



MEMORANDUM

FOR : **The Directors**
Climate Change Service
Legal Affairs Service
Policy and Planning Service

The Bureau Directors
Environmental Management Bureau
Biodiversity Management Bureau
Forest Management Bureau
Land Management Bureau
Mines and Geosciences Bureau
Ecosystem Research Development Bureau

The Executive Directors
National Water Resources Board
Palawan Council for Sustainable Development Staff

FROM : **The Director**
Legislative Liaison Office

SUBJECT : **INVITATION TO THE 3rd TECHNICAL WORKING GROUP (TWG) MEETING RE: HOUSE BILLS ON THE "CLIMATE ACCOUNTABILITY (CLIMA) ACT" FROM THE COMMITTEE ON CLIMATE CHANGE OF THE HOUSE OF REPRESENTATIVES**

DATE : 17 October 2024

In reference to the electronic mail received, the Committee on Climate Change of the House of Representatives is inviting the Department to a 3rd TWG meeting on **October 24, 2024 (Thursday) at 9:30 am at the Speaker De Venecia Hall, South Wing Annex, House of Representatives** to continue deliberations on House Bill Numbered 9609 and 10478, also known as "The Climate Accountability (CLIMA) Bill as follows:

1. **HOUSE BILL NO. 9609, ENTITLED: "AN ACT TO INSTITUTE POLICIES AND SYSTEMS TO ADDRESS CLIMATE CHANGE, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION OF MOST VULNERABLE COMMUNITIES FROM LOSS AND DAMAGE IN THE COUNTRY, PROVIDING FOR CORPORATE AND STATE ACCOUNTABILITIES AND REPARATIONS FOR VIOLATION THEREOF, AND OTHER PURPOSES," AUTHORED BY REP. EDGAR M. CHATTO, REP. JOCELYN SY LIMKAICHONG, REP. FERNANDO T. CABREDO, REP. ANNA VICTORIA VELOSO-TUAZON, REP. CHRISTIAN TELL A. YAP AND REP. JOSE MANUEL F. ALBA**
2. **HOUSE BILL NO. 10478, ENTITLED: "AN ACT INSTITUTING POLICIES AND SYSTEMS TO ADDRESS CLIMATE CHANGE, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION OF MOST VULNERABLE COMMUNITIES FROM LOSS AND DAMAGE IN THE COUNTRY, PROVIDING FOR CORPORATE AND STATE**

MEMO NO. 2024 - 923

**ACCOUNTABILITIES AND REPARATIONS FOR VIOLATION THEREOF,
AND OTHER PURPOSES," AUTHORED BY REP. RALPH WENDEL P.
TULFO, REP. JOCELYN P. TULFO, AND REP. ERWIN T. TULFO**

In this regard, may we invite a representative to participate in the meeting and share comments and insights on the proposed legislation. (preferably the same one who attended the previous TWG meetings). Further, kindly inform us of the name/s of the representative/s from your office who will participate in the meeting so we may include him/her/them as resource person/s.

Attached herewith are the Letter Invitation, agenda, copies of the aforementioned measures, and the latest working draft substitute bill for your reference.



ROMIROSE B. PADIN

cc: Undersecretary for Special Concerns and Legislative Affairs
Undersecretary for Finance, Information Systems and Climate Change



Republic of the Philippines
House of Representatives
Quezon City

COMMITTEE ON CLIMATE CHANGE

October 15, 2024

HON. MARIA ANTONIA YULO LOYZAGA

Secretary

Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City

Dear *Secretary Loyzaga*:

The **Committee on Climate Change** of the House of Representatives will hold its **Third Technical Working Group (TWG) meeting on October 24, 2024 (Thursday), 9:30 A.M., at Speaker De Venecia Hall, South Wing Annex Building.** The meeting is scheduled to continue the deliberations on **House Bill Numbered 9609 and 10478**, also known as "*The Climate Accountability (CLIMA) Bill.*"

We would like to invite you or your representative (preferably the same person who attended the previous TWG meetings), to provide valuable comments and insights on the proposed legislation.

We have attached the agenda, copies of the aforementioned measures, and the latest working draft substitute bill for your easy reference.

Should you have any clarification and for confirmation of your attendance, please contact Mr. Rommel M. Reyes, Committee Secretary at 09277193534 or Ms. MeAnne Ordovez at 09154448595.

Thank you and we look forward to seeing and hearing from you at the meeting.

Very truly yours,

HON. ANNA VICTORIA VELOSO-TUAZON
TWG Chairperson

Republic of the Philippines
HOUSE OF REPRESENTATIVES
19TH Congress
Third Regular Session

3rd TECHNICAL WORKING GROUP (TWG) MEETING
Committee on climate change

October 24, 2024 (Thursday), 9:30 AM
Speaker De Venecia Hall, South Wing Annex Building, House of Representatives

Agenda

- I. ACKNOWLEDGMENT OF AUTHOR, GUESTS, & RESOURCE PERSONS
- II. OPENING REMARKS OF THE TWG CHAIRPERSON
- III. CONTINUATION OF THE DELIBERATION ON THE FOLLOWING MEASURES:
 1. **HOUSE BILL NO. 9609**, ENTITLED: "AN ACT TO INSTITUTE POLICIES AND SYSTEMS TO ADDRESS CLIMATE CHANGE, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION OF MOST VULNERABLE COMMUNITIES FROM LOSS AND DAMAGE IN THE COUNTRY, PROVIDING FOR CORPORATE AND STATE ACCOUNTABILITIES AND REPARATIONS FOR VIOLATION THEREOF, AND OTHER PURPOSES," AUTHORED BY REP. EDGAR M. CHATTO, REP. JOCELYN SY LIMKAICHONG, REP. FERNANDO T. CABREDO, REP. ANNA VICTORIA VELOSO-TUAZON, REP. CHRISTIAN TELL A. YAP AND REP. JOSE MANUEL F. ALBA
 2. **HOUSE BILL NO. 10478**, ENTITLED: "AN ACT INSTITUTING POLICIES AND SYSTEMS TO ADDRESS CLIMATE CHANGE, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION OF MOST VULNERABLE COMMUNITIES FROM LOSS AND DAMAGE IN THE COUNTRY, PROVIDING FOR CORPORATE AND STATE ACCOUNTABILITIES AND REPARATIONS FOR VIOLATION THEREOF, AND OTHER PURPOSES," AUTHORED BY REP. RALPH WENDEL P. TULFO, REP. JOCELYN P. TULFO, AND REP. ERWIN T. TULFO
- IV. OTHER MATTERS
- V. ADJOURNMENT

RESOURCE PERSONS

➤ GOVERNMENT SECTOR

- Climate Change Commission
- Commission on Human Rights
- Department of Budget Management
- Department of Energy
- Department of Environment and Natural Resources
- Department of Finance
- Department of Justice
- Department of Science and Technology
 - Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA)
- Energy Regulatory Commission
- National Anti-Poverty Commission
- National Disaster Risk Reduction and Management Council
- National Economic and Development Authority
- National Power Corporation
- Office of the Solicitor General
- Power Sector Assets and Liabilities Management Corporation (PSALM)
- Public-Private Partnership Center of the Philippines
- Securities and Exchange Commission

➤ LGUs

- League of Cities of the Philippines
- League of Provinces of the Philippines
- League of Municipalities of the Philippines
- Union of Local Authorities of the Philippines

➤ PRIVATE SECTOR

- Ayala Corporation
- Carbon PH Coalition
- Cement Manufacturers Association of the Philippines, Inc. (CeMAP)
- Federation of Philippine Industries, Inc.
- First Philippine Holdings Corporation
- Makati Business Club
- National Grid Corporation of the Philippines
- Nestlé Philippines
- Philippine Chamber of Commerce and Industries (PCCI)
- Philippine Independent Power Producers Association (PIPPA)
- San Miguel Global Power Holdings Corp.

➤ ACADEME

- Manila Observatory
- UP Institute of Environmental Science and Meteorology
- UP Institute of International Legal Studies
- UP Resilience Institute

➤ CIVIL SOCIETY GROUPS/NGOs

- Aksyon Klima Pilipinas
- Climate Action and Human Rights Institute (CAHRI)
- Greenpeace Philippines
- Institute for Climate and Sustainable Cities (ICSC)
- Legal Rights and Natural Resources Center (LRC)
- Parabukas
- Philippine Movement for Climate Justice
- Save the Children Philippines
- The Asia Foundation

- **World Wide Fund for Nature (WWF) – Philippines**

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. _____
(In substitution of House Bill No. 9609)

Introduced by Representatives **EDGAR M. CHATTO, JOCELYN SY LIMKAICHONG, FERNANDO T. CABREDO, ANNA VICTORIA VELOSOTUAZON, CHRISTIAN TELL A. YAP, JOSE MANUEL F. ALBA, and FRANCISCO "KIKO" B. BENITEZ**

AN ACT
TO INSTITUTE POLICIES AND SYSTEMS TO ADDRESS CLIMATE CHANGE, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION OF MOST VULNERABLE COMMUNITIES FROM LOSS AND DAMAGE IN THE COUNTRY, PROVIDING FOR CORPORATE AND STATE ACCOUNTABILITIES AND REPARATIONS FOR VIOLATION THEREOF, AND OTHER PURPOSES

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

Parabukas: The Bill, or its IRR, may be able to draw from the forthcoming opinion of the International Court of Justice on the obligations of States in respect of climate change.

- This opinion is expected to provide guidance on States obligations to ensure the protection of the climate system, and the legal consequences for States where their acts and omissions have caused significant harm to the climate system and other parts of the environment, with respect to vulnerable States and peoples of the present and future generations affected by the adverse effects of climate change (United Nations General Assembly Resolution 77/276 adopted 29 March 2023).
- As of April 2024, 91 written statements have been filed in connection with these advisory proceedings, including one from the Philippines.

CHAPTER I
GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known and referred to as “The Climate Accountability (CLIMA) Act.”

SEC. 2. Declaration of Policy. – It is the declared policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, and shall protect and promote the right to health, dignified life, of the people and instill health consciousness among them.

~~The State shall protect climate systems for the benefit of children (Save the Children), its citizens, and generations yet to be born, on the basis of the precautionary principle, climate justice, common but differentiated responsibilities, and just transition. In this context, the State shall enjoin the participation of businesses to prevent and reduce the adverse impacts of climate change in the context of sustainable development. Towards this end, the State adheres to the United Nations Guiding Principles on Business and Human Rights as a basis for the establishment of minimum standards of behavior for corporate interests operating in the Philippines and in all territories over which the Philippines has sovereignty or jurisdiction.~~

The protection of climate systems advances the right of the people to a balanced and healthful ecology and is a common good. As such common good, all economic agents of the State, including corporations, are to contribute to its attainment.

The State shall enact measures that protect and enhance the right of all the people to human dignity and reduced social and economic inequalities, especially those that arise from adverse impacts attributed to climate change and towards this end the State shall regulate the acquisition, ownership, use, and disposition of property and its increments and therefore. (Atty. Peria)

SEC. 3. Definition of Terms. – For the purposes of this Act, the following terms shall be defined as:

- (a) **Adaptation** refers to the adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm and/or exploits beneficial opportunities;

OSG: Suggested to refine the definition of “adaptation” to make it more precise. The IPCC glossary defines adaptation as follows:

“In human systems, the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities. In natural systems, the process of adjustment to actual climate and its effects; human intervention may facilitate adjustment to expected climate and its effects.”

