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

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REJOINDER *EX ABUNDANTI AD CAUTELAM*

[To the: *Consolidated Reply* dated 14 February 2017]

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REJOINDER *EX ABUNDANTI AD CAUTELAM*[1]

[To the: *Consolidated Reply* dated 14 February 2017]

THE SHELL COMPANY OF THE PHILIPPINES LIMITED ("SCPL") and **ROYAL DUTCH SHELL PLC** ("RDS"), by special and limited appearance of counsel, files the instant *Rejoinder* to the *Consolidated Reply* dated 14 February 2017 ("*Consolidated Reply*") filed by Petitioner Greenpeace Southeast Asia (Philippines), *et al.*, (collectively, the "Petitioners"), on the basis of the presentation below.

As stated in the *Motion to Dismiss Ex Abundanti Ad Cautelam* dated 09 September 2016 ("*Motion to Dismiss*"), for the avoidance of any doubt, SCPL and RDS limit their submissions only to matters questioning the jurisdiction of the Commission of Human Rights ("CHR") over the *Petition* dated 09 May 2016 ("*Petition*"). SCPL and RDS make no admissions in these submissions of any fact, matter, or argument relating to the merits of the claim advanced by the Petitioners. In this regard, SCPL and RDS's submissions in support of the instant *Rejoinder* do not constitute an acceptance of, or acquiescence to, the jurisdiction of the CHR.

ARGUMENTS

I

CONTRARY TO THE ARGUMENTS OF THE PETITIONERS, JURISDICTION, OR THE LEGAL POWER AND AUTHORITY TO EXERCISE THE POWERS OF THE STATE, IS A FUNDAMENTAL REQUIREMENT FOR THE VALIDITY OF ANY GOVERNMENT ACT.

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[1] The instant *Rejoinder* is being filed by special and limited appearance and without prejudice to questioning the CHR's jurisdiction over the instant case, SCPL, and RDS. In the *Order* dated 16 March 2017, a copy of which was received by undersigned counsel on 21 March 2017, the CHR enjoined all respondents to file their answers, rejoinders, or other submissions, on or before **05 May 2017**. Hence, the instant *Rejoinder* is timely filed.

A. **JURISDICTION IS PURELY A MATTER OF LAW AND NOT OF POLICY ADVOCACY; AND RULE OF LAW CONSIDERATIONS, UPON WHICH THE WHOLE LEGAL, POLITICAL, AND ECONOMIC SYSTEM IS FOUNDED, MUST BE RESPECTED AND OBSERVED EVEN IN LIGHT OF ENVIRONMENTAL CONCERNS.**

II

THE CHR HAS NO AUTHORITY TO CONDUCT AN INVESTIGATION CONCERNING THE SUBJECT MATTER OF THE *PETITION*.

A. **THE INVESTIGATIVE, RECOMMENDATORY, AND MONITORING POWERS OF THE CHR ARE SEPARATE AND DISTINCT POWERS UNDER THE 1987 PHILIPPINE CONSTITUTION ("CONSTITUTION") WHICH CANNOT BE INVOKED WHOLESALE AND USED INTERCHANGEABLY, SINCE EACH POWER IS SPECIFICALLY DEFINED IN RELATION TO DIFFERENT SUBJECT MATTERS AND ACTORS AND, THUS, LIMITED BY THE CONSTITUTIONAL TEXT.**

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

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

C. ***THE OMNIBUS RULES OF PROCEDURE OF THE COMMISSION ON HUMAN RIGHTS*** **("*OMNIBUS RULES*") UNILATERALLY EXPANDS THE INVESTIGATIVE MANDATE OF THE CHR DESPITE THE FACT THAT JURISDICTION OF THE CHR IS EXPRESSLY LIMITED TO THE INVESTIGATION OF VIOLATIONS OF CIVIL AND POLITICAL RIGHTS AS PROVIDED IN THE CONSTITUTION AND AS RECOGNIZED BY THE SUPREME COURT OF THE PHILIPPINES ("SUPREME COURT").**

1. **THE CHR'S UNILATERAL ATTEMPT TO EXPAND ITS JURISDICTION THROUGH ITS *OMNIBUS RULES* IS, ACCORDINGLY, BASELESS, INVALID AND UNCONSTITUTIONAL.**

D. **THE PROVISIONS OF THE HUMAN SECURITY ACT AND/OR THE PHILIPPINE CLIMATE CHANGE ACT DID NOT EXPAND THE JURISDICTION OF THE CHR BEYOND VIOLATIONS OF CIVIL AND POLITICAL RIGHTS. INDEED, PETITIONERS' INVOCATION OF THE HUMAN SECURITY ACT AND THE PHILIPPINE CLIMATE CHANGE ACT SHOWS THEIR ADMISSION THAT THE CHR'S JURISDICTION MAY ONLY BE EXPANDED BY CONGRESSIONAL FIAT.**

III

THE CHR HAS NO JURISDICTION OVER THE PERSONS OF SCPL AND RDS.

A. **BY VIRTUE OF THE *OMNIBUS RULES* OF THE CHR ITSELF, THE APPLICABLE MANNER OF SERVICE OF SUMMONS IS THAT PROVIDED IN THE RULES OF COURT, WHICH WAS NOT COMPLIED WITH.**

1. **THE RULES ON SERVICE OF PROCESSES MUST COMPLY WITH THE SERVICE OF SUMMONS IN THE RULES OF COURT.**

2. **THE CHR CANNOT ACQUIRE JURISDICTION OVER RDS AS THE SAME HAS NEVER TRANSACTED IN**

3. IT IS IMMATERIAL THAT SCPL AND RDS WERE ALLEGEDLY IMPLEADED AS CORPORATE GROUPS OR THAT THEY ARE PUBLICLY KNOWN.

IV

THE CHR'S POWERS ARE LIMITED BY BASIC CONCEPTS OF TERRITORIALITY, AS IT HAS NO EFFECTIVE POWER OR COERCIVE JURISDICTION FOR ACTS COMMITTED OUTSIDE THE PHILIPPINES.

A. 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.

B. 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.

V

CONTRARY TO PETITIONERS' ARGUMENTS, THE CHR'S JURISDICTION CANNOT BE EXPANDED BY ANY RULE OF INTERNATIONAL LAW, ASSUMING THERE IS EVEN ANY.

A. THE JURISDICTION OF THE CHR CANNOT BE EXPANDED BY INTERNATIONAL LAW *VIA* "INCORPORATION" OR "TREATY" CLAUSES, AS SECTION 19, ARTICLE XIII OF THE CONSTITUTION, EXPRESSLY LEAVES THE EXPANSION OF THE CHR'S JURISDICTION TO CONGRESS.

B. THE CHR CANNOT UNILATERALLY IMPOSE HUMAN RIGHTS OBLIGATIONS ON PRIVATE PARTIES IN THE ABSENCE OF LAW.

1. THE SOVEREIGN DUTY TO PROTECT HUMAN RIGHTS DOES NOT REQUIRE OR PERMIT THE STATE TO APPLY HUMAN RIGHTS OBLIGATIONS TO PRIVATE JURIDICAL ENTITIES IN THE ABSENCE OF LAW.

C. EVEN ASSUMING THAT THE JURISDICTION OF THE CHR CAN BE EXPANDED BY INTERNATIONAL LAW AS INCORPORATED IN PHILIPPINE LAW, THERE IS CURRENTLY NO NORM OF INTERNATIONAL LAW THAT WOULD JUSTIFY EXTENDING THE JURISDICTION OF THE CHR EXTRATERRITORIALLY.

1. THE PARIS PRINCIPLES (1993) DO NOT PROVIDE FOR THE EXPANSION OF THE JURISDICTION OF THE CHR. INSTEAD, THEY MERELY REINFORCE THE IMPORTANCE OF EXPRESSLY DEFINING THE MANDATE OF THE CHR IN THE CONSTITUTION, WHICH, IN FACT, DIVESTS THE CHR OF JURISDICTION IN THIS CASE.

2. THE PARIS AGREEMENT (2015) DOES NOT PROVIDE ANY LEGAL BASIS FOR THE EXTENSION OR EXTRA-TERRITORIAL APPLICATION OF A STATE'S JURISDICTION.

3. THE EFFECTS DOCTRINE AND THE DOCTRINE OF NECESSITY DO NOT SUPPORT THE EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS OBLIGATIONS SOUGHT BY PETITIONERS.

4. THE STOCKHOLM DECLARATION IS NOT BINDING AND DOES NOT EXPAND THE JURISDICTION OF THE CHR.

5. THE *MAASTRICHT PRINCIPLES* INVOKED BY PETITIONERS DO NOT PROVIDE A PROPER LEGAL BASIS FOR THE CHR'S PURPORTED EXTENSION OF ITS JURISDICTION OVER RDS AND SCPI

6. **THE "NO HARM" PRINCIPLE IS NOT A BASIS FOR THE EXTRA-TERRITORIAL APPLICATION OF HUMAN RIGHTS JURISDICTION.**

7. **THE *GUIDING PRINCIPLES* IS NOT A LEGALLY BINDING DOCUMENT; IT DOES NOT CREATE ANY LEGAL OBLIGATIONS ON STATES OR PRIVATE ACTORS.**

8. **THE APPROPRIATE FORUM TO REGULATE THE CONDUCT OF COMPANIES IS THE STATE OF INCORPORATION OR OF THE SEAT.**

DISCUSSION

I. Contrary To The Arguments Of The Petitioners, Jurisdiction, Or The Legal Power And Authority To Exercise The Powers Of The State, Is A Fundamental Requirement For The Validity Of Any Government Act.

In their *Consolidated Reply*, Petitioners argue that the CHR is not a court of law that needs to acquire jurisdiction over the person and subject-matter before it can hear and decide a legal controversy.[2] Instead, Petitioners contend that the term jurisdiction should not be construed and applied in the instant inquiry[3] since the CHR is acting allegedly according to its special investigative, recommendatory, and monitoring mandate and not as a court of law that needs to acquire—in its technical sense—jurisdiction over the person and subject matter before it can hear and decide a legal controversy.[4]

Petitioners betray a flawed understanding of the concept of jurisdiction. There is no question that the CHR engages the principles of jurisdictional competence, and that these principles preclude the CHR from proceeding with the *Petition* with respect to SCPL and RDS and the other respondents. It is remarkable that, after the Petitioners protested that the respondents were allegedly attempting to have the *Petition* improperly

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2 At pars. 2.3-2.7, pp. 8-9, *Consolidated Reply*.

3 At par. 2.5, pp. 8-9, *Consolidated Reply*.

4 At par. 2.6, pp. 8-9, *Consolidated Reply*.

dismissed for supposedly mere "technicalities", they themselves would attempt to avoid jurisdictional requirements by arguing that the CHR is not formally a court: this despite the fact that the Petitioners requested the CHR to make findings of liability for human rights violations against the respondents and order the respondents to take steps to remedy the violations alleged.

As a preliminary matter, it is important to recall that the principle of jurisdiction has two distinct (albeit closely related) meanings.

First, in the realm of **public international law**, jurisdiction refers to "the limits of the legal competence of a State [...] to make, apply and enforce rules of conduct upon persons". As the former Judge of the International Court of Justice ("ICJ") Judge Bruno Simma explained:

> "[T]he regime of jurisdiction of states operates on a higher level of generality than the jurisdiction of courts and tribunals. It is on the basis, and within the limits, of the jurisdiction enjoyed by states that states, on their part, endow bodies on the domestic and the international level with authority to state the law."[5]

The present *Petition* is clearly of an international character and therefore engages fundamental questions of public international law: the *Petition* requests the CHR, an organ of the Republic of the Philippines, to investigate and decide on the responsibility of nationals of other States who have no presence or activity within the Philippines and in respect of actions that took place outside of the Philippines. The exercise of such investigatory and adjudicatory power in an international context requires that the relevant public organ possess the necessary jurisdictional competence or power to exert authority over non-nationals or otherwise enquire into the affairs of other States. This is discussed in further detail in Section IV below.

Second, jurisdiction refers to the power of a public organ or institution to exercise the State's coercive power over certain individuals and/or situations. As Judge Simma further explained:

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[5] B Simma et al, "Exercise and Limits of Jurisdiction" in J Crawford and M Koskenniemi (eds), *The Cambridge Companion to International Law* (2012), 135. Jurisdiction has likewise been defined as a *"**government's general power to exercise authority over all persons and things within its territory**; esp., a state's power to create interests that will be recognized under common-law principles as valid in other states."* BLACK'S LAW DICTIONARY 927 (9th ed. 2009).

> "[I]n domestic as well as the international realm, reference is had to **the jurisdiction of institutional bodies. This concerns the question under what conditions institutions, particularly those of a judicial or quasi-judicial character may pronounce on what the law is.** As there exists no single institution entitled to address all questions it deems fit, it is crucial to assess the reach of the body's jurisdiction and, correspondingly, to identify the limits to its jurisdiction."[6] (Emphasis supplied)

Jurisdiction is a fundamental principle of law that applies equally to government agencies like Constitutional bodies, including the CHR, as a matter of competence and authority to act, as it does to courts of law. **Jurisdiction is thus not a matter over which only courts of law are concerned**: it serves as the very foundation of the exercise of State power by its agents – and in this case, the CHR.

In fact, the Supreme Court has invalidated or prohibited not only the acts of the judicial branch, but also the executive[7] and the legislative[8] branches, the Constitutional Commissions,[9] and notably, **the CHR itself**, on the ground of lack or excess of jurisdiction or authority to act.[10]

A. Jurisdiction Is Purely A Matter Of Law And Not Of Policy Advocacy; And Rule Of Law Considerations, Upon Which The Whole Legal, Political, And Economic System Is Founded, Must Be Respected And Observed Even In Light Of Environmental Concerns.

In their *Consolidated Reply*, Petitioners bewail respondents' resort to the legal remedies available to them under the law to question acts of a government agency that are done beyond the latter's jurisdiction.[11] Petitioners further evade the jurisdictional issues raised in the *Motion to Dismiss* and, instead, resort to political advocacy and pressure in order to convince the CHR to take cognizance of its *Petition*.[12]

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6 B Simma et al, "Exercise and Limits of Jurisdiction" in J Crawford and M Koskenniemi (eds), *The Cambridge Companion to International Law* (2012), 134; emphasis supplied.

7 *See* ***Belgica v. Ochoa***, 710 SCRA 1 (2013).

8 *See* ***Araullo v. Aquino***, 728 SCRA 1 (2014).

9 *See* ***Eriguel v. Commission on Elections***, 613 SCRA 809 (2010).

10 *See* ***Simon v. Commission on Human Rights***, 229 SCRA 117 (1994).

11 At pp. 5-9, *Consolidated Reply*.

12 At par. 2.50, p. 23, *Consolidated Reply*.

Unfortunately, Petitioners' contentions are without merit.

At the onset, jurisdiction is matter of substantive law,[13] not a matter of fact, science, policy, reputation, or mere technicality—and certainly not advocacy, however desirable Petitioners may think it is. It is the bare-minimum requirement for the validity and enforceability of any act of government.

As discussed above, **jurisdiction is not a matter over which only courts of law are concerned**. On the other hand, jurisdiction serves as the very foundation of the exercise of State power by its agents. In ***People of the Philippines v. Mariano***, 163 Phil. 625 (1976), the Supreme Court defined jurisdiction in its simplest terms as the authority to hear and determine a cause and the right to act in a case:

> "The word 'jurisdiction' is derived from two Latin words 'juris' and 'dico' — 'I speak by the law' — which means fundamentally **the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies**. Bouvier's own definition of the term 'jurisdiction' has found judicial acceptance, to wit: 'Jurisdiction is the right of a Judge to pronounce a sentence of the law in a case or issue before him, acquired through due process of law;' **it is 'the authority by which judicial officers take cognizance of and decide cases**.'
>
> **In *Herrera vs. Barretto*, September 10, 1913, 25 Phil. 245, 251, this Court, in the words of Justice Moreland, invoking American jurisprudence, defined 'jurisdiction' simply as the authority to hear and determine a cause — the right to act in a case. 'Jurisdiction' has also been aptly described as the *right to put the wheels of justice in notion*, and to proceed to the final determination of a cause upon the pleadings and evidence."** (Emphasis and underscoring supplied)

Jurisdiction, therefore, has to do with the conferment of authority and competence upon any State institution to act on certain matters. In petitioning that the CHR conduct a national inquiry on the alleged human rights implications of climate change purportedly brought about by

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13 *Republic v. Court of Appeals*, 306 SCRA 365 (1999).

respondents, and by seeking reliefs in the forms of prayers in both their *Petition* and *Consolidated Reply*, Petitioners are precisely invoking the CHR's authority to hear and decide their cause, and to act on their behalf against respondents. **In other words, the Petitioners have invoked the jurisdiction and authority of the CHR over this case and it must thus be tested if the matter is within its authority and competence.**

Notably, Petitioners utterly fail to cite any basis, as there is none, for their allegation that the *"acquisition of personal and subject matter jurisdiction before hearing and deciding a case, is not applicable to the [CHR], which has a special mandate under the Constitution."*[14] Indeed, Petitioners' skewed understanding of the concept of jurisdiction places the CHR supremely above all judicial or quasi-judicial bodies which are required to only take cognizance of matters within their jurisdiction or authority.

The foregoing position is not supported and is, in fact, contradicted by the very case Petitioners cite to support their position, ***Herrera v. Baretto and Joaquin***, 25 Phil. 245 (1913). In said case, the Supreme Court went through Philippine and American jurisprudence, which all require acquisition of jurisdiction over the person concerned and the subject matter involved for the court to validly decide the questions in those cases. The Supreme Court thus concluded the case, as follows:

> "Jurisdiction is the authority to hear and determine a cause—**the right to act in a case**. Since it is **the power to hear and determine**, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decisions made. Jurisdiction should therefore be distinguished from the exercise of jurisdiction. The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. **Where there is jurisdiction of the person and subject matter, as we have said before, the decision of all other questions arising in the case is but an exercise of that jurisdiction.**" (Emphasis and underscoring supplied)

In fact, the requirement that even a Constitutionally-created body such as the Commission on Elections must first acquire jurisdiction over the person of the party was affirmed by the Supreme Court in ***Acosta v. Commission on Elections***, 355 Phil. 323 (1998). Clearly, contrary to

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[14] See Subheading A. a. B of the Consolidated Reply.

Petitioners' position, even constitutionally-created bodies, of which the CHR is one, are neither immune to nor exempt from the fundamental requirements of due process, including the necessity of a valid acquisition of jurisdiction over the persons of parties to a case or proceedings.

Evidently, Constitutional limits must be respected at all times. Hence, should the CHR proceed with the national inquiry notwithstanding its apparent lack of jurisdiction, the proceedings therein would be void.

Clearly, Petitioners' argument that the foregoing concepts of jurisdiction were not intended to apply to the CHR by the framers of the Constitution[15] is patently without merit. While the Constitution uses the terms "powers and functions"[16] and "authority"[17] in outlining the jurisdiction of the CHR, said terms fall within the concept of jurisdiction in that they outline the government's general power to exercise authority over all persons and things within its territory.

Further, it must be pointed out that Petitioners maliciously and misleadingly argue that the framers of the Constitution allegedly intended a contrary interpretation of the jurisdiction of the CHR to hold.[18] Petitioners' claim is false.

