

**NAPAPANAHONG HUSTISYA:
EXAMINING THE PHILIPPINE CLIMATE CHANGE LEGAL FRAMEWORK
AND ESTABLISHING THE LEGAL BASIS FOR CLIMATE CHANGE
LITIGATION IN THE PHILIPPINES**

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Abstract

The Philippines is one of the most vulnerable countries in the world insofar as adverse impacts of climate change are concerned. It is highly vulnerable to sea level rise, increased frequency of extreme weather events, rising temperatures, extreme rainfall, among others, which are all impacts of climate change. Climate change is also largely caused by the increase in greenhouse gas emissions in the country. Undeniably, climate change is a human rights issue, as it adversely affects one's right to life, right to health, right to food security, right to water, among others.

The Philippines is a State Party to the United Nations Framework Convention on Climate Change, Kyoto Protocol and the Paris Agreement. As such, the country has the concomitant obligations to implement the environmental principles under such legally binding agreements through domestic legislation. The Climate Change Act was enacted and was thereafter amended by The People's Survival Fund Act. Although these laws were enacted to mainstream climate change into government policy, the law does not afford victims of climate injustice the opportunity and proper forum to sue for climate-induced loss and damage. There exists no legally binding provision that would mandate and compel climate change actors to be held liable and accountable for climate-induced loss and damage.

While there are various laws enforcing environmental rights, the absence of a legal basis for suing companies for climate litigation leads to the problem of failing to address the need for proper implementation of government policies, certain liabilities for climate-induced loss and damage. Given the nexus between human rights and climate change, it is high time that litigants can bring cases involving climate change or greenhouse gas emissions to our local courts. Thus, this paper intends to lay down the legal bases for the enactment of substantive and procedural laws that will allow persons to file a suit against corporations for climate loss and damage. Ultimately, this paper aims to fill the gap in Philippine laws vis-a-vis fulfilling the legal obligations of the State, both domestically and internationally, in the pursuit of climate justice.

The link between nature and liberty of man is undeniable. Nature, our home, may seem ever-present, to serve as our dwelling place. However, human activity itself may also be the main reason for our extinction. Truly, it is our duty as stewards to safeguard our environment, chiefly because the sole purpose of the environment is to nurture us and make us productive and dynamic agents. In

essence, we thrive in mutualism. If we take care of nature, nature will take care of us. If we abuse nature, then nature will abuse humanity too. As it stands, there is presently no relief, nor recourse available to victims of climate-induced losses and damage. As such, the protection of people's liberty and prosperity may be ensured if victims of climate-induced disasters are given the capacity and access to assert their fundamental rights.

Keywords: climate change litigation, climate justice, liability, human rights

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OUTLINE

- I. Chapter I shall contain an overview of the climate situation in the global and Philippine context. It provides the background of the Thesis by discussing the concept of climate justice and the current issues that are tied to it. It briefly discusses the need for climate change litigation in the country. This chapter also includes the significance of the study, and objectives.
- II. Chapter II shall discuss the intimate link between climate change and human rights. It introduces the development of climate change law as an emerging legal discipline in international environmental law. Furthermore, it will explain the role that courts play in climate change law and the advantage of using litigation in addressing climate change cases.
- III. Chapter III outlines the climate change legal framework in the international and domestic sphere. It shall discuss the international instruments, which include legally binding agreements, i.e. the Kyoto Protocol and the Paris Agreement, among others, that States are obligated to comply with. Then, it will zero in on the Climate Change Act, and the corresponding environmental laws that are linked to such Act. Finally, it includes a survey of the jurisprudence involving climate change as decided by courts in other jurisdictions. It shall establish the growth of climate change litigation in other countries, the accountability and liability of litigants, and the decision-making of the courts in such cases.
- IV. Chapter IV contains the legal analysis of the Thesis. First, it explains the various environmental laws in relation to climate change and the legal obligations of the State to protect the environment and to take climate action. Second, it shall focus on climate justice and the gap in Philippine laws vis-à-vis climate change accountability and liability. Further, it will take into consideration the need for climate change litigation and how the Philippines can adopt other States' climate change legal framework and procedure for climate suits. Lastly, it shall emphasize the need to address said gap; otherwise, fundamental rights of Filipinos will continue to be violated and obligations are not complied with.
- V. Chapter V finally concludes the Thesis which is then followed by the Proponent's recommendations. This chapter lays down the solution to the gap in Philippine laws insofar as climate justice is concerned.

CHAPTER I.

INTRODUCTION

A. BACKGROUND OF THE STUDY

An Overview of the Global Climate Change Situation

Today, climate change may perhaps be the most alarming and continuing global issue, as it incessantly threatens the entire planet and brings forth major impacts and increased risks that will likely last for centuries. According to the most recent assessment report the Intergovernmental Panel on Climate Change the United Nations body for assessing the science related to climate change,¹ global net anthropogenic greenhouse gas (GHG) emissions during the decade (2010-2019) were higher than any previous time in human history.² Although there are signs of progress in terms of mitigation and adaptation, it cannot be denied that unless action is taken soon, the dreaded climate catastrophe that the whole world attempts to avert would inevitably ensue.

In the May 2022 Global Climate Report of the United States' NOAA National Center for Environmental Information, it was demonstrated that the global temperature from the period January to May 2022 was 0.85 °C above the 20th-century average.³ Notably, the ten warmest January-May periods have all occurred from 2010 to present.⁴

Undeniably, climate change is indeed affecting nature and the lives of people everywhere. In the earlier IPCC *Climate Change Report 22: Impacts, Adaptation, and Vulnerability*, which was released in April 2022, the authors

¹ About, IPCC website, <https://www.ipcc.ch/about/> (last accessed June 15, 2022).

² IPCC Sixth Assessment Report, "Climate Change Report 2022: Mitigation and Adaptation," Technical Summary, April 2022, 8, *available at* https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_TechnicalSummary.pdf (last accessed June 15, 2022).

³ National Oceanic and Atmospheric Administration: National Centers for Environmental Information, State of the Climate: Monthly Global Climate Report for May 2022, June 2022, *available at* <https://www.ncei.noaa.gov/access/monitoring/monthly-report/global/202205> (last accessed June 16, 2022).

⁴ *Id.*

have concluded that dangerous and prevalent impacts are increasingly evident in every region of the world.⁵

It is evident that these impacts are impeding the efforts to meet basic human needs and that they threaten the possibilities for sustainable development. The world continues to experience higher temperatures, rising sea levels, and increased extreme events that impact life on land and in the oceans because of the changing climate. Due to these changes, the world needs to cope and find ways to prevent severe losses and damages. Now more than ever, adaptation to climate change should be a priority for people and society. Adaptation means adjusting people's behavior and lifestyle, adapting infrastructure to properly deal with the changing temperatures today and in the future, and implementing mitigation policies geared towards long-term reduction of emissions.

Fortunately, there are signs of progress reported by the authors of the latest IPCC Sixth Assessment Report. One of the signs of progress mentioned in the latest IPCC report is the marked increase in civic and private engagements with climate governance across platforms.⁶ Correspondingly, climate change activism has become more and more prominent across the globe. In line with this, there is growth with respect to media coverage illustrating the gravity of the current climate situation. Various movements to fight climate change and demanding action have grown over the years as well.

Indeed, the science of climate change is becoming clearer, and the risks are turning out to be increasingly evident. Considering this reality, people – climate scientists at that – have been displaying acts of civil disobedience, risking arrests, and demanding action from institutions and State leaders in a desperate effort to get people to start acting now. In 2021, government climatologists from United Kingdom (UK Met Office) forecasted that 2022

⁵ IPCC Sixth Assessment Report, Climate Change Report 2022: Impacts, Adaptation, and Vulnerability, Overarching Frequently Asked Questions, "FAQ 1: What are the new insights on climate impacts, vulnerability and adaptation from IPCC?," *available at* <https://www.ipcc.ch/report/ar6/wg2/about/frequently-asked-questions/keyfaq1/> (last accessed June 16, 2022).

⁶ *supra* note 10, at 11.

will be one of the “hottest” [years of the Earth] on record, with average global temperatures about 1.96 degrees Fahrenheit over pre-industrial averages.⁷

As the world continues to face the real and urgent threat of climate change, it is really now up to the environmental community—companies, civil society organizations, governments, most especially—to take necessary and effectual action to reduce greenhouse gas emissions and to at least mitigate what may already seem irreversible.

A Snapshot of the Philippines’ Climate Change Situation

The Philippines is highly vulnerable to the risks of climate change. Such impacts include sea level rise, increased frequency of extreme weather events, rising temperatures, and extreme rainfall due to the country’s high exposure to natural hazards (cyclones, landslides, floods, droughts), dependence on climate-sensitive natural resources, and vast coastlines where all of its major cities and the majority of the population reside.⁸ In the Philippines, more than half of greenhouse gas emissions come from the energy sector, followed by agriculture, industrial processes, waste, and land-use change and forestry.⁹

According to the Global Climate Risk Index Report 2021 released by Germanwatch,¹⁰ the Philippines is the fourth (4th) most affected by extreme weather from 2000 to 2019, following Puerto Rico, Myanmar, and Haiti.¹¹

⁷ Zachary Snowdon Smith, “2022 Will Be One of the Earth’s Hottest Years, U.K. Climatologists Predict,” *Forbes: Business*, available at <https://www.forbes.com/sites/zacharysmith/2021/12/21/2022-will-be-one-of-earths-hottest-years-uk-climatologists-predict/?sh=6f3fbbe37c67> (last accessed June 18, 2022).

⁸ Climate Change Risk Profile: Philippines, *Climatelinks*, 2017 available at <https://www.climatelinks.org/resources/climate-risk-profile-philippines> (last accessed June 20, 2022).

⁹ *Id.*

¹⁰ Germanwatch is an independent development and environmental non-government organization, based in Bonn and Berlin, Germany, with the objective to exert influence on public policy regarding environmental protection and relations between countries in the Global North and South. See “Germanwatch,” *Green Talents – International Forum for High Potentials in Sustainable Development*, An Initiative of Federal Ministry of Education and Research, available at <https://www.greentalents.de/germanwatch.php> (last accessed June 20, 2022).

¹¹ David, Eckstein, Vera Künzel, Laura Schäfer, *Global Climate Index Report 2021*, Germanwatch, 11, available at

The report showed that the Philippines ranked fourth out of 180 countries in the 20-year period.¹² Moreover, it stated:

[...] Countries like Haiti, the **Philippines**, and Pakistan, that are recurrently affected by catastrophes, continuously rank among the most affected countries both in the long-term index and in the index for each respective year. Furthermore, some countries were still in the process of recovering from the previous year's impacts. One example is **the Philippines, which is regularly exposed to tropical cyclones** such as Bopha 2012, Hayan 2013 and Mangkhut 2018, due to its geographical location.¹³ (Emphasis supplied)

As an archipelagic nation, the Philippines (its inhabitants, nature, and infrastructure, etc.) is unequivocally under severe threat of weather extremes and other natural hazards associated with the changing climate. Since the country is comprised of islands, it is more prone to typhoons, storm surges, flooding, and landslides. According to climate models, it is anticipated that precipitation will continue to decrease in the dry season and increase in the wet season at least through mid-century, further increasing the risk of flooding and landslides.¹⁴

Weather patterns have also changed. In fact, in November 2020, at the height of the COVID-19 pandemic, Category 4 Super Typhoon Rolly (internationally known as Typhoon Goni) made landfall twice in the Bicol region (first in Bato, Catanduanes, and second in Tiwi, Albay).¹⁵ Several days

https://www.germanwatch.org/sites/default/files/Global%20Climate%20Risk%20Index%202021_2.pdf (last accessed June 20, 2022).

¹² *Id* at 13.

¹³ *Id* at 14.

¹⁴ Benjamin Franta, et al., *Climate Disasters in the Philippines: A Case Study of Immediate Causes and Root Drivers from Cagayan de Oro, Mindanao and Tropical Storm Sendong/Washi*, Harvard Kennedy School, Belfer Center, November 2016, at 1, *available at* <https://www.belfercenter.org/sites/default/files/files/publication/Philippines%20Climate%20Disasters%20-%20final.pdf> (last accessed June 21, 2022).

¹⁵ Acor Arceo, "Rolly intensifies into super typhoon, makes landfall in Catanduanes," *RAPPLER*, Nov. 1, 2020, *available at* <https://www.rappler.com/nation/weather/super-typhoon-rolly-pagasa-forecast-november-1-2020-5am/>; Aror Arceo, "Super Typhoon Rolly makes 2nd landfall in Albay, Signal No. 4 up in Metro Manila," *RAPPLER*, Nov. 1, 2020,

after the disaster brought about by Super Typhoon Rolly, another typhoon made landfall in Isabela and Marikina City, Typhoon Ulysses (also known as Typhoon Vamco).¹⁶ Typhoon Ulysses caused the worst flooding in the Cagayan Valley region in the last four decades.¹⁷

Subsequently, in December 2021, Category 5 Typhoon Odette (or Typhoon Rai) struck Bohol, Cebu, Surigao del Norte, Siargao Island, and the Dinagat Islands.¹⁸ In just one day, Odette/Rai strengthened from a Category 1 to 5 typhoon, which made it difficult for people to prepare for the arrival of the storm or to evacuate.¹⁹ The typhoon increased by 85 miles per hour in just twenty-four (24) hours. Based on the foregoing, the rapid intensification of storms in the country, and the increase in extreme weather events in general, represents one of the most prominent climate-hazards in the Philippines. Due to the rising ocean temperatures and changing atmospheric conditions, tropical cyclones thus increase in strength and produce more precipitation, which further increase hazard exposure in the country.

In view of the foregoing impacts, both of the current and projected future conditions in the Philippines illustrate the need to address the issue of climate injustice and to develop strategies for reducing further losses and damage associated with climate change.

B. STATEMENT OF THE PROBLEM

While the development of environmental legislation in Philippines is advancing considerably and striving towards becoming more innovative, there is much to enhance for the protection of the right to a balanced and

<https://www.rappler.com/nation/weather/super-typhoon-rolly-pagasa-forecast-november-1-2020-8am/> (last accessed June 21, 2022).

¹⁶ Eunice Novio, “Climate Change and Disasters in the Philippines,” HEINRICH-BÖLL-STIFTUNG Southeast Asia, January 21, 2022, *available at*

<https://th.boell.org/en/2022/01/21/climate-disasters-philippines> (last accessed June 21, 2022).

¹⁷ UN Office for the Coordination of Humanitarian Affairs, “Philippines: Typhoon Vamco (Ulysses) Worst Flooding in Decades in the Cagayan Valley Region (As of 16 November 2020),” November 16, 2020, *available at* <https://reliefweb.int/attachments/72d74d90-2e6b-367b-a0ee-0e77d158d055/OCHA-PHL-TyphoonVamco-Snapshot-201116.pdf> (last accessed June 21, 2022).

¹⁸ *supra* note 40.

¹⁹ Super Typhoon Odette (Rai), <https://disasterphilanthropy.org/disasters/super-typhoon-odette-rai/> (last accessed June 22, 2022).

healthful ecology and for the upholding of other basic human rights, such as the right to life. Certainly, climate justice is a field in environmental law that is becoming increasingly relevant and should be given close attention, especially through a human rights perspective.

As a State Party to the Kyoto Protocol, the United Nations Framework Convention on Climate Change, and the 2015 Paris Agreement, the Philippines is obligated to adopt measures that are in accord with the environmental principles laid down by said legally binding agreements. These international treaties commit State parties to reduce greenhouse gas emissions and to engage in climate change adaptation and mitigation with the primary objective of limiting the temperature rise and correspondingly slowing down global warming.

In 2009, the Climate Change Act was passed by the Congress, which created the Climate Change Commission [hereinafter CCC].²⁰ Such agency develops policies and coordinates government programs on climate change. However, the Act is not sufficient to address issues involving impacts of climate change. In fact, the law does not provide any basis for the filing of an adversarial case against private or public entities for climate change liabilities. Additionally, it lacks the parameters in determining accountability and liability of GHG emitters. Although the Supreme Court has enacted Rules on Environmental Procedure in the same year the CCC was created, there is currently no judicial remedy available for victims of climate injustice in the Philippines. Thus, unless such gap in our laws is addressed, human rights violations will carry on.

