



SUBMISSION TO INFORM THE 2024 REPORT BY SPECIAL RAPPORTEUR ON THE RIGHT TO DEVELOPMENT: THEME 1 CLIMATE JUSTICE AND LOSS AND DAMAGE

INTRODUCTION

The following submission from the [Loss and Damage Collaboration](#) (L&DC) is intended to inform the call for input for the 2024 report on “[Climate Justice and Loss and Damage](#)” by the [Special Rapporteur on the Right to Development](#).

Recognising that loss and damage from climate change is already severely undermining not only the right to development but also the enjoyment of the rights to life, security, food, water, housing, health, education, livelihood, environment, participation in cultural life, amongst many other rights, for current and future generations, this submission stresses the need for a human rights-based approach to averting, minimising, and addressing loss and damage to ensure that the right to development is upheld.

SUBMISSION

In response to the call for input, members of the L&DC, have provided answers to each one of the questions posed by the Special Rapporteur on the right to development (please note that we have separated question (1.) into a part (1a.) and part (1b.). When answering we have used sub headings to indicate the specific element of the question that we are addressing. When providing answers we have included references to resources that can more fully elaborate on each point.

The following L&DC members contributed to this submission:

- Teo Ormond-Skeaping ([Loss and Damage Collaboration](#))
- Ryan Plano ([Climate Refugees](#))
- Amali Tower ([Climate Refugees](#))
- Lien Vandamme ([Center for International Environmental Law](#))
- Patricia Miranda Wattimena ([ESCR-Net](#))



QUESTIONS AND ANSWERS

1a. How is the realisation of the right to development impacted by both economic and non-economic loss and damage from climate change?

Loss and damage from climate change is already severely undermining not only the right to development but also the enjoyment of the rights to life, health, water and sanitation, education, adequate housing, a clean, healthy and sustainable environment, food, decent work, participation in cultural life, as well as right of Indigenous peoples to free, prior, and informed consent (FPIC), amongst many other rights, for current and future generations.

With the escalating climate crisis, loss and damage sees the enjoyment of the right to development impacted both directly and indirectly. For example, direct impacts occur when infrastructure, services, and livelihoods are lost or damaged as a result of a climate hazard. Whilst indirect impacts result from the diversion of funds by climate vulnerable individuals¹ communities and countries to address loss and damage, thereby reducing resources available for necessities such as food and hygiene—in the case of the former—and services such as health care and education—in the case of the latter two. The examples provided in section 1b. Further illustrate the many ways in which loss and damage is impacting development including the achievement of the Sustainable Development Goals (SDGs).

1b. How is the impact experienced differently and/or disproportionately by different individuals (e.g., children and women), groups (e.g., Indigenous Peoples) and States (e.g., Small Island Developing States)?

Individuals:

Children: Children are often most affected by climate-related disasters (e.g. malnutrition, missed school days, post-traumatic stress disorder²). This disproportionate vulnerability sees the enjoyment of the right to development of children impacted in a number of ways:

1. **Children who frequently face floods experience moderate anxiety and depression.** For example, almost 93% of children who frequently face tidal floods in

¹ See “Bearing the climate burden – Bangladesh families are paying too much”, IIED, 2020. Available online at: <https://www.iied.org/bearing-climate-burden-bangladesh-families-are-paying-too-much#:~:text=According%20to%20Bearing%20the%20climate,change%20and%20on%20prevention%20measures.>

² 7. See “Children and Disasters: Understanding Vulnerability, Developing Capacities, and Promoting Resilience — An Introduction. Children, Youth and Environments” 18(1), 1–29, Peek, L. (2008). Available online at: <http://www.jstor.org/stable/10.7721/chilyoutenvi.18.1.0001>



the Tirta Districts in Indonesia experience moderate anxiety, and 29% of them have mild depression³. This impacts the enjoyment of social and economic development.

2. ***Children face a loss of education because of loss and damage and climate-related displacement.*** For example, in Urir Char, Bangladesh, due to economic stagnation and lack of educational institutions on the island, it is a common phenomenon for children in Urir Char to drop out of school⁴. This impacts the enjoyment of social and economic development. On Kokwa Island in Lake Baringo, Kenya, the right to development is threatened by loss and damage from climate change impacts. Rising lake waters submerged large sections of the island's only school from 2012 to 2021. Because both the teachers' quarters and latrines were inundated, educators were displaced and education was disrupted for nearly a decade. Though the Kenyan government has finally built a new school, climate impacts have had a clear negative impact on residents' right to development via access to education and SDG number 4 ("inclusive and equitable quality education").^{5 6}
3. ***Children face malnutrition.*** Over 5 million children are acutely-malnourished in Horn of Africa drought-stricken areas.⁷ Even with adaptation measures, climate change could reduce global crop yields by 30% by 2080.⁸ According to a UN OCHA regional overview, climate change-induced drought in the Horn of Africa drought has led to the loss of at least 9.5 million livestock—the lifeblood of pastoralists— across three countries— 4 million in Ethiopia, 3 million in Somalia and 2.5 million in Kenya— contributing to poverty, livelihood loss, income loss and high rates of malnutrition. That livestock loss translates to the loss of 120 million litres of milk that children under 5 are dependent on for daily nutrition. This impacts the enjoyment of social and economic development⁹.
4. ***Flooding forces children into labour and early marriage.*** Flooding in Nepal has forced children into labour and early marriage that denies them their childhood, their right to education, and affects them mentally, physically, and socially¹⁰. This impacts the enjoyment of social, cultural, and economic development.
5. ***Children face a future of escalating loss and damage beyond the immediate impacts.*** The world they inherit is in a state of multiple intersecting social, political, economic, and environmental crises. Children alive today will never know a stable

³ See Bharadwaj, R., Shakya, C. (2021). Loss and damage case studies from the frontline: a resource to support practice and policy. IIED, London. Available online at: <https://pubs.iied.org/20551iied>

⁴ Ibid.

⁵ Sustainable Development Goal 4 is "Quality Education". See: "The 17 Goals," UN Department of Economic and Social Affairs - Sustainable Development. Available online at: <https://sdgs.un.org/goals>

⁶ See "Climate Change Is Controlling Everything, Let Them Compensate Us": Stories of Loss & Damage in Kenya," Climate Refugees, 2023, Available online at: <https://www.climate-refugees.org/reports/kenya-loss-and-damage>, p 48-49.

⁷ See "Horn of Africa Drought: Regional Humanitarian Overview & Call to Action (Revised 28 November 2022)," UN Office for the Coordination of Humanitarian Affairs (OCHA), 29 November 2022, Available online at: <https://reliefweb.int/report/ethiopia/horn-of-africa-drought-regional-humanitarian-overview-call-action-revised-28-november-2022>.

⁸ See "Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights," UN Human Rights Council doc. A/HRC/41/39, 17 July 2019, 3. Available online at: UN document database: <https://documents.un.org/prod/ods.nsf/home.xsp>

⁹ Ibid.

¹⁰ See "Assessing and addressing climate-induced loss and damage in Nepal". Practical Action (2021). Available online at: <https://lib.icimod.org/record/35313>



climate, their futures have been stolen by those most responsible for the climate crisis. Evidence shows that many young people are experiencing ecological grief¹¹. This impacts the enjoyment of social, cultural, and economic development.

Future generations: Although it is impossible to observe and measure, the impact of climate change on future generations should also be considered, as loss and damage will impact the enjoyment of the right to development¹². States are obliged to ensure intergenerational equity and justice¹³ in addressing the impacts of loss and damage. This principle continues to be applied in international and domestic jurisprudence.¹⁴ According to the non-binding Maastricht Principles on the Human Rights of Future Generations¹⁵, States must refrain from conduct which will deprive future generations of their rights.¹⁶ The Principles further spell out the obligation of ensuring that the burdens of mitigating and remedying climate change and other forms of environmental destruction are not shifted to future generations.

Women and girls: Gender can significantly shape experiences of loss and damage. Gendered power dynamics often determine one's access to, and ownership of, resources, mobility, caring responsibilities, income-generating opportunities, and access to services such as climate information, health and education. These factors can exacerbate women's experiences of loss and damage¹⁷. This disproportionate vulnerability sees the right to development of Women impacted in a number of ways:

1. **Women and children are 14 times more likely to die during disasters.** Women and children are 14 times as likely as men to die during a disaster, UN Women advocates for disaster risk planning that takes into account the particular vulnerabilities women and girls face in the climate crisis.¹⁸
2. **Women's care burden is increased to provide for dependents when there is climate stress.** For example, they might have to travel long distances to access

¹¹ See "Young People's Climate Anxiety Revealed in Landmark Survey". *Nature* 597 (7878): 605–605, Thompson, T. (2021). Available online at: <https://doi.org/10.1038/d41586-021-02582-8>

¹² See "Passed The Point Of No Return: A Non-economic Loss And Damage Explainer", Loss and Damage Collaboration, 2022. Available online at: <https://www.lossanddamagecollaboration.org/publication/passed-the-point-of-no-return-a-non-economic-loss-and-damage-explainer>

¹³ Intergenerational equity and justice holds the current generation accountable for preserving the planet for the well-being of the generations to come and ensure full enjoyment of their human rights, particularly their right to a clean, healthy and sustainable environment and their right to development.

¹⁴ In *Future Generations v Ministry of the Environment*, the Supreme Court of Colombia ruled in favour of 25 youth and children in Colombia and found that future generations can bring suit to protect their rights to a healthy environment, life, food, access to water, and health, and that the Colombian Amazon is an entity subject of rights entitled to legal protection. See also *Leghari vs. Federation of Pakistan*, Lahore High Court (2015).