- (b) **Anthropogenic causes** refer to causes resulting from human activities or produced by human beings;

- (c) **Attribution science** refers to the process of evaluating the relative contributions of GHG and multiple causal factors to the observed change or event in the climate system with an assessment of confidence. This is done through a systematic analysis using physical understanding, observational data, statistical analysis and climate models by climate experts; (FPH: Added the IPCC Assessment Report 6 definition of attribution because the bill prescribes it as core in assessing climate liabilities.)
- (d) **Business** refers to a natural or legal juridical entity ~~person~~, including State-owned enterprises, transnational corporations and business enterprises of transnational character, other business enterprises, and joint ventures, whether individual or aggregate entities, undertaken by a natural person or a legal person duly incorporated under the Revised Corporation Code of the Philippines or the corresponding relevant corporate establishment legislation in other countries. For the purposes of this Act, "business" shall mean businesses that reported a gross income and capitalization of more than ₱100,000,000.00 in the previous tax year, or carbon majors, regardless of amount of gross income;

SEC: The setting of a threshold is crucial in determining the covered entities. Other jurisdictions prioritize economically significant entities based on revenue which is used as a proxy for emissions and correlates with the scale of operations and dependencies on GHG emissions.

- Recommended providing a ratio for the threshold to lay down the basis for classification. Other jurisdictions use the amount of total assets as basis for coverage.

CHR: Recommended clarification on the basis of the gross income especially in cases where income is easily manipulated as it is based on "reported gross income".

- Under the UNGP-BHR, both the private sector and state-owned or controlled enterprises may be held liable for activities contributing to human right harms, regardless of size, nature, and context of operation.

CCC: Capitalization commences business.

CEMEX: Will submit their proposed language in Section 3 (c). Whether the threshold depends on the gross income or capitalization or assets?

SMC Power: Related to the provision on polluters pay principle (PPP), in the event that capitalization and assets are not running or they are not contributing to GHG emission, then it will run counter with the PPP provision. Suggested to add "and capitalization".

- (e) **Business relationship** refers to any relationship between businesses to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship (ownership), or any other structure or contractual

relationship as provided under the domestic law of the State, including activities undertaken by electronic means;

- (f) **Carbon majors** refer to the ~~businesses that are multinational or state-owned producers, traders, and refineries of crude oil, natural gas, coal, and cement, that significantly contribute to global greenhouse gas emissions without taking climate accountability, and therefore primarily drive climate change~~ largest multinational and state-owned producers of crude oil, natural gas, coal, and cement with the biggest share of cumulative CO₂ and methane GHG (DENR) emissions since the industrial revolution; some of which have operations or a presence in, or a substantial connection to the Philippines; (CHR)

OSG: Suggested to include **certain threshold** of contribution of GHG for precision.

SEC: Recommended clarifying how carbon majors are determined based on the metrics used.

CCC: Whether or not enumerate the list of businesses or be silent on the enumeration as this will depend on the emission of the business.

Cong. Ana: Clarify whether the "presence" is legal or juridical presence.

CEMAP: Emphasized that there are local cement manufacturers that are as big as "multinational" companies.

- (g) **Climate accountability** refers to the responsibility of and corresponding need for reparation from businesses and carbon majors significantly responsible for climate change. A climate accountability regime establishes a governance mechanism for ensuring that climate targets are met through robust regulation and progress reporting. The accountability of carbon majors as defined in this Act shall range from negligence to causation (**PCCI:** climate change is cumulative and not retroactive. **Cong. Ana:** will be specific with the period covered.) based on emissions thresholds upon the promulgation of this Act; (**FPH:** this is based on the 16 July comment to fix the period.)

OSG: The Canadian Institute for Climate Choices published a document which includes proposed parameters on climate accountability, *i.e.* "Elements of Climate Accountability Frameworks and Best Practices in their Implementation".

- **Suggested** that the elements and best practices be considered in the definition of climate accountability.

NAPC: not only be based on emissions but also include waste disposal systems xxx and contribution to biodiversity loss.

- (h) **Climate change** refers to a change in climate that can be identified by changes in the mean and/or variability of its properties and that persists for an extended period typically decades or longer, ~~now mainly driven by anthropogenic activities since the 1800s~~ whether due to natural variability or as a result of human activity; (CHR) – concurred by the CCC.

OSG: Suggested to refine the definition to be more precise.

- 1) The IPCC glossary defines climate change as follows:

“A change in the state of the climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. Climate change may be due to natural internal processes or external forcings such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use.”

- 2) Article 1 of the UNFCCC defines climate change as:

“A change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”

- 3) Certain indicators of climate change are stated in the IPCC report: Climate Change 2021: The Physical Science Basis Working Group 1 Contribution to the AR6: atmospheric CO₂ concentrations of CH₄ and N₂O, global surface temperature, multi-century temperature, average Arctic sea ice area, glacier retreat, mean sea level, surface open ocean pH, together with manifestations of heatwaves, heavy precipitation, droughts, and tropical cyclones.

FPH: Suggested to amend the phrase “now mainly driven by anthropogenic activities since the 1800s” to “*directly or indirectly by human activity that alters the global atmosphere leading to natural climate variability*”.

This is to further simplify the term “anthropogenic” for the understanding of the public. The proposed qualifying phrase is derived from portions of the UN Framework on Climate Change Convention's original definition of climate change which is also made part of the clarification in the definition of climate change in the Glossary of the IPCC Assessment Report 6 of 2023. There is also no need to cite the Industrial Revolution of 1800 as we are referring to the present situation and this detail on the history of climate change does not improve the understanding by the reader without further explanation of the evolution of climate change.

- (i) **Climate change impact** refers to the effects on natural and human systems of extreme weather and climate events and in general, climate change. Impacts generally refer to effects on lives, livelihoods, health, ecosystems, economies, societies, cultures, services and infrastructure due to the interaction of climate changes or hazardous climate events occurring within a specific time period and the vulnerability of an exposed society or system; (FPH: Suggested to add the definition of "impact" as this is the basis of climate liability and penalties. We used the IPCC Assessment Report 5 definition on science attribution.)
- (j) **Climate Change Victims/Survivors** refer to (a) ~~children (Save the Children)~~—disadvantaged and vulnerable sector (CHR, people or communities who suffered harm, including physical or mental injury, emotional suffering, or economic or property loss, or impairment of their human rights as a result of climate-related loss and damage, as determined by a final and executory decision in a judicial or administrative proceeding (Nestle); or (b) those communities affected by slow or rapid-onset events of such magnitude, that cannot be avoided either by mitigation (avoiding and reducing greenhouse gas emissions) or adaptation (adjusting to current and future climate change impacts; or who have been, or are likely to be, severely affected by climate change, while at the same time having inadequate human, social and economic capital for climate change adaptation, including relocation;

DENR PPS: suggested to clarify how people/communities can be differentiated as Climate Change Victims/Survivors if climate change is a global phenomenon.

Cong. Ana: How to effectuate the remedies that will be awarded in the bill?

ELAC: The purpose is to redress significant societal harm through time and monetary means, and to address societal injustices.

- (k) **Climate-related financial transactions disclosures (FPH) –**
Manila Observatory suggested to define this term as to whether it involves any transaction that has GHG emission, then it could potentially cover the whole business operations.

FPH: The term used in business is "disclosures". This term is derived from the global prescription by investors to business. This relates to the duty of businesses to conduct climate-related risks and opportunities assessment preferably across the value chain or whole operation to determine the potential impact to the financial position of the company. They have described this in Sec. 5 (a).

AYALA: International Sustainability Standards Board that defines climate-related financial transactions.

PIPPA: Is there a specific limitation on this definition since anyone can be a victim or survivor of climate change?

- (l) **Climate justice** refers to justice that links development and human rights to achieve a human-centered approach to addressing climate change, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly; **(Aksyon Klima)**

- (m) **Climate risk** refers to the product of climate and related hazards working over the vulnerability of human and natural ecosystems; **(Aksyon Klima)**

FPH: suggested the following definition:

"Climate risks refers to the physical impacts of climate change which are either acute or driven by extreme weather events or chronic or long-term climate shifts."

NEDA: The Committee may focus to strengthen support for climate change-related public disclosures. The availability of high quality data for reliable and transparent emissions reporting is crucial for holding companies accountable for GHG emissions they produce.

- **Recommended** to expand the scope of the Sustainability Reporting Guidelines for Publicly Listed Companies of the SEC to include industries that may be identified as having high GHG emissions.

- (n) **Climate systems** refer to the global system consisting of five major components: the atmosphere, the hydrosphere, the cryosphere, the lithosphere and the biosphere and the interactions between them. The climate system changes in time under the influence of its own internal dynamics and because of external forcings such as volcanic eruptions, solar variations, orbital forcing, and anthropogenic forcings such as the changing composition of the atmosphere and land-use change; **(Aksyon Klima)**

- (o) **Common but differentiated responsibilities and respective capabilities (CBDRRC)** refers to the principle recognizing that each country vary in terms of contributions to global environmental degradation, and acknowledging that developed countries should bear primary responsibilities in the international pursuit of sustainable development, including the pressures put by their societies to the environment, their command on technologies and financial resources, and their contribution to the largest proportion of historical and current GHG emissions; **(Aksyon Klima)**

- (p) **Rapid-onset event Extreme weather events (Aksyon Klima) or acute event (FHP)** refers to a single, discrete event with a clearly identifiable beginning and/or end and that occur or reoccur in a matter of days or even hours at a local, national, or regional scale; **(Aksyon Klima) (DENR – agreed with AK)**

FHP: Suggested to add the business term for it per Task Force on Climate-related Financial Disclosures or TCFD as business is the bill's main stakeholder.

- (q) **Greenhouse gases (GHG)** refer to gaseous ~~constituents~~ elements of the atmosphere both natural and manmade that absorb and emit radiation from the earth's surface leading to global warming that contribute to the greenhouse effect including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. (FHP: the insertions are derived from the Glossary of IPCC Assessment Report 6. They avoided defining the word "GHG" with the same word – GHG effect – by describing how it became one and what it led to which is global warming.)

OSG: Suggested to refine the definition of GHG. The IPCC glossary defines GHG as follows:

"Gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and emit radiation at specific wavelengths within the spectrum of radiation emitted by the Earth's ocean and land surface, by the atmosphere itself, and by clouds. This property causes the greenhouse effect. Water vapour (H₂O), carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄) and ozone (O₃) are the primary GHGs in the Earth's atmosphere. Human-made GHGs includes Sulphur Hexafluoride (SF₆), Hydrofluorocarbons (HFCs) , chlorofluorocarbons (CFCs) and perfluorocarbons (PFCs); several of these are also O₃-depleting (and are regulated under the Montreal Protocol)."

- (r) **Intergovernmental Panel on Climate Change or IPCC** refers to the intergovernmental body of the United Nations responsible for assessing the science related to climate change and for providing internationally coordinated scientific assessments of the magnitude, timing and potential environmental and socio-economic impact of climate change and realistic response strategies; (OSG: as described in the 21 May 2024 ITLOS Advisory Opinion.)
- (s) **Just transition** refers to maximizing the social and economic opportunities of climate action, while minimizing and carefully managing any social disruption, political and social risks – through effective social dialogue among all groups impacted, and respect for fundamental labor principles and rights; (Aksyon Klima)
- (t) **Loss and Damage** refers to the harms resulting from the adverse effects of climate change, including extreme weather events and slow onset events, such as sea level rise, despite mitigation and adaptation efforts (AYALA).