On the contrary, a full and complete reading of the deliberations of the Constitutional Commission which were only partly cited by Petitioners would show that the choice of the word "authority" over "jurisdiction" did not, in any way, vest the CHR with unlimited power, authority, or jurisdiction, over <u>all</u> kinds of human rights issues:

> "MR. DE LOS REYES. And may I offer an amendment of Commissioner Nolledo that **instead of using the word 'JURISDICTION' which might be confused with the jurisdiction of the regional trial courts, the municipal courts, we put 'AUTHORITY.' I think that will be a more appropriate term in defining the scope of the work of the commission.** Is that acceptable to Commissioner Nolledo?
>
> MR. NOLLEDO. I would like to consult the committee because if we accept the amendment of Commissioner de los Reyes, more or less the amendment will read as follows:

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15 At par. 2.5, p. 8, *Consolidated Reply*.

16 Section 18, Article XIII, Constitution.

17 Section 19, Article XIII, Constitution.

18 At par. 2.5, pp. 8-9, *Consolidated Reply*.

'CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION ON HUMAN RIGHTS TO INVESTIGATE.' Will the committee be amenable?

MR. SARMIENTO. We will take into account the priorities recommended by the Human Rights Commission.

MR. DE LOS REYES. So, it will be 'AUTHORITY' instead of 'JURISDICTION'.

THE PRESIDENT. Is that acceptable?

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

MR. SARMIENTO. The amendment is accepted, Madam President."[19] (Emphasis and underscoring supplied)

The fact that the drafters of the Constitution chose to use the term "authority" with respect to the power of the CHR rather than "jurisdiction" does not relieve the CHR of its duty to determine whether it has the jurisdiction or power as a matter of both domestic and international law to consider the *Petition* and to grant the relief requested. **Nowhere was it stated that the use of the word "authority" would exempt the CHR from application of jurisprudence and legal principles concerning the legal limitations on its power, authority, or jurisdiction, as delineated by the Constitution.**

Whether a national organ is exerting jurisdiction over a private actor, and in particular, over non-national entities that are not seated in the State, is an objective question. Indeed, it is a fundamental principle of law that the characterization of a matter under domestic law is not determinative of whether that matter complies with international law.[20]

Therefore, the distinction claimed by Petitioners is, in fact, completely inexistent. Thus, the CHR is bound to observe the limits imposed by the Constitution upon its actions, whether the latter is termed "power", "authority", "jurisdiction," or otherwise.

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19 At pp. 6-7 of *Records of the Constitutional Commission*, Vol. 3, No. 68 ("*RCC No. 68*").

20 See, *Le Compte, Van Leuven And De Meyere v Belgium* (1981) 4 EHRR 1, which established that what is characterized as a "civil right" as a matter of domestic law is not determinative of the issue under international law (in this instance under Article 6 of the European Convention on Human Rights).

From the foregoing, it is clear that the CHR is mandated to observe and comply with its jurisdiction as delineated in the Constitution, as acts of any government agency which are clearly beyond the scope of its authority are *ultra vires*, and thus null and void and cannot be given any effect.

Thus, contrary to Petitioners' submissions, and as will be discussed further below, should the CHR take cognizance of the *Petition*, it will be acting outside its Constitutionally-delineated jurisdictional limits. By doing so, any resolutions, recommendations, and findings that will be rendered in the instant case will be null and void.

As though aware of the textual jurisdictional limitations of the CHR, it appears that Petitioners are attempting to coerce the CHR to violate the Constitution for the sake of political capital or advocacy. **However, the CHR is first and foremost accountable to the Constitution that created it as an independent body precisely in order to withstand political pressure. Its decision on whether or not to take cognizance of the *Petition* must, therefore, be based solely on the Constitution, and not on any political considerations or personal advocacies.**

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)

Moreover, 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.

Clearly, Constitutional limits must be respected at all times. Hence, should the CHR proceed with the national inquiry notwithstanding its

Thus, it is fallacious, not to mention baseless, for Petitioners to goad respondents into submitting themselves to the national inquiry even when the same would be conducted beyond the investigative mandate of the CHR as outlined in the Constitution, and, therefore, void. It cannot be underscored enough that the rule of law dictates that the resolution of any issue, even environmental and climate change issues, must be brought before the proper government agency with jurisdiction over the matter.

From the foregoing, it is clear that should the CHR take cognizance of the instant case, it would be acting outside its jurisdiction and all its resolutions, recommendations, and findings would be null and void for having been rendered without authority, thus making the investigation an ineffective and impractical remedy.

II. The CHR Has No Authority To Conduct An Investigation Concerning The Subject Matter Of The *Petition*.

A. The Investigative, Recommendatory, And Monitoring Powers Of The CHR Are Separate And Distinct Powers Under The Constitution Which Cannot Be Invoked Wholesale And Used Interchangeably, Since Each Power Is Specifically Defined In Relation To Different Subject Matters And Actors And, Thus, Limited By The Constitutional Text.

In their *Consolidated Reply*, Petitioners make the sweeping claim that they are invoking the CHR's investigative, recommendatory, and monitoring powers in support of their *Petition*.[21] Petitioners' argument is confused and shamefully misleading. Evidently, Petitioners are attempting to lump together the above-cited powers of the CHR in an effort to confuse and merge said distinct powers with the objective to conceal the obvious lack of jurisdiction of the CHR over the subject matter of the *Petition*.

Section 18, Article XIII of the Constitution enumerates the separate and distinct powers of the CHR, including its investigative, recommendatory, and monitoring powers, among others, as follows:

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21 At pars. 2.88 p. 27, *Consolidated Reply*.

"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**;
>
> x x x
>
> (6) **Recommend to Congress effective measures to promote human rights and to provide for compensation** to victims of violations of human rights, or their families;
>
> x x x
>
> (7) **Monitor the Philippine Government's compliance with international treaty obligations on human rights**;
>
> x x x" (Emphasis and underscoring supplied)

The framers of the Constitution, in drafting the same, deliberately crafted the powers and functions of the CHR as appearing in Section 18, Article XIII. Notably, each of the verbs forming the powers and functions of the CHR has their unique and precise definitions as applied to the specific act identified therein. In addition, each power is directed at a different organ of the State – the executive agencies or Congress. More importantly, none are directed at private individuals. As explained by the Supreme Court in ***J.M. Tuason & Co., Inc. v. Land Tenure Administration***, 31 SCRA 413 (1970), operationalizing these definitions, as commonly understood, is the primary step in interpreting and applying the Constitution:

> "**We look to the language of the document itself in our search for its meaning**. We do not of course stop there, but that is where we begin. **It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning** except where technical terms are employed in which case the significance thus attached to them prevails."

Considering that each uniquely defined word modifies a specific subject, the terms, "investigate", "recommend", and "monitor", each pertain to a subject that cannot be interchanged with those of the other functions.

Indeed, a basic rule of statutory construction is *reddendo singula singulis*: "'referring each to each; referring each phrase or expression to its appropriate object', or 'let each be put in its proper place, that is, the words should be taken distributively.'"[22] In ***City of Manila v. Laguio***, 455 SCRA 308 (2005), the Supreme Court has expounded on the rule and held that words in different parts of a statute must be referred to their appropriate connection and giving to each in its place, its proper force and effect:

> "It is well to recall the maxim *reddendo singula singulis* which means that **words in different parts of a statute must be referred to their appropriate connection, giving to each in its place, its proper force and effect**, and, if possible, rendering none of them useless or superfluous, even if strict grammatical construction demands otherwise. x x x"[23] (Emphasis supplied)

Hence, it is evident from a reading of the wording of the powers of the CHR as enumerated in the Constitution that the CHR was intended to exercise its powers to investigate, monitor, and recommend with regard to particular sovereign subjects and differentiated situations, *i.e.*, to investigate violations of civil and political rights; recommend to Congress measures to promote human rights and provide for compensation; and monitor the Philippine Government's compliance with international treaty obligations on human rights, as discussed below.

First, under **Section 18(1), Article XIII** of the Constitution, the CHR's **investigative** mandate pertains specifically only to **violations of civil and political rights**.

The extent of the CHR's power to **"investigate"** has been extensively defined by the Supreme Court in ***Cariño v. Commission on Human Rights***, 204 SCRA 483 (1991), which was recently cited in ***Cudia v. Superintendent of the Philippine Military Academy***, 751 SCRA 469 (2015), as follows:

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22 ***People of the Philippines v. Tamani***, 55 SCRA 153 (1974).

23 ***City of Manila v. Laguio***, 455 SCRA 308 (2005).

"The findings of fact and the conclusions of law of the CHR are merely recommendatory and, therefore, not binding to this Court. **The reason is that the CHR's constitutional mandate extends only to the investigation of all forms of human rights violations involving civil and political rights**. As held in *Cariño v. Commission on Human Rights* and a number of subsequent cases, the CHR is only a fact-finding body, not a court of justice or a quasi-judicial agency. It is not empowered to adjudicate claims on the merits or settle actual case or controversies...

x x x

> **'Investigate,' commonly understood, means to examine, explore, inquire or delve or probe into, research on, study**. The dictionary definition of 'investigate' is 'to observe or study closely: inquire into systematically: 'to search or inquire into: x x x to subject to an official probe x x x: to conduct an official inquiry;' The purpose of investigation, of course, is to discover, to find out, to learn, obtain information. x x x
>
> **The legal meaning of 'investigate' is essentially the same: '(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;' 'to inquire; to make an investigation,' 'investigation' being in turn described as '(a)n administrative function, the exercise of which ordinarily does not require a hearing.** 2 Am J2d Adm L Sec. 257; x x x **an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters.'"** (Emphasis supplied)

The question, therefore, is what can the CHR investigate? As cited above, and as will be discussed below, the Constitution has limited the investigative power of the CHR to "*human rights violations involving civil and political rights*", and not to all forms of supposed human rights violations in general.

Second, as to the power to recommend under **Section 18(6), Article XIII** of the Constitution, "recommendation" has been legally defined as "a specific piece of **advice** about what to do, esp. when given officially" and a "**suggestion** that someone should choose a particular thing or person that one thinks particularly good or meritorious."[24] Ordinary dictionaries have defined "recommend" as "to **suggest** an act or course of action."[25]

Thus, while the CHR is tasked by Section 18(6), Article XIII of the Constitution to "recommend **to Congress** effective measures to promote human rights", the same is addressed to Congress and does not in any way empower the CHR to investigate herein SCPL and RDS. Further, the power to **recommend** should not be confused with the power to **investigate** (which is actually what is involved in any future national public inquiry).

Third, "**monitor**" has been commonly defined as "to watch, **keep track** of, or check usually for a special purpose."[26] Under **Section 18(7), Article XIII** of the Constitution, the obligation and function of the CHR to "**monitor**" has for its object the Philippine Government and its agencies, which relates to the State's compliance international treaty obligations on human rights. This power and function of the CHR does not extend to monitoring the compliance by private persons, but is directed solely against the Philippine Government.

Comparing the foregoing definitions and even judging only by their ordinary meaning, it is incontrovertible that the words "investigate," "recommend," and "monitor" pertain to the different acts and functions of the CHR – and which have different and separate objects and subject matters. Consistent with the principles of construction cited above, a proper interpretation of the Constitutional provisions on the powers of the CHR should treat the powers enumerated in paragraphs (1), (6), and (7) of Section 18, Article XIII of the Constitution as separate, distinct and purposefully differentiated functions.

Fourth, in order to circumvent the aforesaid clear delineation of the CHR's functions and their respective subjects, Petitioners cite[27] Paragraph 3, Section 18, Article XIII of the Constitution and CHR Resolution No. A95-069.[28] **Section 18(3), Article XIII** of the Constitution includes as one of the powers and functions of the CHR the following:

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24 BLACK'S LAW DICTIONARY 1464 (10th ed., 2014).

25 *Recommend,* MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/recommend (last accessed on 03 May 2017).

26 *Monitor,* MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/monitor (last accessed on 03 May 2017).

27 At par. 2.35, p. 18 and pars. 2.41-2.43, p. 20, *Consolidated Reply*.

28 Erroneously cited by Petitioners as CHR Resolution No. A95-096 at pars. 2.42-2.43, p. 20, *Consolidated Reply*.

"Section 18. The Commission on Human Rights shall have the following powers and functions:

x x x

(3) **Provide appropriate legal measures** for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;" (Emphasis supplied)

As stated in Section 18(3), the CHR is empowered to "provide appropriate **legal** measures" for the protection of human rights. It is a general power and must be understood as circumscribed by the more specific and applicable provisions, including the power to investigate which has been constitutionally limited to violations of civil and political rights under Section 18(1), Article XIII of the Constitution.

More importantly, the power granted to the CHR under Section 18(3) is precisely to provide **appropriate legal** measures. The mechanisms provided by the CHR, therefore, must be **appropriate and legal, *i.e.*, allowed by law**. In this case, precisely, the law (Constitution) limited the power to investigate to violations of **civil and political** rights – beyond which, the CHR will also be violating the mandate of Section 18(3), Article XIII of the Constitution.

Further, Petitioners cite the first paragraph of the preambular clauses and paragraph 2 of CHR Resolution No. A95-069. The pertinent portions of CHR Resolution No. A95-069 provides as follows:

"WHEREAS, human rights is concerned with issues in both areas of civil and political rights and economic, social and cultural rights founded on internationally accepted human rights obligations to which the Philippine Government is a state party.

x x x

x x x IT IS HEREBY RESOLVED, that the Commission adopt

1. Sustained and vigorous **investigation of violations of civil and political rights;**

2. Investigative monitoring of incidents and/or conditions obtaining in the country which are violative of concerns in both areas of civil and political rights and economic, social and cultural rights;

x x x" (Emphasis supplied)

Petitioners' misleading citation of CHR Resolution No. A95-069 does not provide them relief from the fatal lack of jurisdictional basis for the *Petition*. In fact, **CHR Resolution No. A95-069 itself recognizes that CHR investigations must pertain to violations of civil and political rights.**

That the CHR has unilaterally arrogated upon itself the conduct of "investigative" functions over economic, social and cultural rights does not remove the illegality and infirmity of the CHR's actions. Such interpretation posited by the Petitioners cannot legally be accepted as it would allow the CHR to amend the Constitution by merely passing administrative rules. Simply, the "spring cannot rise higher than the source,"[29] and CHR Resolution No. A95-069 cannot go beyond the limitations set by the Constitution itself. To reiterate, jurisdiction is matter of substantive law.[30] It cannot be fixed by the agreement of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties. Neither can it be conferred by the acquiescence of the court.[31] Therefore, neither can the CHR confer on itself jurisdiction or authority, which has not been granted by the Constitution.

Furthermore, even assuming *arguendo* that Section 18, paragraphs (3), (6), and (7) may refer to economic, social, and cultural rights,[32] Petitioners are mistaken in applying for the investigative powers of the CHR under Section 18(1). Otherwise stated, paragraphs (3), (6), (7) of Section 18 likewise cannot support the *Petition* which, in truth and in fact, prays for an investigation of respondents.

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29 ***Southern Cross Cement Corporation v. Philippine Cement Manufacturer's Corporation***, 434 SCRA 65 (2004).

30 ***Republic v. Court of Appeals***, *supra*.

31 ***Erguel v. Commission on Elections***, *supra*.

32 At pgs. 7-29, p. 10, *Consolidated Reply*.

To reiterate –

a. The Constitution, under Section 18(1), Article XIII of the Constitution has limited the power to investigate to violations of **civil and political** rights.

b. The power to recommend legislation under Section 18(6), Article XIII of the Constitution cited by Petitioners has for its subject measures to promote human rights and compensation for violations that the CHR can recommend to Congress – but which power to recommend cannot be a substitute for the limited power to investigate violations of civil and political rights as to justify these proceedings.

c. The power to monitor compliance under Section 18(7), Article XIII of the Constitution cited by Petitioners has for its object the government and its agencies in respect of its compliance with international treaty obligations on human rights and not private persons like SCPL and RDS.

All these explicit textual conditions and limitations in the Constitution must be recognized and followed in order that the CHR may not violate Section 18(3), Article XIII of the Constitution to "provide **appropriate legal** measures" for the protection of human rights.

Having clarified the misleading and confused generalization made by Petitioners of the investigative, recommendatory, and monitoring powers of the CHR, a scrutiny of the *Petition* and the *Consolidated Reply* confirms the undeniable fact that, as to SCPL and RDS, Petitioners are seeking an investigation against SCPL and RDS, among others, to determine their alleged responsibility as regards climate change. Should the CHR grant relief in these terms, it would manifestly be exercising judicial or quasi-judicial powers.

Indeed, even a cursory reading of the *Petition* and *Consolidated Reply* shows that Petitioners are inarguably and definitely praying that the CHR make findings on the respondents' alleged responsibility for climate change. The *Petition* expressly prays that a finding on the alleged responsibility for human rights threats and/or violations in the Philippines resulting from climate change and ocean acidification be issued against the so-called Carbon Majors:

"Prayer

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

1. Taking official or administrative notice of the investor-owned Carbon Majors' contribution to carbon dioxide emissions and the UN Guiding Principles on Business and Human Rights, conduct an investigation into the human rights implications of climate change and ocean acidification and the resulting impacts in the Philippines; and following the investigation, **issue a finding on the responsibility of the investor-owned Carbon Majors for human rights threats and/or violations in the Philippines, resulting from climate change and ocean acidification;**

x x x

5. Notify the investor-owned Carbon Majors and request the **submission of plans on how such violations or threats of violations resulting from the impacts of climate change** will be eliminated, remedied, or prevented in the future; and x x x"[33] (Emphasis and underscoring supplied)

The foregoing prayers are clearly a request to determine the respondents' legal liability and responsibility for human rights in respect of a class of victims, in addition to a request that those violations be remedied. This is an exercise of judicial power or function, regardless of the verb used to describe the quality of the CHR's review. Moreover, the Petitioners proceed to assert, later in their submissions, that the CHR is a quasi-judicial body and point to the fact that the drafters themselves described the CHR as quasi-judicial once it was conferred with investigative powers.[34]

Notably, the *Petition* further mentions the CHR's alleged investigative power to determine the responsibility of the "respondents" at least thirteen (13) times,[35] while the *Consolidated Reply* does so at least seventeen (17) times,[36] examples of which are shown below:

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[33] At pp. 66-67, *Petition*.

[34] At par. 2.90, *Consolidated Reply*, citing Mr. Sarmiento.

[35] At pp. 14, 26, 28, 33, 35, 44, 48, 51, 52, 61, 65 and 67, *Petition*.

[36] At pp. 15, 17, 23, 27, 29, 30, 31, 32, 35, 36, 37, 39, 44, 51, and 58-59, *Consolidated Reply*.

"On the authority to **exercise jurisdiction over investor-owned Carbon Majors to determine whether they have breached their responsibility to respect human rights**, the Guiding Principles on Business and Human Rights (Guiding Principles) recognizes that corporations have a responsibility to respect human rights, which arises from a 'global standard of expected conduct applicable to all businesses in all situations.' x x x"[37] (Emphasis and underscoring supplied)

"This Petition focuses on **the responsibility of the investor-owned Carbon Major companies**, the largest producers of crude oil, natural gas, coal, and cement. Acknowledging that the list of investor-owned companies includes cement producers, **we recommend that the Commission prioritizes the fossil fuel producers (coal, oil, and gas) in its investigation of the Carbon Majors' responsibility for climate change** because the greenhouse gas emissions from fossil fuels is the main cause of climate change. x x x"[38] (Emphasis and underscoring supplied)

"There is a close relationship between government policies and practices allowing the extraction, sale, and combustion of fossil fuels and the business activities and practices of fossil fuel companies. **In these proceedings, the Petitioners are seeking a thorough investigation in Carbon Major Respondents' business activities and practices.** x x x"[39] (Emphasis and underscoring supplied)

"2.25. As will be discussed below, **the Honorable Commission has authority to investigate businesses, regardless of where they are registered/domiciled or doing/transacting business, if it is believed that human rights harms are occurring in the Philippines.** Respondents, which are neither registered/domiciled in the Philippines nor doing/transacting business herein, **must participate in the investigative proceedings in order to demonstrate their corporate responsibilities to respect human rights and to take meaningful action on climate change.**"[40] (Emphasis and underscoring supplied)

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37 At pp. 14-15, *Petition*.

