

To: Commission on Human Rights of the Philippines

Re: Amicus Submission, re Petition Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change

From: Olivier De Schutter; Asbjørn Eide; Ashfaq Khalfan; Rolf Künneemann; Jernej Letnar Čerňič; Marcos A. Orellana; Ian Seiderman and Bret Thiele

Date: 5 December 2016

Dear Commissioners,

The purpose of this letter is to offer the views of international legal experts in support of the position that, pursuant to applicable international law and standards, the Philippines may assert jurisdiction, for example through the Commission on Human Rights of the Philippines (Commission), over the primary subject matter at issue in the Petition Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change (Petition). International law allows for a State to exercise permissive jurisdiction in instances where the real effects of abusive conduct are felt in that State leading to harm, irrespective of whether the author of the abuse is situated or domiciled in the territory of another State. Moreover, in certain instances, as analysed in this letter, international law requires a State to protect persons within its jurisdiction that suffer human rights abuses as a result of conduct of businesses located outside its boundaries.

Several of the Carbon Majors¹ have publicly stated that the Commission and the Philippines lack jurisdiction to hear this case. Anglo-American, BHP Billiton, and Conoco Philips have all asserted this lack of jurisdiction argument publicly in their responses published online on the Business and Human Rights Resource Centre.² These assertions are incorrect and, if accepted, would effectively mean that a business outside the territory of a State can cause human rights abuses

¹ “Carbon Majors” refers to the corporations named in Richard Heede’s study on the multinational and state-owned corporations that produce crude oil, natural gas, coal and cement. The Petition uses “Carbon Majors” to refer to the defendants collectively. Heede’s study, “Carbon Majors: Accounting for carbon and methane emissions 1854 -- 2010 Methods & Results Report,” was published by Climate Mitigation Services on 7 April 2014, for more information see: <http://climateaccountability.org/pdf/MRR%209.1%20Apr14R.pdf> (last accessed 17 November 2016).

² The Business and Human Rights Resource Centre invited all “Carbon Majors” respondents to publicly share their responses to the complaint. While many declined to share their response due to the on-going legal matter, at least three corporations publicly stated that the Commission lacked jurisdiction over the present case. However, they did not in those documents provide the legal arguments for their position. See <https://business-humanrights.org/en/fossil-fuel-cos-respond-to-petition-with-philippines-human-rights-commission-on-human-rights-climate-change-impacts> (last accessed 17 November 2016).

within that State with impunity if the State(s) in which it is located does not prevent it from doing so.

This letter will show that the Philippines can properly exercise jurisdiction over the Carbon Majors pursuant to and in accordance with international law and standards. The State duty to protect against human rights abuses by businesses is an obligation under human rights treaty law, as affirmed and reinforced by the plain language of human rights treaties. This obligation is further clarified by treaty interpretation by international and regional courts and human rights treaty bodies, and by principles and other standards adopted by the UN. This duty applies equally to circumstances in which the victims, but not the businesses responsible, are domiciled in the relevant State.

The signatories to this letter do not address the underlying factual allegations of the complaint, nor the other legal questions that may arise, particularly those related to the attribution of legal liability and the jurisdiction of the Commission under the law of the Philippines.

This letter is joined by:

- Olivier De Schutter, former United Nations Special Rapporteur on the right to food and professor at the University of Louvain, Belgium;
- Asbjørn Eide, former Director and presently Professor Emeritus at the Norwegian Center for Human Rights at the University of Oslo;
- Ashfaq Khalfan, Director of Law and Policy Programme Amnesty International - International Secretariat;
- Marcos A. Orellana, Director of the Center for International Environmental Law's (CIEL) Human Rights and Environment Program;
- Ian Seiderman, Legal and Policy Director of the International Commission of Jurists;
- Rolf Künemann, Human Rights Director, FIAN International Secretariat;
- Jernej Letnar Čerňič, Associate Professor of Human Rights Law, Graduate School of Government and European Studies, Slovenia; and
- Bret Thiele, Co-Executive Director, Global Initiative for Economic, Social and Cultural Rights.³

The first five individuals mentioned above were part of a drafting group that led the drafting process and elaborated the commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and

³ The authors of this letter are signing in their personal capacities. The institutions listed with the names of the authors of this letter are for the purpose of identification rather than endorsement of the content by these institutions. The authors thank Kristine Perry for her assistance in drafting this letter.

