Additional positions on proposed legislation pertaining to the "Climate Accountability Bill" (HB 9609 and HB10478)

15 January 2025

Aksyon Klima Pilipinas (**AKP**) reaffirms support the enactment of the "Climate Accountability (CLIMA) Bill"), as proposed under HB 9609 and HB 10478[1]. We argue that its potential as a landmark piece of legislation has increased with recent developments in the ongoing operationalization of the Fund for Responding to Loss and Damage (FRLD), whose Board held the latest meeting on 2-5 December 2024 in the Philippines, the first time since becoming its host. Representatives of some of AKP members attended the entirety of this meeting as Active Observers, including the network's current leader Living Laudato Si' Philippines, Oxfam Pilipinas, Center for Energy, Ecology, and Development, Tebtebba, and Institute for Climate and Sustainable Cities.

One of the priorities stemming from the latest FRLD Board decisions is to enable developing countries formulate their "bottom-up", country-led, and country-owned processes for assessing the loss and damage (L&D)-related needs and preferred strategies, with technical and financial support[2]. This is a process that could be enhanced by the timely enactment of the CLIMA Bill or inform the bill's development through the following ways:

- Through a previous position paper dated 15 July 2024, we recommended that the CLIMA Bill also acknowledge existing mechanisms for L&D-relevant data collection and management (i.e., Post-Disaster Needs Assessment) as potential options to aid in determining rulings by courts or decisions of the Climate Change Reparations Fund (CCRF) Board as described under Section 14, with attribution science still evolving as a discipline. It was also mentioned in this document that said mechanisms also needs improvement to cover other aspects of L&D that are more apparent in the climate paradigm, most notably non-economic L&D and the impacts of slow onset events.
    - By adding provisions that would enhance L&D-relevant data collection and management mechanisms, **the CLIMA Bill can aid in the formulation of the Philippines' own approach to addressing L&D and further strengthen both climate and disaster policies related to prevention, preparation, and response**. Both State and non-State actors could also learn from the practices of institutions such as the Santiago Network on Loss and Damage (SNLD) and other countries in this matter, which would then inform provisions under the CLIMA Bill as a potential primary L&D-related national legal instrument.

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[1] All comments and positions stated in this document are based on the version communicated by the House of Representatives Special Committee on Climate Change on 8 January 2025. All mentions of the "latest version of the bills" are also based on said version.

[2] This is also in response to the CCC's comment in the latest version of the bills to wait until the scope of the FRLD is finalized before creating the CCRF.

- Among the proposed early interventions revealed during the recent FRLD Board meeting is a grants-based rapid disbursement for countries hit by climate-induced extreme weather events.
    - While we agree with statements made during previous Technical Working Group (TWG) meetings that **the CCRF**, in the event of the bill's enactment, would not be the only entity that can access support from the FRLD, it still **remains the most suitable for securing such financing as its mandate would directly cover the imperative of averting, minimizing, and addressing L&D**.
- The criteria to be set for which countries get to avail disbursable funding and technical support under the FRLD would set **a precedent for availing resources under national-level mechanisms**, such as the CRRF under the CLIMA Bill. Aspects of the screening process (i.e., priority needs, repertorial requirements, accreditation) would also impact the form of access modality to be used; for the mechanisms under the CLIMA Bill, the modality must be in the form of grants, with a simplified process to enable the most vulnerable communities and sectors for more timely and urgent access, learning from the failures of the People's Survival Fund.

2025 is a critical year for climate action in the Philippines, with a few milestones intended to be attained on the road to COP30 in Belem, Brazil. Among these are the updating of the Nationally Determined Contributions (NDC), the development of the national just transition framework, and the formulation of the roadmap for Article 6 of the Paris Agreement. All of these would significantly impact strengthening business accountability towards reducing climate pollution, which is also a key goal under the CLIMA Bill.

