioners request that the Commission consider ocean acidification, in addition to climate change, in investigating the Carbon Majors' duty to respect human rights. While climate change is the consequence of a suite of greenhouse gases causing the earth to absorb more of the sun's energy, ocean acidification is caused primarily by increased levels of atmospheric carbon dioxide dissolving into the ocean. It is estimated that approximately 25-30% of the CO₂ emitted by human activities has been absorbed by the oceans,⁵³ buffering to some degree the increase in atmospheric concentrations, but at the same time bringing about fundamental changes to ocean carbon chemistry.⁵⁴ Given the most recent estimates for annual global emissions of CO₂ (around 32 Gt in 2014), it can be estimated that human activities are contributing approximately of 1 million tonnes of CO₂ pollution to the global oceans every hour.⁵⁵ The resulting increase in acidity (decrease in pH) observed over the last 200 years likely exceeds pH changes experienced at any time over at least the last 55 million years in terms of both extent and speed of change.⁵⁶ For details on a background of ocean acidification, see appended Annex "F-1."

⁵² A. Rogers, *Global Warming's Evil Twin: Ocean Acidification* (Oct. 9, 2013), <http://theconversation.com/global-warmings-evil-twin-ocean-acidification-19017> (last accessed on June 16, 2015).

⁵³ C. Le Quéré & M.R. Raupach & J.G. Canadell & G. Marland L. Bopp & P. Ciais & T.J. Conway & S.C. Doney & R.A. Feely & P. Foster & P. Friedlingstein & K. Gurney & R.A. Houghton & J.I. House & C. Huntingford & P.E. Levy & M.R. Lomas & J. Majkut & N. Metzl & J.P. Ometto, J.P. G.P. Peters & I.C. Prentice & J.T. Randerson & S.W. Running & J.L. Sarmiento & U. Schuster & S. Sitch & T. Takahashi & N. Viovy & G.R. van der Werf & F.I. Woodward, *Trends in the Sources and Sinks of Carbon Dioxide*, 2 NATURE GEOSCIENCE, 831 (2009).

⁵⁴ C. Turley, C. (2013) Chapter 2: Ocean Acidification (2013). In: K.J. Noone, U.R. Sumaila, R.J. Diaz [Eds], *Managing Ocean Environments in a Changing Climate: Sustainability and Economic Perspectives*, (2013) at 15.

⁵⁵ Brewer, P. G. *A Changing Ocean Seen with Clarity*, 106(30) PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA, 12213 (2009) [hereinafter Turley].

⁵⁶ A. Ridgwell & D. N. Schmidt, *Past Constraints on the Vulnerability of Marine Calcifiers to Massive Carbon Dioxide Release*, 3 NATURE GEOSCIENCE, 196 (2010); Turley, *supra* note 55.

The adverse impacts of climate change and ocean acidification have harmed or increased the risk of harm to the Filipino people, on top of or in addition to the damage resulting from devastating natural disasters. These harms resulting from the impacts of climate change, including the risk of increased storm intensity, and ocean acidification affect the exercise and enjoyment of Filipinos' human rights.

Issue

At the heart of this petition is the question of *whether or not the Respondent Carbon Majors must account for*—being the largest corporate contributors of greenhouse gases emissions and having so far failed to curb those emissions despite the companies' knowledge of the harm caused, capacity to do so, and potential involvement in activities that have been or may be undermining climate science and action—*the human rights implications of climate change and ocean acidification*.

Discussion

Petitioners assert that the investor-owned Carbon Majors must be held to account. We cite the following as grounds for this assertion:

1. *The corporate responsibility to respect human rights is articulated in the UN Guiding Principles on Business and Human Rights,⁵⁷ which reflect norms and standards on the responsibility of corporate actors.*

The Guiding Principles explicitly call on companies to respect human rights.⁵⁸ As stated in the Guiding Principles, corporate responsibility to

⁵⁷ Guiding Principles, *supra* note 24.

respect human rights is not optional—it arises from a global standard of expected conduct that is often reflected in national laws and regulations.⁵⁹ The Guiding Principles set forth a number of foundational and operational principles concerning the corporate responsibility to respect human rights. Specifically, foundational Principles 11 and 12 are relevant to the Carbon Majors and the impacts of their global operations:

Foundational Principle 11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved; and

Foundational Principle 12: The responsibility of business enterprises to respect human rights refers to internationally recognized human rights.⁶⁰

These Principles recognize that the corporate responsibility to respect human rights applies to virtually the entire spectrum of internationally recognized human rights, including those expressed in the “Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.”⁶¹

As discussed in the Interpretive Guide, all businesses must not only comply with national laws and regulations incorporating international human rights standards, but also with a global standard of conduct:

⁵⁸ International Bar Association Climate Change and Human Rights Task Force Report, *Achieving Justice and Human Rights in an Era of Climate Disruption*, July 2014, at 147-153, <http://www.ibanet.org/PresidentialTaskForceCCJHR2014> (accessed on Apr. 20, 2016).

⁵⁹ Guiding Principles, *supra* note 24, at principle 11 at 13. See Sharan Burrow, Sharan Burrow’s Speech to the 2014 United Nations Forum on Business and Human Rights, Dec. 2, 2014, <http://www.ituc-csi.org/sharan-burrow-s-speech-to-the-2014?lang=en> (last accessed on June 16, 2015).

⁶⁰ Guiding Principles, *supra* note 24, at principles 11-12 at 13-14.

⁶¹ *Id.* at 14.

In many cases the responsibility of enterprises to respect human rights is reflected at least in part in domestic law or regulations corresponding to international human rights standards.... The responsibility to respect human rights is not, however, limited to compliance with such domestic law provisions. It exists over and above legal compliance, constituting a global standard of expected conduct applicable to all businesses in all situations. It therefore also exists independently of an enterprise's own commitments for human rights.⁶²

Corporate responsibility to respect human rights is also recognized in cases involving the violation of the environmental rights brought against corporate entities, among other private individuals and entities, in accordance with the Philippine Rules of Procedure for Environmental Cases. The adjunct rights to a balanced and healthful ecology and to health guaranteed by our Constitution are included in the complete concept of human rights based on the exchange between Commissioners Bennagen and Nolleto during the deliberations of the 1986 Constitutional Convention and their importance is explained in *Oposa v. Factoran*.

2. *The investor-owned Carbon Majors have breached their responsibilities to respect the rights of Filipino people and communities by directly or indirectly contributing to current or future adverse human rights impacts through the extraction and sale of fossil fuels and activities undermining climate action.*

With respect to the manner in which companies should respect these rights, Foundational Principle 13 of the Guiding Principles provides that business enterprises are required to:

⁶² Interpretive Guide, *supra* note 25, at 13-14.

- (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.⁶³

As such, there are three scenarios in which a company can be responsible for adverse impacts on human rights: (1) it may cause impacts through its own activities; (2) it may contribute to impacts through its own activities, either directly or through some outside entity (government, business, or other); and (3) it may be involved in impacts caused by an entity that is directly linked to its business operations, products, or services.⁶⁴

In accordance with the Guiding Principles, the Carbon Majors' activities have contributed to, or the Carbon Majors have been involved in, climate change related infringements of human rights as discussed in the Statement of Facts. For one, the accumulated emissions from the carbon these companies have produced have contributed to a consistently elevated level of atmospheric carbon dioxide. Higher levels of atmospheric carbon dioxide increases radiative forcing⁶⁵ thereby increasing global atmospheric

⁶³ Guiding Principles, *supra* note 24, principle 13 at 14.

⁶⁴ Interpretive Guide, *supra* note 25, at 15.

⁶⁵ According the the IPCC radiative forcing is “the net change in the energy balance of the Earth system due to some imposed perturbation,” i.e. increasing CO₂ and other climate active gases in the atmosphere. Myhre, G., D. Shindell, F.-M. Bréon, W. Collins, J. Fuglestedt, J. Huang, D. Koch, J.-F. Lamarque, D. Lee, B. Mendoza, T. Nakajima, A. Robock, G. Stephens, T. Takemura and H. Zhang, 2013: Anthropogenic and Natural Radiative Forcing. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. It is also explained in this manner: “Energy is constantly flowing into the atmosphere in the form of sunlight that always shines on half of the Earth’s surface. Some of this sunlight (about 30 percent) is reflected back to space and the rest is absorbed by the planet. And like any warm object sitting in cold surroundings — and space is a very cold place — some energy is always radiating back out into space as invisible infrared light. Subtract the energy flowing out from the energy flowing in, and if the number is anything other than zero, there has to be some warming (or cooling, if the number is negative) going on.” Massachusetts Institute of Technology, Explained: Radiative Forcing, Mar. 10, 2010, <http://newsoffice.mit.edu/2010/explained-radforce-0309> (last accessed on Sept. 17, 2015).

temperatures resulting in a multitude of climate change impacts. For example, as discussed in the Statement of Facts, the current or predicted climate impacts in the Alabat and Verde Island communities have resulted and/or will likely result in the infringements of the people's human rights.

