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Republic of the Philippines  
COMMISSION ON HUMAN RIGHTS  
Quezon City

GREENPEACE SOUTHEAST  
ASIA (PHILIPPINES), et al.,

-versus-

Case No.: CHR-NI-2016-0001

CHEVRON (US), et al.

**MOTION TO DISMISS AD CAUTELAM**  
**BASED ON LACK OF JURISDICTION**  
**(Without Any Acceptance of  
or Submission to Jurisdiction)**

LafargeHolcim and the LafargeHolcim respondents<sup>1</sup> (collectively, the "LH respondents"), through the undersigned counsel, and only by special appearance, respectfully submit this Motion to Dismiss Based on Lack of Jurisdiction in respect of the May 9, 2016 Petition and the February 10, 2017 Consolidated Reply. This motion is being filed purely on an *ad cautelam* basis; out of extreme caution; and without accepting or submitting to the Commission on Human Rights' ("CHR's") jurisdiction. Indeed, as the LH respondents explained in their September 15, 2016 Manifestation and replead/reiterate here, it is their position that the CHR has no jurisdiction over the claims or reliefs sought in the Petition. The Consolidated Reply filed by petitioners contains nothing that changes that view, and so with all due respect the LH respondents are constrained to move for the immediate dismissal of this case, precisely due to the CHR's lack of jurisdiction.

1. The LH respondents replead/reiterate the following grounds supporting the CHR's lack of jurisdiction:

(a) The CHR's authority, as an agency of the Philippine government, is generally limited to acts committed within the Philippines or by organs or agents of

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<sup>1</sup> LafargeHolcim is the company resulting from the global merger of Lafarge and Holcim. Lafarge SA, Holcim Group Services Ltd, and Holcim Technology Ltd., which are among the respondents named in the Petition, are affiliates of LafargeHolcim.



the Philippines, or acts affecting Philippine citizens abroad.<sup>2</sup> Both the Petition and the Consolidated Reply do not allege or show that the acts complained of fall under those categories.

(b) The treaties cited in the Petition are not a basis for the CHR's exercise of jurisdiction. Under the Constitution and the CHR's Charter, the CHR's prerogatives as regards treaties are restricted to monitoring the Philippine Government's compliance with its international treaty obligations on human rights.<sup>3</sup> The treaties did not expand, and could not have expanded, the CHR's limited jurisdiction.

(i) The Petition and the Consolidated Reply point to CHR issuances (such as its 2012 rules of procedure) to justify the CHR's alleged jurisdiction. However, those issuances are not bases for the CHR's jurisdiction here. This is because they improperly purport to expand the CHR's powers under the CHR's charter and the Constitution. To illustrate, the Constitution and the CHR Charter limit the CHR's investigation powers to civil and political rights. However, the CHR's 2012 rules of procedure *purported to add* economic, social and cultural rights to its investigation powers.

(ii) It is elementary that rules and regulations enacted by an administrative body cannot be inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.<sup>4</sup> Further, such administrative body may not enlarge, alter or restrict the provision of the law it administers through its issuance of regulations.<sup>5</sup> Accordingly, the CHR cannot improperly expand its powers under the Constitution and its charter.

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<sup>2</sup> See, e.g., Article XIII, Section 18(3) of the 1987 Constitution and Section 3(3) of the CHR's charter (Executive Order No. 163, s. of 1987).

<sup>3</sup> See Article XIII, Section 18(7) of the 1987 Constitution and Section 3(7) of the CHR's charter.

<sup>4</sup> See *United BF Homeowner's Association v. BF Homes, Inc.*, G.R. No. 124873, July 14, 1999.

<sup>5</sup> See *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 159647, April 15, 2005. See also *Lokin, Jr. v. Commission on Elections*, G.R. Nos. 179431-32, June 22, 2010.



(iii) Indeed, the Constitution and the statute (the CHR's charter) are the only sources of the CHR's authority, and the CHR is bound by the law. Whatever intention the petitioners may have to portray this case as supposedly groundbreaking is absolutely irrelevant to the legal question of the CHR's jurisdiction.

(c) The Petition asks the CHR to engage in adjudication by praying that the CHR "issue a finding on the responsibility of investor-owned Carbon Majors for human rights threats and/or violations in the Philippines, resulting from climate change and ocean acidification."<sup>6</sup> However, the Supreme Court has consistently held that the CHR has no adjudicatory powers.<sup>7</sup>

(i) The Consolidated Reply attempts to argue that the Petitioners are invoking the CHR's "investigatory, recommendatory, and monitoring powers."<sup>8</sup> However, their other statements belie that argument, as they seek a determination on "whether the Respondent Carbon Majors have failed or are failing to fulfill their responsibility to respect human rights by having 'contributed' to climate change and consequently to human rights infringements resulting from impacts of climate change"<sup>9</sup>, and petitioners repeatedly insist that respondents contributed to climate change.<sup>10</sup>

(ii) Thus, the petitioners clearly intend for the CHR to exercise adjudicatory powers here -- which, with all due respect, the CHR plainly does not have.