This includes economic or non-economic harms to life, livelihoods, ecosystems, or cultural heritage, and can involve tangible or non-tangible property, possessions, cultural identity, sacred places or objects, human health, among other things, that resulted from the unavoidable and irreversible impacts of climate change (AYALA);

OSG: "Loss and Damage" be in lowercase letters.

Aksyon Klima: Recommended that the "Loss and Damage" be changed to "loss and damage".

- "Loss and Damage" and "loss and damage" have different connotations.
- The term, if used with capitalized letters, political debate under the UNFCCC following the establishment of the Warsaw Mechanism on Loss and Damage in 2013, which is to 'address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.'
- With the definition provided in the most recent version of the bill, it would be referring to the terms, if used with lowercase letters.
- Suggested to **include** climate change impacts and risks that are beyond the capacities of affected stakeholders for climate change adaptation.

CHR: Recommended additional wordings or concepts to be incorporated in the definition:

"Loss and damage refer to the negative consequences of climate change on human societies and the natural environment. Climate change is affecting the frequency, intensity and geographical distribution of extreme weather events such as storms, floods and heatwaves, and slow-onset events such as sea level rise, ocean acidification, loss of biodiversity and desertification. All of these result in loss and damage, both economic and non-economic. Economic loss and damage may include damage to crops, homes or infrastructure. Non-economic loss and damage may include harm to human health and mobility; loss of access to territory, of cultural heritage and of indigenous and local knowledge; and loss of and damage to biodiversity and habitats."

CCC: Will submit the propose definition of "loss and damage".

- The bill may clarify how Loss and Damage is substantially used – whether it is within the domestic civil law or UN climate negotiations.
 - If the bill seeks to establish an institutional, domestic mechanism for Loss and Damage, the CHR recommended aligning the bill with the Philippine Sustainable Finance Framework Roadmap.

PIPPA: There is a need to clarify on what is construed as "loss and damage" since under the New Civil Code, damages are enumerated and awarded by Courts. Is it the intent of the bill to add grounds for awarding damages and impliedly amending the Civil Code?

- (u) **Mitigation**, in the context of climate change, refers to human intervention to reduce ~~address anthropogenic~~ GHG emissions or enhance their removal by natural sinks or through GHG capture by manmade mechanisms ~~by sources and removals by sinks of all GHGs, including ozone depleting substances and their substitutes;~~

FHP: Need to be explicit about the action in mitigation. Instead of saying "address" climate change, studies/experts describe it directly as "reduction of GHG emissions". Also, the bill definition states that we can "address GHG by removal by sinks of all GHGs". This may be made more accurate. There are 2 types of GHG reduction or mitigation (i) removal by natural sinks and (ii) manmade or mechanical capture of emissions. Sinks cannot remove all GHGs as stated in the bill. Only carbon dioxide or CO₂ are absorbed by natural sinks and not the other types of the GHG gases. Lastly, there may be no need to single out ozone and its substitutes as we are referring to all 6 GHGs defined by the IPCC, inclusive of ozone per item "m" above.

DENR: add "nature-based solutions and technological solutions" – **FHP:** There is no need to add nature-based solutions (NBS) since their proposed definition cites "natural sinks" which already covers NBS.

- (v) **Nationally determined contribution** refers to the Philippines' nationally determined contribution ("NDC"), as a climate action plan to cut emissions and adapt to climate impacts, undertaken and communicated pursuant to Article 3 of the Paris Agreement, and for the purposes of this Act, the NDC includes the National Adaptation Plan (NAP) and the Nationally Determined Contribution Implementation Plan (NDCIP) (**AYALA**). It is the country's long-term development plan towards a climate-resilient and low-carbon pathway (**OSG**);

CCC and DENR: recommend to use the definition in the UNFCCC.

- (w) **Paris Agreement** refers to an international treaty on climate change adopted by the Parties, including the Philippines, to the United Nations Framework Convention on Climate Change (UNFCCC) at the twenty-first session of the Conference of Parties of the UNFCCC in December 2015 and duly deposited with the United Nations Secretary-General as its Treaty Depository which aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, and will be implemented to reflect equity and the principle of common but differentiated responsibilities (~~CBDR~~) and respective capabilities (CBDRRC), in light of different national circumstances. (**Aksyon Klima**) It increases the ability to adapt to the adverse impacts of climate change and foster climate resilience and low GHG emissions development in a manner that does not threaten food production. (**OSG**)

- (x) **Reparations** refer to the amends for a tort or injury inflicted, especially, in the context of this bill, compensation, relocation, and rehabilitation and recovery for victims/survivors of climate loss and damage;

*Suggested to use the definition in the UN Principles of Reparations.

DENR: "reparations" not accepted term yet by the developed countries.

FPH: use "pecuniary and non-pecuniary".

DENR: The other provisions of the Bill use the term Compensation. It is proposed to reconcile these provisions. Compensation is not defined in the Definition of Terms.

As to the definition of "Reparations", "compensation" is not popular with developed countries or the private sector, which may create a negative reaction or barrier to claims under the context of this bill.

For example, another term that may be considered is "cash for emergency assistance" or equivalent. Or we can just use the term Loss and Damage.

- (y) **Slow onset event or chronic event** (FHP: suggested to add the business term for it per TCFD.) refers to risks and impacts associated with increasing temperatures, desertification, loss of biodiversity, land and forest degradation, glacial retreat and related impacts, ocean acidification, sea level rise, and salination; **(Aksyon Klima)**
- (z) **Stakeholder** refers to an individual or a group who holds an interest in how an organization operates as it can be the source of benefit or harm a stakeholder. (FPH: Added this term as this is related to the discussion of harm to victims.)
- (aa) **Source attribution** refers to the process of identifying and assigning climate change impacts to specific sources of GHG emissions to allocate accountability for climate change. A source can be a particular sector, entity or activity. (FPH: Added this term because among the areas of study in climate attribution science, this is the segment that determines the liability of an entity. Hence, it must be clear to all concerned.)
- (bb) **UN Guiding Principles on Business and Human Rights (UNGP)** refers to a set of tenets for governments and companies to abide by in order to prevent, respect, address and remedy the negative impacts on human rights. (FPH: Similar to the Paris Agreement definition, proposed to define the UNGP because it is one of the legal frameworks of the human-rights based climate accountability bill.)
- (cc) ~~**Vulnerability Climate risk framework** (DENR) refers to the degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function~~

~~of the character, magnitude, and rate of climate change and variation to which a system is exposed, its sensitivity, and its adaptive capacity~~ propensity or predisposition to be adversely affected by climate variability or change. Vulnerability encompasses a variety of concepts and elements, including sensitivity or susceptibility to harm and lack of capacity to cope and adapt. (Aksyon Klima – from AR6. CCC: agreed.)

OSG: Suggested to refine the definition of vulnerability. The IPCC glossary defines vulnerability as follows:

“The propensity or predisposition to be adversely affected. Vulnerability encompasses a variety of concepts and elements, including sensitivity or susceptibility to harm and lack of capacity to cope and adapt.”

DENR: As to the second sentence in the definition of “Vulnerability”:

- This was an old definition by IPCC and refers to the physical outcome of climate change. Since the AR5, this has been replaced by the risk concept, and vulnerability is one major component, including the system’s social, economic, physical, and technological characteristics even before being exposed to the hazards.
- Use the definition in the AR6.

FPH: there is a definition in AR6 on vulnerability which also includes the risk assessment.

CHR: Recommend the inclusion of the following:

“xxx include victims of discrimination and/or those who suffer from multiple aggravated, compounded, or intersecting forms of discrimination based on other related grounds, such as ethnicity, culture, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards.”

CHAPTER II POLICIES AND SYSTEMS

SEC. 4. Adoption of the Precautionary Principle. – ~~This Act shall adopt adjust~~ (Atty. Peria) In cases where there is a threat or risk of serious damage and the need for environmental protection, the courts shall be guided by Rule 20 of the Rules of Procedure for Environmental Cases, ~~where~~ modified as follows: (AYALA)

OSG: In *PTK2 H2O Corp. vs. Court of Appeals*, the Supreme Court applied the precautionary principle and provided three conditions for its application, i.e., (a)

uncertainty, (b) the possibility of irreversible harm, and (c) the possibility of serious harm.

- **Recommended** that the same be considered, added and/or integrated in Section 6 (b) of the Bill on the Standards for Application.

PIPPA: Are courts equipped to evaluate matters based on the precautionary principle?

- Isn't this within the jurisdiction of the DENR?
- Adoption of the Precautionary Principle pulls the assessment for decisions, recommendations to have no basis except concern when for big businesses and operations that employ a lot of personnel then data and science-based decisions are needed.

Institute of Environmental Science & Meteorology: The scope of application of the principle is predicated on how much scientific information is known at a particular scale and temporal range or frame.

- Who will be the arbiters of scientific certainty?
- The SC has ruled on certain evidentiary and certainty parameters. Lack of scientific certainty questions will be remanded to the relevant government agency for which PAGASA is mentioned.
- Suggested for the **creation of an independent agency or body that will deal with attribution science.**
 - PAGASA may not be the best agency to deal with attribution science because its mandate refers to meteorological and climatological forecasting.

DENR PPS: Include the definition of "precautionary principles" as defined in the Rules of Procedure for Environmental Cases.

FHP: Suggested to convert Section 6 into a general section on the key principles that will guide the analysis of potential violations under this Act. The sections proposed to be consolidated are Sections 6 (precautionary principle), 10 (polluter pays principle), 11 (doctrine of last clear chance), and 12 (attribution science).

- (a) Applicability.— When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it, with the proponent of an activity, rather than the public, bearing the burden of proof (PIPPA: does not agree as this will cause multiple litigations to businesses that contribute GHG).

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

Cong. Ana: Apply the precautionary principle based on Rules of Procedure on Environmental Cases.

Cong. Alba: mention in general terms.

FPH: description of attribution because the process is universal.

- (b) Standards for application.— In applying the precautionary principle, the following factors, among others, may be considered: (1) serious threats to human life or health; (2) inequity to present or future generations; ~~or~~ and (3) prejudice to the environment ~~without legal consideration of the environmental rights of those affected.~~ (AYALA)

The business and the **PAGASA CCC**, which ~~monitors~~ assists SEC on the analysis of the GHG emissions, shall also be obliged to disclose whether or not the cause and effect have not yet been scientifically established. (FPH) (AYALA: suggested to delete this paragraph.)

UPRI: Regarding the last paragraph, this clause highlights the fact that GHG should not be evaluated by just a single agency or institution as there are a lot that not yet well-established, possibly giving rise to doubts. Hence, it is prudent to involve academic institutions in the evaluation and assessment of GHG emitted by businesses. Otherwise, businesses will be at the mercy of a single authority that is mandated. Science does not work that way, conclusions are based on evidence and agreed upon by scientists through consensus after exhaustive long-term discussions and deliberations.

FPH: We suggest convert this Section 6 into a general section on the key principles that will guide the analysis of potential violations under this act. The sections proposed to be consolidated are:

- Precautionary Principle (Sec. 6 in the draft)
- Polluter Pays Principle (Sec. 10 in the draft)
- Doctrine of Last Clear Chance (Sec. 11 in the draft) - Attribution Science (Sec. 12 in the draft)

DENR: This may require support for PAGASA to do this function. PAGASA has only one piece of equipment in the Science Garden to monitor GHG emissions, which is currently not functional. However, businesses can do a greenhouse gas inventory based on the kind of industry or sector they operate in.

