



## **Submission to the UN Special Rapporteur on the Right to Development regarding Climate Justice in Loss and Damage**

*By the Legal Rights and Natural Resources Center (LRC)  
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The Legal Rights and Natural Resources Center (LRC) submits this report on its analysis of corporate accountability in the context of climate loss and damage, particularly as it is interpreted or localized in the Philippines setting.

### **On the Relation of the Right to Development to Climate Loss and Damage**

As emphasized by Article 5 of the UN Declaration on the Right to Development on the need to eliminate massive and flagrant violations by colonialism and the like, Global South nations that have yet to achieve modern industrialization and development because of persisting legacies of colonization are further buried into chronic poverty and vulnerability with the climate loss and damage we are already experiencing at present.

In the Philippines, for instance, US colonial policies intended to make the colony dependent on American factory goods and left the country with a much smaller industrial base than many economies in Asia, with manufacturing making up only 17% of the national economy ([Goodman, 2023](#)).

Despite being a largely agricultural country, a study by government think tank Philippine Institute for Development Studies ([Briones et al., 2023](#)) showed a stagnating agriculture sector since the 1960s, with a recent negative total productivity factor trend in the latest five years of the study's scope. By 2020, agriculture's GDP share dwindled to 9% while the services sector dominated with 61%. The state of economy is such that about half of families in the Philippines consider themselves poor ([Cabico, 2023](#)).

Annual climate-related losses are estimated by the Department of Finance at P49 billion ([DOF, 2021](#)), which is equivalent to negating two weeks' worth of average wages for all workers in the agriculture, fisheries, and forestry sector.<sup>1</sup> The impact is significant considering how agricultural wages are 53% below the poverty threshold ([Mapa, 2022](#)).

These socio-economic impacts disproportionately affect indigenous peoples (IPs) in the Philippines, as they have greater poverty incidence and less access to public utilities and social services compared to non-indigenous Filipinos ([LRC, 2022](#)).

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<sup>1</sup> Computed from average daily wage of PhP301.14 (or PhP6,323.94 monthly) paid to agricultural workers in 2022 as per PSA

## **On Obligations to Prevent, Mitigate, and Remedy Loss and Damage**

The landmark 2022 Report on the National Inquiry on Climate Change (NICC) of the Philippine Commission on Human Rights (CHR), albeit only recommendatory and non-binding, declared that climate change is a human rights issue and that the Carbon Majors, or the top 100 corporations that contribute 71% of global greenhouse gas emissions, can be held liable for their human rights violations. The report further recommends that the State disincentivize financial institutions from funding carbon majors and to create a sufficient loss and damage facility ([CHR, 2022](#)).

In response, Filipino lawmakers under the House of Representatives Committee on Climate Change filed House Bill No. 9609 or the Climate Accountability (CLIMA) Bill, proposing to establish a binding legal framework for climate loss and damage accountability in the Philippines ([LRC, 2023](#)).

In HB 9609, States are obliged to hold carbon majors accountable to **minimum standards of behavior**, based on the United Nations Guiding Principles on Business and Human Rights, to ensure corporations do no harm to the whole gamut of human rights linked to climate change, including but not limited to the right to health, clean and healthy environment, development, gender equality, and the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, and people in vulnerable situations.

In its explanatory note, HB 9609 states that *“The slow-onset nature of climate change also makes it problematic to locate fittingly within traditional legal notions of harm and injury because by the time sea level rise, apocalyptic typhoons, droughts, spread of diseases, and heatwaves happen, among others, conduct contributing to climate change had taken place; in other words, these apocalyptic events are mere inevitable consequences of a prior harmful conduct that has occurred. It is thus imperative that we take a step-back, make a paradigmic shift, and treat conduct contributing to climate change as a harm in and of itself.”*

HB 9609 outlines in its Chapter II a framework for business accountability. Section 4 sets a **due diligence standard of care** in the conduct of business wherein they must proactively identify, prevent, and address possible climate harms of their operations.

Section 5 sets **business responsibilities** such as climate-financial disclosures, greenhouse gas emissions inventories, climate change-related human rights due diligence, and various reportorial requirements.

