THE CARBON MAJORS INQUIRY STUDENT COMPETITION

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RECOMMENDATIONS

As a result of the Philippine Human Rights Commission's findings in its *Carbon Majors Inquiry*, the Commission encourages the Government of the Philippines to recognize the climate change related human rights violations on the Filipino people. In Part I, the Commission recommends global initiatives. Part II contains recommendations for domestic action.

PART I: GLOBAL INITIATIVES

We recommend the Government leverage the *Inquiry*'s significant international attention to advocate for corporate transparency, a compensation schemes for victims, and limiting further exploitation of fossil fuel reserves by Carbon Majors.

1) Transparency

The importance of corporate transparency cannot be overstated. Access to information allows people to understand how their rights may have been violated and provides them with a basis for defense. In requiring full transparency from Carbon Majors and urging other states to cooperate, the Government should:

1. Call on other states to implement the Extractive Industries Transparency Initiative.[1]
2. Call on Carbon Majors to publically disclose GHG emissions from their activities and products,[2] and to communicate climate risks resulting from continued use of their products to the public, shareholders, and policymakers.[3]
3. Call on Carbon Majors to disclose their vulnerability to climate change by either:
    a. Adopting the Task Force on Climate-Related Financial Disclosures' recommendations on financial disclosure, including incorporating a climate scenario analysis of the well below 2°C temperature goal,[4] or

[1] Extractive Industries Transparency Initiative, online: < https://eiti.org/>
[2] Expert Group on Climate Obligations of Enterprises, *Principles on Climate Obligations of Enterprises*, (Netherlands: Eleven International Publishing, 2018) at 7.
[3] Peter Frumhoff, Richard Heede, & Naomi Oreskes, "The climate responsibilities of industrial carbon producers" (2015) 132:2 Climatic Change 157.

b. Adopting the Expert Group on Climate Obligations of Enterprises' recommendations to disclose in a publically accessible way: the vulnerability of its facilities to climate change, the financial effect that climate change is likely to have on the enterprise, the enterprise's actions to increase its resilience to climate change, the technically and financially feasible options available to reduce GHG emissions, and stranded fossil fuel assets consistent with the well below 2°C temperature goal.[5]

2) Compensation Schemes

The societal and financial costs associated with climate change are now unavoidable. In many circumstances, the adverse effects will surpass the point at which they could have been addressed through mitigation and adaptation.[6] The Philippines has an opportunity to become a global leader by encouraging the implementation of a comprehensive mechanism for loss and damage compensation by urging other states to:

4. Establish an international tribunal to adjudicate climate-based claims.[7]
5. Ensure that compensation is based on proportionate liability,[8] and awards are granted on the basis of contributory causation,[9] in line with Heede's findings.[10]
6. Develop a global scheme that taxes Carbon Majors, funding compensation for loss and damage.

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[4] Task Force on Climate-Related Financial Disclosures, "Recommendations of the Task Force on Climate-related Financial Disclosures" (June 2017), online: <https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-2017-TCFD-Report-11052018.pdf>.
[5] Expert Group on Climate Obligations of Enterprises, Principles on Climate Obligations of Enterprises, (Netherlands: Eleven International Publishing, 2018) at 23.
[6] See, e.g., "Warsaw International Mechanism for Loss and Damage | UNFCCC", (2019), online: *Unfcccint* <https://unfccc.int/topics/adaptation-and-resilience/workstreams/loss-and-damage-ld/warsaw-international-mechanism-for-loss-and-damage>.
[7] Michael Faure & Andre Nollkaemper, "International Liability as an Instrument to Prevent and Compensate for Climate Change," (2008) 43:1 Stan J Intl L.
[8] *Ibid.*
[9] See *Lliuya v RWE AG*, [2015] 2 O 285/15 (Appealed) [*Lliuya*].
[10] Richard Heede, "Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854-2010," (2013) 122:1-2 Climatic Change 234.

7. Develop an international insurance scheme that collaborates with vulnerable states and insurers.[11]
8. Consider the implementation of regional insurance schemes as another possible mechanism for uniting and protecting vulnerable states.[12]

3) Ending Fossil Fuel Extraction

Recent estimates state that a third of oil reserves globally, half of gas reserves and over 80 percent of coal reserves must stay in the ground to meet the target of well below 2ºC degrees.[13] The established link between climate change and human rights means that if Carbon Majors choose to ignore their contributions to climate change, they are also choosing to ignore human rights violations. Various policies including economic incentives, such as carbon-taxing, have potential to affect the profitability of Carbon Majors and to facilitate a shift in the investment in fossil fuels to alternative energy.[14] However, the necessary shift will be more attainable with the assistance rather than resistance of Carbon Majors.[15] Thus, the Government should call upon the Carbon Majors to:

9. Acknowledge the link between climate change and human rights, along with the specific findings of the inquiry.
10. Assess their reserves to determine what must be kept in the ground to limit global warming well below 2°C.[16]
11. Cease exploration and extraction of new and non-conventional fossil fuel reserves.
12. Accelerate their transition away from fossil fuels to clean energy.[17]