SEC. 5. Adoption of the Polluter Pays Principle. – Carbon majors or polluters shall pay for the damage they caused to the environment, as may be provided under relevant environmental and natural resource management laws such as, but not limited to:

OSG: Recommended that a brief description or definition of the “polluter pays principle” be included under Section 3 of the Bill. In the *Rationale to the Rules of Procedure for Environmental Cases* as published by the Philippine Judicial Academy, the polluter pays principle is described as a requirement from the polluter to internalize the costs associated with causing pollution.

DENR: It is suggested that we include human well-being (e.g. effects of pollution on health and cost of care).

FPH: Suggested to drop the specific laws as the description already states its coverage to be all relevant environmental and natural resources laws. If the TWG prefers to add the specific laws, consider dropping those that will not related to environmental and natural resources or not leading to potential well-being disruption or human rights violation. Further review of RA 8041, RA 9136, and RA 11285.)

- (a) Presidential Decree No. 705 or the "Revised Forestry Code of the Philippines";
- (b) Presidential Decree No. 856 or the "Code on Sanitation of the Philippines";
- (c) Presidential Decree No. 979 or the "Marine Pollution Decree of 1976";
- (d) Presidential Decree No. 1152 or the "Philippine Environmental Code";
- (e) Presidential Decree No. 1219 or "The Coral Resources Development and Conservation Decree";
- (f) Presidential Decree No. 1586 or "Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes"; **(FMB)**
- (g) Republic Act No. 6969 or the "Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990";
- (h) Republic Act No. 7076 or the "People's Small-scale Mining Act of 1991";
- (i) Republic Act No. 7586 or the "National Integrated Protected Areas Systems Act of 1992" as amended by Republic Act No. 11038;
- (j) Republic Act No. 7942 or the "Philippine Mining Act of 1995";
- (k) Republic Act No. 8048 or the "Coconut Preservation Act of 1995";
- (l) Republic Act No. 8041 or the "National Water Crisis Act of 1995"; **FPH:** The provisions of this law do not impinge human rights as it improves access to water.
- (m) Republic Act No. 8371 or "The Indigenous Peoples' Rights Act of 1997";
- (n) Republic Act No. 8435 or the "Agriculture and Fisheries Modernization Act of 1997";
- (o) Republic Act No. 8550 or "The Philippine Fisheries Code of 1998";
- (p) Republic Act No. 8749 or the "Philippine Clean Air Act of 1999";
- (q) Republic Act No. 9003 or the "Ecological Solid Waste Management Act of 2000"; **FPH:** The provisions of this law has no reference to environment or natural resources that can be a source of human rights violation.
- (r) Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001";
- (s) Republic Act No. 9147 or the "Wildlife Resources Conservation and Protection Act";
- (t) Republic Act No. 9072 or the "National Caves and Cave Resources Management and Protection Act";
- (u) Republic Act No. 9003 or "The Ecological Solid Waste Management Act"; **OSG:** this has been amended by RA No. 11898 dated 23 July 2022, or the "Extended Producer Responsibility Act of 2022."

- (v) Republic Act No. 9168 or the "Philippine Plant Variety Protection Act of 2002";
- (w) Republic Act No. 9275 or "The Philippine Clean Water Act of 2004";
- (x) Republic Act No. 9367 or the "Biofuels Act of 2006";
- (y) Republic Act No. 9513 or the "Renewable Energy Act of 2008";
- (z) Republic Act No. 9729 or the "Climate Change Act of 2009" as amended by Republic Act No. 10174;
- (aa) Republic Act No. 10121 or the "Philippine Disaster Risk Reduction and Management Act of 2010";
- (bb) Republic Act No. 7611 or the "Strategic Environmental Plan (SEP) for Palawan Act";
- (cc) Republic Act No. 9483 or the "Oil Pollution Compensations Act of 2007"; and
- (dd) Republic Act No. 11285 or "An Act Institutionalizing Energy Efficiency and Conservation, Enhancing the Efficient Use of Energy, and Granting Incentives to Energy". **FPH:** The provisions of this law do not have direct reference to well-being and human rights.

The polluter is not allowed to shift the burden of evidence for the damage caused by the pollution. (**OSG:** This is inconsistent with the evidentiary precept as stated in Section 1, Rule 131 of the Amended Rules on Evidence, which declares that such burden may shift from one party to the other.)

The rights and causes of action that are created under this Act shall be without prejudice to other causes of actions under existing laws. In estimating the amount of and accountability for damage, attribution science can be used as a complementary framework in lieu of proof of actual damage.

PIPPA: The last paragraph bolsters the fact that this rule attempts to add more penalties/fines/regulatory compliance implications than those already existing.

- Allows citizen suits and "Polluter pays Principle" pushes the burden of proof to the defendant accused rather than the other way around which is unfair as the principle should be "innocent until proven guilty".
- This bill also allows complaints to be filed while also filing another similar suit under other existing parallel laws.

CHR: noted with concern that the "one-to-one correspondence between anthropogenic climate change and climate change impacts" may be difficult to ascertain.

- Recommended to adopt a carbon taxation program as one of the core polluter pays principles to be mandated on all business operating in the Philippines, including transnational or multinational corporations.
- Carbon tax must be equitable and will not be unfair to the consumers.

SEC 6. Application of the Doctrine of Last Clear Chance. — The Doctrine of Last Clear Chance shall be applied to this Act whereby carbon majors' knowledge of their significant contribution to climate change as what has been documented by the Report of the Commission on Human Rights' National Inquiry on Climate Change,

(Atty. Peria) compels them to substantially reduce greenhouse gas emissions to be faithful to their duty of care. Failure to do so implicates them in exacerbating and thus makes them accountable for significantly contributing to the climate crisis.

~~The doctrine does not apply when only one of the parties was negligent. (FHP)~~ For the doctrine to apply, it must be shown that both parties were negligent but the negligent act of one was appreciably later in time than that of the other. It may also apply when it is impossible to determine who caused the resulting harm, thus, the one who had the last opportunity to avoid the impending harm and who failed to do so will be held liable. (FPH – This is based on *Ofracio vs. People*. LRC: may be placed in the “due diligence standard” instead. Cong. Ana: retain the provision on negligence.)

OSG: The doctrine of last clear chance is a concept in tort law where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom.

- While the Supreme Court has recognized the use of tort law in environmental cases, noting that it can be used to address environmental harms to a well-defined area of specific person, or a class of persons, when readily supported by general and specific causation and the elements of a tort cause of action closely fit, it appears that the definition of doctrine of last clear chance in the Bill veered away from the usual definition provided under jurisprudence.
- **Recommended** that the definition should include the definition provided by prevailing jurisprudence.

DENR: How do we establish their knowledge of significant contribution?

- How do we determine that there is failure?
- Who will determine that there is failure?
- Does a case need to be filed to establish the failure?

PIPPA: Adopting the Doctrine of the Last Clear Chance will cause all accused to blame each other as defense to say they are innocent and projected to increase aggression and mud-slinging that can muddy facts.

DENR Legal: This doctrine cannot be applied to prolonged periods since it would be difficult to identify if the carbon major had the actual last clear chance to avert the damage caused, if any.

SEC. 7. Attribution Science. – ~~Attribution science looks at how climate change exacerbates an extreme event or makes it more frequent. In extreme event attribution, real-time analyses may be conducted immediately after an extreme weather event to determine whether climate change had played a role in it. This is carried out first by examining archival data, and then running two simulation models, one where~~

In many jurisdictions, courts evaluate evidence linking actors to climate-related losses using the stringent standards of legal causation. This disregards the work of climate and attribution science, and causes more climate injustice.

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."

- **Recommended** to take into account the discussions in the CHR Report. They also recommended to seek guidance from appropriate government agencies on data gathering and collection to understand the cost of unabated climate change.

FHP: As discussed last meeting they added a description of the attribution science process for the guidance of all and to remove vagueness. They suggested to replace the first paragraph with the above as the original description is too limited describing just one common method which was questioned by UPRI. On top of modeling, attribution science also looks at physical observation, statistics, scenarios, etc.). The process looks into three areas: "climate change attribution", "impact attribution" and "source attribution". The first two themes have been verified with confidence in the IPCC Assessment Reports of Working Group I (Physical Science) and Working Group II (Adaptation), respectively. There is no IPCC discussion on "source attribution" which refers to defining the defendant's relative contribution to the damage observed. However, this is an active area of research that is generating robust causation on a case- to-case basis so we can still add attribution science. Also as explained by PAGASA, the technology is there but they need training, equipment and resources to attain the skills. Instead of removing it, there was an agreement to put a qualifier which we added as a last line).

UPRI: This is highly unscientific. Two models, one without the carbon emissions and the other with carbon emissions for back analysis of a disaster does not have any sound justification. Natural hazards, more so, disasters are complex; modelling them, especially with the consideration of Climate Change is not this simple. Attributing extreme weather events to a single business may not be feasible. Whether reparations claim will be approved or not, the attribution could be classified as merely a speculation and not scientific even with the two simulation models that were stated in the draft bill.

The adjudication of cases under this Act, therefore, shall make use of attribution science as one of its bases for ruling. The adjudication shall build on existing understandings of the climate-related events most substantially affected by human influence on the climate. Establishing a threshold for greenhouse gas emissions beyond which corporations will be found liable shall be the principal basis for prosecuting and penalizing corporations.

PIPPA: Attribution science is still NOT an established science. No exact causal relationship or link can be established.

- Should take into consideration that the Philippines is a carbon sink country and only contributes around 0.4% of the total GHG emission.
- Exact links should be established and proven in court before imposing any liability.

Atty. Peria: In **sec. 12, Attribution Science**, given there is already a tweak to the precautionary principle in #3 above, as well as the reference to the Report of the Commission on Human Rights in #4 above, this provision is superfluous, and may constitute a pile-on on corporations where they may balk already at the thrust of this bill.

DENR: It is proposed that the Bill define how the methodology of establishing and using attribution science will be made.

- It is proposed that the Bill define how the determination of the threshold for acceptable emissions will be established as the basis for the emission penalty.
- (1) As the attribution is largely dependent on available knowledge (data and other related information) on the event, the question is, which body will provide this function? Historical data for example, need to be long enough to have a greater confidence on the results.
 - (2) As attribution science itself is still evolving, maybe good to state the importance of using science and evidence-based knowledge, as a general statement, in linking the extreme or slow onset event with climate change.
- This needs to be explained fully. Perhaps for extreme temperature cases this may provide some degree of definitiveness. But for extreme rainfall events, natural variability masked the effect of climate change and attribution may not be well founded. For now, other means of assessment need to be employed instead of relying solely in this kind of approach (which happens to be prescriptive at the same time, if we include in the bill, contradicting the intention of the first sentence in the next paragraph.)
 - Another recommendation, is to provide support for research and development, and capacity building towards the improvement of people's skill who are into attribution science.

FMB: Suggested indicating the agency that will conduct attribution science in relation to GHG emissions.

Parabukas: Proposed a general language for par. 2:

"Attribution science using the best available scientific data and methods may be used for the adjudication of cases under this Act."

Manila Observatory: Accountability and reparations seem independently pursued. We go to courts for accountability of businesses. We go to CCRB for reparations for climate change victims.

- In Section 21, when the litigants, who are real party-in-interest or climate change victims/survivors, pursue a case before the courts, should they win the case, a relief or reparations cannot be directly awarded to them. They will still need to file a claim before the Climate Change Reparation Board. The scenario would not be the same if the litigants are minors, generations yet unborn, or biodiversity.