Sections 6 and 10 adopts the **Precautionary and Polluter Pays principles**, the former requiring proactive measures even if some cause and effect relationships are not yet fully established scientifically and the latter ensuring Carbon Majors will pay damages without shifting the burden.

Chapter III establishes and operationalizes a **Climate Change Reparations Fund** to be used to respond to claims made by victims for compensation for economic and non-economic harms, relocation, and recovery and rehabilitation measures. A

**Climate Change Reparations Board** will be established as a quasi-judicial body attached to the CHR, composed of legal and scientific experts as well as indigenous, youth, and civil society representatives, to process claims over climate loss and damage.

Finally, there are a number of provisions that expound specific aspects of loss and damage, such as Section 21 **penalizing corporate greenwashing and climate denialism** and Section 22 establishing a **compensation and reemployment scheme** for employees affected by any suspension or permanent cessation of business activities as a result of the enforcement of this proposed law.

### **On the Obligation to Contribute to the Climate Loss & Damage Fund**

The **Right to Remedy**, as established in Article 8 of the Universal Declaration of Human Rights and Article 2(3) of the International Covenant on Civil and Political Rights, among other international treaties, requires States to ensure access to effective remedy to anyone whose rights and freedoms are violated.

The UN General Assembly Resolution 60/147 subsequently laid down basic principles and guidelines on the right to remedy and reparation for victims of gross violations of international human rights law, particularly stating that persons, legal persons, and other entities—and therefore including businesses and financial institutions, for instance—should provide reparations to victims if found liable. States as duty bearers are thus mandated to hold accountable these private entities.

As pointed out in the CHR's NICC report, the Maastricht Principles apply on the State's **extraterritorial jurisdiction** to fulfill its human rights obligations. States affected by climate harm are therefore mandated to oblige other states that have caused climate harm to provide remedy.

States are also bound by the principle of **Common But Differentiated Responsibility (CBDR)** as inscribed in the UN Framework Convention on Climate Change. Both Annex I Countries and Carbon Majors have historically contributed the most to the runaway climate crisis and thus have greater accountability to pay for the loss and damage of climate vulnerable nations.

A report ([Burger & Tigre, 2023](#)) showed that climate litigation has more than doubled in the past five years with 2,180 climate cases underway around the world, showing how States are now being concretely obligated to these climate loss and damage accountabilities through jurisprudence.

Particular obligations to **Indigenous Peoples and Local Communities (IPLCs)** should be emphasized, as a study of over 1,700 sites across the world indicate that climate impacts on IPLCs are “ongoing, tangible, widespread, and affect multiple elements of their social-ecological systems.” In the Philippines, 73% of IPs belong to the country's 40% poorest, while 21% of indigenous territories face overlapping land and environmental conflict (LRC, 2022), making them among the most climate vulnerable sections of society.

## **On Redressing Non-Economic Loss and Damage**

In the same breath as the South African Apartheid was dismantled, support must be given to thoroughgoing policy and governance reforms that will redress the historical structural injustices imposed by the Climate Apartheid ([Alston, 2019](#)) on climate vulnerable nations and peoples.

In the Philippines' nationally determined contributions to the Paris Agreement, for instance, 72% of the committed mitigation interventions are conditional to be provided by developed nations ([CCC, n.d.](#)). This requires counterpart action from the NDCs of developed nations including demanding the accountabilities of carbon majors based in them.

Further, **historic policy and governance impositions** by the Global North that have denied genuine development from its colonies in the Global South and consequently condemned them into perpetual climate vulnerability, must be held accountable. Mineral and timber exploitation was the mode of development imposed by the US colonial government on the Philippines ([Poblador, 2014](#)), which were later transformed into neoliberal globalization policies such as the [Mining Act of 1995](#) and the [Integrated Forest Management Program](#) that continued to promote export-oriented production.

A closer look at the history of forest policy is instructive. Colonial export-oriented forestry policies from the Spanish Regalian Doctrine to the US Forest Act of 1904 ([Ilagan, 2021](#)) decimated more than half of the country's pre-colonial forest cover until right before the Marcos dictatorship.