The Proponent posits that there are two problems that need to be addressed. First, there is an absence of law that can be the direct basis for suing a private or public entity for climate change litigation. Due to this absence, there is a failure to resolve liabilities for climate-induced losses and damage. Likewise, such failure is tantamount to falling short of complying with international obligations and the disregard for human rights violations

²⁰ An Act Mainstreaming Climate Change into Government Policy Formations, Establishing the Framework Strategy and Program on Climate Change, Creating for this Purpose the Climate Change Commission, and for Other Purposes [Climate Change Act of 2009], Republic Act No. 9729, § 1 (2009).

caused by corporations responsible for climate change impacts. Second, the current procedural framework for environmental cases lacks the parameters for determining climate change liability and accountability. The Rules of Procedure on Environmental cases fails to cover suits involving loss and damage caused by climate change. The judicial remedies that are currently available do not address issues specific to climate change; such special civil actions are applicable mostly for environmental protection in general. These include the Writs of Kalikasan and Continuing Mandamus, SLAPP, among others. Therefore, addressing such gap in the law is a concrete step towards climate justice for the Filipino people.

Without the direct legal basis for climate change litigation, the State's obligations on human rights and the environment, both internationally and domestically, will be left unfulfilled. In other words, there is a failure of the State to provide Filipino people a proper procedure that would afford them the opportunity to seek redress for climate risks. This creates a circumstance that negates their fundamental rights. As such, this Thesis aims to establish the appropriate legal framework for climate change litigation considering the nexus between climate change and other environmental human rights issues in the country.

C. SIGNIFICANCE OF THE STUDY

The effects of climate change are clearly being felt worldwide and the increasingly intense and frequent extreme weather events are a major driver of disaster losses.²¹ In the Philippines, there is no denying that climate change impacts, such as intense typhoons and drought, are expected to get worse. Consequently, the climate crisis we face today affects society as a whole – it affects food production, water security, livelihood and jobs, safety and security, poverty reduction, economic growth, and the overall pursuit of sustainable development. Truly, climate change is a clear threat to the lives of all Filipinos, especially those who are situated at the most vulnerable sectors – farmers, fisherfolks, Indigenous Peoples, persons with disability, women and children, and the elderly.

²¹ Germanwatch, Global Climate Index Report 2021, 23, *available at* https://www.germanwatch.org/sites/default/files/Global%20Climate%20Risk%20Index%202021_2.pdf (last accessed June 20, 2022).

There is, therefore, a call for climate justice, which looks at the climate change through a human rights lens.²² It is associated with an agenda for human rights and international development, and sharing the benefits and burdens associated with the stabilization of the climate system, and also about the impacts of climate change. This means that those who are most vulnerable and who suffer the most from the adverse effects of climate change, and those who contributed the least to the climate crisis, should be empowered and enabled, in terms of capacity and finance, to fight back.²³

The Philippines is presently reliant on fossil fuels to generate power and also run machinery for manufacturing and transportation.²⁴ This pertains to the thermal power generation from gas-fired, oil-fired, and coal-fired plants. The negative impacts of such anthropogenic climate change necessitates the regulation of greenhouse gas emissions, which may be done through a rights-based and compliance-based model *for deterrence*. In this regard, it is imperative that climate change litigation be introduced in domestic law.

In the Philippines, the cumulative carbon dioxide (CO₂) emissions produced from fossil fuels and cement as of year 2020 is 3.39 trillion tonnes.²⁵ The large and mounting adverse impacts of human-caused climate change are alarming. In the Philippines, it is undeniable that victims of climate change are left with no redress. This raises the question of who should pay the price for climate change – the individual victims, or the corporations that contribute to the losses and damage? Categorically, due to the economic impacts, companies and government entities responsible for greenhouse gas (GHG)

²² Climate Just, what is climate justice, *available at* <https://www.climatejust.org.uk/what-climate-justice>.

(last accessed June 20, 2022).

²³ Ludwig Federigan, The journey towards climate justice, *available at* <https://www.manilatimes.net/2022/03/12/business/maritime/the-journey-toward-climate-justice/1835958> (last accessed June 20, 2022).

²⁴ Md Alam Hossain Mondal et al., *The Philippines energy future and low-carbon development strategies*, ENERGY 150 (2018).

²⁵ Hannah Ritchie, Max Roser and Pablo Rosadom, "CO₂ and Greenhouse Gas Emissions". *available at* <http://ourworldindata.org/co2-and-other-greenhouse-gas-emissions>' (last accessed June 21, 2022).

emissions acquire considerable potential liabilities, given the fact that such carbon majors profit by dislodging the economic costs of climate change onto others.

There is a need, therefore, to require corporations causing climate change impacts to compensate damaged communities in order to remedy the injustice of climate change. Professor Shi-Ling Hsu, an expert in the areas of environmental and natural resource law, climate change, law and economics, and property, wrote:

“[s]eeking direct civil liability against those responsible for greenhouse gas emissions – is the only [type of litigation] that holds out any promise of being a magic bullet. By targeting deep-pocketed private entities that actually emit greenhouse gases[,] . . . a civil litigation strategy, if successful, skips over the potentially cumbersome, time-consuming, and politically perilous route of pursuing legislation and regulation.”²⁶

A rights-based approach is appropriate for climate change litigation in the Philippines. With this approach, private entities are subject to accountability for violating an individual’s fundamental rights. Accordingly, once litigation for climate change liability and accountability is established, the major emitters will be held legally responsible for damages resulting from GHG emissions resulting in climate change, which would consequently contribute to climate change mitigation and adaptation, and uphold climate justice. In other words, corporate liability for human rights violations will be determined and imposed.

Apart from the goal of championing sustainable development and sustainability in general, this Thesis seeks to strengthen the climate change policy in the country, and to contribute to the continued development of environmental rule of law in the Philippines. Thus, the Thesis will be a significant addition to field of environmental and natural resources law as it examines the gap in Climate Change Act, and the absence of a clearer mandate for the legal accountability and liability of carbon majors and non-compliant government entities. Since there is no judicial precedent with

²⁶ Shi-Ling Hsu, *A Realistic Evaluation of Climate Change Litigation Through the Lens of a Hypothetical Judgment Lawsuit*, 79 U. COLO. L. REV. 701, 716-717 (2008).

regard to climate change issues in the Philippines, this Thesis provides a discussion on the potential of deriving the doctrines and rules on evidence of other jurisdictions to propel climate change litigation.

The Filipino people are in the front lines of a climate emergency. The adverse effects we are experiencing, such as typhoons, floods, drought, will likely worsen. Meanwhile, corporations who contribute most to climate change are doing business-as-usual. Such entities generate profit at the expense of everyone's survival and future. Therefore, by providing recommendations to address the gap in the primary climate change law in the Philippines, the Thesis aids the Philippines in upholding human rights and climate justice.

Considering that Mother Earth is our one and only home, it is but right the the twin beacons of Liberty and Prosperity be upheld by society to ensure the protection and preservation of our environment. Without question, the first step to take, in order to champion such philosophy, is to take climate action and fight for climate justice now.

CHAPTER II

THE NEXUS BETWEEN CLIMATE CHANGE LAW AND HUMAN RIGHTS

A. CLIMATE CHANGE LAW

In recent decades, lawyers across the globe hailed the emergence of global environmental law. Generally, environmental law has, since then, advanced and evolved rapidly, which encompasses various sub-specialties, such as water biodiversity law, clean air law, clean water law, international environmental law, among others.²⁷ Consequently, the emerging branch in the environmental legal framework to crystallize at present is that of Climate Change Law.

Due to the pressing need for the protection of our ecosystems and the natural environment as a whole, climate change law has evolved especially with the burgeoning scientific, economic, political, and social concerns as regards the effects of greenhouse gas emissions on the entire climate system. As a result, there has been a buildup of case law, development in legislation and international regulation, which eventually led to a profusion of legal concepts and norms that coalesce to form the new discipline of law hailed as “climate change law.” This development is also a result of the transcendental nature of environmental issues which have become more apparent to the international community, especially with the latest overwhelming scientific and socio-political debates over the climate crisis and the concurrent growing sense of urgency to address such problem.

A lot of significant factors have been crucial in forwarding a new legal discipline—that is, climate change law. One of the key drivers in the advancement of climate change law has been the consolidation of scientific data on climate change. As an example, the Intergovernmental Panel on Climate Change (IPCC) is the relevant organization that assesses the science related to climate change.²⁸ The work of the IPCC is reinforced by the contributions of scientists worldwide. In fact, the IPCC, in its report, warned

²⁷ P. W. BIRNIE & A. E. BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* (2nd ed, 2002); PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* (2nd ed, 2003).

²⁸ *supra* note 2.

that the rising temperature to more than two degrees Celsius threatens to have severe impacts for the planet, particularly—a greater frequency of extreme weather events, widespread loss of biodiversity, deglaciation, decreasing global agricultural productivity, and others.²⁹ Because of such scientific concern, governments have acknowledged the severity of the climate crisis and the necessity to take action and mitigate the problem.

Government institutions and even courts recognize the reality of climate change. In a plethora of cases, courts all over the world have taken into account the change in the climate system vis-à-vis resolving environmental issues—especially in the United States, where climate change suits are proliferating. Even outside of environmental fora, we could anticipate the introduction of climate change-related legislation in a variety of international legal contexts in the near future. For example, the possibility that the issue of climate change may one day be the focus of the resolutions and action of the United Nations Security Council is raised by the fact that climate change has been identified as a potential threat to global peace and security.

B. CLIMATE CHANGE AND HUMAN RIGHTS

The connection between human rights and climate change is unmistakable. Given that climate change is one of the most complicated and urgent concerns confronting humanity, with disastrous effects for socially and economically disadvantaged communities, it is thus crucial that we do not approach climate change mitigation and adaptation activities as if they are isolated from people's everyday lives and livelihoods. Consequently, including a human rights framework in international efforts to address climate change has the potential to be responsive to the effects of climate change on human life as well as the people and nations with the fewest and most vulnerable resources.

In January 2009, the Office of the High Commissioner on Human Rights [hereinafter OHCHR] published a “*Report on the relationship between*

²⁹ Stephen H Schneider, Serguei Semenov and Anand Patwardhan, ‘Assessing Key Vulnerabilities and the Risk from Climate Change’ in Working Group II, IPCC, *Climate Change 2007: Impacts, Adaptation and Vulnerability* (2007), 780–810 *available at* <http://www.ipcc.ch/ipccreports/ar4-wg2.htm> (last accessed June 25, 2022).

climate change and human rights.” The report discussed how the observed and projected impacts of climate change have implications for the enjoyment of human rights and for the obligations of States under international human rights law.³⁰ The OHCHR Report recognized the fact that climate change will have “implications for the full range of human rights”³¹ and further enumerates the rights that will potentially be affected, namely the right to life, right to adequate food, right to health, right to housing and right to self-determination.³²

Moreover, it put emphasis on how vulnerable groups will feel the effects of climate change most acutely. These groups include women and children, indigenous peoples, persons with disability, among others. It is obvious that climate change affects and will continue to affect people’s enjoyment of human rights. Therefore, from the point of view of those who are entitled to such rights, it may be said that climate change and its effects essentially violate their rights. On the other hand, as primary duty-bearers, States have the obligation to respect, protect, promote, and fulfill human rights of rights-holders. Logically, governments are obliged to integrate human rights in their climate change-related efforts and action plans.

It is obvious that the enjoyment of human rights actually contributes to adverse impacts on the environment. Failing to integrate human rights and environmental considerations may result in steps aimed to protect one, but unintentionally adversely impacting the other. Meanwhile, if we take into account human rights and environmental issues concurrently, the protection of the environment can support the enjoyment of human rights, and at the same time, such rights can be realized without the unwarranted destruction of the environment. In sum, the OHCHR asserts that since climate change is a human rights issue, then a human rights framework must be one aspect of the general solution.³³

³⁰ Report on the relationship between climate change and human rights, at 6, UN Doc A/HRC/10/61 (Jan. 15, 2009).

³¹ *Id.*, para. 20.

³² *Id.*

³³ *Id.*, at 6.

Among the human rights affected by climate change, the chief one is the right to life. Former UN Deputy High Commissioner for Human Rights Kyung-wha Kang stated in a conference on climate change and migration:

“Global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people [...] ultimately climate change may affect the very right to life of various individuals [...] [countries] have an obligation to prevent and address some of the direst consequences that climate change may reap on human rights.”³⁴

The statement above is especially true in the Philippines, as one of the most disaster-prone countries in the world.³⁵ For example, in 2013, super-Typhoon Haiyan (Yolanda) devastated the country, killing at least 6,300 people, according to the National Disaster Risk Reduction and Management Council (NDRRMC).³⁶ The World Bank, in its strategic note focusing on climate change in the Philippines, showed that according to the EMDAT disaster database, weather-related disasters accounted for 98% of all people affected and 78% of all the people who died due to disasters in the Philippines, between the years 2000 and 2008.³⁷

In the newly published report concerning the landmark inquiry of the Commission on Human Rights of the Philippines on the participation of

³⁴ Kyung-wha Kang, OHCHR, Climate Change, Migration and Human Rights, at the Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities 3-4 (Feb. 19, 2008).

³⁵ Vincenzo Bollettino et al., Perceptions of Disaster Resilience and Preparedness in the Philippines, June 2018, 1, *available at* https://hhi.harvard.edu/files/humanitarianinitiative/files/prc-philippine-report-final_0.pdf?m=1607102956 (last accessed Aug. 10, 2022).

³⁶ Final Report re Effects of Typhoon Yolanda (Haiyan), National Disaster Risk Reduction Management Council, 6-9 November 2013. *available at* https://ndrrmc.gov.ph/attachments/article/1329/FINAL_REPORT_re_Effects_of_Typhoon_YOLANDA_HAIYAN_06-09NOV2013.pdf (last accessed Aug. 10, 2022).

³⁷ C. Ancheta, J. Bojo, V. Dato, J. Heister, M. Kariuki; J. Morton, Z. Trohanis, J. Tuyor, M. Villaluz, F. Virtucio, S. Wedderburn, Y. Zhang, Yabei. A strategic approach to climate change in the Philippines. World Bank, 6, <http://documents.worldbank.org/curated/en/2010/04/15198885/strategic-approach-climate-change-philippines> (last accessed Aug. 10, 2022).

Carbon Majors climate-related human rights violations in the Philippines, it was conveyed that “[t]he effects of extreme weather events attributed to climate change *dehumanizes* the human person. The combination of loss of lives, deprivation of basic needs, material loss, emotional trauma and hopelessness that these survivors experience strip them of their dignities.” (Emphasis mine)

From the foregoing, it can be understood that climate change is intimately associated with human rights. It does not only have an impact on the environment, but also on our overall well-being. Hence, it is but right to adopt a human rights framework to address the climate change situation.

C. THE USE OF LITIGATION TO ADDRESS CLIMATE CHANGE

In the simplest sense, anthropogenic climate change violates the right to life, the right to health, and the right to subsistence. While it is a reality that there are challenges in litigating climate change impacts before the courts and human rights bodies, the very act of filing suit actually underlines the suffering of human beings.³⁸ It also “humanizes” climate change and has the potential of influencing international relations and diplomacy.³⁹

One of the earliest actions, in the form of a petition, that involves explicitly linking climate change and human rights, was a Petition submitted in 2005 to the Inter American Commission on Human Rights (IACHR) by members of the Inuit community of the Arctic regions of the United States and Canada.⁴⁰ At issue in the said petition was whether relief should be granted for the human rights violations resulting from the climate change caused by the acts and omissions of the United States. Such petition contended, *inter alia*, that the United States, the largest emitter of greenhouse gases in the world at that time, was contributing to climate change and thereby

³⁸ Sumudu Atapattu, *Climate Change: Disappearing States, Migration and Challenges for International Law* 4 WASH. J. ENVTL. L. & POL'Y 1, 30 (2014).

