

Redress for Climate Change Impacts on Human Rights – Carbon Majors Example

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Climate Justice and Human Rights Petition in the Philippines

An investigation on the responsibility of 47 Fossil Fuel and Cement Companies for human rights violations or threats of violations resulting from the impacts of climate change

BRIEF DISCUSSION OF THE PETITION

Case No: CHR-NI-2016-0001

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

Petitioners: Greenpeace, Philippine Rural Reconstruction Movement, 12 other non-profit groups, 20 individuals [*supported by more than 132,000 people around the globe, 32,000+ of which are Filipinos, with help from Amnesty Int'l, BHRRC, UCS, ERI, CIEL, ITUC, Avaaz, CJP and WCELA*]

Respondents: Chevron, Exxon, Shell, BHP Billiton, and 43 other investor-owned coal, oil, gas, and cement transnational corporations

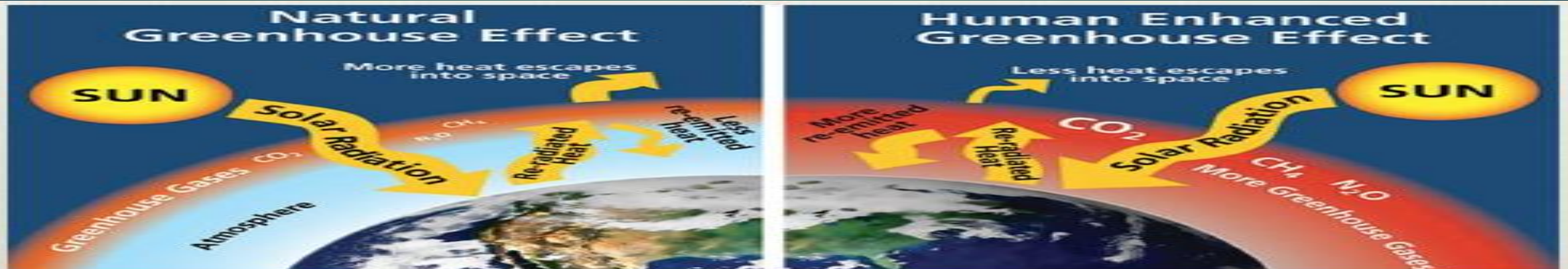


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FACTS



Source: Will Elder, National Park Service

The emissions from the products sold by the Carbon Majors contributed to the lion's share of GHGs that caused climate change – failed to act despite knowledge of harm

Climate change is a factor in extreme weather, sea level rise, others, and ocean acidification

That brought harms on top of, in addition to harms from natural disasters

That constitute human rights infringements

ISSUE

Whether or not the Respondent Carbon Majors must account for—being the largest corporate contributors of greenhouse gases emissions and having so far failed to curb those emissions despite the companies' knowledge of the harm caused, capacity to do so, and potential involvement in activities that have been or may be undermining climate science and action—the human rights implications of climate change and ocean acidification.

The Carbon Majors Study



Credit: Graphic from Climate Accountability Institute

POSITION



- ▶ The fossil fuel industry has a moral and legal obligation to prevent business activities from harming people and communities. The companies have responsibility to respect human rights. And this is not optional. It arises from a global standard of expected conduct.
- ▶ The industry knew about climate change half a century ago, yet continues to mine, drill and burn fossil fuels while those most vulnerable face the ever-increasing devastating impacts of climate change. But these communities have had enough and are rising up and reaching for a better future by challenging fossil fuels.
- ▶ The petitioners are part of a flourishing climate justice movement who are taking legal action to reclaim their lives and livelihoods and fighting on behalf of all of us for the right to a stable climate and healthy environment.

PRAYERS

1. Issue a finding of responsibility.
2. Recommend to policy makers to develop and adopt implementable standard for corporate reporting of human rights issues in CC context.
3. Further recommend effective accountability mechanism accessible by HR victims in the context of climate change.
4. Request Carbon Majors to submit plans on how to eliminate, remedy and prevent HR infringements in the context of CC.
5. Recommend that governments in the Philippines and other countries where Carbon Majors are domiciled fulfill the international duty of cooperation and ensure the Carbon Majors take steps to address the human rights implications of climate change.
6. Monitor people especially vulnerable communities to the impacts of climate change.