Nonetheless, passing the CLIMA Bill into law is more than just another necessary climate milestone for the Philippines in 2025, as important as the other milestones previous mentioned. It is a reflection of whether the country, as the FRLD Board host, truly backs up its calls for climate justice at the global level with corresponding domestic policies and actions. More importantly, it is a much-needed response to the previous 12 months that saw Filipinos experience both sides of the extreme weather spectrum at times within only a matter of weeks, a year that saw the archipelago be hit by both a heat wave that is directly attributable to greenhouse gas (GHG) emissions and a barrage of six storms, including two super-typhoons and three typhoons, in the span of a month.

In addition to the statements made above and previous position papers submitted to the House of Representatives Special Committee on Climate Change, we as representatives of the most climate-vulnerable sectors and communities in the Philippines respectfully submit the following specific asks and recommendations regarding HB 9609 and HB 10478:

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1. In the latest versions of the bill, there would be a redundancy of statements defining attribution science under both Sec. 3 ("Definition of Terms") and Sec. 7 ("Attribution Science", as proposed by FPH). We suggest to **retain the definition of attribution science only under Sec. 3 and to remove it from Sec. 7**.

2. That said, we reiterate our call from a previous submission, which is also in agreement with what was discussed during the previous TWG meeting held 11 November 2024, to **describe the specific process for decision-makers and other stakeholders on how attribution science would be applied** in the corresponding provisions mentioned in the bill (i.e., decisions under the Climate Change Reparations Board). In acknowledgment of its current

status as a maturing discipline, the description of this process must include qualifiers depending on the readiness of its application and other interventions to supplement relevant decision-making processes.

- An example of this, as described above and in our previous submission, is the use of existing L&D-relevant data management mechanisms (i.e., Damage and Loss Assessment under the PDNA, documentation of indicators of adaptive capacity of a community, regional and local climate risk and vulnerability studies).

3. We disagree with suggestions by a few stakeholders of adding business counterparts for terms to be defined under Sec. 3 (i.e., rapid onset event, slow onset event); we further refute their claim that the business sector is the CLIMA Bill's main stakeholder, which is also used as the rationale for these additions. Strengthening corporate accountability for potential human rights violations caused by climate-pollutive practices in aid of ultimately reducing GHG emissions and spurring low-emissions development is only one-half of the bill, with the other half being on the formulation of the CCRF. Both halves also respond to the needs and concerns of the sectors that are **main stakeholders of the CLIMA Bill: the most vulnerable groups and communities** to the climate crisis such as indigenous peoples, women, youth, and farmers, especially those that are already being severely affected by its impacts. With this rationale, we recommend to not add the business counterparts of these terms into the bill and to instead stick to terms most commonly-used in climate discourse: rapid onset events and slow onset events. Furthermore, to uphold the science-based nature of the L&D issue and in alignment with multilateral climate and environmental treaties and frameworks, we encourage that **the definition of scientific terms under Section 3 use the corresponding definitions under the latest reports of the Intergovernmental Panel on Climate Change**.

4. While we do not oppose expanding the composition of the proposed Climate Change Reparations Board (CCRB), **we strongly oppose the suggestion made by the Securities and Exchange Commission** (**SEC**) **to have two representatives of the private sector in the CCRB and only one from civil society organizations**, with whom vulnerable communities directly work more often than businesses. It is unjust and illogical for a mechanism that supposedly responds to the needs of the most vulnerable to have more representation in its decision-making body from businesses than civil society. With this context, we present the following suggestions for the composition and some of the qualifications for members of the CCRB:

   - We strongly recommend that **two civil society representatives and only one representative from the private sector be part of the CCRB**, loosely following how there are more members of the FRLD from developing countries than those from developed countries.
   - We also support the **inclusion of the Vice-Chairperson of the Climate Change Commission** (**CCC**) **as an ex officio member of the CCRB** to ensure the direct representation of the government in this body and given the role of the CCC as the lead coordinating body for Philippine policymaking on addressing the climate crisis, which includes L&D. If included, the CCC Vice-Chairperson would replace one of the four

lawyers on the Board. Nonetheless, the intended independence of the CCRB would be maintained with only one direct representative from the government.