³⁹ *Id.*

⁴⁰ Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, *available at* <http://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/> (last accessed Aug. 10, 2022).

violating their human rights by threatening their cultural identity, livelihood, and spiritual life.⁴¹ The Inuit petition alleged violations of the rights to the benefits of culture, life, physical integrity, preservation of health, security, and a means of subsistence, and to residence, movement, and inviolability of home.⁴² The IACHR declined to process the petition at that time, stating that petitioners had provided insufficient information to for the IACHR to determine whether the alleged facts would characterize a violation of rights protected by the American Declaration.⁴³ Nonetheless, it allowed the petitioners to provide testimony on the negative impact of global warming on the human rights of the Inuit and other affected communities.⁴⁴ In 2008, the suit was filed in the US Supreme Court because the community of the Alaskan Village is threatened by climate change filed a petition for writ of certiorari in the US Supreme Court seeking review of a Ninth Circuit’s decision finding that its lawsuit seeking damages under state common law was superseded by the Clean Air Act.⁴⁵ The Supreme Court refused to review the decision, but the case paved the way for the persistent wave of climate change liability suits,⁴⁶ are testing possible alternatives for using Torts law to enforce a rights-based approach to climate change, while ensuring that the issue is at the forefront of public debate and consciousness.⁴⁷

As early as the 2000s, it can be seen from the Inuit petition and the *Kivalina* case that, aside from climate change being a threat to humanity and ultimately all life forms, it also gives rise to dispute involving claims and competing interests. The resulting disputes can pertain to “conflicts over scarce resources, government priorities, prioritization of rights, and national interests, among others.”⁴⁸ Consequently, the conflicts necessitate resorting to litigation for resolution of the issues.⁴⁹ Suits are then brought to the courts for adjudication of claims and competing interest.⁵⁰

⁴¹ *Id.* at 5-7.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Gregorio Rafael P. Bueta, *The Heat is On: Prospects for Climate Change Litigation in the Philippines*, 62 *ATENEO L.J.* 760, 769 (2018).

⁴⁹ *Id.*

⁵⁰ *Id.*

Today, the world is facing an unprecedented “wave of climate change litigation.”⁵¹ For the purposes of this Paper, as defined by environmental legal scholars, David Markell and J.B. Ruhl, climate change litigation may be defined as “any piece of federal, state, tribal, or local administrative or judicial litigation in which the party filings or tribunal decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts.”⁵² The role of courts in resolving environmental issues is no longer new. Over the past decades, there has been development in the recognition that courts play a crucial role in providing access to environmental and climate justice. The goal of such field of litigation is to address problems of environmental threat or harm, environmental degradation, and climate change, among others.

It can be said that climate change litigation has been increasingly making headway in the wake of regulatory failure vis-à-vis climate change governance.⁵³ One possible reason is the “lack of sufficient concerted political action on climate change at the national and international levels.”⁵⁴ Moreover, litigation has the potential to “plug the regulatory gaps [...] and call upon the judiciary [...] to hold the government to their legal responsibilities of protecting people from the immediate and long-term impacts of climate change.”⁵⁵

In light of the discussion above, the Proponent would like to point out that litigation has been an effective mechanism to address the issue of climate change, as it provides a pathway to amplify regulatory efforts of both the public and private sector. Legal principles and rules play an important role in mitigating and adapting to climate change, despite the myriad of challenges that climate change law faces and will

⁵¹ Jessica Hall, *Climate Change Litigation: An Emerging Wave?*, 31 ENERGY & MIN. L. INST. 133, 134 (2010).

⁵² David Markell & J. B. Ruhl, *An Empirical Survey of Climate Change Litigation in the United States*, 40 ENVTL. L. REP. 10644, 10647, (2010).

⁵³ Hari M. Osofsky, *The Continuing Importance of Climate Change Litigation*, 1 CLIMATE L. 3, 24. (2010).

⁵⁴ Jolene Lin, *Litigating Climate Change in Asia*, 4 CLIMATE L. 140, 141 (2014).

⁵⁵ *Id.*, at 141.

CHAPTER III

THE CLIMATE CHANGE LEGAL FRAMEWORK: INTERNATIONAL LAW, PHILIPPINE LAW, AND JURISPRUDENCE

A. TREATIES RELATED TO CLIMATE CHANGE

The United Nations Framework Convention on Climate Change

The birth of climate change law dates back in 1992 when the negotiation of a framework on climate change at the United Nations Conference on Environment Development took place. The United Nations Framework Convention on Climate Change (UNFCCC) was signed in 1992 in Rio de Janeiro, Brazil. It was then entered into force on 21 March 1994.⁵⁶ It may be considered as the groundbreaking effort of 154 nations to come to an agreement to recognize and address the issue of climate change.⁵⁷ It lays down the key guiding principles for international climate change regulation and establishes the institutional machinery necessary for the current operation and adaptation of the climate change regime.⁵⁸ For instance, the UNFCCC set up a decision-making body, called the “Conference of the Parties,”⁵⁹ at which they assess the implementation of the Convention and any other legal instruments and make effective execution of the Convention, which includes administrative and institutional arrangements.⁶⁰

In addressing the climate crisis, the UNFCCC its “ultimate goal” in Article 2, that is “to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the

⁵⁶ United Nations Framework Convention on Climate Change, What is the United Nations Framework Convention on Climate Change, *available at* <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> (last accessed Aug. 15, 2022).

⁵⁷ 2 ANTONIO G.M. LA VIÑA, PHILIPPINE LAW AND ECOLOGY VOLUME II: INTERNATIONAL LAW AND RULES OF PROCEDURE 35, (2012).

⁵⁸ Jacqueline Peel, *Climate Change Law: The Emergence of a New Legal Discipline*, 32 MELB. L. REV. Review, 922, 927 (2008).

⁵⁹ UNFCCC, *supra* note 52, art. 7.

⁶⁰ United Nations Framework Convention on Climate Change, Conference of the Parties (COP), *available at* <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop> (last accessed Aug. 15, 2022).

atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system[.]”

Furthermore, it must be noted that the most important objective in the UNFCCC is that parties should protect the climate system “in accordance with their common but differentiated responsibilities and respective capabilities.”⁶¹ It is incumbent upon developed country parties in Annex I of the Convention to “take the lead in combating climate change and the adverse effects thereof.”⁶² Such principle creates a distinction between the responsibilities of developed and developing countries (in Annex I and non-Annex I, respectively) regarding climate change. In essence, it is expected that developed countries should undertake the necessary action to reduce GHG emissions to sustainable levels. Likewise, the Convention requires the full consideration of the specific needs and special circumstances of developing countries, and most especially, countries most vulnerable to the impacts of climate change.⁶³

Essentially, the major focus of the UNFCCC, ever since it was enacted, has been to avoid the most dangerous impacts of the changing climate as it recognized that climate change is a “common concern of the human kind.” As such, the UNFCCC set out a framework for global action to prevent and mitigate said harmful impacts. The guiding principles that are championed by the UNFCCC, as provided in Article 3 thereof, include the intergenerational equity,⁶⁴ the adoption of the precautionary principle calling for measures not to be postponed on the basis of scientific uncertainty,⁶⁵ the acknowledgment of common but differentiated responsibilities,⁶⁶ and the importance of cooperation “to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them to address the problem of climate change.”⁶⁷ Despite the division of responsibility being

⁶¹ *Id.* art. 3, ¶ 1.

⁶² *Id.*

⁶³ *Id.* art. 3, ¶ 2.

⁶⁴ UNFCCC, *supra* note 52, art. 3.

⁶⁵ *Id.* art. 3, ¶ 3.

⁶⁶ *Id.* art. 3, ¶ 1.

⁶⁷ *Id.* art. 3, ¶ 5.

a recurrently controversial aspect of the international climate change regime,⁶⁸ it is apparent that the UNFCCC still has widespread support across countries as evidenced by the 197 ratifications that the Convention has received.

It also worth mentioning the UNFCCC was actually considered revolutionary in terms of its recognition of climate change as it bound countries, that are Parties, to conduct themselves in accordance to the goals of the convention despite scientific doubt.⁶⁹ It was stated therein:

“The Parties should take precautionary measures **to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects**. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. xxx”⁷⁰ (Emphasis mine)

The UNFCCC also established a process for countries to generate and disseminate data about domestic GHG emissions. Under the Convention, all Parties are required to submit national GHG inventories,⁷¹ and developed country parties are required to submit more detailed descriptions of mitigation policies and projections of the projected impact of policies on GHG emissions, which are essential in understanding the climate problem.⁷² In addition, the provisions of the UNFCCC include the directing of funds towards developing countries in support of their climate change mitigation and adaptation efforts, maintaining a balance between economic growth considerations and climate change policy, and the formulation of mechanisms necessary for alleviating the climate problems.

⁶⁸ Christopher D Stone, *Common but Differentiated Responsibilities in International Law*, 98 AM. J. INT. L. 276, 278 (2004).

⁶⁹ United Nations Framework Convention on Climate Change, First steps to a safer future: Introducing The United Nations Framework Convention on Climate Change, *available at* http://unfccc.int/essential_background/convention/items/6036.php (last accessed Aug. 22, 2022).

⁷⁰ UNFCCC, *supra* note 52, art. 3.

⁷¹ UNFCCC, *supra* note 52, art. 3 (a).

⁷² *Id.*

The Philippines signed and ratified the UNFCCC on 12 June 1992 and 2 August 1994, respectively.⁷³ It also served as Chair of the Group of 77 and China during the first Conference of Parties (COP) in Berlin, Germany.⁷⁴

Kyoto Protocol

The UNFCCC's lack of more than “soft targets and timetables with many loopholes”⁷⁵ eventually led to the need for a more stringent international agreement, to which negotiations resulted in the conclusion of the Kyoto Protocol⁷⁶ in 1997. It was adopted at the third session of the Conference of the Parties (COP) and signed on 11 December 1997.⁷⁷ The overarching goal of such treaty is for developed country parties (referred to as Annex I Parties) to reduce emissions of relevant GHGs “by at least 5 percent below 1990 levels in the commitment period from 2008 to 2012.”⁷⁸ These legally binding commitments established by the Kyoto Protocol geared towards the reduction greenhouse gas emissions are in line the ultimate goal of the UNFCCC.

Like the UNFCCC, the Kyoto Protocol utilizes the principle of “common but differentiated responsibility and respective capabilities” to put the onus on more developed countries, under its annex based structure, in which it recognizes that more developed countries have a greater contribution to the current levels of high GHG emissions in the atmosphere.⁷⁹ Developing countries, on the other hand, are not bound under the treaty to follow the emission targets of such industrialized countries. As one of the developing countries, the Philippines is a Non-Annex I Party under the Kyoto Protocol.⁸⁰

⁷³ 2 LA VIÑA, *supra* note 182, at 36.

⁷⁴ National Integrated Climate Change Database and Information Exchange System, Climate Actions, *available at* <https://niccdies.climate.gov.ph/climate-actions>. (last accessed July 31, 2022).

⁷⁵ PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW*, 2nd ed. (2003), 365.

⁷⁶ Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted Dec. 11, 1997, 2302 U.N.T.S. 162 [hereinafter Kyoto Protocol].

⁷⁷ UNFCCC Report Of The Conference Of The Parties On Its Third Session, held At Kyoto From 1 To 11 December 1997, FCCC/CP/1997/7/Add. (Mar. 1, 1998).

⁷⁸ Kyoto Protocol, *supra* note 202, art 3, ¶ 1.

⁷⁹ UNFCCC, What is the United Nations Framework Convention on Climate Change? *available at* <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> (last accessed Aug. 10, 2022).

⁸⁰ United Nations Climate Change, UNFCCC Process and meetings, Parties (Kyoto Protocol), *available at* https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states?field_partys_partyto_target_id%5B512%5D=512 (last accessed Aug. 9, 2022).

It signed said treaty on 15 April 1998 and ratified the same on 2003 November 2003.⁸¹ To date, there are 192 Parties to the Kyoto Protocol, which comprises of 191 States and 1 regional economic integration organization.⁸²

2015 Paris Agreement

Another international agreement supplementing the UNFCCC is the Paris Agreement. It is a legally binding international treaty on climate change that was adopted by 196 Parties on 12 December 2015 at COP 21 in Paris, France. It then entered into force on 4 November 2016. As of 2021, 193 out of 197 Parties to the Convention have ratified the Paris Agreement.⁸³ This is significant especially since the Paris Agreement's entry into force was dependent on the ratification of at least 55 nations who are Parties to the Convention, representing approximately 55 percent of total greenhouse gas emissions.⁸⁴

The Paris Agreement is deemed as a landmark in the multilateral climate change process as it set out a binding agreement that brought all nations into a shared cause to undertake large-scale efforts to combat climate change and adapt to its impacts.⁸⁵ The objective of such agreement is to limit global warming to well below 2, preferably to 1.5 Celsius, compared to pre-industrial levels. To reach this long-term temperature goal, countries are expected to reach global peaking of greenhouse gas emissions as soon as possible. It should be noted that another primary goal of the Paris Agreement is to improve and reinforce the international response against climate change, by virtue of the means specified in Article 2 of the Agreement, to wit:

“1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global

⁸¹ *Id.*

⁸² United Nations Climate Change, The Kyoto Protocol - Status of Ratification, *available at* <https://unfccc.int/process/the-kyoto-protocol/status-of-ratification> (last accessed Aug. 10, 2022).

⁸³ United Nations, The Paris Agreement, *available at* <https://www.un.org/en/climatechange/paris-agreement> (last accessed Aug. 10, 2022).

⁸⁴ United Nations Framework Convention on Climate Change, Paris Agreement – Status of Ratification, *available at* http://unfccc.int/paris_agreement/items/9444.php (last accessed Aug. 10, 2022).

⁸⁵ *supra* note 212.

response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.⁸⁶

Essentially, the Paris Agreement marked the commencement of a shift towards a “net-zero” emissions world.⁸⁷ Accordingly, the Paris Agreement operates on a five-year cycle of gradually ambitious climate action carried out by country parties. In the Agreement, State Parties are enjoined to submit an updated national climate action plan, known as the “Nationally Determined Contribution” or NDC. This pertains to the countries’ best efforts in setting domestic goals and complying with the submission of reports on emissions and implementation, pursuant to the transparency policy of the Paris Agreement.⁸⁸ In their individual NDCs, State Parties communicate actions they will undertake to reduce their greenhouse gas emissions to meet the targets set by the Agreement, and also the actions necessary for building resilience to adapt to the impacts of rising temperatures (i.e. formulating long-term strategies).⁸⁹

The details for the operation of the fair, practical and transparent implementation of the Paris Agreement were agreed on the Conference of the

⁸⁶ Paris Agreement, FCCC/CP/2015/L.9, Dec. 12, 2015, art. 2.

⁸⁷ *supra* note 212.

⁸⁸ United Nations Climate Change, Nationally Determined Contributions (NDCs), *available at* <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/nationally-determined-contributions-ndcs> (last accessed Aug. 12, 2022).

⁸⁹ *supra* note 212.

Parties in Katowice, Poland in December 2018.⁹⁰ It was informally called the “Paris Rulebook.”⁹¹ This was then finalized at COP26 held in Glasgow, Scotland, in November 2021.⁹² These implementation guidelines take into account the different capabilities and socio-economic realities of each nation, while providing the foundation for carrying out climate action.⁹³ An effective international system is established to promote and track progress, and at the same time, empowering countries to build their own national systems for the implementation of the Paris Agreement.⁹⁴ This will ensure that each country’s contributed share of action to fight the global challenge of climate change.⁹⁵

The Proponent would like to put emphasis on the Loss and Damage provision found in Article 8 of the Paris Agreement, which illustrates the recognition of the State-Parties of the injuries suffered by climate change vulnerable nations and the need to address them. Article 8 provides:

“1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.

2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.”⁹⁶

⁹⁰ United Nations Climate Change, The Katowice climate package: Making the Paris Agreement Work for All, *available at* <https://unfccc.int/process-and-meetings/the-paris-agreement/katowice-climate-package> (last accessed Aug. 14, 2022).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Paris Agreement, *supra* note 215, art. 9.

