

PROFILE AND STATEMENT OF LISA ANNE HAMILTON, JD

I am Lisa Anne Hamilton. I am currently the Director of Climate and Energy Program at the Center for International Environmental Law (CIEL). I lead CIEL's efforts to use the power of law to accelerate the transition away from fossil fuels, strengthen human rights in climate governance, and empower communities to assert and protect their own rights in the face of climate change.

Prior to joining CIEL, I was a regulatory consultant and my work focused on leveraging the power of finance and securities laws to highlight climate risks and challenge investments in fossil fuel infrastructure. I have also supported a team of energy markets and financial analysts advocating for fair and full disclosure in the energy, mining, and utilities sectors at the Institute for Energy Economics and Financial Analysis (IEEFA). I have also worked alongside stakeholders to develop recommendations for the just transition for communities with retiring electric generation units. I have supported a number of initiatives to encourage the financing of renewable energy projects including a collaboration with the Pace Climate and Energy Center to advocate for the most just and environmentally effective methods to meet the requirements of the Clean Energy Standard in New York State.

For over a decade, I served as a Board Member and Membership Chair of Environmental Advocates of New York. I also served as a volunteer moderator for the development of the first phase of the Northern Manhattan Climate Action Plan for WEACT for Environmental Justice. I have also been a guest Lecturer on public infrastructure finance for the Schack Real Estate Institute at New York University (NYU) and have provided the legal expertise to establish the Friends of the Akuffo Tom School in Ghana and the Adventure Amputee Camp among other 501(c)(3) organizations.

For ready reference, I am attaching my updated *Curriculum Vitae* as **Annex "A"** to this statement.

I am executing this statement upon the invitation of Greenpeace Southeast Asia (Philippines), one of the petitioners in the human rights and climate change case filed before the Commission on Human Rights, to be a witness and resource person for the petitioners to present the summary of CIEL's recent report released on 16 November 2017, entitled "*Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for Climate Crisis*,"¹ in the first public hearing of the case on March 27-28 at the Commission on Human Rights in Quezon City, Philippines.

¹ A copy of which was attached to petitioners' *Manifestation* dated 06 December 2017 and marked as **Exhibit "K"** during the preliminary conference held on 11 December 2017. This is also available at: <http://www.ciel.org/reports/smoke-and-fumes/>, last accessed on 13 March 2018.

I am happy to be part of the inquiry and agree to be a witness and resource person for the petitioners. I was informed that they will ask me questions, which questionnaire they sent on 07 March 2018. I personally answered the questionnaire and had a conversation over Skype on 14 March 2018 with Attorney Hasminah Paudac, one of the legal representatives of the petitioners, and Ms. Anna Dominique Esmeralda, their legal liaison.

The following are my answers to their questions. I am submitting this statement to the Commission on Human Rights with a commitment to expound the same in person through a presentation on 28 March 2018 public hearing.

Q1: *Can you please give us a background about your organization, the Center for International Environmental Law (CIEL)?*

A1: Since 1989 CIEL has used the power of law to protect the environment, promote human rights and ensure a just and sustainable society. CIEL is dedicated to advocacy in the public interest through legal counsel, policy research, analysis, education, training and capacity building.

Q2: *How long have you been with CIEL?*

A2: I joined CIEL in October 2016. As of March 2018, I will have been with CIEL for 1 Year 5 months.

Q3: *You said that you are the Director for CIEL's Climate and Energy Program. How long have you held said position?*

A3: I have held this position since I joined CIEL in October 2016.

Q4: *As Director of said program, what are your key roles and responsibilities?*

A4: As the Director of the Climate & Energy program I oversee our team of human rights, climate finance, and corporate engagement attorneys that utilize a number of policy and legal avenues to accelerate the transition to a low carbon economy. Together we work to advance a human rights approach to climate action, provide expertise to support to global climate litigation cases and advocate for sustainable principles in plastics production and utilization. My responsibilities include conducting and overseeing legal research, analysis and drafting documents to accelerate the objectives of our program. I also assume the managerial responsibilities of my position that include staff coordination and fundraising consistent with the operations of a non-governmental organization.