38 At p. 28, *Petition*.

39 At pp. 60-61, *Petition*.

40 At p. 15, *Consolidated Reply*.

"x x x Similar to the U.S. Court, **the Honorable Commission has the authority to investigate whether human rights harms are occurring in the Philippines as a result of the respondents' global operations and activities.**"[41] (Emphasis and underscoring supplied)

"x x x The respondents' argument is not relevant to this inquiry procedure, which must be allowed to **investigate the issue of responsibility first and foremost**. x x x"[42] (Emphasis and underscoring supplied)

That the goal of the instant inquiry is to impute responsibility for climate change upon the "respondents" is even conceded by the CHR itself during its 08 December 2016 press conference conducted with Petitioners regarding the *Petition*, wherein Commissioner Roberto Cadiz ("Comm. Cadiz") himself stated that the subject matter of the inquiry is the alleged link between the "respondents" and climate change:

"x x x The first phase was to be an inquiry into the science of climate change because you know, this was the very **first petition seeking to link the operation of Carbon Majors to climate change**. It was something that new to us and we wanted to find out if there was a, such a link, we wanted to be educated on the topic before we could proceed to the actual inquiry and that is what we did. x x x"[43] (Emphasis and underscoring supplied)

Later on, during the same press conference, Comm. Cadiz conceded that a possible outcome of the instant inquiry would be recommendations for prosecution or civil action against the "respondents".[44]

Clearly, as the above demonstrate, the *Petition* is not seeking that the CHR merely recommend that Congress pass human rights laws, or to monitor the government's compliance with its human rights obligations (which could actually be done by mere intra-government communications and processes). Instead, as admitted by Atty. Grizelda Mayo-Anda during

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41 At p. 35, *Consolidated Reply*.

42 At p. 44, *Consolidated Reply*.

43 At 1:26 to 2:02, p. 1 of the 08 December 2016 press conference, video available at https://www.facebook.com/greenpeaceph/videos/vb.48688071399/10153921894411400/?type=2&theater (last accessed on 03 May 2017); a copy of the transcription of the 08 December 2016 press conference is attached as **Annex "1"**.

44 At 12:31 to 13:40, p. 3 of the 08 December 2016 press conference, *supra* (**Annex "1"** hereof).

the 08 December 2017 press conference conducted with CHR, Petitioners seeks to determine definitely the level of responsibility and adjudge the alleged liability of "respondents" as regards climate change.[45]

Further, the Petitioners indeed acknowledge that the respondents "will be affected by the outcome of the current proceedings"[46] and that they must be afforded due process and an opportunity to "defend" their case because they will be affected by the proceedings.[47] The very purpose of due process rights is to protect individuals from potential abuse when their legal rights and obligations are being determined by State organs.

Petitioners, thus, cannot now disingenuously claim that the *Petition* which seeks an investigation of the respondents, a determination of their supposed responsibility or liability, and which admittedly does not involve violations of civil and political rights, can nevertheless be taken cognizance of by the CHR by virtue of its other powers and functions (recommend legislation and monitor State compliance) relating to human rights, in general.

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

In their *Consolidated Reply*, Petitioners posit that it was the intent of the framers of the Constitution that the CHR be "evolving and responsive". In line with this intent, Petitioners allege that the CHR has the authority to investigate all forms of human rights violations.[48] The argument is erroneous.

Petitioners' claim is belied by the express text of the Constitution itself, as well as by the very deliberations of the Constitutional Commission that Petitioners attempt to invoke.

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45 At 24:10 to 24:40, p. 6 of the of the 08 December 2016 press conference, *supra* (**Annex "1"** hereof).

46 At par. 2.24, *Consolidated Reply*.

47 *See* pars. 2.8, *Consolidated Reply* and following; and Section 10, Rule 7 of the *Omnibus Rules*.

48 At pp. 23-25, *Consolidated Reply*.

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. x x x"

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 effectiveness 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.**
>
> 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."[49] (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?

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**

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[49] At pp. 721-722 of the *Records of the Constitutional Commission, Vol. 3, No. 66* ("RCC No. 66").

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."[50] (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 over 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?

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.

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50 At p. 727 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*)

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**."[51] (Emphasis and underscoring supplied)

Note that as explained by Commissioner Garcia, quoted above, the civil and political rights covered are those that pertain to the **behavior of governments** – yet SCPL and RDS are being hurled into these proceedings.

Commissioner Sarmiento clarified that despite an enumeration of economic, social and cultural rights in the Universal Declaration of Human Rights ("UDHR"), the violation of these rights will **not** be within the domain of the CHR, the jurisdiction and authority of the CHR as proposed (and enacted) being limited to violations of civil and political 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**."[52] (Emphasis and underscoring supplied)

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:

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[51] [illegible] SC (Annex "1" of the Motion to Dismiss).

"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.**"[53] (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.**"[54] (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.

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

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[53] At p. 731 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*).

[54] At p. 732 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*).

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."**[55] (Emphasis and underscoring supplied)

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 itself, however, 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:

"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 senses**. Therefore, it has a place in the Constitution because the horizon for its functions is well beyond the immediate problems.

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55 ... [illegible] of the Motion to Dismiss)

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**."[56] (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 the jurisdiction of the proposed CHR to be limited to the more severe cases of human rights violations involving **civil and political rights** as defined and enumerated in the UDHR,[57] Bill of Rights,[58] International Covenant on Civil and Political Rights ("ICCPR") (excluding violations of social, economic and cultural rights),[59] and the Convention Against Torture of 1985.[60]

Moreover, a perusal of the entire relevant portion of the deliberations would reveal that the parts omitted by Petitioners in their *Consolidated Reply* precisely prove that that the CHR was created for "modest" or limited objectives relating to concrete and immediate matters regarding **political and civil rights**. The powers and authority of the CHR were not envisioned to involve the virtually unlimited investigative power over all human rights as falsely and misleadingly claimed by Petitioners in their *Consolidated Reply:*

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56 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" of the *Motion to Dismiss*.

57 *See* pp. 731, 733, 736 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*).

58 *See* p. 733 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*).

59 *See* pp. 733, 738-739 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*).

60 *See* pp. 719, 722, 738-739 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*); pp. 755, 762 of

"MR. MONSOD. Madam President, things might be clarified if we put this in the context of the deliberations yesterday. During the interpellations yesterday, **it was the intent of the committee that the commission would have very modest objectives because there were certain concrete and immediate matters that needed to be addressed.** While a constitutional commission that we see has a horizon wider than the present functions of the President Committee on Human Rights, **the objectives now of the commission would be modest.** x x x" (Emphasis supplied)

The extent of CHR's investigative powers was discussed by the Supreme Court *en banc* in ***Simon, Jr. v. Commission on Human Rights,*** 229 SCRA 117 (1994), where it held that **CHR's jurisdiction over human rights** as defined by no less than the fundamental law of the land, the Constitution, **was limited to the most severe form of civil and political violations**:

"It can hardly be disputed that the phrase 'human rights' is so generic a term that any attempt to define it, albeit not a few have tried, could at best be described as inconclusive. x x x

x x x

The final outcome, now written as Section 18, Article XIII, of the 1987 Constitution, is a provision empowering the Commission on Human Rights to 'investigate, on its own or on complaint by any party, all forms of human rights violations *involving civil and political rights*' (Sec. 1).

The term 'civil rights,' has been defined as referring —

> '(t)o those (rights) that belong to every citizen of the state or country, or, in wider sense, to all its inhabitants, and are not connected with the organization or administration of the government. They include the rights of property, marriage, equal protection of the laws, freedom of contract, etc. Or, as otherwise defined civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its general sense, to rights capable of being enforced or redressed in a civil action.'

Also quite often mentioned are the guarantees against involuntary servitude, religious persecution, unreasonable searches and seizures, and imprisonment for debt.

Political rights, on the other hand, are said to refer to the right to participate, directly or indirectly, in the establishment or administration of government, the right of suffrage, the right to hold public office, the right of petition and, in general, the rights appurtenant to citizenship *vis-a-vis* the management of government.

Recalling the deliberations of the Constitutional Commission, aforequoted, **it is readily apparent that the delegates envisioned a Commission on Human Rights that would focus its attention to the more severe cases of human rights violations**. Delegate Garcia, for instance, mentioned such areas as the '(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.' **While the enumeration has not likely been meant to have any preclusive effect, more than just expressing a statement of priority, it is, nonetheless, significant for the tone it has set.** In any event, the delegates did not apparently take comfort in peremptorily making a conclusive delineation of the CHR's scope of investigatorial jurisdiction. They have thus seen it fit to resolve, instead, that 'Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendation.'" (Emphasis and underscoring supplied)

Thus, the importance of delineating the specific parameters of the CHR's jurisdiction was highlighted during the 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**

> **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."**[61] (Emphasis and underscoring supplied)

It is therefore abundantly clear from the drafting history of Article XIII of the Constitution that contrary to the contentions of Petitioners, the jurisdiction and authority of the CHR was designed to be limited to investigations relating to the most serious violations of civil and political rights. Further, while the Constitutional Commission indeed contemplated the potential expansion of the CHR's jurisdiction, the same may only be achieved through legislative fiat. In the instant case, however, Congress has not yet decided to do so, perhaps because "there are very real and concrete problems that have to be addressed"[62] by the CHR, as Petitioners themselves concede.

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. To decide otherwise, and to make unfounded and overbroad assertions that the CHR is not bound by its own Constitutional and jurisdictional limitations would be an implicit admission that the CHR is beyond the very rule of law which it seeks to observe and uphold. This is an abhorrent view that undermines the entire legal, political, and economic system, regardless of its supposed good intentions.

On this point, the 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,

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61 At p. 722 of *RCC No. 66*.

62 At par. 3.8, pp. 55-56, *Consolidated Reply*: "x x x Similar to other weighty matters taken on by the Honorable Commission—such as **extrajudicial killings, displacement,** and reproductive health—the climate crisis is a human rights crisis of 'domestic and/or international implication/importance.' x x x" (Emphasis supplied)

> 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)

In the same case, the Supreme Court thus 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.**"[63]

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

The incontrovertibility of the Constitutional text and policy notwithstanding, Petitioners further argue in their *Consolidated Reply* that the CHR has authority to investigate "environmental rights" on the basis that "environmental rights" are allegedly "inextricably linked to the general concept of human rights".[64]

Notably, however, nowhere in their *Consolidated Reply* do Petitioners cite any Constitutional or statutory basis for this alleged authority of the CHR.

On the contrary, and as previously discussed, the Constitution itself places express and precise limits on the CHR's investigative jurisdiction, *i.e.*, to violations of civil and political rights. Petitioners appear to be aware of this fatal limitation. Hence, in their *Consolidated Reply*, they attempt to

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[63] ***Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.***, *supra*; emphasis supplied.

[64] At p. 27, *Consolidated Reply*.

mislead the CHR by citing a litany of rules and cases that do not actually support their position. Further, Petitioners' admissions as to the nature of the rights they invoke belie their claim on the CHR's supposed investigative authority.

Petitioners' Claim That The "Right To Life", As A Civil And Political Right, Allegedly Includes The Environmental Rights They Invoke Is Patently Without Basis

In a desperate attempt to save their *Petition*, Petitioners claim that the environmental rights they invoke allegedly form part of the "right to life" protected by Article 6 of the ICCPR.[65] Contrary to Petitioners' claim, the right to life, which is a civil and political right protected by the ICCPR, does not embrace the right to a healthy environment as misleadingly asserted in the *Consolidated Reply*.

CCPR General Comment No. 6 of the UN Human Rights Committee clarifies that the "right to life", as protected in the ICCPR, is relevant in the context of "war and other acts of mass violence", such as those involving the threat or use of force; the "arbitrary deprivation of life"; and the "disappearance of individual"; and the imposition of the death penalty. Nowhere did CCPR General Comment No. 6 provide for the expansion of the "right to life" to include environmental rights.

It is worth noting that the rights expressly mentioned in General Comment No. 6 precisely correspond to those classified as civil and political rights as discussed during the deliberations of the Constitutional Commission. Therefore, the environmental rights invoked by Petitioners cannot be classified as part of the "right to life" and the broader class of civil and political rights, the violations of which may be investigated by the CHR.[66]

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[65] At pars. 2.32 and 2.34, pp. 17-18, *Consolidated Reply*.

[66] Moreover, if Petitioners' assertion were correct and all social and economic rights could be "read" into the right to life, the formal distinction between civil and political rights on the one hand, and social and economic rights on the other, would be obliterated. There are important structural differences between the ICCPR and ICESCR that confirm that civil/political and social/economic rights are of a fundamentally different nature. For instance, under Article 2 of the ICESCR (and in contrast to the ICCPR), states are not obligated to satisfy all social and economic rights immediately but must instead take steps towards their progressive realization, subject to the availability of resources. In addition, social and economic rights are sometimes

In Any Event, Petitioners' Admissions As To The Nature Of The Environmental Rights They Invoke Further Highlight The CHR's Lack Of Authority To Investigate The Matter

Petitioners expressly admit in the *Petition* and *Consolidated Reply* that the instant case involves the violation of "environmental rights" which, as earlier shown, do not fall within the class of civil and political rights.

Thus, in their *Petition,* the Petitioners admitted 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.***"[67] In the *Consolidated Reply*, Petitioners' repeated and prolonged disquisitions on their claim that the CHR "has the authority to investigate **'environmental rights,' which are assumed to exist from the inception of humankind and inextricably linked to the general concept of human rights,**"[68] reinforce their above admission in the *Petition*, *i.e.*, that said rights are not civil or political in nature.

On such admission alone, the instant *Petition* is indubitably beyond the jurisdiction of the CHR.

Even Further, The Cases And Rules Of Procedure Cited By Petitioners Do Not Justify An Investigation By The CHR For Alleged Violations Of Environmental Rights.

Petitioners then cite the cases of ***Oposa v. Factoran***, 224 SCRA 782 (1993); ***Henares, Jr. v. Land Transportation Franchising Authority***, 505 SCRA 104 (2006); ***Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay***, 574 SCRA 661 (2008); ***Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes***, 756 SCRA 513 (2015); and the *Rules of Procedure for Environmental Cases* which allegedly grant the CHR the authority to investigate "environmental rights".[69]

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[67] At n.3, p. 10, *Petition.*

[68] At p. 27, *Consolidated Reply.*

Contrary to the claim of Petitioners, none of the foregoing cases contain a declaration or conferment of any authority or jurisdiction to the CHR over investigations of environmental rights. What is more, as previously discussed and as expressly provided in Section 19, Article XIII of the Constitution, only Congress may expand the jurisdiction of the CHR.

Notably, even the Supreme Court in ***Oposa v. Factoran***, *supra*, 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 self-perpetuation — aptly and fittingly stressed by the Petitioners — the advancement of which may even be said to predate all governments and constitutions." (Emphasis supplied)

Oposa v. Factoran, *supra,* thus, concludes that the right to a balanced and healthful ecology is not included in the Bill of Rights, which contains the class of Constitutional rights that are civil and political in nature. In other words, and in order to restore the distinctions self-servingly ignored by Petitioners, **the right to a balanced and healthful ecology is excluded from the class of Constitutional rights that are civil and political in nature.**

Thus, Petitioners' claim that the Supreme Court's pronouncements in ***Oposa v. Factoran*** allegedly "were strongly echoed in the most recent cases of: (a) *Henares, Jr., et al. v. Land Transportation Franchising and Regulatory Board, et al;* (b) *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al.;* and (c) the consolidated cases of *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.* and *Central Visayas Fisherfolk*

Development Center (FIDEC), et al. v. Secretary Angelo Reyes"[70] is of no moment and, again, does not vest the CHR with jurisdiction over the instant case.

Henares, Jr. v. Land Transportation Franchising Authority, *supra*, concerned a petition for mandamus which sought to compel the Land Transportation Franchising and Regulatory Board and the Department of Transportation and Communications to require public utility vehicles to use compressed natural gas ("CNG") as alternative fuel on the ground that that the particulate matters – complex mixtures of dust, dirt, smoke, and liquid droplets, varying in sizes and compositions emitted into the air from various engine combustions – have caused detrimental effects on health, productivity, infrastructure and the overall quality of life.

However, instead of ruling in favor of the petitioners therein on the basis of their invocation of the right to breathe clean air in a healthy environment and the urgency of the environmental problems they raised, the Supreme Court correctly denied the Petition and recognized that there must be a law that the respondent agencies must implement before it issues a writ of *mandamus*:

> "It is the firm belief of this Court that in this case, it is timely to reaffirm the premium we have placed on the protection of the environment in the landmark case of *Oposa*. **Yet, as serious as the statistics are on air pollution, with the present fuels deemed toxic as they are to the environment, as fatal as these pollutants are to the health of the citizens, and urgently requiring resort to drastic measures to reduce air pollutants emitted by motor vehicles, we must admit in particular that petitioners are unable to pinpoint the law that imposes an indubitable legal duty on respondents that will justify a grant of the writ of mandamus compelling the use of CNG for public utility vehicles. It appears to us that more properly, the legislature should provide first the specific statutory remedy to the complex environmental problems bared by herein petitioners before any judicial recourse by mandamus is taken.**" (Emphasis and underscoring supplied)

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[70] At par. 2.57, p. 27, *Consolidated Reply*

Far from supporting Petitioners' contention, ***Henares, Jr. v. Land Transportation Franchising Authority***, *supra,* is actually authority for a finding that the application and enforceability of the right to a balanced and healthful ecology must be provided for by Congress. Hence, any alleged right to a healthful environment cannot serve to run roughshod of limitations imposed in our legal system, *i.e.,* the jurisdiction or authority given by law to the organs of the State such as the CHR.

Meanwhile, ***Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay***, *supra*, involved a petition for mandamus against several government agencies for the cleanup, rehabilitation, and protection of the Manila Bay. The Supreme Court, in affirming the petition for *mandamus*, highlighted the fact that the government agencies impleaded in the case were mandated by their respective charters or enabling laws to perform functions relating directly or indirectly to the cleanup, rehabilitation, protection, and preservation of the Manila Bay:

> "**A perusal of other petitioners' respective charters or like enabling statutes and pertinent laws** would yield this conclusion: **these government agencies are enjoined, as a matter of statutory obligation, to perform certain functions** relating directly or indirectly to the cleanup, rehabilitation, protection, and preservation of the Manila Bay. They are precluded from choosing not to perform these duties." (Emphasis supplied)

In contrast, in the instant case, the Constitution itself, as the highest law of the land, clips the authority of the CHR to investigate violations of human rights, which are not civil or political in nature, such as the alleged environmental rights invoked by Petitioners. A law passed by Congress is indispensable to expand the CHR's jurisdiction, which is absent in this case. Hence, the mere recognition of the alleged right to a balanced and healthful ecology does not automatically confer jurisdiction over the CHR to investigate violations thereof.

Finally, the consolidated cases in ***Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes***, *supra*, concern two petitions which sought to prohibit the further implementation of Service Contract No. 46, which allowed the exploration, development, and exploitation of petroleum resources within the Tañon Strait. In ruling in favor of the

petitioners therein, the Supreme Court's citation of ***Oposa v. Factoran,*** *supra,* was made in order to justify the standing of some of the petitioners to bring the case before said court, **and not to justify the jurisdiction over the subject-matter thereof.**[71] Its citation by the Petitioners therefore does not advance their point and is highly misleading.