The Interpretive Guide describes the ways in which a business's activities may "cause," "contribute," or "be directly linked" to adverse impacts on human rights.⁶⁶ For example, a corporation may be deemed to have caused an adverse impact if it is the "sole or main source" of environmental harm in a community.⁶⁷ A corporation may have contributed to an adverse impact if it is one among other sources that have caused such harm or if it provides products or services to a third party that then causes harm.⁶⁸ Business activities can be directly linked to adverse impacts if the corporation supplies products or services to an entity that causes or contributes to adverse impacts.⁶⁹ With respect to "cause" and "contribute", a corporation that is responsible for the adverse impacts "should cease or change the activity... in order to prevent or mitigate the chance of the impact occurring or recurring;" and if an impact does occur, remediation is necessary "either directly or in cooperation with others (be it the courts, the Government, other enterprises involved or other third parties)."⁷⁰ Whereas for "directly linked", the corporation has a responsibility to use its "leverage to encourage the entity that caused or contributed to the impact to prevent or mitigate its recurrence."⁷¹

Despite the scientifically established links between carbon emissions from fossil fuel production and climate change and ocean acidification, and the resulting human rights implications, there are fossil fuel companies actively preventing action to reduce greenhouse gas emissions and solutions by denying the science and running campaigns of confusion, similar to the tactics employed by the tobacco industry.⁷² For example, according to

⁶⁶ Interpretive Guide, *supra* note 25, at 17, box 2.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 18.

⁷¹ *Id.*

⁷² See Public Health Law Center, *United States v. Philip Morris* (D.O.J. Lawsuit), <http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/united-states-v-philip->

research endorsed by leading NGOs, Chevron funds the American Legislative Exchange Council (ALEC);⁷³ and ALEC has expressed uncertainty about human influence on the climate.⁷⁴ A list of publications providing background on the involvement of fossil fuel industry, either directly or indirectly, in undermining action on climate change and in climate denial efforts is contained in Annex “E.”

Investigative journalists and the Center for International Environmental Law have published new documents revealing that Exxon and others have known about threats of climate change for decades, yet there are examples of members of the fossil fuel industry engaging in activities that undermine climate science and action. These documents with a video explanation are compiled in a USB device named Exhibit “C.” The new developments are discussed in sub-section 8 below.

The Petitioners believe that those who are largely responsible for and profit generously from the problem, and yet are undermining solutions,

morris-doj-lawsuit (last accessed on Apr. 19, 2016); Camille von Kaenel, Environment & Energy Publishing, *Critics of Exxon Mobil Draw Parallels to Big Tobacco*, Dec. 9, 2015, <http://www.eenews.net/climatewire/2015/12/09/stories/1060029208> (last accessed on Apr. 19, 2016); Union of Concerned Scientists, *The Climate Change Dossiers*, July 2015, <http://www.ucsusa.org/global-warming/fight-misinformation/climate-deception-dossiers-fossil-fuel-industry-memos#.Vfp7wZ2qpHw> (last accessed on Sept. 17, 2015); Oreskes, N., & Conway, E. M., *Merchants of doubt: How a handful of scientists obscured the truth on issues from tobacco smoke to global warming*, New York: Bloomsbury Press (2010); Greenpeace USA, *Dealing in Doubt: The Climate Denial Machine v. Climate Science*, Sept. 2013, <http://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/planet3/PDFs/Dealing%20in%20Doubt%202013%20-%20Greenpeace%20report%20on%20Climate%20Change%20Denial%20Machine.pdf> (last accessed on Sept. 17, 2015); U.S. Senators Edward J. Markey (D-Mass.), Barbara Boxer (D-Calif.) and Sheldon Whitehouse (D-R.I.) sent letters to “100 fossil fuel companies, trade groups, and other organizations to determine whether they are funding scientific studies designed to confuse the public and avoid taking action to cut carbon pollution, and whether the funded scientists fail to disclose the sources of their funding in scientific publications or in testimony to legislators.” Ed Markey, US Senator for Massachusetts, Press Release, Markey, Boxer, Whitehouse Query Fossil Fuel Companies, Climate Denial Organizations on Science Funding, Feb. 25, 2015, <http://www.markey.senate.gov/news/press-releases/markey-boxer-whitehouse-query-fossil-fuel-companies-climate-denial-organizations-on-science-funding> (last accessed on Sept. 18, 2015).

⁷³ Center for Media and Democracy, et al., *ALEC’s Climate Change Denial*, <http://aleccclimatechangedenial.org>. For information on ALEC’s Funders, including Chevron, see <http://aleccclimatechangedenial.org/corporate-funders> (last on accessed Aug. 6, 2015).

⁷⁴ American Legislative Council, Interstate Research Commission on Climate Change Act, section 2, <http://www.alec.org/model-legislation/interstate-research-commission-on-climatic-change-act/> (last accessed on Aug. 6, 2015).

should be held accountable, in accordance with the polluter pays principle and intergenerational equity.⁷⁵

3. *The investor-owned Carbon Majors have also breached their responsibilities to respect the rights of Filipino people and communities by **failing to prevent** human rights impacts that are directly linked to their operations, products, or services by its business relationships.*

As part of their corporate responsibility to respect human rights, the Carbon Majors are required to exercise due diligence in their business activities or relationships. Guiding Principle 17 explains that businesses should “identify, prevent, mitigate and account for how they address their adverse human rights impacts” by carrying out human rights due diligence.⁷⁶ The human rights due diligence process includes the following elements:

- Assessing actual and potential impacts of business activities on human rights;
- Acting on the findings of this assessment, including by integrating appropriate measures to address impacts into company policies and practices;
- Tracking how effective the measures taken are in preventing or mitigating adverse human rights impacts; and
- Communicating to the outside world about the due diligence process and results.⁷⁷

⁷⁵ United Nations Commission on Sustainable Development, Rio Declaration, Fifth Session, Apr. 25, 1997 at principle 16.

⁷⁶ *Id.* at principle 17, page 31.

⁷⁷ International Coordinating Committee of National Human Rights Institutions and Danish Institute for Human Rights, *Business and Human Rights: A Guidebook for National Human Rights Institutions* (2013), at 40, http://www.humanrights.dk/files/media/dokumenter/udgivelser/bhr_guidebook_for_nhris_2013_eng.pdf (last access on Apr. 20, 2016)

The scope of due diligence includes “adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.”⁷⁸ Further, this process should be on-going and involve meaningful consultation with potentially affected groups and other relevant stakeholders.⁷⁹

Inconsistent with the requirement of due diligence in corporate responsibility, these companies are making long-term investments based on a scenario in which global consumption of fossil fuels continues to grow, thus warming the earth to levels that will lead to dangerous anthropogenic interference with the climate system resulting in human rights impacts. For example, Exxon publicly dismissed a “low carbon” scenario—stabilization of the global temperature increase to not exceed 2° Celsius by 2100—and continues to invest its resources contrary to the 2° Celsius goal.⁸⁰ Similarly, according to Energy Transition Advisors and the Carbon Tracker Initiative, Shell is making its projections based on a scenario that puts the world on a pathway for a temperature rise of roughly 6° Celsius.⁸¹

The Carbon Majors are ignoring the science and the harms related to the combustion and use of the coal, oil and gas that they produce. The companies have the technical and financial capability to prevent the harm. As a means to comply with the requirements of identifying, preventing, mitigating, and accounting for adverse human rights impacts, it is important that immediate steps are taken by the companies to eliminate the risk of further human rights infringements.

4. *The groundbreaking Carbon Majors data makes it feasible to assign responsibility to the Carbon Majors collectively and individually for*

⁷⁸ Guiding Principles, *supra* note 24, principle 17(a), page 17.

⁷⁹ *Id.* at principles 17 and 18, page 17-19.

⁸⁰ ExxonMobil, Energy and Carbon – Managing the Risks, Mar. 31, 2014, <http://cdn.exxonmobil.com/~media/global/files/other/2014/report---energy-and-carbon---managing-the-risks.pdf> (last accessed on June 16, 2015).

