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**CHR-NI-2016-0001**

**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**

# Amicus Curiae Brief presented by ClientEarth



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## 1 ClientEarth's interest and expertise

1. ClientEarth is Europe's leading non-profit environmental law organisation.

ClientEarth is comprised of lawyers committed to securing a healthy planet.

ClientEarth believes that strong law, properly enforced, is the best tool we have to protect the environment. Using the power of the law, ClientEarth develops innovative strategies and tools to address major environmental issues.

2. ClientEarth was founded in 2007 and primarily operates in Europe through three offices based in London, Brussels and Warsaw, with approximately 100 members of staff in total.<sup>1</sup> It is a United Kingdom (**UK**) registered charity whose objects are:

- a. to promote and encourage the enhancement, restoration, conservation and protection of the environment, including the protection of human health, for the public benefit;
- b. to advance the education of the public in all matters relating to the law, practice and administration of justice in connection with the environment;
- c. to relieve poverty through the provision of legal services to those who cannot otherwise afford them; and
- d. to promote, assist, undertake and commission research into the law, practice and administration of justice in connection with the environment and matters

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<sup>1</sup> ClientEarth is a charity registered in England and Wales (Charity No 1053988) and a UK company limited by guarantee (Company No 02863827), with a registered branch in Belgium (No D'Enterprise 0894.251.512), and with a subsidiary undertaking in Poland (Fundacja ClientEarth Poland, KRS 0000364218, NIP 701 025 42 08, REGON 142564391).

relating thereto, including the impact, direct or indirect, of any human activity on the environment and to disseminate the useful results of such research.

3. ClientEarth has developed specialist expertise in public interest environmental litigation, successfully bringing proceedings against the UK government for violations of European Union law regulating air quality,<sup>2</sup> a complaint against the European Commission for compliance with the UNECE Aarhus Convention,<sup>3</sup> and undertaking successful litigation in respect of coal fired power across Europe.
4. ClientEarth also frequently provides legal analysis and recommendations to policymakers in European institutions and directly to the governments of European Union (EU) member states, in relation to environmental and energy legislation and regulation. Since 2015, ClientEarth has been advising the Chinese Supreme People's Court in relation to the development of court rules for the implementation of its new Environmental Protection Law of 2014.<sup>4</sup>
5. ClientEarth has also conducted detailed legal research in the emerging field of 'climate change litigation', which encompasses legal and quasi-legal actions that relate to the mitigation of greenhouse gas emissions, adaptation to the physical effects of climate change and remedies for loss and damage caused by climate change. ClientEarth lawyers participated in the Climate Change Symposium 'Adjudicating the Future' held in London in September 2015, which brought together

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<sup>2</sup> ClientEarth, R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs [2015] UKSC 28 (29 April 2015); ClientEarth (No.2) v Secretary of State for the Environment, Food and Rural Affairs [2016] EWHC 2740 (Admin) (02 November 2016).

<sup>3</sup> Communication ACCC/C/2008/32 (Part II) concerning compliance by the European Union, submitted by ClientEarth to the Aarhus Compliance Committee, see details at <http://www.documents.clientearth.org/library/download-info/draft-findings-and-recommendations-of-the-compliance-committee-with-regard-to-communication-acccc200832-part-ii-concerning-compliance-by-the-european-union/>

<sup>4</sup> This unique Chinese law gives new rights to civil society groups to bring public interest environmental litigation against private polluters who violate environmental law.

senior judges, academics and practitioners from across the world to discuss how courts are dealing with the problem of climate change. ClientEarth's CEO James Thornton is a member of the International Bar Association's Working Group currently developing a Model Statute on Climate Change Claims and Remedies, a recommendation of the IBA's Task Force on Climate Change Justice and Human Rights.<sup>5</sup>

6. ClientEarth has conducted extensive research into the legal liabilities and the ethical responsibilities of states and private parties for greenhouse gas emissions in a range of jurisdictions around the world and has developed expertise in this area of law and policy. ClientEarth's staff have given presentations and published articles relating to climate change litigation as well as the obligations of states and private parties to prevent harm to citizens whose human rights are threatened by the physical effects of climate change.<sup>6</sup>
7. ClientEarth also possesses significant expertise in international law and in particular the interpretation of the Paris Agreement, which was adopted by the parties to the United Nations Framework Convention on Climate Change (**UNFCCC**) at the 21st Conference of the Parties in Paris in December 2015 (**Paris Agreement**). The Paris Agreement was ratified by the required number of countries and entered into force as binding international law on 4 November 2016.

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<sup>5</sup> The task force published the report, International Bar Association, *Achieving Justice and Human Rights in an Era of Climate Disruption*, July 2015, available at: <http://www.ibanet.org/PresidentialTaskForceCCJHR2014.aspx>.

<sup>6</sup> <http://www.clientearth.org/>

8. ClientEarth therefore holds relevant expertise in international climate change law and policy qualifying it to provide this amicus curiae brief to the honourable Commission on Human Rights (**Commission**). ClientEarth respectfully requests that the Commission accept this brief to assist it in its independent investigation into the responsibility of the Carbon Majors for human rights violations or threats of violations resulting from the impacts of climate change.
9. ClientEarth declares to the Commission that this brief was independently prepared by ClientEarth, that no counsel for any party to this investigation (including the Petitioners) authored this brief, in whole or in part, and that no person or entity contributed money specifically for the preparation or submission of this brief.

## 2 Summary of submissions

10. The Commission is an investigative body tasked with protecting and promoting the human rights of Filipino citizens, but it does not have the power to settle legal disputes. Accordingly this brief is offered to assist the Commission in its fact-finding mission. The strict application of legal rules governing liability is neither appropriate nor necessary for the Commission to fulfil its constitutional task. It is clear, however, that the Commission may and should draw conclusions about the application of human rights related laws, principles, norms and standards, as well as the actual and potential adverse human rights impacts caused by the activities of private entities.<sup>7</sup>
11. The Commission's non-judicial role does not diminish the importance or power of its investigation into the subject-matter of this Petition. To the contrary, the Commission

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<sup>7</sup> Section 2 of Rule 2 of the Omnibus Rule of Procedure of the Commission on Human Rights.

has an historic opportunity to advance international norms regarding human rights, by issuing findings in relation to the factual causal link between the past and current greenhouse gas emissions of the corporations listed in the Petition and the human rights impacts arising from the effects of climate change. As the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights states:

"[t]hrough their role in promoting and protecting human rights, national human rights institutions can play an important part in engaging with business and human rights issues to ensure that States, businesses and civil society uphold their respective duties and responsibilities with regard to business interaction with human rights."<sup>8</sup>

12. This brief first addresses the jurisdictional issues that the Commission must consider.

It then outlines the international legal framework governing climate change and human rights, which provides the context for the Commission's investigation, including the implications of the historic Paris Agreement. Next, it considers several issues relevant to the Commission's fact finding investigation and the elements of factual causation in the context of climate change.

13. Finally, ClientEarth makes submissions regarding the appropriate recommendations that the Commission may choose to make, in respect of both the obligations of the State of the Philippines and the responsibilities of the Carbon Majors, as follows:

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<sup>8</sup> International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights, *Business and Human Right: a Guidebook for National Human Rights Institutions*, (Nov 2013) Available at [http://www.humanrights.dk/files/media/dokumenter/udgivelser/bhr\\_guidebook\\_for\\_nhris\\_2013\\_eng.pdf](http://www.humanrights.dk/files/media/dokumenter/udgivelser/bhr_guidebook_for_nhris_2013_eng.pdf)

- a. the Government of the Philippines should fulfil its obligations to protect the human rights of the Filipino people by (inter alia):
  - i. signing and ratifying the Paris Agreement, and complying with its agreed obligations there under, particularly in relation to the emissions reductions targets and other commitments set out in its NDC;<sup>9</sup> and
  - ii. continuing to participate in the global process to mitigate climate change as established by the UNFCCC and the Paris Agreement;
  
- b. the Carbon Majors listed in the Petition must respect the human rights of the Filipino people in accordance with the Guiding Principles by (inter alia):
  - i. recognising the adverse human rights impacts of their past and current greenhouse gas emissions, which have contributed to climate change;
  - ii. applying the requirements of the Guiding Principles to those impacts; and
  - iii. preparing (in consultation with relevant stakeholders) and publishing detailed business plans describing their operations and activities in a world in which warming is kept well below 2 degrees celsius.

### 3 Jurisdictional issues

14. Regrettably, the majority of the corporate respondents to the Petition have decided not to respond to the Petition at all, or failed to provide a meaningful response to the

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<sup>9</sup> <http://www4.unfccc.int/submissions/INDC/Published%20Documents/Philippines/1/Philippines%20-%20Final%20INDC%20submission.pdf>



substantive issues raised by the Petition.<sup>10</sup> Many of these companies have instead advanced technical arguments challenging the Commission's jurisdiction to conduct the investigation. Such assertions display a fundamental misunderstanding of the role and powers of the Commission.