As far as the Philippines is concerned, it signed the Paris Agreement, along with 174 other countries (including top emitters China and the United States), on 22 April 2016 at the French capital.⁹⁷ The international pact was signed by then President Rodrigo Roa Duterte, despite his reservations—Duterte was of the opinion that the Paris Agreement sought to limit the economic growth of developing nations (such as the Philippines) that have pledged to support it.⁹⁸ Further, he pointed out that such limits on carbon emissions are unfair since developed nations were never limited by such impositions when they were industrializing.⁹⁹ Meanwhile, according to Duterte, “we [the Philippines] have not reached the age of industrialization. We are going into it.”¹⁰⁰ The former President even called such limits “*kalokohan*” (nonsense).¹⁰¹ Nevertheless, Duterte signed the agreement and the “Instrument of Accession,” which is a document signifying the Philippines’ ratification of the landmark climate change agreement, on 28 February 2017.¹⁰² Shortly thereafter, the Paris Agreement was ratified by the Philippines on 23 March 2017.¹⁰³

In view of the fact that the Philippines is one of the most at risk for suffering the adverse impacts of climate change, it must be highlighted that the Philippines actually took charge and headed a new negotiating bloc of 44 vulnerable countries at the COP21 in December 2015 at Paris, France.¹⁰⁴ Such countries made a case for the inclusion of limit of 1.5 degrees Celsius rather than 2 degrees Celsius in the final negotiating text, which was eventually

⁹⁷ Official Gazette, PH Signs the Paris Climate Agreement, April 27, 2016, *available at* <https://www.officialgazette.gov.ph/2016/04/27/ph-sign-paris-climate-agreement/> (last accessed Aug. 15, 2022).

⁹⁸ Pia Ranada, Duterte won’t honor int’l pacts on carbon emissions, RAPPLER, July 18, 2016, *available at* <https://www.rappler.com/nation/140122-duterte-international-agreements-carbon-emissions/> (last accessed Aug. 15, 2022).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Pia Ranada, Duterte signs Paris climate deal, RAPPLER, March 1, 2017, *available at* <https://www.rappler.com/nation/162865-duterte-signs-paris-agreement-climate-change/> (last accessed Aug. 18, 2022).

¹⁰³ UNFCCC, *supra* note 52, art. 1.

¹⁰⁴ Dr. Ben Parr, et al., On Alert: THE Philippines and Climate Change, PURSUIT, April 7, 2016, *available at* <https://pursuit.unimelb.edu.au/articles/on-alert-the-philippines-and-climate-change> (last accessed Aug. 20, 2022).

adopted in the Paris Agreement.¹⁰⁵ Subsequently, last 2021, the Philippines announced that it was revising up its target to reduce greenhouse gas emissions to a 75% reduction by 2030 as part of its commitment to the Paris Agreement, up from a target of 70% set in 2017.¹⁰⁶ Former President Rodrigo Duterte approved such Nationally Determined Contribution (NDC), the country's first, which sets the 75-percent GHG emission reduction and avoidance by 2030.¹⁰⁷

Towards a Global Climate Regime

A global response to climate change was necessary to combat its global-scale effects. Climate change is a “global commons problem,” because atmosphere is one of the four types of global commons.¹⁰⁸ While it is difficult to attribute responsibility for GHG emissions across countries, there has been a remarkable advancement of science and technology—as such, mechanisms and institutions have been set up from a scientific perspective which identify the contribution of the largest emitters. Because of the politically charged negotiations, rules and obligations to address climate change were established. Eventually, the international climate change regime made headway.

Three legally binding instruments have emerged, namely, the 1992 UNFCCC, the 1997 Kyoto Protocol, and the 2015 Paris Agreement. These instruments provide for the various approaches to regulate and mitigate climate change. The UNFCCC has advanced significantly; the scope, complexity, and scope of the global regime have all increased. The involvement of non-state and subnational players, such as corporations, cities, governments, trade unions, human rights and gender campaigners, has grown exponentially as the science has advanced and people throughout the world

¹⁰⁵ *Id.*

¹⁰⁶ Reuters, Philippines raises carbon emission reduction target by 75% by 2030, April 16, 2021, available at <https://www.reuters.com/business/environment/philippines-raises-carbon-emission-reduction-target-75-by-2030-2021-04-16/> (last accessed Aug. 18, 2022).

¹⁰⁷ Philippine News Agency, Duterte OKs 75% emissions reduction PH commitment by 2030, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES CLIMATE CHANGE SERVICE, <https://climatechange.denr.gov.ph/index.php/news/125-duterte-oks-75-emissions-reduction-ph-commitment-by-2030> (last accessed Aug. 19, 2022).

¹⁰⁸ The other global commons are: High Seas, Antarctica, and the Outer Space. See Edenhofer et al., “The Atmosphere as a Global Commons – Challenges for International Cooperation and Governance,” Discussion Paper 2013-58. Cambridge, Mass.: Harvard Project on Climate Agreements, August 2013.

have seen the escalating harmful effects of climate change. Further, the Paris Agreement pushed State Parties to develop rules to operationalize the Agreement and to launch various initiatives for climate change adaptation and mitigation.

The global climate regime considers climate change as a serious problem, and thus, in response, establishes a long-term strategy and process that encourage scientific research and cooperation. The regime induces states to begin a process of national planning and to explore possible response strategies. Further, the regime assists poorer countries in building capacity. And in essence, the climate change regime promotes the formation of a sense of community among states. Overall, it promotes consensus building, cooperation, and commitment. Principally, these international instruments serve as the cornerstones and influence the key developments in the global regulation of GHG emissions. These represent the commitment of nations to limit GHG emissions and to help prevent climate change.

Recent Developments in the Global Efforts during Conference of the Parties (COP27)

Last November 2022, the 27th Conference of the Parties (COP27) to the United Nations Framework Convention on Climate Change took place in Sharm el-Sheikh, Egypt.¹⁰⁹ The main agenda of the recent COP27 was the creation of a funding arrangement to respond to loss and damage associated with the adverse effects of climate change.¹¹⁰ After negotiations, more than 100 Heads of State and Governments that participated in the recent COP27 have agreed to establish and eventually operationalize a loss and damage fund.¹¹¹

According to UN Climate Change News, governments took the landmark decision to institute new funding arrangements and a dedicated fund to support developing countries in responding to loss and damage from

¹⁰⁹ United Nations, COP27, *available at* <https://www.un.org/en/climatechange/cop27> (last accessed Feb. 3, 2023).

¹¹⁰ *Id.*

¹¹¹ *supra* note 259.

climate change.¹¹² In addition, a “transitional committee” was created to assist in the execution of the new funding arrangements and the fund.¹¹³ Likewise, parties settled to institutionalize the Santiago Network for Loss and Damage, to kickstart the technical assistance to developing countries that are highly vulnerable to the adverse effects of climate change.¹¹⁴

COP27 is truly a milestone for the global climate justice movement. From flooding to drought, developing countries must rightfully be compensated for the loss and damage they had suffered or continue to suffer from the climate crisis. While the global climate regime involves significant decisions of States to provide support for poorer developing countries, it is equally important to hold corporations civilly liable for their greenhouse gas emissions and make them pay for the loss and damage suffered by affected persons and individuals.

In essence, developing countries that are particularly vulnerable to climate-induced events should be prioritized in terms of climate response. It is fortunate that loss and damage became the focus at COP27. The funding arrangements are undeniably vital to addressing loss and damage associated with climate change. Thus, its full operationalization will help members of communities impacted by climate disasters. It is but appropriate to demand reparations not only from developed countries, but also from fossil fuel companies that are major carbon emitters. Holding them accountable by making them pay for economic and non-economic loss and damages caused by climate impacts is a great step towards climate justice for all.

B. PHILIPPINE CLIMATE CHANGE LEGAL FRAMEWORK

As a State party to the United Nations Framework Convention on Climate Change, the Philippines has, through the Legislature, over the years, enacted laws on environmental protection and prosecution. In passing such laws, the Congress demonstrates the Philippines’ recognition of its State

¹¹² United Nations Climate Change, COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries, *available at* <https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries> (last accessed Feb. 3, 2023).

¹¹³ *Id.*

¹¹⁴ *Id.*

obligations to the environment under international law. To establish the climate change legal framework in the country, Philippine substantive and procedural laws that are relevant to climate change will be discussed and the deficiencies of our environmental laws will also be pointed out by the Author.

The Philippine Constitution

The 1987 Constitution of the Republic of the Philippines [hereinafter Constitution] is the supreme law of the land. Environmental protection is enshrined in the Philippine Constitution as a State policy. Section 16 of Article II of the Constitution provides that, “The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”¹¹⁵

Fr. Joaquin Bernas, S.J., in his commentary on the Constitution, acknowledged that the right to a balanced and healthful ecology is, “for the first time in our nation’s constitutional history, solemnly incorporated in the fundamental law.”¹¹⁶ Such right is an enforceable right.¹¹⁷ In fact, such right need not be written in the Constitution as it is deemed to “to exist from the inception of humankind and it is an issue of transcendental importance with intergenerational implications.”¹¹⁸ Moreover, in drafting this constitutional provision, the “discussions manifested a clear desire to make environmental protection and ecological balance conscious objects of police power.”¹¹⁹

The fact that such basic rights are explicitly stated in the Constitution denotes that the framers carried the well-founded fear that without the right to a balanced and healthful ecology and right to health being mandated as state policies by the Constitution to highlight their continuing importance and to impose upon the State a solemn obligation to preserve and advance both

¹¹⁵ PHIL. CONST. art. II, § 16.

¹¹⁶ JOAQUIN G. BERNAS, S.J. THE 1987 PHILIPPINE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 90 (2009 ED.).

¹¹⁷ JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 20 (2011, ed.).

¹¹⁸ CARLO L. CRUZ. NOTES ON THE CONSTITUTION: VOLUME I 189-190 (2016 ed.) (citing *Oposa v. Factoran*, 224 SCRA 792 and *MMDA v. Concerned Residents of Manila Bay*, 643 SCRA 90).

¹¹⁹ BERNAS, *supra* note 231, at 90.

rights, then the present and future generations would lose everything and “inherit nothing but parched earth incapable of sustaining life.”¹²⁰ The provision on the right to a balanced and healthful ecology was first applied in the case of *Oposa v. Factoran, Jr.*¹²¹

Evidently, the case of *Oposa* is a clear pronouncement of the enforceability of the right to a balanced and healthful ecology. In essence, such right considers “the rhythm and harmony of nature.”¹²² Further, it was explained:

Such rhythm and harmony indispensable include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations.¹²³

In this regard, the fundamental right to a healthy environment enshrined in our Constitution obligates the State to protect our ecosystems and ensure that the people are able to fully enjoy such right. With regard to climate change, such crisis threatens the enjoyment of human rights. With the enforceability of the right to a balanced and healthful ecology in the Philippines, it can be argued that a victim of climate change impacts can rely on such right as basis to bring a potential claim.

Climate Change Act of 2009

The primary law which this Paper seeks to examine thoroughly is the Climate Change Act of 2009. This law served as the implementing legislation for the United Nations Framework Convention on Climate Change. The Congress, in recognizing the effects of climate change, declared a “policy to afford full protection and advancement of the right of the people to a healthful ecology in accord with the rhythm and harmony of nature.”¹²⁴ Under Section 2, it is provided:

¹²⁰ *Id.*

¹²¹ *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993).

¹²² *Id.* at 803.

¹²³ *Id.*

¹²⁴ An Act Mainstreaming Climate Change into Government Policy Formulations, Establishing Framework Strategy and Program on Climate Change, Creating for this Purpose the Climate

“Towards this end, the State adopts the principle of protecting the climate system for the benefit of humankind, on the basis of climate justice or common but differentiated responsibilities and the Precautionary Principle to guide decision-making in climate risk management. xxx

Further recognizing that climate change and disaster risk reduction are closely interrelated and effective disaster risk reduction will enhance climate change adaptive capacity, **the State shall integrate disaster risk reduction into climate change programs and initiatives.**

Cognizant of the need to ensure that national and subnational government policies, plans, programs and projects are founded upon sound environmental considerations and the principle of sustainable development, **it is hereby declared the policy of the State to systematically integrate the concept of climate change in various phases of policy formulation, development plans, poverty reduction strategies and other development tools and techniques by all agencies and instrumentalities of the government.”¹²⁵**

Further, the same section of the Climate Change Act of 2009, acknowledges our international obligations towards climate change:

“As a party to the United Nations Framework Convention on Climate Change, the State adopts the ultimate objective of the Convention which is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system which should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner. As a party to the **Hyogo Framework for Action,** the State likewise adopts the strategic goals in order to build national and local resilience to climate change-related disasters.

Change Commission, and For Other Purposes [Climate Change Act of 2009] Republic Act No. 9851, § 1 (2009).

¹²⁵ Climate Change Act, § 2.

Recognizing the vulnerability of the Philippine archipelago and its local communities, particularly the poor, women, and children, to potential dangerous consequences of climate change such as rising seas, changing landscapes, increasing frequency and/or severity of droughts, fires, floods and storms, climate-related illnesses and diseases, damage to ecosystems, biodiversity loss that affect the country's environment, culture, and economy, **the State shall cooperate with the global community in the resolution of climate change issues, including disaster risk reduction.** xxx”¹²⁶ [Emphasis and underscoring supplied.]

The Climate Change Act of 2009 also created the Climate Change Commission [hereinafter CCC], which serves as the “sole policy-making body of the government which shall be tasked to coordinate, monitor and evaluate the programs and action plans of the government relating to climate change pursuant to the provisions of this Act.”¹²⁷ Moreover, the law required local government units (LGUs) to draft local climate change action plans (LCCAPs).¹²⁸ At present, there are a total of 1,394 LCCAPs in place which are formulated by LGUs.¹²⁹

People's Survival Fund Act of 2012

The People's Survival Fund [hereinafter PSF] was established by Republic Act No. 10174, which was passed in 2012. It amended the Climate Change Act of 2009. The People's Survival Fund is a long-term finance stream that enables the government to effectively address climate change.¹³⁰ The law guarantees an annual PHP 1,000,000,000 fund, which can be augmented through donations, endowments, grants and contribution. The fund is used to support adaptation activities, to strengthen and establish regional centers and information networks to support climate change adaptation

¹²⁶ *Id.*

¹²⁷ *Id.*, at § 4, ¶ 3.

¹²⁸ *Id.*, at § 14.

¹²⁹ An Act Establishing the People's Survival Fund to Provide Long-term Finance Streams to Enable the Government to Effectively Address the Problem of Climate Change, Amending for the Purpose Republic Act No. 9729, Otherwise Known as the “Climate Change Act of 2009”, and for Other Purposes, Republic Act No. 10174, § 1 (2012).

¹³⁰ Office of the President of the Philippines, People's Survival Fund, *available at* <https://climate.gov.ph/our-programs/climate-finance/peoples-survival-fund>, <https://climate.gov.ph/our-programs/climate-finance/peoples-survival-fund> (last accessed Aug. 5, 2022).

initiatives and projects, and to serve as guarantee for risk insurance needs for farmers, agricultural workers and other stakeholders, among others.¹³¹

“Adaptation” projects are initiatives intended to enhance the resiliency of the target community, taking into account their natural and man-made resources, to overcome the natural hazards of climate change.¹³² These projects and programs should be sustainable, for long periods of time, to keep pace with the evolving conditions brought by the changing climate. In addition, R.A. No. 10174 acknowledges the close relationship of climate change and natural disasters.¹³³ The law points towards the dangers of climate change and its contribution to increasing the frequency and severity of natural disasters, such as storms and floods.¹³⁴ Consistent with international law on climate change, R.A. No. 10174 also adopted the objective of the UNFCCC to regulate GHGs.¹³⁵

To date, six (6) climate change adaptation projects are approved under the PSF,¹³⁶ such as Disaster Risk Reduction & Management Response as Copping Mechanism to Resiliency (Lanuza, Surigao del Sur) and Siargao Climate Field School for Farmers and Fisherfolk in the Municipality of Del Carmen, Siargao Islands, Surigao del Norte, among others. In sum, the PSF understands that adaptation needs and local capacities of every community are unique to one another. The vulnerability of local communities to climate change varies significantly.