Clearly, the cases of ***Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes***, *supra,* and ***Oposa v. Factoran,*** *supra,* cited by Petitioners do not in any way expand the jurisdiction of the CHR to the investigation of "environmental rights" as to enable the CHR to take cognizance of the instant case.

Meanwhile, Petitioners' recourse to A.M. No. 09-6-8-SC entitled *"Rules of Procedure for Environmental Cases"*, issued by the Supreme Court, is likewise unavailing.[72]

As previously discussed, jurisdiction is a matter of substantive law; on the other hand, the *Rules of Procedure for Environmental Cases* are of the character of procedural rules which cannot serve to amend the Constitutional limitations on the investigative authority of the CHR. Section 5(5), Article VIII of the Constitution provides that the Supreme Court has, among others, the following power with its concomitant limitations:

> "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and **shall not diminish, increase, or modify substantive rights.**" (Emphasis supplied)

Clearly, while the Supreme Court may validly issue the *Rules of Procedure for Environmental Cases,* the same may not diminish, increase, or modify substantive rights. In any event, a reading of the *Rules of Procedure*

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71 "Moreover, even before the Rules of Procedure for Environmental Cases became effective, this Court had already taken a permissive position on the issue of locus standi in environmental cases. In *Oposa*, we allowed the suit to be brought in the name of generations yet unborn 'based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.' x x x"

72 pp. 2-58 to 2-77, *Consolidated Reply*

for Environmental Cases will show that the same did not expand the jurisdiction or authority of the CHR, which remains to be limited to the violations of civil and political rights. Further, only Congress may provide for other cases of violations of human rights that should fall within the authority of the CHR, taking into account its recommendations.[73]

C. The *Omnibus Rules* Unilaterally Expands The Investigative Mandate Of The CHR Despite The Fact That Jurisdiction Of The CHR Is Expressly Limited To The Investigation Of Violations Of Civil And Political Rights As Provided In The Constitution And As Recognized By The Supreme Court.

1. The CHR's Unilateral Attempt To Expand Its Jurisdiction Through Its *Omnibus Rules* Is, Accordingly, Baseless, Invalid And Unconstitutional.

As already argued by SCPL and RDS in its *Motion to Dismiss*,[74] Rule 2, Section 2; Rule 3, Sections 1[75] and 3;[76] and Rule 5 of the *Omnibus Rules* are *ultra vires* and in breach of the Constitution, law, and rulings of the Supreme Court.

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[73] Section 19, Article XIII of the Constitution.

[74] At pp. 29-33, *Motion to Dismiss*.

[75] Rule 3, Section 1 of the *Omnibus Rules* provides:

> "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 marginalized, disadvantaged and vulnerable.
>
> x x x" (Underscoring supplied)

[76] Rule 3, Section 3 of the *Omnibus Rules* provides:

> "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."

Petitioners cannot claim that the power of the CHR to set its own operational guidelines under Section 18(2), Article XIII of the Constitution, allows it to expand its own investigative authority.[77] On the contrary, a reading of Section 18(2) would show that the power to set its own operational guidelines does not, in any way, empower the CHR to modify the Constitution, or supplant Congressional power under Section 19 thereof:

> "Section 18. The Commission on Human Rights shall have the following powers and functions:
>
> x x x
>
> 2. Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
>
> x x x"

A mere reading of Section 18(2) shows that nowhere does it operate to allow the CHR to determine and set the extent of its own jurisdiction, which is antithetical to checks and balances underlying the entire constitutional system.[78]

In fact, Petitioners' own citation of the commentary of Fr. Joaquin Bernas recognizes that the CHR's authority is currently limited to the investigation of violations of civil and political rights and may only be expanded by Congressional fiat:

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

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77 At pars. 2.52-2.53, pp. 25-26, *Consolidated Reply*.

78 "The fact that the three great powers of government are intended to be kept separate and distinct does not mean that they are absolutely unrestrained and independent of each other. The Constitution has also provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government." *See* ***Belgica v.***

> **'The scope of its investigation is 'all forms of human rights violations involving civil and political rights,'** whether committed by public officers or by civilians or rebels. Every effort was made to ensure that the phraseology of the provision did not suggest that only military violations were within the scope of the Commission's authority. ***Simon, Jr. v. Human Rights Commission*** **has held, moreover, on the basis of Constitutional Commission debates and Section 18(1) that the Commission can only protect 'civil and political rights' as distinct from less traditional social and economic rights**. Note, however, that the reason for these modest objectives was the desire of the 1986 Constitutional Commission not to overburden the Commission during its initial years. **The limitation does not exclude the possibility of expanding the Commission's scope later—as in fact Section 19 specifically allows.'**
>
> 2.53. Likewise, Fr. Bernas categorically pointed out that, 'the authority [of the Honorable Commission] to set its 'operational guidelines' was adopted in lieu of authority to 'set its own priorities' in order to avoid the suspicion that the Commission might narrow the scope of its investigations to military violations of human rights only. It was thought that 'operational guidelines' is a more neutral expression but, at the same time, is adequately flexible.'"[79] (Emphasis and underscoring supplied)

Clearly, the CHR's jurisdiction derives from the terms of the Constitution alone and not the CHR's *Omnibus Rules*. It cannot be denied that administrative issuances of the CHR, like the *Omnibus Rules*, cannot supplant or amend the express provisions of Section 18(1), Article XIII of the Constitution. Only Congress has the constitutional power to extend the jurisdiction of the CHR. Simply, Petitioners cannot invoke the infringing provisions of the *Omnibus Rules* as the very justification for CHR's *ultra vires* assumption of jurisdiction over this case.

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[73] At pars. 2.52-2.53, pp. 25-26, *Consolidated Reply*.

Thus, to the extent that the *Omnibus Rules* purport to unilaterally expand the investigative jurisdiction of the CHR to rights other than civil and political rights without an act of Congress, said *Omnibus Rules* are *ultra vires* and unconstitutional, and therefore, void. 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*.

Clearly, jurisdiction is conferred by law and not by mere administrative rules such as the *Omnibus Rules,* nor can it be expanded by policy advocacy as what Petitioners are arguing. 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. In the recent case of ***Department of Agrarian Reform v. Carriedo***, G.R. No. 176549 (20 January 2016), 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.

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**.

The lack of power to expand its own jurisdiction via the promulgation of procedural rules is supported by Section 19, Article XIII of the Constitution, which expressly provides that the **"Congress may provide for other cases of violations of human rights that should fall within the authority of the [CHR]."**

The foregoing is confirmed by the deliberations of the Constitutional Commission wherein the rationale for the adoption of Section 19 was discussed:

> "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**

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**."[80] (Emphasis and underscoring supplied)

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. Thus, 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, is patently unconstitutional. As such, these provisions must be deemed *ultra vires* and, therefore, void. Hence, 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.

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80 pp. 762-763 of RCO No. 67 (Annex "2" of the Motion to Dismiss)

D. The Provisions Of The Human Security Act And/Or The Philippine Climate Change Act Did Not Expand The Jurisdiction Of The CHR Beyond Violations of Civil And Political Rights. Indeed, Petitioners' Invocation Of The Human Security Act And The Philippine Climate Change Act Shows Their Admission That The CHR's Jurisdiction May Only Be Expanded By Congressional Fiat.

In the *Consolidated Reply*, Petitioners cite Republic Act No. ("RA No.") 9372, otherwise known as the "Human Security Act",[81] and RA No. 9279, as amended, otherwise known as the "Philippine Climate Change Act",[82] to supposedly support their contention that the CHR has jurisdiction over the subject matter of the *Petition*.

Evident from Petitioners' invocation of the foregoing laws is their admission that Congressional action is required in order to expand the jurisdiction of the CHR as provided under Section 19, Article XIII of the Constitution.

More to the point, under the Human Security Act, Congress empowered the CHR to prosecute public officials, law enforcers, and other persons who may have violated the **civil and political rights** of persons suspected of, or detained for the crime of terrorism or conspiracy to commit terrorism:

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

It is clear from the foregoing that the power of the CHR under the said law to investigate and prosecute is again, and still, limited to violations of the civil and political rights of persons, consistent with the coverage under Section 18(1), Article XIII of the Constitution.

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[81] At pp. 39-40, *Consolidated Reply*.

[82] At pp. 40-42, *Consolidated Reply*.

As discussed, in accordance with Section 19, Article XIII 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). Critically, as conceded by Petitioners themselves, 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 expanding the CHR's jurisdiction to include violations of environmental rights – not even in their cited Human Security Act.

Moreover, **under the Philippine Climate Change Act, the CHR was not even included among the governmental agencies composing the advisory board of the Climate Change Commission,**[83] 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.[84] **This further reflects the fact that Congress does not consider the CHR to have any jurisdiction over environmental, climate change, or socio-economic matters.**

Clearly, the intent of Congress is made clear not only by the Climate Change Act or the Human Security Act, but also, and in fact, a consideration of the laws which mention the CHR, namely: RA No. 10630 (2013) or "*An Act Strengthening the Juvenile Justice System in the Philippines*", RA No. 10368 (2013, as amended) or the "*Human Rights Victims Reparation and Recognition Act of 2013*", RA No. 10366 (2013) or "*Authorizing COMELEC to Establish Precincts Assigned to Accessible Polling Places Exclusively for Persons with Disabilities and Senior Citizens*", RA No. 10353 (2012) or "*Anti-Enforced Disappearance Act of 2012*", RA No. 9775 (2009) or the "*Anti-Child Pornography Act*", RA No. 9710 (2009) or "*The Magna Carta of Women*", RA No. 9745 (2009) or "*The Anti-Torture Act of 2009*", RA No. 9372 (2007) or "*The Human Security Act of 2007*", RA No. 9344 (2006, as amended) or the "*Juvenile Justice and Welfare Act of 2006*", RA No. 9262 (2004) or the "*Anti-Violence Against Women and their Children Act of 2004*", RA No. 8551 (1998, as amended) or "*Philippine National Police Reform and Reorganization Act of 1998*", RA No. 7438 (1992) or "*Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as Well as the Duties of the Arresting, Detaining and Investigating Officers and providing Penalties for Violations Thereof*", RA No. 6948 (1990, as amended) or "*Standardizing and Upgrading the Benefits for Military Veterans and their Dependents*", and Executive Order No. 163 (series of 1987, as amended) or the "*Effectivity of the Creation of the*

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[83] R.A. No. 9729 as amended by R.A. No. 10174, Section 5.

[84] R.A. No. 9729 as amended by R.A. No. 10174, Section 5.

Commission on Human Rights",[85] — which all show that a law passed by Congress is necessary to expand the jurisdiction or authority of the CHR and that such laws so far passed by Congress have firmly and consistently remained in the province of civil and political rights. Further, in none of the foregoing laws has the jurisdiction of the CHR expanded to cover violations of economic, social, and cultural rights or even environmental rights.

That Congress, despite the passage of thirty (30) years, has chosen not to expand the investigative jurisdiction of the CHR to violations of economic, social, and cultural rights is an affirmation of the Constitutional intent that impelled its creation. Most glaringly, that Congress has not expanded the jurisdiction of the CHR is a fact alleged in the *Motion to Dismiss* that has not even been contested by Petitioners in their *Consolidated Reply*. By virtue of this admission, the CHR has no jurisdiction over the *Petition* as the reliefs sought by Petitioners are beyond the CHR's authority as enumerated in Section 18, Article XIII of the Constitution.

III. The CHR Has No Jurisdiction Over The Persons Of SCPL And RDS.

Petitioners contend in their *Consolidated Reply* that the CHR is allegedly not "*in the same footing as that of a court of law which needs to acquire jurisdiction over the subject matter and parties before it can hear and decide a case.*"[86] Thus, the Petitioners allege that "when the [CHR] exercises its 'jurisdiction,' or authority to be more precise, it acts according to its special investigative, recommendatory, and monitoring mandate, not as a court of law that needs to acquire—in its technical sense—**jurisdiction over the person** and subject matter before it can hear and decide a legal controversy."[87]

As discussed earlier, Petitioners' contentions are patently erroneous and betray a flawed understanding of the concept of jurisdiction.

It cannot be denied that due process is required even in administrative proceedings – which Petitioners purport this to be despite their clear admissions cited above that the intention is to find fault as against the purported respondents.

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[85] As this was issued by President Corazon Aquino on 05 May 1987 or before the First Congress convened, it has the legal status of a statute duly passed by Congress. *See* Section 6, Article XVIII (Transitory Provisions) of the Constitution.

[86] At par. 2.4, p. 8, *Consolidated Reply*.

[87] At par. 2.6, p. 9, *Consolidated Reply*; emphasis supplied.

It is imperative that the CHR itself uphold the highest standards of due process and the rule of law, including the requirements of jurisdiction, given its mandate to promote the respect of human rights. Indeed, the CHR itself, through the document *Response from the Commission on Human Rights of the Philippines* it submitted as an answer to the Office of the High Commissioner of Human Rights' *Questionnaire on National Human Rights Institutions and Human Rights Defenders*, undertook to observe due process during its investigations.[88]

As such, the CHR itself, through Section 10, Rule 7 of its *Omnibus Rules*, requires that persons "implicated in the complaint for or report of human rights violations" in a public inquiry be "accorded due process"[89] and "be given due notice of the CHR processes in his/her case."[90]

In ***Azucar v. Jorolan***, 617 SCRA 519 (2010), the Supreme Court reiterated that the right to due process includes a tribunal vested with competent jurisdiction:

> "In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) **a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality**; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected." (Emphasis supplied)

Clearly, administrative proceedings are not exempt from fundamental and basic principles, such as the right to due process in investigations and hearings. The right to substantive and procedural due process is applicable in administrative proceedings. [***Civil Service Commission v. Lucas***, 301 SCRA 560 (1999)]

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88 At p. 4 of the *Questionnaire on National Human Rights Institutions and Human Rights Defenders, Response from the Commission on Human Rights of the Philippines*, available at http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Philippines.pdf (last accessed on 03 May 2017).

89 At par. a, Section 10, Rule 7, *Omnibus Rules*.

90 At par. b, Section 10, Rule 7, *Omnibus Rules*.

Besides, it is clear that in the instant case, SCPL and RDS are being treated as respondents in a proceeding where the ultimate purpose under the *Petition,* and as expressly admitted by Comm. Cadiz of the CHR and Atty. Grizelda Mayo-Anda, counsel for Petitioners, during their joint press conference on 08 December 2016, is the definite determination of the alleged link between the "respondents" and climate change, as well as a judgement on their liability and/or responsibility as regards climate change.[91]

As such, strict compliance with the requirements of due process, including personal jurisdiction, are made even more necessary in light of the grave liability and accountability Petitioners attempt to impute against SCPL and RDS.

A. By Virtue Of The *Omnibus Rules* Of The CHR Itself, The Applicable Manner Of Service Of Summons Is That Provided In The Rules Of Court, Which Was Not Complied With.

1. The Rules On Service Of Processes Must Comply With The Service Of Summons In The Rules Of Court.

In the *Consolidated Reply,* Petitioners claim that the service of the *Petition* and *Order* to respondents via registered mail is allegedly proper and sufficient on the ground that the instant proceedings are primarily investigative – and not prosecutorial or judicial – in character.[92]

Petitioners' contentions must fail.

In the first place, as discussed above, the CHR has no subject matter jurisdiction over the instant case. Thus, it may not even legally issue any summons or process.

Relevantly, the *Omnibus Rules* do not provide for the manner by which notice or summons must be served. However, Section 22, Rule 7 of the *Omnibus Rules* provides for the suppletory application of the Rules of Court in the absence of any specific provision in the former:

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91 At 24:10 to 24:40, p. 6 of the of the 08 December 2016 press conference, *supra* (**Annex "1"** hereof).

92 See Subheading B.1, p. 8 of the *Consolidated Reply*.

"Section 22. *Applicability of the Rules of Court.*—In all matters of procedure not covered by the foregoing rules, the provisions of the Revised Rules of Court shall apply in a suppletory character."

In view of the silence of the *Omnibus Rules* thereon, the Rules of Court, particularly Rule 14 on Summons, thus applies to the service of summons or the initial notice to the respondents in the public inquiry. As shown in the *Motion to Dismiss*, however, there was no compliance with such requirements.

Indeed, the delivery of an LBC package to 156 Valero Street, Salcedo Village, Makati City **cannot qualify as valid personal service** to SCPL. Neither can the same qualify as **valid substituted service**, considering the absence of even an attempt to serve on its resident agent or comply with the rules. In ***Planters Development Bank v. Chandumal,*** 680 SCRA 269 (2012), the Supreme Court stressed that it is only when **prompt personal service is impossible that substituted service may be resorted to:**

"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**

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)

Clearly, the impossibility of prompt personal service in this case cannot be established as there was an utter failure to even attempt the same. In any case, the circumstances surrounding such "attempt" were not even detailed in a sheriff's return, and hence, automatically render the substituted service as **patently defective**, and therefore, null and void.

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)

Further, the *Petition* was served upon SCPL by means of private courier service, which is not sanctioned either in the Rules of Court or even by the CHR's own Rules, which require personal service or registered mail.[93] In ***Palileo v. Planters Development Bank***, 738 SCRA 1 (2014), the Supreme Court noted with disapproval the therein respondent's resort to private courier for the filing and service of its pleading to the court and the other party:

"**Indeed, its filing or service of a copy thereof to petitioners by courier service cannot be trivialized. Service and filing of pleadings by courier service is a mode not provided in the Rules.** This is not to mention that PDB sent a copy of its omnibus motion to an address or area which was not covered by LBC courier service at the time. Realizing its

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93 Section 13, Rule 4, Omnibus Rules

mistake, PDB re-filed and re-sent the omnibus motion by registered mail, which is the proper mode of service under the circumstances. By then, however, the 15-day period had expired." (Emphasis supplied)

Petitioners contend that the case of ***Palileo v. Planters Development Bank***, *supra,* referred to a judicial proceeding and not an investigation; hence, strict adherence to the rules of procedure in judicial proceedings is generally observed. Such claim is without merit.

Strict compliance with the mandatory rules of procedure is the established norm and any relaxation from that standard could only be an exception. Utter disregard of the rules cannot justly be rationalized by harping on the policy of liberal construction.[94]

In the instant case, Petitioners utterly failed to present any cogent basis for its derogation from the established rules of procedure for service of summons. Instead, Petitioners merely rely on its hollow claim of liberal construction in order to excuse its non-compliance. Clearly, contrary to the claims of Petitioners, the service of summons upon SCPL was defective. Hence, the CHR did not acquire jurisdiction over SCPL.

Moreover, SCPL has not participated in any of the alleged activities that are the subject of the Petition as to provide any legal nexus to even begin consideration of jurisdiction. SCPL is a holding company – nothing more.

2. The CHR Cannot Acquire Jurisdiction Over RDS As The Same Has Never Transacted In The Philippines.

With regard to RDS, 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 at all applicable because RDS is a non-resident foreign corporation which has not done business 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

94 *Civil Service Commission v. Appeal*, 447 SCRA 356 (2004)

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 and underscoring 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 the CHR to serve summons or acquire jurisdiction over it. 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.

There is absolutely no showing in the instant *Petition* that RDS has conducted any business in the Philippines that would place it under Philippine jurisdiction. The general allegation by Petitioners that "the

operations or presence in, or a substantial connection to the Philippines"[95] 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.