15. For the reasons set forth in this section, the Commission should ignore such technical objections to its investigation, and should continue to fulfil its constitutional mandate to investigate, monitor, and make recommendations in relation to human rights violations in the Philippines.<sup>11</sup>

16. Companies who have not responded to the substance of the Petition should do so promptly to facilitate a fair investigation of both the past and likely future violations of human rights that will result from the unchecked and continued emissions of greenhouse gas emissions from their operations and products.

### 3.1 Powers and functions of the commission

17. The first and most crucial matter requiring clarification relates to the nature and powers of the Commission and its jurisdiction to conduct an investigation into the responsibility of the groups of companies known as the investor-owned Carbon Majors (as defined in the Petition and in particular Annex C to the Petition).

18. The Commission is an independent office created by Section 17(1) of Article 13 of the 1987 Constitution of the Republic of the Philippines (**Constitution**). The

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<sup>10</sup> <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts>

<sup>11</sup> Notably, many of the groups of companies named in the Petition made various pledges and commitments before the adoption of the Paris Agreement through the UNFCCC's Non State Actor Zone for Climate Action platform, and accordingly recognise the risks climate change poses to the environment and human wellbeing. See here for details: <http://climateaction.unfccc.int/>

Constitution vests the Commission with a primarily investigative function, granting it specific powers to make recommendations to Congress in relation to the effective protection of human rights in the Philippines. Section 18 of Article 13 of the Constitution provides that the Commission shall have the following powers and functions:

- a. "Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- b. Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
- c. 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 underprivileged whose human rights have been violated or need protection;
- d. Exercise visitorial powers over jails, prisons, or detention facilities;
- e. Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
- f. Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;

- g. Monitor the Philippine Government's compliance with international treaty obligations on human rights;
- h. Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
- i. Request the assistance of any department, bureau, office, or agency in the performance of its functions;
- j. Appoint its officers and employees in accordance with law; and
- k. Perform such other duties and functions as may be provided by law".

19. As is clear from the above list of specific constitutional powers and functions, the Commission is not a court. Judicial power in the Philippines is clearly vested by Article 8 of the Constitution in the Supreme Court of the Philippines. Section 1 of Article 8 provides that:

"[t]he judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

20. This provision limits the judicial function to the Supreme Court and the lower courts established by law. In accordance with this clear constitutional separation of powers, the powers and functions of the Commission as expressed in Article 13 do not extend to the determination of legal rights and liabilities. The Commission has no power to determine actual controversies between individual private parties, between the Filipino state and its citizens, or between independent nation states.

21. The Commission's investigatory and advisory function is clearly reflected by the Omnibus Rules of Procedure of the Commission on Human Rights (enacted under the power in section 18(2) of Article 8 of the Constitution) (Omnibus Rules). Section 2 of Rule 7 states that "[t]he investigative and inquiry proceedings of the CHR is fact-finding in nature, and non-adversarial."

22. Furthermore, Rule 3 section 2, which describes the objectives of the Commission's investigation and monitoring function in respect of civil and political rights restricts the Commission's function to making findings of fact and recommendations to government. Section 17 of Rule 4 of the Omnibus Rules also makes it clear that the outcome of the Commission's investigation will be a final report containing those findings of fact, and corresponding recommendations as to appropriate criminal, administrative or civil actions to be taken by other organs of the state of the Philippines. These provisions confirm that the Commission is not empowered to exercise a judicial function under the Constitution of the Philippines.

### 3.2 Personal jurisdiction

23. Given that the Commission is not capable of exercising judicial power, the scope of the investigation that the Commission may conduct in accordance with Section 18(1) of Article 13 is not limited by legal rules governing the exercise of judicial power. This includes principles of international law limiting a nation-state's judicial power to activities that are connected with its territory including:

- a. the principle of state sovereignty; and
- b. the principle of territoriality.

24. This interpretation is confirmed by section 18(c) of Article 13 of the Constitution, which refers to the rights of Filipino citizens residing abroad. The scope of the investigatory function of the Commission is arguably not intended to be limited to violations arising from acts occurring within the territory of the Philippines. This flexible interpretation would support the Commission's function as an investigative fact-finding body tasked with protecting and promoting the human rights of all Filipino citizens.

25. In any event, national judicial bodies are entitled to, and frequently do, assert jurisdiction over activities that cause harm within their own territory, even in circumstances where that damage or harm resulted from events occurring outside that territory.<sup>12</sup> If the Commission accepts that climate change affects human rights within the Philippines, it must be empowered to investigate the cause of those violations, regardless of whether that harm originated outside of the Philippines. This

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<sup>12</sup> *Tolofson v. Jenssen*, [1994] 3 S.C.R. 1022, para. 43 (Canada); *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 (Australia); *Edition Ecosociete Inc. v. Banro Corp.*, 2012 SCC 18 (Canada); *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214 (9th Cir. 2011).

is supported by section 3 of Rule 7 of the Omnibus Rules of Procedure, which provides that:

"[h]uman rights cases and/or issues involving civil and political, or economic, social and cultural rights which are of domestic and/or international implication/importance such as extralegal or summary killings, enforced disappearances, massacres, violations against humanity, hamlettings, forced evictions and/or illegal demolitions, development aggression, displacements, food blockades, or violations involving civil, political, economic, social or cultural rights and/or threats thereof that affect the underprivileged and/or other vulnerable or marginalized sectors, or community of persons, regardless of the situs of the violation and/or the personalities involved or implicated in the human rights case or issues, may be the subject of a public inquiry."

26. It therefore follows that the Commission's investigation of the current and past activities of the Carbon Majors and their contribution to anthropogenic climate change is within the scope of its personal jurisdiction.

### 3.3 Subject matter jurisdiction

27. The Commission is constitutionally empowered to investigate all forms of human rights violations involving civil and political rights. Civil rights include the rights to:

- a. life;<sup>13</sup>
- b. liberty;<sup>14</sup>

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<sup>13</sup> Protected by section 1 of Article 3 of the Constitution and Article 6 of Part 3 of the International Covenant on Civil and Political Rights.

c. property;<sup>15</sup> and

d. private, family and home life.<sup>16</sup>

28. The United Nations,<sup>17</sup> the International Bar Association,<sup>18</sup> a range of scholars,<sup>19</sup> and numerous States have recognised all that climate change interferes with the enjoyment of human rights protected under international law, and that this interference will greatly increase over time unless current climate policy dramatically changes.<sup>20</sup>

29. In March 2011, the United Nations Human Rights Council adopted a resolution finding that “environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights”.<sup>21</sup> Furthermore, the fact that civil and political rights including the right to life, can be infringed by a failure to ensure a healthy environment has been recognised by a large number of national and regional human rights institutions including by the:

a. European Court of Human Rights under the Under the European Convention on Human Rights;<sup>22</sup>

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<sup>14</sup> Protected by section 1 of Article 3 of the Constitution and Article 9 of Part 3 of the International Covenant on Civil and Political Rights.

<sup>15</sup> Protected by section 1 of Article 3 of the Constitution.

<sup>16</sup> Protected by Article 17 of Part 3 of the International Covenant on Civil and Political Rights.

<sup>17</sup> See the UN OHCHR's Key Messages on Human Rights and Climate Change, available at <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRCClimateChangeIndex.aspx>

<sup>18</sup> IBA, *Achieving Climate Justice in an Era of Climate Disruption*, July 2015.

<sup>19</sup> See the resources listed at <http://climaterights.org/resources/hrcc-generally/>

<sup>20</sup> See Knox, J 'Human Rights Principles and Climate Change' in *International Climate Change Law*, Oxford, 2016.

<sup>21</sup> A/HRC/RES/16/11 on Human Rights and the Environment, available at

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.11\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.11_en.pdf)

<sup>22</sup> Lopez Ostra v. Spain (1994) 20 EHRR 277; Guerra v. Italy (1998) 26 EHRR 357; Fadeyeva v. Russia [2005] ECHR 376; Öneriyildiz v. Turkey [2004] ECHR 657; Tatar v. Romania [2009] ECHR.

- b. Supreme Court of India, which recognised the right to a healthy environment is implied by the right to life found in Article 21 of the Indian Constitution;<sup>23</sup>
- c. Nigerian Federal High Court, which expanded the right to life to include a right to a clean environment and to live with dignity;<sup>24</sup> and
- d. Inter-American Commission on Human Rights, which established a link between environmental quality and the right to life in response to a petition brought on behalf of the Yanomani Indians of Brazil.<sup>25</sup>

30. The manner in which climate change affects specific rights is described in detail in a 2009 report published by the OHCHR, which drew on the work of the Intergovernmental Panel on Climate Change (**IPCC**) and investigated the adverse effects of climate change on various human rights, including the right to life.<sup>26</sup>

31. Specifically, that report states that:

"[a] number of observed and projected effects of climate change will pose direct and indirect threats to human lives. IPCC AR4 projects with high confidence an increase in people suffering from death, disease and injury from heatwaves, floods, storms, fires and droughts. Equally, climate change will affect the right to life through an increase in hunger and malnutrition and related disorders

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<sup>23</sup> M.C. Mehta v Kamal Nath (2000) 6SCC 213, Subash Kumar v State of Bihar (1991) 1 SCC 598.