Intended Nationally Determined Contributions

The Paris Agreement and its long-term objectives are based on State-parties’ Nationally Determined Contributions (NDCs).¹³⁷ These represent each nation’s efforts to lower national emissions and prepare for the effects of

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *supra* note 283.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ United Nations Climate Change, Nationally Determined Contributions (NDCs), *available at* <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/nationally-determined-contributions-ndcs> (last accessed Aug 20, 2022).

climate change.¹³⁸ Each party must draft, publicize, and maintain consecutive NDCs that it expects to achieve in accordance with Article 4, Paragraph 4 of the Paris Agreement.¹³⁹ In order to accomplish the goals of such contributions, Parties must adopt domestic mitigating measures.¹⁴⁰

In 2015, in compliance with Decisions 1/CP.19 and 1/CP.20, the Philippines submitted its INDCs to the UNFCCC.¹⁴¹ As part of its INDCs, the Philippines included the contribution of reducing CO₂ emissions by about 70 percent by the year 2030.¹⁴² Accordingly, the Philippines undertook to apply this contribution to the sectors of energy, transport, waste, forestry, and industry.¹⁴³ Then again, the Philippines grounded the implementation of this contribution on “the extent of financial resources, including technology development & transfer, and capacity building, that will be made available [to the Philippines].”¹⁴⁴

In 2021, then President Rodrigo Roa Duterte approved the Philippines’ first Nationally Determined Contribution (NDC), setting a 75 percent greenhouse gas (GHG) emission reduction and avoidance by 2030, as part of the country’s commitment to the Paris Agreement.¹⁴⁵ Essentially, the NDC of the Philippines is a stepping stone towards climate justice. However, it is important to note that 72.29 percent of such target is contingent upon the support of climate finance, capacity, development and technologies, which shall be provided by developed countries (as stated in the Paris Agreement).¹⁴⁶ The remaining 2.71 percent shall be implemented chiefly through domestic resources.

Survey of Jurisprudence on Climate Change Litigation

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *supra* note 283, at 1.

¹⁴² *Id.* at 3.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 3-4.

¹⁴⁵ *supra* note 237.

¹⁴⁶ *Id.*

The Author believes that it is essential to illustrate the ever-expanding body of climate cases all over the world, by delineating various climate change litigation cases brought under domestic and international law. Through this discussion, it may be demonstrated how the courts in other jurisdictions deal with such climate cases that stem from the right to a healthy environment, right to health, among other rights.

A. United States of America

1. *Massachusetts, et al. v. Environmental Protection Agency, et al.* (2007)

In this case, the petitioners (the state of Massachusetts, other American states, local governments, and private organizations) contended that the US Environmental Protection Agency (EPA) abdicated its duty under the federal air quality legislation to regulate motor vehicle GHG emissions.¹⁴⁷ The EPA argued that the Clean Air Act did not give it the authority to “regulate global climate change” and that, regardless if the agency was granted such express power, it would still be imprudent to act on the petition.¹⁴⁸ The SCOTUS ruled, by a 5-4 vote, that the Clean Air Act gives the US EPA the authority to regulate GHGs, provided that it first makes an “endangerment finding” that GHGs pose a threat to public health and welfare.

This trailblazing move by the Supreme Court of acknowledging the existence of a causal link between GHG emissions and climate change and the impact of climate on the environment, is historic as it held that “the widely shared nature of such an injury does not diminish the interest of concrete parties and emphasizing that the existence of other major GHG emitters like China and India, should not preclude the US agency from its regulatory duty, even if the latter by itself is unable to solve the global problem[.]”¹⁴⁹ This is precisely because “[a] reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.”¹⁵⁰

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Massachusetts, et al.*, 05-1120, at 18-22.

It can be seen from the case of *Massachusetts* that the Supreme Court found that the petitioners had fulfilled the stringent prerequisites of an adversarial presentation of a justiciable controversy. Hence, it was concluded that the failure of the EPA to regulate GHG emissions constituted an actual and imminent harm to the State-petitioners.¹⁵¹ Further, the requisite of redressability is fulfilled when a plaintiff has shown that a favorable judgment will relieve a distinct injury to himself or herself, it need not relieve his or her injury.¹⁵² However, in the Dissenting Opinion of Chief Justice John Roberts (along with three other justices), it was pointed out that such an interpretation was problematic, saying that there were critical difficulties in demonstrating causation and redressability, which rendered the case nonjusticiable.

It is important to note that in this case, the petitioners are sovereign States, local governments, and private organizations, and not merely private individuals. Ultimately, here, the Supreme Court found that a proper adversarial presentation exists. Such exists when a litigant has demonstrated that he or she has experienced a concrete and particular injury, that is actual, or at least imminent.¹⁵³ This injury must be one that may be fairly traced back to the defendant, and one that favorable judgment will address.¹⁵⁴ Correspondingly, if a litigant is granted a procedural right to protect his interests under statute, the litigant is then vested with legal standing provided there exists some possibility that the relief sought would move the injury-causing defendant to reconsider its decision that allegedly caused the litigant harm.¹⁵⁵

The Proponent would like to emphasize the Decision of the Supreme Court in *Massachusetts* that, wherein it was held the particularized injury of the petitioners therein is loss of coastal land—which is also that injury that must be “actual or imminent, not conjectural or hypothetical,” “real, and

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Massachusetts, et al.*, 05-1120, at 14-16.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

immediate,” and “certainly impending.”¹⁵⁶ Accordingly, where the harm is concrete, the Court shall find “injury in fact.”¹⁵⁷ From the foregoing, *Massachusetts et. al.*, the petitioners, satisfied the burden of proving an injury that is fairly traceable to the Environmental Protection Agency’s regulatory failure to promulgate new automobile GHG emission standards, and that is likely to be redressed by the prospective issuance of such standards.¹⁵⁸

2. *American Elec. Power Co., et al. v. Connecticut, et al.* 564 US 410 (2011)

The main issue decided upon in this case is whether federal judges could set limits on greenhouse gas emissions in face of a statute empowering the EPA to set the same limits. The Supreme Court held in the negative. In its Decision, the Court held that the Clean Air Act, and the EPA actions that it authorized, displaced any federal common law right to seek the relief sought.¹⁵⁹ The Clean Air Act referred specifically to such emissions. The EPA was directed to list categories of air pollution and establish emission standards. Likewise, the EPA was doing so for GHG emissions from fossil fuel-fired power plants. The Act itself thus provided “ a means to seek limits on emissions—the same relief that [plaintiff] respondents sought by invoking federal common law.”¹⁶⁰ According to the Supreme Court, “it was error to find that federal judges could set limits on greenhouse gas emissions in face of a law empowering the EPA to set the same limits, subject to judicial review only against arbitrary, capricious or unlawful action under 42 U.S.C.S. § 7607(d)(9).”¹⁶¹

Thus, the Court held that the respondents’ plea to commit judgments to federal judges [in suits in any federal district] cannot be reconciled with the decision-making scheme that the Congress had enacted. The Court stressed that the Clean Air Act’s prescribed order of decision-making is first by the

¹⁵⁶ *Id.* See also *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 562 (1992); *Los Angeles v. Lyons* 461 U. S. 95, 102 (1983), *Whitmore v. Arkansas*, 495 U. S. 149, 158 (1990).

¹⁵⁷ *Massachusetts, et al.*, 05-1120, at 18-22.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 423.

¹⁶¹ *Id.*

expert agency and then by federal judges. In particular, the Clean Air Act entrusts such complex balancing and assessing to the EPA in the first instance, in combination with state regulators. To reiterate, the proposal of the plaintiff-respondents to have federal judges determine what amount of carbon dioxide emissions is “unreasonable” and what level of reduction is necessary could not be reconciled with the scheme established by Congress.

The case of *American Elec. Power Co., et al.* is one of the major torts and damages lawsuits that have become prominent in the field of climate change litigation in the US. To give an example, one of the climate change damage lawsuits arose out of a hurricane, Hurricane Katrina. In that case, *In Re Katrina Canal Breaches Consolidated Lit.*,¹⁶² a case for damages was filed for the flooding and inundation of approximately 80 percent of the City of New Orleans caused by the breaches in certain canals. The main question therein was whether US (which negligently granted a permit to dredge a canal) was protected from liability with respect to damages by the discretionary function exception to the Federal Tort Claims Act (FCTA) and immunity granted under the Flood Control Act (FCA).¹⁶³ The Court ruled that it was protected and immune from liability, since the canal was incorporated into a flood control project (that failed and created floodwaters damaging the plaintiffs).¹⁶⁴ This created immunity, under the law, for whatever misapplications it might have made in permitting the dredging of the canal.¹⁶⁵ Likewise, the dredging permit was granted in a policy-based judgment and was thus protected by the discretionary function exception to the FCTA.¹⁶⁶

The takeaway from *In Re Katrina* is that such flooding cases were confronted with statutory challenges. Because of the sovereign immunity under the FCTA and the statutory immunity for any claims based on flooding under the FCA, the claims in the Katrina flooding cases did not prosper.¹⁶⁷ It is clear from the cases discussed above that most, if not all, climate change

¹⁶² *In re Katrina Canal Breaches Consol. Litig.* 533 F. Supp. 2d 615 (E.D. La. 2008).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *See* 33 U.S.C. § 702(c).

tort claims in the US have not reached trial on the merits and are eventually dismissed.

3. *Juliana v. United States (2020)*¹⁶⁸

In this case, twenty one youth plaintiffs, represented by non-profit organization, Our Children’s Trust, filed a complaint against the United States and other federal agencies, alleging that the government has knowingly violated their rights to life, liberty, and property and the government’s sovereign duty to protect public grounds by their act of continuing to “permit, authorize, and subsidize” fossil fuels.¹⁶⁹ Juliana, et al. call for the government to offer “both declaratory and injunctive relief for their claim—specifically, a declaration of the federal government’s fiduciary role in preserving the atmosphere and an injunction of its actions which contravene that role.”¹⁷⁰ The plaintiffs seek declaratory relief and an injunction ordering the government to implement a plan to “phase out fossil fuel emissions and draw down excess atmospheric carbon dioxide.”¹⁷¹

The District Court ruled in favor of the plaintiffs, holding that they stated a claim for infringement of a Fifth Amendment due process right to a “climate system capable of sustaining human life.”¹⁷² It was also concluded that they had stated a viable “danger-creation due process claim” arising from the government’s failure to regulate third-party emissions.¹⁷³ Lastly, the court ruled that the plaintiffs had stated a public trust claim grounded in the Fifth and Ninth Amendment.¹⁷⁴ However, the Court of Appeals reversed this decision. The appellate court concluded that plaintiffs did not have standing because they could not show a decision in their favor would remedy their harm. The majority expressed skepticism about whether putting a halt to U.S. policies promoting fossil fuel use would actually help heal plaintiffs’ injuries.

¹⁶⁸ *Juliana v. United States*, 217 F. Supp. 3d 1224, 1248 (D. Or. 2016).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Juliana*, 217 F. Supp. 3d 1224 at 1248.

B. Netherlands

1. *Urgenda Foundation v. The State of the Netherlands (2015)*

In most climate change cases, governments are the most frequent defendants.¹⁷⁵ In such cases, policies and decisions concern national emission targets and government licenses and permits or subsidies for fossil fuel production or use. The case of *Urgenda v. Netherlands* is an example of a climate suit that involves the national GHG policies of the government. In this case, the Urgenda Foundation, a Dutch environmental group, and 900 Dutch citizens filed a suit against the Dutch government, alleging that the revision of the national GHG emissions reduction goals was tantamount to a violation of its constitutionally imposed duty of care.¹⁷⁶

The Urgenda Foundation, sought for the judgment of the Dutch Supreme Court to hold that, *inter alia*, the State is acting unlawfully if it fails to reduce or have reduced the annual [GHG] emissions in the Netherlands by 40%, in any case at least 25%, compared to 1990, by the end of 2020.¹⁷⁷ It also asked the Supreme Court to rule that joint volume of the current annual emissions in Netherlands is unlawful, and that the government is liable for the joint volume of greenhouse gases in the Netherlands.¹⁷⁸ Furthermore, Urgenda claimed that “the State be ordered to achieve a reduction so that the cumulative volume of Dutch greenhouse gas emissions will have been reduced by at least 25% by end-2020, relative to the year 1990.”¹⁷⁹

Prior to the case reaching the Supreme Court, the District Court of the Hague ordered the Dutch government to lower its emission by at least 25% before 2020 compared to 1990 levels.¹⁸⁰ This ruling required the State to implement climate change mitigation and adaptation measures. Although it

¹⁷⁵ United Nations Environment Programme, Global Climate Litigation Report: 2020 Status Review, 13, *available at* <https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y> (last accessed Aug. 25, 2022).

¹⁷⁶ *Urgenda v. The State of the Netherlands*, C/09/456689/HA ZA 13-1396 (Hague DC 2015) (Neth.).

¹⁷⁷ *Urgenda*, C/09/456689/HAZA 13-1396, T 3.1 (6).

¹⁷⁸ *Id.* (4)-(5).

¹⁷⁹ *Id.* (9).

¹⁸⁰ *Id.* ¶ 5.1.

was found that the contribution of Netherlands to global emissions is comparatively minute – a mere 0.5%, was inconsequential. According to the Court’s ruling, “any anthropogenic greenhouse gas emission, no matter how minor, contributes to an increase in CO₂ levels in the atmosphere and therefore to hazardous climate change.”¹⁸¹

The Urgenda case was viewed as cutting-edge because it was the first in the world where the citizens have established that their government has a legal duty to prevent and mitigate climate change. What is more, the Court’s decision was a first-of-its-kind because it hinged on a rights-based analysis to justify its order for the government to reduce GHG emissions, instead of using statutory requirements as basis.¹⁸²

2. *Milieudefensie et al., v. Royal Dutch Shell (2021)*

This was a case heard by the District Court of the Hague in Netherlands in 2021. In 2019, the plaintiffs in this case brought an action against Royal Dutch Shell (RDS) seeking to extend the holding in *Urgenda* to private parties and governments, and seeking an order that the same duty of care requires Shell to reduce its emissions by 45 percent of its 2010 levels by 2030, given the Paris Agreement’s goals and the scientific evidence on the dangers of climate change.¹⁸³ The plaintiffs’ argument underscores Shell’s knowledge of climate change, its misleading statements on climate change, and inadequate action to reduce climate change.¹⁸⁴ Further, they argued that Shell had failed to uphold the standard of care laid down in the Dutch Civil Code as well as Articles 2 and 8 of the European Convention on Human Rights. Thus, the plaintiffs assert Shell’s unlawful endangerment of Dutch citizens and actions constituting hazardous negligence.¹⁸⁵

One of the defenses of Shell was that there is no legal standard, statutory or otherwise, that would establish that it is acting in conflict with an unwritten legal standard by failing to comply with emission caps.¹⁸⁶ Also, in

¹⁸¹ *Id.* ¶¶ 4.78-4.79.

¹⁸² Bueta supra note 175, 780.