¹⁵ See "Maastricht Principles on The Human Rights of Future Generations" Available online at: <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>

¹⁶ Ibid.

¹⁷ Bharadwaj, R., Shakya, C. (2021). *Loss and damage case studies from the frontline: a resource to support practice and policy*. IIED, London. <https://pubs.iied.org/20551iied>

¹⁸ "SDG 13: Take urgent action to combat climate change and its impacts," UN Women, n.d., <https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-13-climate-action>.



water or skip meals in favour of others due to climate-related impacts¹⁹. This impacts the enjoyment of social and economic development.

3. **Loss and damage often forces girls in vulnerable households to drop out of school or get married as climate shocks translate into economic shocks.**²⁰ This impacts the enjoyment of social and economic development.
4. **Women face exposure to exploitation and abuse due to climate stress.** For example, women and girls have become exposed to new forms of slavery, trafficking, forced labour and forced marriage once affected by climate shocks²¹. This impacts the enjoyment of social and economic development.
5. **Women and girls often bear the brunt of coping with climate impacts and resultant development setbacks.** For example, the goal of ensuring water and sanitation access for all by 2030 (SDG number 6²²) is being threatened by loss and damage. In Lorengippi village in Turkana County, where water is becoming increasingly scarce due to drought conditions, residents have had to repeatedly dig new, deeper and wider water holes. During collections which require an assembly line of people, several holes have collapsed, killing multiple people. Deaths resulting from collapsed water holes even inform the name of the village: in the Turkana language, “Lorengippi” translates to “red water”. The village’s girls are bearing the brunt of this dangerous situation and resultant development setback. One water hole is named “Akinpipu” or “girls” for the many girls who must fetch water for their families, some of whom have lost their lives in the process.²³

The 2030 Agenda for Sustainable Development, which includes goals and targets on gender equality, as does the Global Compact for Safe, Orderly and Regular Migration highlights the importance of gender-responsiveness that States need to take into account in climate change contexts.²⁴ The above examples clearly show how loss and damage is eroding progress on achieving SDG Goal 5 (achieving gender equality and empowering all women and girls) as well as SDG Goal 13 (to combat climate change).²⁵

¹⁹ van Schie, D., Ranon, R. J. K., Mirza, A. B., & Anderson, S. (2022). Local Responses To Climate-Related Non-Economic Loss and Damage A Case Study in Burigolani and Gabura Union, Bangladesh. In <https://www.iied.org/21161iied>

²⁰ See “Four Ways that Climate Change Impacts Girls’ Education in Africa”, Available online at: <https://gca.org/4-ways-that-climate-change-impacts-girls-education-in-africa/>

²¹ Bharadwaj, R., Bishop, D., Hazra, S., Pufaa, E., & Annan, J. K. 2021. Climate-induced migration and modern slavery: a toolkit for policymakers. Anti Slavery International; IIED. Climate-induced migration and modern slavery: a toolkit for policymakers - World | ReliefWeb.

<https://reliefweb.int/report/world/climate-induced-migration-and-modern-slavery-toolkit-policymakers>

²² Sustainable Development Goal 6 is “Clean Water and Sanitation”. See: “The 17 Goals,” UN Department of Economic and Social Affairs - Sustainable Development.

²³ Amali Tower & Ryan Plano, “Climate Change Is Controlling Everything, Let Them Compensate Us’: Stories of Loss & Damage in Kenya,” Climate Refugees, 2023, <https://www.climate-refugees.org/reports/kenya-loss-and-damage>, p 57.

²⁴ “Ensuring safe and regular migration for women and girls in the context of climate change,” UN Women, 2023, 6, <https://www.unwomen.org/en/digital-library/publications/2023/06/policy-brief-ensuring-safe-and-regular-migration-for-women-and-girls-in-the-context-of-climate-change>.

²⁵ Sustainable Development Goal 5 is “Gender Equality” and Goal 13 is “Climate Action”. See: “The 17 Goals,” UN Department of Economic and Social Affairs - Sustainable Development.



Older persons: Older persons are among the most adversely affected in emergencies and disasters including those which are climate exacerbated that led to loss and damage.²⁶ This can be caused by a number of factors such as pre-existing health conditions or increased susceptibility to diseases, reduced mobility, and, in certain contexts, social exclusion and reduced financial independence²⁷. These factors leave older persons, and especially older women, those with disabilities, those living in poverty or others facing intersecting forms of discrimination, greatly exposed to the adverse impacts of climate change.²⁸ This is also aggravated by ageism, which leads to the rights and needs of older people being overlooked in laws and policies.²⁹ The Following examples illustrate how older persons' enjoyment of the right to economic, social and cultural development is impacted by loss and damage.

1. **Older people are among those most affected by heatwaves and have higher mortality rates in extreme weather events.**³⁰ It has been calculated that the number of people over 65 years old who died due to heat stress between 2014 and 2018 had increased by 53.7% compared with 2000-2004.³¹
2. **In the aftermath of an extreme event, older people can experience more difficulties.** This includes accessing food, water and shelter. Older persons are also more likely to become isolated and be deprived of adequate care following loss of family members or community ties and disruption of social services.³²
3. **Older people are also often more susceptible to the health impacts of climate change.** This includes health impacts related to water and food scarcity and water- or vector-borne diseases such as malaria and cholera.³³

Acknowledging the specific needs and protecting the rights of older people is particularly important considering that the world's population is ageing. By 2050, more than 21% of the global population is expected to be aged 60 or over,³⁴ with 80% of older people projected to live in low- and middle-income countries.³⁵ The combination of heightened climate risks and an ageing population will leave an increasing number of people exposed to the worst effects of the climate crisis. For example, in 2015 the Lancet Commission estimated that by the end of this century, the number of times in which older people would experience heat waves would reach 3 billion each year.³⁶

²⁶ "Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis", Amnesty International, 2021. Available online at: <https://www.amnesty.org/en/documents/pol30/3476/2021/en/>

²⁷ Ibid.

²⁸ See OHCHR, "Climate resilience and older refugees", [ohchr.org/EN/Issues/OlderPersons/IE/Pages/ClimateResilience.aspx](https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/ClimateResilience.aspx)

²⁹ See OHCHR, Analytical study on the promotion and protection of the rights of older people in the context of climate change, 30 April 2021, UN Doc. A/HRC/47/46, para. 7. Available online at:

<https://documents.un.org/doc/undoc/gen/g21/099/23/pdf/g2109923.pdf?token=H3ZQeJM4P1mtPxUzv0&fe=true>

³⁰ See HelpAge, Climate Change in an Ageing World, 2015. Available online at:

reliefweb.int/sites/reliefweb.int/files/resources/COP21_HelpAge_PositionPaper_Final_0.pdf

³¹ The Lancet Countdown on Health and climate change: responding to convergent crises, 2020. Available online at:

[thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)32290-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32290-X/fulltext), p. 136

³² HelpAge, Climate Change in an Ageing World. Available online at:

reliefweb.int/sites/reliefweb.int/files/resources/COP21_HelpAge_PositionPaper_Final_0.pdf, para 26.

³³ N. Watts and others, "Health and climate change: Policy responses to protect public health", 2015, Lancet, Volume 386

³⁴ See HelpAge, Climate Change in an Ageing World, 2015. Available online at:

reliefweb.int/sites/reliefweb.int/files/resources/COP21_HelpAge_PositionPaper_Final_0.pdf

³⁵ OHCHR, Human Rights of Older Persons. Available online at:

[ohchr.org/EN/Issues/OlderPersons/Pages/OlderPersonsIndex.aspx](https://www.ohchr.org/EN/Issues/OlderPersons/Pages/OlderPersonsIndex.aspx)

³⁶ N. Watts and others, "Health and climate change: Policy responses to protect public health". Figure 4 at p. 1869 and p. 1871.



Groups:

Indigenous Peoples: Indigenous Peoples, who comprise less than five percent of the global population, safeguard 80 percent of the world's biodiversity.³⁷ Indigenous Peoples have contributed the least to emissions historically. Yet, they have a disproportionate vulnerability to loss and damage because of their marginalisation and the connection for them between culture, identity, place and nature³⁸. This disproportionate vulnerability sees the enjoyment to the right to development of Indigenous People impacted in a number of ways:

1. **Loss and damage erodes Indigenous Peoples' cultural and spiritual obligations.** Relationality between people, land, water, and non-human life are recurring principles of different Indigenous communities³⁹. Climate change, in addition to the immense losses already incurred during the colonial and post-colonial eras, is further eroding Indigenous Peoples' cultural and spiritual obligations⁴⁰ which impacts social and cultural development.
2. **Loss and damage erodes Indigenous Peoples' cultural and social development.** Many Indigenous Peoples see the material world as a “web of relations”⁴¹, therefore declining biodiversity due to climate change significantly impacts individuals and communities social and cultural development. For example, biodiversity is declining due to a reduction in water sources in Chitrakoot, India⁴². The Indigenous Kol community use their traditional knowledge of medicinal plants to treat humans and livestock, however, many of these plants are now disappearing. This represents not only the functional loss of medical treatment now and in the future but also the more fundamental loss of Indigenous knowledge and cultural practices⁴³. In another example, Indonesia's Indigenous Laman Kinipan community —whose customary forest spanned an area of 16,132 hectares— continues to experience severe impacts of loss and damage on their land, territories and indigenous way of life from slow onset changes and drastic weather events⁴⁴. This is exacerbated by development aggression in the form of massive palm oil plantations. The area is now facing scarcity of water resources while becoming more disaster-prone, destroying their homes and fields. The shallow and polluted Inuhan river is no longer fit for use,

³⁷ “Indigenous Peoples,” World Bank, 6 April 2023, <https://www.worldbank.org/en/topic/indigenouspeoples#:~:text=There%20are%20an%20estimated%20476,of%20non%2Dindigenous%20people%20worldwide>.

