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**On inputs for the report on climate justice and loss and damage**

*Submission of Aksyon Klima Pilipinas to the United Nations Special Rapporteur on the right to development*

29 February 2024

***Aksyon Klima Pilipinas*** *(****AKP****) is the Philippines’s largest civil society network for climate action, with more than 40 non-government organizations as members. It advocates for climate change adaptation, mitigation, loss and damage action, finance, and technology transfer at the national and global levels through science-based, urgent, inclusive, and equitable decision-making processes anchored on upholding human rights and social justice. It is currently being led by* ***Living Laudato Si’ Philippines*** *(****LLS****), an interfaith movement initiated by Catholic laypeople calling on Philippine financial institutions to divest from coal-related operations and other environmentally harmful activities; LLS serves as the National Convenor and National Coordinator of the network.*

1. **How is the realisation of the right to development impacted by both economic and non-economic loss and damage from climate change? How is the impact experienced differently and/or disproportionately by different individuals (e.g., children and women), groups (e.g., Indigenous Peoples) and States (e.g., Small Island Developing States)?**

For the purposes of this submission, we refer to loss and damage (L&D) as climate risks and impacts that exceed the current capacities for adaptation and/or mitigation. This means that what is considered as L&D depends on the local contexts and circumstances in each community and the different economic, social, environmental, political, and cultural factors that impact their ability to address said risks and/or impacts. These same factors are also likely to influence ideas and strategies related to the pursuit of development.

While perceptions on development may change over time, the right to development is inalienable. Per the findings of the Intergovernmental Panel on Climate Change (IPCC)[[1]](#footnote-1), it is also evident that no matter how well a community adapts, as long as greenhouse gas (GHG) emissions continue to increase rapidly, both economic and non-economic L&D would also increase.

The most vulnerable groups and sectors (i.e., youth, women, indigenous peoples, differently-abled), who usually do not have sufficient knowledge, resources, and capacities to avert or minimize L&D, would be disproportionately affected by it. Using the definition of L&D stated above, it can be argued that accountability in this context would not only apply to developed countries and fossil fuel corporations (or carbon majors); it would also apply to national and local governments, financers of extractive industries and operations, and other stakeholders that enhance said risks and impacts beyond what affected stakeholders are capable of addressing[[2]](#footnote-2).

While the links between L&D and adaptation are usually more highlighted, the former’s links to mitigation, especially just energy transition, must not be overlooked. If supposed solutions to the climate crisis, including renewable energy, are not properly implemented, they could end up increasing vulnerabilities that result in higher L&D and violation of human rights, including the right to a clean, healthy, and sustainable environment and the right to development.

For example, the residents of Brooke’s Point in Palawan, one of the final ecological frontiers in the Philippines, actively oppose the mining activities of Ipilan Nickel Corporation. The protesters, which include members of the Palaw’an indigenous group, claim the alleged malpractices by the company as part of its extraction of nickel, a critical energy transition mineral, that have resulted in environmental destruction, including on forests and marine ecosystems[[3]](#footnote-3). This is despite part of the mining area overlapping with a protected area and a lack of proof of free, prior, and informed consent from the indigenous peoples in the area. Such destruction would not only reduce the adaptive capacity in the area, but also adversely impact their ability to pursue development.

1. **What are the obligations of States and other actors such as development finance institutions and businesses to prevent, mitigate and remediate the impacts of climate change-related loss and damage on human rights, including the right to development?**

The Philippine Commission on Human Rights conducted a seven-year inquiry on the accountability of carbon majors for human rights violations triggered by their pollutive operations. The findings of this investigation[[4]](#footnote-4), while not legally-binding, can be used as precedent for future litigation. The inquiry produced the following recommendations for States, development finance institutions, and businesses, especially carbon majors, on responding to L&D:

On States

* They should enact laws, policies, and/or other legally-binding instruments that implement the UN Guiding Principles on Business and Human Rights (UNGP). Such instruments should also include mechanisms to hold both corporations and implementing agencies accountable for any failure to regulating GHG emissions of these businesses, enforcing the principle of transparency for businesses to report on how their actions impact human rights, avoid causing L&D to any stakeholder, and prevent impeding the right to development by individuals and/or communities.
* They should institutionalize mechanisms to truly make “polluters pay”. Said mechanisms can take the form of penalties and taxes for excessive emissions by businesses or redress or compensations for communities experiencing L&D and subsequent human rights violations due to the actions of the aforementioned sector.
* They must create an enabling policy and economic environment for ushering a rapid yet just transition away from fossil fuels and towards renewable energy development and other more ecologically-sustainable systems, especially after the landmark decision coming out of the 28th Conference of Parties to the UNFCCC (COP28). This environment must feature an inclusive decision-making process that ensures that the most vulnerable individuals and groups, who disproportionately experienced L&D and any related human rights violations, can meaningfully participate throughout the process. It should also promote greater awareness and education towards instilling a deep understanding of human rights and climate justice, aligned with the principles under the Action for Climate Empowerment.
* They must build the capacities of judicial courts to address climate litigation, especially cases involving human rights violations related to L&D and the potential role of businesses in them; this is even more urgent in the most vulnerable countries. Among the issues that need to be addressed is their ability to implement attribution in the context of the climate crisis, as opposed to interpreting evidence in more traditional cases. In determining claims and liabilities, courts may take notice of the findings of national human rights institutions and other similar entities.

On development finance institutions

* They should follow the Equator Principles (EP4), a framework for financial institutions to identify, assess, and manage environmental and social risks when financing projects. Assessments under this framework would include risks and impacts on human rights and climate change risk assessments aligned with globally-recognized standards and frameworks, such as the UNGP and the Task Force on Climate-related Disclosures. Following these would enable these institutions to direct capital more rapidly towards more sustainable projects that promote decarbonization and build climate-resilient infrastructure, both of which would help lessen L&D.

On businesses

* They have the responsibility to respect human rights, including the right to development, under the UNGP. Specifically, businesses must publicly disclose due diligence and the findings of climate and human rights impact assessments, and their interventions as responses to any risks and impacts. The public has the right to know risks that businesses, especially carbon majors, contribute through their operations or products, which in turn would impact their right to development.
* They should halt further exploration of new fossil fuel sources, especially coal, and instead invest, finance, and support projects and operations enabling a rapid yet just transition towards renewable energy development.
* They must stop being involved from any action promoting climate denialism and disinformation, and denounce such activities. In relation, they have to meaningfully communicate and engage with other stakeholders, especially highly-vulnerable individuals and communities, in assessing and improving their climate responses, including on L&D.

1. **What is the legal and/or moral basis for States and other actors including businesses to contribute to the Fund for climate change-related loss and damage?**

The “polluter pays” principle is near-universal, having been adopted in numerous laws and policies addressing different environmental issues. In the context of addressing the climate crisis, this principle is recognized under Article 3.1 of the UNFCCC, and indirectly strengthens the principle of “common but differentiated responsibilities” under the same Convention.

Despite shared perspectives among countries and stakeholders about L&D, it must be recognized that there remains no single universally-accepted definition of it within the global climate governance regime; “loss and damage” did not even appear in the UNFCCC text. Until this issue is effectively addressed, developed-country States, especially those that are evidently responsible for most of the emissions since the commencement of the Industrial Revolution, could use this as a justification to either delay or avoid contributing to the Fund. Similarly, this may also be used by some businesses as a basis in their lobbying efforts to prevent the enactment of any legal instrument that mandates them to provide restitution, redress, and/or compensation to those hit hardest by L&D, aligned with the “polluter pays” principle.

With climate change impacts projected to worsen if current emissions trends continue[[5]](#footnote-5), the moral imperative for governments and businesses to finance actions to avert or minimize L&D, specifically under the Fund, becomes even more apparent. This imperative is referenced in Pope Francis’s encyclical “Laudato Si’”, wherein he highlights the “ecological debt” that exists between developed and developing countries and that developed countries “ought to help pay this debt by significantly limiting their consumption of non-renewable energy and by assisting poorer countries to support policies and programmes of sustainable development”[[6]](#footnote-6); this can be applied to addressing L&D as a means to remove barriers from a country’s pursuit of development.

However, countries and businesses can be obligated to contribute to the Fund through the lens of human rights violations linked to L&D. For instance, youth individuals and groups from a developed country can file climate litigation against their national government, citing the State’s neglect of its duty to uphold intergenerational responsibility and its interlinkages to hindering their right to development in the context of L&D, which may result in that country’s highest court ordering the government to do its duties, which may include contributing to the Fund. Meanwhile, youth representatives can take a similar action against a corporation in a developing country for human rights violations resulting from their activities; this may also yield a similar decision.