¹⁸³ *Milieudefensie et al., v. Royal Dutch Shell*, C/09/571932/HA ZA 19-379.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

response, Shell manifested that it was doing its part to address the issue of climate change. According to Shell, “[w]hat will accelerate the energy transition is *effective policy, investment in technology and changing customer behavior*.¹⁸⁷ None of which will be achieved with this court action. Addressing a challenge this big requires a collaborative and global approach.”¹⁸⁸ However, the Court pointed out that “the policy intentions and ambitions [of Shell] largely amount to rather, undefined, and nonbinding plans for the long term.”¹⁸⁹

The Court, in its decision, allowed the class action by Milieudéfensie, et al. since the interests served in the class action were in line with the objectives in their articles of association.¹⁹⁰ Furthermore, the Court concluded that “the standard of care included the need for companies to take responsibility for Scope 3 emissions, especially ‘where these emissions form the majority of a company’s CO₂ emissions, as is the case for companies that produce and sell fossil fuels.’”¹⁹¹ In applying this standard of care to Shell, the Court held that the oil company must reduce its Scope 1, 2, and 3 emissions, across its entire energy portfolio, by 45% by 2030, relative to 2019 emission levels. Quoting the Decision of the Court:

“With respect to the business relations of the Shell group, including the end-users, this constitutes a significant best-efforts obligation, in which context RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuing from the CO₂ emissions generated by them, and to use its influence to limit any lasting consequences as much as possible. A consequence of this significant obligation may be that RDS will forgo new investments in the extraction of fossil fuels and/or will limit its production of fossil resources.”¹⁹²

¹⁸⁷ *Id.*

¹⁸⁸ *Milieudéfensie et al.*, C/09/571932/HA ZA, at 26.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

The Court denied the Shell’s argument that the EU Emissions Trading System (ETS) preempted further emissions cuts ordered by the court, and arguments that the reduction obligation would have no effect.¹⁹³ The Court rejected such argument on the grounds that the ETS only applies to some of the emissions in Europe Shell is responsible for, and the ETS does not cover emissions outside the EU.¹⁹⁴ The standard of care, on the other hand, requires Shell to reduce all global emissions that will harm Dutch citizens.¹⁹⁵ Further, the Court rejected the claim that a reduction obligation would have no effect because such emissions would be substituted by other companies.¹⁹⁶ The Court emphasized the causal link between production restriction and emissions reduction, saying it is still unclear if other businesses will step in to replace Shell's output in light of Paris Agreement responsibilities. The Court said, “[we] acknowledge that RDS cannot solve this global problem on its own.¹⁹⁷ However, this does not absolve RDS of its individual partial responsibility to do its part regarding the emissions of the Shell group, which it can control and influence.”¹⁹⁸

C. Philippine Context

In the Philippines, there are many court pronouncements that involve environmental issues and the protection of biodiversity and natural resources, in an endeavor to give life to the constitutional right of the people to a balanced and healthful ecology. From the case of *Oposa (1993)* to the more recent case of *Osmeña v. Garganera (2018)*, it is evident how Philippine courts strive to protect the environment and to ensure the proper enforcement of environmental laws. It can even be said that Philippine jurisprudence on environment has been evolving and innovating.

This development in environmental legislation dates back to 2009 when the Supreme Court issued the Rules of Procedure for Environmental Cases (Rules). Such Rules simplified the process of filing an action that concerns

¹⁹³ *Id.*

¹⁹⁴ *Milieudefensie et al., C/09/571932/HA ZA*, at 26.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

environmental issues or disputes. Essentially, the Rules made it accessible for the public to bring cases and represent the environment. One of the key features of the Rules is that it provides for a remedy called the *Writ of Kalikasan*, which is one of a kind and extraordinary in nature, and available only within the Philippine jurisdiction. It is regarded as a unique remedy because it may be resorted to only when other ordinary legal remedies (i.e. injunction or damage suit) are unavailing and in case of “environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.”¹⁹⁹

Despite the long line of environmental cases, there is yet to be a “climate change case” in the country—meaning to say, there has not been a case filed that has to do (specifically) with climate change causes and the necessary regulation and protection of the country from the effects thereof. However, it must be noted that the only environmental case that can be characterized as a “climate change suit” is the “Road Sharing” case as the party-in-interest based its contentions on climate change laws and principles.

In this case, *Victoria Segovia v. Climate Change Commission*,²⁰⁰ petitioners who are minors asked for the issuance of Writs of Continuing Mandamus and Kalikasan for the government to implement the Climate Change Act and other laws. Petitioners sought for the implementation of the Road Sharing Principle, to give more space on roads for carless people.²⁰¹ They challenged the government’s failure to carve out pedestrian and bicycle space on the country’s roadways, which violated their rights to health and a healthful ecology, as well as executive orders requiring roadways to be designed in a way that facilitates pedestrians and bicycles.²⁰² The Supreme Court denied the petition, stating that the government was able to show that it was taking action to address the environmental issues raised.²⁰³ Moreover, it held that the Court cannot compel the Executive branch to implement

¹⁹⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASSES, A.M.No. 09-6-8-SC, rule 7 (April 29, 2010).

²⁰⁰ *Segovia v. Climate Change Commission*, G.R. No. 211010, March 7, 2017.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

principle, more so because such requires exercise of discretion, and thus cannot be the subject of mandamus.²⁰⁴

²⁰⁴ *Id.*

CHAPTER IV

ANALYSIS ON THE POTENTIAL OF ESTABLISHING THE LEGAL BASIS OF CLIMATE CHANGE LITIGATION IN THE PHILIPPINES

It has been stressed in the earlier chapters that climate change has already affected and will continue to affect human rights, which include, but not limited to, the right to life, right to health, right to food and water, and right to housing. As the impacts of climate change worsen, the prospective violations of these rights by private and public entities, who continue business as usual, are obvious. **It is but right to ask, then—does liberty come at the expense of the environment?**

The Author suggests that by employing a rights-based approach and by invoking the right to a balanced and healthful ecology, private individuals, groups, and organizations can claim for loss and damage due to climate harms. Existing case law suggests that the use of rights based-claims is justified and can yield positive results.

As a potential area of litigation, liability for loss and damage entails that the defendants of the case are private parties. Such cases are often premised on various theories. Generally, most cases seek to hold a GHG emitter or fossil fuel producer responsible for climate harms, and some cases argue that publicly traded companies ignored or misused knowledge about climate change risk. With respect to the Philippines, the question, then, is—how would such claims be proven viable in courts? The Philippine’s first climate case—which was filed in the Commission on Human Rights—*Greenpeace Southeast Asia v. Chevron (US)* can be used as an illustrative case to discuss the viability of climate cases in our courts and its implications.

Philippine Carbon Majors Case

In 2015, the Commission on Human Rights of the Philippines (CHR) was petitioned by 12 organizations and 20 individuals, and over a thousand Filipino citizens who supported the case through a petition, to conduct an inquiry on the impact of climate change on the human rights of Filipinos and

the responsibility of the so-called “carbon majors.”²⁰⁵ These Carbon Majors include multinational and state-owned corporations engaged in the coal, oil, cement, and mining industries, some of which retain branches, regional offices, subsidiaries, or agents in the Philippines.

According to Greenpeace Southeast Asia et al., based on research, these carbon majors are responsible for a large percentage of global greenhouse gas emissions.²⁰⁶ Citing the fact that the Philippines is highly vulnerable to the effects of climate change, it was alleged that violations of the rights to life, health, food, water, sanitation, adequate housing, and self-determination.²⁰⁷ Specifically, the rights of vulnerable groups, peoples and communities, including women and children, people with disabilities, those living in extreme poverty, indigenous peoples, and displaced persons, were invoked.²⁰⁸ The right to development, labor rights, and of course, the right to a balanced and healthful ecology, were also invoked.²⁰⁹

Such petition was brought following a number of particularly destructive typhoons that struck the Philippines, including Typhoon Haiyan (Yolanda). Citing data from the World Bank, the petitioners maintain that the Philippines accounts for 98% of affected persons and 78% of human casualties from weather-related natural calamities between the years of 2000 and 2008 alone.²¹⁰ Carbon fuels processed by the leading fossil fuel companies are responsible for almost one-third of global industrial carbon dioxide from the industrial revolution to 2010.²¹¹ The narrowed down list of 50 investor-owned companies, against whom the petition was brought against,

²⁰⁵ These are high-emitting multinational and state-owned producers of natural gas, crude oil, coal and cement, including BP, Shell and Chevron.

²⁰⁶ Commission on Human Rights, 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, May 12, 2015, *available at* <https://www.greenpeace.org/static/planet4-philippines-stateless/2016/07/213f91ba-amended-petition-may-2016.pdf> (last accessed Aug. 22, 2022).

²⁰⁷ *Id.* at 6.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *supra* note 395. at 2.

²¹¹ *Id.* at 3.

were found to be responsible for 21.72% of global industrial emissions from the industrial revolution up to 2010.²¹²

In terms of imputing liability, the petitioners assert that a potential way to ascribe responsibility for the cumulative effect of global emissions upon an individual Carbon Major is by using the scientific data to identify and determine: 1) the private entity’s contribution to global industrial carbon emissions; and 2) the approximate time in which the private entity would have acquired knowledge, become cognizant, or was informed of the harmful effects of its product in view of climate, ecological health, and human health.²¹³ Thus, the petitioners ultimately ask the CHR to determine:

“[...] *whether or not the Respondent Carbon Majors must be held accountable—* 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 may be undermining climate action—*for the human rights implications of climate change and ocean acidification.*” (Italics theirs)²¹⁴

On 6 May 2022, the CHR released the findings of its nearly seven-year inquiry. At the onset, the CHR stated that, “[w]ith our inquiry, we hope to have been able to help identify, or elaborate on, basic rights and duties relative to climate change, as well as amplify standards for corporate behavior.”²¹⁵ The CHR’s inquiry and analysis, and the evidence it marshaled has persuasive weight and value not only for courts confronting climate change litigation, but for courts all over the world that will face and address similar questions in the future. Furthermore, such case may serve as the first step towards the birth of climate change litigation in the Philippines. It must be noted that in the case of *Greenpeace*, the first “climate change case” in the country, pertained to a relief sought not from our courts, but from the Commission of Human Rights, an independent commission created under the Constitution and tasked with the conduct of investigations into human rights violations.²¹⁶ While the CHR

²¹² *Id.*

²¹³ *Id.* at 5.

²¹⁴ *Id.* at 24.

²¹⁵ Commission on Human Rights, National Inquiry on Climate Change Report, May 3, 2022, at 8, available at <https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf> (last accessed Aug. 25, 2022).

²¹⁶ PHIL CONST. art. XIII, § 17. See Commission on Human Rights, About the Commission, available at <http://chr.gov.ph/about-us/>.

is constitutionally mandated to, *inter alia*, investigate all forms of human rights violations involving civil and political rights, and also to recommend to Congress effective measures for the protection of human rights,²¹⁷ there is some weight to the argument that the CHR is only an investigative and recommendatory body. Although it is true that their findings are still given weight and credence, the Author is of the opinion that a court of law is still the best forum that can hold persons accountable and liable, especially with respect to climate change related matter.

The allegations of liability involving the subject matter of climate change is best heard in a court of law, which has adjudicatory powers and the “duty to settle actual controversies involving rights which are legally demandable and enforceable.”²¹⁸ Moving forward, it would be fitting for climate change cases to be brought before the Philippine courts, more specifically when there are clear violations of human rights. Given the country’s vulnerability to climate change, the most viable grounds for climate litigation would be loss and damage and duty of care for citizens. More particularly, victims of natural calamities due to climate-induced events should be permitted, under the law, to seek relief and compensation for loss and damage. While procedural challenges may arise, the Proponent believes that these can be overcome and dealt with accordingly.

The Author shall demonstrate how a rights-based legal framework will be effective in the pursuit of reparations in relation to climate change corporate liability and accountability through litigation.

A. CLIMATE CHANGE IS A HUMAN RIGHTS ISSUE

The climate crisis negatively affects a multitude of, if not all, human rights. In the report of the CHR, it acknowledged that “the effects of extreme weather events attributed to climate change dehumanizes the human person. The combination of loss of lives, deprivation of basic needs, material loss, emotional trauma and hopelessness that these survivors experience strip them of their dignities.”²¹⁹

²¹⁷ PHIL CONST. art. XIII, § 18 (1), (2).

²¹⁸ PHIL CONST.. art. VIII, § 1.

²¹⁹ *supra* note 419, at 34.

Further, the impact of climate change on human rights is well-documented in legal scholarship and beyond. Indeed, a human rights-based approach to climate change will be advantageous for States, both in national and international law. By approaching climate change from a human rights perspective, the issue moves from being a political question to a legal question and to the area of national and international law. For example, the reduction of greenhouse gas emissions presents itself within human rights law as a question about what States shall do based on existing obligations under the international climate change regime. Correspondingly, as a human rights issue, climate change can be addressed in many ways. One of the mechanisms is litigation. Globally, climate change litigation has come of age.

In the Philippines, the existing line of environmental cases and the active environmental movement in the country can be channeled to look into possible climate change cases, given the nexus between human rights and climate change. Therefore, when climate change accountability and liability is introduced in the country, the contributors to climate change, which cause extreme weather events (a threat to the right to life) may be held accountable and liable. This is simply a glimpse of what benefits climate change litigation can bring—reparations for climate victims, mitigation and adaptation efforts, i.e. reduction of GHG emissions, and overall strengthened protection of our environment.

Evidently, this is also one mode of safeguarding people's liberty and prosperity in the context of environmental protection. Adverse effects of climate change hinder the ability to promote welfare and prosperity of the people through enjoyment of rights, notably the right to life and the right to health. Thus, to respond to this injustice, the Proponent submits that the best option is to use human rights laws and principles on redress for human rights violations and accountability.

B. OBLIGATIONS OF THE PHILIPPINES UNDER INTERNATIONAL LAW

The Philippines is a State Party to various international treaties, which include human rights treaties and conventions. In relation to climate crisis, the UNFCCC is the chief convention that provides a framework for States to use when adopting measures for addressing climate change. Further,

the UNFCCC provides for general commitments for State parties to adopt. A specific obligation or commitment can arise from such treaty when negotiated in the Conference of Parties (COPs). Subsequently, the Philippines also ratified the Kyoto Protocol. As mentioned earlier, the Philippines is a Non-Annex I under the UNFCCC. Because of this, the provisions of Kyoto Protocol, specifically with respect to emission targets, is not binding upon the Philippines. These cannot be used to enforce compliance upon the Philippines.

Even so, the Philippines ratified the 2015 Paris Agreement. At the heart of the Paris Agreement is the Nationally Determined Contribution (NDC). While the UNFCCC does not automatically impose a clear commitment that binds the Philippines when it comes to regulating GHG emissions, the Philippines, by submitting its Nationally Determined Contributions,²²⁰ binds itself to take action and pursue efforts to limit the global average temperature increase to 1.5 degrees Celsius. Essentially, as a State Party to the Paris Agreement, the Philippines has the concomitant obligation to implement the environmental principles embodied therein through domestic legislation.

Although the Philippines is but a developing country, it should not fall short of its obligations under the abovementioned international treaties, which are part of the laws of our land. Anent the obligations under human rights laws, it bears stressing the Philippines, despite the specific needs and special circumstances as a developing country, is still obliged to respect, protect, and fulfill human rights. One barrier, however, in the fulfillment of such human rights obligations is the limited resources. It is more difficult to address the climate emergency for developing countries, which is why they have been pushing for a human rights based framework for climate change to draw attention to their plight and to exert pressure on governments and corporations to take action.

A human rights based approach to addressing climate change necessitates an evaluation of state climate action based on the consideration of the people who will be affected by such action. A broader view of human

²²⁰ Climate Change Commission, Development of the Philippines' Nationally Determined Contributions, available at https://climate.gov.ph/files/NDC%20Briefer%203.1%20Optimized-page1_1600062989.pdf (last accessed Aug. 28, 2022).

rights is contemplated by this approach, which goes beyond violations of rights and available remedies. Rather, the approach proposed revolves around setting standards and providing a canon of values around which common action can be motivated and negotiated.²²¹ Article 10 of the Paris Agreement encourages capacity building of developing country parties, especially for those with least capacity and the most vulnerable to climate change to implement adaptation and mitigation actions and should facilitate technology development, dissemination and deployment and access to climate finance.²²²

Under the loss and damage clause, the listed areas of cooperation and facilitation to enhance understanding, action, and support in averting, minimizing and addressing loss and damage include resilience of communities, livelihoods and ecosystems. Undeniably, it is the people who bear the loss and damage from climate change, and without a doubt—loss and damage affects human rights. Hence, a human rights based approach to respond to climate change is a major theme of the proposals of developing countries in recent years of climate negotiation.

It bears stressing that the Philippines is obliged to respect, protect, and fulfill human rights. On both a domestic and international level, addressing the harm brought about by climate change remains a critical human rights concern and obligation under international law.²²³ The report further stated that “[i]nternational human rights law complements the UNFCCC by underlining that international cooperation is not only expedient but also a human rights obligation and that its central objective is the realization of human rights.”²²⁴

C. PHILIPPINE LAWS TO MITIGATE CLIMATE CHANGE

²²¹ ANNA HUGGINS & BRIDGET LEWIS, *The Paris Agreement: Development, the North-South Divide and Human Rights*, in INTELLECTUAL PROPERTY AND CLEAN ENERGY (THE PARIS AGREEMENT AND CLIMATE JUSTICE) 102 (Matthew Rimmer ed., 2018).