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[11] See, e.g., "Climate change & climate protection | Munich Re," (2019), online: <https://www.munichre.com/en/group/focus/climate-change/index.html>.
[12] See, e.g., "Strategic Objectives | CCRIF SPC", (2019), online: *Ccriforg*<https://www.ccrif.org/content/aboutus/strategic-objectives>.
[13] Christopher McGlade & Paul Elkins, "The geographical distribution of fossil fuels unused when limiting global warming to 2°C," (2015) 517 Nature 187 at 187.
[14] Expert Group on Climate Obligations of Enterprises, *Principles on Climate Obligations of Enterprises*, (Netherlands: Eleven International Publishing, 2018) at 191.
[15] Historically Carbon Majors have actively denied the reality of climate change and worked to ensure fossil fuels remained as a relevant form of energy production see Frumhoff et al, *supra* note 3 at 163.
[16] As suggested in Principle 23, s*upra* note 2.

PART II: DOMESTIC INITIATIVES

In fulfilling its international conventional human rights obligations, the Government should consider how its national laws implement international law[18] and reflect the Philippines constitutional commitments to health, subsistence, nature, and the family.[19] In light of the *Inquiry*'s results and knowing the world is watching its response, the Government should:

13. Consider[20] that the timing may be right[21] to pursue a claim in the International Court of Justice against states that fail to prevent environmental harm in the Philippines or that fail to cooperate to protect human rights by owning or funding Carbon Majors.[22] This claim could be based in conventional obligations,[23] international customary law,[24] or on behalf of Filipino citizens who have exhausted remedies in those states.[25] It could be undertaken alone, with other states of the Climate Vulnerable Forum, Vulnerable 20 (V20) bloc, or other groups such as Alliance of Small Island States.
14. Implement a Polluter Pays[26] principle by:
    a. Developing legislation[27] requiring any Carbon Major operating within the Philippines to assist in funding The People's Survival Fund and initiatives arising from its

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[17] Frumhoff et al, *supra* note 3.
[18] As required by *Constitution of the Republic of the Philippines 1987*, Article VII(21) and Article XIII(18)(7).
[19] *Constitution of the Republic of the Philippines 1987*, Article III(14-16), Article XV(1), Article XIII(4-7).
[20] For positive and negative considerations of a claim, see for example: Daniel Bodansky, "The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections," (2017) 49 Ariz St L J 690.
[21] The ICJ rendered its first decision on compensation for environmental damage in 2018 in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)*, [2015] ICJ Rep 665.
[22] E.g., Saudi Aramco may be the world's most profitable company, netting $33.8 billion in six months of 2017, Julie-Anne Richards, David Hillman, & Laurey Boughey, "The Climate Damages Tax: A Guide to What it is and How it Works," (United Kingdom: Stamp Out Poverty, 2018) at 7.
[23] E.g., *International Covenant on Economic, Social and Cultural Rights*, 16 Dec 1996, 933 UNTS 3 (entered into force Jan 1976), Article 2.
[24] "The Harm Principle," *Trail Smelter Arbitration (United States v Canada),* [1941] 3 RIAA 1905.
[25] International Law Commission, *Draft Articles on Diplomatic Protection*, 2006, UNGAOR, 61st Sess, Supp 10 (2006) UN doc A/61/10, Article 14.
[26] UNCED, Rio Declaration on Environment and Development, UN Doc A/CONF.151/26 (June 1992), Principle 16.
[27] See, e.g., Richards et al., *supra* note 22.

National Adaptation Plan and National Disaster Risk Reduction and Management Plan.

b. Ensure class action laws do not discourage access to compensation from the ten subsidiaries of Carbon Majors present in the Philippines and open discussions with advocates.[28]

15. Publicly endorse the United Nations' draft instrument binding transnational corporations to protect human rights.[29]

16. Publicly highlight the due care[30] it has taken in its climate policy by creating its Climate Change Commission, chairing the Climate Vulnerable Forum (CVF), encouraging loss and damage to be defined as more than adaptation, launching the V20 bloc, and endorsing the state of Palau to the CVF.

17. Continue to lead the way in achieving the standards of the Extractive Industries Transparency Initiative.

18. Continue efforts to expand public information, education and discussions about the impacts of climate change, loss and damage, disaster preparedness, response and relief, mitigation and adaptation actions that can be taken up by the public.

19. Continue mitigation efforts to the best of its ability,[31] illustrating to its nationals that it is taking steps towards net zero carbon.

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[28] E.g., work with advocates working on claims such as *Lliuya*, *supra* note 7.
[29] UNOHCHR, "Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises," IGWG Zero Draft, online: <https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx>. See also: Bonita Meyersfeld, "To Bind or Not to Bind," (April 2014), online: < https://www.business-humanrights.org/sites/default/files/media/documents/a_new_treaty.pdf>.
[30] As claimed in *Urgenda Foundation v the State of the Netherlands*, [2015] HA ZA 13-1396 (The Hague).
[31] In 2016 this was reflected by an 11/89% split between mitigation and adaptation: Climate Change Commission (Philippines), "The Philippine National Adaptation Priorities," online: <https://unfccc.int/sites/default/files/resource/presentation_Item%20V.11%20Philippines%20NAP%20Process.pdf>