REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS
Diliman, Quezon City

IN RE: NATIONAL INQUIRY ON THE IMPACT OF CLIMATE CHANGE ON THE HUMAN RIGHTS OF THE FILIPINO PEOPLE. **CHR-NI-2016-0001**

x----------x

MOTION TO DISMISS *EX ABUNDANTI AD CAUTELAM*[1]

[To the: *Petition Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change* dated 09 May 2016]

THE SHELL COMPANY OF THE PHILIPPINES LIMITED ("SCPL") and **ROYAL DUTCH SHELL PLC** ("RDS"), by special and limited appearance of counsel, files the instant *Motion to Dismiss* with reservation of its rights, to specifically question the jurisdiction of the Commission of Human Rights ("CHR") over the *Petition* dated 09 May 2016 ("*Petition*") filed by Petitioner Greenpeace Southeast Asia (Philippines), *et al.,* (collectively, the "Petitioners") and over the persons of SCPL and RDS, on the basis of the presentation below.

RDS, a company incorporated under the laws of England and Wales and head-quartered in the Netherlands, was named in the caption of the *Petition* dated 09 May 2016. SCPL, a company incorporated under the laws of England and Wales, was *not* named in the caption of the *Petition*. SCPL, therefore, reserves its position on whether it is a proper party or Respondent in this case.

For the avoidance of any doubt, RDS and SCPL limit their submissions to matters of the CHR's jurisdiction only. RDS and SCPL make no admissions in these submissions of any fact, matter, or argument relating to the merits of the claim advanced by the Petitioners. However, in the event that the

---

[1] The instant *Motion* is being filed by special and limited appearance and without prejudice to questioning the CHR's jurisdiction over the instant case and respondents SCPL and RDS. In the *Order* dated 21 July 2016, a copy of which was received by SCPL on 28 July 2016, and by RDS on 29 July 2016, the CHR required the filing of a comment or answer to the *Petition* within a period of forty-five (45) days therefrom; hence, the instant *Motion* is timely filed.

Petitioners make further submission as to the CHR's jurisdiction in relation to this Petition, RDS and SCPL reserve the right to make further submissions in response. In this regard, RDS and SCPL's submissions in support of their *Motion to Dismiss* do not constitute an acceptance of, or acquiescence to, the jurisdiction of the CHR.

PREFATORY STATEMENT

Under Article XIII, Section 18(1) of the 1987 Constitution ("Constitution"), the CHR's investigative powers are limited to violations of **civil and political rights**. The Constitution, however, allows expansion of this limited investigative jurisdiction over violations of civil and political rights, but only through a law enacted by Congress. (*See* Article XIII, Section 19)

As will be discussed in more detail below, the Petitioners themselves admit that the instant *Petition* is anchored on an invocation of certain human rights relating to climate change impacts and *"the adjunct rights to health and to a balanced and healthful ecology,"*[2] and not on civil or political rights. In fact, the Petitioners admit that said *"environmental rights, are not listed under the Bill of Rights,"*[3] thereby removing the supposed violations from the realm of civil and political rights. What is more, it cannot be disputed that there is no law passed by Congress which expanded the jurisdiction of the CHR to include the rights to health and to a balanced and healthful ecology. **Thus, it is undeniable that the CHR has no jurisdiction to investigate the subject matter of the *Petition*.**

The reason for the constitutional limitation of the jurisdiction of the CHR to violations of civil and political rights is historical and born of experience. The catalyst for the creation of the CHR was the serious and widespread violations of civil and political rights under Martial Law and the authoritarian rule at the time. During that dark chapter of Philippine history, the authoritarian government suspended civil and political rights to stifle dissent. There were massive cases of salvaging, disappearances, torture, deprivation of rights of detainees, and hamletting committed across the country. Thousands were arrested without warrant and detained without charge. With the fall of the authoritarian regime and the restoration of democratic institutions and processes in the Philippines in 1986, there was an urgent recognition of the need to prevent State-sponsored violations of the people's civil and political rights.

---

2 *Petition,* p 10.
3 *Ibid.*

The Constitution vested upon the CHR the vital role of defending the people's civil and political liberties. With the creation of the CHR, the Constitution hoped to achieve the noble goal of preventing, addressing and providing redress for past and future violations of the civil and political rights of its citizens by the State.[4]

The CHR's constitutional role is so critical to the defense of the rule of law and democracy that was restored with the adoption of the 1986 Constitution, that its jurisdiction was specifically limited by its framers to enable it to achieve its constitutional duty:

> "MR. GARCIA: **This commission has a very precise task.** Its international instruments would be the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the recently concluded Declaration of Torture of 1985. **The commission has a very specific function which is the protection of civil and political rights. Due to the experience of 14 years of martial rule, we want to ensure that hereafter human rights in this country are not violated and, therefore, provide this very specific body with the function to ensure the safeguarding of these rights."**[5] (Emphasis and underscoring supplied)

The importance of delineating the specific parameters of the CHR's jurisdiction was highlighted during the 1986 Constitutional Commission deliberations, precisely so that the CHR can be effective in achieving its constitutional mandate:

> "MR. GARCIA: I would simply like to make a clarification on that point. Although maltreatment or the crimes that the Commissioner mentioned may fall within the province of this commission, **the primacy of its task must be made clear in view of the importance of human rights and also because civil and political rights have been determined by many international covenants and human rights legislations in the Philippines, as well as the Constitution, specifically the Bill of Rights and subsequent legislation. Otherwise, if we cover such a wide territory in area, we might diffuse its impact and the precise nature of its task, hence, its effectivity would also be curtailed.**

---

4 ***Dizon vs. Eduardo***, 158 SCRA 470 (1988).

5 At p. 719 of the *Records of the Constitutional Commission, Vol. 3, No. 66* ("*RCC No. 66*"), a copy of which is attached as **Annex "1"**.

So, it is important to delineate the parameters of its task so that the commission can be most effective."[6] (Emphasis and underscoring supplied.)

In a very real sense, therefore, the CHR was born to ensure that the State and its agents observe the rule of law, keep to their legal limitations, and respect the civil and political rights of persons.

Presently, the CHR, with its heavy constitutional responsibility of investigating violations of civil and political rights, is undermanned and underfunded. It has been reported that among the five constitutional agencies, the CHR has the smallest number of staff, with 680 open positions, of which only 526 are filled.[7]

Given the CHR's limited resources, and the heavy burden of ensuring that the State and its agents are forever circumscribed by the rule of law in respect of the observance of civil and political rights, the CHR itself must be the shining example of obedience to law, especially in matters of jurisdiction and authority. For what, in essence, is the CHR's role but to ensure that the State and its agents act within the confines of their statutory powers and authority? So, too, therefore, the CHR must act only within the confines of its constitutional authority, *i.e.,* serious violations of civil and political rights, especially in light of the current political environment in the Philippines.

While the protection of the environment is a noble and laudable cause, the same, with all due respect, is not within the CHR's jurisdiction to investigate and address. To reiterate, the Constitution expressly limited the jurisdiction of the CHR to the investigation of "***all forms of human rights violations involving civil and political rights.***"[8] (Emphasis supplied)

Clearly, the CHR must concentrate its limited resources on matters that are squarely with its constitutional jurisdiction, *i.e.,* serious violations of civil and political rights. Further, as it is mandated to ensure that the State and its agents do not overstep the bounds of their authority, the CHR must be a shining example of staying within its lawful authority. It must be the first to obey the mandates of law. Otherwise, all that the CHR preaches becomes no more than lip service to the ideals of the Constitution.

---

6 At p. 722 of *RCC No. 66* (**Annex "1"** hereof).

7 K Ilagan, "Duterte's war: CHR mounts probe of 103 drug killings and counting" (26 July 2016) *Philippine Centre for Investigative Journalism*, at http://pcij.org/blog/2016/07/26/dutertes-war-chr-mounts-probeof-103-drug-killings-and-counting (last accessed on 09 August 2016).

8 Constitution, Article XIII, Section 18(1).

EXECUTIVE SUMMARY

By its *Petition* dated 09 May 2016, Petitioners Greenpeace *et al.* prayed for extensive and wide-ranging relief from alleged threats and/or violations of a range of environmental, social and economic rights that it claims result from the adverse impacts of climate change and ocean acidification. The *Petition* named fifty-one (51) non-Filipino private entities as Respondents alleging that their actions, and specifically actions (including historical conduct) that took place outside the territory of the Philippines, violated or threatened to violate human rights.

Accordingly, the *Petition* manifestly exceeds the scope of the CHR's powers and competences which are enshrined in the Philippine Constitution and consequently, it must be dismissed in its entirety as being outside the jurisdiction of the CHR.

As a preliminary matter, SCPL and RDS expressly and robustly object to the jurisdiction of the CHR to investigate these claims. As such, this submission in support of SCPL and RDS' motion to dismiss is confined to matters relating to the CHR's jurisdiction only, and does not constitute an acceptance of, or acquiescence to, the jurisdiction of the CHR. Accordingly, SCPL and RDS make no admissions of any fact, matter, argument or claim relating to the merits of the *Petition.*

The Petitioners face three primary - and insurmountable obstacles - to establishing the jurisdiction of the CHR: *first,* the CHR's jurisdiction is limited to the investigation of violations of civil and political rights; *second*, the CHR has no jurisdiction to investigate the acts of private parties occurring outside the territory of the Philippines; accordingly, for both of these reasons, the CHR has no jurisdiction over the subject matter of the *Petition;* and *third*, the CHR does not have personal jurisdiction over the foreign corporations RDS or SCPL, for the reasons set out below.

First, pursuant to Article XIII, Section 18 of the Philippine Constitution, and as affirmed by the Supreme Court of the Philippines, the CHR's investigative powers are limited to alleged violations of **civil and political rights** only. As the drafting history of Article XIII makes abundantly clear, the CHR was established against the backdrop of serious, grave and widespread violations of civil and political rights perpetrated by State

a general and broad human rights mandate: rather, the drafters purposively confined the jurisdiction of the CHR to the "very specific function which is the protection of civil and political rights", with a view to enabling the CHR to achieve its specific objectives more effectively.[9]

The human rights invoked by the Petitioners in relation to the impacts of climate change and ocean acidification are clearly *not* in the nature of civil and political rights. Indeed, the Petitioners are forced to concede that environmental rights (including the constitutional rights to health and a balanced and healthful ecology) are omitted from the Bill of Rights. Neither are environmental rights defined or contained in *"The Omnibus Rules of Procedure of the Commission on Human Rights"* (*"Omnibus Rules"*). It follows that the Petitioners' claims are beyond the jurisdiction of the CHR and must be dismissed.

In an attempt to circumvent this patent obstacle to jurisdiction, the Petitioners attempt to ground the jurisdiction of the CHR on provisions of the CHR's *Omnibus Rules* that refer to economic, social and cultural rights. However, the CHR derives its power and authority from Article XIII, Section 18 of the Constitution, and not from any administrative or procedural rules such as the CHR's own *Omnibus Rules*. Moreover, and in accordance with Article XIII, Section 19 of the Constitution, *only* Congress can extend the authority of the CHR to investigate human rights other than those referred to in the Constitution (*i.e.,* civil and political rights). Congress has adopted no such law to date. Accordingly, any attempt to supplant Congress' constitutional power and unilaterally expand CHR's jurisdiction to social and economic rights through the CHR's *Omnibus Rules* is necessarily *ultra vires* and unconstitutional. The provisions of the *Omnibus Rules* referring to economic, social and cultural rights are therefore void and cannot form a basis for jurisdiction.

Second, as a matter of public international law, the Philippines has no jurisdiction to apply and/or enforce human rights obligations outside the territory of the State. States may exercise jurisdiction over its own territory; a corollary of this the principle of territoriality is that States cannot exercise jurisdiction over activities on the territory of *another* State absent a specific rule – this is also a reflection of the international law principles of State sovereignty and independence. In the context of international human rights obligations, extra-territorial application of human rights obligations is limited to *exceptional* circumstances, such as for example, where the State exercises "effective control" over the territory of another. Accordingly, any

---

[9] At p. 719 of *RCC No. 66* (**Annex "1"** hereof).

attempt by the CHR to apply the Philippines' human rights norms extraterritorially to actions of foreign corporations on the territory of another State without legal basis will amount to an incursion of the sovereignty and independence of that other State.

Moreover, to the extent that the Petitioners invite the CHR to opine on the international responsibility of other States, this would amount to a manifest breach of State sovereignty, immunity and independence.

The Petitioners, acknowledging the lack of any proper basis for the CHR's jurisdiction, speculatively attempt to argue that the State may extend its jurisdiction to activities alleged to have occurred outside the Philippines by reference to two (2) non-binding documents: the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights* ("*Maastricht Principles*"), a document produced by international law academics, and the *United Nations ("UN") Guiding Principles on Business and Human Rights* ("*Guiding Principles*"), issued by the UN Special Representative on Business and Human Rights. The Petitioners' attempts to rely on these instruments to extend the jurisdiction of the CHR (on an implied basis) must necessarily fail because they are not legally binding, and these Principles, in fact, affirm and acknowledge that social and economic rights are directed at States and *not* at private parties.

It follows that the CHR has no jurisdiction to investigate the acts of private parties occurring outside the territory of the Philippines. For these reasons, the *Petition* must be dismissed for lack of jurisdiction.

Third, the CHR has no personal jurisdiction over either SCPL or RDS. SCPL, a foreign entity established under the laws of England, was not named as a respondent in the *Petition* and, in any event, the attempted service of the *Order* dated 21 July 2016 upon SCPL was defective and is, therefore, invalid.

In addition, RDS is a foreign corporation incorporated under the laws of England and headquartered in the Netherlands. It is not registered in the Philippines nor does it do business in the Philippines. Philippines courts – and therefore, by analogy the CHR - have no personal jurisdiction over foreign corporations that have no presence (that is to say, that are not registered or do not transact business) in the Philippines. Moreover, the purported service of the *Order* dated 21 July 2016 was, in any event, defective and, therefore, invalid.

On the basis of all of the above, it is manifestly clear that the CHR has neither subject matter nor personal jurisdiction to consider this *Petition.* Moreover, if CHR was to extend beyond its jurisdictional remit over claims against *foreign* corporations in relation to activities alleged to have taken place *outside* the territory of the Philippines, the CHR would effectively encroach on the sovereignty and independence of other sovereign nations, in breach of the Philippines' own obligations under international law.

ARGUMENTS

I. FIRST, THE CHR DOES NOT HAVE JURISDICTION OVER THE *PETITION* FILED BY THE PETITIONERS CONSIDERING THAT:

A. THE JURISDICTION OF THE CHR IS EXPRESSLY LIMITED TO THE INVESTIGATION OF VIOLATIONS OF CIVIL AND POLITICAL RIGHTS, AS RECOGNIZED BY THE SUPREME COURT OF THE PHILIPPINES.