Q5: *Are you familiar with the Petition filed by Greenpeace, along with thirteen (13) non-profit organizations and eighteen (18) individuals, before the Philippine Commission on Human Rights requesting for an investigation of the Carbon Majors for human rights violations or threats thereof resulting from the impacts of climate change?*

A5: Yes, I am familiar with the petition and have contributed to the drafting of legal documents referenced throughout that support arguments found in the petition.

Q6: *How did you become familiar with said Petition?*

A6: CIEL is one of a several expert organizations approached to provide advice and support to the petitioners in conjunction with the filing of the original petition in 2015.

Q7: *Given your background and extensive experience in climate, energy, and human rights issues as mentioned in your brief bio and Curriculum Vitae (Annex “A” hereof), what can you say about the Petition, if any?*

A7: As an attorney working on issues of energy, environment and climate change for the last 15 years, this is a pivotal moment in the course of human rights and climate change. This petition is both a moral and legal plea to address climate change as one of the greatest threats to human rights of our time and an opportunity to uphold the rule of law where corporate actors that have contributed to climate change and knew about the foreseeable harms caused by climate change have a responsibility to respect human rights.

Q8: *The Petition, on page 43, mentions that, “in April 2016, CIEL released hundreds of new documents demonstrating that the oil industry was explicitly warned of climate risks in the 1960.”² Can you confirm this?*

A8: Yes. CIEL compiled the documents and made them publicly available for the first time with the launch of the Smoke and Fumes website in April 2016.

Q9: *How was CIEL able to get hold of these documents, if you know?*

A9: The documents compiled through CIEL’s Smoke and Fumes website were gathered through the course of five years of original research undertaken by CIEL staff. A significant portion of the early period of this research was spent developing a substantial understanding of the early history of climate science in order to identify the distinct terminologies, debates and biological figures relevant to research during different time periods, and to researching the structure, technical and scientific capacity of the oil industry at relevant periods as presented by the industry itself and by informed observers.

Building upon this foundation, the documents were gathered through publicly accessible but sometimes obscure sources, including through web-based archives, scholarly databases, digitized patent collections and search engines. Most documents remain publicly available on the internet and free of charge, although some documents are behind paywalls and a fee is

² See: 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, 13 April 2016, available at: <http://www.ciel.org/news/smoke-and-fumes/>, last accessed on 13 March 2018.

required to access content from the website. CIEL has provided direct links to the primary documents wherever possible. A small number of documents, including the Stanford Research Institute report from 1968, were obtained through library research or, for documents in very limited circulation, by locating and purchasing physical copies.

Q10: What, if any, are CIEL's findings on these documents?

A10: There are 3 key takeaways from these documents. First, many of these documents reflect the petroleum industry's understanding of climate change at critical moments throughout the twenty-first century. Second, the documents reflect research the industry conducted into alternative explanations for observed climatic changes and potential carbon solutions. Third, the documents support actions taken by the industry to willfully and intentionally mislead and confuse the public.

CIEL finds that the major global oil companies conducted and coordinated research into air pollution through the Smoke and Fumes Committee (later Committee on Air and Water Conservation) of the American Petroleum Institute (API) in the United States; they actively used their research apparatus to influence the public understanding and debate surrounding air pollution; at least one oil company Humble Oil (now ExxonMobil) was studying carbon dioxide in the atmosphere in 1957; the Industry as a whole, through API, was studying carbon dioxide in the atmosphere by 1958; the industry as a whole, through API, was warned of the dangers of climate change, and the role of fossil fuels in causing climate change, no later than 1968; documentary evidence demonstrates that the document issuing this warning was widely circulated and viewed. CIEL also finds that the oil companies had early and sophisticated knowledge of historic sea level, paleoclimates, and hurricanes; many of the oil companies were early patent holders for technology, including solar panels, fuel cells, and emissions reduction technologies for carbon dioxide which could have been used to dramatically reduce greenhouse gas emissions and the resulting impacts of climate change.