In ***Avon Insurance PLC 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 its jurisdiction:

> "A foreign corporation, is one which owes its existence to the laws of another State, and generally has no legal existence within the State in which it is foreign. In ***Marshall 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.
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> 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 court's jurisdiction would violate the essence of sovereignty**.
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> 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 court's jurisdiction. **A general allegation standing alone, that a party is doing business in the Philippines does not make it so. A conclusion of fact or law cannot be derived from the unsubstantiated assertions of**

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[95] At p. 2, p. 5, Petition.

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)

To reiterate, Petitioners' reliance on Section 12, Rule 14 of the Rules of Court on service of summons upon a foreign corporation is misplaced considering that **the same only applies to a foreign corporation that has transacted business in the Philippines**. Thus, if the foreign corporation is not transacting or doing business in the Philippines, it cannot be sued in the Philippines due to a lack of jurisdiction. As explained by the Supreme Court in ***Avon Insurance PLC v. Court of Appeals,*** *supra,* to exercise jurisdiction over these foreign corporations would violate the principle of State sovereignty.

Further, as will be illustrated below, 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. States may only exercise extra-territorial jurisdiction in respect of entities (including corporations) resident or otherwise present within its jurisdiction.

To reiterate, 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 CHR does not have, and cannot obtain, personal jurisdiction over RDS as a matter of Philippine and international law.

3. It Is Immaterial That SCPL And RDS Were Allegedly Impleaded As Corporate Groups Or That They Are Publicly Known.

At the outset, Petitioners have not even denied, and hence, admit, 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.[96]

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[96] At p. 3, n. 2, *Petition*

In order to excuse themselves from the fatal defects in the drafting, service, and filing of its *Petition*, Petitioners allege that respondents were "impleaded in the *Petition* as corporate groups and as they are publicly known."[97] Petitioners further sweepingly claim that, "while the *Petition* and the Honorable Commission's *Order* are directed at the Carbon Major's parent entities, the subsidiaries are also implicated."[98]

Petitioners' claims are belied by law, jurisprudence, and basic rules of due process.

Both the *Omnibus Rules* of the CHR and the Rules of Court, which suppletorily applies in this case, make no distinction between publicly known and lesser-known juridical entities. In the Rules of Court, any distinction in the mode of service of summons rests on the limitations of the tribunal's coercive jurisdiction, hence, the varying rules for entities present in and out of the country.

It is hornbook doctrine that corporations have personalities separate and distinct from their subsidiaries, affiliates, sister companies, parent companies, or other related companies. Being mere creations of law, the existence and personalities of corporations are specific and personal to each corporation. Indeed, **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** [***Land Bank of the Philippines v. Court of Appeals,*** 364 SCRA 375 (2001)] and **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** [***Jardine Davies, Inc. v. JRB Realty, Inc.,*** 463 SCRA 555 (2005)]. Thus, for example, the mere fact that a corporation owns all of the stock of another corporation is not sufficient to justify their being treated as one entity.

In ***Velarde v. Lopez, Inc.***, 419 SCRA 422 (2004), the Supreme Court stated that since a subsidiary has an independent and separate juridical personality from its parent company, any suit or claim against one does not bind the other:

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[97] At par. B.2, p. 12, *Consolidated Reply*.

[98] At par. 2.19, p. 14, *Consolidated Reply*.

> "**It cannot be gainsaid that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company, hence, <u>any claim or suit against the latter does not bind the former and vice versa</u>.**"(Emphasis and underscoring supplied)

In fact, in ***Luzon Iron Development Group Corporation v. Bridestone Mining and Development Corporation***, G.R. No. 220546 (07 December 2016), which involved the service of summons to a wholly-owned subsidiary of a parent corporation, the Supreme Court stated that it was not enough to merely allege in a complaint that there is a connection between a principal foreign corporation and an alleged agent domestic corporation. The complaint must show that the alleged agent is a mere conduit of the principal, or that there was fraud that would warrant piercing the veil of the corporate entity:

> "Likewise, the respondents err in insisting that Luzon Iron could be served summons as an agent of Consolidated Iron, it being a wholly-owned subsidiary of the latter. **The allegations in the complaint must clearly show a connection between the principal foreign corporation and its alleged agent corporation with respect to the transaction in question as a general allegation of agency will not suffice.** In other words, **the allegations of the complaint taken as whole should be able to convey that the subsidiary is but a business conduit of the principal or that by reason of fraud, their separate and distinct personality should be disregarded. <u>A wholly-owned subsidiary is a distinct and separate entity from its mother corporation and the fact that the latter exercises control over the former does not justify disregarding their separate personality</u>.** It is true that under the TPAA, Consolidated Iron wielded great control over the actions of Luzon Iron under the said agreement. This, nonetheless, does not warrant the conclusion that Luzon Iron was a mere conduit of Consolidated Iron. In *Pacific Rehouse Corporation v. CA*, the Court ruled:
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> > 'Albeit the RTC bore emphasis on the alleged control exercised by Export Bank upon its subsidiary E-Securities, [c]ontrol, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. **Even control over the financial and operational**

a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case.' [Emphasis supplied]

x x x

To reiterate, **the Court did not acquire jurisdiction over Consolidated Iron because the service of summons, coursed through Luzon Iron, was defective. Luzon Iron was neither the resident agent nor the conduit or agent of Consolidated Iron**." (Emphasis and underscoring supplied)

Applying the said cases, Petitioners' bare and unsubstantiated invocation that the respondents are "*impleaded in the Petition as corporate groups and as they are publicly known*" is insufficient to vest the CHR with jurisdiction over them, absent any showing that would justify the utter disregard of fundamental principles governing the applicability of procedural rules, separate juridical personalities of corporations, and the doctrine of corporate fiction. Hence, Petitioners fatally erred in lumping respondents' identity and existence together, in violation of the established and basic rules of corporate existence and personalities.

However, in an effort to excuse their fatal mistake, Petitioners bewail the application of the rules of technicalities in the instant case.

In ***Building Care Corporation v. Macaraeg***, 687 SCRA 643 (2012), the Supreme Court emphasized that rules of procedure ensure an orderly and speedy administration of justice. Thus, resort to a liberal application, or suspension of the application of procedural rules still remain to be an exception, and must be founded on some valid and compelling reason:

"It should be emphasized that the **resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice**. In *Marohomsalic v. Cole*, the Court stated:

'While procedural rules may be relaxed in the interest of justice, it is well-settled that these

> cases. **The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity.** Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. **While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.'**
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> We must stress that the bare invocation of 'the interest of substantial justice' line is not some magic wand that will automatically compel this Court to suspend procedural rules. **Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.**" (Emphasis and underscoring supplied)

In the instant case, Petitioners simply insist on their blatant and repeated disregard for the basic and fundamental requirements of due process. It cannot be emphasized that the service of summons is a matter of due process. Due process, by virtue of equal protection, is a right enjoyed by any person, without distinction as to their size or scope. Petitioners themselves purport to champion obedience to law. They should be the first ones to follow it.

IV. The CHR's Powers Are Limited By Basic Concepts Of Territoriality, As It Has No Effective Power Or Coercive Jurisdiction For Acts Committed Outside The Philippines.

The Petitioners submit that the CHR has "authority to investigate businesses, regardless of where they are registered/domiciled or doing/transacting business, if it is believed that human rights harms are occurring in the Philippines".[99] This statement is incorrect and unsupported by legal principles for the following reasons:

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[99] At par. 2.25, *Consolidated Reply*

a) The jurisdiction of the Philippines, and therefore the CHR, to prescribe and enforce laws is limited to the territory of the Philippines.

b) The Philippines cannot exercise enforcement jurisdiction beyond the territory of the State to investigate the conduct of foreign companies that are not present or doing business in the Philippines. There are no exceptions to this rule.

c) A State may only extend its prescriptive jurisdiction beyond its own territory in exceptional circumstances and on the basis of one of the limited, internationally recognized bases of extraterritorial jurisdiction.

d) Human rights obligations many only be applied extraterritorially in situations in which the State exercises "effective control" over territory other than its sovereign territory.

e) No such exceptional circumstances are present in this case. Moreover, none of the doctrines or documents invoked by the Petitioners would permit the Philippines to extend its jurisdiction extraterritorially over respondents, like SCPL and RDS, which are not incorporated in the Philippines.

f) In fact, all of the authorities relied on by Petitioners confirm the principle that it is the State in which the company is incorporated or has its main seat that has the primary jurisdiction to regulate the activities of the company. In the present case, neither RDS nor SCPL are incorporated in the Philippines. Furthermore, neither SCPL nor RDS are alleged to have conducted any of the alleged activities on the territory of the Philippines.

g) The exercise of extraterritorial jurisdiction over human rights obligations in the manner sought by the Petitioners would impermissibly encroach on the territorial jurisdiction and sovereignty of other states.

h) Finally, the CHR has no power to prescribe laws or to unilaterally apply international human rights obligations

law. International law does not impose any human rights obligations on private parties. In addition, the CHR is not mandated unilaterally to impose or prescribe human rights norms.

A. 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.

As discussed above, jurisdiction refers to the power of the State to regulate conduct and defines the parameters within which it can exert its coercive powers.[100] A State's jurisdiction - whether prescriptive,[101] adjudicative or enforcement - is presumed to be limited to the *territory* of the State.[102]

The notion of a State's prescriptive and enforcement jurisdiction is closely related to the principles of State sovereignty and territoriality:[103]

> "**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

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100 C Staker "Jurisdiction" in M Evans (ed) *International Law* (4th edn, 2014), 310: "[T]he principles governing jurisdiction define the limits of the State's coercive powers". *See* also Motion to Dismiss filed by SCPL and RDS dated 9 September 2016, Argument F, p. 34.

101 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* MARTIN DIXON, TEXTBOOK ON INTERNATIONAL LAW 133 (5th ed., 2005).

102 J Crawford, *Brownlie's Principles of Public International Law* (8th edn 2012), p. 456; *see* also extensive authorities cited in the *Motion to Dismiss* filed by SCPL and RDS at pp. 36-37.

103 *See* further the 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*** (U.S. v. Neth.), 2 R.I.A.A. 829 (Perm. Ct Arb. 1928) at p. 838.

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 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."[104] (Emphasis and underscoring supplied)

The fundamentally territorial basis of jurisdiction was highlighted by the Permanent Court of International Justice ("PCIJ") 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."[105] (Emphasis supplied)

The Petitioners, however, attempt to misconstrue the holding in the *Lotus* case by arguing that it is also authority for the argument that a State can extend its prescriptive jurisdiction as wide as it chooses provided there is no rule **prohibiting it.** This broad interpretation has, however, been widely rejected and discredited. It has been repeatedly rejected by the International Court of Justice.[106] Commentators have described this "permissive jurisdiction" argument as a "tiresome and oddly persistent

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104 F. A. Mann, *The Doctrine of Jurisdiction in International Law*, 111 RECUEIL DES COURS 1, 30 (1964 I), cited in Hannah Buxbaum, *Territory, Territoriality, and the Resolution of Jurisdictional Conflict*, 57 AM. J. COMP. L. 631, 632 (2009), *available at* http://www.repository.law.indiana.edu/cgi/viewcontent.cgi? article=1132&context=facpub (last accessed on 03 May 2017).

105 ***S.S. Lotus*** (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 18-19 (1927). The *Lotus* case firmly established the relationship between jurisdiction, sovereignty and territory.

106 The "broader" *Lotus* principle was not followed by the ICJ in subsequent cases such as ***Nottebohm*** (Liech. v. Guat.), Second Phase, 1955 I.C.J. 4 (06 April); ***Fisheries Jurisdiction*** (U.K. v. Nor.), 1951 I.C.J. 131, 131-134 (18 Dec.); ***Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.)***, 2002 I.C.J. 1 (14 Feb.) (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* (2008), at 477; emphasis supplied.

fallacy"[107] and reiterated that it has no basis in the intervening State practice, which instead requires States to demonstrate a nexus between the State and the conduct to be regulated in order to extend extraterritorial jurisdiction, even in the context of prescriptive jurisdiction.[108]

The principle of territoriality is widely recognized as the primary basis for jurisdiction in international law.[109] As noted by Professor Lowe:

> "[T]he 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."[110]

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]."[111]

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107 C Staker "Jurisdiction" in M Evans (ed) *International Law* (4th edn, 2014), 310, 314. The authors go on to say that "a moment's thought will indicate that it is extremely improbably that this is what the Court meant to say".

108 C Staker "Jurisdiction" in M Evans (ed) *International Law* (4th edn, 2014), 310, 315: "State practice is consistently based upon the premise that it is for the State asserting some novel extra territorial jurisdiction to prove that it is entitled to do so". *See* also the case law of the ICJ cited in the *Motion to Dismiss* filed by SCPL and RDS, footnote 56 at p. 36.

109 *See* e.g. Alex Mills, *Rethinking Jurisdiction in International Law*, 84(1) BRIT. YEARBOOK INT'L L. 187, 197 (2014): "[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 organized, 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), although a broader presumption against 'extra-jurisdictionality' (presuming that the reach of domestic legislation comports with international law limits) is also sometimes applied."; ALINA KACZOROWSKA-IRELAND, PUBLIC INTERNATIONAL LAW 358 (2015): "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 subject to the enforcement jurisdiction of that State."

110 VAUGHAN LOWE, INTERNATIONAL LAW 475 (2007).

111 Oscar Schachter, *The Jurisdiction of States, in* COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 245 (1982).

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."[112]

In the present case, the Petitioners are manifestly seeking to extend the jurisdiction of the CHR to extraterritorial situations including in relation to the actions of foreign private actors, including SCPL and RDS, which are not incorporated in the Philippines and in respect of activities (including historic activities) that did not occur on the territory of the Philippines.

Prescriptive jurisdiction is the power to prescribe laws. For example, the application of human rights obligations to horizontal relationships or private actors would engage both the prescriptive and adjudicative jurisdiction of the Philippines. Prescriptive jurisdiction is also based on the principle of territoriality.[113] It may only be exercised extraterritorially exceptionally and by reference to a specific basis in international law.[114]

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.[115] Any derogation from this rule must be premised on the consent of the State itself.[116] *Enforcement* jurisdiction is therefore

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112 Cedric Ryngaert, *The Concept of Jurisdiction in International Law*, in ALEXANDER ORAKHELASHVILI, RESEARCH HANDBOOK ON JURISDICTION AND IMMUNITIES IN INTERNATIONAL LAW 2 (2015).

113 *See* for e.g. Article 29 of the Vienna Convention of the Law of Treaties: "Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory."

114 *See Motion to Dismiss* filed by SCPL and RDS at p. 34; J Crawford, *Brownlie's Principles of Public International Law* (8th edn 2012), p. 456.

115 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 the exercise of enforcement jurisdiction. *See* INTERNATIONAL BAR ASSOCIATION, REPORT OF THE TASK FORCE ON EXTRATERRITORIAL JURISDICTION 10 (2009): "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."

116 In ***The Schooner Exchange v. McFaddon*** 11 U.S. (7 Cranch) 116 (1812) at 136, 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)

necessarily confined to the State's territory and is not subject to any general exceptions.[117] States may not encroach upon the enforcement jurisdiction of a State concerning matters within its territory absent any legal basis to do so.[118] The CHR cannot therefore reach beyond the borders of the State to compel or coerce respondents that are not present on the territory of the Philippines.

In the specific context of human rights treaties, which is the subject matter before the CHR, human rights treaties are presumed to apply to the territory and may only be applied beyond the State's territory in exceptional situations, namely where the State exercises effective control over a territory other than its sovereign territory.[119]

This position has been repeatedly reaffirmed by the UN treaty bodies and by international and regional tribunals. For example, the UN Human Rights Committee held that State Parties to the ICCPR:

> "are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to **all persons who may be within their territory and to all persons subject to their jurisdiction**. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone **within the power or effective control of that State Party**, even if not situated within the territory of the State Party."[120] (Emphasis supplied)

When recently considering the applicable scope of the ICESCR, the ICJ affirmed the view that jurisdiction under the Covenant is "essentially territorial" in nature.[121] As the Court noted:

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117 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 the exercise of enforcement jurisdiction. See INTERNATIONAL BAR ASSOCIATION, REPORT OF THE TASK FORCE ON EXTRATERRITORIAL JURISDICTION 10 (2009): "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 *See* references in *Motion to Dismiss* filed by SCPI and RDS at p. 37.

118 *Ibid*.

119 See generally M Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles and Policy* (2011); De Schutter et al, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights" (2012) 34 *Human Rights Quarterly* 1084, 1107: observing, after referring to statements of the ICJ in relation to the ICCPR, ICESCR, CAT and CERD, that they "confirm the view of human rights bodies and of the International Court of Justice that human rights obligations are imposed on states in any situation over which they exercise effective control."

120 UN Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add. 1326 May 2004, par. 10.

121 ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory***, Advisory Opinion, 2004 I.C.J. 136, 180, par. 112 (09 July)

"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**."[122] (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".[123] The European Court has repeatedly recognized that its jurisdiction, for the purposes of human rights obligations, is limited to its own territory.

The European Court of Human Rights however held that States may exercise extra-territorial jurisdiction in exceptional circumstances where it has "effective control" or military occupation over a territory.[124]

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

"Accordingly, [for example], 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

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122 *Id.*

123 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."

124 See *Bankovic and Others v Belgium and Others* (App No 52207/99) (2001) ECtHR, 12 December 2001; *Al-Skeini and others v United Kingdom* (App No 55721/07) ECHR 7 July 2011), paras 138–139, cited in Motion to Dismiss filed by SCPL and RDS dated 9 September 2016, p.40. See generally M Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles and Policy* (2011).

respondent state, through the effective control of the relevant 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."[125]

Thus, 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.

Based on the above, it is clear that the Philippines, through the CHR, cannot exercise 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.

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

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[125] *See* generally M Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles and Policy* (2011). ***Bankovic v. Belgium***, 2001 Eur. Ct. H.R. 890, paras. 60, 71 (12 Dec.). *See also* ***Al-Skeini v. United Kingdom***, 53 Eur. Ct. H.R. 589, pars. 138–139 (2011): "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, par. 139 (Eur. Ct. H.R. 2014): "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."

corporations for acts that occurred abroad, urged by the Petitioners, would impermissibly encroach on the territorial jurisdiction and sovereignty of other States.

B. 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 in its territory.[126] Such an exercise of extraterritorial jurisdiction would be tantamount to an undue encroachment on the territorial jurisdiction and sovereignty of such other States where respondents are domiciled or operate.

The Petitioners expressly pray that the CHR "recommend that governments, including the Philippines and other countries where the investor-owned Carbon Majors are domiciled and/or operate, enhance, strengthen, or explore new ways to fulfill the international duty of cooperation to ensure the Carbon Majors take steps to address the human rights implications of climate change".[127]

Moreover, to the extent that the Petitioners' request for relief would require the CHR to direct *other* sovereign States to take actions[128] 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, sovereign immunity, and international comity.

Thus, any attempt by the CHR to direct other sovereign States to act or to hold them in contempt of their alleged international obligations would amount to a manifest breach of principle of non-interference with sovereign States and sovereign immunity. 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 their own territory; a corollary of this

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126 SHAW, *supra* n. 106, at 475.