²²² Paris Agreement, *supra* note 215, art. 10.

²²³ UN Human Rights Committee, *General Comment 36 (right to life)*, ¶96, Oct. 30, 2018 CCPR/C/GC/36 [hereinafter General Comment 36].

²²⁴ *Id.*

At present, the current laws that are specific to climate change are the Climate Change Act of 2009 and the People’s Survival Fund Act. In the Climate Change Act, the CCC was created, and as part of its powers, it is tasked under R.A. No. 10174 to create a framework to be used for tackling the issue of climate change. This framework under R.A. No. 10174 will be used for “climate change planning, research and development, extension, and monitoring of activities on climate change.” Likewise, the CCC may consult with stakeholders such as nongovernment organizations and even the academe. Because of this, the CCC has the power to exercise policy coordination. Moreover, R.A. No. 10174 gave the CCC recommendatory power by allowing the CCC to recommend legislation, policies, or strategies for purposes such as climate change adaptation and mitigation. It may be said that R.A. No. 10174 is a step in the right direction for the enactment of future legislation to protect the environment. However, the CCC neither has the power to impose penalties nor the power to create its own orders to regulate emissions. Even if the commission is under the Office of the President, the powers of the CCC are limited by its mandate under R.A. No. 10174. This means the CCC can only exercise policy coordination and recommendatory power pursuant to R.A. No. 10174.

In essence, the problem that needs to be addressed is that, despite these laws, there exists no legally binding provision that would mandate and compel climate change actors to reduce their greenhouse gas emissions or to mitigate or adapt to climate change. Neither the Climate Change Action Plan nor the Local Climate Change Action Plans are legally binding. Furthermore, there is no provision that allows for individuals or organizations to file an action for claims of loss and damage, particularly due to climate-induced harm. As a result, climate justice remains to be intangible and seemingly unreachable, and the right of the people to a balanced and healthful ecology and other fundamental human rights remain to be threatened and violated. Major emitters continue to operate business as usual, while those from vulnerable sectors are left unheard and without remedy. While there are remedies provided for in the Rules of Procedure for Environmental Cases, the subject matter of climate change is of extraordinary nature. It requires the understanding of climate science in order to ensure due process, meaning, the evidence presented by parties are weighed and examined properly – in order to reach a proper decision to settle and resolve a case. Therefore, there is a clear gap in our laws which the Thesis undertakes to address and fill.

D. ENVIRONMENTAL REMEDIES IN THE PHILIPPINES: A CRITIQUE

As far as environmental issues are concerned, there are various remedies available to any willing petitioner(s). These include the Writ of *Kalikasan*, the Writ of Continuing Mandamus, the Environmental Protection Order (EPO), and the Temporary Environmental Protection Order (TEPO). Specialized courts called the “Green Courts” have also been established by the Supreme Court to specially hear and decide on environmental cases.²²⁵ The Author seeks to critically assess the Writ of *Kalikasan*, which is the commonly sought-after relief in our environmental courts.

Writ of Kalikasan—Just a Writ?: A Critique

Indubitably, the Writ of *Kalikasan* is a groundbreaking remedy in environmental law. It is known as a remedy which involves determining the “environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.” Such environmental damage must be proven with sufficient evidence for the issuance of the Writ to be granted. As a result, a number of petitions for the issuance of the writ of *kalikasan* have been denied for failure to provide sufficient evidence proving the required magnitude for environmental damage. Clearly, the application for the writ requires that the environmental threat or damage must be so grave. The Proponent opines that this standard is considerably stringent, and arduous to an extent, primarily because the “justiciable magnitude of environmental destruction” is associated with “the involvement of two or more cities or provinces.” It behooves us to question why and how the Supreme Court established such kind of criteria for proving the degree of the environmental threat or damage.

For instance, in the case of *Agham v. Japan Tobacco*, there was no clear showing that respondents therein committed acts or omissions violative of any environmental law which resulted or will result in an environmental damage of such magnitude that would infringe the right of the people to a balanced

²²⁵ CARLO L. CRUZ, NOTES ON THE CONSTITUTION: VOLUME I (2016 ED.), at 190 (citing Supreme Court, Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases, A.O. No. 23-2008 (January 28, 2008)).

and healthful ecology.²²⁶ Categorically, the basis, therefore, in determining whether the issuance of the Writ of *Kalikasan* will be granted by the courts is the magnitude of environmental damage. Similarly, the Supreme Court discussed the grounds for the denial of the Writ in the case of *Dela Cruz v. MERALCO*. In such case, the grounds for the denial were the petitioner's failure to show that: (1) there was an unlawful act or omission on the part of the respondent; and (2) the actual or threatened environmental damage was of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.²²⁷ Further, the Court, citing the case of *Paje*, declared that the ecological threats addressed by the Writ must be of potentially exponential nature and large-scale which, if not prevented, may result in an actual or imminent environmental catastrophe.

The Author observes that, the Supreme Court generally declares that there is no environmental damage serious enough to warrant the issuance of the Writ, unless proven in form and in substance, that there are *at least* two cities or provinces affected. Therefore, if such requirement is not met, the Writ may never issue despite that existence of an environmental threat or damage. It appears that this standard is arbitrary and lacking in strong basis. Our courts deny the special civil action concerning the writ of *kalikasan* solely on political and/or geographic factors. The Author deems it necessary to express that aggrieved parties are thus deprived of the opportunity to have their rights protected and to seek redress from the actual or impending environmental damage or destruction.

In sum, there is truly a need to revisit the rules on the writ of *kalikasan* and evaluate whether the present requirements for its issuance are rights-based and whether such requisites are too stringent considering the public-interest character of the petition.

E. IDENTIFYING THE GAP

The Missing Legal Tool for Environmental Protection

²²⁶ AGHAM v. Japan Tobacco International, G.R. No. 235771 (2021).

²²⁷ Dela Cruz v. MERALCO, G.R. No. 197878 (2020).

Regardless of such laws and rules to protect the environment, there still seems to be a missing piece, which, if found and filled, may provide a stronger pathway towards climate justice. What is the missing legal tool? It would be a substantive and procedural legal framework to address climate change specifically.

First, the decisions of the Supreme Court in environmental cases have been inconsistent over time and across jurisdictions, as observed in several cases. Second, the stringency of the Rules in terms of granting the writs requested by petitioners is contrary to the nature of a writ. More often than not, petitions are denied due to insufficiency of evidence. This should not be the case. Third, the insufficiency of our environmental laws, to address climate change issues in a court setting to seek redress and reparations, must be addressed. This may be achieved by creating a new remedy.

To be clear, there is a gap in our laws primarily because major GHG emitters are not held responsible for their contributions to climate change and global warming, primarily because there is no proper forum to seek redress from such companies. The Philippines, one of the countries that are at risk for climate change impacts, lacks the appropriate laws and remedies to hold such companies accountable.

F. THE NEED FOR SUBSTANTIVE AND PROCEDURAL LEGAL BASIS TO ADDRESS CLIMATE CHANGE ISSUES IN THE PHILIPPINES

Climate change concerns necessitate the enactment of a law, and also rules, that will aid in the process of attaining climate justice, not just for climate-induced event victims, but for everyone. To reiterate, climate change affects human rights. When there are human rights violations, there must be a forum to seek redress for injury. Without legal basis and cause of action, then there will be no basis to sue. All persons are affected by climate change and all of us carry the intergenerational responsibility to preserve the environment. Thus, when it is proven that damage is caused, each person has the right to seek reparations for the violation of his or her right, most especially fundamental rights, i.e. right to life, to food, to health, and others. Thus, there must be proper legal basis to serve as a cause of action for suing private

entities and attributing liability. Similarly, the courts can be used as a forum, not only for dispute resolution between private individuals, but also by public interest litigants to attain social justice and advocate for change.²²⁸

In terms of evidence, source attribution and impact attribution play major roles in many climate cases, including those seeking to compel national governments to take action on climate change and those seeking to hold corporations liable for their contribution to climate change. Source attribution refers to attributing a defendant's emissions of climate change overall. On the other hand, impact attribution pertains to linking climate change to specific climate change impacts. In this regard, it is required that scientific evidence and expert reports detailing the fundamental science of climate change, its observed and projected impacts, and the ways in which the fossil fuel industry contributed to such problem. The science of attribution, when considering legal causality in assessing impacts and damages of climate change, is therefore suggested.

In sum, even with all the judicial remedies in the Philippines concerning environmental issues, the gap lies in the fact that the primary Climate Change laws, and even the Writ of *Kalikasan* are not sufficient to allow citizens to seek redress for loss and damage and for the violation of their basic human rights. Clearly, this is not addressed in the current Rules of Procedure for Environmental Cases. Thus, the Proponent submits that a law focusing on climate change liability and accountability be enacted, and a new set of Rules centered on climate change be issued to guarantee climate justice for all and the protection of the people and the environment, and our natural resources.

²²⁸ Hon. Brian J. Preston, *Characteristics of Successful Environmental Courts and Tribunals*. J. ENVIRON. LAW 365, 387, 388, 31 (2014).

CHAPTER V

CONCLUSION AND RECOMMENDATIONS

A. CONCLUSION

Synthesis of Key Points

The main question raised by this Thesis is mainly focused on whether our current laws are sufficient to safeguard the right of the people to a balanced and healthful ecology in relation to the issue of alleging climate change liability and accountability against climate change actors. More importantly, there is a recognition of the link between climate change and human rights, and the necessity of balancing liberty and environmentalis to ultimately achieve prosperity. These concepts are patently interrelated.

In this study, there was a need to ask the question of whether there is a gap in our Philippine environment laws, considering the State's obligations to provide a proper forum for redress for climate-induced loss, with the goal to mitigate and adapt to climate change, under international law. This primary question provided opportunity to explore the different dimensions concerning climate change. It allowed room for research on the science of climate change, the origin of studying climate science, and the reason as to why there was a need to study the changing climate. It also rendered crucial the study of the concept of climate justice through a human rights lens.

In the analysis of this Thesis, four points were arrived at:

First, climate change is a human rights issue. The adverse impacts of climate change negatively affect the individual and collective human rights of the people. As such, they should be able to seek redress when their rights are violated due to climate-induced events.

Second, the current laws specific to climate change of the Philippines are lacking insofar as liability and accountability of climate change actors are concerned. The laws are merely focused on policymaking and recommendatory measures. Without a legally binding provision that

permits the seeking of redress in courts, the people who suffer injury will be left unheard and without any remedy.

Third, the judicial remedies under the Rules of Procedure on Environmental Procedure are not fitting for climate change cases. Undeniably, the standards for the issuance of a writ of *kalikasan* is stringent as the environmental harm must be so grave. The requisites for the grant of such writ are also not aligned with litigating climate change cases. Therefore, a separate remedy for a specific climate change problem, that is justiciable, should be proposed.

Fourth and final, there is clearly a gap in our Philippine laws because to date, there are no Philippine laws or jurisprudence that recognize and address the intersectionality between business and human rights on the one hand, and climate change on the other. This creates a threat to the rights of the people to bring to court a case that involves their right that is legally demandable and enforceable, which, in this case, is the right to a balanced and healthful ecology.

The climate duties of states under human rights law are still developing. In this context, climate litigation plays a crucial role in recognizing those obligations and further clarifying their content. We are in a state of a “planetary emergency” and the point of no return is now in sight. The threat of climate change affects not only the environment, but our very own lives. Thus, tackling climate change should be more accessible for everyone—even in terms of bringing a case to court. We should close this gap in the law to ensure that our rights are protected.

We must therefore ask this very timely and pivotal question: **if we do not act now, then when? If we do not support climate action, what happens then to people’s freedoms and prosperity?**

Moving Forward: Liberty, Environment, Prosperity

What the Author aims to forward, through this dissertation, is a better understanding of a mutually beneficial relationship between people’s

liberty and the environment. While other scholars may argue otherwise, it will be advantageous for society as a whole to reframe its approach in addressing climate change – because aside from the fact that anthropogenic climate change adversely affects human rights, it is obvious that climate change in general is a risk to prosperity, peace, and survival of man.

At present, not all institutions recognize that climate change is a threat to human rights. What role, then, does the rule of law play, in creating solutions for the ongoing climate crisis? Certainly, it is not only the people who must abide by the laws of the State and who must be guided by the rule of law – but more so the leaders of our institutions, those who possess power. Safeguarding liberty and nurturing prosperity under the rule of law should be the utmost priorities of the government. In line with this, the government must heed the call of victims and provide an avenue where those who suffered may be heard and given reparations for their losses.

Therefore, if we rethink the way we position climate change as an issue – not merely as an environmental one, but a human rights one – we are advocating not only for the environment—our forever and only home, but we are also advancing the fundamental rights of all peoples, from all sectors, to safeguard each one’s liberty, prosperity, and peace. At the end of the day, liberty should never come at the expense of the environment. The main goal, always, is to ensure that justice is served to fulfill the important philosophy of liberty and prosperity under the rule of law. This is imaginable, possible, and doable—if only we take action, here and now.

B. RECOMMENDATIONS

Considering the foregoing research and discussion, the Proponent proposes that a new law entitled “Climate Change Liability and Accountability Act” should be passed. This law will serve as the legal basis for climate change cases to prosper in the Philippines. As established, the Philippine government has the duty to reduce its emissions because these threaten fundamental rights of the people. Since GHG emissions contribute to climate change, which then result in climate-induced events and therefore loss and damage, any injured person should be allowed by law to sue corporations who are doing business in the Philippines, and also those who are not, but still largely contribute to global emissions. This new law will ensure that the right of the people to a balanced and healthful ecology, as well as the basic human

rights to life, health, food security, among others, are protected always. Should any violation of such rights occur, there will be a legal basis and proper forum to seek redress and reparation for loss and damage. Said law will also allow individual claimants to file for climate change loss and damages. It will require corporations to establish, publish, and implement a vigilance plan on an annual basis. Correspondingly, if corporate entities within the scope of the law fail to publish or implement a vigilance plan, any concerned parties can turn to relevant jurisdiction for action. In the proposed legislation, carbon footprint due diligence will be required and reporting requirements for private enterprises will also be made mandatory. Accordingly, non-compliance is one of the bases for the claim for losses.

In addition, the proposed Climate Change Liability and Accountability Act allows individuals to file a suit against corporate defendants, even foreign ones, for causing harm to health and environment. The court of foreign jurisdiction shall order the foreign corporate entities to submit themselves to the jurisdiction of the Philippine court where the case was filed. Likewise, the law shall mandate corporate contribution to the climate fund for the furtherance of mitigation, adaptation, post-disaster recovery, and victim compensation in the Philippines. The redress mechanisms for victims of climate impacts, including compensation, shall be made available by virtue of said proposed law. This shall be in line with the principle of common but differentiated responsibility among nations and promoting the importance of international cooperation in addressing climate change and providing redress.

Further, the Proponent submits that a special writ for climate change cases, which shall be called Writ of *Klima* should be created. There is a need for a separate and extraordinary remedy because of the nature of climate change cases. This is because climate litigation involves the scrutiny of scientific evidence, expert reports, and consultations in order to establish the causal connection between the corporations' action/omission and climate harms. Moreover, its enforceability will be different from the Writ of *Kalikasan*. The final order vis-à-vis the writ may be enforceable anywhere. As such, the Writ of *Klima* must be established.

ANNEX 1

Republic of the Philippines
Congress of the Philippines
Metro Manila
Eighteenth Congress
First Regular Session

Begun and held in Metro Manila, on Monday, the twentieth day of August,
two thousand twenty-two.

[Republic Act No. 110888]²²⁹

**“AN ACT ESTABLISHING A CLIMATE CHANGE LIABILITY AND
ACCOUNTABILITY FRAMEWORK AND REGULATING
GREENHOUSE GAS EMISSIONS IN ACCORDANCE WITH OUR
NATIONALLY DETERMINED CONTRIBUTION, AND FOR
OTHER PURPOSES”**

*Be it enacted by the Senate and House of Representatives of the Philippines
assembled:*

CHAPTER I

TITLE AND DECLARATION OF POLICY

SECTION 1. *Short Title.* – This Act shall be known as the “Climate Change Liability and Accountability Act 2022” It shall hereinafter be referred to as the Act.