SUMMARY OF PLEADINGS/DOCUMENTS

| Pleadings/Communications from Respondents and Amicus Curiae Submissions | Number |
|---|--------|
| Responses/Answers or respondents' engagement to some degree to the Petition | 21 |
| Rejoinders | 7 |
| Amicus Curiae Briefs | 12 |

AMICUS CURIAE SUBMITTERS

- APF and GANHRI
- Client Earth
- Columbia University – Sabin Law Center
- Earth Rights International
- Environmental Law Alliance Worldwide
- Kevin E. Trenberth
- Maastricht Drafting Group – Olivier De Schutter; Asbjørn Eide; Ashfaq Khalfan; Rolf Künneemann; Jernej Letnar Čerňič; Marcos A. Orellana; Ian Seiderman and Bret Thiele
- Mary Robinson Foundation
- Our Children's Trust Foundation
- Plan B
- Sara L. Seck, Western University
- UNICEF

SUMMARY OF CHR PROCEEDINGS

(Timeline: 2015-2017)

22 SEPTEMBER 2015

Typhoon survivors & civil society groups ("Petitioners") file a Petition before the Philippine Commission on Human Rights (PCHR) 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)

DECEMBER 2015

PCHR declares an investigation will be launched based on the Petition

JANUARY - MARCH 2016

PCHR conducts its first phase of inquiry: a consultative process

MAY 2016

Petitioners file an Amended Petition to reflect political, legal, and other developments

JULY 2016

PCHR issues an order calling on respondent Carbon Major companies to submit their respective responses to the Petition within 45 days from receipt of the Order and the Petition

CLIMATE CHANGE & HUMAN RIGHTS: AN INVESTIGATION BY THE PHILIPPINE COMMISSION ON HUMAN RIGHTS

EMISSIONS FROM CARBON MAJOR COMPANIES AND FROM OTHER SOURCES

| | |
|----------------|-------|
| UNATTRIBUTED | 35.2% |
| NATION-STATES | 23.1% |
| INVESTOR-OWNED | 21.6% |
| STATE-OWNED | 20.1% |

OCTOBER - DECEMBER 2016

PCHR receives various amicus curiae briefs in support of the Petition

DECEMBER 2016

PCHR confirms that it will proceed with the inquiry

FEBRUARY 2017

Petitioners submit their Consolidated Reply in response to the answers filed by the respondent Carbon Major companies.

MAY 2017

PCHR receives Rejoinders/Answers from respondent Carbon Major companies and submissions from non-party experts

JULY 2017 ONWARDS...

PCHR conducts data-gathering, key informant interviews, focus group discussions, and community dialogues in select climate change-affected communities

*PCHR consults legal, policy, scientific, and other experts in a round table meeting

*Pre-hearing conference of parties

*Public hearings



SUMMARY OF PUBLIC HEARINGS

(Timeline: March 2018 – December 2018)

CHR PUBLIC HEARINGS/CONSULTATION CALENDAR FOR 2018

| DATE | DESCRIPTION | LOCATION |
|-----------------|---------------------|---|
| March 27-28 | 1st Public Hearing | CHR Session Hall, Quezon City |
| May 23-24 | 2nd Public Hearing | CHR Session Hall, Quezon City |
| August 29-30 | 3rd Public Hearing | CHR Session Hall, Quezon City |
| September 27-28 | 4th Inquiry Hearing | New York Bar Association (Continuing Legal Education Room) |
| November 6-7 | 5th Inquiry Hearing | London School of Economics |
| December 11-12 | 6th Public Hearing | CHR Session Hall, Quezon City |
| January 16-18 | Consultation | Amsterdam, Netherlands |

OVERVIEW OF THE PUBLIC HEARINGS/INQUIRY IN 2018

NUMBER OF HEARINGS

12 in total
(March to
December);

2 hearings per month

NUMBER OF WITNESSES

78 in total

26 Community Witnesses;
39 Expert Resource Persons (Petitioners)
13 Expert Resource Persons (CHR)

NUMBER OF EXHIBITS

239 in total

19 (December 2017); **32** (March 2018);
44 (May 2018); **49** (August 2018); **25**
(September 2018); **43** (November
2018); **27** (December 2018)

OVERVIEW OF MARCH 2018 PUBLIC HEARINGS

5 Community Witnesses

- Rica Cahilig, Felix "Ka Jhun" Pascua, Jr., Lisa Libao, Elma Reyes, and Ernesto Cruz

8 Expert Resource Persons

- Dr. Gerry Bagtasa, Dr. Peter Frumhoff, Ms. Rosalina De Guzman, Dr. Laura David, Dr. Perry Alino, Dr. Maria Lourdes San Diego-McGlone, Dr. Victorino Molina, and Ms. Lisa Anne Hamilton