B. THE CONSTITUTION'S DRAFTING HISTORY CONFIRMS THE CONSTITUTIONAL COMMISSION'S INTENTION THAT THE CHR'S MANDATE BE CONFINED TO CONSIDERATION OF THE MOST SERIOUS VIOLATIONS OF CIVIL AND POLITICAL RIGHTS.

C. THE ALLEGED HUMAN RIGHTS VIOLATIONS CITED IN THE *PETITION* DO NOT CONCERN CIVIL AND POLITICAL RIGHTS; PETITIONERS THEMSELVES ADMIT THAT THEY ALLEGEDLY RELATE TO ENVIRONMENTAL, SOCIAL, AND ECONOMIC RIGHTS, WHICH ARE OUTSIDE THE JURISDICTION OF THE CHR.

D. IN ACCORDANCE WITH THE CONSTITUTION, ONLY CONGRESS CAN EXPAND THE CHR'S JURISDICTION TO THE INVESTIGATION OF ALLEGED VIOLATIONS OF OTHER HUMAN RIGHTS; CONGRESS HAS NOT ENACTED ANY LAW EXTENDING THE CHR'S JURISDICTION IN SUCH A MANNER.

E. **THE CHR'S UNILATERAL ATTEMPT TO EXTEND ITS OWN JURISDICTION BY MEANS OF ITS RULES OF PROCEDURE IS, ACCORDINGLY, INVALID AND UNCONSTITUTIONAL.**

F. **THE CHR HAS NO JURISDICTION TO INVESTIGATE ACTS OF PRIVATE PARTIES COMMITTED OUTSIDE THE TERRITORY OF THE PHILIPPINES.**

1. **THE PHILIPPINES' PRESCRIPTIVE, ADJUDICATIVE AND ENFORCEMENT JURISDICTION OVER HUMAN RIGHTS VIOLATIONS IS LIMITED TO THE TERRITORY OF THE PHILIPPINES.**

2. **THERE IS NO SPECIFIC LEGAL BASIS IN INTERNATIONAL LAW PERMITTING THE PHILIPPINES TO EXTEND THE APPLICATION OF ITS HUMAN RIGHTS OBLIGATIONS TO THE TERRITORIES OF OTHER STATES.**

3. **THE EXERCISE OF EXTRA-TERRITORIAL JURISDICTION OVER HUMAN RIGHTS OBLIGATIONS, AS URGED BY THE PETITIONERS, WOULD IMPERMISSIBLY ENCROACH ON THE TERRITORIAL JURISDICTION AND SOVEREIGNTY OF OTHER STATES.**

4. **THE *MAASTRICHT PRINCIPLES* AND *GUIDING PRINCIPLES*, INVOKED BY THE PETITIONERS, DO NOT PROVIDE A PROPER LEGAL BASIS FOR THE CHR'S PURPORTED EXTENSION OF ITS JURISDICTION OVER THE RESPONDENTS.**

II. **SECOND, THE CHR DOES NOT HAVE PERSONAL JURISDICTION OVER SCPL AND RDS CONSIDERING THAT:**

A. **SCPL IS NOT EVEN NAMED IN THE *PETITION* AS A RESPONDENT; HENCE, THERE IS ABSOLUTELY NO BASIS FOR ITS INCLUSION IN THE INSTANT CASE.**

1. **THE SERVICE OF THE *ORDER* DATED 21 JULY 2016 UPON SCPL WAS IMPROPER AND, THUS, INVALID. HENCE, THE CHR DID NOT ACQUIRE JURISDICTION OVER SCPL.**

B. RDS IS A FOREIGN CORPORATION NOT REGISTERED NOR DOING BUSINESS IN THE PHILIPPINES; HENCE, THE CHR CANNOT ACQUIRE PERSONAL JURISDICTION OVER THE FORMER.

1. **IN ANY EVENT, THE SERVICE OF THE *ORDER* DATED 21 JULY 2016 UPON RDS WAS IMPROPER AND INVALID. HENCE, THE CHR DID NOT ACQUIRE JURISDICTION OVER RDS.**

DISCUSSION

I. The CHR Does Not Have Jurisdiction Over The *Petition* Filed By The Petitioners Considering That:

A. The Jurisdiction Of The CHR Is Expressly Limited To The Investigation Of Violations Of Civil And Political Rights, As Recognized By The Supreme Court Of The Philippines.

Article XIII, Section 18(1) of the Constitution specifically defines and limits the scope of the CHR's investigative powers to violations of **civil and political rights**:

> "Section 18. **The Commission on Human Rights shall have the following powers and functions**:
>
> (1) Investigate, on its own or on complaint by any party, **all forms of human rights violations involving civil and political rights**" (Emphasis and underscoring supplied.)

Article XIII, Section 18 lists the powers and functions of the CHR, which include "monitor[ing] the Philippine Governments' compliance with international treaty obligations on human rights".

Likewise, Executive Order No. 163 entitled, "*Declaring the Effectivity of the Creation of the Commission on Human Rights As Provided for in the 1987 Constitution, Providing Guidelines for the Operation Thereof, And For Other Purposes*" ("EO No. 163") reiterated that the CHR may investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights.

The extent of CHR's investigatory powers was discussed and cited by the Supreme Court *en banc* in ***Simon, Jr. vs. Commission on Human Rights***, 229 SCRA 117 (1994), where it was held that **CHR's jurisdiction was limited to the most severe form of civil and political violations** and that the Supreme Court *en banc* was therefore not prepared to extend the CHR's jurisdiction to the demolition of market stalls and stores.

B. The Constitution's Drafting History Confirms The Constitutional Commission's Intention That The CHR's Mandate Be Confined To Consideration Of The Most Serious Violations Of Civil And Political Rights.

The drafting history of Article XIII, Section 18 of the Constitution illustrates that it was carefully crafted by the Constitutional Commission to specifically address the violations of civil and political rights that occurred during the era of Martial Law.

In 1986, then President Corazon Aquino ("Aquino") created the Presidential Commission on Human Rights ("PCHR"), which was intended to be a forum for individual complaints of human rights violations.[10] Popularly known as the Diokno Commission due to its chairman Jose W Diokno, the PCHR documented the "widespread human rights abuses allegedly perpetrated by the military"[11] during the Martial Law regime of former President Ferdinand V. Marcos. It was within three (3) years into President

---

[10] A Jetschke, *Human Rights and State Security: Indonesia and the Philippines* (2001) p 171.

[11] MM de Mesa, "Seeing Red in the Philippines: Why Enrile Is Attacking Cory", *The Orlando Sentinal*, (05 November 1986), at http://articles.orlandosentinel.com/1986-11-05/news/0270120266_1_enrile-aquino-government-philippines (last accessed on 12 August 2016).

Aquino's term that the Philippines ratified the International Covenant on Civil and Political Rights ("ICCPR"); the First Optional Protocol of the ICCPR; and the International Convention against Torture and Other Inhuman or Degrading Treatment.[12]

In line with the post-Martial Law administration's commitment to incorporate human rights into domestic law, the Constitutional Commission included among its tasks the "constitutionalization" of the PCHR, as stated by Commissioner Sarmiento in his sponsorship speech on the Proposed *Resolution No. 539*, otherwise known as the "*Resolution to Incorporate in the New Constitution the Provisions on the Commission on Human Rights*" ("*Resolution 539*"):

> "MR. SARMIENTO: [x x x] **My fellow Commissioners, the creation of a Human Rights Commission is a timely innovation in our Constitution. It has come at a time when the recognition of the need to protect and promote human rights is at its height. Fifteen years of abuses of fundamental rights and freedoms have awakened us to the need for a comprehensive program for the promotion, protection and respect for human rights.** Such a program can best be formulated and undertaken by a specialized agency which is independent from the three main branches of government and equipped with the necessary powers and functions to carry out its programs. Moreover, a Commission on Human Rights falls squarely into the list of priorities of the present government and dovetails with the commission's innovative work on human rights. [x x x]"[13] (Emphasis supplied.)

That the creation of the CHR was rooted in the Filipinos' experiences of human rights violations is made more evident in the following exchange among Commissioners De Castro, Sarmiento and Garcia as regards the necessity of including the CHR in the new Constitution:

> "MR. DE CASTRO: The more basic question I have in my mind is: Why constitutionalize the Human Rights Commission? Will it not be better if they work under the executive?

---

12 Jetschke, fn 10, p 171.

13 At p. 711 of *RCC No. 66* (**Annex "1"** hereof).

MR. SARMIENTO: As I have stated in my sponsorship speech, there is a need for a specialized body to handle human rights violations. **During martial law, we had many cases of human rights violations. Even until now, we have cases of salvaging, disappearances, hamletting which are committed all throughout the country. So, because of the massiveness of these human rights violations, I think there should be a body that will conduct the investigation and set appropriate actions to stop the commission of these human rights violations.**

MR. DE CASTRO: Cannot the executive, even without constitutionalizing this body, choose the right people with the necessary expertise to conduct the necessary investigation all over the Philippines?

MR. GARCIA: Precisely, one of the reasons why it is important for this body to be constitutionalized is the fact that regardless of who is the President or who holds the executive power, the human rights issue is of such importance that it should be safeguarded and it should be independent of political parties or powers that are actually holding the reins of government. **Our experience during the martial law period made us realize how precious those rights are and, therefore, these must be safeguarded at all times."**[14] (Emphasis supplied.)

In view of the specific purpose for the creation of the CHR, borne from the historical antecedents of the country, the jurisdiction of the CHR was clearly delineated by the framers of the Constitution:

"MR. GARCIA: **This commission has a very precise task.** Its international instruments would be the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the recently concluded Declaration of Torture of 1985. **The commission has a very specific function which is the protection of civil and political rights. Due to the experience of 14 years of martial rule, we want to ensure that hereafter human rights in this country**

---

[14] At p. 717 of *RCC No. 66* (**Annex "1"** hereof).

are not violated and, therefore, provide this very specific body with the function to ensure the safeguarding of these rights."[15] (Emphasis and underscoring supplied.)

At its inception, the draft constitutional text initially proposed that the CHR may investigate "all forms of human rights violations" without limitation, as shown by the text of *Resolution 539*:

> "Section 2. The Commission on Human Rights shall have the following powers and functions:
>
> (1) Investigate all forms of human rights violations committed by public officers, civilian and military authorities, or by private parties."

However, this draft text was not adopted. During the deliberations of the Constitutional Commission, it was made evident that this would be too broad a scope for the CHR, and that it was necessary that the CHR's task should pertain to civil and political rights; otherwise, the effectivity of the CHR would be curtailed:

> "MR. BENGZON: Section 2(1) states 'Investigate all forms of human rights violations,' and line 22 includes the phrase 'private parties.' Is the intention to include the maltreatment of children?
>
> MR. SARMIENTO: That is possible.
>
> MR. BENGZON: No. I am not talking of possibilities. I am talking whether or not it is the intent of the committee. For example, a parent who maltreats his child, would that case be covered by this provision?
>
> MR. SARMIENTO: **What we had in mind when we formulated Section 2(1) are violations of civil and political rights. My understanding is that maltreatment of children does not fall within the concept of civil and political rights; so maybe an appropriate government agency can handle this problem.**

---

[15] At p. 719 of *RCC No. 66* (**Annex "1"** hereof).

MR. BENGZON: That is my difficulty because I think there is a hairline distinction. I would like to give the Commissioner another example. Let us take, for example, a lady who was detained as a prisoner and then was molested. Here, a crime against chastity was committed upon her. Who would have jurisdiction over that case?

MR. SARMIENTO: I think that will be covered by the Commission on Human Rights because here we have a detainee whose rights have been violated because she has been molested.

x x x

MR. GARCIA: I would simply like to make a clarification on that point. Although maltreatment or the crimes that the Commissioner mentioned may fall within the province of this commission, **the primacy of its task must be made clear in view of the importance of human rights and also because civil and political rights have been determined by many international covenants and human rights legislations in the Philippines, as well as the Constitution, specifically the Bill of Rights and subsequent legislation. Otherwise, if we cover such a wide territory in area, we might diffuse its impact and the precise nature of its task, hence, its effectivity would also be curtailed.**

So, it is important to delineate the parameters of its task so that the commission can be most effective."[16] (Emphasis and underscoring supplied.)

Further exchanges between the Commissioners also highlighted the Constitutional Commission's intent in defining the scope of "civil and political rights" and differentiating it from other rights such as social, cultural, and economic rights:

"MR. BENGZON: That is precisely my difficulty because civil and political rights are very broad. The Article on the Bill of Rights covers civil and political rights. Every single right of an individual involves his civil right or his political right. So, where do we draw the line?

---

[16] At pp. 721-722 of *RCC No. 66* (**Annex "1"** hereof).

MR. GARCIA: **Actually, these civil and political rights have been made clear in the language of human rights advocates, as well as in the Universal Declaration of Human Rights which addresses a number of articles on the right to life, the right against torture, the right to fair and public hearing, and so on. These are very specific rights that are considered enshrined in many international documents and legal instruments as constituting civil and political rights, and these are precisely what we want to defend here.**

MR. BENGZON: **So, would the Commissioner say civil and political rights as defined in the Universal Declaration of Human Rights?**

MR. GARCIA: **Yes, and as I have mentioned, the International Covenant of Civil and Political Rights distinguished this right against torture.**

MR. BENGZON: **So as to distinguish this from the other rights that we have?**

MR. GARCIA: **Yes, because the other rights will encompass social and economic rights, and there are other violations of rights of citizens which can be addressed to the proper courts and authorities.**"[17] (Emphasis and underscoring supplied.)

The Constitutional Commission also made it clear that the CHR had no power to define its own functions and take cognizance of cases outside its jurisdiction of civil and political rights:

"MR. BENGZON: **So, we will authorize the commission to define its functions, and, therefore, in doing that the commission will be authorized to take under its wings cases which perhaps heretofore or at this moment are under the jurisdiction of the ordinary investigative and prosecutorial agencies of the government. Am I correct?**

---

[17] At p. 722 of *RCC No. 66* (**Annex "1"** hereof).

MR. GARCIA: **No. We have already mentioned earlier that we would like to define the specific parameters which cover civil and political rights as covered by the international standards governing the behavior of governments regarding the particular political and civil rights of citizens, especially of political detainees or prisoners. This particular aspect we have experienced during martial law which we would now like to safeguard.**

MR. BENGZON: Then, I go back to that question that I had. Therefore, what we are really trying to say is, perhaps, at the proper time we could specify all those rights stated in the Universal Declaration of Human Rights and defined as human rights. Those are the rights that we envision here?

MR. GARCIA: Yes. In fact, they are also enshrined in the Bill of Rights of our Constitution. They are integral parts of that.

MR. BENGZON: Therefore, is the Gentleman saying that all the rights under the Bill of Rights covered by human rights?

MR. GARCIA: **No, only those that pertain to civil and political rights**."[18] (Emphasis and underscoring supplied.)