<sup>24</sup> Jonah Gbemre v Shell Petroleum Development Company of Nigeria and 2 Others, Unreported Suit No. FHC/B/CS/53/05, Delivered on 14 November 2005.

<sup>25</sup> Case 7615 (Brazil), INTER-AM.CH.R., 1984-1985 Annual Report b24, OEA/Ser.L/V/II.66, doc. 10, rev. 1 (1985).

<sup>26</sup> UNGA, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, A/HRC/10/6, January 2009 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>



impacting on child growth and development; cardio-respiratory morbidity and mortality related to ground-level ozone.

Climate change will exacerbate weather-related disasters which already have devastating effects on people and their enjoyment of the right to life, particularly in the developing world. For example, an estimated 262 million people were affected by climate disasters annually from 2000 to 2004, of whom over 98 per cent live in developing countries. Tropical cyclone hazards, affecting approximately 120 million people annually, killed an estimated 250,000 people from 1980 to 2000.

Protection of the right to life, generally and in the context of climate change, is closely related to measures for the fulfilment of other rights, such as those related to food, water, health and housing. With regard to weather-related natural disasters, this close interconnectedness of rights is reflected in the Inter-Agency Standing Committee (IASC) operational guidelines on human rights and natural disasters."<sup>27</sup> [Footnotes omitted]

32. The IPCC's 5th Assessment Report (**AR5**) provides evidence of the way in which anthropogenic climate change will interfere with human rights in the tropical regions of the globe. It states that:

"[s]urface temperature is projected to rise over the 21st century under all assessed emission scenarios. It is very likely that heat waves will occur more often and last longer, and that extreme precipitation events will become more

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<sup>27</sup> See note 16 at page 9.

intense and frequent in many regions. The ocean will continue to warm and acidify, and global mean sea level to rise....

Climate change will amplify existing risks and create new risks for natural and human systems. Risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development. Increasing magnitudes of warming increase the likelihood of severe, pervasive and irreversible impacts for people, species and ecosystems. Continued high emissions would lead to mostly negative impacts for biodiversity, ecosystem services and economic development and amplify risks for livelihoods and for food and human security."<sup>28</sup>

33. Indeed, the Government of the Philippines has acknowledged the likely impacts of climate change in the Philippines, with the Philippines Atmospheric, Geophysical and Astronomical Services Administration stating in its report, *Climate Change in the Philippines*, that:

"[a] warmer world is certain to impact on systems and sectors; although, magnitude of impacts will depend on factors such as sensitivity, exposure and adaptive capacity to climate risks. In most cases, likely impacts will be adverse."<sup>29</sup>

34. The Government of the Philippines has clearly recognised and acknowledged the potential human rights impacts and risks of climate change, having establishing the

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<sup>28</sup> IPCC, 2014: *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, pages 58 and 64.  
<sup>29</sup> The report provides detailed information about the physical risks of climate change in the Philippines, as a result of warmer temperatures, rainfall changes, extreme temperature events, increased extreme weather events and sea level rise, see <http://pagasa.dost.gov.ph/index.php/climate-change-in-the-philippines#impacts-of-climate-change>

Climate Change Commission (**CCC**) under the Climate Change Act of 2009 as amended by the Republic Act 10174. In fact, the Secretary of the CCC Emmanuel De Guzman said recently that:

"building climate-resilient communities is a moral imperative to help preserve the basic human rights of the poor and the marginalized who are most vulnerable to extreme weather events...adaptation, mitigation, and risk reduction are moral imperatives and clearly social justice in action. Building the resilience of our communities, especially the vulnerable poor and the marginalized, allows them not only to preserve their basic rights but also presents opportunities to thrive despite weather extremes and rising sea levels."<sup>30</sup>

35. Section 2 of Rule 2 of the Omnibus Rules of Procedure gives the Commission the power to investigate not only past human rights violations, but “threats of violations”. Thus, the Commission may consider future threats to human rights posed by the current and ongoing emissions of greenhouse gasses from the operations and products of the Carbon Majors. This power is of crucial and critical relevance to this investigation and the recommendations of the honourable Commission, which should aim at preventing future human rights violations and impacts in the Philippines.

36. Although, inherently, some uncertainty remains regarding the exact nature and extent of the projected physical effects of climate change<sup>31</sup> in the Philippines, the scale of the risks is clear. The Petition provides significant evidence regarding the

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<sup>30</sup> <http://climate.gov.ph/15-press-release/146-ccc-climate-change-is-a-human-rights-issue>

<sup>31</sup> The scientifically accepted physical effects of climate change include a rise in average global surface temperatures, a rise in sea levels, continued ocean acidification, and an associated and related increase in extreme weather events, including heat and rainfall events, including tropical storms.

links between the exercise of fundamental civil and political rights and the changes in the physical environment caused by human greenhouse gas emissions. Moreover, the Commission should directly consider expert evidence from climate scientists studying the likely physical impacts of climate change in the Philippines.

37. Accordingly, if the Commission accepts that climate change can affect and interfere with fundamental civil and political rights in the Philippines, then it is empowered to investigate the causes of that interference under the Philippines Constitution. Furthermore, the Philippines is bound by its own human rights obligations to offer a remedy to victims of human rights violations.<sup>32</sup> Based on this assessment, the Commission unambiguously possesses the necessary subject matter jurisdiction to consider the Petition.

### 3.4 Prayer for relief sought

38. Importantly, the Petition recognises the scope and nature of the powers and functions of the Commission and does not request that the Commission exercise any judicial power in respect of the human rights violations or threats of violations alleged in the Petition. The Petitioners simply request the Commission make a finding of factual causation in respect of the Carbon Majors contributions to climate change, and their consequent responsibility for human rights violations and/or threats of violations in the Philippines.

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<sup>32</sup> OHCHR, *Understanding Human Rights and Climate Change*, Nov 2015, available at <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>

39. The Petitioners have also requested that the Commission make a number of recommendations aimed at strengthening corporate accountability for the human rights implications of climate change, none of which go beyond the powers and functions of the Commission. Notably, point 5 of the prayer for relief is a request for plans from the companies to eliminate, remedy and prevent the human rights impacts of climate change in the future. The Petitioners are, accordingly, not seeking adjudication of legal liabilities for past emissions, but are sensibly looking to the future and requesting that the Carbon Majors provide plans for how future adverse human rights impacts will be prevented. ClientEarth provides additional suggestions regarding the appropriate findings and recommendations the Commission may choose to make in section 8, below.

#### **4 International human rights law and climate change**

40. Prior to the 21st Conference of the Parties to the UNFCCC, which led to the adoption of the Paris Agreement, the Office of the High Commissioner for Human Rights (**OHCHR**) of the United Nations submitted a report entitled *Understanding Human Rights and Climate Change* to the parties to the UNFCCC. The submission outlined the human rights implications of climate change and the consequential obligations on States to address its effects, stating that:

"[i]t is now beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. Climate change has profound impacts on a wide variety of human rights, including the rights to life, self-determination, development, food, health, water and sanitation and housing.

The human rights framework also requires that global efforts to mitigate and adapt to climate change should be guided by relevant human rights norms and principles including the rights to participation and information, transparency, accountability, equity, and non-discrimination. Simply put, climate change is a human rights problem and the human rights framework must be part of the solution."<sup>33</sup>

41. The document sets out comprehensively the human rights affected by climate change, including the rights to life, self-determination, development, food, water and sanitation, health, housing and education. The document is comprehensive and is, accordingly, contained in **Annex A** to this brief. The Commission may rely on this document as an accurate and up-to-date statement of current international human rights law and norms.

42. Further detail regarding the specific legal obligations of States (and private actors) in respect of the human rights implications of climate change is also contained in the UNEP Report, *Climate Change and Human Rights*, 2015, contained in **Annex B**. The Commission may also rely on this document as an accurate and up-to-date statement of current international human rights law and norms.

#### 4.1 Obligations of States in respect of human rights and climate change

43. The OHCHR states in its 'Key Messages on Human Rights and Climate Change' that States have the following obligations (*inter alia*) in respect of the human rights effects of climate change, under international human rights instruments and law:

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<sup>33</sup> See note 28.

