

Republic of the Philippines
COMMISSION ON HUMAN RIGHTS
Quezon City

GREENPEACE SOUTHEAST
ASIA (PHILIPPINES), et al.,

-versus-

Case No.: CHR-NI-2016-0001

CHEVRON (US), et al.

MANIFESTATION AD CAUTELAM
**(Without Any Acceptance of
or Submission to Jurisdiction)**

LafargeHolcim and the LafargeHolcim respondents¹, through the undersigned counsel, and only by special appearance, respectfully submit the attached September 13, 2016 Letter (with its Appendix) in respect of the May 9, 2016 Petition. This filing is being made purely on an *ad cautelam* basis; out of extreme caution; and without accepting or submitting to the Commission on Human Rights' ("CHR's") jurisdiction. Indeed, as will be seen from the attached Letter (particularly its Appendix), it is their position that the CHR has no jurisdiction over the claims or reliefs sought in the Petition, and LafargeHolcim is providing the other information in its letter only for the information of the CHR.

The Appendix sets forth and explains the following grounds supporting the CHR's lack of jurisdiction here:

1. In general, the CHR has no extra-territorial (i.e., beyond the Philippines) authority. The Petition does not allege or show that the acts complained of were committed in the Philippines.

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

2. The treaties cited in the Petition are not a basis for the CHR's exercise of jurisdiction. The CHR's prerogatives as regards treaties are restricted to monitoring the Philippine Government's compliance with its international treaty obligations on human rights.

3. The Petition asks the CHR to engage in adjudication, which the Supreme Court has consistently held the CHR has no power to do.

4. The Petition in effect asks the CHR to usurp the functions of the Climate Change Commission, Philippine government's lead policy making body on climate change.

5. The Petition does not identify any basis to impose any responsibility or issue any finding or ruling specifically on the LafargeHolcim respondents. It does not identify the specific alleged acts that the LafargeHolcim respondents committed or are supposedly liable for, or their particular acts allegedly directly causing or directly linked to the prejudice claimed, and individual responsibility has not been alleged. A person may not be prejudiced by the act, declaration or omission of another/a third party (*res inter alios acta alteri nocere non debet*). The LafargeHolcim respondents cannot be collectively considered or held jointly liable together with the other respondents, or be made responsible for the acts of any other respondent.

6. The Petition does not involve civil or political rights, as discussed in *Simon v. Commission on Human Rights (infra)*. The CHR's authority to investigate covers only human rights violations involving civil and political rights.

This filing, the attached Letter from LafargeHolcim and its Appendix, or any action of LafargeHolcim or the LafargeHolcim respondents should not be interpreted as any acceptance or submission whatsoever of the CHR's jurisdiction

Finally, without prejudice to their position against the CHR's jurisdiction over the claims and reliefs sought in the Petition, in light of its attached Letter, LafargeHolcim and the LafargeHolcim respondents reject and deny any allegation or insinuation made in the Petition that they have acted unlawfully to bring about climate change or any prejudice from climate change; or aiming at holding them responsible, collectively with other respondents or otherwise, for threatening or violating the human rights of the Filipino people.

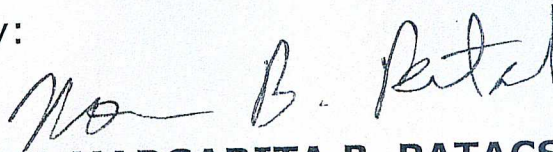
Respectfully submitted.

Makati City for Quezon City, September 15, 2016.

**GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO²**

Counsel for LafargeHolcim
and the LafargeHolcim respondents
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By:



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² The MCLE Compliance Numbers of the undersigned firm's name partners are as follows:

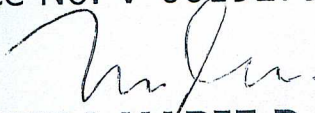
Name	MCLE Compliance No.	Date of Issuance
Jaime Renato B. Gatmaytan	V-0020890	5/2/2016
Ben Dominic R. Yap	V-0014979	2/19/2016
Norma Margarita B. Patacsil	V-0014967	2/19/2016
Anthony Mark A. Gutierrez	V-0011252	10/20/2015
Jesus Paolo U. Protacio	V-0014969	2/19/2016

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Copies furnished:

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Diliman, Quezon City 1103

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Legal Representative of the Petitioners
Environmental Legal Assistance Center
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Explanation

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



Norma Margarita B. Patacsil

Verification

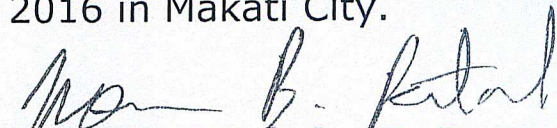
I, Norma Margarita B. Patacsil, of legal age, Filipino, and with office address at 30F, 88 Corporate Center, Sedeño corner Valero Streets, Makati City, hereby depose and state that:

1. I am a partner at Gatmaytan Yap Patacsil Gutierrez & Protacio, counsel to LafargeHolcim, and the LafargeHolcim respondents in CHR-NI-2016-0001, only by special appearance, as LafargeHolcim and the LafargeHolcim respondents are questioning the Commission on Human Rights' jurisdiction over the claims and reliefs sought in the Petition filed in that case.