That the CHR should give primacy to violations of civil and political rights was later repeated by Commissioner Sarmiento, following an observation that the Universal Declaration of Human Rights also included an enumeration of economic, social, and cultural rights:

"MR. SARMIENTO: May I just comment on the statements made by Commissioner Tingson? **In the Universal Declaration of Human Rights, we have an enumeration of economic, social and cultural rights. Violations of these rights will not be within the domain of the Commission on Human Rights. As we stated a while ago, this commission will give primacy to violations of civil and political rights.**"[19] (Emphasis and underscoring supplied.)

---

[18] At p. 723 of *RCC No. 66* (**Annex "1"** hereof).

[19] At p. 725 of *RCC No. 66* (**Annex "1"** hereof).

In a later exchange, conceding the broadness of the term "human rights", Commissioner Sarmiento again repeated that the CHR will give primacy to civil and political rights:

> "MR. ROMULO: Just by way of comment, like the others, I am bothered only by the possible multiplicity of overlapping jurisdiction because of the broadness of the term 'human rights.' But the others have commented on that, and I hope we can find a remedy for it.
>
> MR. SARMIENTO: That is why I think the apprehensions will be eliminated if we state that **we will give primacy to civil and political rights, not economic, social and cultural rights. That is to limit the functions of this Commission on Human Rights**."[20] (Emphasis and underscoring supplied.)

Precisely because of the amorphousness of the term "human rights", the Constitutional Commission, through Commissioner Regalado, directly confronted the question of the extent of the CHR's jurisdiction:

> "MR. REGALADO: [x x x] Actually, when we go into the actual application of this article, divorced from its present ephemeral status, we will have that problem: When do we invoke the jurisdiction of the Human Rights Commission? Unless there is a specification as to the cases that fall within their jurisdiction and, even if not exclusion, but at least something which may either be within their primary or secondary jurisdiction so that the party may know where to go, would the committee want it to be defined and enumerated or determined by the commission itself or would it give Congress a chance to say what are those cases which should fall within the jurisdiction of the Human Rights Commission?"[21]

To this, Commissioner Sarmiento conceded that there would need to be an enabling law to determine the specific offenses covered by the CHR:

---

[20] At p. 727 of *RCC No. 66* (**Annex "1"** hereof).

[21] At p. 730 of *RCC No. 66* (**Annex "1"** hereof).

"MR. SARMIENTO: I think it will be for the enabling law to define exactly what are these specific offenses that will be covered by the Commission on Human Rights."[22]

Notably, the delimitation of the jurisdiction of the CHR over violations of civil and political rights was also motivated by another aspect of the Martial Law Regime - the disambiguation of the term human rights as it pertains to the CHR's purpose and jurisdiction:

"MR. RAMA: In connection with the discussion on the scope of human rights, I would like to state that in the past regime, **everytime we invoke the violation of human rights, the Marcos regime came out with the defense that, as a matter of fact, they had defended the rights of people to decent living, food, decent housing and a life consistent with human dignity. So, I think we should really limit the definition of human rights to political rights. Is that the sense of the committee, so as not to confuse the issue?**

MR. SARMIENTO: **Yes, Madam President.**"[23] (Emphasis supplied.)

Commissioner Garcia also stated that the CHR would be more effective if it focused on six specific areas of civil and political rights:

"MR. GARCIA: I would like to continue and respond also to repeated points raised by the previous speaker.

There are actually six areas where this Commission on Human Rights could act effectively: 1) protection of rights of political detainees; 2) treatment of prisoners and the prevention of tortures; 3) fair and public trials; 4) cases of disappearances; 5) salvagings and hamletting; and 6) other crimes committed against the religious.

x x x

But what we are trying to say in this proposed article on the Commission on Human Rights is that there is also a certain set of problems regarding political detention, arrests, torture,

---

22 At p. 730 of *RCC No. 66* (**Annex "1"** hereof).

23 At p. 731 of *RCC No. 66* (**Annex "1"** hereof).

disappearances, salvagings which we have experienced in the past and which we never want to be repeated. These are a certain set of rights which are very limited, I agree. They do not even touch, as I understand, on the root causes of the problem. But, nevertheless, they are a problem that will remain with us and with many Third World countries. And one of the major reasons why they are often not defended is that people are not aware of the extent and nature of their rights. And, therefore, one of the major advances that we can have in this country is to have a commission which will not only try to cure the effects later on, but also to prevent these by creating or forming consciences with a human rights dimension which is specific and limited in order to make it effective."[24] (Emphasis supplied.)

Commissioner Sarmiento further stated that while there may be other forms of human rights violations, the power or coverage of the CHR as defined and intended was not an attempt to cover all forms of human rights violations:

"MR. SARMIENTO: As Commissioner Maambong said, **the power or the coverage of the Commission on Human Rights is very limiting**. It is, Madam President. **As mentioned by Commissioner Garcia, it is a modest attempt to solve the human rights problems in our country. It is not an attempt to cover all forms of human rights violations.**"[25] (Emphasis and underscoring supplied.)

Thus, for example, as regards the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), the deliberations of the Constitutional Commission show that the CHR was not tasked to investigate violations of the same:

"MR. GARCIA: But **it does not mean that we will refer to each and every specific article therein, but only to those that pertain to the civil and political rights that are politically related**, as we understand it in this Commission on Human Rights.

---

[24] At pp. 731-732 of *RCC No. 66* (**Annex "1"** hereof).

[25] At p. 733 of *RCC No. 66* (**Annex "1"** hereof).

MR. GUINGONA: Madam President, I am not even clear as to the distinction between civil and social rights.

MR. GARCIA: There are two international covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The second covenant contains all the different rights—the rights of labor to organize, the right to education, housing, shelter, et cetera.

MR. GUINGONA: **So, we are just limiting at the moment the sense of the committee to those that the Gentleman has specified.**

MR. GARCIA: **Yes, to civil and political rights.**"[26] (Emphasis and underscoring supplied.)

The distinction between civil and political rights on the one hand and economic, social and cultural rights on the other hand is well understood in human rights law.[27] The latter are so-called "second generation" rights and most States take the view that these are not really rights as they are not justiciable.[28] Moreover these "second generation rights" are not solely concerned with the abuse of governmental power but also how the States' resources are spent which gives rise to different legal questions and considerations. This distinction is illustrated in many human rights instruments. For example, as the Constitutional Commission noted above, the UN has two distinct covenants, one for civil and political rights and one for economic, social and cultural rights.

It is clear, therefore, that the CHR's jurisdiction, as stated in the Constitution, is limited to violations of civil and political rights.

While Commissioner Monsod recognized "human rights" as a very broad concept, he reiterated that the CHR should have modest objectives since they would rather not have it dilute its efforts when there were real and concrete problems involving civil and political rights to be addressed:

---

[26] At p. 739 of *RCC No. 66* (**Annex "1"** hereof).

[27] *See* e.g., Vinodh Jaichand "*An Introduction to Economic, Social and Cultural Rights*" (2010), pp. 45-55.

[28] *Ibid*.

"MR. MONSOD: No. We would like it to be a constitutional creation because we could feel the problems of human rights particularly in the next few years. **We foresee in the foreseeable future that we will have more problems of human rights, even in the narrow sense of the political and civil rights**. But we also foresee that over time as we become more developed, as our institutions function normally, **the scope of this commission, since it is a constitutional body, can be enlarged to include social and economic rights. It can include the concepts proposed by Commissioner Rosario Braid in looking into the causes of the violations of human rights, both in their narrow and broad sense**s. Therefore, it has a place in the Constitution because the horizon for its functions is well beyond the immediate problems.

MR. MAAMBONG: In other words, the Commissioner is saying that it will not become *functus officio* at all. It will be a continuing body, regardless of whether it has performed its function in the field of human rights, as far as the individual, political and civil rights are concerned.

MR. MONSOD: Yes, and **it can expand its scope as the need and circumstances arise because human rights is a very broad concept. The only reason we are limiting this concept now and trying for very modest objectives at this time is because we do not like the committee to dilute its efforts at this time when there are very real and concrete problems that have to be addressed**."[29] (Emphasis and underscoring supplied.)

In view of the foregoing deliberations, the Constitutional Commission revised Section 2(1) of *Resolution 539* to state: "Investigate all forms of human rights violations **involving civil and political rights**."

The framers of the Constitution thus intended that the jurisdiction of the proposed CHR would be limited to the more severe cases of human rights violations involving civil and political rights as defined and enumerated in the Bill of Rights, ICCPR (excluding violations of social, economic and cultural rights),[30] and the Convention Against Torture of 1985.

---

[29] At pp. 743-744 of the *Records of the Constitutional Commission, Vol. 3, No. 67* ("*RCC No. 67*"), a copy of which is attached as **Annex "2"**.

[30] *See* pp. 733, 7738-739 of *RCC No. 66* (**Annex "1"** hereof).

It is therefore abundantly clear from the drafting history of Article XIII of the Constitution that the jurisdiction and authority of the CHR was designed to be limited to investigations relating to violations of civil and political rights.

C. The Alleged Human Rights Violations Cited In The *Petition* Do Not Concern Civil And Political Rights; Petitioners Themselves Admit That They Allegedly Relate To Environmental, Social, And Economic Rights, Which Are Outside The Jurisdiction Of The CHR.

The CHR's jurisdiction is carefully limited by the Constitution, the Supreme Court and the drafting history described above to civil and political rights. This should end CHR's consideration of the *Petition*, because the Petitioners admitted that the environmental rights they seek to invoke are not civil and political rights.

In fact, the Petitioners admitted in their *Petition* that "***the adjunct rights to health and to a balanced and healthful ecology, known collectively as environmental rights, are not listed under the Bill of Rights***."[31] As such, the instant *Petition* is clearly outside the jurisdiction of the CHR.

Notably, even the Supreme Court in ***Oposa v Factoran***, 224 SCRA 782 (1993), the very case relied upon by the Petitioners (albeit erroneously) to justify the CHR's jurisdiction, ruled that the right to a balanced and healthful ecology is *not* included within the Bill of Rights and that such a right belong to a different category of rights from those covered by the Bill of Rights:

> "While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and

[31] *Petition*, fn 3, p 10.

self-perpetuation — aptly and fittingly stressed by the Petitioners — the advancement of which may even be said to predate all governments and constitutions."

Thus, having effectively conceded that the environmental rights they invoked in this case are not in the nature of civil or political rights, the Petitioners instead expressly anchored their *Petition* on the supposed jurisdiction of the CHR to investigate and monitor all economic, social, and cultural rights violations under Section 2, Rule 2 of the latter's *Omnibus Rules*.[32]

As is now clear, the CHR's jurisdiction derives from the terms of the Constitution alone and not the CHR's *Omnibus Rules*. As will be discussed further in the next two sections, it cannot be denied that administrative issuances of the CHR, like the *Omnibus Rules*, cannot supplant or amend the provisions of Article XIII, Section 18(1) of the Constitution. Only Congress has the constitutional power to extend the jurisdiction of the CHR (Section I.D). To the extent that the *Omnibus Rules* purport to unilaterally extend the jurisdiction of the CHR to rights other than civil and political rights without an act of Congress, those *Rules* are *ultra vires* and unconstitutional, and therefore void (Section I.E). Besides, the right to environment or a balanced and healthful ecology is not even expressly identified as an economic, social, or cultural right in the CHR's *Omnibus Rules*.

---

[32] *Ibid*, pp 11–12, Petitioner Greenpeace alleged:

"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*:

> 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, 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 (sic) 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 marginalised, disadvantaged, and vulnerable."

D. In Accordance With The Constitution, Only Congress Can Expand The CHR's Jurisdiction To The Investigation Of The Alleged Violations Of Other Human Rights; Congress Has Not Enacted Any Law Extending The CHR's Jurisdiction In Such A Manner.

Pursuant to Article XIII, Section 19 of the Constitution, only Congress may expand the jurisdiction of the CHR beyond the context of civil and political rights to the investigation of violations of other human rights through the enactment of a law. To date, however, Congress has not passed any laws expanding the investigatory powers of the CHR to economic, social and cultural rights or the right to a balanced and healthful ecology. Article XIII, Section 19 provides:

> "**The Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission**, taking into account its recommendations." (Emphasis supplied.)

It is clear from the foregoing that absent an enabling law, the CHR cannot expand its jurisdiction. Its investigative jurisdiction is necessarily limited by Article XIII, Section 18(1) of the Constitution limiting its jurisdiction to civil and political rights. Moreover, the canon of interpretation ***expressio unius est exclusion alterius***—what is expressed puts an end to what is implied or the explicit mention of one thing in a statute means the elimination of others not specifically mentioned—dictates that there is no other legal basis to expand the authority of the CHR.[33]

Critically, no law has been passed to date by Congress expanding the jurisdiction of the CHR to investigate violations outside civil and political rights, let alone extending the CHR's jurisdiction to the "right to a healthy environment" which the Petitioners admit is not even covered by the Bill of Rights.

---

[33] ***Re: Vicente S.E. Veloso***, A.M. No. 12-8-07-CA (16 June 2015); ***ABS-CBN Broadcasting Corporation v World Interactive Network Systems Japan Co Ltd***, 544 SCRA 308 (2008); ***Philippine American Life Insurance Co vs. Arnaldo***, 224 SCRA 599 (1994).

To date, Congress has enacted the following laws in relation to the CHR, but not involving any expansion of the CHR's investigative jurisdiction to the rights to health and to a balanced and healthful ecology:

a. Inclusion of the CHR in the Juvenile Justice and Welfare Council;[34]

b. Inclusion of the Chairperson of the CHR as a member of the Inter-Agency Council Against Child Pornography;[35]

c. Designation of the CHR as the Gender and Development Ombudsman;[36] and

d. Attaching the Human Rights Victims' Claims Board to the CHR but not under it.[37]

In fact, Congress has expressly acknowledged, in recent legislative acts, that the CHR's jurisdiction is confined to violations of civil and political rights. This is evident in Republic Act ("R.A.") No. 9372, otherwise known as the *Human Security Act*, which states that the CHR's role was to "give highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation [of R.A. No. 9372]".[38]

Notably, the CHR was not included among the governmental agencies composing the advisory board of the Climate Change Commission,[39] the government agency tasked to, in coordination with the Department of Foreign Affairs, among others, formulate the official Philippine positions on climate change negotiation issues and decision areas in the international arena.[40] This further reflects the fact that Congress does not consider the CHR to have any jurisdiction over environmental, climate change, or socio-economic matters.

This rationale for the adoption of Section 19 is also illustrated in the drafting history of the provision, as discussed during the Constitutional Convention:

---

34 R.A. No. 10630, Section 4.
35 R.A. No. 9775, Section 20.
36 R.A. No. 9710, Section 39.
37 R.A. No. 10368, Section 8.
38 R.A. No. 9372, Section 55.
39 R.A. No. 9729 as amended by R.A. No. 10174, Section 5.
40 R.A. No. 9729 as amended by R.A. No. 10174, Section 9.