⁸¹ Energy Transition Advisors and Carbon Tracker Initiative, Responding to Shell: An Analytical Perspective, June 2014, <http://www.carbontracker.org/wp-content/uploads/2014/09/CTI-Shell-Response-Final-030714-Full2.pdf>, at 4.

human rights impacts resulting from climate change and ocean acidification.

The Carbon Majors Study “represents an important milestone in establishing legal accountability for climate change impacts.”⁸² According to the Center for International Environmental Law:

By tracing industrial CO₂ emissions to their underlying source, and to a small group of companies and entities whose actions have made a measurable, demonstrable and historically important contribution to global warming, this research demonstrates one important route by which those barriers can and will be overcome by plaintiffs in future litigation.⁸³

The Carbon Majors collectively contribute to global climate change, in that the emissions by one company are not distinguishable in their effects from emissions by other companies. The research therefore provides the best surrogate or proxy measure of responsibility that has been devised to date. The Carbon Majors data identifies the Carbon Majors’ responsibility, jointly and severally, for contributing predominately to climate change and its resulting impacts that are interfering with the enjoyment of human rights. Therefore, while it is not possible to attribute a specific harm, or threat thereof, to the carbon produced by a single Carbon Major, there is a substantial probability that the climate impacts experienced by Filipinos are made significantly worse as a result of the Carbon Majors’ past and current activities. Each company should be held accountable for making some of that contribution.⁸⁴ As the Guiding Principles explain, responsibility is not

⁸² The Center for International Environmental Law, CIEL Reaction to Carbon Majors Report, Nov. 22, 2013, http://www.ciel.org/Climate_Change/CarbonMajors_22Nov2013.html (last accessed on June 16, 2015).

⁸³ *Id.*

⁸⁴ In the landmark US Supreme Court case, *Massachusetts v. EPA*, the Supreme Court held: “The harms associated with climate change are serious and well recognized. The Government’s own objective assessment of the relevant science and a strong consensus among qualified experts indicate that global warming threatens, inter alia, a precipitate rise in sea levels, severe and irreversible changes to natural ecosystems, a significant reduction in winter snowpack with direct and important economic consequences,

contingent on a company being the sole cause of a human rights impact. A company is responsible if it has contributed to or is involved in the impacts, even if it is one among many responsible parties.⁸⁵

It is only fair and just that the companies that have extracted and profited the most from fossil fuels account for the resulting harm and take the necessary measures to prevent more harm in order to protect the rights of the people.⁸⁶

5. *Even if the Commission finds scientific uncertainties in establishing the Respondents' responsibility for specific or future human rights harms, the precautionary principle applies.*

The Precautionary Principle prescribed in the Philippine Rules of Procedure for Environmental Cases is relevant in investigating the responsibility of the Carbon Majors for the human rights implications of climate change.⁸⁷

and increases in the spread of disease and the ferocity of weather events. That these changes are widely shared does not minimize Massachusetts' interest in the outcome of this litigation.... Given EPA's failure to dispute the existence of a causal connection between man-made greenhouse gas emissions and global warming, its refusal to regulate such emissions, at a minimum, "contributes" to Massachusetts' injuries." *Massachusetts v. EPA*, 127 S. Ct. 1438, 1446 (2007).

⁸⁵ A recent groundbreaking climate decision in the Netherlands contains useful guidance on establishing the causal link in climate cases. See *Urgenda Foundation v. the State of the Netherlands*, C/09/456689 / HA ZA 13-1396 (English translation), June 24, 2015, ¶ 4.90. Available at <http://www.urgenda.nl/documents/VerdictDistrictCourt-UrgendaVStaat-24.06.2015.pdf> [hereinafter *Urgenda Verdict*] ("Sufficient 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.").

⁸⁶ For more information on early reductions to limit warming below 1.5 degrees Celsius by 2100, see J. Rogelj & G. Luderer & R.C. Pietzcker E. Kriegler & M. Schaeffer & V. Krey & K. Riahi (2015): Energy System Transformations for Limiting End-of-Century Warming to Below 1.5°C, 5 NATURE CLIMATE CHANGE, 519 (2015).

⁸⁷ See *Urgenda Verdict*, *supra* note 85 at ¶ 4.79 ("The fact that the amount of the Dutch emissions is small compared to other countries does not affect the obligation to take precautionary measures in view of the State's obligation to exercise care. After all, it has been established that any anthropogenic greenhouse gas emission, no matter how minor, contributes to an increase of CO₂ levels in the atmosphere and therefore to hazardous climate change.").

Precaution espouses prudence where risk is uncertain, but plausible. It is an addition to two basic tenets of problem-solving: curing problems and preventing them. Under a curative approach, the harm has already been realized, and measures are created to reverse the harm, or require compensation for the costs associated with harm. Under the preventive approach, measures are taken to prevent known risks from materializing into actual harm. Precaution requires even greater diligence than prevention, by calling for measures to safeguard the environment even if the occurrence of harm is uncertain. The precautionary principle affirms the need for urgent measures given the unpredictable patterns of the environment, and the harm resulting from its abuse.⁸⁸

In a recent landmark ruling on the precautionary principle, our highest court explained:

An application of the precautionary principle to the rules on evidence will enable courts to tackle future environmental problems before ironclad scientific consensus emerges.⁸⁹

Furthermore, when features of uncertainty, possibility of irreversible harm, and possibility of serious harm coincide, the case for the precautionary principle is strongest according to the Supreme Court; and it advises:

⁸⁸ Sub-committee on the Rules of Procedure for Environmental Cases, Rules of Procedure for Environmental Cases, Apr. 29, 2010 at 82.

⁸⁹ See Supreme Court Decision, dated December 8, 2015, on the consolidated cases *ISAAA v. Greenpeace Southeast Asia (Philippines), et al.*, G.R. No. 209271, *Environmental Management Bureau of the Department of Environment and Natural Resources, Bureau of Plant Industry and Fertilizers and Pesticides Authority of the Department of Agriculture v. Greenpeace Southeast Asia (Philippines) et al.*, G.R. No. 209276; *University of the Philippines Los Banos Foundation, Inc. v. Greenpeace Southeast Asia (Philippines)*, G.R. No. 209301; and *University of the Philippines v. Greenpeace Southeast Asia (Philippines)*, G.R. No. 209430, at 100.

When in doubt, cases must be resolved in favor of the constitutional right to a balanced and healthful ecology.⁹⁰

The precautionary approach has been confirmed by a group of eminent experts in human rights, environmental, and international law. On March 1, 2015 the Oslo Principles on Global Obligations to Reduce Climate Change (Oslo Principles) were adopted. The experts found that states are “bound by **existing international law** to assess the environmental impact of their activities and to take measures to prevent the destructive effects of climate change.”⁹¹ According to the Oslo General Principles, “[t]here is clear and convincing evidence that the greenhouse gas (GHG) emissions produced by human activity are causing significant changes to the climate and that these changes pose grave risks of irreversible harm to humanity, including present and future generations, to the environment, including other living species and the entire natural habitat, and to the global economy.”⁹² According to the same Principle, the precautionary principle requires that:

- 1) GHG emissions be reduced to the extent, and at a pace, necessary to protect against the threats of climate change that can still be avoided; and
- 2) the level of reductions of GHG emissions required to achieve this, should be based on any credible and realistic worst-case scenario accepted by a substantial number of eminent climate change experts.⁹³

⁹⁰ *Id.*

⁹¹ Legal Experts Release Oslo Principles on Global Climate Change Obligations, Press release, Mar. 30, 2015, available at <https://web.law.columbia.edu/sites/default/files/microsites/climate.../release.docx> [emphasis added]. For a detailed discussion of the existing international law underpinning the Oslo Principles, see Oslo Principles Commentary, available at <http://www.yale.edu/macmillan/globaljustice/Oslo%20Principles%20Commentary.pdf>; J. Powles & T. Kahn, Climate Change: At last a breakthrough to our catastrophic political impasse?, Mar. 31, 2015, <http://www.theguardian.com/commentisfree/2015/mar/30/climate-change-paris-talks-oslo-principles-legal-obligations> (last visited Sept. 17, 2015).

⁹² Oslo Principles on Global Obligations to Reduce Climate Change, Mar. 1 2015,

<http://www.yale.edu/macmillan/globaljustice/Oslo%20Principles.pdf> (last accessed on June 16, 2015) at 3.