Q11: What, if any, are the implications of CIEL's findings?

A11: These findings demonstrate that the Carbon Majors were on early, consistent and ongoing notice that (1) the rate and amount of carbon dioxide emissions attributable primarily to production, sale and marketing of their products were contributing to a growing concentration of carbon dioxide and other greenhouse gases in the atmosphere; (2) that continued CO₂ emissions could contribute to substantial warming of the earth's atmosphere; that, over time, it was foreseeable that such warming posed serious and potentially catastrophic risks to the global climate; and, (3) accordingly, that it was well known within the industry that continued production, marketing, and sale of those products could cause potentially severe environmental consequences.

Moreover, these companies possessed sophisticated expertise in numerous areas of science relevant to assessing and understanding these risks,

including sophisticated scientific and technical research operations in the fields of meteorology, geology, climatology, and hydrology. In light of this expertise, and the expertise commonly imputed to those involved in the extraction, production, and marketing of goods, the Carbon Majors can be reasonably assumed to have been experts in the risks of their products at all relevant times for purposes of assessing appropriate standards of care. More fundamentally, their notice of potentially significant risks associated with their products and operations carried a responsibility to adequately warn consumers, investors and the public with respect to those risks.

Instead of actively warning the public, these companies instead pursued avenues to expand the production and consumption of fossil fuels, and failed to develop or deploy technologies that could have avoided or dramatically reduced the risks of climate change associated with their products and operations.

Q12: On 16 November 2017, CIEL released the report entitled, “Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis” (Petitioners’ Exhibit “K”), how is this related, if any, to CIEL’s initial release of hundreds of documents in April 2016?

A12: The referenced report synthesizes, for the first time, the key documents collected by an array of sources, drawing not only on CIEL’s Smoke & Fumes documents, but on documents gathered by other researchers and organizations, including the Los Angeles Times & Columbia School of Journalism, Inside Climate News, ClimateFiles, New York Times, Union of Concerned Scientists and others. An early summary of this evidence was prepared specifically for the use by the Commission in CIEL’s original amicus submission in the present inquiry.

The Smoke and Fumes Synthesis also incorporates important new documents that were not available to CIEL when the original Smoke & Fumes database was launched in April 2016 or when its original amicus was submitted in February 2017. . It combines this evidence regarding corporate knowledge and corporate conduct with important recent advances in the attribution of climate change and climate impacts, including significant publications by Ekwurzel et al. and Oreskes & Supran, among others.

Finally, and significantly, the Smoke & Fumes Synthesis presents this evidence in the context of fundamental principles of legal responsibility shared by multiple fields of law, including human rights law, the law of torts in common law jurisdictions, and the law of non-contractual civil liability in civil law jurisdictions. This analysis of the core legal principles underlying the concept of responsibility across regimes thus argues that the available and mounting evidence supports a finding that the major oil companies are ethically and legally responsible for harms caused by climate change where those harms are fairly attributable to emissions resulting from the production, marketing, and sale of their products.

Q13: *How did this report come about?*

A13: During the period of time between the initial launch of the Smoke and Fumes website in 2016 and the release of the November 2017 Legal and Evidentiary Synthesis Report, a number of key developments and documents were brought to our attention. The Smoke & Fumes Synthesis Report builds upon CIEL's earlier work on Smoke & Fumes and, more significantly, on an earlier synthesis of available evidence included as the Annex to CIEL's original amicus submission to the Commission. The Report was created to provide a ready means for researchers, investigators, and others to assess and navigate a rapidly growing body of documentary evidence, and to allow direct and easy access to the underlying documentation wherever feasible.