"MR. NOLLEDO: **In that case, we can add to the last part of the section the phrase 'UNTIL OTHERWISE PROVIDED BY CONGRESS.' So, we will give to the commission the initial duty to define its jurisdiction, taking into account the Bill of Rights and the convention mentioned by Commissioner Bengzon, after which we add the phrase 'UNTIL OTHERWISE PROVIDED BY CONGRESS.' Ultimately, it will be Congress that will determine the extent of the jurisdiction of the Commission on Human Rights.**

x x x

FR. BERNAS: I am a little uncomfortable with the idea of allowing the commission to fix its jurisdiction. **Fixing jurisdiction is a function either of the Constitution itself or of the legislative body, not even courts fix their own jurisdictions. It is either the Constitution or the legislature that does this. So, it would seem to me that if we have to talk about jurisdiction at all, we should not leave it to the Human Rights Commission but we either do it ourselves or we leave it to Congress.**

MR. MONSOD: Madam President, just an additional comment. We were going to propose as a complementary provision to this article a section in the Transitory Provisions to the effect that until the Human Rights Commission is established by Congress in accordance with this Constitution, the present Presidential Committee on Human Rights will function as the commission so that it will already have its own terms of reference. **Then Congress may expand, delineate or add to these functions.**"[41] (Emphasis and underscoring supplied.)

Section 19 was also adopted against the backdrop of a need to limit the overall jurisdiction of the CHR to the most serious civil and political rights:

"MR. MONSOD: **I think the jurisdiction of the Commission on Human Rights is quite clear – that all violations of human rights involving civil and political rights**

---

41 At p. 763 of RCC No. 67 (Annex "J" hereof).

are now within the jurisdiction of the Commission of Human Rights, and one of the issues that was precisely raised by Commissioner Bengzon at that time was that we should try to eliminate overlaps in government offices. Therefore, with this amendment and in consonance with the representation at that time of Commissioner Regalado, this is now taken out of the area of the Ombudsman and placed under the Commission on Human Rights.

MR. MAAMBONG: Just one point, Madam President. If we are agreed that violations of civil, political or human rights committed by public officers will be with the Commission on Human Rights, I would assume that there will be practically no cases within the jurisdiction of the Tanodbayan. During my interpellation of the committee, when we talked about civil, political or human rights, the committee was very specific in saying that when we say 'political rights' we are also talking of violations of individual rights, and this will take out practically all the jurisdiction of the Tanodbayan.

MR. MONSOD: No, I believe it was clarified in the interpellations and debates that the area of the Commission on Human Rights is much narrower and there was even an enumeration of those violations mentioned by the panel at that time. We are only trying to take out the overlap here, Madam President. I **agree with the Gentleman that if one were to take human rights in its broadest context, then the Commission on Human Rights will be a super body under our Constitution. However, if the Gentleman were to read the provisions on the Commission on Human Rights, the intent there is to have very modest objectives for the Commission on Human Rights, and only after Congress so provides under Section 3 of the article, on recommendation of the Commission itself, will it expand the area of the coverage of the Commission on Human Rights**."[42] (Emphasis and underscoring supplied.)

From the foregoing deliberations of the Constitutional Commission, it is clear that the intent of the framers of the Constitution was to limit the jurisdiction of the CHR only to the investigation of "all forms of human rights violations **involving civil and political rights**".[43]

---

42 At p. 204 of the *Records of the Constitutional Commission, Vol. 4, No. 73* ("*RCC No. 73*"), a copy of which is attached as **Annex "3"**.

43 Constitution, Article XIII, Section 18(1).

E. The CHR's Unilateral Attempt To Extend Its Own Jurisdiction To Socio-Economic Rights By Means Of Its Rules Of Procedure Is, Accordingly, Invalid And Unconstitutional.

As noted in Section I.C above, the Petitioners, acknowledging that the rights it asserted were environmental rights, including attendant rights excluded from the Bill of Rights, attempted to found the jurisdiction of the CHR on provisions of the CHR's *Omnibus Rules* that refer to economic, social and cultural rights.

In this regard, in addition to the Petitioners' attempted reliance on the general reference to economic, social and cultural rights in Rule 2, Section 2, it should also be noted that Rule 3, Sections 1[44] and 3,[45] purport to extend the CHR's "powers and functions" and "objectives" to the investigation and monitoring of economic, social, and cultural rights violations.[46] Further, Rule 5 of the *Omnibus Rules* outlines the procedure for the investigation of economic, social, and cultural rights violations.

Any attempt by the CHR to unilaterally extend the scope of its jurisdiction through its internal rules of procedure, in the absence of an enabling law of Congress, would be unconstitutional. As will be set out further below, *first,* the jurisdiction of the CHR must be conferred by law, and not merely by administrative policies; *second,* any administrative regulations, like the CHR's rules of procedures, must comply with both the "enabling" law and the provisions of the Constitution; *third,* any administrative regulations that are *ultra vires* or in violation of its enabling law or the Constitution would be void; *finally,* the requirement that administrative regulations comply with superseding or enabling laws is a natural corollary of the rule of law. Accordingly, the above referenced

---

44 Rule 3, Section 1: "*Powers and Functions*: The Commission on Human Rights shall have the following powers and functions: a)To investigate all forms of human rights violations and abuses involving civil and political rights, as well as investigate and monitor economic, social and cultural rights violations, particularly those who are marginalised, disadvantaged and vulnerable." (Underscoring supplied.)

45 Rule 3, Section 3: "*Objectives of Investigation and Monitoring of Economic, Social and Cultural Rights*: The objectives of investigation and monitoring of economic, social and cultural rights violations or situations are: to determine the rights violated by State or non-state actors, including private entities and individuals; to assess the economic, social and cultural rights situation of a particular group or community of persons or sector of society; to determine the basic obligations of the government on the matter; to determine the level of government's compliance with international human rights standards; and to recommend and advice government of the appropriate legislative, administrative, judicial, policy and program measures necessary to fully address the economic, social and cultural rights of the people in the country or any part thereof."

46

provisions of the *Omnibus Rules* of the CHR purporting to extend the jurisdiction of the CHR to social, economic, and cultural rights are *ultra vires* and in breach of the Constitution, law and rulings of the Supreme Court.

First, it is a well-established principle that jurisdiction is conferred by law and not merely by administrative policy.[47] Thus, in ***China Banking Corporation v Members of the Board of Trustees, Home Development***, 307 SCRA 443 (1999), the Supreme Court held that rules and regulations promulgated by administrative agencies should be within the scope of the authority granted by the legislature:

> **"It is well settled that the rules and regulations which are the product of a delegated power to create new or additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency**. Department zeal may not be permitted to outrun the authority conferred by statute." (Emphasis and underscoring supplied.)

Second, in the recent case of ***Department of Agrarian Reform v Carriedo,*** G.R. No. 176549 (20 January 2008), the Supreme Court reiterated that administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. Further, the same shall only be valid when they are not contrary to the laws or the Constitution:

> **"Administrative regulations must be in harmony with the provisions of the law for administrative regulations cannot extend the law or amend a legislative enactment. Administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant or modify the law. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution**. Administrative regulations issued by a Department Head in conformity with law have the force of law. As he exercises the rule-making power by delegation of the lawmaking body, it is a requisite that he should not transcend the bounds demarcated by the statute for the exercise of that power; otherwise, he would be improperly

---

47 [illegible]

exercising legislative power in his own right and not as a surrogate of the lawmaking body." (Emphasis and underscoring supplied.)

In ***Antipolo Realty v National Housing Corporation,*** 153 SCRA 399 (1987), the Supreme Court noted that the quantum of the judicial or quasi-judicial powers that a government agency may exercise is defined in its enabling statute:

> "In general the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. **In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency.**" (Emphasis supplied.)

Thus, while the CHR has been empowered by the Constitution to adopt its own operational guidelines and rules of procedure, such power to promulgate its own rules of procedure must necessarily be in accordance with the powers and functions expressly granted by the Constitution, which is limited to investigations of violations of **civil and political rights**.

In ***Social Justice Society v Dangerous Drugs Board,*** 570 SCRA 410 (2008), the Supreme Court was categorical in holding that all limits imposed by the Constitution must be observed:

> "**It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution. In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.**" (Emphasis and underscoring supplied.)

Third, the Supreme Court in ***Acebedo Optical v Court of Appeals,*** 329 SCRA 314 (2000), held that acts which are clearly beyond the scope of one's authority are *ultra vires*, and thus null and void, and cannot be given any effect:

"It is therefore decisively clear that estoppel cannot apply in this case. The fact that Petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is *ultra vires* or beyond the ambit of authority of respondent City Mayor. ***Ultra vires* acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect.** The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*." (Emphasis supplied.)

In ***Executive Secretary v Southwing Heavy Industries, Inc.***, 482 SCRA 673 (2006), the Supreme Court emphasized that for an administrative issuance to be valid, it must not supplant or modify its enabling statute or any other existing law. Otherwise, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable:

"Taking our bearings from the foregoing discussions, we hold that the importation ban runs afoul the third requisite for a valid administrative order. **To be valid, an administrative issuance must not be *ultra vires* or beyond the limits of the authority conferred. It must not supplant or modify the Constitution, its enabling statute and other existing laws, for such is the sole function of the legislature which the other branches of the government cannot usurp**. As held in ***United BF Homeowner's Association v BF Homes, Inc.***:

> 'The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.'

> The proscription in the importation of used motor vehicles should be operative only outside the Freeport and the inclusion of said zone within the ambit of the prohibition is an invalid modification of RA 7227. **Indeed, when the application of an administrative issuance modifies existing laws or exceeds the intended scope, as in the instant case, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable.**" (Emphasis and underscoring supplied.)

*Finally, t*he Supreme Court in ***Metropolitan Manila Development Authority v Bel-Air Village Association, Inc.,*** 328 SCRA 837 (2000), warned that whatever the intentions of government, it cannot run roughshod over the rule of law:

> "**Not infrequently, the government is tempted to take legal shortcuts solve urgent problems of the people. But even when government is armed with the best of intentions, we cannot allow it to run roughshod over the rule of law.** Again, we let the hammer fall and fall hard on the illegal attempt of the MMDA to open for public use a private road in a private subdivision. While we hold that the general welfare should be promoted, **we stress that it should not be achieved at the expense of the rule of law**." (Emphasis and underscoring supplied.)

Thus, in the same case, the Supreme Court ruled that the Metropolitan Manila Development Authority's good intentions could not justify acting without legal warrant and outside its prescribed jurisdiction, as the "promotion of the general welfare is not antithetical to the preservation of the rule of law."[48]

Based on the foregoing, the provisions in the CHR's *Omnibus Rules* purporting to empower the CHR to investigate human rights violations involving economic, social, and cultural rights are contrary to the express authority granted to it by the Constitution and law, having clearly been issued in a unilateral expansion of its own jurisdiction. As such, these provisions must be deemed *ultra vires* and unconstitutional and, therefore, void. Thus, the claim of the Petitioners that their *Petition* is covered by the CHR's jurisdiction on the ground that its claims allegedly constitute violations of economic, social, and cultural rights must necessarily fail.

---

[48] ***Metropolitan Manila Development Authority v Bel-Air Village Association, Inc.*** *supra*

F. The CHR Has No Jurisdiction To Investigate Acts Of Private Parties Committed Outside The Territory Of The Philippines.

There is no proper legal basis for the CHR to exercise jurisdiction over acts which were committed outside the territory of the Philippines by foreign entities. As will be developed further below, under international law, the primary basis for a State's jurisdiction—whether prescriptive,[49] adjudicative, or enforcement jurisdiction—is territorial.[50] A corollary of the presumption of territoriality is that the courts of one State do not generally have jurisdiction regarding events that occurred in another State.[51] The exercise of extra-territorial jurisdiction by a State is therefore an *exception* to the general principles and can only be undertaken by reference to a specific basis in international law.[52]

With regard to **human rights**, the extra-territorial application of the State's human rights obligations is confined to exceptional situations such as where the State exercises effective control over the territory of another State. However, the Petitioners have failed to point to any exceptional situations that would give rise to such an extra-territorial application.

Accordingly, there is **no specific basis of international law permitting the Philippines or the CHR to extend its prescriptive or enforcement jurisdiction** to the actions of foreign corporations outside the territory of the Philippines. The exercise of human rights jurisdiction over foreign corporations for acts that occurred abroad, urged by the Petitioners, would impermissibly encroach on the territorial jurisdiction and sovereignty of other States.

Indeed, the Petitioners recognize these limitations on the exercise of extraterritorial jurisdiction by the CHR.[53] In order to avoid these universally recognized rules, the Petitioners seek to rely on extraneous documents, including the *Maastricht Principles* and the *UN Guiding Principles,* to argue

---

49 Prescriptive jurisdiction relates to the States power to prescribe or legislate; it has been described as the "power of a state to bring any matter with the cognizance of its national law". See M. Dixon *Textbook on International Law* (5th edn 2005), p.133.

50 J Crawford, *Brownlie's Principles of Public International Law* (8th edn 2012), pp 456–457.

51 M Shaw, *International Law* (CUP 2014), p 456.

52 *See* Crawford, fn 49, p 457.

53 *See*, for e.g., *Petition* at p.49: "In regard to corporations, [the UN Committee on Economic, Social and Cultural Rights] 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]

108 United Nationals 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.

that the Philippines and the CHR should extend its human rights jurisdiction to reach the conduct of foreign corporations operating abroad. However, reliance on these principles is misconceived: as non-binding principles they cannot provide a proper legal basis for the CHR's purported extension of its jurisdiction over private entities not subject to its personal jurisdiction of the Philippines.

Finally, to the extent that the Petitioners' request for relief would require the CHR to opine on the compliance of *other sovereign States* with their obligations under international law, this is clearly beyond the CHR's scope and contrary to fundamental principles of State sovereignty, independence, and comity.

1. The Philippines' Prescriptive, Adjudicative And Enforcement Jurisdiction Over Human Rights Violations Is Limited To The Territory Of The Philippines.