⁹³ *Id.*

Further, it explains that “[t]he measures required by the Precautionary Principle should be adopted without regard to the cost, unless that cost is completely disproportionate to the reduction in emissions that will be brought about by expending it.”⁹⁴

6. *As for the States where the Carbon Majors are incorporated, they have obligations to protect the human rights of Filipinos, including the duty to prevent harm by third parties, and the Philippines has a duty to assess, monitor, and notify of current or threatened harm.*

The no-harm principle is recognized in customary international law governing State responsibility for transboundary pollution.⁹⁵ This principle was first enunciated in the 1941 Trail Smelter Arbitration. The Trail Smelter Arbitration involved a Canadian smelter that emitted sulfur dioxide,⁹⁶ which allegedly caused harm to landowners downwind in the United States. The arbitration Tribunal stated in its damages award that:

[U]nder the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.⁹⁷

According to the International Court of Justice (ICJ) in the Corfu Channel case, every State has an obligation not to knowingly allow its

⁹⁴ *Id.*

⁹⁵ R. Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility*, 145-168 (2005).

⁹⁶ Trail Smelter Case (United States, Canada), 3 U.N. Rep. Int'l Arb. Awards 1905, 1915, (Arbitration Tribunal 1941). Available at http://legal.un.org/riaa/cases/vol_III/1905-1982.pdf (last accessed on June 16, 2015).

⁹⁷ *Id.* at 1965.

territory to be used for acts contrary to the rights of other States.⁹⁸ In its Advisory Opinion on the threat or use of nuclear weapons, the ICJ stated: “The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”⁹⁹

The no-harm principle has been subsequently codified in the 1972 Stockholm Declaration and the 1992 Rio Declaration.¹⁰⁰ The International Law Commission draft Articles on the Prevention of Transboundary Harm from Hazardous Activities states that: “The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.”¹⁰¹ The Articles define ‘harm’ as “harm caused to persons, property or the environment.”¹⁰² In light of the transboundary effect of climate change and the no-harm principle, the continued production and burning of fossil fuels must be prevented.

With respect to civil and political rights, Article 2 of the International Covenant on Civil and Political Rights (ICCPR) states that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.”¹⁰³ The Human Rights Committee has interpreted this provision to impose both negative and positive obligations on Parties—in other words, States must refrain from violating rights as well as adopt laws or other measures to fulfil their legal obligations and provide remedies in

⁹⁸ Corfu Channel case, Judgment of Apr. 9th, 1949, I.C. J. Reports, p. 4, 22 (1949).

⁹⁹ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), I.C.J. Reports, p. 226 241-242, ¶ 29 (1996).

¹⁰⁰ United Nations Conference on the Human Environment, Declaration of the United Nations Conference on the Human Environment, June 16, 1972 at princ. 21; United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, June 14, 1992, at princ. 2.

¹⁰¹ Prevention of Transboundary Harm from Hazardous Activities, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10), at art. 3; United Nations General Assembly, Report of the International Law Commission: Fifty-third Session, Fifty-Sixth Session, 2001 at 394.

¹⁰² *Id.* at art. 2; United Nations General Assembly, Report of the International Law Commission: Fifty-third Session, Fifty-Sixth Session, 2001 at 386.

¹⁰³ International Covenant on Civil and Political Rights, December 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 360 at art. 2(1).

case of violations.¹⁰⁴ As such, a Party's failure to "take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm" caused by private entities could give rise to violations of the ICCPR.¹⁰⁵

With respect to economic, social and cultural rights, Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) sets forth the obligation of State Parties to work toward the progressive implementation of the rights under the Covenant. Each Party agrees to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources," and "all appropriate means" to achieve the full realization of the specified rights.¹⁰⁶ The UN Committee on Economic, Social, and Cultural Rights has emphasized that the ICESCR imposes immediate obligations on Parties to take concrete and targeted actions toward the realization of those rights.¹⁰⁷ In regard to corporations, it has stated that: "States Parties should also take steps to prevent human rights contraventions abroad by corporations that have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of host states under the Covenant."¹⁰⁸ Furthermore it has required that "[t]o comply with their international obligations in relation to Article 12, States Parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries."¹⁰⁹ As stated in the OHCHR Report, "irrespective of the additional strain climate change-related events may place on available resources, States remain under an obligation to ensure the widest possible

¹⁰⁴ Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Eighteenth Session, May 26, 2004 at ¶ 6.

¹⁰⁵ *Id.* at ¶ 8.

¹⁰⁶ International Covenant on Economic, Social and Cultural Rights, December 19, 1966, art. 2(1), 993 U.N.T.S. 3.

¹⁰⁷ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations, Fifth Session, Dec. 14, 1990, at ¶ 2.

¹⁰⁸ United Nations Committee on Economic, Social and Cultural Rights, Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, 2011, at ¶¶ 5-6.

¹⁰⁹ United Nations Committee on Economic, Social, and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health, Twenty-Second Session, August 11, 2000, at ¶ 39. It has made similar statements in other General Comments, for example United Nations Committee on Economic, Social, and Cultural Rights, General Comment 15: The Right to Water, Twenty-Ninth Session, January 20, 2003, at ¶ 33.

enjoyment of economic, social and cultural rights under any given circumstances.”¹¹⁰ The United Nations Committee on the Rights of the Child in General Comment 16 finds that States should “[e]nsure access to effective remedy for children whose rights have been infringed by a business enterprise acting as a private party or as a State agent.”¹¹¹ Access to justice and effective remedy is of particular importance to the youth Petitioners.

The Maastricht Principles articulate the current state of international law regarding ETOs, as set out above, including the obligation for states to avoid causing harm. Principle 13 states that:

States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.¹¹²

In the climate context, Principle 13 demonstrates that action needs to be taken now to avoid the foreseeable risk of more severe impacts and resulting from the Carbon Majors’ business activities and operations.

Through the current efforts of the Special Rapporteur on Human Rights and Environment in promoting and reporting on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, there is recognition that international human rights law imposes certain procedural and substantive obligations on States

¹¹⁰ Human Rights Council, Annual Report of the United Nations High Commissioner for Human rights and Reports of the Office of the High Commissioner and the Secretary-General, Fifth Session, January 15, 2009, at ¶ 77, http://www2.ohchr.org/english/issues/climatechange/docs/A.HRC.10.61_AUV.pdf (last accessed on Apr. 20, 2016).

¹¹¹ General Comment 16, *supra* note 33 at 4.

¹¹² Maastricht Commentary, *supra* note 35, at 1112..

in relation to environmental protection, including preventing harm resulting from climate change.¹¹³

The procedural duties include the following:

- States must ensure the assessment of environmental impacts and make environmental information public;
- States must facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and
- States must provide access to remedies for harm.¹¹⁴

The substantive duties on States include the following:

- States must adopt and implement legal frameworks to protect against environmental harm that may infringe on enjoyment of human rights; and,
- States must regulate private actors to protect against such environmental harm.¹¹⁵

Steps must be taken by the States where the Carbon Majors are incorporated, such as Australia, Canada, and the United States, and by the states where the harm is suffered, such as the Philippines, to ensure that the Carbon Majors refrain from the activities that are interfering with the rights of Filipinos. The States where the Carbon Majors are incorporated need to adequately regulate, while the states that are acutely vulnerable to the

¹¹³ Human Rights Council, 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, Twenty-Fifth Session, December 30 2013, at 7, ¶ 17.

¹¹⁴ *Id.* at 9-12, ¶¶ 25-33.

¹¹⁵ *Id.* at 7-9, ¶¶ 18-24.

impacts of climate change need to monitor, assess, notify the Carbon Majors, and their states, of imminent or on-going human rights violations, and to take further action if deemed necessary. This petition presents an opportunity for the States where the Carbon Majors are incorporated to cooperate with the Philippines, a State profoundly affected by climate change, and specifically with the Honourable Commission in fully investigating this urgent matter.

7. The international law and principles discussed herein form part of the law of the land.

The 1987 Constitution provides that the Philippines “adopts the generally accepted principles of international law as part of the law of the land.”¹¹⁶ Relevant to an administrative investigation, the application of international laws specifically in litigating environmental cases has been explained by former Supreme Court Chief Justice Renato Corona. He said:

No doubt, the duty of Philippine courts is to give force and effect to the prohibitions, regulations and obligations found in multilateral environmental agreements, whether or not they have been transposed into local laws.¹¹⁷

This is even more relevant in the light of increasing environmental challenges that are transboundary in nature such as climate change; and where domestic laws are traditionally limited to regulating and addressing problems within national boundaries such as in the Philippines. Therefore, the Petitioners appeal for the Honourable Commission’s wise, novel and courageous investigation to hold accountable the big, powerful, multinational Carbon Majors for the human rights implications of climate change and ocean acidification.