³⁸ McNamara KE, Westoby R, Clissold R and Chandra A (2021) ‘Understanding and responding to climate-driven non-economic loss and damage in the Pacific Islands’, *Climate Risk Management*, 33, 100336, <https://doi.org/10.1016/j.crm.2021.100336>

³⁹ Simpson, L. B. (2017). ‘KWE AS RESURGENT METHOD’. In *As We Have Always Done*, 27–38. Indigenous Freedom through Radical Resistance. University of Minnesota Press.

<https://www.upress.umn.edu/book-division/books/as-wehave-always-done>

⁴⁰ Whyte, K. (2020). ‘Too Late for Indigenous Climate Justice: Ecological and Relational Tipping Points’. *Wiley Interdisciplinary Reviews: Climate Change* 11 (1). <https://doi.org/10.1002/wcc.603>

⁴¹ Meriläinen, E., Joseph, J., Jauhola, M., Yadav, P., Romo-Murphy, E., Marin, J. and Gadhavi, S. (2022). Examining relational social ontologies of disaster resilience: lived experiences from India, Indonesia, Nepal, Chile and Andean territories. *Disaster Prevention and Management*, 31(3), 273-287. <https://doi.org/10.1108/DPM-02-2021-0057>

⁴² Bharadwaj, R., Shakya, C. (2021). Loss and damage case studies from the frontline: a resource to support practice and policy. IIED, London. <https://pubs.iied.org/20551iied>

⁴³ Ibid.

⁴⁴ “Going Nowhere: Fact-finding Mission Report on Indigenous Communities, Fisherfolk: Harassment, Poverty and Climate Change in Indonesia.” FORUM-ASIA (2021). Available at:

<https://forum-asia.org/report-going-nowhere-fact-finding-mission-report-on-indigenous-communities-fisherfolk-harassment-pov-erty-and-climate-change-in-indonesia/>



threatening the community's livelihoods and survival. The Laman Kinipan community, which is known for their use of traditional scientific knowledge and medicine, is now unable to use centuries old indigenous healing practices, as they face various impacts of loss and damage exacerbated by the loss of their land and forest cover due to the human-induced climate crisis in the name of 'development'.⁴⁵

3. ***Loss and damage drives Indigenous Peoples to migrate to urban centers; this is impacting social, cultural and political development.*** For example, the young generation of Kols is increasingly migrating to urban centres in search of opportunities, and leaving behind the traditions and culture of their community⁴⁶.
4. ***Loss and damage is threatening the social cohesion of Indigenous Peoples communities, threatening social, cultural and political development.*** The El Molo Peoples inhabit the Eastern and south East of Lake Turkana in Kenya, including the Palo, Soit, Yal and Moite villages —all of which are impacted by loss and damage. The El Molo are the smallest Indigenous fishing community in Kenya.⁴⁷ Having borne the brunt of historical injustices, the climate-induced rise of the water levels of Lake Turkana, heat stress, and food insecurity, amongst other things, have caused further challenges. To illustrate how loss and damage is impacting the enjoyment of the right to development the El Molo community (via the El Molo Forum⁴⁸) and Climate Refugees (via their report “Climate change is controlling everything”⁴⁹) have highlighted the following examples:
 - a. The community is at the verge of extinction due to factors including food and nutrition insecurity, whilst severe heat waves, body rashes and other health issues have become the norm.
 - b. Fishery —which is the major economic pillar of the community— is under serious threat as many have lost their boats, rafts and fishing equipment as a result of Lake Turkana rising. The rising waters have also claimed part of the land and infrastructure within the El Molo Peoples communities.
 - c. Women and children are the most affected by loss and damage. They are having to walk longer distances over harder and more insecure terrain to access medical, antenatal and postnatal care. This is causing some women to lose their pregnancies and others to lose their lives. Women are also

⁴⁵ See “Going Nowhere: Fact-finding Mission Report on Indigenous Communities, Fisherfolk: Harassment, Poverty and Climate Change in Indonesia”, Forum Asia, 2021. Available online at: <https://forum-asia.org/report-going-nowhere-fact-finding-mission-report-on-indigenous-communities-fisherfolk-harassment-pove-ty-and-climate-change-in-indonesia/>

⁴⁶ Ibid.

⁴⁷ “Kenya, El Molo Tribe,” Atlas of Humanity, n.d., <https://www.atlasofhumanity.com/elmolo>.

⁴⁸ See the El Molo Forum via:

<https://www.facebook.com/worldfishers/posts/el-molo-forum-in-kenya-fighting-against-corporate-grabbing-of-indigenous-territo/1737383469842524/>

⁴⁹ “Climate change is controlling everything - let them compensate us:” addressing the climate displacement of Indigenous, marginalised populations in Kenya”, Climate Refugees. Available online at: <https://www.climate-refugees.org/reports/2023/11/13/loss-and-damage-case-study>



having to cover greater distances in search of water and firewood in a region that is prone to desertification.

- d. As a result of Lake Turkana rising, Women's centres have also been lost in El Molo Peoples communities. These centres served as meeting and training centres and market spaces, especially for alternative livelihoods such as beadwork, basketry and the making of other artefacts, that contributed Significantly to their livelihoods and to the local economy.
- e. School-going children who would previously walk to school now have to use boats to cross the lake. Boat crossings incur costs that did not previously exist and are dangerous.
- f. Hundreds of homesteads have been submerged. These include the loss of burial sites.
- g. High cases of water borne diseases and malnutrition are reported amongst children.

Economically, Socially, and Politically Marginalised People: Decades of climate change and disaster research show that those who are most marginalised in societies are most vulnerable to shocks and stressors^{50 51} this is also true for loss and damage⁵². Those who are marginalised —based on, for instance, class, caste, disability, or membership of sexual/gender minority— often have limited access to resources, own few assets, have low incomes and rely on natural resources for their livelihoods. Dependence on nature for subsistence in the context of an increasingly unpredictable changing climate puts these groups at high risk of loss and damage which increases the risk that their enjoyment of the right to development will be impacted. Examples include:

1. ***When land is lost or unsuitable for agriculture marginalised communities face a life with uncertainties around dignity and security***⁵³. This impacts the enjoyment of the right to social, cultural, political, and economic development.
2. ***Mobility and immobility are key manifestations of loss and damage which interact with current conditions.*** Mobility is often shaped by socio-economic, political and cultural factors. Where issues of exclusion, marginalisation, poverty and underdevelopment are acute, displacement and distress migration reproduce and multiply pre-existing conditions of vulnerability.

⁵⁰ Jackson, G. (2021). Critical junctures, agrarian change, and the (re)production of vulnerability in a marginalised Indigenous society'. *World Development* 145: 105538. <https://doi.org/10.1016/j.worlddev.2021.105538>

⁵¹ Oliver-Smith, A. Alcántara-Ayala, I., Burton, I & Lavell, A. (2016). *Forensic Investigations of Disasters (FORIN): A Conceptual Framework and Guide to Research.* (IRDR FORIN Publication No.2). Beijing: Integrated Research on Disaster Risk. www.irdrinternational.org/uploads/files/2020/08/n0EpdIvgoGZuwbrhioKRFLQiw5XILfF1vIDE7tEB/FORIN-2-29022016.pdf

⁵² Thomas, A., & L. Benjamin. (2020). 'Non-Economic Loss and Damage: Lessons from Displacement in the Caribbean'. *Climate Policy*, 20 (6): 715–28. <https://doi.org/10.1080/14693062.2019.1640105>.

⁵³ Practical Action (2021) *Assessing and addressing climate-induced loss and damage in Nepal.* Practical Action, Rugby. <https://lib.icimod.org/record/35313>



3. **People facing exclusion turn to migration to minimise loss and damage.** For example, in Turkana County, Kenya, the semi-nomadic Turkana people—who are already suffering from socio-economic deprivation— have had to turn to migration as a means of climate adaptation despite being pastoralists for generations. Besides the loss of culture that comes with having to abandon livelihoods in this way, poor planning and underdevelopment in the county’s urban areas means those arriving may experience development setbacks as they struggle to integrate and find work.⁵⁴
4. **Lack of existing economic diversification makes communities and households vulnerable to climate impacts.** On Kokwa Island in Lake Baringo, Kenya, lake rise flooding has submerged hotels and other facilities that were part of the area’s tourism industry upon which residents depended. This major loss of economic revenue threatens residents’ right to decent work, enumerated in the International Bill of Human Rights⁵⁵, and is a huge threat to the achievement of sustainable development goal (SDG) number 8 (“sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”).⁵⁶ The situation for Kokwa islanders is especially acute as secondary activities like fishing become more difficult due to climate change impacts as well. Overall, the closure of hotels and the end of related job opportunities for local residents have increased poverty and livelihood loss.⁵⁷

States:

Small Island Developing States: The disproportionate vulnerability of Small Island Developing States to climate impacts⁵⁸ means that they face a disproportionate impact on the enjoyment of the right to development. Consider the following example that details how Hurricane Irma infringed on Antigua and Barbuda’s enjoyment of the right to economic and social development:

Hurricane Irma Antigua and Barbuda. On September 6, 2017, Hurricane Irma hit the islands of Antigua and Barbuda and made landfall as a category 5 storm. Irma was the most powerful hurricane ever recorded in the Atlantic, with wind speeds of more than 185 miles per hour (298 km/hour) accompanied by torrential rainfall⁵⁹, which affected more than 25,000 people. The hurricane severely impacted lives and livelihoods, housing and infrastructure and basic services such as health, telecommunication, electricity, water, sewage and waste systems, agriculture and

⁵⁴ Amali Tower & Ryan Plano, “Climate Change Is Controlling Everything, Let Them Compensate Us’: Stories of Loss & Damage in Kenya,” Climate Refugees, 2023, <https://www.climate-refugees.org/reports/kenya-loss-and-damage>, p. 26.