In its broadest sense, the jurisdiction of a State refers to its lawful power to act, including its power to make laws, decisions or rules ("prescriptive jurisdiction"), and to take judicial or executive action in relation to those laws and rules ("enforcement" and "adjudicative" jurisdiction). The notion of a State's prescriptive and enforcement jurisdiction is closely related to the principles of State sovereignty and territoriality:[54]

> "**Jurisdiction is an aspect of sovereignty, it is coextensive with and, indeed, incidental to, but also limited by, the State's sovereignty**. As Lord Macmillan said, 'it is an essential attribute of the sovereignty of this realm, as of all sovereign independent States, that it should possess jurisdiction over all persons and things within its territorial limits and in all cases, civil and criminal, arising within these limits.' **If a State assumed jurisdiction outside the limits of its sovereignty, it would come into conflict with other States which need not suffer any encroachment upon their own sovereignty.** [x x x] Such a system seems to establish a satisfactory regime for the whole world. **It divides the world into compartments within each of which a sovereign State has jurisdiction**. Moreover, the connection between

[54] *See* further the ICJ's discussion in the ***Island of Palmas case*** on State sovereignty, noting that that "Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State". See ***Island of Palmas Case***, The Hague (April 1928), available at http://legal.un.org/riaa/cases/vol_II/829-871.pdf (last accessed on 12 August 2016)

jurisdiction and sovereignty is, up to a point, obvious, inevitable, and almost platitudinous, for to the extent of its sovereignty a State necessarily has jurisdiction."[55] (Emphasis and underscoring supplied.)

The fundamentally territorial basis of jurisdiction was highlighted by the International Court of Justice ("ICJ") in the seminal **S.S "Lotus" case**:

> "[T]he first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—**it may not exercise its power in any form in the territory of another State**. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention."[56] (Emphasis supplied.)

Accordingly, the principle of territoriality is widely recognized as the primary basis for jurisdiction in international law.[57] As noted by Professor Lowe,

---

55 FA Mann, "The Doctrine of Jurisdiction in International Law" (1964-I) 111 Recueil des Cours 1, p 30, as *cited* in Buxbaum, Hannah, "Territory, Territoriality, and the Resolution of Jurisdictional Conflict" (2009) The American Journal of Comparative Law, at http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1132&context=facpub (last accessed on 13 August 2016), p 632

56 ***S.S. Lotus case*** Publications of the ICJ Series A.-No. 10, 1927, 7 September 1927, pp 18–19. The *Lotus* case firmly established the relationship between jurisdiction, sovereignty and territory. To the extent that the *Lotus* case also observed a broader power of prescriptive jurisdiction, *i.e.* permissive jurisdiction *save* to the extent that it is not prohibited by a contrary rule of international law, this "broader" *Lotus* principle was not followed by the ICJ in subsequent cases such as ***Nottebohm Case*** (second phase), 6 April 1955, ICJ Reports 1955; ***Fisheries Case (United Kingdom v. Norway),*** 18 December 1951, ICJ Reports 1951, pp. 131-134; ***Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)***, 14 February 2002, ICJ Reports 2002, Joint separate opinion of Judges Higgins, Kooijmans and Buergenthal and Dissenting Opinion of Judge van den Wyngaert, leading the prominent international law commentators to conclude that today, the "emphasis [on permissive jurisdiction absent a prohibitory rule] lies the other way around not least due to the rise of international human rights law." In M. Shaw *International Law* (CUP, 2014), p. 477 [Emphasis supplied].

57 *See* e.g. A Mills, "Rethinking Jurisdiction in International Law", *British Yearbook of International Law* (2014), p 197: "[T]erritoriality particularly dominates in the context of jurisdiction to enforce, where it is normally considered to be the exclusive basis for jurisdiction in the absence of special consensual arrangements. In the context of jurisdiction to prescribe or adjudicate, territoriality is supplemented by other bases of jurisdiction (including as discussed below), but the dominant way in which State authority is defined and justified, that is, by which the division of international regulatory authority is organised, is by reference to territorial criteria. The idea that territoriality should be the main basis of jurisdiction is often reflected in a domestic legal presumption against the extraterritorial application of legislation, rearticulated by the US Supreme Court in ***Morrison v National Australia Bank*** (2010) 36, although a broader presumption against 'extra-jurisdictionality' (presuming that the reach of domestic legislation comports with international law limits) is also sometimes applied."; A Kaczorowska-Ireland, *Public International Law* (2015), p 358: "The principle of territoriality is universally recognised and raises no controversy. It is a manifestation of State sovereignty, and the most common basis of jurisdiction. [x x x] The essence of the territoriality principle is that every State has jurisdiction over crimes committed in its own territory. Normally, the application of the principle will be straightforward. An individual, present within a State, committing a crime in that State, will be

"the most obvious basis upon which a State exercises its jurisdiction is the territorial principle, that is, the principle by virtue of its sovereignty over its territory the State has the right to legislate for all persons within its territory."[58]

Similarly, Professor Schachter stated in his *Hague Lectures* on the jurisdiction of states that:

"It had long been accepted that a State was entitled to apply its legislative (or prescriptive) authority to events and persons within its territory and to its nationals outside of the country.' 'Territoriality' and 'nationality' were referred to as 'bases' of jurisdiction and functioned as criteria of permissible authority. Territoriality is generally considered the normal basis of jurisdiction [x x x]."[59]

Professor Ryngaert has also observed that:

"A State's jurisdictional assertions that pertain to acts carried out *in its territory* are in principle lawful, while assertions that pertain to acts done *outside its territory* are suspect, and even presumptively unlawful. This emphasis on territoriality is a reflection of the persistent Westphalian bent of the international legal order: a system of territorially delimited nation-States that have full and exclusive sovereignty over their own territory, and no sovereignty over other States' territory."[60]

Specifically, with regard to *enforcement* jurisdiction, such as that exercised by the CHR, the jurisdiction of a State over its own territory is necessarily exclusive and absolute.[61] Any derogation from this rule must be

---

58 V Lowe, *International Law* (2007), p 475.

59 O Schachter, "The jurisdiction of States", in *Collected Courses of the Hague Academy of International Law* (1982), p 245.

60 C Ryngaert, "The Concept of Jurisdiction in International Law", in Alexander Orakhelashvili, *Research Handbook on Jurisdiction and Immunities in International Law (Research Handbooks in International Law Series*(2015), p 2.

61 Note that adjudicative jurisdiction will, to the extent that it amounts to a final determination of the rights of an individual by the conviction, sentencing or punishment of the defendant, will amount to

premised on the consent of the State itself.[62] Accordingly, other States may not encroach upon the enforcement jurisdiction of a State concerning matters within its territory absent any legal basis to do so.[63]

Based on the above, it is clear that the Philippines, through the CHR, cannot acquire jurisdiction over the Respondents in the instant case who are non-state actors, and the alleged acts complained of were admittedly committed outside Philippine territory and jurisdiction. To exercise extraterritorial jurisdiction over Respondents would be tantamount to an undue encroachment on the territorial jurisdiction and sovereignty of such other States where Respondents are domiciled and operate.

2. There Is No Specific Legal Basis In International Law Permitting The Philippines To Extend The Application Of Its Human Rights Obligations To The Territories Of Other States.

Under international law, the exercise of extra-territorial human rights jurisdiction is an exception to the general principle of territoriality and one that will only be met in exceptional circumstances. No such exceptional circumstances are present in this case.

For example, when recently considering the applicable scope of the ICESCR, the ICJ affirmed the view that jurisdiction under the Covenant is "essentially territorial" in nature.[64] As the Court noted:

Jurisdiction (2009), p 10: "Where a national court asserts that its domestic laws are applicable to particular conduct occurring outside its state's territory, it is exercising prescriptive jurisdiction and should be subject to those principles. Where it convicts, sentences and punishes an offender, it is exercising enforcement jurisdiction and should accordingly be subject to the enforcement rules."

62 In ***The Exchange v McFaddon*** 11 US 7 Cranch 116 (1812), it was held that the jurisdiction of a State within its territory is necessarily exclusive and absolute: "The jurisdiction of the nation within its own territory is necessarily **exclusive** and **absolute**. It is susceptible of no limitation not imposed by itself. Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty to the extent of the restriction and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories **must be traced up to the consent of the nation itself**. They can flow from no other legitimate source." (Emphasis and underscoring supplied.)

63 *Ibid.*

64 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory

"The International Covenant on Economic, Social and Cultural Rights contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are **essentially territorial**. However, it is not to be excluded that it applies both to territories over which a **State party has sovereignty and to those over which that State exercises territorial jurisdiction**."[65] (Emphasis supplied.)

This is further emphasized in the jurisprudence of the European Court of Human Rights relating to the scope of application of the European Convention on Human Rights, under which State Parties to the European Convention are required to secure the human rights of "everyone within their jurisdiction".[66] The European Court has repeatedly recognized that its jurisdiction, for the purposes of its human rights obligations, is primarily, its own territory. The European Court also recognizes that there are limited exceptions to that principle whereby a state may exercise *extra-territorial* human rights jurisdiction, but that these exceptions are "exceptional", typically based on the state's exercise of "effective control" in another territory.

For example, in ***Bankovic and Others v Belgium,*** the European Court held that:

"Accordingly, a State's competence to exercise jurisdiction over its own nationals abroad is subordinate to that State's and other States' territorial competence [x x x]. In addition, a State may not actually exercise jurisdiction on the territory of another without the latter's consent, invitation or acquiescence, unless the former is an occupying State in which case it can be found to exercise jurisdiction in that territory, at least in certain respects [x x x].

In sum, the case law of the Court demonstrates that its recognition of the exercise of extra-territorial jurisdiction by a Contracting State is exceptional: it has done so when the respondent state, through the effective control of the relevant

---

65 *Id.*

66 Pursuant to Article 1 of the European Convention on Human Rights which provides that "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government."[67]

Accordingly, the exercise of extra-territorial human rights jurisdiction is necessarily an exception to the general principle of territoriality and one that will only be met in exceptional circumstances, such as, for example, where the state exercises sufficient control over the territory of another sovereign state. In the present case, there is no suggestion—nor could the Petitioners suggest—that the Philippines exercises "effective control" over the whole world that would allow the CHR to exercise extra-territorial jurisdiction over the actions of foreign corporations acting in other sovereign states.

3. The Exercise Of Extra-Territorial Jurisdiction Over Human Rights Obligations, As Urged By The Petitioners, Would Impermissibly Encroach On The Territorial Jurisdiction And Sovereignty Of Other States.

It follows from the above that in the absence of a specific legal basis establishing extraterritorial jurisdiction, the State cannot exercise jurisdiction over persons and conduct that have not occurred or are not occurring on its territory.[68] Such an exercise of extraterritorial jurisdiction

---

[67] ***Bankovic and Others v Belgium and Others*** (App No 52207/99) (2001) ECtHR, 12 December 2001), paras. 60, 71, *See* also ***Al-Skeini and others v United Kingdom*** (App No 55721/07) ECHR 7 July 2011), paras 138–139: "138. Another exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration [x x x]139. It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area (see Loizidou (merits), [x x x]). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region [x x x]." (Underscoring added.); *see* also ***Jaloud v the Netherlands,*** App no. 47708/08 (ECtHR, 20 November 2014), para 139: "The Court would observe that, while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory (compare *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, § 109, see paragraph 95 above). The Court reiterates that in *Al Skeini,* [x x x], it summarised the principles on the exercise of jurisdiction within the meaning of Article 1 of the Convention outside the territory of the Contracting States x x x."

[68]

would be tantamount to an undue encroachment on the territorial jurisdiction and sovereignty of such other States where Respondents are domiciled or operate.

Moreover, to the extent that the Petitioners' request for relief would require the CHR to direct *other* sovereign States to take actions[69] or would involve the CHR making a finding on the international responsibility of another State, this would amount to a serious incursion on the fundamental international legal principle of sovereign equality and breaches of the principles of non-interference and sovereign immunity, and international comity.

Furthermore, it would contravene the principle established by the ICJ in the ***Monetary Gold*** case,[70] whereby a court/adjudicatory should not adjudicate on a case where it would be required, as a necessary prerequisite, to adjudicate on the rights or responsibilities of a non-consenting and absent third State.

Thus, to the extent that the CHR purports to make a finding as to the international responsibility of another State through the exercise of exorbitant jurisdiction, this is very likely to amount to a breach of State sovereignty and international law.[71]

4. The *Maastricht Principles* And *Guiding Principles*, Invoked By The Petitioners, Do Not Provide A Proper Legal Basis For The CHR's Purported Extension Of Its Jurisdiction Over The Respondents.

To attempt to circumvent the fundamental principle of territoriality discussed above, the *Petition* seeks to justify the CHR's jurisdiction over extra-territorial acts by invoking (1) the *Maastricht Principles*,[72] and (2) *Guiding Principles*.[73] For the reasons set out below, these non-binding documents cannot provide a basis to unilaterally exercise extra-territorial jurisdiction over foreign entities.

---

69 *Petition*, fn 3, p 67, para 6.

70 ***Case of the Monetary Gold Removed from Rome in 1943*** (Preliminary Question) [1954] ICJ Reports, p 32: "To adjudicate upon the international responsibility of [another State] without her consent would run counter to a well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent."

71 J Crawford, *Brownlie's Principles of Public International Law* (8th edn), p 477.

72 *Petition*, fn 3, pp 15–16.

73 *Ibid*, pp 11–15.

To the contrary, these very sources cited in the *Petition* demonstrate that State responsibility and jurisdiction lies with the States where the Respondents are incorporated and allegedly committing the acts complained of.

i. The Maastricht Principles

The Petitioners erred in invoking the *Maastricht Principles*[74] to justify the CHR's exercise of extraterritorial jurisdiction over Respondents considering that:

a. First, the *Maastricht Principles* is not a legally binding international law instrument and cannot be invoked to amplify or extend legal obligations or to establish jurisdiction where none exists as a matter of law.

b. Second, the *Maastricht Principles* themselves affirm the fundamental principle that economic and social rights engage the legal responsibility of States and not of private actors or corporations. Consequently, the principles do not support the Petitioners' attempts to directly enforce obligations against private corporations, particularly those not domiciled or otherwise present within the territorial jurisdiction of the Philippines.

c. Third, the *Maastricht Principles* also affirm the primacy of territorial jurisdiction, and provide no basis for the exercise of jurisdiction over foreign actors in respect of actions outside the territory of the Philippines.

d. Fourth, the *Maastricht Principles* provide no basis for the exercise of jurisdiction inconsistent with fundamental rules of public international law.

---

[74] *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 29 Netherlands Quarterly of Human Rights (2011) 578,, at http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 (last accessed on 24 June 2016); and *Petition*, fn

Each of these points is addressed in further detail below.

a. The *Maastricht* Principles Are Not Legally Binding And Cannot Create A Basis For Jurisdiction In This Case.

Like the various other documents and statements invoked by the Petitioners,[75] the *Maastricht Principles* is not a legally binding international law instrument and cannot be invoked in order to vest the CHR with jurisdiction which it does not have as a matter of domestic or international law.