127 At p. 60, *Consolidated Reply*; *see* also par. 2.136.

128 At n. 3, p. 67, par. 6, *Petition*.

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

Likewise, to the extent that the Petitioners invite the CHR to opine on the international responsibility of other States, such would amount to a manifest breach of State sovereignty, immunity and independence. Indeed, in ***Arigo v. Swift***, 735 SCRA 102 (2014), which involved an attempt to hold a foreign state liable for the environmental damage caused by its agents, the Supreme Court upheld the sovereign immunity of the foreign state:

> "In *United States of America v. Judge Guinto*, we discussed the principle of state immunity from suit, as follows:
>
> > **The rule that a state may not be sued without its consent, now—expressed in Article XVI, Section 3, of the 1987 Constitution, is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Article II, Section 2.** x x x.
> >
> > Even without such affirmation, we would still be bound by the generally accepted principles of international law under the doctrine of incorporation. Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society, the state is automatically obligated to comply with these principles in its relations with other states.
> >
> > As applied to the local state, the doctrine of state immunity is based on the justification given by Justice Holmes that 'there can be no legal right

which the right depends.' [*Kawanakoa v. Polybank*, 205 U.S. 349] There are other practical reasons for the enforcement of the doctrine. In the case of the foreign state sought to be impleaded in the local jurisdiction, the added inhibition is expressed in the maxim *par in parem, non habet imperium*. **All states are sovereign equals and cannot assert jurisdiction over one another. A contrary disposition would, in the language of a celebrated case, 'unduly vex the peace of nations.'** [*De Haber v. Queen of Portugal*, 17 Q. B. 171]'

x x x

In the case of *Minucher v. Court of Appeals*, we further expounded on the immunity of foreign states from the jurisdiction of local courts, as follows:

> **'The precept that a State cannot be sued in the courts of a foreign state is a long-standing rule of customary international law then closely identified with the personal immunity of a foreign sovereign from suit** and, with the emergence of democratic states, made to attach not just to the person of the head of state, or his representative, but also distinctly to the state itself in its sovereign capacity. If the acts giving rise to a suit arc those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent. Suing a representative of a state is believed to be, in effect, suing the state itself. The proscription is not accorded for the benefit of an individual but for the State, in whose service he is, under the maxim -par in parem, non habet imperium -that all states are sovereign equals and cannot assert jurisdiction over one another. The implication, in broad terms, is that if the judgment against an official would rec 1uire the state itself to perform an affirmative act to satisfy the award, such as the appropriation of the

against him, the suit must be regarded as being against the state itself, although it has not been formally impleaded.'" (Emphasis supplied)

Similarly, in the instant case, any attempt by the CHR to determine the international responsibilities of other sovereign States concerning international instruments or treaties would be well outside its jurisdiction, and thus, void.

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.[129]

V. Contrary To Petitioners' Arguments, The CHR's Jurisdiction Cannot Be Expanded By Any Rule Of International Law, Assuming There Is Even Any.

A. The Jurisdiction Of The CHR Cannot Be Expanded By International Law *Via* "Incorporation" Or "Treaty" Clauses, As Section 19, Article XIII Of The Constitution, Expressly Leaves The Expansion Of The CHR's Jurisdiction To Congress.

Faced with the incontrovertibility of the above Congressional intent, Petitioners desperately attempt to save their *Petition* from outright dismissal by claiming that the CHR's "authority to take cognizance of the *Petition* and investigate the subject matter therein has overwhelmingly been established by law, rules, **international instruments**, and jurisprudence."[130] This assertion is patently without basis.

As already illustrated in the next preceding section, there is absolutely no law passed by Congress that would authorize the CHR to take cognizance of, much less grant the *Petition*, which is clearly beyond the ambit of its jurisdiction to investigate violations of civil and political rights or even monitor the Government's compliance with its international human rights obligations. Moreover, as extensively discussed in the *Motion to Dismiss* and in the instant *Rejoinder*, the CHR cannot unilaterally expand its own jurisdiction, which is defined and limited by the Constitution, as the same would flagrantly flout the very document that created it and the

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[129] CRAWFORD, *supra* n. 102, at 477.

[130] At par. 2.92, n. 39, *Consolidated Reply*; emphasis supplied.

system of checks and balances that underlie our Constitutional system. Furthermore, the cases cited in the *Motion to Dismiss*, particularly ***Simon v. Commission on Human Rights***, *supra*, themselves revolt against the *Consolidated Reply*'s claim that jurisprudence has recognized the CHR's power to investigate violations of human rights other than those which are civil and political in nature.

Further to the aforesaid absence of any jurisdictional basis for its recourse to the CHR, there is likewise no international instrument or rule of international law that can or will justify the CHR taking cognizance of the *Petition*.

The analysis on this point must begin with a proper understanding of the basic principles concerning the application of international law in the Philippines. Such principles begin from the primordial premise that the Philippines follows the dualist model,[131] which recognizes the simultaneous existence of two parallel legal systems: the domestic or Philippine system, and the international legal order. This model has been succinctly defined by an internationally-recognized expert in public international law as follows:

> "On the relation between international law and municipal (or national) law, the dualist theory affirms that **the two legal systems are distinct and separate, each supreme in its own sphere and level of operation.** They differ as to the subjects as well as sources. **International law governs the relations of states; municipal law regulates the conduct of individuals and other persons within the sphere of state jurisdiction.** The two legal systems being separate, international law becomes binding on states **by incorporation of general norms of international law, or by transformation of conventional rules of international law into municipal law.** Dualists take state sovereignty as a basic premise. **States, not individuals, are subjects of international law**.

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[131] "In the Philippines, while specific rules on how to resolve conflicts between a treaty law and an act of Congress, whether made prior or subsequent to its execution, have yet to be succinctly defined, **the established pattern, however, would show a leaning towards the dualist model**. The Constitution exemplified by its incorporation clause (Article II, Section 2), as well as statutes such as those found in some provisions of the Civil Code and of the Revised Penal Code, would exhibit a remarkable textual commitment towards 'internalizing' international law." (Separate opinion of Justice Vitug in ***Government of the United States v. Purganan***, 389 SCRA 623 (2002); emphasis supplied).

"**The Philippines has a dualist approach in its treatment of international law.** Under this approach, the Philippines sees international law and its international obligations from two perspectives: first, from the international plane, where international law reigns supreme over national laws; and second, from the domestic plane, where the international obligations and international customary laws are considered in the same footing as national laws, and do not necessarily prevail over the latter." (Dissenting opinion of Justice Brion in ***Poe-Llamanzares v. Commission on Elections***, 786 SCRA 1 (2016); emphasis supplied).

x x x **within a state system...the rule of another legal order, such as international law, cannot be applied as such, but only being 'transformed' into legal rules of that system...Until this transformation has taken place, international standards merely have the value of 'facts.'"**[132] (Emphasis and underscoring supplied)

Two points can, thus, be derived from the above citation.

First, because the Philippine system and the international legal order operate on two different planes, international law does not reign supreme within the domestic or Philippine sphere. **Ultimately, the Constitution prevails over any international instrument or norm.** It is for this reason that Section 5(2)(a), Article VIII of the Constitution even empowers the Supreme Court to judicially review the constitutionality of a treaty or international agreement:

"Section 5. The Supreme Court shall have the following powers:

x x x

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any **treaty, international or executive agreement,** law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question." (Emphasis supplied)

Needless to say, if international law could be considered supreme in the Philippine legal system as to defeat even the Constitution, the above provision would be useless. Such an interpretation would then go against the principle of *ut magis valeat quam pereat,* or the basic rule of

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[132] MERLIN MAGALLONA, FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW 57-8 (2005)

constitutional construction which states that "each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings."[133]

Further to this point, in ***Secretary of Justice v. Lantion***, 322 SCRA 160 (2000), the Supreme Court was confronted the issue of whether the Constitutional due process requirements of notice and hearing would conflict with the Extradition Treaty between the United States and the Philippines. The Supreme Court held that there was no such conflict and thus refused to rule on whether the treaty was unconstitutional. However, it nevertheless stated that in the event of a conflict, the Constitution would reign supreme over any rule of international law:

> "The doctrine of incorporation is applied whenever municipal tribunals (or local courts) are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both since it is to be presumed that municipal law was enacted with proper regard for the generally accepted principles of international law in observance of the Incorporation Clause in the above-cited constitutional provision (Cruz, *Philippine Political Law*, 1996 ed., p. 55). **In a situation, however, where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts** (*Ichong vs. Hernandez*, 101 Phil. 1155 [1957]; *Gonzales vs. Hechanova*, 9 SCRA 230 [1963]; *In re: Garcia*, 2 SCRA 984 [1961]) **for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances** (Salonga & Yap, op. cit., p. 13). **The fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere**. The doctrine of incorporation, as applied in most countries, decrees that **rules of international law are given equal standing with, but are not superior to, national legislative enactments. Accordingly, the principle *lex posterior derogat priori* takes effect — a treaty may repeal a statute and a statute may repeal a treaty. In states where the constitution is the highest law of the land, such as the Republic of the**

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[133] ***David v. Senate Electoral Tribunal*** GR No. 221538 (20 September 2016) at III A

Philippines, both statutes and treaties may be invalidated if they are in conflict with the constitution (Ibid.)." (Emphasis and underscoring supplied)

Pursuant to ***Secretary of Justice v. Lantion***, *supra,* no rule of international law, assuming there is even any, can overturn the provisions of the Constitution, including those international instruments, which allegedly expand the powers and functions of the CHR.

Second, the CHR is a creation of the Constitution and its powers are necessarily circumscribed by the same law: otherwise stated, **the CHR is a creature of Philippine law**. Because of the dualist nature of our legal system, while human rights may be defined by international instruments, these rights must, by transformation or incorporation, be given a domestic or Philippine character before they may be enforced in the Philippine jurisdiction against the State. Moreover, human rights treaties, whether incorporated or not, do not apply to private individuals. The State must validly adopt a law expressly requiring private individuals to uphold these State human rights obligations in their activities or in the course of their business, for example.

Hence, as a creature of "national," "municipal," or "domestic" law, the powers of the CHR and the limitations thereto are limited by the same national, municipal, or domestic law that created it, *i.e.*, the Constitution. There is therefore no basis for Petitioners' contention that "international instruments" have established the CHR's authority to take cognizance and act on the *Petition*, considering that by themselves alone, said instruments "merely have the value of 'facts'" and do not have any force or effect in the sphere of Philippine law.

B. The CHR Cannot Unilaterally Impose Human Rights Obligations On Private Parties In The Absence Of Law.

International human rights treaties are addressed to States. States, including its organs, agencies and instrumentalities, are legally bound to comply with human rights treaties, as a matter of international law. This includes the obligation to protect individuals from human rights violations caused by private actors.

For example, as explained by Commissioner Garcia, the civil and political rights covered by the CHR's investigative authority are those that pertain to the **behavior of governments**:

"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."[134] (Emphasis and underscoring supplied)

In contrast, private actors are not themselves directly bound by the international instruments or obligations.[135] Yet, even in the absence of any domestic law, SCPL and RDS, which are foreign private persons, are being hurled into these proceedings.

International law does not therefore regulate the private relationships between private actors. It is for the State to adopt the requisite legislation or regulations to apply human rights obligations on those private relations. However, this obligation arises purely as a matter of domestic, and not international, law.[136]

For example, the UN Human Rights Committee explained in General Comment No 31 that the obligations in the ICCPR are "binding on States and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law".[137]

To date, there is no domestic provision of Philippines law requiring the CHR to take cognizance of violations of international human rights obligations relating to the ecology or environmental rights.

In any event, the CHR cannot unilaterally apply international human rights obligations on private juridical entities as a matter of both international and domestic law.

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134 At p. 723 of *RCC No. 66* (Annex "1" of the *Motion to Dismiss*).

135 E de Brabandere, "Human Rights and Transnational Corporations: The Limits of Direct Corporate Responsibility" (2010) 4 *Hum. Rts. & Int'l Legal Discourse* 66, 67: "Human rights thus have, strictly speaking, no direct horizontal effect, in the sense of being applicable, as a matter of international law, in relations between individuals (and/or corporations)".

136 *See* E de Brabandere, "Human Rights and Transnational Corporations: The Limits of Direct Corporate Responsibility" (2010) 4 *Hum. Rts. & Int'l Legal Discourse* 66, 67: "Non-state actors cannot therefore be said to be the direct holder of human rights obligations under international law. The obligations individuals and corporations have are essentially a matter of domestic civil or criminal law, backed by the international legal obligation of the state to ensure effective protection of the human rights of the individuals under its jurisdictions. The distinction between these two levels of obligations and the two legal systems if often blurred in international scholarship".

137 UN Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add. 1326 May 2004, par. 8.

1. The Sovereign Duty To Protect Human Rights Does Not Require Or Permit The State To Apply Human Rights Obligations To Private Juridical Entities In The Absence Of Law.

Even the "duty to protect" invoked by Petitioners in their *Consolidated Reply,*[138] does not require or permit a quasi-judicial body to unilaterally impose human rights obligations on individuals in the absence of an applicable law.

The duty of States to comply with human rights comprises both negative and positive obligations. *First*, States have a negative obligation not to infringe individuals' human rights; this is described as the "duty to respect" rights. *Second*, States have a positive obligation to take steps to protect individuals from human rights violations caused by private actors; this is described as the "duty to protect".[139]

Professor Knox observed that human rights instruments "do not specify the private duties that governments should impose" to ensure that human rights are not violated by third parties. He proceeded to state that:

> "[I]n the absence of specification, the obligation on governments is merely to exercise 'due diligence' to protect human rights from private interference. Under the due diligence standard, a state's obligations to ensure human rights is an obligation of conduct, not result".[140]

Such measures might include the adoption of legislation or codes of conduct, or the launch of public awareness or educational campaigns. The extent of the duty to protect must also be considered in the specific context of social and economic rights. In contrast to civil and political rights, States are not required to vindicate all social and economic rights immediately but are instead required to "take steps" towards the "progressive realization" of those rights.[141]

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138 At par. ii, pp. 28-30, *Consolidated Reply*.

139 UN Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add. 1326 May 2004.

140 J H Knox, "Horizontal Human Rights Law" (2008) 102(1) *American Journal of International Law* 1, 22.

141 See Article 2(1) ICESCR; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23.

Petitioners, however, attempt to distort the intended meaning of the "duty to protect" human rights by attempting to argue that it *requires* a quasi-judicial body to *impose* human rights obligations on foreign private actors, despite the absence of any domestic law applying human rights standards to individuals.[142] This argument confounds the meaning of the duty to protect human rights, which is simply an obligation to exercise due diligence or to adopt **permissible** and appropriate legislative or governance measures.[143]

The duty to protect rights from violations by private parties cannot – and was never intended to – require an investigatory body to unilaterally impose human rights obligations on private parties in the absence of any domestic law imposing such obligations or to apply those obligations retroactively, as in the instant case.

This would breach fundamental principles of due process, legal certainty and the principle of *nullem poena sine lege,* no punishment without law. It would effectively impose international human rights obligations on all horizontal relationships between private parties in the absence of domestic law, in flagrant disregard of the clear conceptual distinction between the two. Moreover, for the reasons explained above, the extraterritorial application of human rights obligations by the CHR would encroach of the principles of non-interference and sovereign equality with regard to other States.

For these reasons, the Petitioners' request that the CHR effectively impose international human rights obligations on all horizontal relationships between private parties in the absence of domestic law (as discussed further below), in flagrant disregard of the clear conceptual distinction between the two. For these reasons, the Petitioners' unprincipled and unsupported submissions that the general duty of States to protect human rights should require the CHR to over-extend its jurisdiction and to impose obligations on private parties in the absence of law must be rejected.

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[142] At par. 2.62, *Consolidated Reply*, arguing that the Philippines is "obligated to protect and promote human rights", and therefore the CHR must take action to prevent human rights abuses "including with respect to abuses caused by businesses located outside its territory"; *see* also Amicus submissions of de Schutter et al of 5 December 2016, p. 1.

[143] UN Guiding Principles, Commentary to Principle 24, p. 3. See also UN Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add. 1326 May 2004, p. 8 which refers to the potential State responsibility where the State failed to take "appropriate" measures

C. Even Assuming That The Jurisdiction Of The CHR Can Be Expanded By International Law As Incorporated In Philippine Law, There Is Currently No Norm Of International Law That Would Justify Extending the Jurisdiction of the CHR Extraterritorially.

In the alternative, the Petitioners attempt to argue that the CHR may exercise exorbitant extraterritorial jurisdiction over foreign private actors in respect of activities alleged to have taken place outside the territory of the Philippines by reference to a myriad of doctrines and international documents including: the "effects" doctrine, the general duty on States to protect human rights; the 1972 Stockholm Declaration, the 2015 Paris Agreement; the 1993 Paris Principles; the necessity doctrine; the "no harm" principle; the Maastricht Principles and the UN Guiding Principles. None of the doctrines or documents invoked by the Petitioners, however, would permit the Philippines to extend its jurisdiction to private juridical entities not present on the territory of the in this manner. Thus, all of these submissions must fail for the reasons set out below.

In any event, none of the doctrines or documents on which the Petitioners rely upon provides a lawful basis for the extension of jurisdiction to foreign entities that are not present in the territory and in respect of activities that did not take place on said territory.

1. The Paris Principles (1993) Do Not Provide For The Expansion Of The Jurisdiction Of The CHR. Instead, They Merely Reinforce The Importance Of Expressly Defining The Mandate Of The CHR In The Constitution, Which, In Fact, Divests the CHR Of Jurisdiction In This Case.

The Paris Principles were adopted by resolution of the United Nations General Assembly in 1993.[144] Contrary to the Petitioners' submissions, the Paris Principles do not provide any basis for the expansive reading of the CHR's constitutional mandate advocated by the Petitioners. The Paris Principles simply confirm that the authority of National Human Rights Institutions ("NHRI") must be clearly defined in a constitutive text

[144] UN General Assembly Resolution 48/134 on National institutions for the promotion and protection of human rights, A/RES/48/134 (20 December 1993) (the "Paris Principles").

and reiterate that the national institution can only consider "questions falling within its competence".[145] For example, Principle 2, from which the Petitioners cited selectively, states as follows:

> "A national institution shall be given as broad a mandate as possible, **which shall be clearly set forth in a constitutional or legislative text**, specifying its composition and its sphere of competence."[146] (Emphasis supplied)

As is clear from this language, the Paris Principles simply provide that the mandate of the NHRI must be established in national law[147] and the State should confer on national institutions a "broad a mandate as possible" **when setting forth those powers in the constitutive law.** Conversely, Principle 2 does **not** require that the clear terms of the constitutional text be disregarded in order to arrogate broader mandate than is expressly provided for. If the (non-binding) General Observations of the Sub-Committee on Accreditation ("SCA") of the Paris Principles advocate that the mandate of national a human rights institution should be interpreted in a broad manner, neither the General Observations nor the Principles themselves provide a basis for reading additional and *contra legem* requirements into the constitutional provisions.

The Paris Principles, therefore, reinforce the importance of expressly defining the mandate of the CHR in a constitutional text and do not provide a basis to expand the jurisdiction of the CHR beyond the clear and unambiguous Constitutional language. The same principle was correctly applied by the Supreme Court and should be continually observed by the CHR. Again, in ***Simon, Jr. v. Human Rights Commission***, *supra*, the Supreme Court correctly stated that the power of the CHR to investigate only includes violations of "civil and political rights", considering the precise constitutional restriction on the CHR's jurisdiction made in Section 18, Article XIII of the Constitution.

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[145] UN General Assembly Resolution 48/134 on National institutions for the promotion and protection of human rights, A/RES/48/134 (20 December 1993), p.6 (the "Paris Principles").

[146] *See* par. 2.48, *Consolidated Reply*, in which Petitioners state "[t]he Paris Principles states that National Human Rights Institutions (NHRIs) "shall be give a broad a mandate as possible".

[147] Global Alliance on National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation adopted on 6 March 2017, available at http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/General Observations_adopted%2006.03.2017_EN.pdf (last accessed on 03 May 2017).