2. I caused the preparation and filing of the foregoing Manifestation *Ad Cautelam* (Without Any Acceptance of or Submission to Jurisdiction).

3. I have read and understood the contents of the foregoing Manifestation, and the facts alleged therein are true and correct of my personal knowledge or based on authentic records.

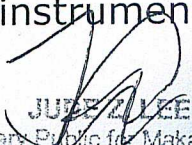
In witness whereof, I have hereunto set my hand this SEP 15 2016 day of September 2016 in Makati City.


Norma Margarita B. Patacsil

REPUBLIC OF THE PHILIPPINES)
CITY OF MAKATI)S.S.

Before me, a notary public in and for the city named above, personally appeared Norma Margarita B. Patacsil on September SEP 15 2016 2016, exhibiting to me her Passport No. EC316488 issued on January 13, 2015, who is personally known by me to be the same person who presented the foregoing instrument and signed it in my presence, and who took an oath before me as to such instrument.

Doc. No. 370 ;
Page No. 75 ;
Book No. II ;
Series of 2016.


Notary Public for Makati City
Appointment No. M-370 until December 31, 2016
Roll of Attorney No. 63740
PTR No. 6031507; 1/7/2016; Makati City
IDP No. 1022203; 1/0/2016; Manila VI Chapter



LafargeHolcim

Attention to: Commission of Human Rights, Republic of the Philippines

Zurich and Paris, 13 September 2016

LafargeHolcim entities in France and Switzerland have received a copy of the Petition dated 9 May 2016 filed by Greenpeace Southeast Asia (Philippines) and others with the Commission on Human Rights (CHR), apparently docketed as CHR-NI-2016-0001, on the alleged impact of climate change on the human rights of Filipino people. The Petition is addressed to a selection of companies producing fossil fuels and cement operating overseas, with highest priority on fossil fuel producers.¹

About LafargeHolcim's presence in the Philippines

LafargeHolcim has been present in the Philippines for more than 50 years and has been committed to the country and its people ever since. We are proud that we have played a leading role in the development of the country by contributing to projects that range from affordable housing innovations to the country's largest infrastructure investments. In 2015, LafargeHolcim employed roughly 1500 people in the country, and owned and operated four integrated cement plants, all committed to sound environmental management standards and ISO 14001 (Environmental Management System Standards) certified.

LafargeHolcim is committed to the principles of the UN Global Compact and the respect of human rights. It has upheld this commitment for more than 15 years as several practical initiatives demonstrate:

- More than 5000 people have been trained to become certified masons;
- Scholarships have been granted benefiting more than 500 pupils;
- Training on sustainable farming and sustainable shellfish harvesting have been provided in the communities where LH operates;
- In partnership with local government agencies, LafargeHolcim donated a parcel of land to relocate 204 informal settlers to safer grounds and further away from the river where they were living.
- For victims of Typhoon Pablo in the Compostela Valley Region in Mindanao, LafargeHolcim provided labour and materials for the construction of 100 houses, and

¹ While LafargeHolcim respects the role of the CHR, it considers that the CHR does not have jurisdiction or authority over the claims or reliefs sought in the Petition, for the reasons set out in the Appendix to this letter. This letter, or any action of LafargeHolcim, should not be interpreted as such acceptance or submission.



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trained people to develop housing sites and construct primary and secondary drainage systems.

About LafargeHolcim's action regarding climate change

LafargeHolcim is the largest construction materials company in the world and it produces cement to help meet the growing needs of housing and infrastructure in 90 countries. Cement production is an energy- and resource-intensive process, which is regulated by competent authorities who define environmental regulations and issue permits. LafargeHolcim has developed and deployed processes and technologies to facilitate compliance with relevant environmental regulations and permits (prescribed by competent authorities) in all relevant countries where it operates, and exceeds requirements where practically and economically feasible.

