



# HUMAN RIGHTS AS A COMPASS FOR OPERATIONALIZING THE LOSS AND DAMAGE FUND

SUBMISSION



February 2023

## TABLE OF CONTENTS

<b>I. INTRODUCTION</b>	3
<b>II. PUBLIC PARTICIPATION IN THE TRANSITIONAL COMMITTEE</b>	4
<b>III. A LOSS AND DAMAGE FUND COMPLIANT WITH HUMAN RIGHTS STANDARDS</b>	4
1. Rights-based and comprehensive action	4
> Protecting the most impacted through rights-based and gender-responsive finance	4
> Providing effective remedy	5
2. Procedural Rights	6
> Effective stakeholder engagement and access to information	7
> Rights-based, participatory and inclusive Loss and Damage Needs Assessments	7
> A participatory, inclusive, and representative Board	7
> Effective safeguards	8
> Accountability, monitoring and grievance mechanisms	9
3. Funding	9
> Adequate funding based on the polluter pays principle	9
> Public, grants-based finance to avoid new debt creation	10
> Local ownership and direct access for frontline communities	10
<b>IV. INPUT FOR THE GLASGOW DIALOGUE AND THE WORKSHOPS</b>	11
1. Process/structure	11
2. Topics	11

### **AI Index Number: IOR 40/6463/2023**

This brief was submitted to the UNFCCC on 15 February 2023 by Amnesty International and the Center for International Environmental Law, responding to the call to submit views on topics for and the structure of the 2nd Glasgow Dialogue and the workshops referred to in paragraph 7(a) of FCCC/CP/2022/L.18–FCCC/PA/CMA/2022/L.20.

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## INTRODUCTION

Under existing human rights law applicable to all UNFCCC Parties, States have an individual and collective obligation to address climate change. More specifically, international human rights bodies, as well as national courts, have affirmed that States should protect individuals and communities from climate-induced human rights harms, domestically and also extraterritorially<sup>1</sup>. Ahead of COP27, former High Commissioner for Human Rights, Michelle Bachelet, sent an open letter to Parties, stating that *“the adverse effects of climate change can violate human rights, requiring access to justice and an effective remedy for those affected. Equitable, flexible and accountable mechanisms to address climate change-related loss and damage, now and in the future, are a climate justice imperative.”*<sup>2</sup>

Under the Paris Agreement, Parties should take adequate and urgent action to reduce emissions, support people to adapt to climate change, and avert, minimize and address loss and damage<sup>3</sup>. This should be done on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities, as enshrined in the UNFCCC.<sup>4</sup> At COP27, Parties acknowledged *“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”* and in this context established new funding arrangements for assisting developing countries that are particularly vulnerable to the adverse effects of climate change in responding to loss and damage, including a fund for responding to loss and damage, hereafter the ‘Loss and Damage Fund’<sup>5</sup>.

All Parties to the Paris Agreement have obligations under international human rights law and these obligations help identify appropriate ways to meaningfully address loss and damage. **This submission aims to clarify how human rights can and should be fully integrated into the discussions and outcomes on funding arrangements to address loss and damage, and more specifically the newly established Loss and Damage Fund.** Based on this, the submission concludes with specific proposals for topics for and the structure of the 2nd Glasgow Dialogue and the workshops referred to in paragraph 7(a) of FCCC/CP/2022/L.18–FCCC/PA/CMA/2022/L.20.

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<sup>1</sup> See for example: Daniel Billy and others v Australia (Torres Strait Islanders Petition), CCPR/C/135/D/3624/2019, 2019; David Richard Boyd, Safe Climate: A Report of the Special Rapporteur of Human Rights and the Environment, UN Special Procedures, A/74/161, 2019, paras 65, 91 and 92, [www.ohchr.org/en/special-procedures/sr-environment/safe-climate-report](http://www.ohchr.org/en/special-procedures/sr-environment/safe-climate-report); Frequently Asked Questions on Climate Change and Human Rights-Fact Sheet No. 38, UN Office of the High Commissioner of Human Rights (OHCHR), 2021, [www.ohchr.org/Documents/Publications/FSheet38\\_FAQ\\_HR\\_CC\\_EN.pdf](http://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf); UN Committee on Economic, Social and Cultural Rights (CESCR), Climate change and the International Covenant on Economic, Social and Cultural Rights, 8 October 2018: [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E); State of the Netherlands v. Urgenda Foundation, ECLI:NL:HR:2019:2007, Judgement (Sup. Ct. Neth. Dec. 20, 2019) (Neth.).

<sup>2</sup> Open-Letter from the United Nations High Commissioner for Human Rights on priorities for human rights-based climate action at the 27<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change. 2 November 2022. [www.ohchr.org/sites/default/files/2022-11/2022-11-02-HC-Open-Letter-to-UNFCCC-COP27.pdf](http://www.ohchr.org/sites/default/files/2022-11/2022-11-02-HC-Open-Letter-to-UNFCCC-COP27.pdf)

<sup>3</sup> Paris Agreement, Article 8

<sup>4</sup> See United Nations Framework Convention on Climate Change, art 3.2.

<sup>5</sup> Decision -/CP.27 -/CMA.4. Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage. [unfccc.int/sites/default/files/resource/cma4\\_auv\\_8f.pdf](http://unfccc.int/sites/default/files/resource/cma4_auv_8f.pdf)

## PUBLIC PARTICIPATION IN THE TRANSITIONAL COMMITTEE

Public participation is critical to ensuring effective climate policies<sup>6</sup>, as confirmed by the IPCC<sup>7</sup>, recognized by the Paris Agreement<sup>8</sup>, and enshrined as a human right<sup>9</sup>. International environmental law and legal instruments specifically recognize that public participation must also be guaranteed in relation to international processes related to the environment<sup>10</sup>. In particular, women, Indigenous Peoples, children, older people, people with disabilities, peasants and other persons working in rural areas and those with lived experience of loss and damage from climate change impact, must have a seat at the table at all stages and levels of decision-making.

We therefore endorse the letter that was sent by Climate Action Network International (CAN), Demand Climate Justice (DCJ), the Women and Gender Constituency (WGC), YOUNGO, and TUNGO on January 24, 2023 to Executive Secretary, Mr. Simon Stiell & COP President, H.E. Mr. Sameh Shoukry on 'Inclusion of Observer Organisations in the transitional committee on the operationalization of the new funding arrangements for responding to Loss and Damage and the fund'. In line with the precedent set by the Transitional Committee for the operationalization of the Green Climate Fund (GCF) and the recent decision to allow for observer participation on the board of the Santiago Network for Loss and Damage<sup>11</sup>, civil society groups and Indigenous Peoples should be able to actively and meaningfully engage in all meetings of the transitional committee and related workshops.

This is essential to develop policies that align with affected people's needs and human rights, and ensure transparency and accountability.

## A LOSS AND DAMAGE FUND COMPLIANT WITH HUMAN RIGHTS STANDARDS

### 1. Rights-based and comprehensive action

The Loss and Damage Fund should undertake activities that address all aspects of loss and damage (economic and non-economic, sudden-onset and slow-onset impacts) and that are rooted in human rights principles such as non-discrimination, substantive equality, inclusion, and effective redress and remedy.

> Protecting the most impacted through rights-based and gender-responsive finance

Climate impacts and related loss and damage often disproportionately affect individuals and communities that already face marginalization. Under human rights law, governments have committed to the principle of

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<sup>6</sup> Cattino, Massimo, and Diana Reckien. "Does public participation lead to more ambitious and transformative local climate change planning?." *Current opinion in environmental sustainability* 52 (2021): 100-110.

<sup>7</sup> IPCC WGII, page 160 [report.ipcc.ch/ar6/wg2/IPCC\\_AR6\\_WGII\\_FullReport.pdf](https://www.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf)

<sup>8</sup> Paris Agreement, Article 12, Preamble. [unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf)

<sup>9</sup> Universal Declaration of Human Rights, article 21, [www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf); International Covenant on Civil and Political Rights, article 25, [www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights)

<sup>10</sup> Including the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ([Escazú Agreement](https://www.oas.org/en/las/escruz)) and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ([Aarhus Convention](https://www.aarhusconvention.com)).

<sup>11</sup> Decision -/CMA.4. Santiago network for averting, minimizing and addressing loss and damage under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. [unfccc.int/sites/default/files/resource/cma4\\_auv\\_7\\_WIM.pdf](https://unfccc.int/sites/default/files/resource/cma4_auv_7_WIM.pdf)

non-discrimination<sup>12</sup>. Discrimination can be multi-layered, and thus it is essential to identify and redress these harms from an intersectional perspective. Any decision taken to address loss and damage should therefore consider potential discrimination in multiple ways: to prevent its occurrence, to systematically identify harms, to provide redress, and to guarantee substantive equality. All responses to loss and damage should be inclusive, intersectional, gender-responsive, and aim to achieve substantive equality for individuals who are already marginalized or in vulnerable situations.

For example, persons with disabilities are often disproportionately affected by climate hazards and among the least able to access emergency support<sup>13</sup>; as violence occurs in the aftermath of sudden onset climate hazards such as cyclones and in temporary shelters and when people are displaced, this comes with specific implications for women and girls; the way entities such as ‘households’ are described (e.g. in a heteronormative way) could lead to exclusion of relief for LGBTQI+ individuals and couples<sup>14</sup>; and responses related to and understanding of what constitutes labor could lead to exclusion of people working in the informal sector<sup>15</sup>, who are also often people living in poverty<sup>16</sup>. These are just some examples of how loss and damage responses need to be inclusive and informed by patterns of discrimination to ensure all people who have been made vulnerable are reached. Additionally, specific policies and practices are needed to ensure appropriate security and remedies to violence, including gender-based violence. Without taking into consideration these and other examples, the actions and policies supported through the loss and damage fund risk failing to adequately respect and protect the rights of many impacted people.

#### > Providing effective remedy

Under international human rights law, communities and individuals that have experienced human rights violations are entitled to access to effective remedies<sup>17</sup>. The rights to life, food, water, sanitation, health, a clean, healthy and sustainable environment, and an adequate standard of living, as well as collective rights to land and culture, may be relevant normative foundations for those seeking redress in the context of economic and non-economic loss and damage linked to climate change. The objective of the Loss and Damage Fund should be to provide effective remedy to those most affected by the climate crisis, in such a way that it does not put additional pressure on public budgets of developing countries.

Remedy for victims of human rights abuses or harm can only be effective when it entails both access to justice and substantive redress. The Loss and Damage Fund is particularly relevant in the context of providing substantive redress or reparations for the harm suffered. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights

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<sup>12</sup> UN CESCR, General Comment No. 20 on Non-discrimination in Economic, Social and Cultural Rights, 2009, para. 8, [www.refworld.org/docid/4a60961f2.html](http://www.refworld.org/docid/4a60961f2.html); UN CESCR General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, 2005, [www.refworld.org/docid/43f3067ae.html](http://www.refworld.org/docid/43f3067ae.html); UN CEDAW Committee, General Comment No. 28 on the core obligations of Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 2010, para. 18 [www.refworld.org/docid/4d467ea72.html](http://www.refworld.org/docid/4d467ea72.html)

<sup>13</sup> OHCHR (2020). *Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change*. Report of the Office of the United Nations High Commissioner for Human Rights.

<sup>14</sup> Rainbow Pride Foundation Fiji, Edge Effect & Oxfam (2018). *Down by the River. Addressing the Rights, Needs and Strengths of Fijian Sexual and Gender Minorities in Disaster Risk Reduction and Humanitarian Response*. [www.edgeeffect.org/wp-content/uploads/2018/02/Down-By-The-River\\_Web.pdf](http://www.edgeeffect.org/wp-content/uploads/2018/02/Down-By-The-River_Web.pdf)

<sup>15</sup> Amnesty International (2022). *Pacific: Transgender rights progress, but much more needs to be done*. Amnesty International Joint Statement, 17 May 2022. [www.amnesty.org/fr/wp-content/uploads/2022/05/ASA1856132022ENGLISH.pdf](http://www.amnesty.org/fr/wp-content/uploads/2022/05/ASA1856132022ENGLISH.pdf)

<sup>16</sup> International Labor Organization. *More than 60 per cent of the world's employed population are in the informal economy*. Press release, 30 April 2018. [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_627189/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_627189/lang--en/index.htm)

<sup>17</sup> Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 2.

Law and Serious Violations of International Humanitarian Law<sup>18</sup> define substantive redress according to the following typology: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. This typology can be applied to addressing loss and damage to guide decisions on the activities that the fund will undertake and ensure that it covers the wide spectrum of needs of people and communities affected by the climate crisis, going beyond immediate emergency needs.

Restitution can be defined as restoring the victim to the original situation before the violation of international human rights law occurred. In the context of loss and damage, this could mean either restoring the actual situation where possible (e.g. rebuilding destroyed infrastructure in case of a natural disaster) or assisting victims in achieving a situation that is similar to the previous one (e.g. planned relocation in the context of slow onset events that render an area inhabitable). Compensation, or monetary reparation, is often used when restitution is found to be impossible. Next to material damages and costs for several types of assistance, this category as defined by the UN principles mentioned above, explicitly includes physical or mental harm, lost opportunities such as education and employment, and moral losses. In the context of climate-related loss and damage this is particularly relevant for non-economic losses such as loss of life and loss of cultural heritage. Rehabilitation is a form of reparation that can include medical and psychological care as well as legal and social services. This category is again particularly important for non-economic losses which cannot be restituted, e.g. in the context of loss of cultural heritage and planned relocation. Lastly, satisfaction entails a broad category of reparations, often aiming to emphasize the wrongful nature of the harm, publicly and symbolically acknowledge suffering, and respect the dignity of those who have been harmed. This can include recognition of losses or official apologies.

The right to a remedy also entails guarantees of non-repetition. This once again demonstrates the important linkages between mitigation and adaptation action and loss and damage: providing remedy to people whose rights have been harmed by the climate crisis is not limited to but inevitably also entails increased mitigation ambition such as a commitment to fully and equitably phase out fossil fuels, and increased public, grants-based finance for adaptation to build resilience and prevent future harms from happening.

Loss and damage can be experienced very differently by groups and communities and in varying situations. Participation of affected communities is therefore essential in the process of determining effective and meaningful remedy. As remedy frameworks have been developed and applied in varying contexts<sup>19</sup>, ensuring that people whose human rights have been harmed receive the redress they are entitled to, these can serve as an important basis for the Loss and Damage Fund.

## 2. Procedural Rights

Access to information, participation in decision-making, and access to justice are core principles of international environmental and human rights law, and should be central to the design, planning, and implementation of the Loss and Damage Fund. As Parties move through the stages of operationalizing the newly established fund and commence its implementation, transparent reporting is vital to ensuring accountability and responsible decision-making. Establishing effective safeguards based on human rights law and standards are essential to ensure that funding provided by the Loss and Damage Fund does not result in human rights violations and prioritizes the advancement of human rights. Establishing effective,

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<sup>18</sup> Resolution adopted by the General Assembly on 16 December 2005, "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". [www.ohchr.org/sites/default/files/2021-08/N0549642.pdf](http://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf)

<sup>19</sup> See for example CIEL (2022). Remediating Harm: Lessons from International Law for Development Finance. [www.ciel.org/wp-content/uploads/2022/03/Remediating-Harm\\_Lessons-from-International-Law-for-Development-Finance.pdf](http://www.ciel.org/wp-content/uploads/2022/03/Remediating-Harm_Lessons-from-International-Law-for-Development-Finance.pdf)

accessible and independent redress mechanisms is crucial to provide access to remedy for human rights harms that might result from the fund's activities.

#### > Effective stakeholder engagement and access to information

Those most directly affected by climate change impacts who have lived experience of loss and damage should be able to fully and effectively participate in the design and implementation of related policies and funding mechanisms. This requires meaningful participation in all processes related to the Transition Committee, as mentioned above, as well as in the Glasgow Dialogue and in the Loss and Damage Fund itself, including in the context of the further development of modalities of the fund, the disbursement of funding and monitoring of its activities, and national implementation. In order to ensure meaningful participation, protecting, respecting and fulfilling the right to access information about decision making processes and arrangements is essential, as well as effective stakeholder consultation, including respect for Indigenous Peoples' right to Free, Prior and Informed Consent (FPIC). In the context of the Loss and Damage Fund and its activities, this means that timely and comprehensive information must be publicly available and presented in an accessible manner, including that it should be in the language(s) used by affected people, groups and communities, and presented in a manner that is culturally appropriate, taking into consideration that people may have difficulty reading, may lack internet access, and may face barriers due to their position in a marginalized group.

#### > Rights-based, participatory and inclusive Loss and Damage Needs Assessments

Parties should conduct human rights-based, inclusive and participatory Loss and Damage Needs Assessments (LDNAs), considering the adverse effect of climate change on the enjoyment of human rights, such as the rights to life, health, food, water, a clean, healthy and sustainable environment, adequate housing, education, work, culture, and self-determination. These LDNAs should inform national and sectoral policy planning and budgeting and can help inform which activities should be funded at the national and local levels to provide effective redress. Human rights law, standards and approaches, including a gender lens, can be useful to provide indicators, especially for non-economic dimensions of loss and damage, which are difficult to quantify and thus to assess and remedy<sup>20</sup>. When assessing loss and damage, attention should be paid to the effective participation of marginalized groups<sup>21</sup>. This is important to determine the magnitude of the loss and damage, including non-economic losses, how harms have differentiated impacts on specific groups, and to improve understanding of how to provide effective and meaningful remedies. While the Santiago Network for Loss and Damage could play an important role in building the capacity of national governments to conduct human rights-based, participatory and inclusive LDNAs, the Loss and Damage Fund should provide funding for carrying these out.

#### > A participatory, inclusive, and representative Board

To ensure effective public participation in the day to day operations of the Loss and Damage Fund, groups affected by climate-related loss and damage should be represented on the Board and its modalities should allow for their active participation. Lessons can be learned from the recently established modalities for the Advisory Board of the Santiago Network for Loss and Damage, which includes representatives of women, youth and Indigenous Peoples<sup>22</sup> as well as from the Green Climate Fund (GCF). The Green Climate Fund

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<sup>20</sup> Katherine Lofts, Sébastien Jodoin and Larissa Parker (2020). A rights-based approach to loss and damage due to climate change. [www.elgaronline.com/display/edcoll/9781788974011/9781788974011.00018.xml](http://www.elgaronline.com/display/edcoll/9781788974011/9781788974011.00018.xml)

<sup>21</sup> See for example ActionAid, ADDRN & CANSA (2019). Loss & Damage Handbook for community-led assessment of climate-induced loss and damage: A 7 step guide. [actionaid.org/sites/default/files/publications/HandbookforLossandDamageActionAid](http://actionaid.org/sites/default/files/publications/HandbookforLossandDamageActionAid)

<sup>22</sup> Decision -/CP.27 -/CMA.4. Santiago network for averting, minimizing and addressing loss and damage under the Warsaw International Mechanism for Loss and Damage associated with Climate Change

includes observers in Board meetings by not only having observers at the meeting and webcasting all meetings but also by allowing the participation of active observers in the Board meetings themselves<sup>23</sup>. While observers do not have a “vote” on the Board, they are able to take the floor and intervene in GCF discussions as well as participate in many meetings of the Board. The Loss and Damage Fund should build on the experience at the GCF by including self-selected active observers from civil society and Indigenous Peoples representatives. This should be the case for meetings, and by always ensuring observers’ ability to participate prior to decisions being taken. Further, importantly, observers on the Board of the Loss and Damage Fund should be allowed to take the floor, suggest agenda items, and be active in all working groups, Board committees, or other forms of division of work and activities of the Board. Additionally, as is the case for the Adaptation Fund, developing countries should constitute the majority of Board members, with a significant number of seats provided to the most vulnerable countries.

### > Effective safeguards

It is essential that funding provided by the Loss and Damage Fund does not contribute to or cause adverse social and environmental impacts. Social and environmental safeguards consistent with international law and standards must be in place to not only prevent social and environmental harm, but also to ensure that the funding advances rights-compatible action including by maximizing public benefit, participation, transparency, accountability, equity and the protection of rights in the activities of the Loss and Damage Fund.

Safeguards should include<sup>24</sup>:

- processes for the anticipation and mitigation of social and environmental impacts through social and environmental impact analysis, including gender analysis and human rights impact analysis;
- respect for human rights, including the rights of children, women, Indigenous Peoples, and local communities, and involving them in decision-making;
- excluding any activities that violate human rights, including the rights of Indigenous Peoples (for example activities that could result in forced evictions and displacement or involuntary resettlement, or that could have significant adverse impacts on traditional livelihoods and Indigenous Peoples’ way of life);
- avoiding harms to biodiversity or ecosystems;
- provisions for public participation and meaningful consultation, including FPIC;
- compliance with existing international obligations on gender, labor standards, cultural protection and multilateral environmental agreements

The development of these safeguards can and should build on good practices and lessons learned over the last several decades of experience with safeguards in the development finance, climate finance, and humanitarian and disaster risk reduction (DRR) spaces. The nature of the activities of the Loss and Damage Fund might require adapted standards, where activities related to post-disaster response and recovery could build on safeguards developed for the humanitarian and DRR sector, and activities related to long term restitution, rehabilitation and addressing slow onset impacts could build on safeguards developed in the context of the Green Climate Fund and the Adaptation Fund, and other internationally-recognized standards.

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Impacts. [unfccc.int/sites/default/files/resource/cma4\\_auv\\_7\\_WIM.pdf](https://unfccc.int/sites/default/files/resource/cma4_auv_7_WIM.pdf)

<sup>23</sup> Green Climate Fund, Governing Instrument, para. 16 (2011) (adopted by the UNFCCC and annexed to Decision 3/CP.17), [www.greenclimate.fund/document/governing-instrument](https://www.greenclimate.fund/document/governing-instrument)

<sup>24</sup> See also CIEL (2021). Funding our Future. Five Pillars for Advancing Rights-Based Climate Finance. [www.ciel.org/wp-content/uploads/2021/03/FundingOurFuture\\_5PillarsForRightsBasedClimateFinance\\_CIEL\\_mar2021.pdf](https://www.ciel.org/wp-content/uploads/2021/03/FundingOurFuture_5PillarsForRightsBasedClimateFinance_CIEL_mar2021.pdf)



### > Accountability, monitoring and grievance mechanisms

Having safeguards in place does not guarantee proper implementation and successful operation or that there will not be adverse impacts. The Loss and Damage Fund must have effective mechanisms for monitoring and oversight, enhancing implementation and addressing problems that arise during implementation in place. This includes having effective and independent grievance mechanisms at the local, national, and global levels for the public to raise concerns and to seek redress. To be effective, grievance redress mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning<sup>25</sup>. It is also important to have participatory monitoring and to engage non-government actors in the monitoring process, including national human rights institutions.

## 3. Funding

In order to protect human rights in the context of climate-induced loss and damage, new and additional, needs-based, human rights compliant, and gender-responsive finance is crucial. Based on state obligations under international human rights law and core principles under the international climate regime such as equity and common but differentiated responsibilities and respective capabilities, a significant share of the funding should be provided by countries with a historic responsibility for the climate crisis. The Paris Agreement requires “continuous and enhanced international support” to developing countries for the implementation of their climate action obligations, including through financial support from developed countries.<sup>26</sup> International human rights law similarly acknowledges the need for international cooperation in the context of the progressive realization of social, economic and cultural rights<sup>27</sup>. In 2019, five Human Rights Treaty Bodies clarified that this established legal obligation implies in the context of climate change that “*states must co-operate in good faith in the establishment of global responses addressing loss and damage suffered by vulnerable countries, paying particular attention to safeguarding the rights of those who are at particular risk of climate harm.*”<sup>28</sup> Additionally, innovative sources of finance can ensure funding is provided at scale.

### > Adequate funding based on the polluter pays principle

While the finance needs for addressing loss and damage are immense, recent examples in the context of the pandemic and war have demonstrated that mobilizing resources at scale in short time frames is possible. As mentioned above, the resources provided to the fund must be new and additional and, based on human rights obligations and equity principles, historic polluters have the responsibility to contribute significantly to the Loss and Damage Fund. Additionally, innovative sources of funding should ensure that finance for addressing loss and damage is available at the scale required. Many actors have proposed and explored such sources of finance, including based on the polluter pays principle, such as international levies on commercial air passenger travel and emissions from international shipping, redirection of fossil fuel subsidies, or a Climate Damages Tax, as well as debt cancellation and debt relief<sup>29</sup>. Innovative sources

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<sup>25</sup> *ibid*

<sup>26</sup> Paris Agreement, article 7.13, article 9.1.

<sup>27</sup> International Covenant on Economic, Social and Cultural Rights, article 2.1, [www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights](http://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights)

<sup>28</sup> OHCHR, 5 UN Treaty Bodies issue a joint statement on human rights and climate change, 16 September 2019, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998)

<sup>29</sup> See for example Boyd and Keene (2021), Air Travel and Maritime Shipping Levies: Making Polluters Pay for Climate Loss, Damages and Adaptation. A Policy Brief from the UN Special Rapporteur on Human Rights and the Environment, October 2021; CAN International, Christian Aid, Heinrich Böll Stiftung, Practical Action and Stamp Out Poverty (2022). The Loss and Damage Finance Facility. Why and How [climatenetwork.org/resource/ldff-paper/](http://climatenetwork.org/resource/ldff-paper/); Stamp Out Poverty (2018). The Climate Damages Tax. A guide to what it is and how it works, [www.stampoutpoverty.org/live2019/wp-content/uploads/2019/06/CDT\\_guide\\_web23.pdf](http://www.stampoutpoverty.org/live2019/wp-content/uploads/2019/06/CDT_guide_web23.pdf).

must be equitable, placing the highest burden on those most responsible and most able to pay. The UN Special Rapporteur on climate change and human rights has proposed that the UN Secretary-General establish a group of experts to explore these new and innovative sources of funding<sup>30</sup>. Such a high-level group should comprise experts from various backgrounds, including from civil society and human rights experts, and feed into the conversations on the Loss and Damage Fund, while making important linkages with other relevant UN processes. Related to the adequacy of funding, states should refrain from subsidizing polluters including through harmful tax incentives and exemptions and should ensure that they pay their fair share of taxes. By mobilizing innovative sources of funding, States can comply with their human rights obligation to prioritize the collective allocation of the maximum available resources to ensure the progressive realization of economic, social and cultural rights.

#### > Public, grants-based finance to avoid new debt creation

Many countries vulnerable to the climate crisis have a significant debt burden, which negatively impacts the delivery of public services and thus the realization and protection of economic, social and cultural rights. The economic cost of climate-related loss and damage is contributing to this debt crisis. At the same time, climate finance for adaptation and mitigation has been provided primarily in the form of loans, a large share of which is non-concessional<sup>31</sup>. This is highly problematic as climate finance should not indebt the Global South further. Additionally, as is the case for adaptation<sup>32</sup>, loans are ill-designed to address irreversible losses, as borrowers seeking money to address loss and damage will not be investing those funds in ways that will generate income and enable them to pay the loan back. Funding for loss and damage should be grants-based and primarily public, including through taxes and levies for corporations and sectors based on the polluter pays principle (see above).

#### > Local ownership and direct access for frontline communities

To ensure that the activities of the Loss and Damage Fund reach those at the frontlines of the climate crisis, local ownership and direct access for marginalized groups are key. Local ownership can help ensure that funding is in line with local and national priorities, including those of Indigenous Peoples, and involves people from the local, sub-national, and national levels in designing, implementing, and monitoring activities as well as relevant institutions such as National Human Rights Institutions and gender-related mechanisms. This goes hand in hand with the participatory, human rights-based LDNAs mentioned above. The fund should also consider national systems for distributing loss and damage funds that make use of existing instruments such as national disaster mechanisms and social protection schemes, enabling immediate support when needed and overcoming the aspects of the project-based model of climate finance for mitigation and adaptation that are inappropriate for loss and damage finance or that have proved problematic<sup>33</sup>. This should go together with the inclusion of direct access modalities for marginalized groups, such as those pioneered by the Adaptation Fund<sup>34</sup>.

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<sup>30</sup> Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change. Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation. A/77/226. [undocs.org/Home/Mobile?FinalSymbol](https://undocs.org/Home/Mobile?FinalSymbol)

<sup>31</sup> Oxfam (2022). Climate finance short-changed. The real value of the \$100 billion commitment in 2019–20. [oxfamlibrary.openrepository.com/bn-climate-finance-short-changed](https://oxfamlibrary.openrepository.com/bn-climate-finance-short-changed)

<sup>32</sup> Timperley, J. (2021). The broken \$100-billion promise of climate finance—and how to fix it. *Nature*, 598(7881), 400-402.

<sup>33</sup> Shawoo, Z., Maltais, A., Bakhtaoui, I. and Kartha, S. (2021). Designing a fair and feasible loss and damage finance mechanism. SEI brief. Stockholm Environment Institute, Stockholm. [doi.org/10.51414/sei2021.024](https://doi.org/10.51414/sei2021.024)

<sup>34</sup> [www.adaptation-fund.org/about/direct-access](https://www.adaptation-fund.org/about/direct-access)

# INPUT FOR THE GLASGOW DIALOGUE AND THE WORKSHOPS

In the light of the above, it is essential that the Glasgow Dialogue and the workshops meant to inform the discussions on the loss and damage funding arrangements, including the Loss and Damage Fund, effectively mainstream human rights obligations and principles, as well as include human rights-specific modalities and sessions. Please find below concrete suggestions to realize this:

## 1. Process/structure

As described in chapter II of this submission, **effective public participation** in the Glasgow Dialogue, the workshops, and all work and activities related to the Transitional Committee is key. This is particularly important for women, Indigenous Peoples, children, older people, people with disabilities, peasants and other persons working in rural areas, and those with lived experience of loss and damage from climate change impact.

Additionally, the Glasgow Dialogue and workshops should be **informed by human rights law and obligations, and human rights institutions and authorities must be invited** to contribute effectively and provide input to ensure this. Examples include the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, the Office of the High Commissioner on Human Rights, and National Human Rights Institutions. Parties should build structural synergies with these institutions for the future design, implementation and monitoring of activities related to the Loss and Damage Fund.

## 2. Topics

The 2nd and 3d Glasgow Dialogue and the workshops to inform the work of the Transitional Committee should include human rights-specific conversations, including but not limited to the following topics:

### > **Lessons learned from development finance, climate finance, and humanitarian and disaster risk reduction spaces for realizing human rights compliant and gender-responsive action on loss and damage**

Guiding questions:

- What modalities are needed to ensure direct access for frontline communities, including women, Indigenous Peoples, children, older people, people with disabilities, peasants and other persons working in rural areas and those with lived experience of loss and damage from climate change impact?
- Which social, environmental and human rights safeguards are essential for an effective Loss and Damage Fund that does no harm and maximizes benefits for frontline communities?
- How can non-discrimination, inclusion and substantive equality be ensured for finance flowing out of the Loss and Damage Fund?
- What good practices and lessons learned from development finance, climate finance, and humanitarian and disaster risk reduction can feed into the work of the Loss and Damage Fund?

### > **Ensuring local ownership and rights-based needs assessments**

Guiding questions:

- How can the Loss and Damage Fund go beyond a project-approach towards supporting the development and implementation of national and local systems to address loss and damage, and making use of these to channel the funding?
- How can the Loss and Damage Fund, in synergy with the Santiago Network, contribute to and build on participatory, inclusive and human rights-based Loss and Damage Needs Assessments at the local and national level? How can existing human rights standards and approaches and remedy frameworks inform these LDNAs and activities of the Loss and Damage Fund, to ensure that it meets the needs of those most affected by the climate crisis?
- What is the role of human rights mechanisms at the national level such as National Human Rights Institutions and gender mechanisms to contribute to LDNAs, and the design, implementation and monitoring of activities of the Loss and Damage Fund?

### **> Delivering public and grant-based finance at scale**

Guiding questions:

- What are States' existing obligations to provide finance for the Loss and Damage Fund? What does this mean for contributions?
- How can equitable new and innovative sources of finance based on the polluter pays principle significantly increase the capital of the Loss and Damage Fund? What is needed within and outside the UNFCCC to realize this? How can this be linked to national policies and to global tax cooperation strategies?
- What is the role of debt cancellation and relief in the context of loss and damage? How can the discussions on funding arrangements spark progress on this front?