- **Mitigation:** States have an obligation to respect, protect, fulfil and promote all human rights for all persons without discrimination. Failure to take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms, breaches this obligation.... Therefore, States must act to limit anthropogenic emissions of greenhouse gases (e.g. mitigate climate change), including through regulatory measures, in order to prevent to the greatest extent possible the current and future negative human rights impacts of climate change.
- **Adaptation:** States must ensure that appropriate adaptation measures are taken to protect and fulfil the rights of all persons, particularly those most endangered by the negative impacts of climate change such as those living in vulnerable areas (e.g. small islands, riparian and low-lying coastal zones, arid regions, and the poles).
- **Accountability and Remedies:** The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other human rights instruments require States to guarantee effective remedies for human rights violations. Climate change and its impacts, including sea-level rise, extreme weather events, and droughts have already inflicted human rights harms on millions of people.... Those affected, now and in the future, must have access to meaningful remedies including judicial and other redress mechanisms. *The obligations of States in the context of climate change and other environmental harms extend to all rights-holders and to harm that occurs both inside and beyond*

*boundaries*. States should be accountable to rights-holders for their contributions to climate change including for failure to adequately regulate the emissions of businesses under their jurisdiction regardless of where such emissions or their harms actually occur.

- **Business harms:** The United Nations Guiding Principles on Business and Human Rights affirm that States have an obligation to protect human rights from harm by businesses, *while businesses have a responsibility to respect human rights and to do no harm*. States must take adequate measures to protect all persons from human rights harms caused by businesses; to ensure that their own activities, including activities conducted in partnership with the private sector, respect and protect human rights; and where such harms do occur to ensure effective remedies. *Businesses are also duty-bearers. They must be accountable for their climate impacts and participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights*. Where States incorporate private financing or market-based approaches to climate change within the international climate change framework, the compliance of businesses with these responsibilities is especially critical. [Emphasis added]

44. The UNEP has identified the following obligations of States in respect of environmental threats to human rights under international human rights instruments:

- **Procedural obligations:** States must:
  - ensure access to information and conduct environmental assessments;



- ensure public participation in environmental decision making; and
- ensure access to administrative, judicial and other remedies.<sup>34</sup>
- **Substantive obligations:** States have obligations to enact legal and institutional frameworks to protect against and respond to the impacts of environmental harm on human rights. They accordingly have the following obligations in that context:
  - adaptation obligations, requiring States to enact frameworks for protecting people against the effects of climate change;
  - domestic mitigation obligations, requiring States to regulate the sources of GHG emissions;
  - international cooperation obligations, requiring States to participate in international negotiations for an effective global climate agreement;
  - transboundary mitigation obligations, requiring States to mitigate the effect of their activities on the human rights of persons outside of their jurisdiction; and
  - an obligation to ensure that mitigation and adaptation activities do not themselves contribute to human rights violations.<sup>35</sup>

45. Although these obligations have been consistently identified as the international human rights standard, it is also acknowledged by human rights bodies and institutions that States have significant discretion in deciding how to strike the

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<sup>34</sup> UNEP, *Human Rights and Climate Change*, 2015. Available at [http://apps.unep.org/redirect.php?file=/publications/pmtdocuments/-Climate\\_Change\\_and\\_Human\\_Rights-human-rights-climate-change.pdf.pdf](http://apps.unep.org/redirect.php?file=/publications/pmtdocuments/-Climate_Change_and_Human_Rights-human-rights-climate-change.pdf.pdf)

<sup>35</sup> See note 29 at p 19.

balance between environmental protection and other societal interests, such as economic development.<sup>36</sup>

46. While human rights treaties do not bind private parties directly, they have consistently been interpreted to require States to take steps to protect these rights from private conduct that interferes with their enjoyment.<sup>37</sup> A State may violate its obligations based on its own actions, or through a failure to protect its citizens from the acts of a third party. This principle has been confirmed by several regional human rights bodies, including the European Court of Human Rights (**ECHR**).

47. The ECHR has found that States have violated their human rights obligations with respect to environmental harm through failures to follow environmental standards, with consequent impacts on human rights.<sup>38</sup>

48. The Philippines recognises that human rights obligations require States to protect their citizens from harmful climate change, and has advocated in international forums for the strengthening of this obligation. In 2012, the Philippines signed the *Geneva Pledge for human rights in climate change*, a voluntary pledge which reiterates the importance of addressing the human rights implications of climate change and emphasizes that human rights should inform climate responses. The pledge has now been signed by 32 nations, and states:

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<sup>36</sup> See note 16 at 222.

<sup>37</sup> See note 16 at 223.

<sup>38</sup> *Lopez Ostra v. Spain* (1994) 20 EHRR 277.

*“[w]e will facilitate the exchange of expertise and best practice between our human rights and climate experts to build our collective capacity to deliver responses to climate change that are good for people and the planet.”<sup>39</sup>*

49. The Philippines has also:

- supported inclusion of a reference to human rights in the text of the Paris Agreement;
- referred to human rights in its nationally determined contribution;
- referred to climate change in its national report to the Human Rights Council’s Universal Periodic Review;
- sponsored the following Human Rights Council’s resolution(s) on Human Rights and Climate Change: Resolution 7/23 (2008), Resolution 10/4 (2009), Resolution 18/22 (2011), Resolution 26/27 (2014) and Resolution 29/15 (2015); and
- ratified the following human rights instruments with relevance in the context of climate change: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>40</sup>

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<sup>39</sup> <http://climaterights.org/our-work/unfccc/geneva-pledge/> We note that this website contains a number of useful resources regarding human rights and climate change that we suggest may be relevant to the Commission’s Investigation.

<sup>40</sup> <http://climaterights.org/database/Philippines/>

## 4.2 Obligations of business in respect of human rights and climate change

50. The core international human rights treaties do not directly address the obligations of private parties to respect human rights. However, the global standard on the behaviour of private actors is enshrined in the UN Guiding Principles on Business and Human Rights proposed by UN Special Representative John Ruggie and endorsed by the UN Human Rights Council in June 2011 (**Guiding Principles**).<sup>41</sup>

51. The foundational principles for private actors contained in the Guiding Principles include, *inter alia*:

- Businesses should respect human rights by avoiding infringing on the human rights of others and addressing any adverse human rights impacts with which they are involved.
- The rights that must be respected by businesses include, at minimum, the rights recognized in the International Bill of Rights (UDHR, ICCPR, ICESCR) and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.
- The responsibility to respect human rights requires that business enterprises:
  - avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

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<sup>41</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

- seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
- The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.
- To meet their human rights responsibilities, businesses should implement policies and processes appropriate for their size and circumstances, so as to safeguard human rights in all aspects of their operation.
- Businesses should also carry out human rights due diligence, which includes assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.
- Where businesses identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.<sup>42</sup>

52. The Guiding Principles do not create new international law obligations. However, they should be considered as the most definitive statement of principle and guidance on the conduct of private actors in respect of human rights. They may be used to guide the Commission's factual investigation into the responsibility of the Carbon

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<sup>42</sup> See note 29 at 29.

Majors for human rights violations and impacts resulting from climate change in the Philippines.

53. Notably, a binding international treaty on business and human rights has been proposed and is currently being debated by an intergovernmental working group established by the OHCHR.<sup>43</sup>

## 5 International climate change law

### 5.1 UNFCCC

54. At the outset, it is worth recalling the overall objective of the UNFCCC treaty regime, agreed in 1992, and articulated in Articles 2 of the Convention:

"[t]he ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, *stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."

[Emphasis added]

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<sup>43</sup> <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntnc.aspx>

55. The treaty does not specify a particular concentration of greenhouse gasses, nor does it define what exactly is meant by dangerous anthropogenic interference in the climate system.

56. In 2012, the parties to the UNFCCC formally adopted the target of limiting greenhouse gas concentrations such that the global average temperature would rise no more than 2 degrees above pre-industrial levels.<sup>44</sup> Scientists have noted that the 2 degree target was a political consensus formulated after an analysis of the trade off between expense and risks, and does not necessarily reflect a 'safe' upper limit under which no harmful effects will occur.<sup>45</sup>

## 5.2 The Paris Agreement

57. The Paris Agreement was agreed in December 2015 at the 21st Conference of the Parties to the UNFCCC. It entered into force on Friday, 4 November 2016.<sup>46</sup> This means that the agreement is now operational and has legal force under international law. The Paris Agreement commits countries to the submission and implementation<sup>47</sup> of nationally determined emissions reduction targets (known as **NDCs**), in order to achieve the overall objective of limiting temperature rise to well-below 2 degrees below pre-industrial levels.

58. The core objective of the Agreement is contained in Article 2 which states that the parties aim to:

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<sup>44</sup> Report of the Conference of the Parties on its Eighteenth Session, Held in Doha from 26 November to 8 December 2012 - Addendum - Part Two: Action Taken by the Conference of the Parties at its Eighteenth Session FCCC/CP/2012/8/Add.1 (UNFCCC, 2012).

<sup>45</sup> Knutti et al, 'A scientific critique of the two-degree climate change target' *Nature Geoscience* 9, 13–18 (2016).

<sup>46</sup> UNFCCC, The Paris Agreement, [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php)

<sup>47</sup> Arguably implied under Article 4(2).

"hold[] the increase in the global average temperature to well below 2 degrees celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees celsius above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change."<sup>48</sup>

59. In order to achieve the long-term temperature goal set out in Article 2, Article 4(1) provides that the parties will aim to reach global peaking of greenhouse gas emissions as soon as possible, and will:

"undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gasses in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty."