- We support the suggestion of SEC to **include the Chairperson of the Commission on Human Rights** (**CHR**) **as the Chairperson of the CCRB**; this also maintains the independence of the CCRB. If included, the CHR Chairperson would replace one of the four lawyers on the Board.
- We suggest that **a priority for selecting the resulting two members of the Philippine Bar in the CCRB should be those with experience on dealing with climate issues**, given that climate and environmental issues, while related, are also distinct; this shall especially apply to the Chairperson, which as suggested by SEC would be among these members.
- We support the suggestion to have **at least one of the two climate scientists**, who are also intended to represent the academic sector in the CCRB, be **a member of the National Panel of Technical Experts or the National Academy of Science and Technology**, as a concrete indicator of evidence-based decision-making.

5. As a response to the comments made by the Commission on Human Rights (CHR) and FPH on Sec. 17 about means for generating more resources for the CCRF through a carbon taxation program or an emissions trading scheme, respectively, we need to raise the point that there are two ongoing initiatives related to these by the executive branch: the establishment of a national carbon pricing system, with the support of the World Bank[3]; and the formulation of the Article 6 roadmap. This is complemented by other bills in Philippine Congress, such as the "Carbon Rights Bill" and the "Low Carbon Economy Investment Bill". In previous TWG meetings and dialogues with different stakeholders involved to the development of this bill, we raised the point of not only how to more strongly connect the two "halves" of this document, but also on how exactly to make "polluters pay" that would be added to the CCRF.

   - We support **the principle of businesses exceeding a GHG emissions threshold**, as set under other national policies through a "whole-of-society" approach, **being penalized through carbon pricing mechanisms that would be allotted to the CCRF**. That said, we emphasize that any carbon pricing framework must exhibit the highest standards of upholding environmental integrity and strict protection of social and environmental safeguards, with respect to human rights and, with the enactment of RA 11995 or the "Philippine Ecosystems and Natural Capital Accounting System (PENCAS) Act", the rights of nature.
   - We also recommend that **the use of any carbon pricing mechanism** as relevant to the formulation and, in the event of enactment, implementation of the CLIMA Bill **must be coherent with the policies set by the national government**.

6. We concur with the following suggestion of Atty. Elpidio Peria on Sec. 16, with its final placement in the final version of the bill notwithstanding:

   - "*Notwithstanding the grant of such incentives, there shall be imposed a 3% windfall tax on the gross profit of carbon majors operating in the country for the immediately*

[3] Jocson, L. M. (2024, January 18). DoF studies carbon tax, emissions trading system. *Business World*. https://www.bworldonline.com/top-stories/2024/01/18/569625/dof-studies-carbon-tax-emissions-trading-system/

preceding year after the approval of this Act. The proceeds of such tax shall accrue to the funds of the Peoples' Survival Fund as amended by this Act. In addition, to hasten the transition to renewable energy sources, the fossil fuel-based operations of carbon majors shall be taxed at 1% of the current net present value of such assets which shall progressively be reduced at 10% intervals until such assets are transitioned away."

7. We further recommend that instead of a conditional increase in the allotment from its initial proposed PHP50 million budget, **the increase or decrease in the funding under the CCRF should be required after every five years**. This is due to several reasons:

    - Current projections indicate that even if the current commitments of all countries are fully implemented, global warming is still projected to increase by up to 3.1°C, well above the aspirational 1.5°C goal under the Paris Agreement. Furthermore, emissions in recent years are still increasing instead of declining[4]. Coupled with how long carbon dioxide, by far the most frequently-emitted GHG, stays in the atmosphere and available climate finance still below what is needed by developing countries, these indicate that the Philippines is likely to experience more extreme impacts of the climate crisis in the short-term and subsequently higher economic and non-economic L&D.
    - The enactment of the PENCAS Law and any improvements in accounting methodologies for determining economic L&D would also result in a more comprehensive and accurate state of L&D in the Philippines.
    - Setting it to a change in allotment every five years, starting in 2025, would be aligned with the updating of the country's NDC and an indicator of coherence of policies across different workstreams of climate action at the national and global levels. This is also aligned with the initial plans of the Philippine government to feature L&D as a key theme in its next NDC[5].