⁵⁵ Available online at: <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

⁵⁶ Sustainable Development Goal 8 is “Decent Work and Economic Growth”. See: “The 17 Goals,” UN Department of Economic and Social Affairs - Sustainable Development, n.d., <https://sdgs.un.org/goals>.

⁵⁷ Amali Tower & Ryan Plano, “Climate Change Is Controlling Everything, Let Them Compensate Us’: Stories of Loss & Damage in Kenya,” Climate Refugees, 2023, <https://www.climate-refugees.org/reports/kenya-loss-and-damage>, p 29-30.

⁵⁸ IPCC Sixth Assessment Report – Impacts, adaptation and vulnerability. Available at: <https://www.ipcc.ch/report/ar6/wg2/>

⁵⁹ ReliefWeb. (2020, February 27). Antigua and Barbuda and Saint Kitts and Nevis: Hurricane Irma (MDR49009): Emergency Appeal Final Report [online] Available at: <https://reliefweb.int/report/antigua-and-barbuda/antigua-and-barbuda-and-saint-kitts-and-nevis-hurricane-irma-mdr49009-1>



fisheries. Approximately 80 percent of the homes in Barbuda were destroyed⁶⁰. The post disaster needs assessment reported that the total damage of hurricanes Irma and Maria for Antigua and Barbuda amounts to 136.1 million USD, while losses amount to approximately 18.9 million USD. The total recovery needs, once environmental costs are taken into account, totalled 222.2 million USD⁶¹. Nearly 70 percent of the costs were left to be covered by the Government of Antigua and Barbuda. Moreover, just one day after Hurricane Irma hit, the government was forced to pay the International Monetary Fund (IMF) 3 million USD as part of repayment of a loan⁶². The IMF told the government that it would rather lend Antigua and Barbuda more money than delay the repayment of its current debt, a decision which seems to defy logic and demonstrates how loss and damage can push vulnerable countries into ever greater debt burdens⁶³. Higher debt levels also impact the country's ability to invest in climate-resilient public services. The example of the cascading impacts of Irma on Antigua and Barbuda demonstrate how important it is to ensure that the countries that have historically contributed the least to climate change do not bear the financial consequences of climate impacts on their own.

Least Developed Countries: The disproportionate vulnerability of the Least Developed Countries to climate impacts⁶⁴ means that they face a disproportionate impact on the enjoyment of the right to development. Consider the following example that details how drought infringed on Malawi's enjoyment of the right to economic and social development:

Malawi drought 2015/16. In Malawi, the 2015/2016 agricultural season was greatly affected by strong El Nino conditions and resulted in erratic rains and prolonged dry spells across most parts of the country. In response to the dry spells, the Government of Malawi declared a state of disaster in April 2016, and a post-disaster needs assessment was initiated in mid-May under the leadership of the government⁶⁵. The damages stemming from the drought amounted to 36.6 million USD with losses (projected to March 2017) of 329.4 million USD and the economic impact estimated at 365.9 million USD. The total amount of financial assistance mobilised by the government and international partners was 149 million USD. The World Bank provided 174 million USD via grants of 152 million and loans of 22 million respectively. To cover the remaining costs of the recovery, the Government of Malawi was forced to reallocate funds from the national budget. This reallocation of funds, the Government of Malawi has already an extremely limited budget⁶⁶, burdened by

⁶⁰ ReliefWeb (2020, February 15). Final evaluation: IFRC Hurricane Irma Response Operation (Antigua & Barbuda and St Kitts & Nevis) [online] Available at:

<https://reliefweb.int/report/antigua-and-barbuda/final-evaluation-ifrchurricane-irma-response-operation-antigua-barbuda>

⁶¹ Government of Antigua and Barbuda et al. (2017). Hurricane Irma and Maria Recovery Needs Assessment for Antigua and Barbuda [online] Available at: https://www.gfdr.org/sites/default/files/publication/Antigua%20and%20Barbuda%20executive%20summary_print_text%282%29.pdf

⁶² Cummings, M. (2022). Riders on the storm - How debt and climate change are threatening the future of small island developing states [online] Available at: https://www.eurodad.org/debt_in_sids.

⁶³ Ibid.

⁶⁴ IPCC Sixth Assessment Report – Impacts, adaptation and vulnerability. Available at: <https://www.ipcc.ch/report/ar6/wg2/>

⁶⁵ World Bank (2016). Malawi Drought 2015-2016 : Post-Disaster Needs Assessment [online] Available at: [https://openknowledge.worldbank.org/handle/10986/25781#:~:text=In%20response%20to%20the%20dry,the%20United%20Nations%20\(UN\).](https://openknowledge.worldbank.org/handle/10986/25781#:~:text=In%20response%20to%20the%20dry,the%20United%20Nations%20(UN).)

⁶⁶ Jonathan Reeves, ActionAid UK (2017), The wrong model for resilience. Available at: https://actionaid.org/sites/default/files/the_wrong_model_for_resilience_final_230517.pdf



high levels of debt servicing, and high inflation resulting in a reduction in funds available for health care schooling and social protection which in turn curtailed development gains.

All Developing countries: Although climate impacts are most acute in the LDCs and SIDS all developing countries are seeing development impacted as a result of loss and damage to infrastructure and services such as health care and schooling and as a result of recovery and rebuilding costs falling on states, the latter of which is leading to increased indebtedness which further reduces already strained national budgets. The following example illustrates how all developed countries are impacted by loss and damage:

1. **The 2022 Pakistan Floods:** The devastating Pakistan Floods of 2022, killed 1,739 people, destroyed 2.9 million homes and left 20.6 million people in need of assistance. The flooding significantly damaged infrastructure, affected 33 million people and displaced 7.9 million people. It also had a significant impact on agriculture, flooding 9.4 million acres of crops and killing more than 1.1 million livestock and education, with 34 thousand schools damaged or destroyed. Whilst economic loss and damage was estimated at \$40 billion. In each case the floods undermined existing and ongoing development gains thereby affecting the enjoyment of social, cultural, political, and economic development. Furthermore, following 2022 floods, over 90% of funds secured by Pakistan during a pledging conference to address the loss and damage caused by the floods were loans⁶⁷. The provision of loans instead of grants to address loss and damage caused by the floods further increased Pakistan's debt burden. These increased debt repayments further reduced Pakistan's national budgets intended to advance development and provide services such as health care and education thereby additionally affecting the it's citizen's enjoyment of social, cultural, political, and economic development.

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

⁶⁷ See "Pakistan minister says 90% pledges by international community at Geneva conference in form of 'loans'", Economic Times of India, 2023. Available online at: <https://economictimes.indiatimes.com/news/international/world-news/pakistan-minister-says-90-pledges-by-international-community-at-geneva-conference-in-form-of-loans/articleshow/96916092.cms?from=mdr>



International Human Rights Law

Under international human rights law, communities and individuals that have experienced human rights violations are entitled to access to effective remedies. This also applies to loss and damage caused by climate change. The Office of the High Commissioner for Human Rights has made this very clear in their Key Messages on Loss and Damage and Human Rights, stating that “under human rights law, the actors responsible for climate change related harms (primarily States and businesses) should be accountable for remedying them”.⁶⁸

National, regional and international mechanisms to address loss and damage must provide effective remedies to affected people based on the United Nations’ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The principles define substantive redress according to the following typology: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. By applying this typology, Loss and Damage decision-makers can take a comprehensive approach to remedying the breadth of harm experienced by communities, including non-economic loss and damage, and provide comprehensive support to those most affected⁶⁹.

The element of non-repetition further underlines the need to prevent loss and damage. This is critical, when considering the incommensurable nature of much loss and damage in many cases, such as the loss of culture, heritage and the irreparable damage to the distinct identity, self-determination and survival of Indigenous Peoples, it is imperative that states adopt policies and practices that ensure that global average temperatures to stay below 1.5C to avoid as much loss and damage as possible. This includes ensuring that community-led data and evidence inform key decisions to avert, minimise and address loss and damage. This would enable Indigenous Peoples to exercise their collective right to self-determination, which includes but is not limited to their right to Free, Prior and Informed Consent (FPIC), distinct identity, and self-determined development.

UNDER THE UNFCCC

The obligations of states to prevent, mitigate and remediate the impacts of climate change-related loss and damage under the United Nations Framework Convention (UNFCCC) and its Paris Agreement include the following.

The Paris Agreement recognizes that:

⁶⁸ See “HUMAN RIGHTS AND LOSS AND DAMAGE Key messages”, UN OHCHR, 2023. Available online at: <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/2023-key-messages-hr-loss-damage.pdf>

⁶⁹ See “Climate-related human rights harm and the right to effective remedy”, Center for International Environmental Law, 2024. Available online at: <https://www.amnesty.org/en/documents/ior40/7717/2024/en/#:~:text=This%20joint%20submission%20by%20Amnesty,driver's%20state%20of%20determining%20>



Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

This is especially relevant in the context of loss and damage. The failure of Parties—particularly Parties bearing historical responsibilities with the most available resources—to meaningfully address loss and damage is causing immense human suffering, and is not compliant with international legal duties, including human rights obligations. As Parties take steps to address this injustice, human rights principles are critical to ensure that loss and damage responses reach those who need it most, and respect, protect and promote their human rights. Therefore, the following human rights principles must form a foundational basis for any effective response to loss and damage.