60. Although some commentators have suggested that Article 2 frames 2 degrees as the target and 1.5 degree as a less onerous ambition, the distinction between the two temperature goals is over-stated. Crucially, NDCs will be judged according to both measures. As a matter of best practice and due diligence State parties should be seeking to meet the 1.5 degree target.

61. The Paris Agreement has been characterised as an evolution in climate governance in its treatment of the bottom-up and top-down approaches. It presents itself as a hybrid model between the two approaches. Whereas the Kyoto Protocol sought to

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<sup>48</sup> Article 2(1) of the Paris Agreement.



entrench a top-down command and control approach with hard ramifications for non-compliance, the Paris Agreement codifies a 'bottom-up' approach whereby all States make their own contributions tailored to their own 'national circumstances'. In particular, the NDCs "codify" the bottom-up approach that emerged from Copenhagen. Nevertheless, the Paris Agreement retains many of the top-down vestiges of the Kyoto Protocol in the form of common rules of transparency and the compliance mechanism.

62. At the time of Agreement's adoption, it was acknowledged that the intended NDCs submitted by the State parties did not amount to sufficient greenhouse gas emissions reduction targets to meet either the 2 or 1.5 degree temperature goal.<sup>49</sup> The Paris Agreement contains a number of provisions intended to ratchet up ambition over time and to bring the NDCs into line with the temperature goals, including by requiring that:

- a. parties' NDCs represent a progression beyond the party's then-current nationally determined contribution and reflect its highest possible ambition (Article 4(3) and 4(11));
- b. the process for the global stock-take be conducted every 5 years, in which an assessment of collective progress towards achieving the temperature objective will be undertaken by all parties (Article 14); and

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<sup>49</sup> See the Decision of the Parties, dated 12 December 2015.

- c. the parties comply with the transparency framework contained in Article 13, under which all parties will report their emissions consistently and subject their reporting practices to a "technical expert review".

63. The Paris Agreement is also the first climate change agreement to contain a mention of human rights and, therefore, establishes the direct link between international climate change and human rights regimes. The preamble to the Paris Agreement emphasises that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.<sup>50</sup> The Agreement therefore recalls the positive obligations of the state to promote these human rights through action on climate change.

64. The Paris Agreement represents groundbreaking and game-changing international law and shifts the definition of acceptable and reasonable behaviour by private actors in the context of the global threat posed by climate change. Human rights obligations in the context of climate change should be interpreted in accordance with this new international norm.

### 5.3 Carbon budgets

65. The implication of the Paris Agreement's temperature goals is that there is a finite quantity of greenhouse gasses that may be emitted into the atmosphere, above which the temperature goal(s) will be exceeded. An article in Nature in June 2016

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<sup>50</sup> Paris Agreement, recital 12.

found that current NDCs will result in median warming of 2.6–3.1 degrees celsius by 2100.<sup>51</sup>

66. 'Carbon budget' is the established terminology used to refer to the calculation of what quantity of greenhouse gasses (in carbon dioxide equivalent) the atmosphere can accommodate. The global carbon budget refers to total world emissions, and does not differentiate between individual countries. The emissions of private entities, resulting from their operational activities and their products, are also counted in the total global carbon budget.

67. In 2014, the IPCC reported that in order to stay within 2 degrees of warming, the carbon budget as of 2011 was 1000 gigatonnes (Gt) of carbon dioxide equivalent.<sup>52</sup> The results of scientific research have concluded that globally, a third of oil reserves, half of gas reserves and over 80 per cent of current coal reserves should remain unused from 2010 to 2050 in order to stay within the global carbon budget and meet the target of 2 degrees celsius.<sup>53</sup>

68. The carbon budgets and the Paris Agreement have clear implications for the future activities and operations of the Carbon Majors named in the Petition. Detailed economic research on 'stranded assets' has been developed in detail by the think tank Carbon Tracker among others, to describe those fossil fuel reserves held by the

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<sup>51</sup> Rogelj, et al, 'Paris Agreement climate proposals need a boost to keep warming well below 2 °C' *Nature* 534, 631–639 (30 June 2016).

<sup>52</sup> IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland.

<sup>53</sup> McGlade et al, 'The geographical distribution of fossil fuels unused when limiting global warming to 2 °C' *Nature* 517, 187–190 (08 January 2015).

Carbon Majors that will become unburnable in a carbon-constrained world in which States act to limit climate change in accordance with the Paris Agreement.<sup>54</sup>

69. These facts are relevant to the framing of the final recommendations that the Commission may seek to make in this investigation.

## 6 Evidence of the effects of climate change on human rights in the Philippines

70. This section will discuss some of the matters relevant to the Commission's determination of factual causation in this investigation. The comments herein will focus on the legal aspects of factual causation, consistent with ClientEarth's expertise.

### 6.1 Intergovernmental Panel on Climate Change

71. The IPCC is a scientific body and an intergovernmental organisation established by the United Nations Environment Program (**UNEP**) and World Meteorological Organization (**WMO**) in 1988. Its task, as outlined in UN General Assembly Resolution 43/53 of 6 December 1988, was to prepare a comprehensive review and recommendations with respect to the state of knowledge of the science of climate change; the social and economic impact of climate change, and possible response strategies and elements for inclusion in a possible future international convention on climate change. Today the IPCC's role is as defined in the Principles Governing IPCC Work:

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<sup>54</sup> Carbon Tracker Institute, Unburnable carbon 2013: Wasted capital and stranded assets, 2013, available at <http://www.carbontracker.org/report/unburnable-carbon-wasted-capital-and-stranded-assets/>.

"...to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation. IPCC reports should be neutral with respect to policy, although they may need to deal objectively with scientific, technical and socio-economic factors relevant to the application of particular policies."<sup>55</sup>

72. The IPCC's process involves multiple stages of review, with hundreds of expert assessors critiquing the accuracy and completeness of the papers that are cited in its report. Multiple stages of review are an essential part of the IPCC process to ensure that its synthesis reports are the most comprehensive, objective and transparent assessment of the current state of knowledge of the science related to climate change. Expert scientists from every nation are involved in the drafting of IPCC reports, with each sentence being subject to significant scrutiny, debate and contestation, with input from scientists from around the world.<sup>56</sup>

73. The Synthesis Report of the AR5, released in 2014, provides the most up to date summary of the state of current scientific knowledge about the causes of climate change, as well as its effects and impacts.<sup>57</sup>

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<sup>55</sup> [https://www.ipcc.ch/organization/organization\\_history.shtml](https://www.ipcc.ch/organization/organization_history.shtml)

<sup>56</sup> Details of the review process can be found at [https://www.ipcc.ch/news\\_and\\_events/docs/factsheets/FS\\_review\\_process.pdf](https://www.ipcc.ch/news_and_events/docs/factsheets/FS_review_process.pdf)

<sup>57</sup> <https://www.ipcc.ch/report/ar5/>

74. The Commission may rely on the findings of the IPCC, including the AR5, as fact.

This approach was taken by the District Court of the Hague in the 2015 case, *Urgenda Foundation v State of the Netherlands*,<sup>58</sup> which found that:

"[t]he UN Climate Change Convention [t] also made provision for the establishment of the IPCC as a global knowledge institute. The IPCC reports have bundled the knowledge of hundreds of scientists and to a great extent represent the current climate science. The IPCC is also an intergovernmental organisation. The IPCC's findings serve as a starting point for the COP decisions, which are taken by the signatories to the UN Climate Change Convention during their climate conferences. Similarly, the Dutch and European decision-making processes pertaining to the climate policies to be pursued are also based on the climate science findings of the IPCC. The court - and also the Parties - therefore considers these findings as facts."<sup>59</sup>

75. The IPCC uses the term 'likely' to denote more than 66% likelihood and 'very likely' as more than 90%. Findings in the IPCC's assessment reports that are described as being 'likely' or 'very likely', therefore, more than satisfy civil standards of proof that the finding is more likely than not.<sup>60</sup> The Commission should, therefore, accept as proven those findings of the IPCC described as 'likely' or 'very likely'.

76. The IPCC identifies the following key risks that span sectors and regions:

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<sup>58</sup> *Urgenda Foundation v. The State of the Netherlands*, C/09/456689/HA ZA 13-1396, Judgement of 24 June 2015, available in English at <http://edigest.elaw.org/sites/default/files/urgenda.pdf>

<sup>59</sup> See note 32 at p 34.

<sup>60</sup> T F Stocker (and others) *Climate Change 2013: The Physical Science Basis - Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP, 2013), p 2.