SUMMARY

- **Community:** Concerns of young people, farmers, fish vendor, jeepney driver and the transport sector
- **Experts:** CC and ocean acidification and vulnerability of PH to these; CMs as source of carbon emissions; PAGASA findings in relation to CC; Health impacts; CIEL's Smoke and Fumes (FF Industry's knowledge; Climate deception)

OVERVIEW OF MAY 2018 PUBLIC HEARINGS

7 Community Witnesses

- Pablo Rosales, Jonathan delos Reyes, Noli Abinales, Pablo Taon III, Francia Encinas, Isagani Molina, and RJ de Ramos

6 Expert Resource Persons

- Carroll Muffett, Michael Addo, Usec. Segfredo Serrano, Dr. Vincent Hilomen, Dr. Marcos Orellana, and Dr. Mudjekeewis Santos

SUMMARY

- **Community:** Concerns of fishermen, consignment (fish), and urban poor victims of typhoon Ondoy (Ketsana) in Marikina
- **Experts:** CIEL's Smoke and Fumes (Liability/accountability of CMs from 1957 up to present); legal framework of HR responsibility of transnational corporations (CMs); analysis of Inter-American Court of HR's opinion on healthy environment; and CC impacts on agricultural sector, fish and seaweed supplies, reef ecology, and food chain supply (PH's food security)

OVERVIEW OF AUGUST 2018 PUBLIC HEARINGS

6 Community Witnesses

- Arthur S. Golong, Elicer G. Lauce, Delia A. Tulagan, Buucan Hangdaan, Dalia Nalliw, and William Mamanglo

8 Expert Resource Persons

- Dr. Rosa Perez, Dr. Celine Vicente, Richard Heede, Dr. Geoffrey Supran, Carroll Muffett, Dr. Neil Aldrin Mallari, Dr. Jonathan Moses Jadloc, Glenn Stuart Hodes, and Sophie Marjanac

SUMMARY

- **Community:** Concerns of a transgender survivor of super typhoon Yolanda (Haiyan) and how CC compounded gender-based discrimination; concerns of fisher folks and farmers in Capalonga, Camarines Norte; CC impacts on rice terraces in Banawe (including culture)
- **Experts:** Recent climate scenarios; CC impacts on children; CMs responsibility on CC; Exxon and Shell's climate deception; Oil industry conduct and international norms and standards; PH's biodiversity's vulnerability to CC; CC's health impacts and pathophysiology of heat stress, air pollution, and zika virus; valuing cc impacts, financial policies (closing gaps), CC as risk multiplier for agricultural livelihoods; extreme weather attribution science and climate litigation

OVERVIEW OF SEPTEMBER 2018 INQUIRY HEARINGS

3 Community Witnesses

- Marinel S. Ubaldo, Cristina Cocadiz, and Candice Sering

4 Expert Resource Persons

- Katherine Lofts, Kert Davies, Sharon Eubanks, and Brenda Ekwurzel

SUMMARY

- **Community:** Concerns of youth survivors of super typhoon Yolanda (Haiyan) and hurricane Sandy and how their CC impacted their HR
- **Experts:** ESCR and CC; CC as threat multiplier; FFs and trade associations and industry's climate deception; tobacco case's relation to climate deception of FFs; attribution science (CMs as culprit)

CHR's RESOURCE PERSONS

September 2018 Hearings (New York)

6 Expert Resource Persons

| Name | Designation |
|------------------------|--|
| Prof. David Estrin | Certified Environmental Law Specialist Distinguished Adjunct Professor Osgoode Hall Law School, York University Co-Chair Climate Change Justice and Human Rights Task Force International Bar Association |
| Prof. Cynthia Williams | Osler Chair in Business Law Osgoode Hall Law School, York University |
| Dr. James E. Hansen | Director of Climate Science, Awareness and Solutions Program Earth Institute, Columbia University |
| Prof. Erin Daly | Professor of Law, Delaware Law School Co-Founder, Dignity Rights Project Director, Global Network for HR and Environment Adjunct Professor of Law and Dignity Rights, Pakistan College of Law Vice President, Institutional Development Universite de la Fondation Dr. Aristide |
| Prof. Radley Horton | Lamont Associate Research Professor Lamont-Doherty Earth Observatory, Columbia University |
| Daniel Zarrilli | One NYC Director Chief Climate Policy Advisor, New York City Office of the Mayor |

OVERVIEW OF NOVEMBER 2018 INQUIRY HEARINGS

2 Community Witnesses

- Mariel Trixie Bacason and Veronica Cabe

7 Expert Resource Persons

Mark Campanale, Andrew Grant, Henry Shue, Dr. Roda Verheyen, Dr. Dylan Tanner, Dr. Myles Allen, and Dr. Paul Ekins OBE