- Promoting international cooperation and assistance
- Guaranteeing access to information, meaningful and effective public participation, and access to justice
- Enforcing substantive equality, and preventing and redressing intersectional discrimination
- Ensuring accountability, including in relation to extraterritorial obligations
- Providing effective remedy

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

The Legal Case

The legal basis for states to contribute loss and damage finance to the Loss and Damage Fund under the United Nations Framework Convention on Climate Change (UNFCCC) and its Paris Agreement include the following.

From the UNFCCC:

In accordance with the principle of “common but differentiated responsibility and respective capabilities” set out in the Convention, developed country Parties are to provide financial resources to assist developing country Parties in implementing the objectives of the UNFCCC.



From the Paris Agreement:

From Article 8 of the Paris Agreement:

Article 8 of the Paris Agreement reads as follows:

1. Parties recognize the importance of averting, minimising and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.
2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.
4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:
 - (a) Early warning systems;
 - (b) Emergency preparedness;
 - (c) Slow onset events;
 - (d) Events that may involve irreversible and permanent loss and damage;
 - (e) Comprehensive risk assessment and management;
 - (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
 - (g) Non-economic losses; and
 - (h) Resilience of communities, livelihoods and ecosystems.

Why does this support the provision of Loss and Damage finance from states?: Article 8.1 indicates that “Parties recognize the importance of averting, minimising and addressing loss and damage”. Article 8.3 of the Paris Agreement makes it clear that “Parties should enhance...action and support” with respect to loss and damage. Article 8.4 provides a non-exhaustive list, thus grant-based Loss and Damage Finance from developed countries should not be ruled out under “action and support” as the list could be broadened⁷⁰.

From Article 9 of the Paris Agreement:

Article 9.3 of the Paris Agreement reads as follows:

3. As part of a global effort, developed country Parties should continue to take the lead in mobilising climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilisation of climate finance should represent a progression beyond previous efforts.

⁷⁰ See “Financial mechanism on Loss and Damage”, LRI, 2021. Available online at: <https://legalresponse.org/legaladvice/financial-mechanism-on-loss-and-damage/>



Why does this support the provision of Loss and Damage finance from states?:

Article 9.3 of the Paris Agreement indicates that developed country Parties should take the lead in mobilising climate finance to assist developing country Parties, “including supporting country-driven strategies” and “taking into account the needs and priorities of developing country Parties”. This language, and the growing priority of developing countries to secure finance to address Loss and damage, especially in respect to long-term national-level strategies, suggests that developed countries should be providing loss and damage finance. However, this argument is likely to be subject to resistance by developed countries as Article 9.1 of the Paris Agreement clarifies that financial resources are to be balanced between adaptation and mitigation.⁷¹

From decisions made by the Parties to the UNFCCC:

Decisions on the Warsaw International Mechanism for Loss and Damage (WIM):

The three functions of the Warsaw International Mechanism for Loss and Damage (WIM) are as follows:

- Enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change;
- Strengthening dialogue, coordination, coherence and synergies among stakeholders by providing leadership, coordination and oversight under the UNFCCC on the assessment and implementation of approaches to address loss and damage associated with climate change impacts; and
- Enhancing action and support, to enable countries to undertake actions to address loss and damage.

Why does this support the provision of Loss and Damage finance from states?: The third function of the WIM is to enhance action and support to enable countries to undertake actions to address loss and damage. Decision 2/CMA.2 on the WIM makes it clear that this must include scaling up action and support including finance for developing countries⁷². See the following relevant paragraphs:

- Paragraph 32: “*Urges* the scaling-up of action and support, as appropriate, including finance, technology and capacity-building, for developing countries that are particularly vulnerable to the adverse effects of climate change”
- Paragraph 35: “*Urges* the broad range of bodies, organisations and funds under and outside the Convention and the Paris Agreement to scale up

⁷¹ Ibid.

⁷² Ibid.



support, including finance, technology and capacity-building, for developing countries that are particularly vulnerable to the adverse effects of climate change ...”

From decisions to establish and operationalize the Loss and Damage Fund and Funding arguments:

The COP27 decision ([2/CP.27](#)) to establish the Loss and Damage Fund included the following paragraph:

1. Acknowledge the urgent and immediate need for new, additional, predictable and adequate financial resources to assist developing countries that are particularly vulnerable to the adverse effects of climate change in responding to economic and non-economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, especially in the context of ongoing and ex post (including rehabilitation, recovery and reconstruction) action;

Why does this support the provision of Loss and Damage finance from states?: The paragraph shows that Parties — including developed countries— are in agreement that there is an immediate need for new, additional, predictable and adequate financial resources to assist developing countries to address loss and damage. It provides the context for why the Loss and Damage Fund needed to be established and therefore why it must now be filled.

The COP28 decision ([Decision 1/CP.28](#)) to operationalize the Loss and Damage Fund included the following paragraphs:

12. Also urge developed country Parties to continue to provide support and encourage other Parties to provide, or continue to provide support, on a voluntary basis, for activities to address loss and damage;
13. Invite financial contributions with developed country Parties continuing to take the lead to provide financial resources for commencing the operationalization of the Fund;

Why does this support the provision of Loss and Damage finance from states?: In paragraph 12 developed country Parties are “urged” —on a voluntary basis—to continue to provide support for activities to address loss and damage whilst encouraging other Parties (i.e. developing country Parties) to provide, or continue to provide support. Paragraph 13, invites financial contributions to the Fund and recalls language from Article 9.3 of the Paris Agreement which indicates that developed country Parties should take the lead in mobilising climate finance to assist developing country Parties.



The New Collective Qualified Goal (NCQG): Under the negotiations for the NCQG, developing country Parties have called for a subgoal on Loss and Damage⁷³. The NCQG will conclude at COP29 and it is likely that the COP29 decision could provide another legal basis for the provision of loss and damage finance from states.

The Polluter Pays principle and the No Harm Principle

The “polluter pays” principle, i.e. that those responsible for causing harm must pay to address it, and the “no harm” principle, whereby states are obliged to prevent, reduce and control the risk of environmental harm to other states, are central in determining where finance to address Loss and Damage should come from. By one calculation, countries in the Global North are responsible for 92% of excess historical emissions.⁷⁴ Between 1990 and 2015 the carbon emissions of the richest 1% of people globally were more than double the emissions of the poorest half of humanity.⁷⁵ The entire continent of Africa produces less than 4% of global emissions,⁷⁶ yet the African Development Bank reported in 2022 that Africa was losing between 5% and 15% of its GDP per capita growth because of climate change.⁷⁷ Similarly the the Vulnerable Twenty Group (V20) of Ministers of Finance from the Climate Vulnerable Forum, which currently represents 55 countries, 1.4 billion people and only 5% of global emissions, attributed economic losses attributable to climate change over the last two decades (2000–2019) to be \$525 billion USD⁷⁸. Given this, the countries and companies most responsible should be providing significant finance for loss and damage, and new innovative sources that embody the polluter pays principle should be considered to help scale up finance for loss and damage.

The Moral Case

The enormous scale of on going and projected loss and damage

In 2022, major climate and weather events in developing countries caused more than US\$109 billion in losses, a figure that does not take into account smaller locally devastating

⁷³ See “What Do The Submissions To Inform The Ncqq Workplan Tell Us About Support For A Sub Goal On Loss And Damage Under The NCQG?”, Loss and Damage Collaboration, 2024. Available online at: <https://www.lossanddamagecollaboration.org/pages/what-do-the-submissions-to-inform-the-ncqq-workplan-tell-us-about-support-for-a-sub-goal-on-loss-and-damage-under-the-ncqq>

⁷⁴ Excess historical emissions refer to those that take the world above ‘safe’ levels of warming (350 ppm). J. Hickel (2020). “Quantifying national responsibility for climate breakdown: an equality-based attribution approach for carbon dioxide emissions in excess of the planetary boundary”. The Lancet Planetary Health. Accessible at: [https://www.thelancet.com/journals/lanph/article/PIIS2542-5196\(20\)30196-0/fulltext](https://www.thelancet.com/journals/lanph/article/PIIS2542-5196(20)30196-0/fulltext)

⁷⁵ T. Gore (2020). “Confronting Carbon Inequality: Putting climate justice at the heart of the COVID-19 recovery”. Oxfam. Accessible at:

<https://policy-practice.oxfam.org/resources/confronting-carbon-inequality-puttingclimate-justice-at-the-heart-of-the-covid-621052/>

⁷⁶ H. Ritchie and M. Roser (2020). “CO2 emissions”. Our World in Data: <https://ourworldindata.org/co2-emissions>

⁷⁷ African Development Bank Group (2022). “Africa loses up to 15% of its GDP per capita annually because of climate change – African Development Bank Acting Chief Economist Kevin Urama”. Accessible at: <https://www.afdb.org/en/news-and-events/press-releases/africa-loses-15-its-gdp-capita-annually-because-climate-change-african-development-bank-acting-chief-economist-kevin-urama-54660#:~:text=Africa%20has%20been%20losing%20from,and%20Vice%20President%20Kevin%20Urama.>

⁷⁸ V20 (2022). “Climate Vulnerable Economies Loss Report: Economic losses attributable to climate change in V20 economies over the last two decades (200–2019)”. Accessible at: https://www.v-20.org/wp-content/uploads/2022/06/Climate-Vulnerable-Economies-Loss-Report_June-14_compressed-1.pdf



events, slow onset impacts, or non-economic loss and damage.⁷⁹ Whilst current, midpoint estimates of economic loss and damage in developing countries suggest costs of US\$425 billion per year in the 2020s and US\$671 billion per year in the 2030s. In light of these projections, a Loss and Damage finance floor of US\$400 billion per year has been suggested⁸⁰, with financing needs likely to be revised upward over time as the climate crisis escalates.