The *Maastricht Principles* have no formal legal status and have not been endorsed or accepted by States. They were developed by "[a] small and mixed drafting group of scholars and NGO representatives"[76] on 28 September 2011 in a meeting of private stakeholders. Accordingly, the principles are not among the recognized sources of international law that are considered binding upon States (*i.e.,* treaties, customary international law, and general principles of international law).[77] Indeed, the principles themselves state that ***"[t]he Maastricht Principles do not purport to establish new elements of human rights law."***[78]

The non-binding status of the *Maastricht Principles* was underscored by one scholar who has noted:

> "[L]ike most other 'soft law' [the *Maastricht Principles*] are not legally binding. It remains to be seen whether States, particularly those from developed regions, will take them seriously. This is more so when one considers that an initial attempt by the UN to impose obligations on MNCs for human rights violations committed outside their headquarters was met with resistance."[79]

---

75 *I.e., Guiding Principles.*

76 W Vandenhole, "Beyond Territoriality: The Maastricht Principles on Extra-territorial Obligations in the Area of Economic, Social and Cultural Rights" (2011) 29 *Netherlands Quarterly of Human Rights*, p 431.

77 *See* Statute of the International Court of Justice, Art 38(1) (d), which is referred to as establishing the authentic list of the sources of international law.

78 International Federation for Human Rights, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights* (2013) 3.

79 E Durojaye, "The Viability of the Maastricht Principles on Extraterritorial Obligations of States on Socioeconomic Rights in Advancing Socioeconomic Rights in Developing Countries" (2014) 15

Given their clear lack of legal status, the *Maastricht Principles* cannot be invoked so as to amplify or extend legal obligations or to establish jurisdiction where none exists as a matter of law. By this token, and in light to the principles outlines above, the *Maastricht Principles* provide no legal basis for the CHR's exercise of jurisdiction over Respondents.

b. The *Maastricht* Principles Provide No Basis For The Exercise Of Jurisdiction By The CHR Over Private Corporations.

Even assuming that the *Maastricht Principles* could be invoked as a binding instrument, its invocation in the present case is misplaced. The *Maastricht Principles* clarify States' extra territorial obligations ("ETOs") which proceed from the general obligations to respect, protect and fulfill economic, social, and cultural rights of persons within their territories.[80]

The *Maastricht Principles* reflect the general legal position that States have the obligations and are responsible for breaches of human rights. This is seen, for example, in a number of the Principles:

- Principle 2: *"**States** must at all times observe the principles of non-discrimination...."* (Emphasis supplied.)
- Principle 3: *"**All States** have obligations to respect, protect and fulfill human rights..."* (Emphasis supplied.)
- Principle 4: *"**Each State** has the obligations to realise economic, social and cultural rights, for all persons within its territory...."* (Emphasis supplied.)
- Principle 8: *"[x x x] [E]xtraterritorial obligations encompass [x x x] obligations relating to the acts and omissions of **a State**, within or beyond its territory..."* (Emphasis supplied.)
- Principle 9: *"**A State** has obligations to respect, protect and fulfill economic, social, and cultural rights [x x x] [in] situations over which it exercises authority or effective control [x x x]."* (Emphasis supplied.)

---

80 *Maastricht Principles*, Principles 19, 22, and 28.

- Principle 10: ***A State's*** *obligation to respect, protect and fulfill economic, social and cultural rights extraterritorially does not authorise* ***the State*** *to act in violation of...general international law.*" (Emphasis supplied.)

- Principle 11: "***State responsibility*** *is engaged as a result of conduct attributable to a State [x x x]*" (Emphasis supplied.)

- Principle 13: "***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.*" (Emphasis supplied.)

It is well established that under international law human rights obligations are binding on national States and not individuals.[81] For example, Article 2 of the ICESCR clearly directs the rights contained therein to States:

> "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 recognised in the present Covenant." (Underscoring supplied.)

Moreover, the language of the General Comments of the Committee on Economic Social and Cultural Rights on the scope of application of the rights contained in the ICESCR clearly and unambiguously reiterate that the rights are directed at States, observing that human rights impose obligations "*on State parties*", *i.e.,* the obligation to respect to protect and to fulfill.

After reviewing these covenants, the Universal Declaration of Human Rights, and the International Labour Organisation's (ILO) core conventions, as well as the commentary of UN committees responsible for interpreting the relevant rights, John Ruggie, the Special Representative of the Secretary-General on Business and Human Rights, concluded: "it does not seem that the international human rights instruments [x x x] currently impose direct legal responsibilities on corporations."[82]

---

81 *See* e.g. UN Human Rights Committee, *General Comment 31* para 8. The UN Human Rights Committee noted in General Comment 31 that even the obligations in the International Covenant on Civil and Political Rights do not have "direct horizontal effect [i.e. to private actors] as a matter of international law."

82 J Ruggie, "Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts" (A/HRC/4/035, Feb 9, 2007) para 44. The issue of corporate

The foregoing clearly shows that the ETOs addressed in the *Maastricht Principles* relate to the obligations of States and not private corporations. Accordingly, contrary to the Petitioners' assertions, even if the *Maastricht Principles* had some binding legal authority—which they do not—they cannot be invoked so as to impose human rights obligations directly on private corporations.

c. The *Maastricht Principles* Provide No Legal Basis For Jurisdiction Over Foreign Actors In Respect Of Actions Outside The Territory Of The Philippines.

It is well established that extraterritorial human rights obligations (such as they are) pertain to the obligation of States to ensure that their own actions and the actions of non-State actors within their jurisdiction do not violate the human rights of individuals outside their territory.[83] This fundamental principle is reflected in the pronouncements of the various United Nations Human Rights bodies concerning extra-territorial obligations:

1. The Committee for Economic, Social and Cultural Rights in its Statement on the Obligations of State Parties emphasized that, "**States Parties should also take steps to prevent human rights contraventions abroad by corporations which have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant.**"[84] (Emphasis and underscoring supplied.)

2. The 2006 Report of the Special Rapporteur on the Right to Food stated that, "[t]he extraterritorial obligation to protect the right to food **requires States to ensure that**

---

liability under international criminal law is distinct from corporate responsibility under human rights instruments, and Ruggie treated it as such. *See ibid*, paras 19–32. At most, international criminal law overlaps, without being synonymous, with a subset of human rights.

83 *See* Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant* (2004) para 10, UN Doc. CCPR/C/21/Rev.1/Add.13. It was provided that "[A] State party must respect and ensure the rights laid down in the [International Covenant on Civil and Political Rights] to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."

84 UN Committee on Economic, Social and Cultural Rights [CESCR], *Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social, and Cultural Rights*, para 5, U.N. Doc. E/C.12/2011/1 (2011).

third parties subject to their jurisdiction (such as their own citizens or transnational corporations), do not violate the right to food of people living in other countries."[85] (Emphasis and underscoring supplied.)

3. The Committee on the Rights of the Child in its General Comment No. 16 stated that, "[**h]ome States** also have [human rights] obligations [x x x] **in the context of businesses' extra-territorial activities and operations**, provided that there is a reasonable link between the State and the conduct concerned."[86] In this regard, a "reasonable link" was said to exist where "a business enterprise **has its centre of activity**, is **registered** or **domiciled**, or **has its main place of business or substantial business activities in the State concerned.**"[87] (Emphasis and underscoring supplied.)

Contrary to Petitioners' assertion, ETOs do not empower States to exercise jurisdiction over entities and activities beyond their territory. ETOs merely emphasize and extend the human rights obligations of States to ensure that they regulate persons and activities **within their territorial jurisdiction** in such a manner as to safeguard the human rights of people located outside the territorial boundaries of the State.

The *Maastricht Principles* are consistent with these international principles. Article 9 of the *Maastricht Principles* clearly provides that a States' ETOs are directed only against parties within its effective jurisdiction, including "situations over which **[the State] exercises authority or effective control**, whether or not such control is exercised in accordance with international law." (Emphasis supplied.) Thus, it is misguided for Petitioners to rely on the *Maastricht Principles* in their effort to convince the CHR to exercise jurisdiction over entities that are outside the territory of the Philippines and have no proper legal connection with the Philippines for the purposes of establishing jurisdiction.

---

85 J Ziegler, *Report of the Special Rapporteur on the Right to Food* (2006) UN Doc E/CN.4/2006/44 (2006), para 36.

86 Committee on the Rights of the Child, *General Comment No. 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights* (2013) UN Doc. CRC/C/GC/16, para 43.

87 *Ibid.*

d. The *Maastricht* Principles Provide No Basis For The CHR To Exercise Jurisdiction Contrary To Fundamental Rules Of Public International Law, Including The Principle Of Territorial Sovereignty.

Should the CHR unilaterally assume jurisdiction over entities and/or actions which are within the territory and jurisdiction of other States, this would implicate the Philippines in an impermissible incursion on the sovereignty of other States and a breach of international law.

First, such an exercise of jurisdiction would be contrary to the international principle that the home State is primarily responsible for the regulation the activities of corporations. As the Committee on Economic, Social and Cultural Rights has noted that "State Parties should [x x x] 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."[88] (Underscoring supplied.)

The *Maastricht Principles*, invoked by Petitioners, also reflect the position that the home State retains primary authority and responsibility for regulating non-State entities within its territory and jurisdiction regardless of whether the latter engages in activities that may have extraterritorial effects:

> "**The duty of the State** to protect human rights by regulating the conduct of private actors **extends to situations where such conduct may lead to violations of human rights in the territory of another State**.
>
> x x x
>
> **[T]he State is under a duty to control the activities of private persons within its State territory and the duty is no less applicable where the harm is caused to persons or other legal interests within the territory of another State**."[89] (Emphasis and underscoring supplied.)

---

[88] *Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts, U.N. Doc. 95E/C.12/2011/1 (2011), *cited Commentary on Maastricht Principle No. 24*, para 3.

[89]

Second, the CHR's exercise of jurisdiction over Respondents would be contrary to the fundamental international legal principle of sovereign equality.

Indeed, the *Maastricht Principles* recognize that States should not seek to promote human rights in a way that does not respect the sovereignty of other States.[90] As the commentary to Maastricht Principle No. 25 notes:

> "Principle 25(d) makes it clear that while a reasonable link must exist between the State and the situation it seeks to regulate, it would be artificial to restrict the exercise of extraterritorial jurisdiction by prescribing certain conduct to a limited range of instances. However, it must be shown by the State in question that exercising such jurisdiction is not acting in violation of the UN Charter or other principles of international law: specifically, by intervening in the domestic affairs of the territorial State, interfering with its sovereign rights, or interfering with the principle of equality of all States [x x x]."[91]

Therefore, although the Philippines may have the duty to cooperate with other States to protect human rights, the actions of the Philippines must not violate the sovereignty of other States that have primary State responsibility and jurisdiction.

Petitioners thus erred in demanding the CHR to investigate Respondents under the guise of exercising the Philippines' ETOs under the *Maastricht Principles.* Neither the *Maastricht Principles* nor the rules of public international law allow the CHR (or any other organ of the Philippine State) to encroach on other States' primary jurisdiction over corporations operating within their respective territories.

---

[90] Thus, Principle 21 of the Maastricht Principle directs States to refrain from any conduct which: "(a) impairs the ability of another State or international organisation to comply with that State's or that international organisation's obligations as regards economic, social and cultural rights; or (b) aids, assists, directs, controls or coerces another State or international organisation to breach that State's or that international organisation's obligations as regards economic, social and cultural rights, where the former States do so with knowledge of the circumstances of the act."

[91] *Commentary on Maastricht Principle No. 25*, para 7. Pertinently, the annotation stressed that the

ii. The Guiding Principles on Business and Human Rights

Similarly, the *Guiding Principles*[92] do not provide a legal basis for the CHR to expand its jurisdiction.

a. First, like the *Maastricht Principles,* the *Guiding Principles* is not a legally binding document; it does not create any legal obligations on States or private actors.

b. Second, the *Guiding Principles* make clear that States have the primary responsibility to regulate business enterprises **within their territory or jurisdiction** to ensure the respect, protection, and fulfillment of human rights.

c. Third, the *Guiding Principles* cannot be applied retroactively to actions that occurred before they were adopted.

a. The *Guiding Principles* Is Not A Legally Binding Document; It Does Not Create Any Legal Obligations On States Or Private Actors.

Although, widely recognized as *best practice*, the *Guiding Principles* do not impose binding obligations on corporations as a matter of international law. Instead, the *Guiding Principles* distinguish between sovereign States' obligations and duties to protect against human rights violations and corporations' "*responsibility*".

As stated by the Office of the High Commissioner of Human Rights in its Interpretative Guide on the Corporate Responsibility to Respect Human Rights, the *Guiding Principles* "***do not by themselves constitute a legally binding document***."[93] They merely elaborate on the implications of existing standards and practices for States and businesses. (Emphasis supplied.)

---

92 OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework ("Guiding Principles") (2011), HR/ PUB/11/04, at p 9 of the *Petition*.

93 Office of the High Commissioner of Human Rights, Interpretative Guide on The Corporate Responsibility to Respect Human Rights (2012), p 1, at http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf (last accessed on 13 August 2016).

Under the General Principles, the *Guiding Principles* provide that "[n]othing in these Guiding Principles should be read as creating new international law obligations [x x x]."[94] The *Guiding Principles*' Commentary further states that "[t]he responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions."[95]

Thus, it is clear that the *Guiding Principles* do not reflect binding international law regarding the responsibility of businesses for human rights. After reviewing [the ICCPR and the ICESCR], the Universal Declaration of Human Rights, and the International Labour Organisation's (ILO) core conventions, as well as the commentary of UN committees responsible for interpreting the relevant rights, John Ruggie concluded that "it does not seem that the international human rights instruments [x x x] currently impose direct legal responsibilities on corporations."[96]

That the *Guiding Principles* are not legally binding is amply illustrated by the very fact that in June 2014, the UN Human Rights Council adopted Resolution No. 26/9 establishing the Open-Ended Intergovernmental Working Group ("OEIWG") in order to produce "an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises."[97] This is a clear recognition that there is **currently no binding instrument** under international law that regulates the extraterritorial human rights obligations of States in relation to the activities of transnational corporations and business enterprises.[98]

---

94 *Guiding Principles*, p 1.

95 *Ibid*, p 14.

96 Ruggie, fn 82, para 44. The issue of corporate liability under international criminal law is distinct from corporate responsibility under human rights instruments, and Ruggie treated it as such. *See id,* paras 19–32. At most, international criminal law overlaps, without being synonymous, with a subset of human rights.

97 H.R.C. Res. 26/9, Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, UN Doc. A/HRC/26/L.22/Rev 1 (2014), p 2. See e.g., Report on the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, with the mandate of elaborating an international legally binding instrument, A/HRC/31/50 Feb. 5, 2016.

98 M Orellana, Briefing Paper for Consultation: Extraterritorial Obligations, ESCR-Net and FIDH Joint Treaty Initiative Project

Additionally, many civil societies have criticized from the outset the *Guiding Principles* for not being legally binding. For example, Peter Frankental of Amnesty International wrote:

> "There is no consensus around any implementation process for the [*Guiding Principles*] which would enable them to have their intended effect on the behaviour of companies. For the moment, **they are just a set of principles, which are not binding on States or on companies**, though they do reflect States' existing obligations and set for the first time at UN level a baseline of expected conduct for all companies. **Not only are the UNGPs not enforceable as an instrument**, but at this point they are not embodied in any other enforceable instrument. This means that **nowhere in the world where individuals and communities are defending their rights against the activities of multinational corporations, can they rely on this UN-endorsed standard for protection or for remedy**."[99] (Emphasis supplied.)

The International Federation for Human Rights, an umbrella group representing over 150 human rights groups around the world, concluded that the "road towards accountability is still a long way ahead" because the *Guiding Principles* fail to ensure "the right to an effective remedy and the need for States' measures to prevent abuses committed by their companies overseas."[100] Human Rights Watch has claimed that the *Guiding Principles* are "woefully inadequate" as an effort to hold the corporate world accountable for its adverse impact on human rights.[101]

Given their clear lack of legal binding status, the *Guiding Principles* cannot be invoked so to amplify or extend legal obligations or to establish jurisdiction where none exists as a matter of law. Accordingly, the *Guiding Principles* provide no legal basis for jurisdiction in this case.

---

99 P Frankental, "A Business and Human Rights Treaty? We shouldn't be afraid to frighten the horses," (June 13, 2013), at http://londonminingnetwork.org/2014/06/a-business-and-human-rights-treaty-we-shouldnt-be-afraid-to-frighten-the-horses/ (last accessed on 06 September 2016).

100 UN Human Rights Council Adopts Guiding Principles on Business Conduct, yet Victims Still Waiting for Effective Remedies, FIDH (June 17, 2011), at https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/UN-Human-Rights-Council-adopts (last accessed on 06 September 2016).; see also Robert C Blitt, "Beyong Ruggie's Guiding Principles on Business and Human Rights: Charting an Embracive Approach to Corporate Human Rights Compliance", (2012) 48 Texas International Law Journal, p 53.

101 A. Batesmith, "HRW vs. Ruggie: How Valid is the Criticism of the UNGPs?" (February 8, 2013), at http://www.batesmithlaw.com/blog/hrw-vs-ruggie-how-valid-is-the-criticism-of-the-ungps (last

b. The *Guiding Principles* Make Clear That States Have The Primary Responsibility To Regulate Business Enterprises Within Their Territory Or Jurisdiction To Ensure The Respect, Protection, And Fulfillment Of Human Rights.

Principle 1 of the *Guiding Principles* provides that:

> "1. States must protect against human rights abuse **within their territory and/or jurisdiction by third parties, including business enterprises**. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
>
> x x x
>
> 2. States should set out clearly the expectation that all **business enterprises domiciled in their territory and/or jurisdiction** respect human rights throughout their operations."[102] (Emphasis supplied.)

Thus, like the *Maastricht Principles*, under the *Guiding Principles* states are called to take the necessary steps to ensure effective remedies against human rights abuses by business enterprises **within its territory and/or jurisdiction**:

> "25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that **when such abuses occur within their territory and/or jurisdiction** those affected have access to effective remedy.[103]
>
> x x x

---

[102] *Guiding Principles,* Principle 1, Part I (A).

[103]

26. States should take appropriate steps to ensure the effectiveness of **domestic judicial mechanisms when addressing business-related human rights abuses**, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."[104] (Emphasis and underscoring supplied.)

This responsibility was further interpreted to include the State's authority to impose regulatory measures on business enterprises within their territory and/or jurisdiction applicable to the latter's extraterritorial activities:

"**There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad**, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.

States have adopted a range of approaches in this regard. Some are **domestic measures with extraterritorial implications**. Examples include requirements on 'parent' companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement."[105] (Emphasis supplied.)

---

[104] *Ibid*, Principle 26, Part III (B)

[105]

Based on the foregoing, States are clearly given primary jurisdiction and authority to regulate business enterprises within its territory or jurisdiction. More specifically, guidelines are provided on how States should regulate and deal with such business enterprises within its territory or jurisdiction to ensure the protection of human rights in all of its operations and activities.

As applied to the instant case, the *Guiding Principles* indicate that the States where Respondents are operating have the primary responsibility and authority to act and regulate them.

c. The *Guiding Principles* Cannot Be Applied Retroactively To Actions That Occurred Before They Were Adopted.

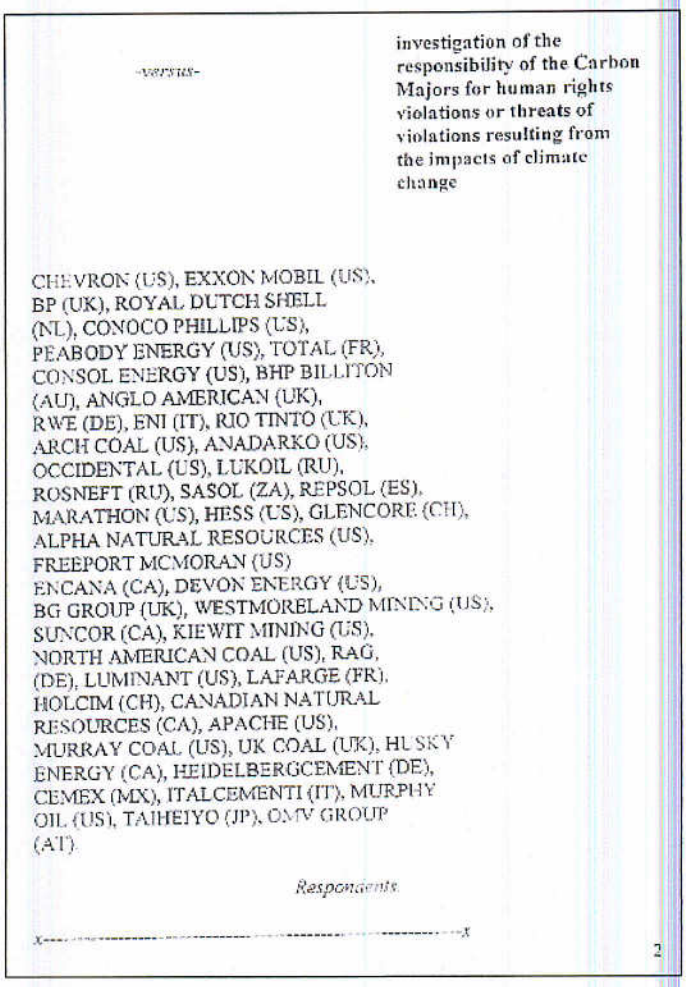
There is a strong presumption against retroactivity in national and international law. This presumption is consonant with fundamental principles on the rule of law. The *Guiding Principles* do not rebut this presumption. Thus, the *Guiding Principles* cannot be applied retroactively to actions that occurred before they were adopted in 2011.

II. Second, The CHR Does Not Have Personal Jurisdiction Over SCPL And RDS Considering That:

A. SCPL Is Not Even Named In The *Petition* As A Respondent; Hence, There Is Absolutely No Basis For Its Inclusion In The Instant Case.

At the onset, the instant *Petition* must be dismissed against SCPL considering that a mere reading of the caption of the instant case would show that SCPL is not even named as a Respondent in the instant case:[106]

106



-versus-

investigation of the responsibility of the Carbon Majors for human rights violations or threats of violations resulting from the impacts of climate change

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

Respondents.

x----------x

2

Instead, it appears that SCPL is being included in the instant case on the mistaken assumption that SCPL is a branch or regional office of RDS constituting the latter's presence in the Philippines:

> "The investor-owned Carbon Majors 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'."[107]

In the instant case, aside from its bare allegations and mistaken conclusion, Petitioners has utterly failed to show that SCPL is a branch of RDS in the Philippines so as to enable the CHR to acquire jurisdiction over the latter. In fact, while Annex "C" of the *Petition* claims that the records of the Securities and Exchange Commission ("SEC") would show a relationship between RDS and SCPL, SCPL's General Information Sheet ("GIS") for 2016 clearly shows that it is a foreign corporation organized in the United

107

Kingdom whereas RDS is a foreign corporation based at The Hague, The Netherlands.[108] The 2016 GIS of SCPL does not even show any interest or shareholding by RDS. Besides, mere investment or shareholding of a foreign corporation in a domestic company (which is not even the case here) does not amount to "doing business".[109]

In ***Land Bank of the Philippines v Court of Appeals,*** 364 SCRA 375 (2001), the Supreme Court held that "**a corporation, upon coming into existence, is invested by law with a personality separate and distinct from those persons composing it as well as from any other legal entity to which it may be related.**"

In any event, even assuming *arguendo* that SCPL is a branch of RDS, it is settled that a subsidiary has a separate and distinct personality from its parent company. The mere fact that a corporation owns all of the stock of another corporation, taken alone, is not sufficient to justify their being treated as one entity.[110] The mere fact that a corporation owns all of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective businesses.[111] As held in ***Jardine Davies, Inc. v JRB Realty, Inc.,*** 463 SCRA 555 (2005):

> "In ***Velarde v Lopez, Inc.***, the Court categorically held that **a subsidiary has an independent and separate juridical personality, distinct from that of its parent company; hence, any claim or suit against the latter does not bind the former, and vice versa.**" (Emphasis supplied.)

Clearly, there is no tenable basis for the inclusion of SCPL in the instant case since it was not even impleaded as a respondent. Further, Petitioners' claim in Annex "C" of the *Petition* is proven false by the very SEC records it claims to have based its assumptions on.

---

108 A copy of SCPL's 2016 GIS is attached as **Annex "4"**.

109 Section 3(d) of R.A. No. 7042, otherwise known as the *Foreign Investments Act*.

110 ***MR Holdings, Ltd. v Bajar***, 380 SCRA 617 (2002).

111 ***Pantranco Employees Association v Philippine National Bank***, 581 SCRA 588 (2009).

1. **The Service Of The *Order* Dated 21 July 2016 Upon The SCPL Was Improper And, Thus, Invalid. Hence, The CHR Did Not Acquire Jurisdiction Over SCPL.**

In the instant case, SCPL is a foreign corporation registered in the Philippines. As stated in its GIS for 2016,[112] the following are its officers: Mr. Edgar O Chua ("Chua"), President; Ms. Mary Agnez C Yap-Abina ("Yap-Abina"), Treasurer; and Mr. Erwin R Orocio ("Orocio"), Corporate Secretary.

The Rules of Court provides that service of summons to a foreign private juridical entity may be made on its resident agent which are the persons named in SCPL's 2016 GIS.[113] If for justifiable causes, however, the service of summons cannot be made on the foregoing officers, substituted service may be effected by: (a) leaving a copy of the summons at the defendant's residence with some person of suitable age and discretions then residing therein; or (b) leaving a copy at the defendant's office or regular place of business with some competent person in charge thereof.[114]

In ***Pioneer International, Ltd. v Guadiz, Jr.***, 535 SCRA 584 (2007), the Supreme Court held that summons for a foreign juridical entity may be made, among others, on its resident agent or any of the corporation's officers or agents within the Philippines:

> "When summons is served on a foreign juridical entity, there are three prescribed ways: (1) **service on its resident agent designated in accordance with law for that purpose**, (2) service on the government official designated by law to receive summons if the corporation does not have a resident agent, and (3) **service on any of the corporation's officers or agents within the Philippines**." (Emphasis supplied.)

In this regard, on 28 July 2016, an LBC package addressed to "The Shell Company of the Philippines, Ltd." was delivered to 156 Valero Street, Salcedo Village, Makati City. While this is the address indicated in the 2016 GIS of Respondent SCPL, notably, the LBC package did not indicate the name of the addressee thereof or to whom the package was supposed to be delivered. The LBC package was received but with reservations and without prejudice to questioning the invalid mode of service made upon Respondent SCPL as noted in the receiving copy of said package.

---

112 **Annex "4"** hereof.

113 Rules of Court, Section 12, Rule 14.

114

Under the Rules of Court, the service of summons to SCPL, a foreign private juridical entity, should have been made on its resident agent as stated in the 2016 GIS of SCPL, namely, Mr. Chua, Ms. Yap-Abina, or Mr. Orocio. However, no service of summons was made or even attempted to be made on them.

The service of summons on SCPL cannot likewise be considered as a valid substituted service since there was no attempt at all to serve the LBC package upon SCPL's resident agent.

Notably, a valid substituted service of summons is governed by Section 7, Rule 14 of the Rules of Court, which states:

> "Section 7. *Substituted service*. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."

In ***Planters Development Bank v Chandumal,*** 680 SCRA 269 (2012), the Supreme Court stressed that it is only when the defendant cannot be personally served with summons within a reasonable time that substituted service may be made. In case of substituted service of summons, the Supreme Court held that the sheriff must describe in the Return of summons the facts and circumstances surrounding the attempted personal service; otherwise, the service becomes invalid:

> "The fundamental rule is that **jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. If a defendant has not been properly summoned, the court acquires no jurisdiction over its person, and a judgment rendered against it is null and void**.
>
> Where the action is in personam and the defendant is in the Philippines, service of summons may be made through

to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him. **If the defendant cannot be personally served with summons within a reasonable time, it is then that substituted service may be made. Personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service**.

No valid substituted service of summons

In this case, the sheriff resorted to substituted service of summons due to his failure to serve it personally. In ***Manotoc v Court of Appeals***, the Court detailed **the requisites for a valid substituted service of summons**, summed up as follows: (1) **impossibility of prompt personal service** — the party relying on substituted service or the sheriff must show that the defendant cannot be served promptly or there is impossibility of prompt service; (2) **specific details in the return — the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service**; (3) a person of suitable age and discretion — the sheriff must determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons, which matters must be clearly and specifically described in the Return of Summons; and (4) a competent person in charge, who must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. These were reiterated and applied in ***Pascual v Pascual***, where **the substituted service of summon made was invalidated due to the sheriff's failure to specify in the return the necessary details of the failed attempts to effect personal service which would justify resort to substituted service of summons**.

In applying the foregoing requisites in the instant case, the CA correctly ruled that the sheriff's return failed to justify a resort to substituted service of summons x x x." (Emphasis and underscoring supplied.)

In the instant case, there were no efforts at all to personally serve the *Petition* on the resident agents of SCPL. Instead, the summons was directly served on the person who received said LBC package. Indeed, it does not even appear that the authority of said person to receive the package on behalf of SCPL was determined. Thus, it is apparent that the service of the summons on SCPL is patently defective.

Relevantly, the Supreme Court in the case of ***Chu v Mach Asia Trading Corporation,*** 694 SCRA 302 (2013), stated that with an invalid service of summons upon the defendant, the court acquires no jurisdiction over their person and a judgment rendered against them is null and void:

> "The service of summons is a vital and indispensable ingredient of due process. As a rule, **if defendants have not been validly summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void.**" (Emphasis supplied.)

Clearly, the service of summons upon SCPL being defective, the CHR did not acquire jurisdiction over the former.

B. RDS Is A Foreign Corporation Not Registered Nor Doing Business In The Philippines; Hence, The CHR Cannot Acquire Jurisdiction Over The Former.