SUMMARY

- **Community:** Concerns of typhoon survivors and youth who was displaced because of super typhoon Yolanda (Haiyan)
- **Experts:** How much CO₂ were released in the atmosphere and whether supply options of CMs are aligned with demand levels consistent with various scenarios of carbon constraint; ethical aspect of the issue on CMs and CC; Climate litigation cases and their relevance to the inquiry; European corporate influence on climate policy and action; attribution science of CC (modelling) and assessing these changes to future climate simulations; and geographical of unused FF (2C)

CHR's RESOURCE PERSONS

November 2018 Hearings (London)

7 Expert Resource Persons

| Name | Designation |
|--|---|
| Ms. Joni Pegram | Senior Climate Change Policy & Advocacy Adviser Unicef UK |
| Mr. Adam Matthews | Co-Chair Transition Pathway Initiative (TPI) Director Ethics & Engagement at the Church of England Pensions Board |
| Dr. Jaap Spier | Professor of Law and Global Challenges University of Amsterdam |
| Ms. Lene Wendland and Mr. Ben Schachter (via phone patch) | Advisers on Business and Human Rights UN Office of the High Commissioner for Human Rights |
| Dr. Swenja Surminski | Head of Adaptation Research Grantham Research Institute on Climate Change and the Environment London School of Economics |
| Ms. Linda Siegele | Senior Teaching Fellow Climate Change Law & Policy SOAS University of London |

OVERVIEW OF DECEMBER 2018 PUBLIC HEARINGS

3 Community Witnesses

- Amalia Bahian, Monica Piquero Tan, and Honeylyn Gonzales

6 Expert Resource Persons

- Mr. Kumi Naidoo, Ms. Laura Gyte, Dr. Glenn Roy Paraso, Ms. Loretta Ann "Etta" Rosales, Mr. Naderev "Yeb" Sano, and Margaretha Wewerinke-Singh

SUMMARY

- **Community:** Concerns of typhoon survivors (mother and youth) who lost loved ones due to tropical storm Sendong (Washi) and DRR officer who experienced super typhoon Yolanda (Haiyan) and how Camotes Island (Cebu) achieved zero casualty
- **Experts:** HR responsibilities in relation to CC; CHR's role in this global issue; just transition and corporate requirements (CMs) to ensure that they act responsibly in relation to CC; health impacts of CC and development of health adaptation strategy in relation to CC; HR and gender lens (narrative of CMs); gaps in climate policy (CCC); Climate Compensation Act and principles of liability for large-scale greenhouse gas emitters

WHERE WE ARE RIGHT NOW



- Petitioners have submitted their Memorandum last September 19, 2019.
- The CHR is expected to come out with a Resolution by December 2019.

SOME INSIGHTS



- ▶ Role of National Human Rights Institutions (NHRIs) in investigating human rights impacts of CC
- ▶ Administrative remedies and inquiries can provide us with evidence for future legal actions
- ▶ Value of our networks (Environmental Law Alliance Worldwide [ELAW], Greenpeace and other networks on climate justice) in securing experts, studies, jurisprudence and other valuable information
- ▶ Contribution to the global movement on climate justice

Insights

- ▶ *“For communities affected by the climate crisis, the outcome is a significant step towards getting the justice we truly deserve.” - Joanna Sustento, Supertyphoon Haiyan survivor, Tacloban City*

Credits and References

- ▶ Slide credits to Greenpeace (GP) lawyers Hasminah Paudac, Kristin Casper; Greenpeace campaigner Desiree Llanos and other GP staff
- ▶ Press Release link here:
- ▶ <https://www.greenpeace.org/philippines/press/3374/worlds-first-climate-change-and-human-rights-liability-inquiry-nears-closure/>
- ▶ ANC Dateline interview on CHR inquiry and memo filing: [PH groups call for climate justice, urgent action on global climate crisis | Dateline Philippines](#)
- ▶ Media Library - [News Clipreel link](#)
- ▶ [Facebook Live - September 19 Filing](#)

Other References

List of Important Documents and Other Relevant Links:

1. All documents relating to the National Inquiry:

<https://www.greenpeace.org/philippines/press/1237/the-climate-change-andhuman-rights-petition/>

2. Joint Summary of the Amicus Curiae Briefs to the Philippine Commission on Human Rights:

<http://www.ciel.org/reports/philippines-joint-amicus/>

3. Environmental Science for Social Change's Portal on National Inquiry on Climate Change: <http://essc.org.ph/content/nicc/>

4. Official Transcript of Stenographic Notes of the National Inquiry: <http://chr.gov.ph/nicc-resources/>