²²⁹ The provisions of this proposed law are based on the provisions of the Climate Change Act of 2009.

SECTION 2. *Declaration of Policy.* – It is hereby declared that the policy of the State is to:

a) protect and promote the right to the Filipino people to a balanced and healthful ecology along with the rights that depend upon it for its fulfillment and realization;

b) respect, protect, and fulfill all human rights, considering climate change poses significant risks to human health and security, to the environment, including biodiversity, and to economic growth;

c) to fulfill its obligations under the Paris Agreement, and under that Agreement, has committed to set and communicate national objectives and undertake ambitious national measures for climate change mitigation;

d) recognize that the effects of climate change to facilitate the reduction of the Philippines' GHG emissions to achieve and exceed the target for 2030 set out in its Nationally Determined Contribution communicated in accordance with the Paris Agreement;

d) to develop a plan to set Philippines to a path to achieve a prosperous net-zero-emissions future by 2050, supported by public participation and expert advice;

e) to ensure that climate justice is considered and that this facilitation of the transition to net zero emissions such that there can be no transition if it is not just and equitable to the communities and individuals who suffer from climate injustice.

CHAPTER II DUTY AND LIABILITY OF THE PRIVATE SECTOR

Section 3. *Liability of corporate greenhouse gas emitters.* A corporation, with large greenhouse gas emitting facilities, coming from, but not limited to, the fossil fuel industry, energy industry, manufacturing industry, on the basis of expert reports, or its Philippine-based subsidiaries, are required to set up and implement a “vigilance plan.” The vigilance plan shall include the reasonable

vigilance measures to allow for risk identification and for the prevention of severe violations of environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls, as well as from the operations of the subcontractors or suppliers with whom it maintains an established commercial relationship, when such operations derive from this relationship. Non-compliance with the submission of this plan may be the basis for the imposition of a penalty and the basis for a demand for compensation by real-parties-in-interest.

Section 4. *Liability of corporate greenhouse gas emitters.* A corporation, a major greenhouse gas emitters, coming from, but not limited to, the fossil fuel industry, energy industry, manufacturing industry, based on expert reports, shall be liable for damages suffered by any person, group, or organization, due to any climate-induced hazards, risks, or losses.

Section 5. *Inquiry of the Climate Change Commission.* The Climate Change Commission shall be the main regulatory and investigative agency for climate change related matters and its current powers and functions, in addition to those in the Climate Change Act of 2009, shall include the following:

- (a) Formulate and update guidelines for determining vulnerability to climate change impacts and adaptation assessments and facilitate the provision of technical assistance for their implementation and monitoring;
- (b) Coordinate with local government units (LGUs) and private entities to address vulnerability to climate change impacts of regions, provinces, cities and municipalities and mandate such LGUs to implement their respective LCCAP if so able;
- (c) Facilitate capacity building for local adaptation planning, implementation and monitoring of climate change initiatives in vulnerable communities and areas;
- (d) Promote and provide technical and financial support to local research and development programs and projects in vulnerable communities and areas;
- (e) Oversee the dissemination of information on climate change, local vulnerabilities and risks, relevant laws and protocols and adaptation and mitigation measures;

- (f) Issue rules and regulations concerning allowable GHG emissions keeping in line with the NDC and the international treaties;

Section 6. *Jurisdiction over Climate Liability Cases.* The environmental court, depending on the venue, assigned by the Supreme Court shall have jurisdiction to take measures directed to the redress of climate change claims when:

- a) the city or municipality is the place where the injury from the adverse effects of climate change was suffered and where the person who suffered the injury resides;
- b) the city or municipality is the defendant's place of domicile or office, or the place where the defendant may be found, or a place with which the defendant has substantial connection.

CHAPTER III LIABILITY OF THE PUBLIC SECTOR

Section 6. *Liability of local government units or administrative agency.* A public entity, particularly local government units (LGUs) or administrative agencies shall be liable for damages suffered by any person, group, or organization, due to any climate-induced hazards, risks, or losses caused by an activity or project that such entity has approved, supported, or subsidized.

CHAPTER IV REGULATION OF GHG EMISSIONS PER SECTOR

Section 7. *Regulatory measures.* There shall be a set amount for allowable GHG emissions per sector to be determined by the Panel of Technical Experts under Section 10 of the Climate Change Act and to be published in the subsequent rules and regulations after the effectivity of this act.

Provided that the Panel of Technical Experts' determination of the allowable GHG emission per sector shall be in consonance with our Nationally Determined Contribution.

Section 8. *Mandatory Reporting on transition plan's status.* There shall be a mandatory reporting of the status of transition plans that support a Paris-compatible pathway.

Provided that any person, public or private under this act who fails to act on their transition plan within a reasonable period shall be sanctioned.

CHAPTER V

CLIMATE FUND

Section 8. *Contribution to a climate fund.* There shall be a mandatory contribution of corporations to a climate fund for mitigation, adaptation, post-disaster-risk recovery, and victim's compensation.

Provided that the private corporation contributes in accordance with the amount of estimated carbon footprint as declared and determined by the panel of technical experts from Climate Change Commission. Non-compliance with such contribution will result to an imposition of fine and/or penalty.

CHAPTER VI

ACTIONS

Section 9. *Citizen Suits.* - For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

(a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or

(b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or

(c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any

manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until thirty-day (30) notice has been taken thereon.

Within thirty (30) days, the court shall make a determination if the compliant herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

Section 10. Independence of Action. - The filing of an administrative suit against such person/entity does not preclude the right of any other person to file any criminal or civil action. Such civil action shall proceed independently.

CHAPTER VII

FINES AND PENALTIES

Section 11. Violation of Standards. - For actual exceedance of GHG standards under this Act or its rules and regulations, the Climate Change Commission, shall, after due notice and hearing, impose a fine of not more than One hundred thousand pesos (P300,000.00) for every day of violation against the owner or operator of a stationary source until such time that the standards have been complied with.

For purposes of the application of the fines, the Climate Change Commission shall prepare a fine rating system to adjust the maximum fine based on the violator's ability to pay, degree of willfulness, degree of negligence, history of non-compliance and degree of recalcitrance: Provided, That in case of negligence, the first time offender's ability to pay may likewise be considered by the Commission: Provided, Further, That in the absence of any extenuating or aggravating circumstances, the amount of fine for negligence shall be equivalent to one-half of the fine for willful violation.

The fines herein prescribed shall be increased by at least ten percent (10%), every three (3) years to compensate for inflation and to maintain the deterrent function of such fines.

In addition to the fines, the Climate Change Commission shall order closure, suspension of development, construction, or operations of the stationary

sources until such time that proper environmental safeguards are put in place: Provided, That an establishment liable for a third offense shall suffer permanent closure immediately. This paragraph shall be without prejudice to the immediate issuance of an *ex parte* order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case upon prima facie evidence that there is imminent threat to life, public health, safety or general welfare, or to plant or animal life, or whenever there is an exceedance of the emission standards set by the Department and/or the Board and/or the appropriate LGU.

Section 12. All law enforcement officials and deputized agents accredited to conduct vehicle emissions testing and apprehensions shall undergo a mandatory training on emission standards and regulations. For this purpose, the Department, together with the DOTC, DTI, DOST, Philippine National Police (PNP) and other concerned agencies and private entities shall design a training program.

Section 13. Fines and Penalties for Violations of Other Provisions in the Act. - For violations of all other provisions provided in this Act and of the rules and regulations thereof, a fine of not less than Ten thousand pesos (P100,000) but not more than One Hundred thousand Pesos (P500,000) or six (6) months to six (6) years imprisonment or both shall be imposed. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations shall suffer the penalty herein provided.

CHAPTER VII

PENALTIES

Section 14. Implementing Rules and Regulations. - The Department, in coordination with the Committees on Environment and Ecology of the Senate and House of Representatives, respectively and other agencies, shall promulgate the implementing rules and regulations for this Act, within one (1) year after the enactment of this Act: Provided, That rules and regulations issued by other government agencies and instrumentalities for the prevention and/or abatement of pollution not inconsistent with this Act shall supplement

the rules and regulations issued by the Department pursuant to the provisions of this Act.

Section 15. Separability of Provisions. - If any provision of this Act or the application of such provision to any person or circumstances is declared unconstitutional, the remainder of the Act or the application of such provision to other person or circumstances shall not be affected by such declaration.

Section 16. Effectivity. - This Act shall take effect fifteen (15) days from the date of its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved, April 20, 2023.

ANNEX 2

THE RULES ON THE WRIT OF *KLIMA*

Draft Rules

WRIT OF KLIMA

RULE I

GENERAL PROVISIONS

SECTION 1. *Title.* — These Rules shall be known and cited as “The Rules on the Writ of *Klima*.”

SECTION 2. *The writ of Klima.* — The writ of *klima* is an extraordinary remedy to persons whose right to life, right to health, or right to a balanced and healthful ecology, are violated due to climate-induced events. It is an order directed to those private entities to compensate victims of climate change and to comply with a court-sanctioned plan within a reasonable period of time to rectify the losses and damages incurred by such persons.

SECTION 3. *Scope and applicability.* — These Rules shall apply to persons who are gravely affected by an extreme weather event with calamitous consequences caused by anthropogenic climate change. These include victims of typhoons, floods, droughts, among others.

SECTION 4. *Supplementary effect of existing rules of procedure.* — The Rules of Court on Environmental Cases shall have supplementary effect to these Rules.

SECTION 5. *Definition of terms.* — For purposes of these Rules, the following terms are defined as follows:

- (1) “Climate system” means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.
- (2) “Emissions” means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.
- (3) “Greenhouse gases” means the gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

RULE II

PROCEEDINGS

SECTION 6. *Who may file.* — A person who suffers injury or loss, or a person in his behalf, may file a petition for a writ of *klima*.

SECTION 7. *Who shall be impleaded.* — The petition shall implead the following as respondents:

- (a) The President of the Corporation;
- (b) The Resident Foreign Corporation;

SECTION 8. *When and where to file.* — The petition may be filed on any day at any time with the Regional Trial Court exercising territorial jurisdiction over the affected municipality, city, or province where the petitioner is located or the Supreme Court.

SECTION 9. *Fees for the petition.* — The petitioner shall be exempted from paying docket and other fees.

SECTION 10. *Contents of petition.* — The petition shall be signed and verified, with an attached certification against forum shopping. It shall set forth the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal respondent or the business name of the corporation, as the case may be. If the name or business name are unknown or uncertain, the respondent may be described by an assumed appellation;
- (c) The particular damage or injury suffered, the act or omission complained of, and the environmental damage that is caused by the climate-induced event related to the act or omission of a corporation;
- (d) All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;
- (e) Allegations and factual bases showing that the petitioner's right to life, right to health, right to a balanced and healthful ecology, is violated.
- (f) Any documentary and object evidence attached to the petition supporting the allegations in it; and
- (g) The certification of petitioner under oath that:
 - (1) Petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has

been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom; and

- (2) The reliefs prayed for which may include a prayer for the issuance of a TEPO.

SECTION 11. *Issuance of the writ.* — Within five (5) days from the date of filing of the petition, the court shall immediately order the issuance of the writ if, in form and in substance, it is sufficient in form. The clerk of court shall issue the writ under the seal of the court, or in case of urgency, the justice or judge may issue the writ.

If the court finds that the writ of *klima* is not the proper remedy, it may deny the petition without prejudice to the filing of the proper action.

SECTION 12. *To whom the writ is directed, and what to require.* — The writ shall be directed to the following:

- (a) A Commissioner of the Climate Change Commission;
- (b) The President of the Corporation;
- (b) The Resident Foreign Corporation;

The writ shall order the respondents to report the following:

- (1) Complete data on its greenhouse gas emissions;
- (2) Report on carbon footprint due diligence;
- (3) Compliance report on its vigilance plan and commitment to Nationally Determined Contributions (NDC).

SECTION 13. *Service of the writ.* — A judicial officer or a person deputized by the court shall serve the writ on the officers and/or directors of the corporation. The judicial officer or person serving the writ shall keep a receiving copy.

A copy of the writ shall likewise be served on the Climate Change Commission and the Securities and Exchange Commission.

SECTION 14. *Return.* — Within 30 days after the service of the writ, the corporation shall file a verified written return together with supporting documentary and object evidence, which shall, among others, contain the following:

- (a) Whether the respondent complied with its greenhouse gas emission reduction commitments as required by law;
- (b) The measures taken to abide by the State’s Nationally Determined Contributions (NDC)
- (c) The programs employed to comply with the corporate vigilance plan required by law.
- (d) That respondent did not violate or allow the violation of any environmental law, rule, or regulation resulting to the climate-induced loss and damage.

SECTION 15. *Failure to issue, serve, or return the writ.* — A clerk of court who neglects or refuses to issue the writ after its allowance, or a judicial officer or deputized person who neglects or refuses to serve the writ, or the respondent who neglects or refuses to make a return of the writ, shall be liable for contempt of court without prejudice to other disciplinary actions.

SECTION 16. *Hearing.*—Upon receipt of the return of the respondent, the court may call a preliminary conference to simplify the issues, determine the possibility of obtaining stipulations or admissions from the parties, and set the petition for hearing.

The hearing including the preliminary conference shall not extend beyond fifteen (15) days and shall be given the same priority as petitions for the writs of habeas corpus, amparo, and habeas data.

SECTION 17. *Discovery Measures.*—A party may file a verified motion for the following reliefs:

(a) Ocular Inspection; order—The motion must show that an ocular inspection order is necessary to establish the clear lack of inaction on the part of the corporation, or its irresponsibility when it came to the natural resource it was entrusted with. The order shall specify the person or persons authorized to make the inspection and the date, time, place, and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

(b) Production or inspection of documents or things; order—The motion must show that a production order is necessary to establish the clear lack of inaction on the part of the corporation, or its irresponsibility when it came to the natural resource it was entrusted with. After hearing, the court may order an person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The production order shall specify the person or persons authorized to make the production and the date, time, place and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

SECTION 18. *Submission of case for decision.*—After hearing, the court shall issue an order submitting the case for decision. The court may require the filing of memoranda and if possible, in its electronic form, within a non-extendible period of thirty (30) days from the date the petition is submitted for decision.

SECTION 19. *Judgment.*—Within thirty (30) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of public trust.

The reliefs that may be granted under the writ are the following:

(a) Directing respondent corporation to halt or suspend any operations done by the corporations that show large and excessive greenhouse gas emissions.

(b) Directing agency, bureau, or department concerned to mandatorily review the license of the corporation to do business in the Philippines; and

(c) Directing the mandatory revocation of the franchise, permit, or contract if found that the entity has indeed irresponsibly contributed to the total greenhouse gas emissions beyond what is required by law and scientific standards;

SECTION 20. *Appeal.*—Within ten (10) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.

SECTION 21. *Institution of separate actions.*—The filing of a petition for the issuance of the writ of public trust shall not preclude the filing of separate civil, criminal, or administrative actions.

RULE III

CLIMATE SCIENTIFIC EVIDENCE

SECTION 1. *Scientific data, records, and similar evidence.*—Records from physical, chemical, and biological materials shall be admissible when authenticated by the person who retrieved the same, or by some other person present when the evidence was taken, or by any other person competent to testify on the accuracy thereof.

SECTION 2. *Records on greenhouse gas emissions; how obtained.*—Company or entity net fossil fuel production data from publicly available resources shall be admissible. The procedure of obtaining the emissions of companies or entities shall involve the estimation of carbon content of each fuel type, deduction for non-energy uses of produced fuels which determines carbon storage rates but also accounts from non-energy uses (such as short-term oxidation of lubricants, waxes, petrochemicals, and other petroleum products), and emission factors for each fuel for each entity, and for every year for which production data have been found.

SECTION 3. *Testimony by expert witnesses on climate science.*—A witness who is qualified as an expert by knowledge, skill, experience, training or

education may testify, particularly on climate science and other related subject matter, in the form of an opinion, or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the climate change case.

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