Although very welcome, the \$700 million USD pledged at COP28⁸¹ is just a drop in the ocean⁸² compared to the \$400 billion USD⁸³ developing countries actually need each year throughout the 2020s. It is also important to recognise that during the Third Meeting of the Transitional Committee Tasked with providing recommendations to operationalise the Loss and Damage Fund, developing countries identified that they expect⁸⁴ the Fund to be able to program \$100 billion USD a year. With this in mind, the \$700 million USD pledged at COP28 would account for less than 1% of what developing countries expect (\$100 billion USD) and only 0.2% of the actual needs of developing countries (\$400 billion USD).

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

The following non-financial components should be provided by states:

- 1. Limiting warming to 1.5°C:** States must deliver on their individual and collective commitments under the Paris Agreement to slash emissions and limit average global temperature increases to 1.5°C above pre-industrial levels. This entails a full, fast and fair phase out of all fossil fuels, as confirmed by the IPCC⁸⁵. Averting loss and damage must still be a top priority.
- 2. Meeting adaptation and mitigation finance commitments:** Developing countries must meet their existing climate finance commitments under the UNFCCC and Paris

⁷⁹ See “The Loss and Damage Finance Landscape”, Loss and Damage Collaboration, 2023. Available online at: <https://www.lossanddamagecollaboration.org/publication/the-loss-and-damage-finance-landscape>

⁸⁰ Ibid.

⁸¹ See “Tracking Loss And Damage Fund And Pledges At COP28”, Los and Damage Collaboration, 2023. Available online at: <https://docs.google.com/document/d/1QWNkTrjBF2ydcvSQX6NqdCehcveQ69BzHFWD4UJQ5I/edit>

⁸² See “The Loss And Damage Fund And Pledges At Cop28: Shall I Compare Thee To A Summer’s Day? Or To The Annual Earnings Of A Megastar Footballer?”, Loss and Damage Collaboration, 2023. Available online at: <https://www.lossanddamagecollaboration.org/pages/the-loss-and-damage-fund-and-pledges-at-cop28-shall-i-compare-thee-to-a-summer-day-or-to-the-annual-earnings-of-a-megastar-footballer#:~:text=Countries%20immediately%20pledged%20more%20than,miracle%2C%20let’s%20examine%20the%20details.>

⁸³ See “The Loss and Damage Finance Landscape”, Loss and Damage Collaboration, 2023. Available online at: <https://www.lossanddamagecollaboration.org/publication/the-loss-and-damage-finance-landscape>

⁸⁴ See “Proposal From Developing Countries On The Launch Of The Loss And Damage Fund And Funding Arrangements”, e representatives of developing country Transitional Committee members representing Africa, Asia-Pacific, Latin America and Caribbean, Least Developed Countries, and Small Islands Developing States, 2023. Available online at: https://unfccc.int/sites/default/files/resource/23_08_23_Final_Submission_TC_3.pdf

⁸⁵ See IPCC, AR6, 2022. Available online at: <https://www.ipcc.ch/report/ar6/wg2/>



Agreement and the \$100 billion USD goal and commit to scaling up finance under the New Collective Qualified Goal (NCQG) on Climate Finance. This is needed to enable developing countries to undertake adaptation and mitigation to further prevent and minimise loss and damage⁸⁶.

3. **Regional and national policies to protect at-risk populations:** States must support the development of relevant regional and national policies to protect the rights of populations at risk of internal and cross-border displacement.
4. **Centering impacted people and communities:** People and communities impacted by loss and damage should be at the forefront of designing and implementing remedies and initiatives to address loss and damage, including the allocation of resources. Centering the voices of those most at risk and understanding what affected people value and prioritise most may help identify practical and sustainable solutions that can advance strategies to address loss and damage.
5. **Supporting the mobility aspirations of impacted people and communities:** The mobility aspirations of affected communities and the right of people to determine their own adaptation futures should be supported and prioritised in all efforts to avert, minimise and address loss and damage. This obligation is fundamental toward Indigenous Peoples, people from small island developing states (SIDS), pastoralists and other groups with special dependency on and important connections to their lands. People who choose to stay or whose capacity to move is limited by ill health or disability should be supported to address the ongoing impacts of loss and damage and adapt in place.⁸⁷
6. **Commitments to provide and uphold safe, regular pathways for migration:** To ensure that the mobility aspirations of affected communities are upheld, States must commit to providing safe, regular pathways for regional and international migration that respect, promote and realise human rights, including labour rights, in line with international law, and provide a wide range of mobility opportunities, such as work visas and visas for educational purposes or family ties⁸⁸. In designing safe and regular migration pathways, governments should identify and address the specific barriers faced by disadvantaged and marginalised groups.
7. **Access to Justice:** Effective grievance and redress mechanisms must be established and access to justice shall be guaranteed. Failure to do so will lead to the continuation of human rights violations, including the historic and ongoing dispossession and alienation of Indigenous Peoples from nature and their ancestral lands, territories and resources.

⁸⁶See “The Role Of The New Collective Quantified Goal On Climate Finance In Filling The Loss And Damage Fund”, Loss and Damage Collaboration, 2023. Available online at: <https://www.lossanddamagecollaboration.org/publication/the-role-of-the-new-collective-quantified-goal-on-climate-finance-in-filling-the-loss-and-damage-fund>

⁸⁷ See “Loss and Damage and Displacement: Key Messages for the Road to COP28”, Loss and Damage Collaboration, 2023. Available online at: https://assets-global.website-files.com/605869242b20501f9a579e7a/6502fe411ba5a5075c395f51_L%26DC_DISPLACEMENT_MESSAGES_FINAL_14092023_1330.pdf

⁸⁸ See “Stop burning our rights”, Section 11.3., Amnesty International, 2021. Available online at: <https://www.amnesty.org/en/documents/pol30/3476/2021/en/>



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

A Human Rights-Based Approach to the Loss and Damage Fund

Loss and damage can be seen as human rights losses, development setbacks, and woefully inadequate efforts to protect impacted people. Given States' obligations under international human rights law, such rights must be a part of any approach to truly address loss and damage.⁸⁹

A human rights-based approach vital to ensuring that Loss and Damage finance delivered by the Loss and Damage Fund maximises public benefit and protections and that it does not end up causing negative social and environmental impacts.⁹⁰ Social and environmental safeguards are critical to avoid harm in the context of loss and damage responses, similar to forms of maladaptation, in which climate change adaptation measures actually increase vulnerability,⁹¹. Such safeguards should include but are not limited to effective participation of marginalised communities in decision-making, and adherence to international obligations on gender, labor rights and standards, and cultural preservation,⁹² to name just a few.

International human rights law provides a compass for addressing the harms already caused by climate change and preventing or, when not possible, minimising future harms. The rights recognized in the International Bill of Human Rights—the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)—together, form the foundation of international human rights law, including the right to an adequate

⁸⁹ Human Rights as a Compass for Operationalizing the Loss and Damage Fund, Center for International Environmental Law (CIEL) (Feb. 2023), https://www.ciel.org/wp-content/uploads/2023/02/Human-Rights-as-a-Compass-for-Operationalizing-the-Loss-Damage-Fund_submission-Amnesty-and-CIEL_Feb-2023.pdf

⁹⁰ See "Climate change is controlling everything - let them compensate us:" addressing the climate displacement of Indigenous, marginalised populations in Kenya", Climate Refugees, 2023, supra note 22, 101. Available online at: <https://www.climate-refugees.org/reports/2023/11/13/loss-and-damage-case-study>

⁹¹ Lisa Schipper, Catching maladaptation before it happens, NATURE CLIMATE CHANGE 12 (2022), <https://doi.org/10.1038/s41558-022-01409-2>, Climate Refugees, supra note 22, 101.

⁹² Human Rights as a Compass, supra note 38, 8; Climate Refugees, supra note 22, 101.



standard of living, the right to housing, and the right to movement, among others.⁹³ Failing to take meaningful action on loss and damage, and therefore allowing climate change to harm communities around the world, especially in disproportionate and unjust ways, constitutes a failure to uphold these rights which apply to every human being.

Within the COP 28 decision to operationalize the Loss and Damage Fund ([Decision 1/CP.28](#)), there is no explicit reference to human rights in the Governing Instrument of the Fund beyond a reference to gender-responsiveness in its section on objectives and purpose ([See para.5 page 6](#))⁹⁴. The framing of the Fund’s purpose and its goal of providing funding to developing countries and affected local communities, including vulnerable population groups, therefore lacks a clear human rights-based approach⁹⁵. It is therefore important to anchor human rights obligations for all Loss and Damage Fund operations and funded actions through incorporation of explicit Human Rights references into modalities, frameworks and policies as they are developed by the Board of the Fund⁹⁶.

Additionally, the language in the Governing Instrument of the Loss and Damage Fund on social and environmental safeguards only mandates the Board to develop “a mechanism that will help ensure the activities financed by the Fund are implemented based on high-integrity environmental and social safeguards (ESS) and fiduciary principles and standards” (See para.22(f) of the GI)⁹⁷. Unlike the Adaptation Fund and the Green Climate Fund, the Loss and Damage Fund will not set up its own high-integrity standards, and instead will have to rely exclusively on the environmental and social safeguard policies of its implementing entities.⁹⁸ These safeguards which are supposed to be “functionally equivalent” with the World Bank’s own environmental and social safeguards as determined through modalities to be developed by the Board of the Fund (See para.68 of the GI)⁹⁹.