- risk of severe ill-health and disrupted livelihoods resulting from storm surges, sea level rise and coastal flooding; inland flooding in some urban regions; and periods of extreme heat;
- systemic risks due to extreme weather events leading to breakdown of infrastructure networks and critical services;
- risk of food and water insecurity and loss of rural livelihoods and income, particularly for poorer populations;
- risk of loss of ecosystems, biodiversity and ecosystem goods, functions and services.<sup>61</sup>

77. Scientific evidence of the physical impacts in the Philippines to date and those that are predicted to occur in the coming decades should be considered in detail by the Commission. Nevertheless, we submit that the Commission may accept, in the face of overwhelming evidence as reported by the IPCC, that climate change is having and will continue to have significant impacts on the human rights of the people of the Philippines.<sup>62</sup>

## 6.2 Attribution of greenhouse gas emissions

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<sup>61</sup> See note 33 at p 65.

<sup>62</sup> We also note that the emerging science of "extreme weather event attribution" now enables scientists to determine the extent to which anthropogenic climate change has altered the probability or magnitude of a particular weather event or a class of weather events. The scientific definition of event attribution is "the process of evaluating the relative contributions of multiple causal factors to a change or event with an assignment of statistical confidence". These kinds of studies could in the future allow scientists to categorically conclude that a tropical storm in the Philippines, for example, would not have occurred but for the influence of human greenhouse gas emissions. See Stott et al, 'Attribution of extreme weather and climate-related events', *WIREs Climate Change*, 2015. Also see <https://www.carbonbrief.org/in-depth-the-scientific-challenge-of-extreme-weather-attribution> , and <https://www.nap.edu/catalog/21852/attribution-of-extreme-weather-events-in-the-context-of-climate-change>

78. This section sets out why the Commission may accept that greenhouse gas emissions from a range of different sources (expressed in tonnes of carbon dioxide equivalent) contribute equally to global warming.

79. The evidence of the IPCC is clear and unequivocal. Climate change is a global problem by its very nature. It is caused by the release of greenhouse gasses, of which methane and carbon dioxide are the most potent, into the earth's atmosphere, as well as land use changes that have increased deforestation, and affect the planet's ability to absorb excess carbon dioxide via natural processes. These two processes and their acceleration since the start of the industrial revolution have caused a build up of gasses in the earth's upper atmosphere, trapping radiative heat from the sun in the earth's atmosphere and warming the surface of the planet. A build up of carbon dioxide in the atmosphere also causes ocean acidification which has potentially significant negative impacts on marine environments and the people who depend on them.<sup>63</sup>

80. The AR5 concluded that:

"[a]nthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. This has led to atmospheric concentrations of carbon dioxide, methane and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are *extremely likely* to have

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<sup>63</sup> <http://climate.nasa.gov/evidence/>



been the dominant cause of the observed warming since the mid-20th century."<sup>64</sup>

[Emphasis in original].

81. The detection and attribution report (Chapter 10) states that:

"[m]ore than half of the observed increase in global mean surface temperature (GMST) from 1951 to 2010 is *very likely* due to the observed anthropogenic increase in greenhouse gas (GHG) concentrations. The consistency of observed and modeled changes across the climate system, including warming of the atmosphere and ocean, sea level rise, ocean acidification and changes in the water cycle, the cryosphere and climate extremes points to a large-scale warming resulting primarily from anthropogenic increases in GHG concentrations. Solar forcing is the only known natural forcing acting to warm the climate over this period but it has increased much less than GHG forcing, and the observed pattern of long-term tropospheric warming and stratospheric cooling is not consistent with the expected response to solar irradiance variations. The Atlantic Multi-decadal Oscillation (AMO) could be a confounding influence but studies that find a significant role for the AMO show that this does not project strongly onto 1951–2010 temperature trends."<sup>65</sup> [Emphasis Added]

82. As previously explained, 'very likely' is used by the IPCC to indicate that a result is 90–100% certain in terms of scientific proof, indicating a clear and rigorously proven causal relationship between two physical phenomena.<sup>66</sup> This indicates that the

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<sup>64</sup> IPCC AR5, Synthesis Report, Summary for Policymakers. See note 46 at p 4.

<sup>65</sup> IPCC AR5, Synthesis Report, Summary for Policymakers. See note 46 at p 869.

<sup>66</sup> IPCC, Guidance Note for Lead Authors of the IPCC Fifth Assessment Report on

assessment more than satisfies the civil standard of proof, and thus, the Commission may rely on this statement for its factual investigation. Accordingly, the Commission may take it as proven, for the purposes of its investigation, that human greenhouse gas emissions have caused half of the observed warming of the planet from 1951 to 2010.<sup>67</sup>

83. A fundamental conclusion of the IPCC's AR5 is that there is a clear and demonstrable linear causal relationship between the emission of carbon dioxide and warming of the planet as a whole. SPM 2.1 of the IPCC states:

"[c]umulative emissions of CO<sub>2</sub> largely determine global mean surface warming by the late 21st century and beyond. Projections of greenhouse gas emissions vary over a wide range, depending on both socio-economic development and climate policy."<sup>68</sup>

84. Two graphs demonstrating this linear relationship, based on observations to date, and on the basis of modelling into the future, are contained on page 9 of the AR5. This page is included as **Annex C** to this brief due to its fundamental importance to the Commission's investigation.

85. Furthermore, the scientific evidence is clear that greenhouse gas emissions are inherently fungible. That is, emissions are mutually interchangeable in their environmental impact and their effect in the atmosphere, because it is the overall

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Consistent Treatment of Uncertainties, 2010 <https://www.ipcc.ch/pdf/supporting-material/uncertainty-guidance-note.pdf>

<sup>67</sup> The globally averaged combined land and ocean surface temperature data as calculated by a linear trend show a warming of 0.85 [0.65 to 1.06] °C 2 over the period 1880 to 2012, when multiple independently produced datasets exist. IPCC AR5, Synthesis Report, Summary for Policymakers. See note 46 at p 4.

<sup>68</sup> IPCC AR5, Synthesis Report, Summary for Policymakers. See note 46 at p 8.

concentration of greenhouse gasses in the atmosphere that ultimately impacts anthropogenic warming.

86. This concept is the basis of emissions trading schemes around the world. It also has implications for the Commission's investigation, because it means that all emissions from various sources all around the world since reliable temperature records exist (1850) have contributed equally to the phenomena of global warming. It also means that for the purposes of investigation of the contributions of various parties to climate change, on a global basis, the total quantities of carbon dioxide equivalent emissions emitted by different actors since 1850 may be used as the basis for attributing responsibility among States, or private parties. This approach is well accepted by the scientific community, industry, States and civil society and is used as the basis of the calculation of projected future emissions.

87. The fungibility of greenhouse gas emissions has important implications for the development of liability and responsibility of States and private actors for the loss and damages associated with climate change. The Commission should take this into account when considering the responsibility of the Carbon Majors and its associated recommendations.

## **7 Evidence of the contribution of the Carbon Majors**

88. As previously discussed, in the context of determining the Carbon Majors' responsibility for the human rights implications of climate change, it would be inappropriate for the honourable Commission to apply strict tests of legal causation.

89. ClientEarth supports the Petitioners contention that it is most appropriate to consider the responsibilities of the Carbon Majors in the context of the Guiding Principles, particularly Principles 11 and 13. Specifically, Principle 13 calls on business enterprises to "avoid causing or contributing to adverse human rights impacts through their own activities", and:

"to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."

90. This confirms that the principle is engaged when business activity contributes to adverse human rights impacts, even though it may not be the *only* cause of the adverse impact. Thus, the Guiding Principles call for the application of a test of contributory causation, balanced by a standard of reasonableness.<sup>69</sup> The Interpretive Guide to the Guiding Principles (included as **Annex D** to this brief) supports this conclusion, noting that a business enterprise may contribute to the impact through its own activities - either directly or through some outside entity.<sup>70</sup> The Interpretive Guide gives the following examples of contributing to a human rights impact:

- providing data about internet service users to a Government that uses the data to trace and prosecute political dissidents contrary to human rights;

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<sup>69</sup> Described in the context of 'business relationships' in Principle 19 and its accompanying commentary, which states that: "[a]ppropriate action will vary according to whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship." "Where a relationship is 'crucial' to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business...[the enterprise] should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences - reputational, financial or legal - of the continuing connection".

<sup>70</sup> OHCHR, *The Corporate Responsibility to Protect Human Rights: An Interpretive Guide* (2012).

- a business that targets high sugar foods at children, contributing to childhood obesity.

91. These examples demonstrate the potential scope of the Guiding Principles, and confirm that a business may contribute to a human rights impact through the *legal sale of its products*. These examples are analogous to the situation of the Carbon Majors, many of whom legally sell fossil fuels and other products for energy use. Despite the fact that their products are accepted and used on a wide scale, their human rights impacts must also be acknowledged by the Carbon Majors.

92. ClientEarth does not suggest that all business enterprises, including small and medium enterprises around the world, should be held to the same standards in the context of the human rights implications of climate change, as should the Carbon Majors.<sup>71</sup> This is because the Carbon Majors, as demonstrated by the evidence of Heede provided by the Petitioners, have, through their operations and products, contributed to the emission of such significant quantities of greenhouse gas emissions into the earth's atmosphere so as to impose upon them specific and particular obligations in respect of climate change. This interpretation is consistent with the approach taken in the Guiding Principles, particularly Principle 14. The application of the Principle is discussed in further detail in section 7.4.