There is scientific consensus that global warming is unequivocal, and anthropogenic greenhouse gas emissions are a dominant cause. LafargeHolcim believes that addressing climate change requires an economy-wide response that goes beyond the efforts of one company. LafargeHolcim considers that the Paris Agreement is an encouraging step forward, and the commitment taken by the signatories should translate into appropriate and balanced regulations that put a price on carbon. Accordingly, and consistently with this belief, LafargeHolcim supports and contributes to the development of climate change regulations by competent authorities. It is a partner in the Carbon Pricing Leadership Coalition which advocates for the application of a carbon price throughout the global economy.

The process to develop and enforce regulations that mitigate climate change and its impacts in the global economy is complex and likely to be extended over some years. In the meantime, LafargeHolcim proactively set voluntary reduction targets on carbon emissions more than 15 years ago. LafargeHolcim has also taken actions to alter its product portfolio and reduce the use of clinker (the carbon-intensive component of cement), to reduce dependency on traditional fossil fuels and to improve energy efficiency. For instance, since 2011, LafargeHolcim has been able to co-process in the Philippines 650,000 metric tons of rice husks and other alternative fuels, replacing coal. On a global scale, in 2015 LafargeHolcim reduced its specific net carbon emissions² by 26% compared to 1990, and it is today, the international cement company with lowest net CO₂ emissions per ton of cementitious product³.

LafargeHolcim is already bringing solutions to the challenges posed by climate change. LafargeHolcim has set voluntary targets to reduce specific carbon emissions by 33% by

² Specific net carbon emissions are measured according to WBCSD-CSI methodology.

³ Based on company reports publicly available.



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2020, and by 40% by 2030 (vs. 1990). LafargeHolcim has not only committed to reducing carbon emissions from its production activities, but it also develops and provides solutions to reduce carbon emissions of buildings and infrastructure. A target to reduce 10 Mt of CO₂ through the use of our innovative products has been defined as part of the strategy of the group. For instance, LafargeHolcim has partnered with Solidia Technologies since 2013 to develop cement that can reduce the overall carbon footprint of this product by up to 70%. LafargeHolcim is currently piloting the production of such cement with some customers in several countries worldwide.

September 13, 2016.

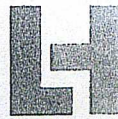
LafargeHolcim

By:

Name: CAROLIDE HEITSTEAD

Position: HEAD GROUP COMMUNICATION

PUBLIC AFFAIRS & SUSTAINABLE DEVELOPMENT



LafargeHolcim

Appendix
to LafargeHolcim's 13 September 2016 letter

It is respectfully submitted that the CHR lacks jurisdiction and authority over the claims or reliefs sought in the Petition dated 9 May 2016 filed by Greenpeace Southeast Asia (Philippines) and others (apparently docketed as CHR-NI-2016-0001). LafargeHolcim also rejects and denies any allegations made in the Petition suggesting that it has been unlawfully threatening or violating the human rights of the Filipino people.

LafargeHolcim provides the following reasons why it respectfully considers that the CRH lacks jurisdiction:

A. In general, the CHR has no extra-territorial (i.e., beyond the Philippines) authority. The Petition does not allege or show that the acts complained of were committed in the Philippines.

The CHR's authority, as an agency of the Philippine government, is generally limited to acts committed within the Philippines or by organs or agents of the Philippines, or acts affecting Philippine citizens abroad.⁴ The Petition does not allege or show that the acts complained of fall under any of those categories. Accordingly, the CHR has no authority and cannot exercise jurisdiction over the LafargeHolcim respondents -- which Annex C of the Petition indicates have addresses and operations outside of the Philippines -- or their alleged acts (which, as mentioned, are regulated by competent authorities in areas where they operate).

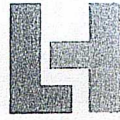
B. The treaties cited in the Petition are not a basis for the CHR's exercise of jurisdiction.

The CHR's prerogatives as regards treaties are restricted to monitoring the Philippine Government's compliance with its international treaty obligations on human rights.⁵ The Philippines' entry into certain human rights and environmental treaties cannot (and did not) expand the CHR's foregoing limited authority (which does not include treaty enforcement), or grant it extra-territorial powers. Thus, such treaties are not a basis for the CHR's jurisdiction over the petitioners' claims.

Moreover, treaties are agreements between states, and states are the entities responsible for compliance with them. The Petition has not alleged valid ground to invoke treaties against private persons such as the LafargeHolcim respondents. In any event, if the petitioners believe that human rights or environmental treaties to which the Philippines is a party are not

⁴ See, e.g., Article XIII, Section 18(3) of the 1987 Constitution and Section 3(3) of the CHR's charter (Executive Order No. 163, s. of 1987).

⁵ See Article XIII, Section 18(7) of the 1987 Constitution and Section 3(7) of the CHR's charter.



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being fully complied with, their recourse is with the Philippine national government -- and not before the CHR against private persons such as the LafargeHolcim respondents.