However, relying on the World Bank’s ESS is inadequate to ensure that actions funded by the Loss and Damage Fund take a people-centered approach that promotes human rights obligations relevant and appropriate specifically for addressing loss and damage. For example, in the World Bank’s ESS, the integration of climate change is largely focused on reducing or managing climate pollutants, while references to human rights are only articulated with respect to Indigenous Peoples’ right to free, prior and informed consent (FPIC) in one specific safeguard, limited to certain circumstances, and not as a cross-cutting reference frame throughout. The World Bank’s ESS also fails to meet international standards such as core labor standards and labor rights, and gender considerations. They therefore are inadequate to meet the standard of “best practice” as required by the Governing Instrument of the Fund (See para.68 of the GI)¹⁰⁰. Additionally, given the World Bank’s lack of working with direct access for communities, it is unlikely that its safeguarding policies – which are not geared toward needs of communities or community access – can be easily

⁹³ See “Universal Declaration of Human Rights,” UNGA, arts. 25, 26 and 13; “International Bill of Human Rights,” OHCHR, <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

⁹⁴ See “The Loss and Damage Fund Board: Getting It Right from the Start”, HEINRICH-BÖLL-STIFTUNG, 2024. Available online at: <https://us.boell.org/en/2024/03/18/loss-and-damage-fund-board-getting-it-right-start>

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.



adapted or that local organizations would easily be able to pass the equivalency test if they could at all at all. With this in mind, the Board should therefore only consider the World Bank's ESS as interim ESS only for the duration of the World Bank's interim hosting arguments of the Loss and Damage Funds secretariat. During this time, the Board must therefore work to develop its own independent ESS framework adapted to the distinct objectives of the Loss and Damage Fund to ensure it advances rights-compatible actions without contributing to harm.

Finally, the Governing Instrument of the Loss and Damage Fund does not establish an independent grievance mechanism and instead, like the ESS, states that activities financed by the Fund will make use of the grievance mechanisms of the implementing agencies. This is highly problematic, as a grievance mechanism at the level of the Loss and Damage Fund is essential to ensure that individuals and groups who are negatively affected by the activities of the Fund have access to justice¹⁰¹. The absence of an independent grievance mechanism results in the inability to effectively prevent and address harms to local communities. It also falls short of the standards established for other financial instruments under the UNFCCC, such as the Green Climate Fund and the Adaptation Fund. Therefore, like the ESS, the Board of the Loss and Damage Fund must develop an independent grievance mechanism within the interim hosting period¹⁰².

Accessibility:

Access to information, participation in decision-making, and access to justice are core principles of international environmental and human rights law¹⁰³. They must be the guiding principles for the Loss and Damage Fund to ensure that any response to loss and damage fits the needs of affected communities and respect, protect and promote human rights. Those most directly affected by climate change impacts who have lived experience of loss and damage are best placed to identify adequate remedies for the violations of their rights, and should be able to fully and effectively participate in and drive the design and implementation of related policies, programs and funding mechanisms including the work of the Board of the Loss and Damage Fund. In order to ensure meaningful participation, protecting,¹⁰⁴ respecting and fulfilling the right to access information about decision making processes and arrangements for the Loss and Damage Fund is essential. Decisions related to the full operationalisation and administration of the Loss and Damage Fund must therefore be taken through the meaningful participation of affected groups and communities, including the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples when the decisions may affect them.

¹⁰¹ See "Climate-related human rights harm and the right to effective remedy", Center for International Environmental Law, 2024. Available online at: <https://www.amnesty.org/en/documents/ior40/7717/2024/en/#:~:text=This%20joint%20submission%20by%20Amnesty,driver's%20state%20of%20determining%20appropriate>

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ In the context of the Loss and Damage Fund, it is essential that strong and comprehensive participation modalities are established at the level of the Board, and in the context of planning, design and implementation of the Fund's activities.



- The Board of the Loss and Damage Fund, should put in place and implement policies, procedures, and governance structures that guarantee representation and active and meaningful participation in decision-making for frontline communities, children, youth, women, Indigenous Peoples, people with disabilities, older people and other marginalised groups that are disproportionately impacted by the climate crisis.
- The Board of the Loss and Damage Fund must facilitate access to all Board meetings including by providing financial support, language and interpretation support, virtual participation modalities, as well as timely access to information, draft and decision documents and documents required for accreditation. Additionally, accessibility modalities should focus on specific groups and their needs, such as people living in poverty and people with disabilities, and be adapted to the local context.

Non-discrimination:

Commitments to the principle of non-discrimination¹⁰⁵ are a critical starting point to ensure that marginalized communities—who tend to bear the brunt of climate impacts¹⁰⁶—have their unique needs recognized and ultimately met as part of the provision of Loss and Damage finance.¹⁰⁷ Therefore, all responses led by the Loss and Damage Fund need to be non-discriminatory, inclusive, intersectional, gender-transformative, and advance substantive equality for individuals who are already marginalized, as well as future generations through intergenerational justice¹⁰⁸.

The UN Committee on Economic, Social and Cultural Rights (CESCR) has made clear that “eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the

¹⁰⁵ Sustainable Development Goal 10 is “Reduced Inequalities”. See The 17 Goals, UN Department of Economic and Social Affairs - Sustainable Development. In addition, various instruments encompass this principle, most notably the International Covenant on Economic, Social and Cultural Rights (including General Comment No. 20), the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women. See also The Core International Human Rights Instruments and the monitoring bodies, Office of the UN High Commissioner for Human Rights (OHCHR), n.d., <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>; General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights,” UN Committee on Economic, Social and Cultural Rights (July 2 2009), <https://www.refworld.org/docid/4a60961f2.html>, Climate Refugees, supra note 22 101

¹⁰⁶ See “Report: Inequalities exacerbate climate impacts on poor”, UN Department of Public Information, (Oct. 3, 2016), Available online at:

<https://www.un.org/sustainabledevelopment/blog/2016/10/report-inequalities-exacerbate-climate-impacts-on-poor/>. See also Marginalised communities bear the brunt of climate crisis in the USA: New report, (Oct. 5, 2021), Environmental Justice Foundation. Available online at:

<https://ejfoundation.org/news-media/marginalised-communities-bear-the-brunt-of-climate-crisis-in-usa>, Climate Refugees, supra note 22, 101

¹⁰⁷ See “Human Rights as a Compass for Operationalizing the Loss and Damage Fund”, (CIEL) (Feb. 2023), Available online at: https://www.ciel.org/wp-content/uploads/2023/02/Human-Rights-as-a-Compass-for-Operationalizing-the-Loss-Damage-Fund_submission-Amnesty-and-CIEL_Feb-2023.pdf, Climate Refugees, supra note 22, 101.

¹⁰⁸ See “Climate-related human rights harm and the right to effective remedy”, Center for International Environmental Law, 2024. Available online at: <https://www.amnesty.org/en/documents/ior40/7717/2024/en/#:~:text=This%20joint%20submission%20by%20Amnesty,driver's%20state%20of%20determining%20appropriate>



formal treatment of individuals in similar situations.”¹⁰⁹ The following examples help to illustrate what sort of discriminations the Loss and Damage Fund must avoid:

1. Loss and damage Fund responses related to labor could lead to exclusion of people 70 working in the informal sector, many of whom often live in poverty;
2. Persons living with disabilities and older persons are often disproportionately affected by climate hazards^{110 111 112}, and are among the least able to¹¹³ access warning systems and emergency support;
3. The way entities such as “households” are described¹¹⁴ (e.g. in a heteronormative way) could lead to the exclusion of relief for LGBTQI+ individuals and couples.

Consideration must also be given to the specific Loss and Damage Fund policies and practices that are needed to ensure appropriate security and remedies to violence that may occur—including gender-based violence—in the aftermath of sudden onset events such as cyclones¹¹⁵, in temporary shelters, and when people are displaced.

The principle of non-discrimination—which the UN Basic Guidelines reinforce in the context of remedy and reparations¹¹⁶—entails that the responses made by the Loss and Damage Fund must be targeted and designed to ensure all people who have been made vulnerable are reached and their rights are protected. Therefore the Fund must have adequate and dedicated policies in place to achieve this¹¹⁷.

In addition, particular attention must be paid to how different forms of marginalization and discrimination intersect¹¹⁸, and how the Loss and Damage Fund’s operation should be designed by the Funds Board to redress these intersectional discriminations. Something that has been recognized by the Committee of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has called on Parties to “identify and

¹⁰⁹ See United Nations Committee on Economic Social and Cultural Rights (2009), “General Comment 20 on Non-discrimination in Economic, Social and Cultural Rights (E/C.12/GC/20)”, <https://digitallibrary.un.org/record/659980>, paragraph 8.

¹¹⁰ Amnesty International, (2022), “Pacific: Transgender Rights Progress, but much more needs to be done”.

<https://www.amnesty.org/fr/wp-content/uploads/2022/05/ASA1856132022ENGLISH.pdf>

¹¹¹ International Labor Organization, “More than 60 per cent of the world’s employed population are in the informal economy”, accessed on 8.1.2024 via https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_627189/lang--en/index.htm.

¹¹² Office of the United Nations High Commissioner for Human Rights (2020), “Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change”. Available online at:

<https://documents.un.org/doc/undoc/gen/g20/097/56/pdf/g2009756.pdf?token=lmMkRdSk22tjEiLkYg&fe=true>.

¹¹³ For instance in British Columbia, Canada in 2021, 595 people died from heat-related deaths over a five day period, most of whom were over 70 years old and who died in their homes. See British Columbia Coroners’ Service, (2021) “BC Coroners Service (BCCS) Heat-Related Deaths – Knowledge Update”, accessed 12.1.24. Via

https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/heat_related_deaths_iN_bc_knowledge_update.pdf.