93. ClientEarth agrees with the Petitioner's assertion that the Interpretive Guidance issued by the OHCHR may be relied upon by the Commission in deciding the appropriate test for determining whether the activities of the Carbon Majors have

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<sup>71</sup> This is recognised in Principle 14, which states that "the means by which a business enterprise meets its responsibility to respect human rights will be proportional to...its size".

infringed and are infringing human rights through the continued emission of greenhouse gasses. The Commission may also find the Guidebook for National Human Rights Institutions issued by the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights useful in interpreting and applying the Guiding Principles.<sup>72</sup> Below are some additional matters the Commission may find relevant to its determination of the contribution of the Carbon Majors to global climate change.

## 7.1 Corporate personhood

94. The Petition names 51 corporate groups respondents in Annex C to the Petition. This list has been updated and is slightly different to that identified in the study undertaken by Richard Heede contained in the various documents in Annexes D, D1, D2 and D3 to the Petition.<sup>73</sup>

95. Although Annex C to the Petition does not specify the specific corporate entities implicated by the claims in the Petition, it is clear that the intention of the Petitioners is to refer to the corporate group as a whole.

96. The Commission should accept that a reference in the Petition to the Carbon Majors or a particular corporate group should be taken as a reference to the parent entity or entities<sup>74</sup> in whose name the accounts of the group are consolidated in accordance with the rules of the jurisdiction in which the parent is incorporated or listed for trading on a stock exchange.

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<sup>72</sup> See note 6 at p 6.

<sup>73</sup> In Table 14 in Heede, *Carbon Majors: Accounting for carbon and methane emissions 1854-2010 Methods and Results Report*, 2014, Annex D2.

<sup>74</sup> Such as in the case of Rio Tinto, registered in both the UK and Australia.

97. This intent is also able to be ascertained by the fact that the Petition refers to the Guiding Principles as the primary document containing the international norms and standards applicable to corporate activity in respect of human rights. The Guiding Principles apply to nation-states and "all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure". They also state that "the responsibility to respect human rights applies fully and equally to all business enterprises," whether that operation conducts business through a corporate group or individually.<sup>75</sup>

98. Second, for the purposes of this fact finding investigation, the Commission should adopt an enterprise theory of corporate personhood, meaning that the activities of the whole group of companies (and specifically the greenhouse gas emissions of the group as a whole) should be aggregated and attributed to the parent entity. This approach should be adopted because:

- a. it is the only practical way to assess the activities of multinational corporations whose operations and products produce greenhouse gas emissions across multiple jurisdictions, and reflects the manner in which these organisations in fact operate;
- b. this is the accepted approach in the context of human rights violations resulting from the activity of multinational entities, and is adopted by the

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<sup>75</sup> OCHCR, *UN Guiding Principles on Business and Human Rights*, 2014.

United Nations (in the Guiding Principles) and the OECD in its Guidelines on Multinational Enterprise;<sup>76</sup>

- c. it overcomes the formalism of entity theory which "ignores the economic reality of the relationship between parent corporations and their subsidiaries" and better aligns with the expectations of the public;<sup>77</sup> and
- d. it is the only logical way to assess the causation of climate change which is a global problem on a global scale caused by greenhouse gas emissions from a wide number of actors over a long period of time.

99. Furthermore, it is generally only at the level of the parent company where top line strategic decisions regarding the emissions intensity of products, capital allocation and the mix of energy sources in a company's portfolio can be made. Accordingly, only the parent entity has the power to set corporate policy in respect of greenhouse gas emissions and consequent environmental implications.

100. Finally, the majority of the respondent companies named in Annex C to the Petition report (either voluntarily or under national regulation) their greenhouse gas emissions on a group-wide basis, consistent with the practice of consolidating the company's financial accounts (and in accordance with the Greenhouse Gas

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<sup>76</sup> The OECD Guidelines on Multinational Enterprise state that the Guidelines "extend to enterprise groups...Compliance and control systems should extend where possible to these subsidiaries". OECD Guidelines on Multinational Enterprises (as revised on 25 May 2011), II, General Policies, Commentaries, para 9.

<sup>77</sup> Ibid, 209.



Protocol).<sup>78</sup> It is therefore appropriate to impute control over the emissions of subsidiaries, and their consequent climatic impacts, to the parent company.

## 7.2 Emissions from operations and products to date

101. The Commission has before it detailed evidence of the previous activities of the Carbon Majors, in the form of the thorough expert evidence of Richard Heede of the Carbon Accountability Institute. This work is the only example of research linking anthropogenic greenhouse gas emissions since 1850 to the operations and products of private actors.

102. The key finding of the research is that greenhouse gas emissions totalling 914.3 Gt of carbon dioxide equivalent produced between 1854 and 2010 can be traced to the operations and products of the 90 Carbon Major groups of companies included in the analysis.<sup>79</sup> This is the equivalent of approximately 63 per cent of the estimated global greenhouse gas emissions since 1754, based on total global estimates produced by the Carbon Dioxide Information Analysis Center, of the US Department of Energy (see Annex D to the Petition).

103. Of the 90 Carbon Majors included in the original study, 51 of those privately owned groups of companies have been included in the scope of the Petition. Subject to the Commission's acceptance of the evidence presented in this analysis, it can conclude that the operations and products of the 51 companies named in the Petition

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<sup>78</sup> The Greenhouse Gas Protocol is the international standard by which most companies calculate and report on greenhouse gas emissions from their operations and products. The Protocol divides emissions into three categories, scope 1, being direct emissions from activities, scope 2 being emissions from electricity used by corporate operations, and scope 3 being the full emissions of the company's products throughout their life-cycle. For details see the <http://www.ghgprotocol.org/>

<sup>79</sup> Heede, R, 'Carbon Majors: Accounting for Carbon and methane emissions 1854-2010: Methods and Results report', in Annex D3 to the Petition.

contributed around one fifth of all global greenhouse gas emissions since 1854, per Annex D to the Petition.

### 7.3 Ongoing and future activities

104. The operations and products of the Carbon Majors named in the Petition continue to be significant contributors to global greenhouse gas emissions.<sup>80</sup> For example, in 2015, Chevron Corporation disclosed to the carbon accounting NGO CDP that it emitted the following quantities of greenhouse gas emissions during the reporting period 1 Jan 2014 - 31 Dec 2014) (in metric tonnes Co2e):

- **Scope 1:** 55,746,124;
- **Scope 2:** 4,686,702; and
- **Scope 3:** 358,000,000 (use of sold products only),<sup>81</sup>
- **Total = 418,432,826.**

105. By way of comparison, 418 Mt of Co2e is more than the total national emissions of most nation-states in 2012, including significant economies including Ukraine, Spain, Thailand, Poland, Spain, Argentina, Pakistan, Nigeria, Kazakhstan, Egypt, Malaysia, Venezuela and Vietnam.<sup>82</sup> This simple comparison illustrates the huge impact that the operations and products of the Carbon Majors have on overall global

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<sup>80</sup> Based on information disclosed both voluntarily to organisations such as CDP and under mandatory reporting laws in various jurisdictions, for example, see Chevron's CDP 2015 response at <https://www.chevron.com/-/media/chevron/corporate-responsibility/documents/CDP-2015.pdf>

<sup>81</sup> See Chevron's CDP Response for details at <https://www.chevron.com/-/media/chevron/corporate-responsibility/documents/CDP-2015.pdf>

<sup>82</sup> Calculated by reference to the CAIT Climate Data Explorer, available at [http://cait.wri.org/historical/Country%20GHG%20Emissions?indicator\[\]=Total%20GHG%20Emissions%20Excluding%20Land-Use%20Change%20and%20Forestry&indicator\[\]=Total%20GHG%20Emissions%20Including%20Land-Use%20Change%20and%20Forestry&year\[\]=2012&sortIdx=NaN&chartType=geo](http://cait.wri.org/historical/Country%20GHG%20Emissions?indicator[]=Total%20GHG%20Emissions%20Excluding%20Land-Use%20Change%20and%20Forestry&indicator[]=Total%20GHG%20Emissions%20Including%20Land-Use%20Change%20and%20Forestry&year[]=2012&sortIdx=NaN&chartType=geo)

emissions. It demonstrates that the decisions that these companies make about energy production, their overall energy mix, energy efficiency, products development, and investment in new low carbon technologies have influenced and will continue to influence the global emissions trajectory and subsequent global climate change, well into the future. It also further justifies the Carbon Majors being held to a higher standard of conduct than small enterprises or individuals.

106. Many of the Carbon Majors named in the Petition have stated that they aim to reduce greenhouse gas emissions from their operations and products, and were supportive of States coming together to sign the Paris Agreement.<sup>83</sup> Companies that have done so are worthy of commendation. However, the climate change issue should be seen, not only as an environmental problem, but as a human rights challenge, and, the Commission can and should request that the Carbon Majors do more.