Nonetheless, it must be emphasized that developed countries have failed to live up to their obligations under the UNFCCC in terms of providing sufficient support for the adaptation and mitigation of developing countries, and reducing their own GHG emissions. Had they properly fulfilled their obligations, L&D as an issue would not have been as significant today, and there would have been no need for a L&D Fund as currently intended.

1. **In addition to making a financial contribution to the Fund, what non-financial components may be relevant from a climate justice perspective (e.g., transfer of green technologies, building of capacity and relocation pathways for climate-induced migrants)?**

Capacity-building mechanisms coupled with activities on climate education, training, and awareness-raising are necessary to accelerate the development and/or implementation of interventions relevant to addressing L&D, especially in the most vulnerable countries. While there is a growing awareness about the dangers brought by the climate crisis and how it would impact future generations, there remain large sections of populations in these nations that lack a sufficient understanding of the climate crisis and its impacts, let alone on L&D[[7]](#footnote-7).

Education, training, and awareness-raising are three of the elements under Action for Climate Empowerment (ACE), implementation of Article 6 of the UNFCCC that aims to empower Parties to empower the whole of society to meaningfully engage in climate action. Programs aligned with these elements must emphasize the interlinkages between L&D, climate justice, and human rights, including both substantive and procedural rights. They must also focus on the significance of understanding and addressing slow onset events, which are more likely to cause irreversible L&D, such as loss of cultural heritage and loss of ecosystems services.

At the global level, developing-country Parties to the UNFCCC could seek technical assistance from L&D experts, including those under the Santiago Network on Loss and Damage. They may also develop or enhance their respective National ACE Strategies that would improve knowledge and capacity-building strategies for different stakeholders in addressing impacts in their respective areas.

It must be emphasized that biodiversity and ecosystems conservation, especially those part of nature-based solutions (NbS), can strengthen climate resilience at the local level and provide co-benefits for adaptation and mitigation, which in the long-term reduces the likelihood of both economic and non-economic L&D. In ASEAN, countries are accounting for NbS in shaping their domestic and international policy targets and striving for implementation at scale. They are also improving national policy frameworks to further give importance to the role of ecosystems for greenhouse gas sequestration and ecosystems-based adaptation[[8]](#footnote-8). These solutions would also avoid non-economic L&D, such as loss of indigenous knowledge, loss of cultural identities, and mental health. NbS implementation must be suitable to the social, economic, and cultural context of the local area, while not adversely impacting the surrounding natural environment. This would avoid the risks associated with implementing maladaptive policies and practices, which would impact the right to development of local stakeholders[[9]](#footnote-9).

1. **How should a human rights-based approach to operationalise and administer the Fund look like (e.g., integration of considerations such as accessibility, non-discrimination, fair representation in decision making, gender responsiveness, and accommodation for marginalised communities and countries especially vulnerable to the adverse effects of climate change)?**

The Fund should contain special windows that directly address the needs of the most vulnerable communities. These windows are intended as specific allocations that can be granted to highly-vulnerable groups and sectors, including indigenous peoples and the youth. While such windows should prioritize those residing in the Least Developed Countries and Small Island Developing States, they should remain open for access by such groups and sectors in both developing and developed countries; for the latter, it is likely that even in developed countries that have more available resources to address L&D-related concerns, these stakeholders would not necessarily have their concerns meaningfully included in national decision-making processes or properly represented by their governments in global policymaking spaces.

To ensure fair representation, non-discrimination, and transparency, all meetings of the Fund Board should include observers representing each of the nine constituencies under the UNFCCC: businesses and industries; environmental organizations; farmers and fisherfolk; indigenous peoples; local and municipal authorities; academe; trade unions; women and gender; and youth. In addition, observers from the following sectors should also be included: the differently-abled; and faith-based organizations. To strengthen gender responsiveness within the Board, there must be an equal representation of men and women among the members and alternate members; as of this writing, there are currently more nominated men than women as representatives to said entity[[10]](#footnote-10).

The criteria for assessing which proposals would be approved for financing under the Fund must include protecting, respecting, and upholding both substantive and procedural environmental human rights, including the right to development and the right to a clean, healthy, and sustainable environment. In developing such criteria, the Santiago Network, as the technical arm under the L&D governance landscape of the UNFCCC, must be involved. Intergovernmental bodies such as the Office of the UN High Commissioner for Human Rights, UNESCO, UNICEF, and the UN High Commissioner for Refugees must be consulted in this process to ensure a human rights-based approach to the Fund’s operations, covering different sectors and groups.