¹¹⁶ CONST. art. II, § 2.

¹¹⁷ In a public lecture on environmental law and protection at the Graduate School of the University of Sto. Tomas, Manila, Nov. 20, 2010.

8. *Recent developments in international climate law and foreign climate legal actions, cases, and investigations warrant official or administrative notice.*

The Petitioners request that the Honorable Commission take official or administrative notice of the recent developments in international climate law and foreign legal actions, cases, and investigations concerning climate change, and some of these are “reminiscent”¹¹⁸ of the tobacco investigations and cases of the 1990s. The parties, facts, scientific bases, and legal grounds in the recent actions, cases, and investigations are similar or relevant to or have a bearing in this Petition. This section provides an overview of (a) the Paris Agreement and (b) climate-related legal actions, cases, and investigations that are relevant to this Petition.

a. Paris Agreement

On December 12, 2015, the historic Paris Agreement was agreed by 195 nations. The UNFCCC Secretariat proclaimed:

The Paris Agreement for the first time brings all nations into a common cause based on their historic, current and future responsibilities. The universal agreement’s main aim is to keep a global temperature rise this century well below 2 degrees Celsius and to drive efforts to limit the temperature increase even further to 1.5 degrees Celsius above pre-industrial levels. The 1.5 degree Celsius limit is a significantly safer defense line against the worst impacts of a changing climate. Additionally,

¹¹⁸ D. Zegart, Senior Fellow at the Climate Investigations Center, Interview, The Real News Network, ExxonMobil Investigation Reminiscent of Tobacco Wars of 1990s, http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=16015 (last accessed on Apr. 19, 2016).

the agreement aims to strengthen the ability to deal with the impacts of climate change.¹¹⁹

The Paris Agreement is a show of international cooperation, and it “sent a powerful signal to global markets, hastening the transition away from fossil fuels and to a clean energy economy.”¹²⁰

The Paris Agreement is the first environmental treaty to explicitly acknowledge that parties should respect and promote human rights in addressing climate change.¹²¹ The reference to human rights is found in the preamble:

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[.]¹²²

The human rights reference does not impose a “jurisdictional limit” to respect, promote, and consider respective obligations on human rights. Also, the preamble notes the importance of the concept of “climate justice” in

¹¹⁹ UNFCCC, Press Release, Historic Paris Agreement on Climate Change 195 Nations Set Path to Keep Temperature Rise Well Below 2 Degrees Celsius, Dec. 12, 2015, <http://newsroom.unfccc.int/unfccc-newsroom/finale-cop21/> (last accessed on Apr. 19, 2016).

¹²⁰ S. Goldenberg, J. Vidal, L. Taylor, A. Vaughan, and F. Harvey, *Paris Climate Deal: Nearly 200 Nations Sign in End of Fossil Fuel Era*, Guardian, Dec. 12, 2015, <http://www.theguardian.com/environment/2015/dec/12/paris-climate-deal-200-nations-sign-finish-fossil-fuel-era> (last accessed on Apr. 19, 2016).

¹²¹ Press Release, CIEL, A Powerful Signal but a Weak Agreement in Paris: Global Movement for Climate Action Must Accelerate, Dec. 12, 2015, <http://www.ciel.org/news/a-powerful-signal-but-a-weak-agreement-in-paris-global-movement-for-climate-action-must-accelerate/> (last accessed on Apr. 20, 2016).

¹²² Adoption of the Paris Agreement, FCCC/CP/2015/L.9/Rev.1, Dec. 12, 2015, preamble, <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> (last accessed on Apr. 19, 2016).

taking action to address climate change.¹²³ While the preamble is not part of the Agreement's operative provisions, the preambular language should guide the interpretation of those provisions¹²⁴ and lends support to national climate efforts, such as this Petition. The Petitioners recognize the leading role of the Philippine delegation, skilfully led by Secretary and Vice Chairperson of the Philippine Climate Change Commission, Emmanuel M. de Guzman, played in ensuring human rights are a bedrock principle of the Paris Agreement.¹²⁵

b. Climate Cases and Investigations

There are a number of climate-related legal actions, cases, and investigations that are similar or relevant to or have a bearing in this Petition. The developments fall into two categories: (1) legal developments challenging government action or lack thereof concerning climate policy and practices; and (2) legal developments challenging corporate activities concerning climate harm and corporate knowledge of the threats of climate change. As climate law develops and the harms associated with climate change intensify, those harmed will continue pursue claims using various legal theories, e.g. negligence and product liability, and rules to assign liability, e.g. market share approach, material contribution test, globally detectable emissions, significant contribution, co-mingled contribution approaches.¹²⁶ The following section provides an overview of recent developments, including the procedural status of the actions, the claims made, and the dispositions (if applicable). The Petitioners anticipate the developments in the area of climate law to continue at a rapid pace and will update the Honorable Commission as necessary and appropriate.

¹²³ *Id.*

¹²⁴ C. Schwarte, Legal Response Initiative, Preliminary Legal Assessment of the Paris Agreement, Dec. 14, 2015, <http://legalresponseinitiative.org/preliminary-legal-assessment-of-the-paris-agreement/> (last accessed on Apr. 19, 2016).

¹²⁵ P. Ranada, *PH on Paris Climate Pact: Monumental Feat for Humanity*, Rappler, Dec. 13, 2015, <http://www.rappler.com/nation/115821-philippines-paris-agreement-climate-change> (last accessed on Apr. 19, 2016).

¹²⁶ See A. Gage and M. Byers, *Payback Time: What the Internationalization of Climate Change Litigation Means for Canadian Oil and Gas Companies*, West Coast Environmental Law and Canadian Centre for Policy Alternatives, at 6, 20-22, Oct. 2014, <http://wcel.org/sites/default/files/publications/Payback%20Time.pdf> (last accessed on Apr. 19, 2016); A. Gage, *Climate Change Litigation and the Public Right to a Healthy Atmosphere*, 24 J. ENV. L. & PRAC. 257 (Nov. 12, 2015).

b.1. Challenges to Government Actions or Lack Thereof Concerning Climate Policy and Practices

In the Netherlands and the United States, there are three cases that are relevant to this Petition. The cases are still ongoing but may already provide some useful insight to climate claims touching upon human rights.

b.1.1. State Negligence: *Urgenda Foundation v. The State of the Netherlands*

On June 24, 2016, the Hague District Court ruled in favour of the Urgenda Foundation, an NGO representing 886 individuals, ordering the State of the Netherlands (State) to take more stringent action to avert the imminent danger caused by climate change. The Court ordered the State to ensure that Dutch emissions in the year 2020 be at least 25% lower than those in 1990.¹²⁷ The State has appealed the verdict.¹²⁸ The issue in the case was whether the State committed the tort of negligence against its citizens by taking insufficient measures to prevent dangerous climate change.¹²⁹ In order to determine the State's duty of care towards its citizens, the Court analyzed the Constitution, the no harm principle, the UNFCCC, European Union law, and European human rights laws, and it also looked at case law involving hazardous negligence.¹³⁰ Ultimately, the Court concluded that “[d]ue to the severity of the consequences of climate change and the great risk of hazardous climate change occurring, without mitigating measures, the State has a duty of care to take mitigation measures to protect its citizens.”¹³¹

¹²⁷ *Urgenda* Verdict, *supra* note 85, at Inhoudsindicatie..

¹²⁸ Government of the Netherlands, Cabinet Begins Implementation of Urgenda Ruling But Will File Appeal, Sept 1, 2016, <https://www.government.nl/latest/news/2015/09/01/cabinet-begins-implementation-of-urgenda-ruling-but-will-file-appeal> (last accessed on Apr. 19, 2016).

¹²⁹ Roger Cox, *A Climate Change Litigation Precedent: Urgenda Foundation v. The State of the Netherlands*, CIGI Paper No. 79, Nov. 2015, https://www.cigionline.org/sites/default/files/cigi_paper_79.pdf (last accessed on Apr. 19, 2016).

¹³⁰ *Urgenda* Verdict, *supra* note 85, at 4.36, 4.52, 4.53.

¹³¹ *Id.* at 4.83.