    With this context, we recommend the following change in the language under Sec. 17:

    - "The amount of Fifty million pesos (₱50,000,000.00) shall be initially allotted as the opening balance of the CCRF under the General Appropriations Act (GAA); *Provided*, That the balance of the CCRF **shall be increased every five years, based on the recommendations by the Department of Finance**; […]"

8. As was brought up during the 5th TWG meeting, the implementation of the CCRF and the whole bill, if enacted into law, requires sources of consistent funding such as the FRLD. On this note, we emphasize that **the People's Survival Fund should not be included as a potential funding source for the operationalization of the CLIMA Bill**. This is following the principle of any climate finance as new, additional, predictable, and adequate, as has been highlighted in recent discussions under the FRLD and the 2024 Baku climate negotiations, which was branded as a "finance COP". This is to also ensure that the implementation of the PSF continues to be more improved after its slow disbursement for much of the past decade.

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[4] United Nations Environment Programme (2024). *Emissions Gap Report 2024: No more hot air … please! With a massive gap between rhetoric and reality, countries draft new climate commitments*. Nairobi. https://doi.org/10.59117/20.500.11822/46404.

[5] This was revealed during the "Multistakeholder Kick-off Forum on the Updating of the Philippines' NDC" held on 9 December 2024 in Quezon City. This served as the first in a series of consultations to be held by the Philippine government for developing the country's next NDC.

However, **this does not mean that the funding under the PSF should be excluded from being classified as L&D finance**, as proper adaptation still factors in to averting or minimizing L&D in any community. The identification of other funding sources would also factor in to any potential assessment of the needs and proposed approaches of the Philippines to address L&D, as part of its engagements with the FRLD; this may also be reflected in its future initiatives on disaster risk reduction management and other aspects of national climate planning and policymaking.

In addition, government data shows that the CLIMA Bill's potential operationalization can already be sufficiently funded by public finance, as long as the national budget allotment matches the country's commitments and identified priorities for addressing the climate crisis. As an example of this, the NDC Implementation Plan presents a strong case that the Philippines' unconditional target can be increased even more for its next NDC to be submitted before COP30. According to it, only 9.26% of the national climate budget, as marked through Climate Change Expenditure Tagging (CCET) is aligned with NDC policies and measures (PAMS). This is an indicator of not only how the next NDC needs to feature a higher unconditional target than the current 2.71% pledge, but also the role of the Philippine Congress in ensuring that adequate funds flow to urgent climate priorities with multiple co-benefits, ensuring that this agenda can be properly addressed.

9. It must not be lost in translation that the CLIMA Bill serves as a main instrument for translating the recommendations of the CHR's landmark National Inquiry on Climate Change (NICC) into concrete and actionable policies, as advocated for by civil society organizations. Based on the comments mentioned in the latest draft version of the bills, we concur the following comments made by other stakeholders that indicate a stronger integration of the NICC's findings into the proposed legislation:

    - Sec. 7: the suggestion of the Office of the Secretary-General to use the NICC's recommendation on attribution science to the judiciary:
        - "*a. Design and Implement Rules of Evidence for Attributing Climate Change Impacts and Assessing Damages – There is a distinction between the science of event attribution and the establishment of legal causation.* […] *The Commission therefore recommended that the judiciary take notice of developments in the science of attribution when considering legal causality in assessing climate change impacts and damages.*"
    - Sec. 21: the suggestion of CHR to include "obstructionist efforts" by concerned parties with the intention to delay or slow down the transition towards clean and renewable energy, based on the findings of NICC;
        - "*From the foregoing, the Commission agrees that the Carbon Majors,* […] *engaged in willful obfuscation of climate science, which has prejudiced the right of the public to make informed decisions about their products, concealing that their products posed significant harms to the environment and the climate system. All these have served to obfuscate scientific findings and delay meaningful environmental and climate action.*"

Aksyon Klima Pilipinas *is the Philippines's largest civil society network for climate action, aiming to build campaigning capacities and leadership among its partner communities, NGOs, and the academe on climate and environment-related policies and issues.*

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