Q14: *Did this report undergo any form of scrutiny from other scholars or researchers?*

A14: While CIEL did not submit its Legal and Evidentiary Synthesis report to a formal peer review process prior to release, drafts of the report were shared with outside researchers with relevant expertise for review and comment. Additionally, at numerous stages throughout the development of the project including the development of the website and the Smoke & Fumes database, CIEL has consulted with outside experts to inform our assessment of the content and significance of individual documents. CIEL has also reached out to researchers whose work is discussed in Smoke & Fumes to ensure our characterization of their findings and methods were appropriate and drew upon that earlier guidance in presenting and analyzing evidence for the report.

Q15: *Briefly, what is this report all about?*

A15: This report summarizes the letters and research that demonstrate how major fossil fuel companies had deep knowledge of climate change earlier than they have publicly acknowledged, and then not only failed to warn the public of the potentially severe danger their products pose, but then actively undertook efforts to mislead and confuse the public regarding the certainty of climate science and the dangerous impacts of climate change. This knowledge, combined with both the actions and inactions of the companies involved, is an appropriate basis for legal responsibility under several theories of liability, including civil liability theories of tort, non-contractual obligations under civil law, and international human rights law.

Q16: *The report is divided into two (2) parts: Part 1 of the report, pages 3 to 6, discusses "The Legal Basis for Accountability: Fundamental Elements of Responsibility under Tort, Civil Liability, and Human Rights" and Part 2, pages 7 to 25, tackles "The Evidentiary Basis for Accountability: Notice, Opportunity, and Failure to Act." Could you please briefly summarize the key points of each part?*

A16: Part 1 is a comparative review of the nature of responsibility, that details the history and jurisprudence of causation, harm, and foreseeability under

common law tort and the emergence of corporate responsibility in international human rights law.

Part 2 presents an overview of key pieces of scientific research studies that provide evidence currently available concerning what the fossil fuel industry knew and what actions were taken in light of, their products' contribution to climate change.

Q17: *Based on Part 1, could you please summarize what are the fundamental elements of corporate responsibility under tort, civil liability, and human rights law?*

A17: Under traditional legal norms, standards and jurisprudence defining civil liability (as opposed to criminal liability), whether a harmed party can seek a remedy is dependent, in part, on the links between identifiable plaintiff, an identifiable defendant and a causal chain that connects the harms suffered to the actions or inactions of the parties.

Under common law tort, there are theories of strict liability where a defendant is liable for harms regardless of the conduct by the plaintiff. Alternatively, for example, under a theory of comparative negligence, a defendant is only liable for a percentage of fault. These common law theories are not exhaustive but are only selected to show how legal authorities can allocate responsibility and determine liability among the participants for the conduct at issue and for purposes of compensating harm. Allocating responsibility, particularly among corporate actors for human rights violations, is a matter of evolving jurisprudence that balances considerations of statutory mandate, fairness, moral and ethical obligations among other considerations.

Principles of corporate responsibility therefore reflect the evolution of jurisprudence concerning responsibility or 'non-contractual obligations' in civil law jurisdictions, civil liability approaches to responsibility under common law tort, widely accepted principles of legal responsibility that are fundamental to international human rights law, and an emerging body of jurisprudence that has clarified that corporations are among the private actors that have responsibilities to comply with international human rights law.

In 2011, the UN Special Rapporteur on Business & Human Rights John Ruggie addressed the human rights responsibilities of corporations in his report Guiding Principles on Business and Human Rights (UNGPs). These UNGPs have been endorsed by the UN Human Rights Council as the foundation for assessing corporate responsibilities to uphold human rights and avoid complicity in human rights violations.

When discussing corporate responsibility in the human rights context, legal experts adopt a civil liability approach that weighs the fundamental elements of corporate responsibility that include (1) a causal link between the actor

and the harm caused (2) the ability to foresee a harm based on knowledge or awareness of a harm or potential harm; and (3) an opportunity and ability to prevent that harm to determine corporate responsibility.

Please also see the Joint Summary that provides greater detail about specific principles from the UNGP's that can guide and inform the Commission in its deliberations about whether the conduct at issue is consistent with corporate responsibilities to respect human rights.