FPH: Agreed with the comments above. Suggested the following description of the procedure:

Attribution science is a process that seeks to identify the relationship of climate drivers to an affected system (nature, socio-cultural or economic). In attribution science, it is important to establish the causal connection between the defendants' GHG emissions or activities to the plaintiff's injuries and that these injuries were a foreseeable result of the emissions. There are several studies that show that impacts are already occurring due to climate change which makes the issue of predictability of future impacts acceptable.

The 1st step is the "detection of the change". The 2nd step is the attribution which seeks to analyze causative factors to determine the role of a driver/s with respect to the detected change.

The process looks into three areas: "climate change attribution", "impact attribution", and "source attribution."

FPH and DENR: Retain "attribution science".

FPH: Include "subject mechanism and readiness of the country"

CHAPTER III INSTITUTIONAL MECHANISMS

SEC. 8. Establishment of the Climate Change Reparations Board. – There is hereby created an independent quasi-judicial body to be known as the Climate Change Reparations Board, hereinafter referred to as the Board, which shall be attached to the Commission on Human Rights. The CCRB shall administer the CCRF.

The Board shall be composed of five (5) ~~nine (9)~~ members, who shall possess the following qualifications:

- (a) Must be of known probity, competence, and integrity;
- (b) Must have a deep and thorough understanding and knowledge of climate change, environmental law, and/or ecosystems science;

- (c) At least two (2) must be members of the Philippine Bar who have been engaged in the practice of environmental law or human rights for at least ten (10) years;
- (d) At least two (2) must be climate scientists or recognized experts who have a technical proficiency of climate science and the subfield of climate attribution science; and
- (e) At least one (1) representative from and chosen by civil society engaged in human rights and climate justice issues.

The Board shall be chaired by a lawyer and shall (FHP: A lawyer is recommended to be the head to guide the Board on the systematic analysis of evidence.) organize itself within thirty (30) days from the completion of appointment of all three (3) members and shall, thereafter, organize its Secretariat.

PIPPA: Shouldn't the CCRB be linked as well to the DENR or have a member come from the DENR?

Manila Observatory:

- How the CCRB would ensure accessibility for climate change victims/survivors-claimants, particularly on their capacity to accomplish technical requirements such as documentation and valuation?
- Whether incorporating disqualifications of and/or prohibitions to CCRB members is needed to strengthen the Board's integrity? For example:
 - CCRB members must have no shareholdings in business defined in this Bill;
 - Must have no relatives within fourth (4th) degree of consanguinity and affinity who are directors in businesses defined in this Bill; and
 - May not be selected as director in businesses defined in this Bill for a certain number of years after their term of office in the CCRB.

CHR: Recommended that the five (5) members of the board must be composed of 1 environmental lawyer, 1 scientist, 1 youth, 1 member of the Ips, and one from civil society.

- Recommended for a regular or periodic capacity building of the members of the board and their staff on but not limited to the following:
 - (a) Human rights;
 - (b) Climate change and environment; and
 - (c) Business and human rights.

Aksyon Klima: Recommended that the CLIMA Bill acknowledge as a potential option to aid in determining rulings by courts or decisions of the Board as described under Section 14, the existing data and information on climate-related loss and damage, as conducted under the Post-Disaster Needs Assessment.

SEC. 9. Appointment to the Board. – The President shall appoint the Chairperson and the members of the Board; *Provided*, That human rights organizations, environmental organizations, and indigenous peoples' rights, women's rights, youth's

rights, and people with disabilities' rights advocates may submit nominations to the President for the civil society representative; *Provided*, Further, That the members of the Board cannot be removed without justifiable cause.

SEC. 10. Term of Office. – The members of the Board shall serve for three (3) years: *Provided*, That for the first appointees, the Chairperson and two (2) members, shall hold office for three (3) years, two (2) members shall hold office for two (2) years; *Provided*, Further, That appointment to any future vacancy shall only be for the unexpired term of the predecessor: *Provided*, Finally, That there shall be no reappointment and in no case shall any member serve for more than seven (7) years.

DENR PPS: It may include the term of office wherein the chairperson and/or member would step down from his/her position.

SEC. 11. Functions of the Board. – The Board shall have the following powers and functions:

- (a) Receive, evaluate, process, and investigate applications for claims under this Act;
- (b) Issue *subpoena ad testificandum* and *subpoena duces tecum*;
- (c) 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;

Manila Observatory: This provisional relief may be inconsistent with the nature of proceedings before the CCRB where climate change victims/survivors themselves file claims from the CCRF for loss and damage they incur, and not against any particular business defined in this Bill.

PIPPA: How would this be construed in relation to the Writ of Kalikasan under the Rules of Procedure for Environmental Cases which can only be issued by the Supreme Court or Court of Appeals?

- How to reconcile the respective jurisdictions of CCRB and DENR over environmental cases?

- (d) Hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor;
- (e) Administer the Climate Change Reparations Fund;
- (f) Approve with finality all eligible claims under this Act;
- (g) Deputize appropriate government agencies to assist the Board in order for it to effectively perform its functions;
- (h) Exercise administrative control over its Secretariat;
- (i) Promulgate such rules as may be necessary to carry out the purposes of this Act, including rules of procedure in the conduct of its proceedings, with

the Revised Rules of Court of the Philippines having suppletory application;
and

- (j) Perform such other duties, functions, and responsibilities as may be necessary to effectively attain the objectives of this Act.

In cases where the issue is related to pollution in violation or environmental laws, the Pollution Adjudication Board of DENR shall be invited as a resource group to improve technical analysis of the complaint **(FPH: Inserted based on the meeting last July 16)**.

In any proceeding before the Board, the rules of evidence prevailing in the courts of law or equity shall not be controlling but applied suppletorily, and it is the spirit and intention of this Act that shall govern. The board shall use every and all reasonable means to ascertain the facts in each case speedily, objectively, and without regard to technicalities of law or procedure, all in the interest of due process and social justice. Provided, further, that any decision, order, award or ruling of the Board may be brought for review to the Court of Appeals within receipt 15 days of a copy thereof. **(FPH)**

DENR: It is proposed that this provision be further reviewed since claims need to be evidence-based and science-informed to be entitled to compensation or reparations.

In any proceeding before the Board, the parties may be represented by a legal counsel.

The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be deemed final and executory.

Parabukas: Clarity is needed in relation to the procedure and process of filing and investigating applications for claims under the Bill.

- Clear delineation between the claims that may be determined by the CCRB and those for adjudication before the RTC.
- Guidance on the requirements for claims within its scope of work must be provided.

Aksyon Klima: The structure and decision-making procedures of the CCRF Board must be specified under the CLIMA Bill.

- CLIMA Bill or its IRR should state whether the CCRF Board should make decisions by consensus or a majority vote, based on its functions under Section 17.
- The language on membership in Section 14, while it intends to have five (5) members, it also states that "at least" for each of the three classifications for representation in the Board (Section 14, items c to e), which could create unnecessary lack of clarity about the body's composition.

SEC. 12. Compensation. – The Chairperson and members of the Board shall be entitled to compensation in accordance with the Salary Standardization Law.

DENR Legal: The members of the Board cannot be given discretion as to their compensation under the SSL, as there would be no limit to the salary grade they will select. The bill should define the salary grades of the members of the board or at least their equivalent positions.

SEC. 13. Secretariat of the Board. – The Board shall be assisted by a Secretariat, without prejudice to the hiring of additional personnel as determined by the Board to accommodate the volume of required work.

DENR: It is proposed that the Bill identifies the expertise required for the board to perform its functions.

The Secretariat shall assist the Board with its functions and perform other duties as may be assigned by the Board.

The Chairperson of the Board shall appoint a Board Secretary who shall head the Secretariat for the duration of the existence of its Board. There shall be a Technical Staff Head to be assisted by five (5) legal officers and three (3) climate scientists, and an Administrative Staff Head assisted by three (3) administrative support staff.

CHAPTER IV FRAMEWORK OF BUSINESS ACCOUNTABILITY

DENR: Suggested to amend to “Climate Accountability for Business”.

- Suggested to determine what corporations can be responsible for in general and what the limits to their responsibility are.
- What emissions are corporations responsible for?
- What should be included in their sphere of influence: just the emissions in their own factories/ production sites or also the ones made by their contractors and other actors in the supply chain?

Institute of Environmental Science & Meteorology: Large businesses may be able to account for negative climate outcomes. What about SMEs?

- How are pollution control outcomes ensured at present.
- Suggested to review the mandate of CCC.

SEC. 14. Due Diligence Standard of Care in the Conduct of Business – A business shall be held accountable for negligence emanating from the businesses’ role in exacerbating extreme weather events or slow-onset events where they exceed thresholds for GHG emissions. (DENR)

OSG: If the law does not provide for the degree of diligence to be exercised, then the required diligence is that of a **good father of a family**. As the provision in the Bill is

silent on the standard of diligence required, the diligence applicable would be that of a good father of a family.

Businesses in the conduct of their activities shall do no harm. To this end, these businesses are mandated to undertake the following throughout their value chain, among others:

DENR: It is suggested that the "due diligence" standard of care in the context of climate accountability be defined.

- On the sentence, "Businesses in the conduct of their activities shall do no harm."
- DENR proposed to clarify what "shall not harm" means.
- It is proposed to mean "*that businesses should harness their positive contribution and minimize the adverse impacts of business activities on the right to development and to overcome the adverse impacts of climate change.*"

(a) ~~Businesses must take proactive steps to find out facts about possible climate harms~~ assess the actual and potential human rights impacts their operations may cause or contribute to cause and to prevent and address them;
(AYALA)

OSG: Include **specific proactive measures**, such as the conduct of an Environmental Impact Assessment (EIA) under PD No. 1586.

DENR: It is proposed that the bill specify climate harms being referred e.g., sea level rise, and flooding.

It is also proposed to provide parameters for determining the impact of business operations on the environment and communities. Please note that the EIA process is an existing tool that should be considered in this provision.

(b) ~~Businesses must proactively adopt measures to shift away from their business as usual activities exacerbating climate change impacts, strategically~~ and enact company policies to reduce their GHG emissions climate change impacts (**CHR**), and to uphold human rights, specifically, through the crafting and submission of transition plans, in line with the government's NDC. Further, businesses shall report emissions to the concerned body when they breach 25,000 tons CO₂e annually (**LRC**); and

AYALA: Suggested to delete item (b).

DENR: It is suggested that we clarify what "proactive" means. Parameters or qualifications should be provided. GHG emissions and short-lived climate pollutants.

(c) ~~Taking into account existing and prospective vulnerabilities, businesses must address potential impacts of their activities, and to have stringent risk management efforts~~ Businesses must assess the impact of climate change

and other global environmental issues in the sustainability of their operations.
(AYALA)

DENR: It is suggested that we clarify when do we consider the efforts are stringent. Define the parameters.

- (d) **Businesses should ensure that reports relating to human rights risks and impacts, including their findings and how the human rights impacts were addressed are publicly available and accessible. (CHR – suggested to include another sub-provision.)**

Businesses must undertake measures that are in reasonable proportion to the nature and scope of the business activities, their ability to influence, the severity of the violation that can typically be expected, and the nature of and causal contribution to such harms.

DENR: Please clarify/specify what “ability to influence” means. Please also indicate when do you consider measures reasonable. When do you consider violation severe?