1. **How to ensure that the Fund and/or climate finance (including for mitigation and adaptation) does not result in a debt trap for developing countries?**

Finance under the Fund must be delivered to the most vulnerable countries only in the form of grants. As L&D is fundamentally rooted in the reality that climate-related risks and impacts are becoming worse to the point of countries or communities being unable to adequately address them through adaptation or mitigation, delivering any means of L&D finance or support to them with the conditionality of having to pay up within months or years is a total disregard of climate justice and would only exacerbate existing inequalities. It is also a contradiction to the principle of “common but differentiated responsibilities”, a primary fixture within the UNFCCC and the Paris Agreement that is based on both the recognition that developed countries largely caused the climate crisis, including L&D, and that developing nations do not have as much resources or capacities to address associated risks and impacts.

Given the imperative of rapidly and collectively scaling up solutions to address the climate crisis, a multitude of financial mechanisms should be used such that the implementation of these solutions would be accelerated, without further burdening countries with fewer resources and higher vulnerabilities. These mechanisms must be suitable to national circumstances, and executed in a manner that allows countries to still pursue sustainable development.

For instance, debt-for-climate swaps can be scaled up to enable more debt relief and improve financial flows into adaptation or mitigation projects. Instead of bilateral deals, a pooling system can be implemented such that part of the debt of a developing nation from several developed countries can be cancelled, which reduces risks for the latter and still allows the former to implement its climate actions. Blended financing may also be employed by combining grants with other financial instruments (i.e., loans, guarantees) that can produce returns to be reinvested in additional climate and/or sustainable development projects; this would attract a wider range of investors and increase the impact of these actions, while reducing the risk of debt trap for developing countries[[11]](#footnote-11).

1. IPCC (2021). *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press. In Press. [↑](#footnote-ref-1)
2. This was based on the outcomes of “Found and Rebuilt”, a L&D Forum hosted by Aksyon Klima Pilipinas, Living Laudato Si’ Philippines, Greenpeace Philippines, and the Manila Observatory on 9 November 2023 in Tacloban City, Leyte, Philippines, in commemoration of the 10th anniversary of the landfall of super-typhoon Haiyan, one of the most destructive storms in history. [↑](#footnote-ref-2)
3. Fernandez, H. A. (2023, February 28). Sleepless but not silenced: Indigenous people face off with nickel mine in Philippine tropical sanctuary. *Eco-Business*. https://www.eco-business.com/news/sleepless-but-not-silenced-indigenous-people-face-off-with-nickel-mine-in-philippine-tropical-sanctuary/ [↑](#footnote-ref-3)
4. Commission on Human Rights of the Philippines (2022). *National inquiry on climate change report* [PDF document]. https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf [↑](#footnote-ref-4)
5. Pope Francis (2015a). Laudato Si': On Care for Our Common Home [Encyclical]. [↑](#footnote-ref-5)
6. IPCC (2021). *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press. In Press. [↑](#footnote-ref-6)
7. Leiserowitz, A., Verner, M., Goddard, E., Wood, E., Carman, J., Reynoso, N. O., … & Buttermore, N. (2023). *International public opinion on climate change, 2023*. New Haven, CT: Yale Program on Climate Communication. [↑](#footnote-ref-7)
8. Suratno, A., Pistorius, T., Mislimshoeva, B., & Elkan, S. (2023). *Study on nature-based solutions (NbS) in ASEAN*. Jakarta, Indonesia: ASEAN. [↑](#footnote-ref-8)
9. During the “Found and Rebuilt” L&D forum held on 9 November 2023, representatives of local communities in or surrounding Tacloban City expressed opposition to the construction of a causeway in nearby Cancabato Bay, one of the intended benefits of which is to shield nearby areas from future storm surges. They contrasted the statement of the local chief executive, who publicly claimed that the aforementioned bay is dead; they instead argued that said project would result in further pollution and loss of ecosystem services and, thus is considered as maladaptation.. [↑](#footnote-ref-9)
10. UNFCCC (2024). *Members nominated to the Loss and Damage fund Board*. https://unfccc.int/process-and-meetings/bodies/funds-and-financial-entities/loss-and-damage-fund-joint-interim-secretariat/members-nominated-to-the-loss-and-damage-fund-board [↑](#footnote-ref-10)
11. Karaki, K., Medinilla, A., & Bilal, S. (2023). *Three ways to scale up debt-for-climate swaps*. https://ecdpm.org/work/scale-debt-climate-swaps-infographic-three-ways [↑](#footnote-ref-11)