Cultural Rights, a restatement and interpretation of legally binding standards in international law by 40 international experts, including current and former UN Special Procedures and human rights treaty body members.⁴

I. International Law Requires States to Protect Human Rights from Abuse by Private Actors and to Exercise Jurisdiction over the Conduct of Businesses that Constitutes Human Rights Abuse

Authoritative interpretations of international and regional human rights treaties by their respective treaty monitoring bodies and courts make clear that States have a duty to protect against human rights abuses within their territory or jurisdiction, whether committed by State or non-State actors, including businesses.

Article 2 of the International Covenant on Civil and Political Rights (ICCPR), to which the Philippines is a party, requires States to “respect and **ensure...** the rights recognized” in the ICCPR, and to “take the necessary steps in accordance with its Constitutional processes....to adopt such legislative or other measures to give effect to the rights recognized in the...Covenant.”⁵ In addition, State Parties must “ensure that any person whose rights or freedoms...are violated shall have an effective remedy” and “ensure that any person claiming such remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities.”⁶ In its authoritative interpretation of this article and the general obligation of States parties under the ICCPR, the UN Human Rights Committee, the supervisory body for the ICCPR, has affirmed that the duty to ensure rights extends to the duty to protect. The Committee has clarified that State Parties to the ICCPR must protect individuals from acts committed by private persons or entities which would impair the enjoyment of rights contained in the ICCPR, including appropriate measures or exercising due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁷ In considering State Party compliance with the ICCPR, the Human Rights Committee has called on State Parties to “set out clearly the expectation that all business enterprises domiciled in its territory and/or subject to its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations” as well as to “take appropriate measures to

⁴ De Schutter et al. Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Human Rights Quarterly, Vol. 34, 2012, p. 1084, also available at http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=63 (accessed 11 November 2016). The sixth member of the drafting group of the Principles, Margot A. Salomon, was on leave during the finalisation of this amicus.

⁵ UN General Assembly, the International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999.

⁶ *Id.*

⁷ UN Human Rights Committee, General Comment 31: nature of the general legal obligation imposed on states parties to the covenant, UN Doc CCPR/C/21/Rev1/Add.13, 26 May 2004, para 8.

strengthen the remedies for people who have been victims of activities of such business enterprises operating abroad, as well as strengthen the safeguards to prevent people from becoming victims to these.”⁸

The International Covenant on Economic, Social and Cultural Rights (ICESCR), using somewhat different formulations, imposes similar obligations on States. The ICESCR, to which the Philippines is a party, requires that “[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”⁹ The Committee on Economic, Social and Cultural Rights (CESCR), the supervisory body for the ICESCR, has further articulated and expanded on this duty to protect in its jurisprudence and general commentary, including its general comments on the right to food, and the right to water.¹⁰ With regards to the right to food and the duty to protect, the CESCR stated, “[t]he right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil.”¹¹ This duty to protect human rights includes the duty to protect against abuses by third parties, which includes businesses.¹² With this in mind, States have a positive obligation to protect against human rights abuses by private actors occurring within their territories under international treaty law.

International standards addressing business and human rights have affirmed and reinforced these treaty obligations. The UN Guiding Principles on Business and Human Rights,¹³ which were adopted by the UN Human Rights Council on 16 June 2011, reiterate the States’ duty to protect against human rights abuses by business enterprises in Principle 1.¹⁴ This Principle “requires [States] taking

⁸ UN Human Rights Committee, Concluding Observations: Republic of Korea, UN Doc. CCPR/C/KOR/CO.4 (October 2015).

⁹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993.

¹⁰ UN Committee on Economic, Social and Cultural rights, General Comment 12: The right to adequate food (Article 11), UN Doc E/C.12/1999/5, 12 May 1999, para 15; UN Committee on Economic, Social and Cultural Rights, General Comment 15: The right to water (articles 11 and 12), UN Doc E/C.12/2002/11, 20 January 2003, paras 23–24.

¹¹ UN Committee on Economic, Social and Cultural rights, General Comment 12: The right to adequate food (Article 11), UN Doc E/C.12/1999/5, 12 May 1999, para 15.

¹² UN Committee on Economic, Social and Cultural Rights, General Comment 15: The right to water (articles 11 and 12), UN Doc E/C.12/2002/11, 20 January 2003, paras 23–24.

¹³ Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011.