The *Urgenda* verdict may provide important insights for the instant Petition because of how the Court treated two issues – causation and damages - that commonly arise in climate claims. First, the Dutch Court found there to be a sufficient causal link between the country’s greenhouse gas (GHG) emissions, global climate change, and the current and future effects on the “Dutch living climate.”¹³² Even though the country is not a major carbon polluter, the Court reasoned that the country’s emissions have and will continue to contribute to climate change.¹³³ In this proceeding before the CHR, the Petitioners anticipate the Respondent Carbon Majors will argue that there are thousands of sources of GHG emissions; therefore individual carbon producers should not be held responsible. Similar to the finding against the Dutch State, the Respondents produce carbon, that when used, has and will continue to contribute to climate change, unless the companies put in place mitigation measures. As discussed above, the Carbon Majors publications are helpful in determining each company’s measureable contribution to climate change.

Second, the Court’s handling of the issue of establishing climate damages is relevant to this Petition. The court stated:

It is an established fact that climate change is occurring partly due to the Dutch greenhouse gas emissions. It is also an established fact that the negative consequences are currently being experienced in the Netherlands, such as heavy precipitation, and that adaptation measures are already being taken to make the Netherlands “climate-proof”. Moreover, it is established that if the global emissions, partly caused by the Netherlands, do not decrease substantially, hazardous climate change will probably occur. In the opinion of the court, the possibility of damages for those whose interests *Urgenda* represents, including current and future generations of Dutch

¹³² *Id.* at 4.90

¹³³ *Id.* at 4.90

nationals, is so great and concrete that given its duty of care, the State must make an adequate contribution, greater than its current contribution, to prevent hazardous climate change.¹³⁴

The Dutch Court relied on IPCC reports as fact because the IPCC is a scientific intergovernmental organisation and the Netherlands is a member.¹³⁵ Climate science was not disputed in the case. The Court found that the possibility of damages to be great and concrete requiring the State to make an adequate contribution to prevent hazardous climate change.¹³⁶ Similarly in these proceedings, IPCC reports should be recognized as being internationally established and acknowledged as scientific fact. Climate harm in the Philippines is great and concrete and requires the Respondent Carbon Majors to prevent business activities that contribute to hazardous climate change.

b.1.2. Constitutional Rights and Public Trust Doctrine: *Foster et. al v. Washington Department of Ecology*

On November 19, 2015, a County Superior Court Judge in the U.S. state of Washington weighed in on a case involving eight youth petitioners calling on the Washington Department of Ecology to write a carbon emissions rule that protects the atmosphere for their generation and those to come. The Judge denied the request for rulemaking, because (in part), Washington's Governor stepped in and ordered the Department of Ecology to initiate rulemaking. However, this decision itself is groundbreaking. The Judge recognized the youths' right to a healthy atmosphere based on U.S. constitutional protections and the public trust doctrine. The Judge declared, "[the youths'] very survival depends upon the will of their elders to act now, decisively and unequivocally, to stem the tide of global warming...before doing so becomes first too costly and then too late."¹³⁷ The Judge found the

¹³⁴ *Id.* at 4.89.

¹³⁵ *Id.* at 2.8-2.9.

¹³⁶ *Id.*

¹³⁷ *Foster et. al v. Washington Department of Ecology*, Order Affirming the Department of Ecology's Denial of Petition for Rulemaking, Nov. 19, 2015, at 5,

http://ourchildrenstrust.org/sites/default/files/15.11.19.Order_FosterV.Ecology.pdf (last accessed on Apr.

“[t]he state has a constitutional obligation to protect the public’s interest in natural resources held in trust for the common benefit of the people.”¹³⁸ The decision addressed both the threat of climate change and ocean acidification.¹³⁹

In early 2016, the Washington Department of Ecology withdrew the proposed rule to reduce GHG emissions.¹⁴⁰ The youth went back to court seeking an order to force the Washington Department of Ecology to continue the rulemaking in a timely manner.¹⁴¹ Described as “a surprise ruling from the bench,” the Superior Court ordered the Washington Department of Ecology “to promulgate an emissions reduction rule by the end of 2016 and make recommendations to the state legislature on science-based greenhouse gas reductions in the 2017 legislative session.”¹⁴² The ruling also requires consultation with the youth petitioners before the recommendations are issued.¹⁴³

The decisions are important to the instant Petition because it demonstrates a growing recognition of the right to a healthy atmosphere. The Judge stated in the 2015 decision, “[i]f there ever were a time to recognize through action this right to the preservation of to healthful and pleasant atmosphere, the time is now...”.¹⁴⁴ The time is now for the Honorable Commission to recognize the Petitioners’ right to a healthy atmosphere and the urgent need for the Carbon Majors Respondents to take responsibility for human rights impacts associated with companies’ carbon production.

19, 2016) [hereinafter *Foster et. al v. Washington Department of Ecology*]; for an overview of the “Atmospheric Trust Legal Actions,” please see Our Children’s Trust, Legal Action, <http://ourchildrenstrust.org/Legal> (last accessed on Apr. 19, 2016).

¹³⁸ *Id.* at 8.

¹³⁹ *Id.*

¹⁴⁰ Our Children’s Trust, Washington, <http://ourchildrenstrust.org/state/Washington> (last accessed on Apr. 29, 2016)

¹⁴¹ *Id.*

¹⁴² Our Children’s Trust, Press Release, Youths Secure Second Win in Washington State Climate Lawsuit, Apr. 29, 2016, <http://ourchildrenstrust.org/sites/default/files/2016.04.29WAFinalRulingPR.pdf> (last accessed on Apr. 29, 2016).

¹⁴³ *Id.*

¹⁴⁴ *Foster et. al v. Washington Department of Ecology*, at 9.

b.1.3. Constitutional Rights and Public Trust Doctrine: *Juliana et. al v. United States of America*

On April 8, 2016, a Magistrate Judge for U.S. District Court for the District of Oregon recommended the denial of motions from the Government and fossil fuel and energy industry associations to dismiss a climate lawsuit brought by 18 youth plaintiffs and Dr. James Hansen, as a guardian for future generations. The Magistrate Judge summarized the youths' claims in his recommendation:

[The] Plaintiffs assert the actions and omissions of defendants that increased CO₂ emissions "shock the conscience," and are infringing the plaintiffs' right to life and liberty in violation of their substantive due process rights. Plaintiffs also allege defendants have violated plaintiffs' equal protection rights embedded in the Fifth Amendment by denying them protections afforded to previous generations and by favoring short term economic interests of certain citizens. Plaintiffs further allege defendants' acts and omissions violate the implicit right, via the Ninth Amendment, to a stable climate and an ocean and atmosphere free from dangerous levels of CO₂. Finally, plaintiffs allege defendants have violated a public trust doctrine, secured by the Ninth Amendment, by denying future generations essential natural resources.¹⁴⁵

The Magistrate Judge's findings and recommendation are to be provided to a District Court Judge, and the parties will be allowed to file objections and responses. Then, the District Court will issue its judgment or order.¹⁴⁶ This

¹⁴⁵ *Juliana et. al v. United States of America*, Order and Findings and Recommendation, 6:15-cv-1517-TC, Apr. 8, 2016, at 2, <http://ourchildrenstrust.org/sites/default/files/16.04.08.OrderDenyingMTD.pdf> (last accessed on Apr. 19, 2016) [hereinafter *Juliana v. U.S.*]

¹⁴⁶ M. Gerrard, Sabin Center for Climate Change Law, Climate Law Blog, Our Children's Trust Suit against US Government Surmounts Litigation Hurdle, Apr. 9, 2016,

could be appealed, and only after all the appeals are heard, will the case proceed to the merits.

This case is highly relevant to the instant Petition because of the fossil fuel and energy industry associations' status as intervenor-defendants. Three associations - National Association of Manufacturers, American Fuel and Petroleum Manufacturers, and American Petroleum Institute - sought to intervene in the case on the side of the U.S. government because the associations' members "would have to substantially overhaul their business and business models to survive in the event plaintiffs prevail."¹⁴⁷ The fossil fuel and energy industry associations were granted the ability to participate in the proceedings and now have the status as intervenor-defendants.¹⁴⁸

There is a close relationship between government policies and practices allowing the extraction, sale, and combustion of fossil fuels and the business activities and practices of fossil fuel companies. In these proceedings, the Petitioners are seeking a thorough investigation in Carbon Major Respondents' business activities and practices. Successful government policies and practices on climate change are contingent on the corporate transparency, cooperation, and leadership in reducing emissions.

b.2. Challenging corporate activities concerning climate change

b.2.1. Securities Fraud, Consumer Protection, Environmental, and Anti-Racketeering Laws: *State Attorneys General investigations into Exxon and potentially others for misleading the public and investors about the threats of climate change*

In September 2015, *InsideClimate News* reported that in 1978 a senior Exxon scientist informed managers and other company scientists of the

<http://blogs.law.columbia.edu/climatechange/2016/04/09/our-childrens-trust-suit-against-us-government-surmounts-litigation-hurdle/> (last accessed on Apr. 19, 2016).