A business shall be held accountable for gross **(AYALA)** negligence emanating from the businesses’ role in exacerbating extreme weather events or slow-onset events where they exceed established thresholds for GHG emissions. Thresholds are limits for ambient concentrations of GHGs that are sufficient to protect public health and welfare. DENR and CCC shall provide technology-based emission standards reflecting the best available technology or system for emission reduction. **(FPH: it is important to describe the nature of the standards as determined in developed countries that are more advanced in this activity. As in other countries, we can turn to technology to avoid claims of unsound limits.)**

The thresholds to determine business’ climate accountability shall be informed by the government’s NDC, national policies and programs as well as their technical, economic and operational circumstances. **(FPH: It is important to give flexibility to the law to increase its implementability because there are technical constraints to undertake 100% mitigation. While there are 10 carbon dioxide removal methods or CDR, about 80% is still in the feasibility stage and very expensive. Because of this situation even as the IPCC prescribes 80% carbon capture by 2050, their AR 6 discusses only 2 viable mitigation measures, namely biochar and afforestation/ reforestation or nature-based solutions. See the summary of these CDR measures gathered by the UK Royal Academy of Engineering. See Table 2 page 67 of the reference: *The Royal Academy of Engineering (2018). Greenhouse gas removal. <https://royalsociety.org/-/media/policy/projects/greenhouse-gas-removal/royal-society-greenhouse-gas-removal-report-2018.pdf>)***

PIPPA: Suggested that public consultations with affected businesses/industries be conducted when setting the threshold.

DENR: This is one provision where we need to determine how do we establish the causal connection. Attribution? Which established thresholds are being referred to? Are these the target GHG emissions reduction in the NDCs, for example?

FMB: Suggested providing the criteria for business (e.g. threshold of GHG) that can qualify them for the requirement of undertaking necessary measures to reduce these emissions. Look into the 4 steps of human rights diligence.

San Miguel Power: Align with the "Energy Efficiency Act".

SEC: considering the threshold of PhP10M.

LRC: Company's transition plan aligned with the NDC and adopt similar regimes with US and Singapore regarding acceptable thresholds.

SEC. 15. Business (BMB) Responsibilities. – Businesses have the responsibility to ~~update~~ align their conduct and policies in accordance with the United Nations Guiding Principles on Business and Human Rights to respect human rights and to provide a grievance redress mechanism when human rights are transgressed. Moreover, they have the following tasks and responsibilities under the law: (FPH: For the understanding and to give context to the section, they summarized the responsibilities of business based on the Ruggie's framework which is the basis of the UNGP.)

FMB: Suggested indicating the specific measures that can be undertaken by businesses which may include the establishment of green infrastructures, among other.

FPH: Suggested to add the responsibilities of business under the UN Guiding Principles on Business and Human Rights (UNGPR) particularly the "duty to respect human rights and to provide a grievance redress mechanism when human rights are transgressed."

(a) Climate related financial disclosures – Businesses shall disclose to the Securities and Exchange Commission (SEC) climate-related financial disclosures and the names of those who authorized the climate-related financial transactions. This shall include opportunities and risks from climate impacts, climate policies and new ~~technologies~~ climate measures across the value chain; (FPH: Technologies in its strict definition will be very restrictive. Not all companies might have access to or have the resources to procure them. It may be more viable if we change "technology" to "climate measures" to address the climate impacts.)

PIPPA:

- What is a climate-related financial disclosure?
- What are the parameters to determine if a transaction is a climate-related financial transaction?
- Maybe include it in the definition of terms.

SEC: Suggested that a phased implementation on sustainability reporting is beneficial to the reporting entities, regulators, and other entities that may in the future be subjected to the same reporting.

CHR: Include the “non-financial disclosures, including those relating to the environment, social impact, and governance.”

- (b) Measurement of GHG emissions – Businesses shall measure and analyze their GHG emissions, throughout their value chains, to comply with the standards based on the most recent scientific ~~evidence~~ methodologies and reports of the IPCC; **(DENR)**

SEC: Suggested using a comprehensive and global framework for measuring and managing GHG emissions.

Institute of Environmental Science & Meteorology: The measurement of GHG emissions can be modeled and there should be systems that can be adapted for large businesses and SMEs.

- In the context of climate justice, **should SMEs be exempted or have more lenient policies?**

- (c) Prevention of human rights abuses – Businesses must ensure, throughout their value chains, that in the conduct of their operations and activities, efforts must be made not just to counter the adverse impacts of climate change, but also to ensure the protection of human and children’s **(Save the Children)** rights. Businesses shall respect, protect, and promote the human rights of ~~communities~~ stakeholders **(FPH:** Proposed to expand the coverage beyond communities based on the UNGP and since this bill refers to the value chain or the whole business process. Under the Human Rights Diligence process of the UNGP, the rights of all internal stakeholders like employees and external stakeholders like partners, communities, etc. must be upheld.), including the right to life, liberty and property, freedom of movement, right of public participation, and the right to self-determination of indigenous cultural communities. In accordance with the United Nations Guiding Principles on Business and Human Rights, businesses have the responsibility to respect human rights especially in the context of climate change, and should avoid harming these rights by taking proactive steps to identify, prevent, mitigate, and address adverse impacts with which they are involved;

- (d) Monitoring of people who experience the impacts of climate change – Due diligence must be undertaken by businesses to address the adverse climate change-related human rights impacts they may cause or contribute through its own activities, or which may be directly linked to its operations, products or

services by its business relationships. This can be achieved through on-the-ground assessments of adverse impacts through stakeholder participation.

Stakeholder consultations should be held on a regular basis with reports released on ~~a quarterly schedule~~ a semi-annual period. These can be in the form of surveys, assemblies, focus group discussion, and other modalities as appropriate. (FPH: Per last July 16 TWG mtg. there was a comment to qualify the word "people". Suggested the phrase above. In addition to host communities, they included the "area of impact of the operation" as impact is beyond the project area.)

For projects that require the consent of the communities in which infrastructure is constructed, the business must proactively pursue the compliance with and adherence to the provisions of Republic Act No. 8371, or "The Indigenous People's Rights Act of 1997".

PIPPA:

- Need clarity if this will duplicate the EIA being done by DENR.
- Annual report is better than quarterly report.
- This statement is very broad since it can be argued that everyone experiences climate change. What and who will set the battery limits to businesses as to which people or community/ies should they monitor?

PCCI: It may be difficult to comply with item (d), e.g. be specific on host communities.

*Who will be the implementing agency?

CHR: Define "Free and Prior Informed Consent" as provided in the Indigenous Peoples' Rights Act of 1997:

"Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs to; be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language an process understandable to the community;"

- (e) Reporting – Businesses shall submit a report of their findings, and initiatives to address the issues mentioned under Sections 4, 5, and 6 of this Act. The report shall include initiatives that were taken in the context of business relationships, such as, entities in its value chain, and any other non-state or state entity directly linked to the business operations, products or services. The report shall also include an assessment of vulnerabilities, and whether or not efforts have been made to address the possible impacts of climate change through internal or external corporate policy decisions, or whether the business utilizes renewable energy. The report must also include mitigation and adaptation efforts, energy efficiency particularly with regard to equipment inventory, waste reduction, and the utilization and construction of green infrastructure to support the work of the corporation. All publicly listed

companies and unlisted companies with revenues equal or above PhP_____ shall be covered by this Act. (FHP: Added this due to the query of Cong. Alba from SEC. SEC manifested they intend to include unlisted companies with revenues beyond PhP10 billion.)

The report shall be filed by the business with the ~~Climate Change Commission (CCC) and the SEC~~ copied the Climate Change Commission (CCC) and PAGASA (FHP), which shall impose penalties for non-compliance with its guidelines on these mandates, and shall be made available on all their platforms for download and distribution to the public at any time. The Commission on Human Rights, upon petition, may conduct investigations and assist in the gathering of evidence to determine compliance with the reporting obligations under this Act. (Atty. Peria)

To help businesses with their reportorial requirements, this Act shall establish a reporting facility for GHG emissions of businesses, and a threshold for acceptable emissions established. Such a reporting facility will be lodged with the ~~Philippine Geophysical Atmospheric and Astronomical Services Administration (PAG-ASA) SEC.~~

PIPPA:

- How often should reporting be made to the CCC and SEC?
- What is the procedure with respect to PAG-ASA - is it a prerequisite of the CCC and SEC filing?

AYALA: proposed the following revisions in Section 5:

"SEC. 5. Responsibilities. – Businesses have the responsibility to align their conduct and policies with the United Nations Guiding Principles on Business and Human Rights, and to perform the following:

- (a) **Climate Risk Management Process** – Businesses shall establish a robust climate risk management process which includes assessing risks and opportunities, prioritizing climate risks and opportunities, developing strategies for climate resilience, monitoring and reporting. this should be an iterative process to ensure relevance of strategies with the evolving business and technological landscape.
- (b) **Measurement of GHG emissions** – Businesses shall adopt a globally accepted standard in measuring its emissions such as the GHG accounting protocol and shall establish a process that will regularly identify sources of emissions and its measurement.
- (c) **Decarbonization Plan** – Businesses shall develop its mitigation and adaptation strategies that will comprise its decarbonization plan and shall report on the status of this plan on a regular basis to the designated government agency under this Act or relevant Act.

- (d) **Transition Planning** – Businesses shall articulate its transition as they shift to a low-carbon or net-zero GHG economy to ensure that a just transition will be achieved. employees, communities, customers who will be affected are well taken care of.
- (e) **Stakeholder Mapping and Engagement** – To ensure a just transition, businesses shall have a regular stakeholder mapping and engagement activity that will inform their transition plan.
- (f) **Reporting and Validation** - Businesses shall report and disclose climate-related financial disclosures following a globally accepted sustainability reporting framework. Businesses shall strive for external assurance of their disclosures.”

SEC: Suggested to clarify the type of report referred to in this Section and the reporting framework to adopt and use. The SEC and CCC should discuss and agree on the reportorial requirements, manner of reporting, monitoring of reports submitted, and oversight function of the reporting entities.

UPRI: Regarding the last paragraph, there should be duplicate repositories and reporting facilities for this in DICT and other academic institutions. Reporting of GHG emissions and establishment of thresholds should be standardized and agreed upon by local scientists and international peers from various institutions. It should not just be one institution (i.e. PAGASA) setting the thresholds. This issue is scientific in nature, but the parameters and methodology to be used are not yet well-established.

BMB: Suggested to include specific sections on the impact of business activities on adjacent wetlands, including data on water quality, biodiversity, and ecosystem health. Failure to report accurately shall result in penalties.

- The LGUs issuing business permits must have a role in the monitoring and validation of the reports and must ensure its availability at its official website and other digital platform similar to the report submitted to the SEC and CCC.

DENR PPS: Suggested to provide an outline/template for the reporting since every business has its own nature of service.

Aksyon Klima: Proposed that the Sustainability Reporting Guidelines under the SEC be aligned with the provisions of Section 5.