Q18: Based on Part 2, could you please summarize the evidentiary basis for fold holding fossil fuel companies accountable?

A18: In short, the evidence collected in Smoke & Fumes supports key elements of a corporate responsibility analysis.

(1) The Carbon Majors, by benefit of atmospheric science research funded by oil companies since the 1950's were aware and could foresee the harm, or the threat of harm, caused by the production, marketing and sale. Documented research into the atmospheric behavior of carbon dioxide by oil companies began no later than 1957 for Humble Oil (ExxonMobil) and 1958 by the American Petroleum Institute. API and its members were explicitly warned by no later than 1968 that CO₂ was accumulating in the atmosphere from anthropogenic sources; that the combustion of fossil fuels was the most important source of these CO₂ emissions; that rising levels of CO₂ and other greenhouse gases had the potential to alter the earth's radiation balance on a planetary scale; and that this change to the global climate create the risk of widespread, severe and potential catastrophic impacts on the global environment. were likely to be severe. While acknowledging that some uncertainties remained, the industry's own researchers emphasized that the highest priority for research was in technologies and other changes to reduce greenhouse gas emissions.

(2) The Carbon Majors, were aware and had the opportunity and ability to prevent the harm caused by the production, marketing, and sale of their products.

By the 1970s, Exxon (now ExxonMobil) was explicitly warned by its own scientists of the consensus surrounding climate change; Shell was warned no later than 1986. By the late 1980s, at least two companies - Shell and Exxon - were incorporating likely climate changes into their operational planning. Despite this knowledge, fossil fuel companies engaged in both individual and coordinated campaigns to mislead the public about the existence, causes and severity of climate risks. These campaigns are well documented in the 1980s and 1990s, extended into the 2000s, 2010s, and likely continue to this day.

Q19: Given said discussion, what are the report's key findings and/or conclusions, if any?

A19: The report's key findings are that (1) fossil fuel companies had the knowledge and expertise to understand both the threat of climate change and the impact that continued production, marketing and sale of fossil fuel products would have on climate change and the resulting climate change impacts and (2) instead of actively warning the public and taking action to prevent harm they continued and increased the production and sale of fossil fuels and (3) did so while actively sowing doubt and confusion about the reality of climate change among the general public.

Q20: On page 26 of the report, Appendix I enumerates fifty-one (51) investor-owned carbon majors, ranked by cumulative emissions contribution. Have any of these investor-owned companies, all respondents herein³, reached out to your organization after the release of this report in November 2017?

A20: CIEL has not been directly contacted by any of the enumerated companies after the release of the Smoke & Fumes Synthesis report in November 2017.⁴

Q21: Do you know if this report has been used in any legal proceeding? And if so, how?

A21: Globally, a number of lawsuits have been filed in civil court in the United States by plaintiffs that have been harmed by climate change and seek redress and remedy from several of the Carbon Majors for their contributions to climate change. Evidence gathered in CIEL's Smoke and Fumes research have been cited in legal complaints and other documents in the following cases:

- City of Richmond v. Chevron et al., C-18-00055, Superior Court of the State of California, County of Santa Cruz (January 22, 2018).
- New York City v. BP, Chevron, ConocoPhillips, Exxon Mobil, Shell, 18-cv- 182, (U.S. District Court for the Southern District of New York) (Filed 01/09/18).
- County of Santa Cruz v. Chevron et al., 17-CV-03242, Superior Court of the State of California, County of Santa Cruz (December 20, 2017).
- City of Santa Cruz v. Chevron et al., 17-CV-03243, Superior Court of the State of California, County of Santa Cruz (December 20, 2017).
- Oakland v. BP, Chevron Corp., Exxon Mobil Corp., Royal Dutch Shell PLC and ConocoPhillips, RG-17-875-889, Superior Court of the State of California, Counties of San Francisco and Alameda (Filed 09/19/17) removed to U.S. District Court for the Northern District of California (No. C 17-06011 WHA).
- San Francisco v. BP, Chevron Corp., Exxon Mobil Corp., Royal

³ Due to mergers and acquisitions, the total number was reduced to forty-seven (47) when the *Petition* was filed in September 2015.