¹⁴ *Id.*

appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”¹⁵ The commentary to this Principle further clarifies that “States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse.”¹⁶ Principle 1 recognizes an obligation on the part of the State to protect against abuses committed by businesses that negatively affect people within its territory and/or jurisdiction.

The duty to protect against human rights violations and abuses is also highlighted in jurisprudence of regional human rights courts. The Inter-American Court of Human Rights discussed the duty of due diligence in its seminal case, *Velásquez-Rodríguez v. Honduras*. The decision held that “[t]he State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”¹⁷ The decision further articulated that the State has a duty to use “all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.”¹⁸ The Inter-American Court also emphasized that “[a]n illegal act which violates human rights and which is initially not directly imputable to a state ... can lead to international responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the convention.”¹⁹

Additionally the duty to protect has been found in case law from the African Commission on Human and Peoples’ Rights, the Economic Community of West African States (ECOWAS) Community Court of Justice, and the European Court of Human Rights (ECtHR). A 2001 decision by the African Commission on Human and Peoples’ Rights, *SERAC and CESR v. Nigeria*, held that States have a duty to protect right holders by the use of legislation and other measures against potential abuses committed by others.²⁰ This case held that there is a duty to create

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights, Judgment of 29 July 1988, Inter-Am Ct. H.R., (Ser C) No.4 (1988), para 174.

¹⁸ *Id.* at para 175.

¹⁹ *Id.* at para 172.

²⁰ *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples’ Rights, App No.155/96, 27 October 2001, para 46.

a framework in which right holders can realise their rights against abuses by third parties.²¹ The ECOWAS Community Court found the duty to protect in its decision in the 2012 case *SERAP v. Federal Republic of Nigeria*. Nigeria had a duty to protect the human rights of its most vulnerable rights holders that were affected by oil companies' abuses.²² The ECtHR found a similar duty to protect against human rights abuses in its decision in *Kalender v. Turkey*. In this case, Turkey had not put in place the appropriate safety measures and also had failed to investigate a corporation for potential liability in causing the death of an individual in connection to the lack of safety standards.²³

The duty to protect human rights has been repeated in the jurisprudence of numerous judicial and quasi-judicial authorities and should inform this Commission that the Philippines has this same duty to protect against human rights abuses within its own jurisdiction. Article 11(1) of the ICESCR articulates a State's duties in regards to protecting an adequate standard of living for its people. Article 11(1) provides that, "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties **will** take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent"²⁴ (emphasis added). The language in Article 11(1) particularizes for the rights to food, clothing, housing, among others, the general obligation found in the above-referenced Article 2(1) of the ICESCR. In the present case, the petition alleges that the Carbon Majors' business activities have substantially impaired the people of the Philippines' right to an adequate standard of living.²⁵ The Philippines therefore has a duty to assess the impact of the mentioned business activities on human rights including on the rights to water, housing, food, sanitation, health and other rights, and may exercise that duty through a variety of means, including the work of the Commission.

The Philippines is also a State Party to the Convention on the Rights of the Child (CRC) and as such, has an obligation to safeguard the rights of children under its jurisdiction.²⁶ The Committee on the Rights of the Child has elaborated in some

²¹ *Id.*

²² *SERAP v. Federal Republic of Nigeria*, The Court of Justice of the Economic Community of West African States (ECOWAS), Judgment of 14 December 2012, N° ECW/CCJ/JUD/18/12.

²³ *Kalender v. Turkey*, No.4314/02, 15 December 2009, ECHR 2009.

²⁴ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993.

²⁵ See Petition "Statement of Facts," at 21 – 29 for specific examples.

²⁶ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol.

depth on State obligations under the CRC to regulate the private sector and business enterprises in its General Comment 16.²⁷ The Committee referred to the disadvantages children face in ensuring the enforcement of their rights found in the CRC against businesses' abuses: "...[T]he Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children's rights and **States must ensure they do so**"²⁸ (emphasis added).

Specifically in regards to Article 6²⁹ of the CRC, the Committee stressed that "[t]he activities and operations of business enterprises can impact on the realization of Article 6 in different ways. For example, environmental degradation and contamination arising from business activities can compromise children's rights to health, food security and access to safe drinking water and sanitation."³⁰ The Committee emphasized the importance of both preventative measures and monitoring the impact businesses have on the environment.³¹

The Carbon Majors' effects, as alleged, would not solely impact adults in the Philippines; rather, the effects would be felt by all persons. Children, an already vulnerable class with limited ability to enforce their rights, are especially susceptible to the effects of climate change. In keeping with its obligations found in the CRC and further expounded upon by the Committee in its General Comment Number 16, the Philippines has a duty to ensure the rights of children under its jurisdiction are protected.

