

CLOSING STATEMENT FOR THE PETITIONERS¹

12 December 2018

Delivered at the Commission on Human Rights Session Hall

Magandang hapon sa inyong lahat. Good afternoon to everyone who are here and those watching us live online. To the Honorable Commissioners, a pleasant afternoon.

This week, as the world celebrates the 70th birthday of the Universal Declaration of Human Rights, that milestone in our evolution as a human family, we also arrive at the end of these public hearings for what has been a **first in the world**, a national inquiry into the responsibility of major fossil fuel and cement companies -- respondent Carbon Majors -- for climate change and ocean acidification and the impacts on the human rights of Filipinos. We have travelled together on an extraordinary journey this year, learned a great deal from experts in the fields of science, policy, the law, and from the stories of Filipinos, from here and abroad, who experienced, continue to experience, or are threatened by the impacts of climate change firsthand. They have helped to move this, sometimes, abstract concept of human rights out of its legal frame and invited us to view its meaning in the setting of everyday life. Please allow me to take you back.

A young indigenous woman of the Aeta-Ambala [Rica Cahilig] shared with us her fear of losing cultural traditions of her people because of forests, springs, and lands that can no longer provide the food and medicine they have always relied on. She told us about her father, a farmer unable to bear the extreme heat, forced to work shorter hours, and reduced income which made day-to-day survival even harder.

A rice farmer [Felix "Kha Jhun" Pascua] invited us to see in a grain of rice the symbol of a dream, a hope, and a dying family legacy, a now wretched livelihood. He illuminated the tragic irony of farmers -- those who feed this country -- going without enough to eat, dragged deeper into poverty and debt to regenerate their fields after typhoons drown the crops, only to worry about the drought that may come later. He laid bare for us the ingredients of life that climate change is taking away: food to eat, land to till, a home to live in. *Nag-uulyanin na ang panahon.* "The weather is getting more senile," he said, and farmers at its mercy.

A leader from the LGBTQIA community in Tacloban [Arthur Golong] helped us to understand how what may appear to be simple, everyday luxuries for many of us like a refrigerator, represented to her a dream, conjured by years of sacrifice,

¹ Orally presented on 12 December 2018; updated and corrected with footnotes on 13 December 2018.

determination, and hard work— only to be washed away in the hungry storm surge of typhoon Yolanda (internationally known as Haiyan). The same super typhoon displaced a youth survivor [Marielle Bacason] who was forced to stand up for her family at a young age and work overseas, enduring loneliness, just to help provide food on the table.

Far away from the countryside, we also heard about how climate change impacts people's lives in the cities. A surgeon who temporarily and frighteningly lost the use of her hands after infection from an unheard of mosquito-borne disease after a typhoon. The jeepney driver who reaches for his bottle of water, already forced by the extreme heat to work shorter hours and stretch a smaller income. The way extreme heat and air pollution stress the human body beyond its ability to cope.

And we have heard too many stories from all over the country, just like yesterday and today from Amalia Baihan and Honeylyn Gonzales, of those who have lost their children, parents, brothers and sisters, friends, and neighbors they love to ever fiercer typhoons and tropical cyclones, the shadows of which continue to steal their peace of mind long after their loved ones have been laid to rest and life returns to some semblance of normal. **They have prompted us to ask, is this the kind of life our children and their children will lead— living in the shadow of fear and want?**

You might have noticed that what they want most from life is not riches or fame; they want what we all want: to feel safe, to have enough to eat, medicine when they are sick, a home to lay their heads down every night, to have work, to get an education, to send their children to school so they might enjoy better lives, to pass their culture down to the next generation, to realize a dream. Freedom from fear, freedom from want— dignity. **In reality, these are basic human rights, so basic that we cannot help but question why they seem to be elusive, a far-fetched dream to many Filipinos?**

Some would call these hardships a tragedy. Just “the way it is,” the hand of destiny, the cards some are dealt. A favorite narrative of some Carbon Majors is that “everyone is responsible for climate change.” But to take that view would be to ignore big, inconvenient questions that loom around it: the responsibilities and obligations of those who have a hand in dealing those cards. It would be easy to dismiss these as too hard and impossible to answer. **But the petitioners are boldly asking these questions. They are asking who is responsible— legally and morally.**

It is important to remember that these stories of indignity piled upon injustice were the result of conscious decisions and decisions not to act by the Carbon Majors. At some point, a few people in positions of power, effectively decided it

would be acceptable to continue producing, burning, marketing, selling, and profiting from products that would cause harm to untold millions of people, for the present, and for generations to come. Decisions made over and over again in defiance of science, of the law, and of conscience. We've heard what the human cost of those decisions can look like.