- Under the SEC Memorandum Circular 4, publicly-listed companies must comply by reporting, among numerous details, the following information: climate-related financial disclosures; measurement of GHG emissions (Scope 1 and Scope 2); measures for prevention of human rights abuses; and monitoring of people who experience climate change impacts, specifically through stakeholder consultations. While these are thematically included in Section 5 (“Responsibilities”) under the proposed legislation, the current SEC guidelines do

~~greenhouse gas emissions are kept constant and another where actual greenhouse gas emissions are factored in. Attribution science shall be viewed alongside factors such as exposure and underlying vulnerability, which put communities at risk.~~ Attribution science is a process that seeks to identify the relationship of climate drivers to an affected system (nature, socio-cultural or economic). In attribution science, it is important to establish the causal connection between the defendants' GHG emissions or activities to the plaintiff's injuries and that these injuries were a foreseeable result of the emissions. The first step is the "detection of the change" which demonstrates that a certain variable has changed in a statistically significant way. The second step is "attribution" which seeks to analyze causative factors to determine the role of a driver/s with respect to the detected change. The process looks into three areas: "climate change attribution", "impact attribution" and "source attribution". The use of attribution science shall depend on the maturity of the tool and the readiness and technical capacity of the country. (FHP)

OSG: "Attribution science" was mentioned in the CHR's NICC Report as building on existing understandings of the climate-related events most substantially affected by human influence on the climate. Establishing a threshold for GHG emissions beyond which corporations will be found liable shall be the principal basis for prosecuting and penalizing corporations.

- The said Report also discusses that in many jurisdictions, courts evaluate evidence linking actors to climate-related losses using the stringent standards of legal causation. It also notes that this disregards the work of climate and attribution science, and causes more climate injustice.
- CHR Report provided *Attribution Science* as a recommendation particular to the judiciary, thus:

"3. Recommendations Particular 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. Event attribution is not a direct reconstruction of how each carbon contribution of an individual caused damage through climate change. Instead, it seeks to establish: (a) whether the likelihood or strength of a natural event has changed in the observational record, and (b) whether this change is consistent with the anthropogenic influence as found in one or more climate models.

Assessment of the "Fraction of Attributable Risk" is often misunderstood and misapplied in the context of legal causation where a clear unbroken chain of events leading up to the injury or damage is necessary to establish liability.

not cover the entire value chain, in contrast to what is specified under the CLIMA Bill.

- Therefore, enhancing the Sustainability Reporting Guidelines, which is currently undergoing revisions by SEC, with these provisions of the bill would be suitable not only to streamline reporting processes, but also to strengthen corporate transparency and accountability in aid of the pursuit of climate-aligned sustainability.

DENR: How will the govt monitor the compliance of businesses with the performance of their responsibilities? Who will review the report?

- This reporting could be made part of the Environmental Sustainability and Governance Reports being submitted by businesses to the Security Exchange Commission. As of Oct 2023 the SEC has already issued guidance to incorporate Sustainability and Climate-related Opportunities and Risks Exposures (SCORE) into the proposed revision of the ESG Report following international standards of reporting climate-related disclosures.

CHR: Suggested an additional subsection to ensure access to environmental information which may be referenced from the Escazu Agreement which is a regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean.

- The Escazu Agreement ensures "the right of all persons to have access to information in a timely and appropriate manner, to participate significantly in making the decisions that affect their lives and their environment, and to access justice when those rights have been infringed."

CHR also recommended a provision ensuring the prevention of deception, obfuscation, and misinformation on climate science to uphold the standard of honesty and good faith expected of a person, whether natural or juridical, in the exercise of his rights.

CHR also recommended for the Bill to elaborate on reporting and communicating of any findings based on the United Nations Guiding Principles on Business and Human Rights Operational Principles.

SEC. 16. Incentives. — Businesses which observe their due diligence standard of care and which contribute to the transition to clean energy as set out in the Philippines' Nationally Determined Contribution (NDC) and other mechanisms and roadmaps shall be recognized by the government through a tax credit regime. The qualification for incentives and the list of incentives shall be rationalized in the IRR upon the passage of the bill. (FHP: Suggest in addition to CREATE Law. See Renewable Energy Act and BOI incentives. The criteria for qualifications must also be part of the IRR.)

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 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. (Atty. Peria) (PIPPA and PCCI: may be placed in another section.)

PIPPA: Incentives should be clear and exact. IRR cannot apply any tax credit regime if the law itself is not clear on what is the incentive.

- Windfall tax on gross income of Carbon Majors is not considered as an incentive.

Manila Observatory: Clarify whether mere compliance with the due diligence standard of care under Section 4 would or would not be eligible for incentives under this Bill.

- Mere compliance with Section 4 should not merit incentives because it is the baseline of diligence.
- Reexamine whether existing laws providing incentives for pursuing clean or renewable energy are already sufficient.

DENR: Who will determine that businesses observe due diligence standards?

CHR: Recommended the involvement of CCC, DENR, SEC, DTI, and other relevant agencies. CHR may assist in the popularization of the findings and analyze whether such activities have harmful impacts to human rights.

PCCI: Enumerate the incentives.

DENR: mention the "transition credits".

BMB: businesses that actively engage in (wetlands) conservation and restoration may receive further financial incentives such as grants, subsidies, or additional tax deductions.

CHAPTER IV LOSS AND DAMAGE MECHANISM

SEC. 17. *Establishment of the Climate Change Reparations Fund (Aksyon Klima* suggested to rename the CCRF to "National loss and Damage Fund Board" as this will be in line with the Philippine hosting the Loss and Damage Fund.). –The Climate Change Reparations Fund (CCRF) is hereby created as a special fund in the Bureau of the Treasury for the financing of the claims approved by the Climate Change Reparations Board. The CCRF shall be used to respond to claims made by Climate Change Victims/Survivors. Claims may take the form of the following, among others:

DENR: How will the claims be evaluated? Who will evaluate?

Could we harmonize this with the internationally adopted "Loss and Damage Fund" and name it as such?

CHR: Recommended to adopt a carbon taxation program or similar measures which can generate funds.

- Suggested that claims which may be filed under this Fund should explicitly cover climate migrants or internally displaced persons (IDPs) and the corresponding concerns. Define the terms "climate migrants" and "IDPs"
- Recommended in exploring how the fund may cover expenses that will be incurred in the mitigation and adaptation efforts, as well as rehabilitation and restoration of affected geological, ecological, and other areas; the just transition to a low-carbon economy; and incentivizing Filipino scientists and investors working on climate education, science, and attribution.

- (a) Compensation for economic and non-economic harms;
- (b) Technology transfers;
- (c) Capacity building;
- (d) Financial support
- (e) Relocation; and
- (f) Recovery and Rehabilitation measures.

The amount of Fifty million pesos (P50,000,000.00) shall be initially allotted as the opening balance of the CCRF under the General Appropriations Act (GAA); *Provided*, That the balance of the CCRF may be increased as the need arises; *Provided*, Further, That the CCRF shall not be used to fund personal services and other operational services of the Board; *Provided*, Furthermore, That the balance of the CCRF including the amount appropriated in the GAA which shall form part of the funds shall not revert to the general fund; *Provided*, Finally, That the Board shall submit to the Congress and the Department of Budget and Management (DBM) an annual narrative and financial report on the utilization of the CCRF.

The CCRF may be augmented by donations, endowments, grants, and contributions, which shall be exempted from donor's tax and be considered as allowable deductions from the gross income of the donor, in accordance with the provisions of the National Internal Revenue Code of 1997, as amended. The CCRF shall also serve as the repository for funds generated by international and other mechanisms created for loss and damage finance, such as the funding arrangements responding to loss and damage associated with the adverse effects of climate change established under Decision 2/CP.27 and Decision 2/CMA.4. (**Aksyon Klima:** CCRF must be specifically stated to be an entity that can access and receive funds through the Loss and Damage Fund.)

Parabukas: Additional discussion may be needed on how the CCRF will differ, in scope and distribution, from existing forms of post-disaster assistance.

- Clarity is needed on whether the CCRF will still be available for individuals and/or communities that have accessed the Quick Response Fund and other Disaster Risk Reduction and Management Funds under RA 10121 (Sec. 22).

- **Disagree** with the designation of the CCRF as the "repository for funds generated by international and other mechanisms created for loss and damage finance". Hence, suggested the following:

"The CCRF may receive and access international climate finance, including from mechanisms created for loss and damage finance, as appropriate."

NEDA: has reservations on "emission thresholds and penalties" and "CCRF". As a developing country that contributes only a minimal amount to global GHG emissions, the Philippines must pursue a decarbonization strategy that balances sustainable and inclusive economic growth, consistent with the principle of common but differentiated responsibilities, espoused in the UNFCCC and the Paris Agreement. This approach ensures that efforts made to transition to a low carbon economy do not hinder economic progress or worsen existing inequalities that contribute to vulnerability.

- **Recommended** to wait the full operationalization of the Loss and Damage Fund to avoid overlapping interventions.
- **Consult** the DOJ on the potential implications of establishing a reparation fund to ensure that all aspects of the fund, including legal, financial and social repercussions, are thoroughly considered and addressed.

SEC. 18. ~~Who may file Complaints on Climate-related Violations.~~ (FPH)

(OSG: suggested to amend the title to "Who may file and where") – Any real party in interest, or the climate change victims/survivors may seek redress for any harm caused by non-compliance of the business entity with its obligations under Sections 4 to 6 of this Act or commission of any prohibited ~~acts~~ activities (FPH) under this Act. Minors Children (**Save the Children**), generations yet unborn, and biodiversity can, likewise, be allowed as litigants which should be represented by a legal guardian, in compliance with A.M. No. 09-6-8-SC; or the "Rules of Procedure for Environmental Cases". (PIPPA) The petitions may be filed before the Environment Management Bureau's Pollution Adjudication Board, and appealable before the Department of Environment and Natural Resources (PIPPA) ~~with the regional trial court exercising jurisdiction on the business address of the corporation, the residence of the complainant/s, or any location where the impact is felt.~~

DENR: The bill should state who will determine the Climate Change Victims/Survivors (CCV/S), and how they will be determined.

DENR Legal: Must be left to the Supreme Court, with which the rule making power in pleading, practice, and procedure in all courts is lodged.

The filing of a petition ~~in the domestic courts~~ under this Section shall be without prejudice to the seeking of appropriate administrative recourse, including the remedies available before the Climate Change Reparations Board, (PIPPA) or international redress.

OSG: Suggested to **reword** Section 18 as follows:

"Section 18. Who may file and where. – Any real party in interest [or the climate change victims/survivors] may seek redress for any harm caused by non-compliance of the business entity with its obligations under Sections 4 and 14 to 15 or commission of any prohibited acts under this Act.

For the purpose of enforcing the provisions of this Act or its implementing rules and regulations, any real party in interest [climate change victims/survivors] may file appropriate civil, criminal, and administrative suits against any of the following:

- a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- b) Any public officer with respect to orders, rules and regulations inconsistent with this Act.

The filing of a petition in the domestic courts shall be without prejudice to the seeking of appropriate administrative recourse or international redress."

SEC. 19. Resolution of Claims. – The Board shall be convened, with an attendance of a majority, to resolve all claims.

~~**SEC. 20. Citizens suits.** – For the purpose of enforcing the provisions of this Act or its implementing rules and regulations, any real party in interest may file appropriate civil, criminal, and administrative suits against any of the following:~~

- ~~(a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or~~
- ~~(b) Any public officer with respect to orders, rules and regulations inconsistent with this Act.~~

OSG: Suggested to reword Section 19 as follows:

"Section 19. Citizens Suits. – Minors, generations yet unborn, and biodiversity can, likewise, be allowed as litigants which should be represented by a legal guardian, in compliance with A.M. No. 09-6-8-SC, or the "Rules of Procedure for Environmental Cases."

FPH: This can be folded into the general section as suggested above.