The Committee to the CRC has drawn attention to the need to protect against abuses by business enterprises. In its observations on Chile, the Committee highlighted the "the lack of a national plan or general regulation on business and human rights that considers the impact of business on children's rights, and about the limited and ad hoc measures."³² Additionally, in its observations on Colombia,

1577, p. 3.

²⁷ UN Committee on the Rights of the Child (CRC), General comment No. 16 (2013): State obligations regarding the impact of the business sector on children's rights, 17 April 2013, CRC/C/GC/16.

²⁸ *Id.*

²⁹ The full text of Article 6 of the CRC reads as follows: "1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child." UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

³⁰ CRC, General Comment 16, *supra* note 27.

³¹ *Id.*

³² UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Chile*, 30 October 2015, CRC/C/CHL/CO/4-5 para 20.

the Committee commented on the lack of precautions taken by Colombia to protect children from business entities' abuses. The Committee recommended that Colombia take certain steps to ensure that it protects children under its jurisdiction in accordance with the CRC against abuses by business entities.³³

II. States in which a Business is domiciled, as well as States in which the Victims Reside have Obligations to Prevent a Business from Abusing or Impairing Human Rights

Extraterritorial obligations refer to the human rights obligations relating to the conduct of States within or beyond its territory that have effects on the enjoyment of human rights outside of that State's territory as well as obligations of a global character. There is wide-ranging recognition by international human rights treaty monitoring bodies and by courts recognizing that a State's human rights obligations may extend beyond its borders.³⁴ However, the various authorities on the existence of extraterritorial obligations do not excuse a State from its territorial obligations towards those within its borders. While the Carbon Majors' business activities occurred primarily outside the physical territory of the Philippines, the Petition alleges that the effects of these activities has a substantial impact on the rights of people in the Philippines. International law does not limit the obligation to prevent and remedy such abuses only to the State(s) in which the businesses are domiciled, or in which the victims reside. Rather, each State is obliged to take the necessary steps within its jurisdiction to address potential or actual abuses.

Guidance on the relevant States' extraterritorial obligations is provided by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, adopted in 2011 and elaborated through an extensive process over several years by 40 international law experts consisting of experts from universities and organizations located in all regions of the world as

³³ UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Colombia*, 6 March 2015, CRC/C/COL/CO/4-5, paras 17–18.

³⁴ The following cases highlight that obligations may extend extraterritorially: *Arrest Warrant of 11 April 2000*, 2002 I.C.J. 3, 76 para 46 (14 Feb.) (Higgins, Kooimans, & Buergenthal, opinions); *Military and Paramilitary Activities in and Against Nicaragua*, 1986 I.C.J. 14, 64, para 108; *The Corfu Channel Case (U.K. v. Alb.)* (Merits) 1949 I.C.J. 4, 22 (9 Apr.); *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, para 29 (8 July); *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14, 64, para 115 (27 June); *Communication No. 1539/2006 (Munaf v. Rom.)*, adopted 30 July 2009, U.N. GAOR, Hum. Rts. Comm., 96th Sess., Annex para 14.2, U.N. Doc. CCPR/C/96/D/1539/2006 (2009); *Ilascu and Others v. Moldova and Russia*, Appl. No. 48787/99, 2004 Eur. Ct. H.R., para 317, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61886>; *Case of Al-Skeini and Others v. The United Kingdom*, App. No. 55721/07, 2011 Eur. Ct. H.R., paras 138–39, available at <http://www.unhcr.org/refworld/pdfid/4e2545502.pdf>; *Victor Saldano v. Argentina*, Petition, Report No. 38/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 289 (1998), para 19; *Provisional Measures in the case of Georgia v. Russian Federation*, 2008, No. 35/2008, I.C.J. para 109 (15 Oct.); *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, 2005 I.C.J. 26 (19 Dec.); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I. C. J. 136, para 109 (9 July); *Coard et al. v United States*, Case 10.951, Inter-Am. Comm'n H.R., Report No. 109/99, para 37 (1999); *Trail Smelter Case (U.S. v. Can.)*, 3 R.I.A.A. 1905 (1941).

well as both then-serving contemporaneous and former members of international human rights treaty bodies, regional human rights bodies, and Special Rapporteurs of the United Nations Human Rights Council. The Maastricht Principles did not create new law, but rather draw from already existing laws and standards with a view to clarifying States' obligations in relation to their extraterritorial conduct.³⁵ While the Principles themselves are not legally binding, they interpret and restate pre-existing legally binding standards in international law.