107. The Guiding Principles should guide the Carbon Majors' future conduct in respect of their greenhouse gas emissions, and their future business plans. Details are provided below in the discussion of the application of the Guiding Principles to the human rights implications of climate change.

#### **7.4 Conclusions on application of the Guiding Principles**

108. Principle 11 of the Guiding Principles states that business enterprises "should respect human rights" and "avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved". The

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<sup>83</sup> <http://climateaction.unfccc.int/>

commentary accompanying the principle acknowledges that "this obligation exists over and above compliance with national laws and regulations protecting human rights". This means that despite the regulation of their operations and products at a national level, under the Guiding Principles, the Carbon Majors are obliged to address human rights impacts by taking "adequate measures for their prevention, mitigation and where appropriate, remediation". Clearly, what constitutes adequate measures is likely to be the subject of legitimate dispute. Although it may not be the role of the Commission to define adequate measures, it may nevertheless exercise its discretion to make findings and recommendations in relation to how the Carbon Majors may demonstrate compliance with the Guiding Principles in the context of climate change.

109. Principle 13 sets out the core responsibilities of business enterprises to avoid human rights impacts. It states that the responsibility to respect human rights requires that business enterprises avoid causing or contributing to adverse human rights impact through their own activities. Principle 14 notes that the severity of a human rights impact will affect the means through which the business meets its responsibility to respect human rights. The Interpretive Guide states that:

"the severity of a potential adverse human rights impact is the most important factor in determining the scale and complexity of the processes the enterprise

needs to have in place in order to know and show that it is respecting human rights".<sup>84</sup>

110. In the context of climate change, the impacts of which are likely to have extremely severe adverse effects on human rights in the Philippines, those business enterprises that release significant quantities of greenhouse gases should use equivalent appropriate means to meet their responsibility to respect human rights.

111. Principle 15 of the Guiding Principles sets out the operational principles that businesses are expected to meet in order to implement the foundational principles, specifically, the obligations to have a statement of policy commitment, a human rights due diligence process and processes to enable remediation. The Interpretive Guide states that "respecting human rights is not a passive responsibility: it requires action on the part of businesses". In the context of climate change, compliance with the requirements of this principle requires businesses to have:

- a. a policy commitment to meet their responsibility to respect those human rights that are being and will be infringed by climate change;
- b. a due diligence process to identify, prevent, mitigate and account for how they address the impacts of their greenhouse gas emissions on human rights; and
- c. processes to enable the remediation of the adverse human rights impacts of climate change.

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<sup>84</sup> See note 66 at p 19.

112. Principles 16 to 22 elaborate on the operationalization of each of these three requirements. In applying these principles to the human rights implications of climate change, the Commission could find that the Carbon Majors should:
- a. acknowledge, in their statement of policy created under Principle 16, the effect of climate change on the exercise of human rights now and into the future;
  - b. include climate change as a human rights issue in human rights due diligence undertaken in accordance with Principle 17;
  - c. identify and assess the specific human rights impacts of climate change arising from their operations and products, drawing on human rights expertise, and involving meaningful consultation with potentially affected groups and other relevant stakeholders (Principle 18);
  - d. take appropriate action to mitigate the greenhouse gas emissions from their operations *and* products, which may (or may not) constitute a crucial relationship as defined in Principle 19, for some of the Carbon Majors; and
  - e. track the effectiveness of their response by fully and adequately reporting on their total greenhouse gas emissions (including across the full life-cycle of their products), as well as proposed actions to mitigate their emissions into the future including appropriate emissions reduction targets, and diversification of energy sources. This should be transparently produced and documented, in order to fully comply with Principles 21 and 20.

113. The Interpretive Guide states that, where a business contributes or may contribute to a human rights impact, it should take action to cease or to prevent the contribution, and also use its leverage to mitigate any remaining impact (by other parties involved) to the greatest extent possible.<sup>85</sup>

114. Compliance with the Guiding Principles should be interpreted by the Commission *in light of, and in accordance with*, the international legal framework governing climate change, as well as other norms of international environmental law, including the precautionary principle and the polluter pays principle.<sup>86</sup> This is consistent with Section 2 of Article 2 of the Constitution, which states that:

“[t]he Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.” [Emphasis added.]

115. Accordingly, the Commission should carefully consider the implications of the globally agreed temperature target of keeping warming between 1.5 and 2 degrees celsius (and associated carbon budget) contained in the Paris Agreement. This temperature goal now represents the generally accepted definition in international law of 'dangerous climate change' that is likely to unacceptably interfere with the exercise of human rights for people around the globe (although such human rights impacts are already occurring in some regions). It therefore represents an

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<sup>85</sup> See note 66 at p 48.

<sup>86</sup> See note 68 at p 77.

appropriate and agreed-upon threshold for continued emissions within which all actors (including States and private parties) should be expected to operate.

116. In issuing its findings and recommendations to the Philippine Government, the Commission should recommend that *compliance with the Guiding Principles requires that the Carbon Majors prepare (in consultation with relevant stakeholders) and publish, detailed business plans describing their operations and activities in a world in which warming is kept well below 2 degrees*. Such a plan would arguably satisfy the policy, due diligence and process requirements of the Guiding Principles. It would also demonstrate the ability and intention of the Carbon Majors to reduce their carbon footprint to sustainable levels that respects planetary boundaries, as well as the human rights of Filipino citizens and the millions of other citizens threatened by climate change around the world. The preparation of such a plan would not be overly burdensome on the respondent companies, and is arguably required under international human rights norms.

## 8 Suggested findings and recommendations

### 8.1 Findings

117. The Commission can, and should confidently make the following findings of fact:

- a. in relation to the science of climate change:
  - i. conclusions contained in the reports of the IPCC expressed as being 'likely' or 'very likely', may be relied upon as fact (for the purposes of



- satisfying the civil standard of proof) in court proceedings, and for the purposes of this investigation;
- ii. it is unequivocal that anthropogenic forcings have been the dominant cause of the observed warming of the planet since mid-century;
  - iii. there is a linear and causal relationship between the concentrations of greenhouse gasses in the atmosphere and the median surface global temperatures, as well as ocean acidification; and
  - iv. continued greenhouse gas emissions are likely to have continued and increasing adverse effects on all natural systems and processes, through rising temperatures, varied precipitation patterns, sea level rise, increased ocean acidification and increased extreme weather events;
- b. in relation to climate change and human rights;
- i. the physical effects of climate change and ocean acidification will have adverse and significant impacts on the enjoyment of human rights in the Philippines;
  - ii. climate change is a human rights issue and must be addressed in order to permit the full enjoyment of all other fundamental human rights in the Philippines;
- c. in relation to the Carbon Majors;

- i. the greenhouse gas emissions from the operations and products of the Carbon Majors have contributed to the observed global warming to date;
- ii. continued emissions of greenhouse gasses will continue to contribute to climate change, causing increased environmental harm in the future; and
- iii. such environmental harm will severely impact the Filipino people's effective enjoyment of their internationally protected human rights.

## 8.2 Recommendations

118. The Commission, as a national human rights institution, has a Constitutional mandate to protect and promote the effective enjoyment of human rights in the Philippines. It has a broad remit to conduct investigations, provide appropriate measures for the protection of human rights, recommend appropriate measures to Congress, and monitor the compliance of the Philippines with international treaty obligations on human rights.

119. Accordingly, ClientEarth respectfully submits that the Commission can and should make the following recommendations in respect of the human rights implications of climate change in the Philippines (in addition to the prayer for relief requested in the Petition):

- a. the Government of the Philippines should fulfil its obligations to protect the human rights of the Filipino people by (inter alia):

- i. signing and ratifying the Paris Agreement, and complying with its agreed obligations there under, particularly in relation to the emissions reductions targets and other commitments set out in its NDC;<sup>87</sup>
  - ii. continuing to participate in the global process to mitigate climate change as established by the UNFCCC and the Paris Agreement;
- b. the Carbon Majors listed in the Petition must respect the human rights of the Filipino people in accordance with the Guiding Principles by (inter alia):
  - i. recognising the adverse human rights impacts of their past and current greenhouse gas emissions, which have contributed to climate change;
  - ii. applying the requirements of the Guiding Principles to those impacts;  
and
  - iii. preparing (in consultation with relevant stakeholders) and publishing detailed business plans describing their operations and activities in a world in which warming is kept well below 2 degrees celsius.

## 9 Annexures

120. **Annex A:** OHCHR, *Understanding Human Rights and Climate Change* (2015). N

121. **Annex B:** UNEP, *Climate Change and Human Rights*, (2013).

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<sup>87</sup> <http://www4.unfccc.int/submissions/INDC/Published%20Documents/Philippines/1/Philippines%20-%20Final%20INDC%20submission.pdf>

122. **Annex C:** IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, page 9.

123. **Annex D:** OHCHR, *The Corporate Responsibility to Protect Human Rights: An Interpretive Guide* (2012).

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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