The thing about great power is it comes with great responsibility. **Through this historic investigation, the Commission sought to answer some of the biggest, compelling, and most urgent scientific and legal questions of our time: Are the activities of the respondent Carbon Majors and the fossil fuel industry as a whole linked to the harms Filipinos experienced, are experiencing, and will continue to experience? Did the Carbon majors see these harms coming? Could they have avoided or reduced the harms? What can this Commission do about it? What can the Carbon Majors do about it now?**

Let's take the first Question: Are the activities of the respondent Carbon Majors and the fossil fuel industry as a whole linked to the harms Filipinos experienced, are experiencing, and will continue to experience?

The answer is a resounding yes. We learned about the groundbreaking research into the historical production of fossil fuels that identified a group of entities, including investor-owned companies -- the respondent Carbon Majors -- whose contributions to the climate crisis are **identifiable, measurable, and significant**. You may be familiar with many of these names on that list: ExxonMobil, Shell, BP, Chevron, Total, BHP Billiton, and Suncor. They are the largest corporate contributors of greenhouse gas emissions that have caused, that are causing, and will continue to cause climate change. And they have the largest responsibility and the greatest ability to act with the urgency needed. **There is no other industry in the world that could have the greatest impact on steering the fate of our country, our way of life, well-being, our future prosperity.**

Until recently, it was hard to distinguish the fingerprint of climate change in a way that would allow scientists to say with confidence that "this drought" or "that storm" bears the mark of climate change or was more likely to happen. **But now, with event attribution science, we can now detect the fingerprint of climate change on these events. It's becoming clearer that what we once called "natural" disasters are anything but natural.**

Why is this important for us? Well, better science means more communities and individuals like those we heard from can better understand and prove the human rights harms they experienced and are experiencing in their day-to-day lives are connected to climate impacts. **But simply understanding why a thing is happening is not enough. We have to ask, who is responsible?**

Scientists are even beginning to quantify the Carbon Majors' contributions to specific climate impacts, to individual extreme weather events. As the largest contributors of greenhouse gas emissions that cause climate change, the science is telling us that the activities of the Carbon Majors and those of the fossil fuel industry as a whole are linked to the human rights harms Filipinos are experiencing.

But did the Carbon Majors know about these risks and harms, did they see this coming?

The answer is, again, a reverberating yes. When did they see it coming? They have known for **60 years or more**. We learned that the Carbon Majors were aware of the climate risks, and the social and economic impacts associated with their businesses as early as **1954**.² In fact, ExxonMobil (when it was known as Humble Oil) was also leading some of the world's earliest scientific research into climate change, publishing research that acknowledged the link between fossil fuels and atmospheric carbon dioxide as early as 1957.³ So, not only did they know, **they were among the first to know**. What's even more telling is that the industry was even coordinating and sharing that research among themselves.

But what did the companies do about this scientific knowledge they possessed? Did the Carbon Majors have an opportunity to avoid or reduce the climate risks posed to the Filipino people?

The answer is an unqualified yes. Respondent companies were uniquely placed with the knowledge, capacity, and skills to contribute to avoiding or minimizing the harms, and or threat of harms, being suffered by Filipinos. If the adage held, "Do the best you can until you know better. Then when you know better, do better," do you think there might have been a moment over the past six decades where they could have summoned and shared their knowledge and power, and helped steer our economies and the climate system onto a safer track?

² Benjamin Franta, "Early Oil Industry Knowledge of CO₂ and Global Warming" (2018) 7 Nature Climate Change 1024, available at https://www.nature.com/articles/s41558-018-0349-9.epdf?shared_access_token=pjazh7DpLvTpHzKC6tJnR9Rgn0jAjWei9jnR3ZoTv0P4fU1pUb7k0a5LnOE5ZS6C6a7RZ3NHKtxGsOdgHHB-ijjdyckMqNGCt7v20UfBSfXn7urJhqpbNkOrEEg4cBKI28toRgrdYqY_8QwJXcMn236XXSYtNusiXyHqN b8nuU%3D, last accessed on 12 December 2018.