As a general matter, Principle 4 indicates that “[e]ach State has the obligation to realize economic, social and cultural rights, for all persons within its territory, to the maximum of its ability ...”³⁶ Regarding the duty to protect from human rights abuses, Principle 25(a) of the Maastricht Principles indicates that: “States **must** adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: a) the harm or threat of harm originates **or occurs** on its territory... d) there is a reasonable link between the State concerned and the conduct it seeks to regulate” (emphasis added).³⁷ Principle 3 of the Maastricht Principles further states that “[a]ll States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially.”³⁸

In the present case, the Petition alleges that the activities of the Carbon Majors significantly contributed to the climate-related harms to human rights in the Philippines. The Petition further alleges that the Carbon Majors' activities contributed considerably to the amount of carbon dioxide and methane emissions, which in turn have had substantial and harmful environmental effects in the Philippines, including on human rights.³⁹ Should these allegations be substantiated, this clear link would be established between the Carbon Majors' activities and the human rights abuses that occurred in the Philippines is a straightforward example of when, as set out in Maastricht Principle 25(a) and (d), the Philippines can and should exercise jurisdiction. We note that a *prima facie* case exists for the exercise of jurisdiction, thus warranting further consideration by the Commission.

³⁵ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Preamble, available for example at http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

³⁶ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Human Rights Quarterly, Vol. 34, 2012, p. 1084, also available at http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 (accessed 11 November 2016).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Petition “Statement of Facts,” at 21 – 29.

Principle 37 of the Maastricht Principles states that “States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any state concerned must provide remedies to the victim.”⁴⁰ In the present situation, the Philippines is a location in which harm has occurred resulting from harmful conduct that was mostly carried out in other States. It is therefore one of the ‘concerned’ States that must provide remedies to victims in Philippines, in this case commencing by assessing the wrongful conduct concerned.

Furthermore, the Philippines’ obligations are not limited only to the exercise of its own jurisdiction. The commentary to Principle 4 states that even if a State is faced with conduct of other States that affects the realization of economic, social, and cultural rights within its territory—for example, if these other States permit environmental pollution—the State affected by such conduct is required to mitigate such interferences to the full extent that it is able to do so.⁴¹ The Philippines must therefore take concrete steps to press other States to implement their own obligations that would protect the rights of the people in the Philippines.

As described in Principle 26, the Philippines should influence non-state actors where it is in a position to do so to take measures towards the realization of human rights.⁴² Principle 26 states: “States that are in a position to influence the conduct of non-State actors even if they are not in a position to regulate such conduct, such as through their public procurement system or international diplomacy, should exercise such influence, in accordance with the Charter of the United Nations and general international law, in order to protect economic, social and cultural rights.”⁴³ In addition to its obligations flowing from its duty to protect people in its territory, the Philippines should take steps within its power to influence the conduct of non-State actors, including by providing information from its investigations regarding responsibility for human rights abuses alleged in the petition to all States that have the power to exercise jurisdiction over these actors and enforce judgements. As addressed in the Petition, the alleged abuses have wide-reaching effects that are felt not only in the Philippines. With this in mind, the Philippines must not only investigate the abuses within its own jurisdiction, but should request other States to do the same.

⁴⁰ Maastricht Principles, *supra* note 36.

⁴¹ Commentary to Maastricht Principles, Commentary to Principle 4, para. 2, *supra* note 4.

⁴² Maastricht Principles, *supra* note 36.

⁴³ *Id.*

III. Conclusion

International law requires the Philippines to respond when human rights abuses occur within its territory, including with respect to abuses caused by businesses located outside its territory. States in which a business actor is domiciled, as well as States in which the victims reside, have obligations to prevent that business from abusing human rights. The Philippines therefore has positive obligations to assess these abuses and determine responsibility. Based on the foregoing reasons, the Philippines, and through it the Commission, can and must exercise jurisdiction over the Carbon Majors. 🇵🇭