Finally, in view of the foregoing, and inasmuch as it is well-settled that the CHR has no adjudicatory powers (see below), the CHR has no authority to determine whether private persons such as the LafargeHolcim respondents have acted inconsistently with any treaty entered into by the Philippines.

C. The Petition asks the CHR to engage in adjudication, which the CHR has no power to do.

The Petition asks the CHR to, among others, (a) "issue a finding on the responsibility of the investor-owned Carbon Majors for human rights threats and/or violations in the Philippines, resulting from climate change and ocean acidification"; (b) "tak[e] official or administrative notice of the investor-owned Carbon Majors' contribution to carbon dioxide emissions"; and (c) "[n]otify the investor-owned Carbon Majors and request the submission of plans on how such violations or threats of violation resulting from the impacts of climate change will be eliminated, remedied, or prevented in the future." The Supreme Court has repeatedly ruled that *the CHR is not a court or quasi-judicial body, and has no adjudicatory power*.⁶ Consequently, the CHR has no jurisdiction to grant the reliefs requested in the Petition. The latter (particularly a "finding [on] responsibility" and a directive to submit remedial plans) requires a decision on and adjudication of the purported merits of the Petition. On the other hand, "official or administrative notice" is a disingenuous guise for judicial notice, which is not a CHR prerogative.

D. The Petition in effect asks the CHR to usurp the functions of the Climate Change Commission (CCC), which the CHR cannot do.

The Petition asks the CHR to issue findings and recommendations to/as regards Philippine and foreign governments, as well as private entities, in relation to climate change. The CHR has no power to do so, as it would usurp the CCC's functions. Republic Act No. 9729 (as amended) constituted the CCC as the Philippine government's lead policy making body on climate change. In this regard, we note that CHR officials were not made members of the CCC's advisory board, and Section 15 of the law did not include the CHR among the government agencies with specific roles to implement the framework strategy and program on climate change that will be formulated by the CCC.

⁶ See, e.g., *EPZA v. Commission on Human Rights*, G.R. No. 101476, April 14, 1992, 208 SCRA 125; *Simon v. Commission on Human Rights*; G.R. No. 100150, January 5, 1994, 229 SCRA 117 ; *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991, 204 SCRA 483.



LafargeHolcim

E. The Petition does not identify any basis to impose any responsibility or issue any finding or ruling specifically on the LafargeHolcim respondents.

The Petition should have sufficiently alleged petitioners' purported cause/s of action against the LafargeHolcim respondents, i.e., their alleged act/s or omission/s in violation of the petitioners' supposed legal rights.⁷ The Petition did not do so. It does not identify the specific alleged acts that the LafargeHolcim respondents committed or are supposedly liable for, or their particular acts allegedly directly causing or directly linked to the prejudice claimed. Indeed, the Petition itself (page 43) *admits* that the individual responsibility of each alleged Carbon Major *cannot be ascertained*. The CHR has no authority to engage in speculation or guesswork, let alone proceed or issue any findings on that basis. Moreover, it is fundamental that a person may not be prejudiced by the act, declaration or omission of another/a third party.⁸ Thus, the LafargeHolcim respondents cannot be collectively considered or held jointly liable together with the other respondents, or be made responsible for the acts of any other respondent. Consequently, the CHR has no power to act on the claims in the Petition.

F. The Petition does not involve civil or political rights.

The CHR's authority to investigate covers only human rights violations involving civil and political rights.⁹ Even assuming environmental rights are human rights, such supposed rights as alleged in the Petition are neither civil nor political rights, as discussed in *Simon v. Commission on Human Rights* and the Constitutional deliberations cited there. To illustrate, environmental rights are not among the civil or political rights set forth in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights (which *Simon* refers to). The Petitioners' alleged rights are also not civil rights, as their lack of specifics on each respondent's supposed acts or their particular direct causation or link to the prejudice claimed preclude them from being enforced or redressed in a civil action. Finally, those alleged rights are not akin to the "(1) protection of rights of political detainees, (2) treatment of prisoners and the prevention of tortures, (3) fair and public trials, (4) cases of disappearances, (5) salvagings and hamletting, and (6) other crimes committed against the religious" also referred to in *Simon*. This confirms that the claims alleged in the Petition are beyond the CHR's authority.

⁷ See Rules of Court, Rule 2, Section 2.

⁸ This is the principle *res inter alios acta alteri nocere non debet*. See *People v. Ciobal, et al.*, G.R. No. 86220, April 20, 1990, 184 SCRA 464; see also Rule 130, Rules of Court, Section 28 and Article 1207 of the Civil Code.

⁹ See Article XIII, Section 18(1) of the 1987 Constitution and Section 3(1) of the CHR's charter.