CHAPTER IV FINAL PROVISIONS

SEC. 21. Penal Provisions. – Businesses shall be held liable for any observed adverse impacts on the climate through the exercise of their work. This is anchored on Sec 32 of the Civil Code of the Philippines which provides for the liability for damages

of any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs the rights and liberties of another person. The violation of the human right to the environment entitles the victims thereto for damages from the perpetrators of such damage. These shall be complemented by environmental statutes. The following shall be covered by the act: **(FPH)**

DENR Legal: Recommended to provide the means of identifying liable businesses for any observed adverse impacts on the climate through the exercise of their work. Recommended that the clarification of whether the penal provisions are for damages (civil liability) or penalties (criminal liability and should be titled accordingly).

DENR: On the sentence, "Businesses shall be held liable for any observed adverse impacts on climate through the exercise of their work."

- How do we establish the liability? Who will determine the commission of greenwashing and climate denialism?
- Who will impose the fines and penalties? Who will order closure or suspension?
- Are these penalties in addition to fines and penalties imposed under existing laws?

BMB: Recommended to include a clear deterrent against harmful activities to ensure accountability for environmental degradation.

CHR: Recommended to include "obstructionist efforts" by concerned parties with the intention to delay or slow down the transition towards clean and renewable energy. This is in reference to the findings of the NICC Report:

"From the foregoing, the Commission agrees that the Carbon Majors, directly by themselves or indirectly through others, singly and/or through concerted action, 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."

(a) Greenwashing. – Greenwashing refers to the conveyance of false information on the environmental soundness of their products, operations, and services. Acts of greenwashing include, but are not limited to, outright false statements, understating impacts, omitting trade-offs, absence of proof backing up claims, vague or overbroad claims, false third-party certifications, and the like. More detailed guidelines shall be provided in the implementing rules and regulations of the Act. **(FPH)** Any act of greenwashing shall be restrained, and the culpable business engaged in greenwashing fined ~~an amount equivalent to 15% of their gross income~~ (4% of the annual turnover or income of the previous financial year) ~~reported in their latest regulatory disclosure. The collected penalty shall accrue to the CCRF~~ under the existing Civil Code and existing environmental statutes.

FPH: We recommend additional guidelines in the IRR including the provision for a 3rd party assurance to avoid unintentional violations. It is difficult to determine the proper fine but we can refer to the fine from the Green Claims Directive of the European Union which has studied this for the past 2 years. They consider 4% of the annual turnover or annual income as already hefty). Please see the following references:

- <https://www.euronews.com/green/2024/03/12/misleading-green-claims-to-cost-up-to-4-of-companies-annual-turnover>
- <https://www.euractiv.com/section/energy-environment/news/eu-lawmakers-back-hefty-fines-for-companies-making-false-green-claims/>

Parabukas: In other jurisdictions, “greenwashing” penalties are anchored on violations of other laws.

- For example, companies and retailers have been held liable for manipulating emissions tests, failure to report defects in machinery or false claims of product recyclability or recycled and/or organic content.
- Clarity is needed on the definition and scope of greenwashing, and how (and if) this will differ from other forms of prohibited misrepresentation and misreporting under current policies. For example, clarity is needed on if, and how will prohibited greenwashing will differ from:
 - False, Deceptive or Misleading Advertisement (RA 7394 Art. 110)
 - Exceedance of Pollution or Air Quality Standards (RA 8749, Sec. 45), with charges for Gross Violations (Sec. 48)

Aksyon Klima: Requesting clarification as to the specific process of determining an act of greenwashing or climate denialism. Questions:

- Which courts should individuals or groups file a complaint regarding a business’s alleged act of greenwashing or climate denialism?
- Should the scope of the clauses on greenwashing and climate denialism be extended to apply to individuals and non-business organizations?

(b) Climate denialism. – Climate denialism refers to the public denial or dismissal of anthropogenic climate change, in a manner deliberately intended to mislead or intentionally misstating facts, contrary to scientific consensus. Any business engaged in climate denialism shall be held liable for the disinformation perpetuated, by issuing a public retraction and sanctioned with a penalty ~~in an amount equivalent to 15% of their gross income~~ (4% of the annual turnover or income of the previous financial year) based on the Civil Code and existing environmental statutes (FPH) ~~reported in their latest regulatory disclosure~~. The collected penalty shall accrue to the CCRF.

Institute of Environmental Science & Meteorology: Climate denialism cannot be legislated against without risk. It will impact the freedom of scientists to do research as we cannot be completely certain on our scientific conclusions.

- If the uncertainty is quoted by a business interest, the scientist could be held liable for climate denialism.

(c) Emission Penalty - Based on data collated by the reporting facility for businesses' GHG emissions established by this Act, an emission penalty shall be applied pursuant to Section 12 of this Act for breaching the threshold for acceptable emissions which are also aligned with the country's nationally determined contributions. The threshold shall be established after due consultation among the PAG-ASA, the Climate Change Reparations Board, and the Climate Change Commission. The fine shall be based on the Civil Code and existing environmental statutes. All collected penalties shall be remitted to the CCRF. The fine shall be 4% of the annual turnover or income of the previous financial year. **(FPH)**

Parabukas: The DENR is not specified, even as it is mandated by RA 8749 to "review and improve emission standards" for sources of air pollution, including Nitrous oxide from coal-fired and oil-fired sources.

- More clarity is needed on the "acceptable thresholds" in Section 5, 12, and 21 (c), given that these will have significant implications and consequences.
- If fixed standards and/or quantities have not yet been established by the best available science, a process for determining these thresholds may be provided instead, with guidance to ensure that this will be comprehensive, participatory and transparent. These thresholds must also be reviewed periodically, as new data and methods for analysis become available.

(d) SLAPP Suits. — Strategic lawsuit against public participation (SLAPP) refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. This Act shall prohibit SLAPP Suits and shall penalize such suits filed, with damages equivalent to 15% of the gross income of the petitioner and entity at whose instance and for whose benefit the SLAPP Suit was filed.

OSG: SLAPP was lifted from Rule 6, Section 1 of the Rules of Procedure for Environmental Cases (RPEC). However, the Bill omits the fact that a SLAPP is a matter of defense to be invoked by the person involved in the enforcement of environmental laws.

- In *FCF Mineral Corporation vs. Lunag, et al.*, the Supreme Court explained that it adopted the defense of SLAPP to give ample protection to parties advocating environmental protection. xxx the Supreme Court declared that the anti-SLAPP remedy in the Rules aims to encourage public participation to forward environmental law as well as to deter the chilling effect of SLAPP litigation. Hence, xxx the remedy of SLAPP cannot be haphazardly invoked by any defendant in an environmental case. xxx SLAPP is a defense that may only be

invoked by individuals who became target of litigation due to their environmental advocacy.

- Section 3, Rule 6 of RPEC provides that a hearing on the defense of a SLAPP shall be held and the parties must submit all available evidence in support of their respective position.
- The **prohibition of a SLAPP** by the proposed legislation should take into account that the same would undergo a summary hearing by a court of competent jurisdiction. The **outright prohibition** intended by the Bill **without hearing** would be **contrary** to the provisions of the RPEC and may be violative of due process.

Fines and penalties under this Act shall accrue to the CCRF. In addition to the fines, the court has power to order the closure or suspension of business until such time that proper environmental safeguards are put into place and the government is assured of the compliance mechanism by the business: *Provided*, That an establishment liable for a third offense shall suffer permanent and immediate closure.

This paragraph shall be without prejudice to the immediate issuance of an *ex parte* order for such closure or suspension or cessation of operations during the pendency of the case upon *prima facie* evidence that there is an imminent threat to life, public health, safety or general welfare, or to biodiversity.

If the offender is a juridical person, the president, manager, directors, trustees, or the officials directly related to the operations shall suffer the penalty herein provided.

PIPPA: In determining the threshold, it is important to consider and balance our economic growth, which also requires industrialization, and environmental concerns. The Philippines is a developing country and only contributes 0.3% of the worldwide GHG emissions.

We also suggest that there be public consultations conducted with the affected businesses/ industries when setting this threshold in order to have a realistic approach to the threshold that will be set, especially considering that breach thereof entails hefty penalties that will definitely have an adverse effect the business and its operations.

SEC. 22. Potential Loss of Employment. – The Secretary of the Department of Labor and Employment is authorized to establish a compensation and reemployment scheme for employees of businesses that will be affected by any suspension or permanent cessation of business activities as a result of the implementation and enforcement of this Act. The Board can help determine the scope of the relief package for the employees.

Manila Observatory: Expand to “workers”, and not only “employees”.

- Since it is the courts that would order the suspension or permanent cessation, this Bill can also state that “the courts should award reliefs to affected workers together with the order of suspension or permanent cessation.”

- This presents a two-way safeguard – businesses would be further deterred from violating the law and the courts would be more cautious before ordering the suspension or permanent cessation of businesses.

DENR: Suggested to explicitly state the allocation of appropriation for compensation and reemployment scheme for employees of businesses that will be affected by any suspension or permanent cessation of business activities. Adequate assistance must be extended to those working in the informal economy sector.

- Recommended to cover or elaborate on measures on just transition in the context of the shift towards renewable energy which shall be holistic in approach and grounded on climate change and human rights frameworks.

SEC. 23. Coordination with Various Sectors. – In order to fully implement this Act, the SEC in conjunction with the CCC shall consult **(FPH)** nongovernment organizations, community leaders, indigenous peoples, civic society, the academe, and youth organizations, industry associations, professional organizations, **(FPH)** the private and corporate sectors, child-led groups or organizations working on children's rights **(Save the Children)**, and other concerned stakeholder groups ~~shall be consulted and shall work in close coordination with corporations.~~

FHP: Suggested to identify the responsible agency for this task. It must be the regulatory agency for companies which is the SEC. Because this involved a technical matter, the CCC is recommended to assist the SEC. Also, they suggested to drop the last phrase requiring the close coordination with the corporations as it gives a wrong impression. They will just be consulted like the rest.

SEC. 24. Joint Congressional Oversight Committee. – A Joint Congressional Oversight Committee is created in order to monitor the implementation of this Act. The Committee shall be composed of five (5) Senators and five (5) members of the House of Representatives, selected respectively by the Senate President and the Speaker of the House. The Committee shall be co-chaired by one (1) member from the Senate and the House of Representatives, selected separately by their peers who are also members of the Committee.

SEC. 25. Appropriations. – An amount of **Fifty Million Pesos (P50,000,000.00)** shall be appropriated for the initial implementation of this Act. Thereafter, the amount necessary to effectively carry out the provisions of this Act shall be included in the General Appropriations Act.

DENR PPS: Revise PhP50,000,000.00

SEC. 26. Implementing Rules and Regulations. – The Climate Change Commission, Commission on Human Rights, Department of Environment and Natural Resources **(FPH)**, and the Securities and Exchange Commission, shall issue the

Implementing Rules and Regulations within ninety (90) days from the effectivity of this Act.

FMB: Suggested to include DENR among concerned agencies to be involved in the development of the IRR.

PIPPA: Suggested that the IRR be subject to public consultations with the affected businesses/industries before the same is finalized and imposed.

- Suggest to include BIR in view of the tax incentives to be given for compliant businesses.

SEC. 27. Separability Clause. – If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

SEC. 28. Repealing Clause. – All laws, decrees, orders, resolutions, instructions, rules and regulations, and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SEC. 29. Effectivity. – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

- Paragraphs a, b, c, and d under Section 21 should be transferred under Section 3 - Definition of Terms.
- Recommended introduction of the concept of Nature-based solutions into the Bill.