¹⁴⁷ *Juliana v. U.S.*, supra note 141 at 5.

¹⁴⁸ *Juliana et. al v. United States of America*, Order, 6:15-cv-1517-TC, Jan. 14, 2016,

<http://www.ourchildrenstrust.org/sites/default/files/16.01.14.OrderGrantingMotiontoIntervene.pdf> (last accessed on Apr. 19, 2016).

likely catastrophic climate change implications of fossil fuel consumption, but in the decades that followed, Exxon chose to work “at the forefront of climate denial.”¹⁴⁹ In October 2015, the *Los Angeles Times* reported that there is evidence that while Exxon “sought to downplay the certainty of global warming,” and Exxon and Imperial Oil were “closely studying the impact of climate change on the company’s operations.”¹⁵⁰ In April 2016, the *Center for International Environmental Law* released hundreds of new documents. The leading non-profit organization suggests that the documents demonstrate that “the oil industry was explicitly warned of climate risks in the 1960s.”¹⁵¹ Further, the organization found that “much of this research was carried out as part of a broader industry effort—dating from the 1940s—to use industry-funded research to spur public skepticism of pollution science and environmental regulations.”¹⁵² With mounting evidence of Exxon’s early knowledge of the threats of climate change, a key question is *what did the company do about it*.¹⁵³

Following the *InsideClimate News* and *Los Angeles Times* revelations, it became public on November 5, 2015 that the New York Attorney General had begun investigating ExxonMobil (one of the named Respondents to this Petition) “to determine whether the company lied to the public about the threats of climate change or to investors about how such risks might hurt the oil business.”¹⁵⁴ A few days later, the New York Attorney General’s Office

¹⁴⁹ N. Banerjee, L. Song, and D. Hasemyer, *Exxon: The Road Not Taken*, *InsideClimate News*, Sept. 16, 2015, <http://insideclimatenews.org/content/Exxon-The-Road-Not-Taken> (last accessed on Apr. 19, 2016).

¹⁵⁰ S. Jerving, K. Jennings, M.M. Hirsch, and S. Rust, *Los Angeles Times*, *What Exxon knew about the Earth’s melting Arctic*, Oct. 9, 2015, <http://graphics.latimes.com/exxon-arctic/> (last accessed on Apr. 19, 2016).

¹⁵¹ Center for International Environmental Law, Press Release, *New Documents Reveal Oil Industry Knew of Climate Risks Decades Earlier Than Suspected; Suggest Coordinated Efforts to Foster Skepticism*, Apr. 13, 2016, <http://www.ciel.org/news/smoke-and-fumes/> (last accessed on Apr. 19, 2016); The source documents and useful analysis are available to the public online. See Center for International Environmental Law, *Smoke and Fumes*, <https://www.smokeandfumes.org/#/> (last accessed on Apr. 19, 2016).

¹⁵² *Id.*

¹⁵³ *Id.*; See *New York Times*, *A Range of Opinions on Climate Change at ExxonMobil*, *New York Times*, Nov. 6, 2015, http://www.nytimes.com/interactive/2015/11/06/science/exxon-mobil-global-warming-statements-climate-change.html?_r=0 (last accessed on Apr. 19, 2016); Greenpeace USA, *Exxon’s Climate Denial History: A Timeline*, <http://www.greenpeace.org/usa/global-warming/climate-deniers/exxons-climate-denial-history-a-timeline/> (last accessed on Apr. 19, 2016).

¹⁵⁴ J. Gillis and C. Krauss, *Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General*, *New York Times*, Nov. 5, 2015, <http://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html> (last accessed on Apr. 19, 2016).

announced a settlement with Peabody Energy Corporation (also a named Respondent to this Petition) requiring improved climate change disclosure after a two-year investigation.¹⁵⁵ As explained in a Greenpeace UK Investor Briefing:

The investigation found Peabody had repeatedly denied in financial filings that it had the ability to predict the impact of potential regulation, when in fact it and its consultants had actually made projections detailing severe impacts on the company. There was a clear discrepancy between the company's public disclosures and private knowledge. The Attorney General concluded that Peabody's public disclosures focused on the IEA scenario most favourable to coal demand but which assumes governments will fail to adopt any new policies or regulations with the omission of the IEA's other two scenarios which provide a less favourable view on future coal demand.¹⁵⁶

There is a growing coalition of state attorneys general looking into corporate obfuscations of threats of climate change.¹⁵⁷ In addition to New York, Attorneys General in Massachusetts, California, and the U.S. Virgin Islands have announced investigations.¹⁵⁸ The legal grounds for the investigations vary from state-to-state. While some are premised on potential violations of securities and consumer fraud laws, the Attorney General for the U.S. Virgin Islands is conducting an investigation under the local anti-

¹⁵⁵ New York State Office of the Attorney General, Press Release, A.G. Schneiderman Secures Unprecedented Agreement with Peabody Energy to End Misleading Statements and Disclose Risks Arising From Climate Change, Nov. 9, 2015, <http://www.ag.ny.gov/press-release/ag-schneiderman-secures-unprecedented-agreement-peabody-energy-end-misleading> (last accessed on Apr. 19, 2016).

¹⁵⁶ Greenpeace UK, Investor Briefing, Climate Liability: The New York Attorney General's Investigation into Exxon, Feb. 2016, http://www.greenpeace.org.uk/sites/files/gpuk/2016%20-%20Greenpeace%20-%20Exxon%20-%20Climate%20Liability%20-%20Investor%20Briefing_0.pdf (last accessed on Apr. 19, 2016).

¹⁵⁷ D. Hasemyer and S. Shankman, *Climate Fraud Investigation of Exxon Draws Attention of 17 Attorneys General*, InsideClimate News, Mar. 30, 2016, <http://insideclimatenews.org/news/30032016/climate-change-fraud-investigation-exxon-eric-shneiderman-18-attorneys-general> (last accessed on Apr. 19, 2016).

¹⁵⁸ *Id.*

racketeering laws.¹⁵⁹ Sharon Eubanks, a legal expert who was the Department of Justice's lead counsel in the historic tobacco case, *U.S. v. Philip Morris USA, Inc., et al.*,¹⁶⁰ suggested in a news article that “[i]f investigators find evidence that fossil fuel companies hid knowledge about climate change from the public, those could be held liable under the federal Racketeer Influenced and Corrupt Organizations Act (RICO)...like Philip Morris and other cigarette companies.”¹⁶¹ The U.S. Department of Justice has referred the Exxon matter to the FBI.¹⁶²

The investigations by the attorneys general are relevant to this Petition. First, Exxon is the subject of all the investigations. Second, the Philippines and its citizens are acutely vulnerable to the impacts of climate change, like the U.S. Virgin Islands for instance. If companies, such as Exxon, are found to have misled consumers and investors in the U.S. for decades, then this would have “robbed” Filipinos, and humanity as a whole, “a generation’s worth of time to reverse climate change” and fuelled the human rights impacts being experienced today.¹⁶³

b.2.2. Corporate Responsibility & Moral Imperative: Exxon Shareholder Resolutions

In a departure from previous years, the U.S. Securities and Exchange Commission recently decided, over objections from the company, that Exxon must allow shareholders to vote on a number resolutions related to

¹⁵⁹ D. Hasemyer and B. Simison, *Exxon Fights Subpoena in Widening Climate Probe, Citing Violation of Its Constitutional Rights*, InsideClimate News, Apr. 14, 2016, <http://insideclimatenews.org/news/13042016/exxon-virgin-islands-subpoena-climate-change-investigation-violates-rights-claude-walker> (last accessed on Apr. 19, 2016).

¹⁶⁰ For more information on tobacco litigation, see Public Health Law Center, *Tobacco Litigation*, <http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation> (last accessed on Apr. 19, 2016).