(d) The Petition in effect asks the CHR to usurp the functions of the Climate Change Commission, the Philippine government's sole policy-making body on climate change.<sup>11</sup>

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<sup>6</sup> Petition, Prayer.

<sup>7</sup> See *Cudia v. Superintendent of the Philippine Military Academy*, G.R. No. 211362. February 24, 2015; see also *Simon v. CHR*, G.R. No. 100150, January 5, 1994; and *Cariño v. CHR*, G.R. No. 96681, December 2, 1991.

<sup>8</sup> Consolidated Reply, p. 3.

<sup>9</sup> Consolidated Reply, par. 2.121.

<sup>10</sup> Consolidated Reply, pars. 2.118, 2.125, 2.129, among others.

<sup>11</sup> Republic Act No. 9729 or the Climate Change Act of 2009, Sec. 4.



(e) Neither the Petition nor the Consolidated Reply identify any basis to impose any responsibility or issue any finding or ruling specifically on the LH respondents. The petitioners do not identify the specific alleged acts that the LH respondents committed or are supposedly liable for, or their particular acts allegedly directly causing or directly linked to the prejudice claimed, and individual responsibility has not been alleged.

Moreover, the petitioners still do not present any basis or reason why the LH respondents should be considered together with the other respondents named in the Petition. It is fundamental that a person may not be prejudiced by the act, declaration or omission of another/a third party (*res inter alios acta alteri nocere non debet*<sup>12</sup>). The LH respondents cannot be collectively or held jointly liable together with the other respondents, or be made responsible for the acts of any other respondent.

(f) Finally, the Petition does not involve violations of civil or political rights. As stated in Constitution<sup>13</sup> and the CHR's charter, and as declared by the Supreme Court in jurisprudence such as *Simon v. CHR*<sup>14</sup>, the CHR's investigatory power covers only human rights violations involving civil and political rights. Both the Petition and the Consolidated Reply fail to establish that the alleged violations involve these rights. Again, the CHR's issuances cannot enlarge the CHR's jurisdiction beyond civil and political rights.

2. The matter of the CHR's jurisdiction is obviously a critical, threshold issue which must be resolved at the first instance before an inquiry on the merits may proceed.<sup>15</sup> Indeed, procedural fairness and good order demand nothing less. Accordingly, and inasmuch as the Consolidated Reply indicates that the matter of the CHR's jurisdiction was likewise argued by other respondents, with all due respect, such matter should first be resolved by addressing all of the

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<sup>12</sup> This is the principle *res inter alios acta alteri nocere non debet*. See *People v. Ciobal, et al.*, G.R. No. 86220, April 20, 1990, 184 SCRA 464; see also Rule 130, Rules of Court, Section 28 and Article 1207 of the Civil Code.

<sup>13</sup> Art. XIII, Sec. 18(1).

<sup>14</sup> G.R. No. 100150, January 5, 1994.

<sup>15</sup> See *St. Paul Fire & Marine Insurance Company v. United States Lines Company*, G.R. No. L-24861, October 29, 1971.



arguments raised upon it, before any further proceedings are conducted here. That will potentially prevent unnecessary expenses and efforts by the parties and the CHR, in case lack of jurisdiction is determined.

3. This Motion to Dismiss, the September 15, 2016 Manifestation and its attachments, or any action of any LH respondents should not be interpreted as any acceptance or submission whatsoever of the CHR's jurisdiction.

4. Finally, without prejudice to their position against the CHR's jurisdiction, the LH respondents strongly reiterate their rejection and denial of any and all allegations or insinuations made in the Petition and the Consolidated Reply that they have acted unlawfully to bring about climate change or any prejudice from climate change; or aiming at holding them responsible, collectively with other respondents or otherwise, for threatening or violating the human rights of the Filipino people.

Thus, premises considered, it is respectfully submitted that (i) the matter of the CHR's jurisdiction should first be resolved before any further proceedings are conducted; and (ii) the Petition should be dismissed due to the CHR's lack of subject matter jurisdiction.

Makati City for Quezon City, May 5, 2017.

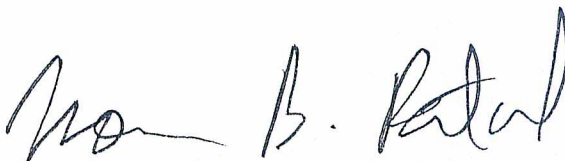
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**Submission Ad Cautelam and Explanation**

This motion is being submitted for consideration upon receipt, subject to the reservations on jurisdiction above.



Due to the distances involved, time constraints, and lack of messengers, this motion is being served by registered mail.

  
**VEDA MARIE D. VEDAN**

4-1-63