⁴ On November 9, 2016, Carroll Muffett—CIEL's President and lead researcher and co-author on the report—was personally subpoenaed by ExxonMobil in a suit the company has filed against the Attorneys General of New York and Massachusetts. The subpoena seeks an array of documents related to CIEL's research, writings and advocacy with respect to climate change. It does not explicitly reference Smoke & Fumes.

Dutch Shell PLC and ConocoPhillips, CGC-17-561-370, Superior Court of the State of California, Counties of San Francisco and Alameda (Filed 09/19/17), removed to U.S. District Court for the Northern District of California (No. C 17-06012 WHA).

- City of Imperial Beach v. Chevron et al., C-17-01227, Superior Court of the State of California, County of Contra Costa (July 17, 2017).
- County of Marin v. Chevron et al., 17-CIV-03222, Superior Court of the State of California, County of Marin, CIV-17-02586, (July 17, 2017).
- County of San Mateo v. Chevron et al., 17-CIV-03222, Superior Court of the State of California, County of San Mateo (July 17, 2017).

Q22: *Other than this study, are there any articles or publications made by your organization regarding the matter which might prove useful for the Commission's inquiry?*

A22: CIEL maintains a website, www.smokeandfumes.org, which may be of additional use to the Commission. The website allows users to research documents by a variety of criteria including by company, year, issue area and key individuals.

CIEL and the Global Initiative for Economic, Social and Cultural Rights recently published States Human Rights Obligations in the Context of Climate Change: A Synthesis Note on the Concluding Observations and Recommendations Adopted by UN Human Rights Treaty Bodies. Notably, Table 1 in this publication summarizes climate-relevant rights and principles under various instruments, and Figure 4 provides a simple visual guide and quantitative summary of the climate-relevant issue areas addressed by the major human rights treaty bodies. This report is available at: <http://www.ciel.org/wp-content/uploads/2018/01/HRTBs-synthesis-report.pdf>.

For more detailed citations, CIEL has created a fully searchable Data Portal on Incorporating Human Rights into Climate Action. The portal, which is searchable by country, may provide a useful resource for identifying and contextualizing climate related statements and actions by human rights treaty bodies relevant to the Philippines. It may be accessed at <http://climaterights.org/database/Philippines/>.

With the United Nations Environment Program, CIEL has produced the UNEP Compendium On Human Rights and the Environment: Selected International Legal Materials and Cases. This Compendium may provide a valuable, readily searchable source of additional information on cases and proceedings referenced in the various amicus briefs submitted in the present inquiry. It may be accessed at: http://www.ciel.org/wp-content/uploads/2015/03/UNEP_Compendium_HRE_Mar2014.pdf.

On request, I can provide a physical copy of this compendium at the hearing.

Q23: *Based on your extensive research, do you have any insights on what steps respondent Carbon Majors should take to remedy, eliminate, and prevent human rights harms resulting from the fossil fuel products they extract and sell?*

A23: We support the recommendations outlined in the Joint Summary that include seeking guidance from the UN Guiding Principles on Business and Human Rights, tort law, and international human rights law, in assessing the responsibility of the Carbon Majors for the harms suffered by the people of the Philippines due to climate change. The Carbon Majors have long known that the use of their products substantially contribute to climate change, which, in turn, has significant impact on and adverse consequences for people, especially vulnerable populations. Moreover, the Carbon Majors knowingly advanced or promoted theories to deliberately create misleading information, casting doubt on the connection between fossil fuels and climate change, in order to deter regulation that would adversely impact their profits.

Q24: *Are you ready and willing to swear this Statement under oath before the Philippine Commission on Human Rights, if required to do so?*

A24: Yes.



Lisa Anne Hamilton, JD

Date of electronic signing: