

Republic of the Philippines
COMMISSION ON HUMAN RIGHTS
Quezon City

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

Case No.: CHR-NI-2016-0001

*Petition Requesting for
Investigation of the
Responsibility of the Carbon
Majors for Human Rights
Violations or Threats of
Violations Resulting from
the Impacts of Climate
Change*

Petitioners,

-versus-

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 INING (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

COMMENT
(to the Petition dated 9 May 2016)

Respondent **TAIHEIYO CEMENT CORPORATION** (hereinafter "Respondent TCC") through undersigned counsel, by way of special appearance for the purpose of questioning the jurisdiction of this Honorable Commission, respectfully moves for the **dismissal of the Petition** for lack of jurisdiction over the person of the Respondent as well as the subject-matter, there being no basis for Petitioners' claim of violation or threatened violation of human rights.

FACTUAL ANTECEDENTS

1. On 04 August 2016 Respondent TCC received an Order dated 21 July 2016 (hereinafter the "Order") issued by the Honorable Commission on Human Rights of the Philippines (hereinafter "CHR"), through private courier – DHL.
2. The Order directs the named Respondents to submit their Comment or Answer to the Petition filed by Greenpeace Southeast Asia (Philippines), et al. (hereinafter the "Greenpeace Petition") within forty-five (45) days from receipt of the Petition.
3. The Greenpeace Petition entitled "Petition 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 9 May 2016 was filed by 14 individuals and non-governmental organizations, headed by Greenpeace Southeast Asia (Philippines) (hereinafter the "Petitioners") with the Honorable Commission.
4. The Petitioners stated that for procedural convenience and practical reasons, they may be collectively served with summons and other processes issued from this Honorable Commission at Greenpeace Southeast Asia No. 30 JGS Bldg., Sct. Tuason, Brgy. Laging Handa, Quezon City, addressed to their Legal Representatives.
5. Respondent TCC is a corporation duly organized and existing under the laws of Japan, with head office at Daiba Garden City Building, 2-3-5 Daiba, Minato-ku, Tokyo 135-8578 Japan.

Respondent TCC may be served with legal processes through undersigned counsel, Cochingyan & Peralta Law Offices, with address at the 12th Floor, 139 Corporate Center, 139 Valero Street, Salcedo Village, 1227 Makati City.

6. On 19 September 2016, Respondent TCC, through undersigned counsel, filed a Motion for Extension of Time *Ex Abundati ad Cautelam* (to file a response to the Petition dated 09 May 2016) praying that it be granted an additional period of twenty (20) days from filing of the Motion within which to file its Response to the Greenpeace Petition.
7. Hence, Respondent TCC most respectfully submits its Comment (to

A. The Honorable Commission has not acquired jurisdiction over the person of Respondent TCC by failing to serve the Order as provided under the Commission's own Rules of Procedure.

8. It is a basic legal concept that courts of law acquire jurisdiction over the persons of defendants or respondents by a valid service of the legal processes, such as summons, by the court or through the party's voluntary submission to the court's authority.¹
9. A party who has not been validly served summons and who did not voluntarily submit to the court's authority cannot be subject to said court's jurisdiction nor can the court validly grant any relief against said party.
10. Section 18 (2), Article XIII of the 1987 Constitution conferred to this Honorable Commission the authority to adopt its own operational guidelines and rules of procedure.
11. Pursuant to its Constitutional mandate, this Honorable Commission promulgated its own Rules of Procedure on 19 April 2012 or the *Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance* (hereinafter the "CHR Rules of Procedure").
 - 11.1. As provided in Rule 4, Section 12 of CHR Rules of Procedure, **the service of invitations, orders, subpoena, or summons to the parties shall be done by personal service or by registered mail.**
 - 11.2. Respondent TCC received a copy of the Order of the Honorable Commission on 04 August 2016. Said Order was delivered to the office of Respondent TCC in Japan by a private courier, DHL.

- 11.3. The means provided in the CHR Rules of Procedure are only by (1) personal service and (2) registered mail.
- 11.4. It bears stressing that service under this particular provision is not merely procedural in nature but is in fact a jurisdictional requirement as well as a due process requirement which must strictly be complied with for the Honorable Commission to acquire jurisdiction over the person of the Respondent TCC.
- 11.5. In the case of *Macasaet et al. vs. Co, Jr.*, the Supreme Court emphasized that “[t]he significance of the proper service of the summons on the defendant in an action in personam cannot be overemphasized. The service of the summons fulfills two fundamental objectives, namely: (a) to vest in the court jurisdiction over the person of the defendant; and (b) to afford to the defendant the opportunity to be heard on the claim brought against him.” (emphasis supplied)
12. Thus, Respondent TCC most respectfully submits that the Honorable Commission has not acquired jurisdiction over its person for having failed to serve the Order via personal service or registered mail, which are the means sanctioned by the Honorable Commission’s own Rules of Procedure.
13. Accordingly, it is most respectfully submitted that the Honorable Commission does not have the authority to grant any of the relief prayed for against Respondent TCC, having failed to acquire jurisdiction over the person of the latter.

B. It is most respectfully submitted that the alleged acts of Respondent TCC are not human rights violations of threatened human rights violation which are the proper subject of the jurisdiction of the Honorable Commission.

14. The effects of CO₂ emissions are neither violations of human rights nor threatened violation of human rights which are subject matters within the jurisdiction of the Honorable Commission.
 - 14.1. Jurisdiction over the subject matter is conferred by law.
 - 14.2. There are no laws which provide that effects of CO₂ emissions are violations or threatened violations of human rights.
15. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in a complaint. The averments therein and the character of the relief sought are the ones to be consulted.²
16. The Honorable Commission, through CHR Resolution No. AB8-045, approved by the Honorable Commission on 26 July 1988, has promulgated guidelines to determine the nature of acts that may constitute (1) clear or *per se* violations of human rights, which should immediately be given due course by its personnel; and (2) other cases of alleged human rights violations which should first be referred to an evaluation committee in order to determine if they should be given due course by the Honorable Commission, or referred to another proper government agency, or be considered as not within the jurisdiction of the Honorable Commission.
17. The effects of CO₂ emissions, such as climate change and ocean acidification, are not included in the acts enumerated as *human rights violations per se* provided in Article II of the CHR Circular No. 001, series of 1988.

18. Further, Respondent TCC most respectfully submits that the alleged acts in the Greenpeace Petition were not submitted, for evaluation and determination, to an evaluation committee to determine if they can be considered as *other human rights violation* as provided in Article II of the CHR Circular No. 001, series of 1988, thus, there is no basis to say that the alleged acts are “other human rights violations” which are within the jurisdiction of the Honorable Commission.
19. Not being human rights violations *per se* or “other human rights violations,” the effects of CO₂ emissions are subject matters which are beyond the jurisdiction of the Honorable Commission and should not be given due course by said Honorable Commission.

C. Further, it is most respectfully submitted that the Honorable Commission has no jurisdiction over the person of Respondent TCC because it is a foreign corporation not domiciled in the Philippines; it is not licensed to engage in and is not engaging in business herein.

20. Respondent TCC, being a foreign private juridical entity not engaged in business in the Philippines, is beyond the jurisdiction of the Philippine courts as well as this Honorable Commission.
21. As held by the Honorable Supreme Court in the case of ***Avon Insurance PLC, et al. v. Court of Appeals, et al.***,³ “[i]ndeed, 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.”

- 21.1. As admitted by Petitioners in the Greenpeace Petition, Respondent TCC is a corporation duly organized and existing under the laws of Japan. Being such, it is most respectfully submitted that the laws, rules and jurisprudence are in agreement that it cannot be subject of the jurisdiction of any court or agency, such as the Honorable Commission, unless it is doing business in the Philippines.
- 21.2. This is further supported by the ruling in the 2014 United States Supreme Court case of *Daimler AG v. Bauman*,⁴ that a corporation is only subject to general jurisdiction where their affiliations with the forum State are so 'continuous and systematic' as to render them essentially at home there. Thus, unless there are exceptional circumstances, the place of incorporation and/or its principal place of business shall determine where a corporation is "at home."
- 21.3. Further, the Honorable United States Supreme Court stated that under the "at home" test, the place of incorporation and principal place of business are the paradigm bases for general jurisdiction.
- 21.4. It is most respectfully submitted that Respondent TCC is not licensed to engage in and is not engaging in business in the Philippines.
- 21.5. It is further respectfully submitted that, as explicitly stated in Section f(1) of the Implementing Rules and Regulations of the Foreign Investment Act, Respondent TCC's investment in a domestic corporation shall not be deemed as "doing business" in the Philippines.
22. Thus, being a foreign private juridical entity not engaged in business in the Philippines, and there being no valid service of summons or other legal processes, it is most respectfully submitted that the Honorable Commission has not validly acquired jurisdiction over the person of Respondent TCC.

D. Notwithstanding the procedural contentions of Respondent TCC, it is nevertheless most respectfully submitted that Respondent TCC proactively addresses the issue of and is committed to mitigating the effects of climate change by reducing greenhouse gas emissions through the recycling of wastes, implementation of efficiency measures and the introduction of environmental technologies through the implementation of corporate responsibility and other actions.

23. Respondent TCC has pledged its commitment to the environment as stated in its Corporate Social Responsibility (CSR) Report 2015.⁵ As part of its business principles, Respondent TCC aims to manage the environmental impacts of its operations while supporting the development of a recycling-based society.
 24. In January 2006, Respondent TCC created an Environmental Management Policy with various initiatives such as emphasizing compliance with environmental laws and regulations, proactively addressing the issue of climate change, and contributing to a recycling-based society.
 25. Respondent TCC respectfully submits that it strives for a sustainable cement industry and focuses on reducing CO₂ emissions from cement production.
 26. As a minimum, Respondent TCC complies with environmental laws and regulations applicable to its business activities. Beyond such minimum compliance, Respondent TCC meets further environment commitments undertaken through voluntary agreements.
-

27. Respondent TCC respectfully submits that it has been striving to further improve its environmental management since having a unified environmental management systems developed by individual plants and obtaining a unified ISO 14001 certification for the entire company in April 2009. The company-wide environmental management system was audited for the second time in March 2015, and was re-certified. Respondent TCC further submits that the implementation of its environmental management systems, together with development and adaptation of its products and technologies, reduce environmental impact.
 28. Respondent TCC proactively addresses the issue of and is committed to mitigating the effects of climate change by reducing greenhouse gas emissions through the recycling of wastes, implementation of efficiency measures and the introduction of environmental technologies. Respondent TCC promotes greater energy reduction throughout the whole of its business activities and strives to develop technology to help reduce society's total greenhouse gas emissions.
 29. To realize its aim of sustainable development, Respondent TCC set group targets to reduce CO₂ emissions, as well as other greenhouse gas emissions, using the key performance indicators developed by the Cement Sustainability Initiative (CSI). For 2015, Respondent TCC aimed to reduce specific net CO₂ emissions per tonne of cementitious product by 4.5% from fiscal 2000 levels by fiscal 2015.
 30. Respondent TCC respectfully submits that it calculates and reports its greenhouse gas emissions. Respondent TCC monitors its CO₂ emissions and uses the "Cement CO₂ and Energy Protocol" in accordance with the guidelines provided by the World Business Council for Sustainable Development (WBCSD), Cement Sustainability Initiative (CSI).
 31. For fiscal 2014,⁶ Respondent TCC group performance for CO₂ and climate protection, emission monitoring and reporting, health and safety, and water, was third-party certified by KPMG AZSA Sustainability Co., Ltd.
-

32. **For fiscal 2015⁷, Respondent TCC achieved a 5.9% reduction of specific net CO₂ emissions per tonne of cementitious product from fiscal 2000 levels.**
33. Respondent TCC respectfully submits that it strives to reduce CO₂ emissions through efforts to reduce energy consumption by introducing energy-efficient equipment and improving stability and efficiency in kiln operations. Further, Respondent TCC has been implementing measures such as using waste-derived and biomass-derived energy sources to decrease its rate of use of fossil fuels. Moreover, Respondent TCC is moving towards using recycled resources with less carbonate content to bring down CO₂ emissions from the calcinations of the limestone used as raw material and have started using waste heat power generation to tackle CO₂ emissions from electricity.
34. Further, Respondent TCC respectfully submits that it uses alternative energy resources such as waste tires, plastics, oil and wood for cement production. In fiscal 2014 non-fossil energy and biomass energy accounted for about 15% of all energy used for group kilns. As a result, reductions in CO₂ emissions are expected to reach 1.87 million tonnes (emission factor for coal: 0.096 kg-CO₂/MJ).
35. Respondent TCC respectfully submits that it reduces specific CO₂ emissions from raw materials in cement production by replacing limestone with alternative raw materials, such as waste and by-products that contain CaO, such as slag.
36. Respondent TCC respectfully submits that it has set a quantitative target to reduce specific net CO₂ emissions per tonne of cementitious product by over 10% from fiscal 2000 levels by fiscal 2025 as Respondent TCC and its group companies, including its overseas sites, continue to conduct climate change mitigation activities. Respondent TCC established the following policies for achieving such target:
- 36.1. Respondent TCC promotes the expansion of its recycling technologies worldwide for the reuse of conventional waste and by-products generated from cement production.
-

- 36.2. Further, Respondent TCC promotes the development of technologies for handling wastes that are difficult to recycle, with a focus on reusing them as alternative energy resources.
- 36.3. To promote further energy saving, Respondent TCC introduces energy efficient equipment and installs additional in-house power generation equipment such as waste heat power generation systems. Respondent TCC also promotes further energy saving by using mainly new renewable energy sources.
- 36.4. Respondent TCC promotes research and development (R&D) activities that contribute to reducing global environmental impact, including R&D into innovative cement production technologies. Further, Respondent TCC promotes the development of new technologies for practical applications.
37. Notwithstanding the foregoing, it is nevertheless most respectfully submitted that Respondent TCC should not be held accountable for human rights violations or threatened human rights violation in this instant case. It bears stressing that Respondent TCC is proactively addressing the issue of and is committed to mitigating the effects climate change.

PRAYER

Wherefore, premises considered, it is respectfully prayed that this Honorable Commission dismiss the instant Petition against Respondent TCC for lack of jurisdiction.


Respondent likewise prays for such other remedies as may be just and equitable under the circumstances.

RESPECTFULLY SUBMITTED.

Makati City for Quezon City, 06 October 2016.

COCHINGYAN & PERALTA LAW OFFICES
Counsel for Respondent Taiheiyo Cement Corporation
12th Floor, 139 Corporate Center,
139 Valero Street, Salcedo Village,
Makati City, Metro Manila
Tel. No. (02) 8173081 to 83

By:



JOSE COCHINGYAN III

Roll No. 35309

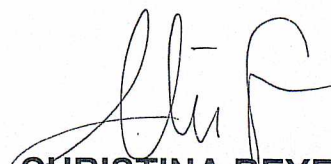
PTR No. 5330487/January 11, 2016/Makati City
IBP LRN No. 04836/June 18, 2003/Quezon City
MCLE Exemption No. V-001436/March 29, 2016/
Pasig City



AIMEE ABIGAIL SALAMAT

Roll No. 58432

PTR No. 5330490/January 11, 2016/Makati City
IBP No. 1023417/January 08, 2016/ Quezon Province
MCLE Compliance No. V-0020707/April 20, 2016/ Pasig
City



MA. CHRISTINA REYES

Roll No. 63407

PTR No. 5330491/January 11, 2016/Makati City
IBP No. 1023415/January 08, 2016/ Makati City
MCLE Compliance No. V-0012366/December 08, 2015/
Pasig City

VERIFICATION AND CERTIFICATION

I, **AIMEE ABIGAIL SALAMAT**, of legal age, with office address at Unit 1202 12th Floor 139 Corporate Center, 139 Valero St. Salcedo Village, Makati City, under oath, hereby depose and state:

1. I am the duly authorized representative of Taiheiyo Cement Corporation (the "Company"), a Respondent in the above-entitled Petition.
2. I have caused the preparation of the foregoing Comment.
3. I have read and understood its contents which are true and correct based on authentic records.
4. I hereby certify that I have not commenced any action or proceeding involving the same issues before the Court of Appeals or any of its divisions, the Supreme Court or any of its divisions, or any other tribunal or agency, and to the best of our knowledge, no similar action or proceeding has been filed or is pending before any other court, tribunal or agency; and
5. If I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court or any of its divisions, the Court of Appeals or different divisions thereof, or any other tribunal or agency, we undertake to promptly inform this Honorable Commission, as well as such other courts, tribunals or agency, of that fact within five (5) days therefrom.

IN WITNESS WHEREOF, I have signed my name this OCT 06 2016 in MAKATI CITY.

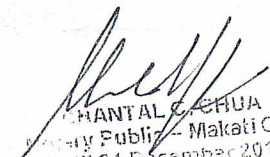

AIMEE ABIGAIL SALAMAT
Affiant

ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN to before me this OCT 06 2016
in MAKATI CITY, affiant exhibited to me her Tax Identification No. 289-784-223.

Doc. No. 290;
Page No. 59;
Book No. 2;
Series of 2016.




CHANTAL C. CHUA
Notary Public - Makati City
Until 31 December 2017
Cochingyan & Perata Law Offices
Twelfth Floor, 139 Corporate Center
139 Valero St. Salcedo Village, Makati City

Copy Furnished:

GREENPEACE SOUTHEAST ASIA (PHILIPPINES)

Petitioners

No. 30 JGS Bldg., Sct. Tuason,
Brgy. Laging Handa, Quezon City

EXPLANATION

A copy of this Comment was served on the Petitioners through registered mail due to time constraint and considerable distance between the office address of the undersigned and those of the Petitioners.



MA. CHRISTINA REYES