2. The Paris Agreement (2015) Does Not Provide Any Legal Basis For The Extension Or Extra-territorial Application Of A State's Jurisdiction.

Petitioners submit that the reference to "human rights" in the Preamble of the Paris Agreement "further supports" an exorbitant exercise of jurisdiction over entities that are not present in the territory of the State. This submission is particularly misconceived for a number of reasons.

The Paris Agreement only recently entered into force in respect of the Philippines and had not been ratified at the time this *Petition* was filed or at the date of the *Consolidated Reply*.[148]

More importantly, the Paris Agreement does not impose any specific obligations on private actors or businesses that would bind the respondents. Nor does it contain any provisions that refer to, or would justify the implicit extension of, the jurisdiction of a national human rights institution.

In fact, the Petitioners refer only to the Preamble of the Paris Agreement which provides only that States should consider human rights **"when taking action to address climate change"**.[149] This statement therefore requests States to make sure that they do not violate human rights obligations in taking actions to reduce climate change as promised in said Agreement.

This provision is not relevant to the present case for multiple reasons. The statement in the Preamble does not refer to actions in the past, which are the subject of the *Petition*. Moreover, the CHR, which is mandated to protect human rights, is not on any view "taking action to address climate change" in the framework of the UNFCCC or the Paris Agreement. Indeed, and as was already set out in SCPL and RDS's *Motion to Dismiss*, the Philippines Government has not assigned the CHR any role in the development of the Philippines climate change position, a task which was allocated to the Philippine Climate Change Commission (of which the CHR is not a member).

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[148] The Senate ratified the Paris Agreement on 14 March 2017.

[149] Preamble, referred to at par. 2.68 *Consolidated Reply*.

3. The Effects Doctrine And The Doctrine Of Necessity Do Not Support The Extraterritorial Application Of Human Rights Obligations Sought By Petitioners.

The "Effects" Doctrine Is Not A Recognized Basis For The Extraterritorial Application Of Human Rights Obligations. It Is A Disputed Principle And Its Conditions Would Not, In Any Event, Be Satisfied In The Present Case.

The Petitioners invoke the "effects doctrine" to justify the CHR's exercise of exorbitant jurisdiction. Importantly, however, there is no domestic law or jurisprudence which allows the "effects doctrine" to be applied. The effects doctrine has only been applied by a limited number of primarily common law countries in the specific context of anti-trust law and torts.[150] There is no support for its application in the human rights context. The doctrine is controversial[151] and is not universally accepted[152] by other States.

When the United States extended the application of its anti-trust laws to extraterritorial conduct that has economic effects in the US, many other States protested strongly.[153] The application of the doctrine is also subject to additional requirements: for example, US anti-trust law will only apply to a foreign party where an act committed abroad was intended to cause, and did in fact cause, significant consequences on US territory.[154] Similarly, while it is sometimes said that the EU applies an "effects doctrine" in respect of its anti-trust/competition laws, EU law also requires that the defendant have a specific connection with the EU.[155] Indeed, the European Court of Justice "has so far been careful to avoid any clear

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150 C Staker "Jurisdiction" in M Evans (ed) *International Law* (4th edn, 2014), 310, 318.

151 V Lowe, *International Law* (2007), p.173; SHAW, *supra* note 106; *see* also F A Mann, 'The Doctrine of International Jurisdiction', (1964) 111 *Recueil des cours de l'Académie de droit international de la Haye* 1, 104.

152 M T Kamminga, "Extraterritoriality" (2012) *Max Planck Encyclopedia of Public International Law*, par. 15.

153 V Lowe, *International Law* (2007) p. 173; C Staker "Jurisdiction" in M Evans (ed) *International Law* (4th edn, 2014), 310, 318.

154 *United States v. Aluminum Company of America*, 148, F.2d 416 (1945)

155 C Staker "Jurisdiction" in M Evans (ed) *International Law* (4th edn, 2014), 310, 318.

pronouncement in favor of [the effects doctrine]"[156] and the validity of the doctrine in EU competition law is under review by the European Court of Justice in a pending matter.[157]

Recourse to the effects doctrine in the context of extraterritorial torts jurisdiction is almost exclusively limited to common law jurisdictions[158] (as illustrated by the list of examples cited by the Petitioners). It has not been adopted in the Philippines. In civil law countries, the "fundamental jurisdictional rule" remains the domicile or residence of the defendant as discussed.

Moreover, in those common law States that do permit service out of the State when the tortious damage is suffered within the State, it is also necessary to demonstrate an additional relationship with the forum State, *i.e.*, *first,* that the foreign defendant has a specific or substantive connection with the State or that the defendant intentionally and/or foreseeably directed its activities at the State in which the damage was suffered,[159] and *second,* that it is reasonable to exercise exorbitant jurisdiction[160] in the circumstances in light of, for example, considerations of international comity or if another more suitable forum is available (*i.e.*, *forum non conveniens*).

It follows that the effects doctrine is not an accepted basis for the extraterritorial application of human rights treaties. In the two discrete areas in which the effects doctrine has been applied, it is controversial and has not been accepted universally. Furthermore, even if the effects doctrine could be applied in the human rights context, the Petitioners have not suggested that SCPL, RDS, or any of the other respondents, have any significant connection with the Philippines or that they intentionally

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156 P Behrens, "The extraterritorial reach of EU competition law revisited: The "effects doctrine" before the ECJ" *Europa-Kolleg Hamburg, Institute for European Integration, Discussion Paper No 3/16* (2016).

157 ECJ Case C-413/14, *Intel v Commission,* pending on appeal from Case T-286/09 *Intel v Commission*.

158 IBA, *Report of the Task Force on Extraterritorial Jurisdiction* (2009), p. 127: "In civil law countries, however, effects-based jurisdiction is generally not permitted except to the extent that a state has adopted a broad interpretation of the commission of a tort. Moreover, under the Brussels Regime, even this type of effects-based jurisdiction is prohibited."

159 For example, in the US, in order to exercise personal jurisdiction over a foreign defendant that is alleged to have caused tortious damage in the US, the Court must be satisfied that the defendant established "minimum contacts" with the forum State by the US, in order to exercise personal jurisdiction over a foreign entity. *See* World-Wide Volkswagen Corp v Woodson, 444 US 286, 297 (1980), cited in IBA, *Report of the Task Force on Extraterritorial Jurisdiction* (2009), p. 109.

160 *See* for e.g. *Voth v Manildra Flour Mills* (1991) 65 *A. L. J. R.* 83 (Australia); *Spiliada Maritime Corp v Cansulex Ltd* [1986] UKHL 10, [1987] AC 460 (England).

directed their activities at the Philippines. For all of the above reasons, the Petitioners' suggestion that the effects doctrine be applied in the human rights context must be rejected.

The Doctrine Of Necessity Is Not A Recognized Basis For The Extraterritorial Application Of Human Rights Obligations. It Is A Disputed Principle And Its Conditions Would Not, In Any Event, Be Satisfied In The Present Case.

Next, the Petitioners erroneously submit that the "doctrine of necessity permits the CHR to accept a complaint where there is no feasible alternative human rights forum in other countries, or where the petitioners may be reasonably expected to bring the action".[161]

The doctrine of necessity is not a generally accepted basis for extraterritorial jurisdiction.[162] In any event, the basic premise of the so-called necessity doctrine is that it is necessary for a third State to exercise exorbitant jurisdiction despite a lack of connection to the parties or the events, because the victims have no access to any other forum and would thus be denied access to justice.

On its face, this argument is absurd. The Philippines is certainly not the only jurisdiction in the world where a party may seek redress for alleged human rights violations. In fact, Petitioners do not even attempt to explain why they could not access "feasible alternative human rights for[a]" in other countries, as many states have established and sophisticated human rights mechanisms.

For this reason, the Petitioners' claim that the Philippines must have jurisdiction as the "necessary" forum to prevent a denial of access to justice must be rejected.

4. The Stockholm Declaration Is Not Binding And Does Not Expand The Jurisdiction Of The CHR.

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161 At par. 2.76, *Consolidated Reply*.

162 None of the textbooks or treatise on public international law recognize the "necessity" doctrine as a basis for extraterritorial civil jurisdiction. Although the IBA, *Report of the Task Force on Extraterritorial Jurisdiction* (2009) refers to the "necessity forum", it notes that "though this basis for jurisdiction exists in theory [in the statutes of certain civil law jurisdictions], in practice it is rarely a basis for extraterritorial tort jurisdiction in these countries"

In their *Consolidated Reply*, Petitioners further cite the 1972 Stockholm Declaration as one of the international environmental agreements that allegedly acknowledge the relationship between human rights and environmental protection,[163] and thus would allegedly allow the CHR to take cognizance of their *Petition*. This allegation is misleading.

Contrary to Petitioners' assertion, the Stockholm Declaration "espouses mostly broad environmental policy goals and objectives rather than detailed normative positions".[164] It does not contain any provisions that would provide a basis to extend the territorial jurisdiction of the Philippines or the CHR. In fact, the Stockholm Declaration emphasizes that the effects of transboundary environmental harm should be addressed through "cooperation" between States to develop international law.[165] The Stockholm Declaration is a non-binding instrument, which has now been superseded by the 1992 Rio Declaration, which is also non-binding.[166] Accordingly, the Petitioners' submissions on this point are unsubstantiated and should be dismissed.

5. The *Maastricht Principles* Invoked By Petitioners Do Not Provide A Proper Legal Basis For The CHR's Purported Extension Of Its Jurisdiction Over RDS and SCPL.

Contrary to Petitioners' arguments,[167] the Maastricht Principles cannot provide a legal basis to extend the Philippines and the CHR's jurisdiction extraterritorially for the following reasons.

First, the Maastricht Principles have no formal legal status in international law. They were prepared and adopted by individuals and academics, not by any subjects of international law. Nor are they recorded in an agreement between sovereign States or international organizations.[168]

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163 At par. 2.67, p. 30, *Consolidated Reply*.

164 G Handl, Introductory Note to the [Stockholm] Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development" *UN Archives*, p. 1, available at http://legal.un.org/avl/ha/dunche/dunche.html (last accessed on 03 May 2017).

165 *See* Preamble, Principle 22.

166 F. Francioni, "Preamble of the Rio Declaration" in J. E. Vinuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (2015), p. 89.

167 At pars. 2.81-2.84, pp. 35-36, *Consolidated Reply*.

168 The Maastricht Principles were initiated by the Consortium on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights, comprising universities, NGOs and civil society

Second, the Maastricht Principles are concerned with obligations of sovereign States, not private actors, as emphasized in the Preamble thereof:

> "Drawn from international law, these principles aim to clarify the content of extraterritorial State obligations to realize economic, social and cultural rights with a view to advancing and giving full effect to the object of the Charter of the United Nations and international human rights".[169]

The Principles do not state that private actors, including corporations, are human rights duty holders.[170]

Third, even if the Maastricht Principles had any relevance, there is no provision of the Maastricht Principles that would justify the extension of jurisdiction of the Philippines (acting through the CHR) to regulate conduct that occurred outside the Philippines (and in particular where that conduct was performed by foreign private actors). Remarkably, the Petitioners do not refer to Principle 9 of the Maastricht Principles, which identifies possible bases for extraterritorial jurisdiction. In fact, none of the bases enumerated apply to the present case. These include situations (i) where the State exercises effective control over another territory; (ii) a "no harm" principle where "situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights" on the territory of another State (which has already been discussed above); and (iii) a general obligation to cooperate and coordinate with other States in order to realize economic, social and cultural rights. In addition, the Maastricht Principles reflect the position that the home State is responsible for the regulation of persons and entities within its territory and jurisdiction.[171]

There were no sovereign representatives present. However the Maastricht Principles were *not* adopted by the Consortium but were instead adopted by the individual experts in their personal capacity. *See* F Coomans, "Situating the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", *Maastricht Faculty of Law Working Paper* (2013) p. 20. Published in the German language in Zeitschrift für Menschenrechte, 6 (2012), nr. 2; De Schutter et al, Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights" (2012) 34 *Human Rights Quarterly* 1084.

169 Preamble, Maastricht Principles; underscoring supplied.

170 F Coomans, "Situating the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", *Maastricht Faculty of Law Working Paper* (2013), p. 20.

171 *See* Principles 24 and 25 of the Maastricht Principles.

The Petitioners rely on Principle 3, which provides that all States have obligations to respect, protect and fulfil social and economic rights extraterritorially. However, the Commentary to the Principles reiterates that Principle 3 is qualified by Principle 9 above such that extraterritorial obligations only arise when a State exercises control or authority over people or territories outside its sovereign territory or in the context of international (*i.e.,* intergovernmental) cooperation.[172] Accordingly, the Principles cannot be understood as going beyond the existing position under international law. Indeed, as one commentator on the Principles acknowledged:

> "[M]ost States do not accept that they have human rights obligations beyond their national border. They will argue that there are no explicit extraterritorial obligations included in international human rights treaties. In other words, States have never explicitly accepted that they are bound by such obligations."[173]

With regard to Petitioners' claim that the duty to *protect* against violations by private actors also applies extraterritorially, there is also "no explicit legal basis for the extraterritorial obligation to protect in the ICESCR".[174]

Similarly, nothing in Principles 4, 25(a) or 37 provide any basis for CHR's jurisdiction in this case. Based on the foregoing, the Maastricht Principles do not extend the jurisdiction of the Philippines or the CHR.

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172 De Schutter et al, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights" (2012) 34 *Human Rights Quarterly* 1084, 1090. The remainder of the Commentary to Principle 3 focuses on the obligation of international cooperation and assistance, which is not relevant in the context of a Petition before the CHR in which the named Respondents are private actors. However, the Commentary proceeds to acknowledge at p. 1094 that "[d]espite its provision in binding international instruments, disagreement persists as to the legally binding nature of the obligation of international cooperation as expressed in [ICESCR]", noting that many States formally object to the interpretation that Article 2 ICESCR imposes a legally binding obligation of cooperation.

173 F Coomans, "Situating the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", *Maastricht Faculty of Law Working Paper* (2013) p.20. Published in the German language in Zeitschrift für Menschenrechte, 6 (2012), nr. 2, p. 6.

174 F Coomans, "Situating the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", *Maastricht Faculty of Law Working Paper* (2013) p. 20. Published in the German language in Zeitschrift für Menschenrechte, 6 (2012), nr. 2, p. 15. While the author observes that there are strong arguments to be made for such extraterritorial duty, he ultimately concludes "that there is no explicit extraterritorial obligation to protect laid down in international human rights law".

6. The "No Harm" Principle Is Not A Basis For The Extra-Territorial Application Of Human Rights Jurisdiction.

The Petitioners also attempt to invoke[175] the so-called "no harm" principle, which provides that States must ensure that activities within their jurisdiction or control do not cause damage to the environment of *other* States or areas beyond the limits of national jurisdiction.[176] However, the Petitioners' argument is again based on a misunderstanding of the nature and addressee of the principle.

The "no harm" principle is – as is clear from the language above - directed at the State in which the allegedly harmful conduct took place. It requires said State to prevent the effects of that conduct from extending beyond its territory and causing harm in other States. Moreover, the "no harm" principle refers to the "obligation to avoid a real risk [of] the probability of the risk occurring, not to the nature of its consequences once it has materialized".[177]

In the present case, there is no allegation that the activities alleged to have caused the human rights violations took place in the Philippines. As such, the "no harm" principle cannot apply in these circumstances to the Philippines. Despite this, the Petitioners attempt to flip the principle on its head by arguing that the "no harm" principle requires the Philippines to regulate conduct occurring in *other* States to prevent harm occurring in its own territory. This is illogical. Either the Philippines owes an obligation not to harm *other* States (a situation that would be outside the jurisdiction of the CHR because its mandate is to investigate alleged violations of the human rights of the Filipino people) or other States owe an obligation not to harm the Philippines (a situation that would again be outside the jurisdiction of the CHR because the CHR cannot pass judgment on the international responsibility of other States). In neither circumstance does the "no harm" principle create a basis for CHR jurisdiction. For these reasons, this submission must be rejected.

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175 At par. 2.79, *Consolidated Reply*: "the Philippines is responsible for taking the necessary steps to ensure that the Carbon Majors refrain from activities that are interfering with the rights of people in the Philippines".

176 Principle 21 of the Stockholm Declaration; Principle 2 of the Rio Declaration; Gabčíkovo-Nagymaros (Hungary/Slovakia) [1997] ICJ Reports 7, 41. *See* generally L. Duvic-Paoli, J. E. Vinuales, "Principle 2" in J. E. Vinuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (2015), p. 107 and following.

177 F Coomans, "Situating the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", *Maastricht Faculty of Law Working Paper* (2013) p.20. Published in the German language in Zeitschrift für Menschenrechte, 6 (2012), pp. 2 – 19

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

As set forth in SCPL and RDS's *Motion to Dismiss*,[178] the UN Guiding Principles are not legally binding nor do they impose any legally binding human rights obligations on businesses.[179]

That the Guiding Principles are not legally binding is incontrovertible. As acknowledged by the UN Office of the High Commissioner for Human Rights, the use of the term "responsibility" to describe businesses relationship to human rights, rather the term "duty" "indicates that respecting rights is not an obligation that current international human rights law generally imposes directly on companies, although elements of this responsibility will often be reflected in domestic laws."[180]

For this reason, the Guiding Principles do not impose any direct obligations on respondents, and the Principles cannot be used to justify the extension of the jurisdiction of the CHR.

Petitioners attempt to deny this position by asserting that the Guiding Principles reflect the existing position under international law.[181] If by this statement, Petitioners urge that international law imposes on businesses the obligations set forth in the Guiding Principles, this is flatly wrong. As explained above, international law does not impose any binding human rights obligations on companies. In addition, the Guiding Principles reiterate that nothing in the Principles "should be read as creating new international obligations".[182]

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178 At pp. 50-55, *Motion to Dismiss*.

179 *See* for example UN Office of the High Commissioner for Human Rights, *Frequently asked questions about the Guiding Principles on Business and Human Rights* 2014, p.8: "The Guiding Principles do not constitute an international instrument that can be ratified by States, nor do they create new legal obligations. Instead, they clarify and elaborate on the implications of relevant provisions of existing international human rights standards, some of which are legally binding on States, and provide guidance on how to put them into operation."

180 UN Office of the High Commissioner for Human Rights, *Frequently asked questions about the Guiding Principles on Business and Human Rights* 2014, p. 28.

181 At par. 2.115, p. 46, *Consolidated Reply*.

182 At p. 1, *Guiding Principles*.

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.

8. The Appropriate Forum To Regulate The Conduct Of Companies Is The State Of Incorporation Or Of Seat.

It is now established that the appropriate situs to regulate the conduct of multinational corporations is the "home" State,[183] *i.e.*, the State where the business is incorporated or has its place of domicile or principal seat. This is not, however, an obligation: as acknowledged in the Commentary to the UN Guiding Principles, "States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor or are they generally prohibited from doing so, provided there is a recognized jurisdictional basis".

UN bodies have reiterated that to the extent that the home State wishes to regulate the conduct of private entities operating abroad it must do so within the limits of international law and without infringing the sovereignty of the States in which the activities occurred:

> "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."[184] (Emphasis supplied)

Thus, rather than provide a basis for applying extraterritorial jurisdiction, the statements of UN treaty bodies and the UN Guiding Principles upon which the Petitioners rely specifically declare the opposite.

In the present case, SCPL and RDS are incorporated in the United Kingdom. Neither SCPL nor RDS conduct activities that affect or affected the Philippine territory as the Petitioners claim as to provide a nexus or begin consideration of a basis for CHR's jurisdiction if at all. Accordingly, the CHR cannot purport to regulate or exercise jurisdiction over the SCPL and RDS.