There is no basis either in domestic or international law for the CHR to exert jurisdiction over RDS—a foreign corporation having no domicile, presence or activity within the territory of the Philippines. It is well-settled that foreign corporations not doing business in the Philippines cannot be subjected to its laws and jurisdiction, and certainly not in respect of actions that took place outside the territory of the Philippines.

In ***Avon Insurance PLC. British Reserve Insurance Co. Ltd. v Court of Appeals,*** 278 SCRA 312 (1997), the Supreme Court ruled that a foreign corporation not doing business in the Philippines cannot be placed within the sphere of the court's jurisdiction:

> "A foreign corporation, is one which owes its existence to the laws of another State, and generally has no legal

Wells Co. vs Elser, it was held that **corporations have no legal status beyond the bounds of sovereignty by which they are created**. Nevertheless, it is widely accepted that foreign corporations are, by reason of State comity, allowed to transact business in other States and to sue in the courts of such *fora*. In the Philippines, foreign corporations are allowed such privileges, subject to certain restrictions, arising from the States sovereign right of regulation.

Before a foreign corporation can transact business in the country, it must first obtain a license to transact business here and secure the proper authorizations under existing law.

If a foreign corporation engages in business activities without the necessary requirements, it opens itself to court actions against it, but it shall not be allowed maintain or intervene in an action, suit or proceeding for its own account in any court or tribunal or agency in the Philippines.

The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts, otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts.

The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. **Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the States regulation**. As we observed, **in so far as State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts jurisdiction would violate the essence of sovereignty**.

x x x

As we have found, there is no showing that Petitioners had performed any act in the country that would place it within the sphere of the courts jurisdiction. A general allegation standing alone, that a party is doing business in the Philippines does not

> the unsubstantiated assertions of parties notwithstanding the demands of convenience or dispatch in legal actions, otherwise, the Court would be guilty of sorcery; extracting substance out of nothingness. In addition, the assertion that a resident of the Philippines will be inconvenienced by an out-of-town suit against a foreign entity, is irrelevant and unavailing to sustain the continuance of a local action, for jurisdiction is not dependent upon the convenience or inconvenience of a party." (Emphasis and underscoring supplied.)

It is therefore clear from the above that the Philippine courts have no personal jurisdiction over foreign corporations, that is, entities incorporated or established under the laws of another State, save to the extent that the foreign corporation "does business" in the Philippines.

The requirement that there be a strong connecting factor or nexus between the defendant and the forum State is a widely accepted principle of private international law.[115] Most civil law approaches to personal jurisdiction (as a matter of private international law, and as distinct from the State's prescriptive jurisdiction discussed above) are predicated on the principle that defendants ought to be sued to the extent possible in the courts of its domicile.[116] To the extent that civil law systems extend to foreign corporations with a commercial presence in the State, it is typically a "specific" jurisdiction, signifying that the courts will only exercise jurisdiction in relation to claims specifically related to that branch.[117]

Common law legal systems generally allow courts to exercise personal jurisdiction over foreign defendants, including foreign corporations not domiciled in the State that have a presence in the jurisdiction. For corporations, this typically means a commercial presence

---

[115] *See* J Hill, "The Exercise of Jurisdiction in Private International Law" in M Evans et al (ed) *Asserting Jurisdiction* (2003), p 49. Hill notes that there are [] general bases of personal jurisdiction in civil matters under private international law: (i) "consensual" jurisdiction, where the defendant voluntarily submits to the jurisdiction of the court, for example, by agreement or by appearing before the court to defend the claim without challenging the court's jurisdiction, and (ii) "connected" jurisdiction based on the existence of a significant or substantial nexus; and (iii) universal jurisdiction, although he notes that universal jurisdiction has not yet had any impact in the sphere of private international law. *See* generally the Final Report of the International Law Association on "International Civil Litigation and the Interest of the Public" (2012), p 9.

[116] J Crawford, *Brownlie's Principles of Public International Law* (8th edn 2012), p 457. *See* also A Nuyts, 'Study on Residual Jurisdiction: (Review of the Member States' Rules Concerning the "Residual Jurisdiction" of the Courts in Civil and Commercial Matters Pursuant to the Brussels I and II Regulations" (2007) p.72 et seq.

[117] This is the case, for example, in the Netherlands; *see* generally International Law Association, *Final Report of the Committee on International Civil Litigation and the Interest of the Public: International*

or a requirement that it "do business" in the State. For example, under the law of England, which is the place of incorporation of RDS, a foreign corporation will be treated as being "present" within the State for the purpose of personal jurisdiction where:

> "(1) The corporation has either:
>
> (a) A branch office in the country, defined as fixed place of business where it has carried on its own business for more than a minimal period of time, and maintained at its own expense, or
>
> (b) An agent or representative that has carried out the foreign corporation's business for more than a minimal period of time at or from some fixed place of business; and
>
> (2) In either case, the foreign corporation's business has been "transacted at or from the fixed place of business."[118]

Moreover, in the United States, the US courts have a broad general civil jurisdiction over foreign defendants in relation to *tort* claims brought under the US Alien Torts Claims Act 1789. However, the US Supreme Court has reiterated that the Alien Torts Claims Act is subject to a general presumption of extraterritoriality. The court noted that the presumption of extraterritoriality "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord."[119] Furthermore, the Supreme Court held that even where the claims in question had a connection with the United States, it must be of "sufficient force" to displace the presumption against extraterritorial application; significantly, the court stated that "mere corporate presence" would *not* be sufficient to displace the presumption.[120]

---

118 ***Adams and Others v Cape Industries Plc and Another*** [1990] Ch. 433, p 530.

119 ***Kiobel et al v Royal Dutch Petroleum Co. et al*** 569 US 14 (2013), p 2 citing ***EOC v Arabian American Oil Co***. 499 U.S 244, p 248.

120 *Ibid*, p 14: "On these facts, all the relevant conduct took place outside the United States. And even where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application. *See* Morrison, 561 US ___ (slip op. at 17–24). Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices. If Congress were to determine otherwise, a statute more

Significantly, in 2014, the US Supreme Court unanimously held in the case of ***Daimler AG v Baumann*** that a US court cannot exercise general personal jurisdiction over a foreign-incorporated parent corporation solely on the basis that the foreign entity's US-incorporated subsidiary had substantial business activities in the United States, thereby rejecting the "agency doctrine" of jurisdiction.

In addition, the Supreme Court proceeded to find, *arguendo,* that even if the subsidiary's conduct *could* be imputed to the parent under an agency doctrine, jurisdiction could only be exercised over a foreign corporation in exceptional circumstances in which its contacts with the foreign State were "*so substantial and of such a nature as to render the corporation at home*" in the forum.[121] In that case, the Supreme Court held that the subsidiary's contacts with the US—which included regional headquarters and the sale and distribution of tens of thousands of cars in California—were not sufficient to establish jurisdiction over the parent company before the courts of California.

Finally, and for the avoidance of any doubt, as is now clear from the discussion at Section 1.F. above that there is no justification under international law for the CHR to exercise jurisdiction over a foreign corporation having *no* presence or activity within the territory of the Philippines. As has been established, States may only exercise extra-territorial jurisdiction in respect of entities (including corporations) resident or otherwise present within its jurisdiction.

Applying the principle set out in ***Avon Insurance PLC. British Reserve Insurance Co. Ltd. v Court of Appeals,*** *supra,* RDS is a foreign corporation, incorporated in England and headquartered in the Netherlands. It is not registered in the Philippines, nor does it do any business in the country. Accordingly, the Philippine courts do not have personal jurisdiction over RDS as a matter of Philippines law; it necessarily follows that the CHR cannot have jurisdiction over RDS.

121

1. **In Any Event, The Service Of The *Order* Dated 21 July 2016 Upon Respondent RDS Was Improper And Invalid. Hence, The CHR Did Not Acquire Jurisdiction Over Respondent RDS.**

In the instant case, RDS was served a copy of the *Order* of the CHR and the *Petition* via private courier. It received the *Order* on 29 July 2016.

Section 12, Rule 4 of the CHR's *Omnibus Rules* provides for the manner of service of processes in the conduct of its investigation:

> "Section 12. *Service of processes to parties, resource persons* - The service of invitations, orders, subpoena, or summons to the parties, shall be done by personal service or by registered mail.
>
> The party shall be identified as a respondent when the person is named/identified as such in the complaint or in the course of investigation. Resource persons shall also be summoned to the investigation, to shed light on the facts surrounding the investigation."

The *Omnibus Rules*, however, is silent on how the CHR can effect service of processes to foreign juridical entities. Accordingly, pursuant to Section 22, Rule 7 of the *Omnibus Rules*, the Rules of Court shall apply in a suppletory character. However, Section 12, Rule 14 of the Rules of Court, which provides for the rule on the service of summons upon a foreign private juridical entity is not applicable in this case because RDS has not transacted in the Philippines:

> "Section 12. *Service upon foreign private juridical entity*. — **When the defendant is a foreign private juridical entity which has transacted business in the Philippines**, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

If the foreign private juridical entity is not registered in the Philippines or has no resident agent, service may, with leave of court, be effected out of the Philippines through any of the following means:

a) By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;

b) By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by-registered mail at the last known address of the defendant;

c) By facsimile or any recognised electronic means that could generate proof of service; or

d) By such other means as the court may in its discretion direct." [Emphasis supplied]

It is clear from above-cited provision that the only foreign juridical entities that can be impleaded under our rules are those that have **transacted business in the Philippines**.

In the instant case, it bears stressing that RDS is a foreign corporation which is not registered and has not transacted business in the Philippines. Hence, there could be no basis for serving summons or acquiring jurisdiction over it.

There is absolutely no showing in the instant *Petition* that RDS has performed any act in the Philippines that would place it under the State's jurisdiction. The general allegation by Petitioners that "the investor-owned i.e. publicly traded, Carbon Majors, some of which have operations or presence in, or a substantial connection to the Philippines"[122] is not a sufficient ground to give the Philippines, through the CHR, jurisdiction over a foreign corporation not registered and not doing business in the Philippines.

---

122 Petition, p. 7.

To reiterate, Section 12, Rule 14 of the Rules of Court on service of summons upon a foreign corporation only applies to a foreign corporation that has transacted business in the Philippines. If the foreign corporation is not transacting or doing business in the Philippines and does not have any license to so transact or do business in the Philippines, it cannot be sued in the Philippines due to a lack of jurisdiction.

Thus, jurisdiction over RDS cannot be acquired by the CHR even through the provisions of the Rules of Court on service of summons upon foreign juridical entities considering that RDS is not registered and has not engaged or transacted business in the Philippines.

Based on the foregoing, RDS, being a foreign corporation not doing business in the Philippines, is clearly beyond Philippine jurisdiction. As explained by the Supreme Court, to exercise jurisdiction over these foreign corporations would violate the principle of State sovereignty.

PRAYER

WHEREFORE, it is most respectfully prayed that the Honorable Office **DISMISS** the *Petition* dated 09 May 2016 for lack of jurisdiction.

Taguig City for Quezon City, Metro Manila, 09 September 2016.

CRUZ MARCELO & TENEFRANCIA
Counsel for Respondents
THE SHELL COMPANY OF THE PHILIPPINES, LIMITED
and **ROYAL DUTCH SHELL**
9th, 10th, 11th and 12th Floors, One Orion
11th Avenue corner University Parkway
Bonifacio Global City
Taguig City, 1634 Metro Manila
Tel. No.: (632) 810-5858
Fax No.: (632) 810-3838
E-mail: info@cruzmarcelo.com

By:

JOHN JERICO L. BALISNOMO
PTR No. A-2626669 – 01/04/16 – Taguig City
IBP Life Member Roll
No. 07266– 01/08/08 – Makati City
Roll of Attorneys No. 42790

MARIA VININA BONITA A. PADILLA
PTR No. A-2626689 – 01/04/16 – Taguig City
IBP No. 1015887 – 01/04/16 – Makati City
Roll of Attorneys No. 59648
MCLE Compliance No. V-0017290 – 03/28/16

RACHEL B. MIRANDA
PTR No. A-2990954 – 06/30/16 – Taguig City
IBP No. 1042192 – 06/13/16 – Quezon City
Roll of Attorneys No. 66601
Admitted to the Philippine Bar in 2016

DOMINGO A. LUCENARIO III
PTR No. A-2991008 – 7/14/16 – Taguig City
IBP No. 1041790 – 06/01/16 – Makati City
Roll of Attorneys No. 66405
Admitted to the Philippine Bar in 2016

REQUEST

THE RECEIVING CLERK
Commission on Human Rights
Diliman, Quezon City

Greetings:

Please include the instant *Motion to Dismiss Ex Abundanti Ad Cautelam* for hearing or consideration of the Honorable Commission on **19 September 2016** at 10:00 a.m., or on any date thereafter as may be convenient for, or ordered by, the Honorable Commission, if necessary.

DOMINGO A. LUCENARIO III

NOTICE

ATTY. ZELDANIA DT SORIANO
Rooms 301-302 JGS Building
No. 30 Sct. Tuason, Brgy. Laging Handa
Diliman, Quezon City 1103

ATTY. GRIZELDA MAYO-ANDA
Environmental Legal Assistance Center
Carlos Sayang Compound, Mitra Road
Brgy. Sta. Monica, Puerto Princesa City

Greetings:

Please be informed that undersigned counsel will submit the instant *Motion to Dismiss Ex Abundanti Ad Cautelam* for hearing or consideration of the Honorable Commission on **19 September 2016** at **10:00 a.m.**, or on any date thereafter as may be convenient for, or ordered by, the Honorable Commission, if necessary.

DOMINGO A. LUCENARIO III

COPY FURNISHED:
(By Personal Service)

ATTY. ZELDANIA DT SORIANO[123]
Rooms 301-302 JGS Building
No. 30 Sct. Tuason, Brgy. Laging Handa
Diliman, Quezon City 1103

(By Registered Mail)

ATTY. GRIZELDA MAYO-ANDA
Environmental Legal Assistance Center
Carlos Sayang Compound, Mitra Road
Brgy. Sta. Monica, Puerto Princesa City

---

[123] Under p. 26 of the *Petition*, service of processes to Atty. Zeldania DT Soriano is sufficient. Any further copy furnished to any other counsel or party is merely a courtesy.

WRITTEN EXPLANATION
FOR SERVICE BY REGISTERED MAIL

THE RECEIVING CLERK
Commission on Human Rights
Diliman, Quezon City

Greetings:

Please be informed that the undersigned counsel caused the service of a copy of the foregoing *Motion to Dismiss Ex Abundanti Ad Cautelam* by registered mail to Atty. Grizelda Mayo-Anda as evidenced by the attached *Affidavit of Service by Registered Mail*. The undersigned counsel was constrained to cause service thereof by registered mail due to the considerable distance between the offices of the said counsel and the undersigned.

DOMINGO A. LUCENARIO III