³ Roger Revelle & Hans E. Suess, "Carbon Dioxide Exchange Between Atmosphere and Ocean and the Question of an Increase of Atmospheric CO₂ during the Past Decades" (1957) 9 TELLUS 18, available at <http://www.tandfonline.com/doi/pdf/10.3402/tellusa.v9i1.9075?needAccess=true>, last accessed on 12 December 2018.

What did the companies do instead of making the morally and legally responsible actions to warn the public and address the climate pollution from their products?

Unfortunately, we know now how the story went instead. Over decades and even today, Carbon Majors like Shell and ExxonMobil choose to wage a war on climate science and climate action. For [nearly] 3 decades, they've invested in a broad, deep, expensive, and sophisticated public campaign of deception, denial, and delay in an attempt to sow doubt in climate science and undermine meaningful action—a legacy we are living with today.⁴ They penetrated into the halls of academia and the US Congress, they sat at the tables of international fora, stifled renewable energy technologies, covered pages of elite media, even while inside their own halls, they were quietly using climate change projections into their operations. **They were careful to protect their own infrastructure from rising seas, but chose to leave the most vulnerable people exposed to the impacts of unabated warming.** Why? To protect their profits— although, they might say it was all for our prosperity so we could live modern lives. More of their favorite narratives. They chose to pit profit against human rights like this was the only choice on the table.

Imagine if Shell and other Carbon Majors had chosen another path when it started researching and understanding the risks climate change posed to human beings and the planet in the 1950s, 1960s, 1970s, 1980s, 1990s, or even in 2000. What if they instead shared it with innovators, collaborated with governments to take meaningful, urgent, and effective action on the risks and harms they had identified? How many lives could have been spared? How many people could have avoided the kinds of indignities and loss we heard about from our witnesses if different decisions were made?

What are they doing about it today, now that they know better?

Well, actions speak louder than words -- and **they are saying a lot these days, but not doing better, and certainly not enough.** Their investments in renewable energy are measly at best. Carbon Majors like Exxon and Shell continue to invest in developing new dirty projects like in the Patagonia,⁵ as if there is no end in sight to fossil fuel production. Shell tells its investors oil and gas

⁴ See e.g. Union of Concerned Scientists, "*The Climate Deception Dossiers*" (2015), available at <https://www.ucsusa.org/global-warming/fight-misinformation/climate-deception-dossiers-fossil-fuel-industry-memos#.XBFktBNKj-Y>, last accessed on 12 December 2018.

⁵ Brian Walzel, "Producers Set Sights on Vaca Muerta" *E&P Hart Energy* (11 April 2018), available at <https://www.epmag.com/producers-set-sights-vaca-muerta-1690866>, last accessed on 12 December 2018.

consumption will at least continue at the same level for decades to come.⁶ Shell recently announced it would set carbon footprint targets.⁷ But these are all just words because at the end of the time, the company continues to spend on fossil fuels and ignore the risks facing communities.

ExxonMobil is planning for the “the dominance of oil and gas in the energy and transportation sectors” and [it] is “skeptical that policy will actually achieve a 2°C scenario; it anticipates a 2.4°C scenario instead.”⁸ **As if they can play God and negotiate with air and water.... What planet are they living on?**

Here is what we know for sure: **Mother Nature is a notoriously bad negotiator.** She does not suffer fools gladly. And sadly, the respondents appear to be living in a world of fantasy where they can bargain with the laws of physics and chemistry as they may over pipeline contracts. These companies are not doing what is necessary to prepare for a zero carbon economy, but seem to want to loot the ship even as it burns. **Should we allow these companies to play dice with our children's futures, in blatant disregard of human rights law?**

They are yet to realize that the real art of this deal is walking away with a livable planet *for all*. That means the drilling, the burning, the smoke and fumes, and the delay have to end. The Carbon Majors must meaningfully align their business models with the 1.5°C limit of the Paris Agreement and integrate climate change considerations in their policies and practices, including their human rights due diligence processes in order to protect communities. **Because, at the end of the day and according to our Constitution, everyone has the right to life and that right is to live a good life.**

What can/must the Carbon Majors do about it? How do we hold them accountable?