Timber License Agreements (TLAs) were issued en masse by the US-backed dictator to his cronies, increasing TLAs from 58 in 1969 to 471 by 1976 and ramping up deforestation rates to up to 316,000 hectares on average (*Ibid.*). Timber exports were banned and community-based forest management was introduced only in 1992, four years after the People Power Revolution that toppled the dictatorship, in response to a flood disaster brought about by Typhoon 'Uring' submerging Ormoc City and killing over 5,000 people because of a heavily deforested watershed.

The confluence of mining, deforestation, and climate change was very recently demonstrated in the 2024 flood and landslide disaster caused by northeastern monsoon rainfall, resulting in the death of more than 100 people in a mining village in the island of Mindanao ([AFP, 2024](#)).

Redressing this historical responsibility over the denudation of the Philippines' forests should be addressed distinctly from existing climate financing for forest-based mitigation and adaptation interventions such as REDD+. The nature of existing forest facilities are for carbon offsetting and present and future responsibilities, not for securing justice over historic transgressions.

**Particular compensation should be provided for IPs**, as they experience cultural losses when the lands and waters that constitute their identity, knowledge, practices, and sacred places are affected by climate change. The loss and damage experienced

by IPs are also deeply enmeshed in historic injustices they continue to face ([Biangalen-Magata, 2022](#)).

A case in point in the Philippines is the 2022 landslide disaster caused by Typhoon ‘Paeng’, where at least 27 indigenous Tedurays died after they were buried in mud at an unsafe resettlement area. They were ejected by private land developments from their ancestral lands in 2020, made possible by the national government’s longstanding neglect of the tribe’s ancestral domain claim that is yet to be awarded to date ([Bello et al., 2023](#)).

### **On a Rights-Based Approach to the Climate Loss and Damage Fund**

As proposed in Section 14 of HB 9609 ([LRC, 2023](#)), the establishment of a Climate Change Reparations Board can be seen as an example of how to operationalize the Loss and Damage Fund. Its members should possess qualifications that ensure of their knowledge and practice regarding the **nexus of climate change, environment, and human rights**. Seats should be ensured for representatives of **climate vulnerable sectors** such as IPs, youths, and women, as well as civil society groups with abovementioned qualifications. Section 17 establishes the powers and functions of the Board, rephrased to generalize, as follows:

1. Receive, evaluate, process, and investigate applications for claims;
2. Issue *subpoena ad testificandum* and *subpoena duces tecum*;
3. Enjoin any and all acts involving or arising from any claims pending before it, which, if not restrained forthwith, may cause further or irreparable damage to any of the parties to the claim or seriously affect social and economic stability;
4. Hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor;
5. Administer the Climate Change Reparations Fund;
6. Approve with finality all eligible claims;
7. Deputize appropriate agencies to assist the Board in order for it to effectively perform its functions;
8. Exercise administrative control over its Secretariat;
9. Promulgate such rules as may be necessary to carry out the purposes of the Climate Loss and Damage Fund and its Board, including rules of procedure in the conduct of its proceedings, with the domestic rules of court having suppletory application; and
10. Perform such other duties, functions, and responsibilities as may be necessary to effectively attain the objectives the Fund and its Board.

Finally, Section 24 creates an Oversight Committee to monitor the implementation of the Fund and its Board.

### **On Averting a Debt Trap for Developing Countries**

**Conditionalities** imposed upon developing nations throughout their histories have caused the chronic poverty and crisis they currently face. Case in point is the imposition of Structural Adjustment Policies (SAPs) by the International Monetary

Fund on the Philippines, where loan conditionalities led to the stripping off restrictions of more than 900 items and reduction of nominal tariff protection that caused the severe erosion of the Philippines' industries, unable to compete with the global open market ([Abocejo, 2014](#)).

Loss and Damage compensation should not come with strings attached, and should only be guided by the actual or attribution science-estimated damages to be attached as evidence alongside claims.