¹⁶¹ C. von Kaenel, *Critics of Exxon Draw Parallels to Big Tobacco*, E&E Publishing, Dec. 9, 2015, <http://www.eenews.net/climatewire/2015/12/09/stories/1060029208> (last accessed on Apr. 19, 2016).

¹⁶² P. Kadzik, Assistant Attorney General, U.S. Department of Justice, Letter to the Honorable Ted W. Lieu U. S. House of Representatives and the Honorable Mark DeSaulnier U. S. House of Representatives, Jan. 12, 2016, <https://www.documentcloud.org/documents/2730475-DOJ-RESPONSE.html> (last accessed on Apr. 19, 2016).

¹⁶³ 350.org and other participating organizations, #ExxonKnew, available at www.exxonknew.org (last accessed on Apr. 19, 2016).

climate change at the upcoming annual general meeting.¹⁶⁴ One resolution of great importance to the Petitioners calls on Exxon's Board of Directors to adopt a policy acknowledging the *moral imperative* to limit global average temperature increases to 2° Celsius above pre-industrial levels, which includes committing the Company to support the goal of limiting warming to less than 2° Celsius. The resolution refers to Pope Francis' encyclical letter *Laudato Si'*, which states that "the climate is a common good, belonging to all and meant for all."¹⁶⁵ The Petitioners believe that the Respondent Carbon Majors have both a moral and legal responsibility to the Philippines, Filipinos, and to the world, to conduct business in a manner that will keep global temperature rise this century well below 2° Celsius, and to drive efforts to further limit the temperature increase to 1.5° Celsius above pre-industrial levels. The Respondents have the knowledge, power, and resources to support the rapid transition to 100% renewable energy for all.

Conclusion

In summary, what the Petitioners are saying is that the production of fossil fuels by the Carbon Majors has been found to be primarily responsible for large amounts of greenhouse gases. The concentration of said gases, especially carbon dioxide in the atmosphere, causes climate change. An estimated 25-30% of the carbon dioxide already emitted by these activities has been absorbed by the oceans¹⁶⁶ and is contributing to ocean acidification.

¹⁶⁴ Interfaith Center on Corporate Responsibility, Exxon Feels the Heat, <http://www.iccr.org/exxon-feels-heat> (last accessed on Apr.18, 2016).

¹⁶⁵ Interfaith Center on Corporate Responsibility, Shareholder Resolution, Acknowledge the Moral Imperative to Limit Global Warming to 2°C: 2016-Exxon Mobil Corporation, <http://www.onlineethicalinvestor.org/eidb/wc.dll?eidbproc~reso~12464> (last accessed on Apr. 19, 2016).

¹⁶⁶ C. Le Quéré & M.R. Raupach & J.G. Canadell & G. Marland L. Bopp & P. Ciais & T.J. Conway & S.C. Doney & R.A. Feely & P. Foster & P. Friedlingstein & K. Gurney & R.A. Houghton & J.I. House & C. Huntingford & P.E. Levy & M.R. Lomas & J. Majkut & N. Metzl & J.P. Ometto, J.P. G.P. Peters & I.C. Prentice & J.T. Randerson & S.W. Running & J.L. Sarmiento & U. Schuster & S.Sitch & T. Takahashi & N. Viovy & G.R. van der Werf & F.I. Woodward, Trends in the Sources and Sinks of Carbon Dioxide, 2 Nature Geoscience, 831 (2009).

The adverse impacts of climate change and ocean acidification have brought harm or pose the threat of harm to people, on top of or in addition to, damage resulting from natural disasters. These harms resulting from the impacts of climate change and ocean acidification affect the exercise and enjoyment of Filipinos' human rights to (a) to life; (b) to the highest attainable standard of physical and mental health; (c) to adequate food; (d) to water (e) to sanitation; (f) to adequate housing; (g) to self-determination; and (h) the human rights of marginalized and disadvantaged groups particularly vulnerable to the effects of 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 recognition of the Human Rights Council, OHCHR, and the parties to the UNFCCC that climate change impedes the full and effective enjoyment of human rights protected by the most fundamental international human rights conventions provides a framework for the requested investigation of the Honourable Commission.

This investigation will further bolster the country's leadership position on human rights in the UNFCCC process and at the Human Rights Council, and help achieve the country's commitment to reduce carbon emissions with international aid by 70% by year 2030 in its Intended Nationally Determined Contributions to the UNFCCC. At the 20th Conference of the Parties to the UNFCCC held in Lima, Peru, the Philippines made interventions calling for references to human rights, rights of indigenous peoples, and gender in the 2015 climate agreement. In its high-level ministerial statement, the Philippines reflected on the rights implications of a climate deal (or lack thereof), stating: "losing the credibility of the UN multilateral process is not only an insult to diplomacy but a complete disregard to human rights."¹⁶⁷ The Government of the Philippines joined 17 other countries in signing the Geneva Pledge on Human Rights and Climate Change in February 2015. This demonstrates the Philippines' commitment to "promote and respect

¹⁶⁷ M.A.L.L. Sering, Statement of the Philippines at the High Level Segment of the COP20/CMP 10 , Dec. 10, 2014, <http://climate.gov.ph/index.php/media-resource/24-media-resources/speeches/98-high-level-segment-statement-of-the-philippines-at-cop-20-cmp-10> (last accessed on June 16, 2015).

human rights in our climate actions.”¹⁶⁸ With the mounting evidence of the Carbon Majors holding the world back on climate progress, it is essential for the Honourable Commission to act now and establish the responsibility of the Carbon Majors, which will be seen as a strong signal for future climate action.

So Petitioners pray for vindication, respect and protection of human rights in the context of climate change. *Hindi po dapat na kami ay mauuwi lamang sa pagbibilang o kaya’y mapapabilang na lamang sa mga biktima ng climate change.*¹⁶⁹

Prayer

WHEREFORE, premises considered, the Petitioners most respectfully pray that the Honourable Commission on Human Rights take the following actions:

1. Taking 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;

¹⁶⁸ The Geneva Pledge for Human Rights in Climate Action, Feb. 13, 2015, <http://carbonmarketwatch.org/wp-content/uploads/2015/02/The-Geneva-Pledge-13FEB2015.pdf> (last accessed on Apr. 20, 2015).

¹⁶⁹ English translation: We should not only be counting the victims of climate change or being counted among them.

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.

Petitioners further pray for such other just and equitable reliefs under the premises.

This petition was originally filed on September 22, 2015. A motion to admit updates and amendments was filed on April 21, 2016 and an oral manifestation was made on May 6, 2016 to make further formatting corrections which were both granted by the Commission. This petition therefore contains the said updates, amendments and formatting corrections, as of May 6, 2016.

Quezon City, Philippines, May 9, 2016.



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List of Tables, Figures, Exhibits, and Annexes

Tables

- Table 1: Investor-owned Carbon Majors 1751-2010
Table 2: Investor-owned Carbon Majors 1751-2013

Figures

- Figure 1: Natural Greenhouse Effect v. Human Enhanced Greenhouse Effect

Exhibits

- Exhibit A: Recorded interviews of Petitioners from Alabat Island, Quezon Province
Exhibit B: Recorded interviews from some residents of Verde Island
Exhibit C: Compilation of ‘Smoke and Fumes’ documents with video explanation

Annexes

- Annex A: Non-exhaustive List of International Human Rights Treaties Signed and/or Ratified by the Philippines
Annex B: Cover Note from Climate Change Commission of the Office of the President of Philippines to the UNFCCC
Annex B-1: Expert Report, Human Rights by John Knox, UN Special Rapporteur for Human Rights and the Environment
Annex B-2: Expert Report, Labour by Tord Kjellstrom et al., Ruby Coast Research Centre
Annex B-3: Migration/Displacement by Walter Kaelin, Envoy of the Chairmanship of the Nansen Initiative

- Annex C: Updated List of Respondent Investor-Owned Carbon Majors with Principal Business Addresses and Known Philippine Presence Based on Securities and Exchange Commission Records
- Annex D: Updated Details of Carbon Major Publications
- Annex D-1: Climate Accountability Institute, Press Release on Update of Carbon Majors Project
- Annex D-2: Carbon Majors: Accounting for Carbon and Methane Emissions 1854-2010 Methods and Results Report
- Annex D-3: Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010
- Annex E: Publications on Fossil Fuel Industry Involvement in Undermining Climate Science and Action
- Annex F: Past Research on Vulnerabilities and an Overview of Existing Literature on Climate Change Impacts in the Philippines
- Annex F-1: Background on Ocean Acidification