This is why we initiated this petition. Because States are not the only ones who must abide by human right principles, standards, and laws. The respondent Carbon Majors, according to UN Guiding Principles on Business and Human Rights,

⁶ Shell, “<https://www.shell.com/energy-and-innovation/the-energy-future/scenarios/shell-scenario-sky.html>,” last accessed 12 December 2018.

⁷ Letter from Ben Van Beurden to Patricia Espinosa (28 November 2018), available at <https://unfccc.int/sites/default/files/resource/Van%20Beurden%20Letter%20to%20Espinosa.pdf>, last accessed at 12 December 2018.

⁸ Justin Gundlach, “‘2°C’ Reports by Fossil Fuel Companies and Utilities: A Brief Survey” *Sabin Center for Climate Change Law* (19 March 2018), available at <http://blogs.law.columbia.edu/climatechange/2018/03/19/2c-reports-by-fossil-fuel-companies-and-utilities-a-brief-survey/>, last accessed at 12 December 2018. [The oral presentation inadvertently attributed this quote to Exxon, rather than the correct source, the Sabin Center for Climate Change Law.]

have a responsibility to respect human rights -- including human rights harms resulting from climate change. **And this responsibility is not optional. It arises from a global standard of expected conduct.**

Throughout this inquiry, substantial -- if not overwhelming -- evidence have been provided to prove the Carbon Majors are in breach of their corporate obligations to respect the rights of the Filipino people, and the fundamental tenets of responsibility underlying the laws of tort in common law jurisdictions, of "non-contractual obligations" in civil law countries.

The respondent **Carbon Majors** are violating the human rights of Filipinos and the Commission has firm grounds to stand on for issuing recommendations that the respondent companies, including their directors and officers, meaningfully align business models with keeping global temperature rise to 1.5°C, to do their part to avert the worst impacts of climate change, and that they submit their plans on how any human rights violations or threats of violation resulting from the impacts of climate change will be eliminated, remedied, or prevented in the future.

To **policy and law makers**, the Commission may recommend that they develop and adopt effective accountability mechanisms that can be easily accessed by those whose rights under threat or have been violated.

To **governments**, including the Philippines and other countries where the investor-owned Carbon Majors are domiciled and/or operating, the Commission may recommend that they strengthen or explore new ways to fulfill the international duty of cooperation to ensure the Carbon Majors take immediate steps to address the human rights implications of climate change.

This historic national inquiry has amassed one of the largest collections of evidence on climate change, corporate responsibility, and human rights. The Commission can do the world a service and make this collection public for use by other National Human Rights Institutions, communities, and even corporations that are working to address the human rights implications of climate change.

Seventy years ago when the Universal Declaration was born, it captured a broken but healing world's imagination with its dauntless hope of saving future generations from "the scourge of war and untold sorrow."

The petitioners plant themselves at the same gates of hope, shoulder to shoulder with others around the globe who are drawing a line in the sand. From the youth in Canada and Columbia to crab fishermen in California, more and more people are standing up for their rights against some Carbon Majors. Filipino cities and municipalities experiencing climate impacts have issued resolutions in

support of this investigation. We have Tacloban City; Palo, Leyte; Capalonga, Camarines Norte; Marawi City; and, recently, Baguio City.

The Commission is in good company for leading with courage. Stories and the quest for justice go hand in hand: if injustice is not given voice, it cannot be healed. And if telling your story as our witnesses have done, is in itself a choice about how to use the power you hold, choosing to listen is also a choice about how to use one's power. In holding spaces for these stories to be heard and the faces to be seen; in taking an inclusive, creative, and global approach, grounded in the local threats faced by Filipinos, the Commission has chosen to host an unprecedented global dialogue about climate change, human rights, who is responsible, and what climate justice solutions are possible.

At the end of the day, our vision for a more beautiful tomorrow is simple: it is one where we bring the law ever closer to justice in protecting human dignity. Because at the end of the day, human rights are experienced very personally: farmer without land, fisherman without catch, children without school books, mother without home. It is a world where each of us, and the those who are in the most vulnerable situations first, have all they need to flourish. **Victory will be achieved when we have a world of dignity for all.** When the words "climate change" are placed firmly in the history books as a scourge and sorrow from which we emerged, if not unscathed, wiser and braver.

Thank you. *Maraming, maraming salamat po.*