¹¹⁴ Global Age Watch (2015), “Building disaster resilience of older people”, Available online at:

<https://www.helpage.org/silo/files/building-disaster-resilience-of-older-people.pdf>

¹¹⁵ United Nations Women (2022), “Tackling violence against women and girls in the context of climate change”.

<https://www.unwomen.org/sites/default/files/2022-03/Tackling-violence-against-women-and-girls-in-the-context-of-climate-change-en.pdf>.

¹¹⁶ United Nations General Assembly (2005), “Resolution 60/147 - UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, <https://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf>.

¹¹⁷ “Climate-related human rights harm and the right to effective remedy”, Center for International Environmental Law, 2024.

Available online at:

<https://www.amnesty.org/en/documents/ior40/7717/2024/en/#:~:text=This%20joint%20submission%20by%20Amnesty,driver's%20state%20of%20determining%20appropriate>

¹¹⁸Ibid.



eliminate all forms of discrimination, including intersecting forms of discrimination, against women in disaster risk reduction and climate change policies, legislation, policies, programmes, plans, and other activities.”¹¹⁹

Gender Transformative:

States must recognise the role and contribution of women in combating climate crises including addressing the impacts of loss and damage.¹²⁰ The Loss and Damage Fund must realise a gender transformative approach to financing loss and damage i.e. one that is designed around a fundamental aim of addressing root causes of gender inequality within society¹²¹. This is essential to address historical inequalities between men and women and ensure that women’s knowledge and lived experiences are at the core of decision-making processes of the Fund.

The Governing Instrument of the Loss and Damage Fund includes several explicit references on gender, including taking into account gender balance on the Board of the LDF (See para.19 of the GI) and among the staff of its dedicated and independent Secretariat (See para.32 of the GI)¹²². However, only a third of the nominations made to the Board of the Loss and Damage Fund women (7 of 25 total nominated members and 10 of 25 nominated alternate members). This reveals a gender imbalance and is therefore a disregard for a crucial mandate that acknowledges that addressing the gender-differentiation loss and damage will require gender-transformative policies and programming approved by a Board that is equitably representing gender diversity and not just developing and developed countries¹²³. Currently, the Governing Instrument of the Fund does not preclude the development of a specific gender policy like the ones employed by the Green Climate Fund and Adaptation Fund which apply to all fund activities including operations, participation, outreach, communication and engagement in broader fund operations¹²⁴. Instead, the concerns of distinct population groups¹²⁵ including women are largely considered through a “do not harm” lens which does not equate to a rights-based approach via environmental and social safeguards (ESS) in the implementation of funded activities¹²⁶. The Board of the Fund must therefore take a rights-based approach that respects, protects and promotes human rights and advances substantive equality through the application of an intersectional lens.

¹¹⁹ See United Nations Committee on the Elimination of Discrimination Against Women (2018), “General recommendation No.37 on gender-related dimensions of disaster risk reduction in a changing climate (CEDAW/C/GC/37)”, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-37-2018-gender-related>, paragraph 31(a).

¹²⁰ The Paris Agreement affirms not only that States Parties must comply with the principles of “gender equality, women’s empowerment and intergenerational equity,” but also highlights the importance of adaptation action to ensure a gender-transformative, participatory and fully transparent approach.

¹²¹ See “Gender responsive and/or transformative approaches”, UNFPA, 2024. Available online at: https://www.unfpa.org/sites/default/files/admin-resource/thematic%20note%201_gender_final.pdf

¹²² See “The Loss and Damage Fund Board: Getting It Right from the Start”, HEINRICH-BÖLL-STIFTUNG, 2024. Available online at: <https://us.boell.org/en/2024/03/18/loss-and-damage-fund-board-getting-it-right-start>

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ This is also the case for all other groups including Indigenous Peoples, children and youth, migrants and people living with disabilities.

¹²⁶ Ibid.



Accommodation for marginalised communities and countries especially vulnerable to the adverse effects of climate change:

Addressing loss and damage requires adequate access to information, and meaningful and effective participation of the frontline communities facing the direct impacts of loss and damage¹²⁷ such as Indigenous Peoples, rural women, peasants, fisherfolk and other small-scale food producers, and children. The Loss and Damage Fund must create a mechanism that enables their meaningful participation particularly in decision-making processes related to modalities, disbursement, implementation, and monitoring of the Fund. One demand that has been echoed globally across UNFCCC constituencies is to ensure direct access of communities is through a small-grant community window¹²⁸.

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

Many climate vulnerable countries have a significant debt burden which negatively impacts the delivery of public services and thus the realisation and protection of the right to economic, social and cultural development. The economic cost of loss and damage and the provision of climate finance for adaptation and mitigation primarily in the form of loans, a large share of which are not concessional, is contributing to this debt crisis¹²⁹. With mounting debt an increasing burden for developing countries, the most climate-vulnerable states are spending over a tenth of their export revenues to service long-term debts — the highest proportion since 2000.¹³⁰ At the end of 2021, the external debt of these economies totalled \$9 trillion USD— more than double the amount a decade ago. Rising interest rates and slowing global growth meant that about 60 percent of the poorest countries are already at high risk of debt distress or already in distress.

If the Loss and Damage Fund, as World Bank hosted Financial Intermediary Fund (FIF), were to employ loans to scale up loss and damage programming, increased debt repayments would further reduce scarce resources from public services, including health, education, social protection and climate-resilient infrastructure, at a time when regions including Africa are spending more on servicing debt than serving their peoples' health and

¹²⁷ See "Addressing loss and damage: our call for accountability and justice." International Network for Economic, Social and Cultural Rights (ESCR-Net), 2023. Available online here: <https://www.escr-net.org/news/2023/addressing-loss-and-damage-our-call-accountability-and-justice>

¹²⁸ See "The Loss and Damage Finance Landscape", Loss and Damage Collaboration, 2023. Available online at: <https://www.lossanddamagecollaboration.org/publication/the-loss-and-damage-finance-landscape>

¹²⁹ See "Climate finance short-changed. The real value of the \$100 billion commitment in 2019–20", Oxfam (2022). Available online at: <https://oxfamilibrary.openrepository.com/bitstream/handle/10>

¹³⁰ See "International Debt Report 2023", The World Bank, 2024. Available online at: <https://www.worldbank.org/en/programs/debt-statistics/idr/products>



schooling needs.¹³¹ Therefore, loans are entirely inappropriate for addressing loss and damage as they will further exacerbate the indebtedness of developing countries impacted by loss and damage whilst also being ill-designed to address¹³² irreversible losses where no income will be generated to pay them back¹³³.

Under international human rights law, wealthy industrialised countries must provide new, additional, needs-based, rights-compliant, predictable, grant-based and sustainable public finance for loss and damage, at the scale required, in light of the legal duties of international cooperation. In its operationalisation, the Loss and Damage Fund must provide grant-based finance to prevent the creation of new debts¹³⁴. To fill the Loss and Damage Fund with the \$400 billion USD currently needed each year by developing countries¹³⁵, developed countries must pay their fair share of Loss and Damage Finance into the Fund via a Loss and Damage subgoal under the The New Collective Quantified Goal (NCQG) on climate finance¹³⁶. To avoid burdening their citizens, developed countries must implement policies to raise alternative sources of Loss and Damage finance via initiatives such as a climate damages tax, frequent flyer levy or maritime shipping levy. These alternative sources must also be sourced in a way that is fair, equitable and human rights aligned, following the polluter pays and CBDR-RC principles of the UNFCCC. Any such proposals should reduce inequalities rather than deepen them, for example by putting the burden primarily on fossil fuel corporations by increasing taxation on their profits, rather than increasing costs for consumers.

Additionally, above and beyond addressing loss and damage through resourcing of funding mechanisms and reparations frameworks, lenders, including states and Multilateral Development Banks, should take steps to create more fiscal space for countries affected by loss and damage by pausing debt repayments during loss and damage events and through debt forgiveness and tax justice.¹³⁷

¹³¹ See “A world of debt”, UNCTAD, 2023. Available online at: <https://unctad.org/publication/world-of-debt#:~:text=Debt%20has%20been%20translating%20into,their%20people%20and%20their%20future.>

¹³² See “The broken \$100-billion promise of climate finance—and how to fix it”, Timperley, Jocelyn. (2021). *Nature*, 598(7881), e400-e402. 10.1038/d41586-021-02846-3.

¹³³ “Climate-related human rights harm and the right to effective remedy”, Center for International Environmental Law, 2024. Available online at:

<https://www.amnesty.org/en/documents/ior40/7717/2024/en/#:~:text=This%20joint%20submission%20by%20Amnesty,driver's%20state%20of%20determining%20appropriate>

¹³⁴ Submission to UNFCCC for the 2nd Glasgow Dialogue. Human Rights as a Compass for Operationalising the Loss and Damage Fund. Amnesty International and the Center for International Environmental Law. 2023: https://www.ciel.org/wp-content/uploads/2023/02/Human-Rights-as-a-Compass-for-Operationalizing-the-Loss-Damage-Fund_submission-Amnesty-and-CIEL_Feb-2023.pdf

¹³⁵ Ibid.

¹³⁶ See “The Role Of The New Collective Quantified Goal On Climate Finance In Filling The Loss And Damage Fund”, Loss and Damage Collaboration, 2023. Available online at: <https://www.lossanddamagecollaboration.org/publication/the-role-of-the-new-collective-quantified-goal-on-climate-finance-in-filling-the-loss-and-damage-fund>

¹³⁷ Debt Justice UK, Climate Action Network International et al. (2022), “The debt and climate crises: Why climate justice must include debt justice”. Available online at:

<https://debtjustice.org.uk/wp-content/uploads/2022/10/Debt-and-the-Climate-Crisis-Briefing-October-2022-UPDATED.pdf>