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[183] *See* p. 48, *Motion to Dismiss*.

[184] "Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights" UN Committee on Economic, Social and Cultural Rights (2011)

In summary, both SCPL and RDS, are incorporated outside the Philippines. RDS is headquartered out of the Philippines. Neither entity ever engaged in any conduct within the territory of the Philippines that is alleged to have caused any harm. Moreover, RDS has never transacted in the Philippines. For all of the above reasons, the CHR has no jurisdiction over respondents, and specifically SCPL and RDS. In addition, there is no basis under either domestic or international law to extend the jurisdiction of the Philippines and the CHR to entities, like SCPL and RDS, that are incorporated and operating out of the territory. Finally, there is no basis to apply human rights obligations to the respondents, including SCPL and RDS, under either international or domestic law. For these reasons, the Petitioners' claim must be dismissed.

PRAYER

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

Taguig City, Metro Manila for Quezon City, Metro Manila, 04 May 2017.

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ANNEX " 1 "

RE : Transcript of the Press Conference on 08 December 2016 conducted by the Commission on Human Rights and Greenpeace

Comm. Cadiz: Investigation or inquiry to be conducted by the CHR on the effect of the operations of the so-called Carbon Majors of the lives of the Filipino people. The allegation was that the operation of the Carbon Majors, their operations were affecting the climate change and as a consequence of the climate change, severe weather conditions were happening or resulting from their operations, thereby affecting the lives of the Filipino people. So that in gist was the theory behind the Petition. On December 04, 2015, in Paris, during the climate change conference, the Commission on Human Rights announced that it was taking due cognizance of the Petition and that an inquiry was going to be conducted. On 10 December 2015, back home in the Philippines, the Commission announced the manner by which the climate change inquiry will be conducted. We said that it will be conducted into two phases. The first phase was to be an inquiry into the science of climate change because you know, this was the very first petition seeking to link the operation of Carbon Majors to climate change. It was something that new to us and we wanted to find out if there was a, such a link, we wanted to be educated on the topic before we could proceed to the actual inquiry and that is what we did. We conducted the first phase from January to March of 2016. On 13 April, the month after we concluded the first phase of our inquiry, we had a conference with the petitioners on the procedure that shall govern the second phase of the inquiry, meaning the conduct of the actual hearing. During the said conference of 13 April 2016, the petitioners – it was manifested that they will be amending the Petition, the original petition which was submitted on 20 September 2015 was thus amended by the petitioners. They were able to file their amended petition on July 21, 2016. Immediately thereafter, on 27 July 2016, we sent out our order to the respondents for them to file their responses to the petition. As of today, twenty (20) responses have been filed in filed in various ways. I have here a matrix of filing of the submissions [video skips] via other means. An additional seven (7) parties submitted their responses not before the Commission on Human Rights and they also did not furnish any copy on the petitioners but they submitted it before the Business and Human Rights Center [video skips].

Last week, December 2, we received a manifestation and motion from the petitioners seeking that they be granted up to February 14, Valentine's Day, to submit their Consolidated Reply because as I said, twenty (20) responses had been filed by the forty-seven (47) originally impleaded in the Petition and Greenpeace has moved the Commission to be given until 14 February to file a Consolidated Reply from the—one single reply responding to all the submissions that have been filed in regard to this case. So we shall be granting—we do not want to be very technical about this and—so as to promote a deeper dialogue, a deeper discussion of this case, we are granting Greenpeace's motion. [This is] to discuss number 1, the conduct of the hearing, which is essentially phase 2 of the inquiry, how many witnesses will be presented by each side, the calendar, the exact dates when these hearings will be conducted, who the witnesses will be, etc. In short, the details of the hearing and, hopefully, once the agreement is settled among the parties, we shall proceed to the actual hearing on the next month, April of 2017.

Now, we intend to conduct the hearing, because, although this case is filed before us, the Commission on Human Rights of the Philippines, we are cognizant of the fact that the world is watching us. As many of us know, this is the very very first case filed before a national human rights institution, forwarding the theory that the Carbon Majors' operations are causing climate change and that the climate change effects are in violation of human rights. National human rights institutions all over the world are watching how this case will progress. Whenever we attend conferences abroad, this is one of the questions they ask of us, the Commission on Human Rights, is what is the status now of the Petition that has been filed before you, what are you going to do about this, who will be the witnesses that will be presented, etc. So there's a worldwide interest in this case and because of this we shall be conducting the hearing, webcasting it live so that other jurisdictions can observe, listen to the hearings, and also submit their comments to the Commission. By the way, we are encouraging all parties to submit their opinions regarding this case and as a matter of fact, six (6) amicus curiae briefs, meaning briefs coming from not the parties, briefs coming from stakeholders and interested parties can be submitted before us, and we are also considering their briefs in the conduct. So, we shall be conducting this inquiry, we shall allow this coverage over the Internet in real time. We shall be accepting opinions from stakeholders during the course of our inquiry. So that is the brief update on where we are right now.

Moderator: At this point, we will be taking questions to be addressed to the Commission Human Rights, Commissioner Cadiz. Please raise your hands

if you want to raise questions and then your address kindly provide your name the institution your represent, and the question you want to ask, we will start with Mr. Serrano.

Mr. Serrano: Yung amicus na sinasabi mo, does this include Jeffrey Sachs [unintelligible]. We heard that he came to visit [unintelligible].

Comm. Cadiz: Thank you for that question, Yes, Mr. Jeffrey Sachs visited the Philippines and we requested for a special meeting with him, and there was also a very good exchange of opinions regarding the petition that you filed. Specifically, he offered to help the Commission in the conduct of the inquiry. He offered—[video skips] There was no, he did not advocate any particular position. What he advocated, what he offered was to link us. He said he had friends who are involved in the science of climate change, who might be able to assist us understand the scientific and legal issues there, and we welcome the offer.

Moderator: So Jeffrey Sachs will provide the resources.

Questioner: Good morning, sir. [Unintelligible] from the Philippine Star. Clarification on the inquiry [unintelligible] will the CHR pass [judgment] [video skips].

Comm. Cadiz: Of course, it will be our duty to rule, but here we have to make a distinction between rulings that are made by the regular courts and quote unquote rulings that may be churned out or released by the Commission. We have to make a distinction between the [actual] court hearings where the process is adversarial, and at the end of the day the court will rule that one party owes another party a certain amount of money for damages for violations of certain rights [video skips] are just open to the process. The Petition has been filed, we will be listening to parties and then we will see how to conclude the inquiry.

Questioner: When you say that you're open to whatever outcome, this includes possible recommendation for prosecution or [unintelligible] or action on the part of [video skips].

Comm. Cadiz: [Unintelligible] in the realm of possibilities as I have mentioned.

Moderator: Anyone else?

Questioner: [Unintelligible] When you say Consolidated Reply, it raw po ba yung Reply sa petitioners?

Comm. Cadiz: Actually, the petitioners, marami sila, almost (15) fifteen NGOs and some individuals. Consolidated Reply means they will only submit one (1) reply, the petitioners Greenpeace et al., they will be submitting one reply that will contain their positions on all the issues raised by all the respondents, so instead of submitting a reply to respondent A, one separate reply to respondent B, respondent C, so on and so forth, it's consolidated. Isang reply nalang to everyone so they can tackle similar issues that have been discussed in certain responses. This is to explain to non-lawyers. Let's say, respondents A, B, C, D and E have common arguments questioning the jurisdiction of the Commission on Human Rights in the Philippines, or on their persons, so instead of individually responding to this, they will just have one reply [video skips] there's a petition, there's an answer, there's a reply, there's a rejoinder—basically a response to the reply. So if the respondents seek to comment on the reply, then we will give them the opportunity to submit what we call rejoinders.

Questioner: And then those consolidated replies [unintelligible] will form the basis for the next phase of the hearing itself?

Comm. Cadiz: Yes, after that we have what they call a joining of issues, kaya nga yung mga partido nagkakaintindihan kung ano yung issue, so that is the reason behind us asking the parties to submit their answer, their reply, then file a rejoinder to the [court]. Once the issues had been joined through the exchange of all these briefs, we conduct a pre-inquiry conference. In the pre-inquiry conference, we agreed that these are the issues that have been clarified, must be discussed, that must be answered during the hearing, so once na-define na mga issues na yan, nag-agree na yung mga partido then we proceed to the inquiry.

Questioner: Sir in the past kasi meron efforts din na, I'm not sure kung kayo yun, pero political rights din kung sino yung social econ rights, hindi ba [unintelligible] meron bang similarities yung process in terms of the elements of looking into [unintelligible, video skipping].

Comm. Cadiz: Well as you know, the whole gamut of human rights may be divided into two basic classifications, as you mentioned, civil and political rights, which is the original conception of human rights, but through the years the concept of human rights has expanded so as to cover also economic, social and cultural rights, so, a major allegation in the Petition filed by Greenpeace et al. is that climate change is affecting the economic, social, cultural rights of the Filipino people. So we have a mandate, as a Commission on Human Rights, and economic, social, and cultural rights are part of human rights—we have a mandate to inquire into the

allegations. We cannot limit ourselves to just civil and political rights [unintelligible].

Moderator: We have a representative from the Business Human Rights Resource Center.

Questioner: [Unintelligible] Sir, yung tungkol po sa magiging outcome nung [unintelligible]. First of all, thank you po for being very open and transparent po. You know that we are very happy to support with greater transparency in international community and there is a lot of interest. Yun pong sa magiging recommendations ng Commission, kasali po ba dito yung pwedeng i-recommend sa mga businesses mismo at hindi lamang po yung sa pamahalaan. I ask because of the potential for standard-setting kasi po yung mga Carbon Majors sa Petition, yung iba sa kanila cognizant of their human rights responsibilities. Ang dinedeny po nila ay yung [link] nila dun sa climate change. So yun po ang importanteng itatawid ng Commission, yun po ba ang magiging outcome, macocover din po ba yun? Ano ba dapat ang standards sa responsible practice sa mga kumpanya na ito and it that case kung covered po yun, it just adds so much more value to the whole process.

Comm. Cadiz: The quick answer is yes. We cannot ignore and especially because we are also bound by the UN guiding principles of business in human rights. In fact, as we are talking now, there's a workshop going on also under the auspices of the Commission on Human Rights in a hotel in Quezon City that's discussing the mainstreaming of corporate responsibility, in respect to human rights and certainly, of all, all the respondents are big businesses. And if I may also add, whenever we attend conferences abroad, this one [unintelligible] was always being raised. Yung how the business and human rights principles impact or affect the lives of our people and now it is relevant, again that was a long explanation, but the short answer is yes.

Moderator: If there are no more questions addressed to Atty. Cadiz, may we invite Atty. Gervie Mayo ("Mayo") [unintelligible]. May tanong po ba sa mga representatives ng petitioners?

Questioner: Given the political climate how can you [inaudible]?

Male speaker: [video skips] Pero we're still very, very optimistic and we are going by the enthusiasm of the Commission on Human Rights regarding this case, [nakita naman po natin na] despite the different reactions from the Carbon Majors and a lot of them are pointing to an indication that they would want this dismissed because of a lack of jurisdiction, the

Commission on the Human Rights continues to be invested in finding out, and investigating this case and is launching a national inquiry, so we welcome that very much, for us that is very positive. The other source of inspiration for us petitioners is the growth of—emerging other cases in other jurisdictions from the various people from different walks of life, including children, grandparents, farmers, who are now filing cases in their own countries regarding the impact of climate change that are infringing on their human rights as well so very positive na development for us that's why we remain optimistic despite the kind of [unintelligible] [inaudible] [video skips].

Atty. Mayo: The commissioners mentioned, and we have as well [unintelligible] that this is novel and it's also interesting the petitioner seek identification of the extent of the responsibility of the Carbon Majors. Dapat tukuyin kung anong pananagutan nila and that actually contributes to a clear signal on what climate action related remedies, policies can be pursued. So yung, even if the inquiry is not judicial but it's an investigation [on] the impact of policy on the legal framework will be very important because the petitioners seek that there should be proposal to Congress, to government, on what should be the standards now, how can we be able to convince and engage businesses to actually wean away [inaudible] [video skips] can also be a result. Pero sa Pilipinas, ako, speaking from the public interest and environmental laws in Greenpeace, we have had so many laws and somehow it is not enough. We have to really think out of the box, how do you take an extra mile in the current laws we have on exacting accountability should actually be more meaningful and relevant in light of climate change. So itong kasong ito ay isang maganda oportunidad para mas malinaw yung diskurso na ito. Thank you.

Moderator: Meron pa po bang gustong mag tanong sa...

Atty. Mayo: May idagdag ako kasi, mahalaga din ung tanong ni— ung educative value—because Greenpeace and the petitioners also view [and] the CHR, if you look at their rules and procedure in national inquiry, hindi lang policy, for educative value. Alam mo ung para tayo maging matuto, hindi lang dapat ung karaniwang mamamayan—yung ating mga tao dito sa pamahalaan diba? Ung [unintelligible] sa karapatan pangtao, pagbabago ng klima, lahat tayo dapat matuto. Hindi naman sa nag mamarunong kami, pero mahalaga din, because it was good to try to hear the commissioners that they are also trying to learn, to be oriented about the science of climate change. Tingin natin dapat buong gobyerno matuto eh, para makita nila na hindi sapat ung umiiral nating programa at patakaran para naman mapanagot ung mga nag-cocontribute.

Audience: Follow up lang sa isang question ko, [unintelligible] central ung current dito no, kasi we know yung policy is [inaudible] particular [unintelligible] to be considered [inaudible] to bring the issue directly sa presidente mas accommodate sa [unintelligible] issue as the national policy and second kasi naalala ko ung sa [unintelligible] campaign, may mga effort din at the national level tulad ng [unintelligible] pero [inaudible] national saka local, local ung [inaudible] under this [inaudible] pero sa local area nya meron efforts yung local government to [inaudible] programs [unintelligible].

Man: [Inaudible – video skips] so ang tanong ni [unintelligible] is Petition against [inaudible] private companies [inaudible – no volume – video skips] policy kung itutuloy ba natin yung mga plano ng pagpapanood ng pagtulak ng [configured] development ng cost and fuel infrastructure not here in the Philippines but in many countries in South East Asia and other parts of the world. So malaki po ung link nya so hindi po isolated, hindi po disconnected itong Petition natin, dahil yung mga kapangyarihan non, the power forces behind fossil fuel industries sila rin naman ung nag tutulak ng mga coal projects dito sa ating bansa. Hindi pa po malinaw sa publiko yung flow ng finance pero meron po kami ginagawa para i-establish na magkakaugnay po yan kung saan nang gagaling yung pera para isulong yung patuloy na pagtatayo ng coal power plant sa atin pati yung patuloy na pagsulong ng coal miningss sa iba't ibang bahagi ng bansa, ito po ay mag kakaugnay pero that's a long answer but ang gusto ko din sabihin na gumagawa na din po tayo ng hakbang at kampanya, upang kumbinsihin ang ating pamahalaan na wag maging bahagi nitong kawalan ng hustisya at katarungan kaugnay nito nangyayari sa buong daigdig. Dahil kung tayo magiging party to the, if the Philippines as a nation, as a government becomes the continues to be a party to the escalation of climate change para nating paparusahan sarili natin at naging kasangkapan din tayo dito sa climate injustice sa buong daigdig. Kaya dapat po maging malinaw yun sa ating pamahalaan at maging malinaw na may direction din tayo nakikita dito sa current administration na magkaroon ng independent foreign policy dapat po maging consistent yung independent foreign policy na yun, hindi lamang sa government side pati yung pano tayo na-impluwensyahan ng multinational companies lalo na sa fossil fuel industry.

Atty. Mayo (OS): Ano lang yung [unintelligible] just one by [unintelligible] I think building on [Ed's] point on energy, mahalaga talaga na [inaudible – no volume] champions who can [inaudible] evidence.

Moderator: At this point siguro banggitin na po natin na kasama yung representatives, petitioners and ilan sa mga petitioners na [unintelligible]

for the farmers galing po sa mga ibang bahagi ng Pilipinas who [unintelligible] here [inaudible]. Meron pa pong tanong? Kung wala na po.

Audience (OS): Yes, discuss ko lang kay Secretary Gina Lopez itong Petition na ito, in early this year no and isama natin ito sa mga conversation kahit po nung hindi pa siya na-appoint as Secretary, nagkaroon po tayo ng conversation with Secretary Lopez regarding this Petition and [inaudible] that could ensure a protection for environment yun naman po yung pinayo nya sa atin.

Atty. Mayo (OS): Dagdag ko lang Voltaire, [inaudible] nagkasama kasi kahapon sa visit sa mine site balak ipasok sa EIA process yung concept ng [reuse] yung usapan nung [inaudible] evaluation ecosystem services dapat may sukat ng value ng food [inaudible – no volume].

Male (OS): [Unintelligible]

Moderator: If you have any questions, this is your first and last opportunity, because the next one is we would act the Human Rights to close [unintelligible].

[Inaudible – video skipping]

Comm. Cadiz: Yung procedure is more or less clear na. We have our rules of procedure we're just getting, we cannot let it [unintelligible] wait until it's formally approved by the Commission *en banc*. So wala tayong problema sa procedure. But when you talk of the outcomes, you're thinking of substantive [unintelligible]. We want to clarify, hypothetically, that such an outcome, is within the range, you know, of resolutions that the Commission can come up with at the conclusion [unintelligible] everything is hypothetical [unintelligible]. The next steps is [no volume] that will be filed by the petitioners. They have requested that they be given until February 14, 2017 to file their Consolidated Reply. We want to give a much leeway to the parties to submit all their pleadings, briefs, memoranda, whatever, which will facilitate the resolution of the issues in the Petition. We grant the petitioners [inaudible] until February. Once [no volume] so we will furnish the respondents with a copy of the Reply. They will be given a reasonable period of time to respond. Once they have responded, we will call a pre-inquiry or a pre-hearing conference where all the parties who have decided to respond to the Petition, whether by way of Motion to Dismiss or whatever, there have been various responses, they will be invited to sit down with us, the Commission and the petitioners, in a pre-inquiry conference, where the issues will be agreed upon, say, we all agree that based on the submissions of all the parties, these are the issues: issue number one, issue number two, issue

number three. Once there is an agreement on the issues, then that is when we can say that there has been a joinder of the issues. So issues having been joined, we can discuss the other details of the inquiry. What are the other details? How many witnesses will be presented, when will they be presented, how long will it take them to give their testimonies, etc., details of the hearing. After all the details of the hearing have been agreed upon, there can be a termination of the pre-hearing process, now we can proceed to trial. We expect, the consolidated reply [video skips] we will give respondents a month to submit their rejoinder, so that will be March already, hopefully soon thereafter, we can have the pre-inquiry conference, and proceed to trial on the merits, so April or May, depende. So right now we cannot move on to the next step, until we receive the petitioners' Consolidated Reply. And as I said again, they have requested, and we have agreed, to given them until 14 February, Valentines' Day, to submit their Consolidated Reply. After that, we expect that after the pre-trial conference and hearings our estimate as of last week based on the submissions and the discussion of issues, we expect that the hearings will happen at twice a month, because we were informed that our support group will be in one [video skips] so that other interested parties may monitor the proceedings.

Audience (OS): Six (6) months from--?

Comm. Cadiz: As I said, the reckoning period is from — six (6) months from [inaudible] ganito. It's not hard to determine six (6) months from when, because right now [video skips]

[CROWD NOISES]