



## **Inputs for the analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, pursuant to Human Rights Council Resolution 53/6 on human rights and climate change**

31 January 2024

### Introduction

2023 was the warmest year on record<sup>1</sup>. Without urgent action on climate change, it is also going to be the coolest year for the foreseeable future. The adverse impacts of climate change-related natural disasters, which continue to grow in scale and frequency, bring grave consequences for humanity as a whole, with research indicating that “at least 12,000 people - 30% more than in 2022 - lost their lives due to floods, wildfires, cyclones, storms, and landslides globally in 2023”<sup>2</sup>. The impacts on life, livelihoods and human rights because of climate change-related natural disasters cannot be underestimated. The losses and damages to countries and communities from adverse climate impacts are manifesting in many forms, including as existential threats in the case of some small island developing states.

The current understanding of ‘loss and damage’ recognizes that some adverse effects of climate change are unavoidable, leading to the need for mechanisms to address their associated losses and damages. This would cover both slow onset events and extreme events, as well as economic and non-economic losses. In economic terms for instance, research suggests that cumulative losses from anthropogenic extreme heat between 1992–2013 “likely fall between \$5 trillion and \$29.3 trillion globally. Losses amount to 6.7% of Gross Domestic Product per capita per year for regions in the bottom income decile, but only 1.5% for regions in the top income decile”<sup>3</sup>. At the same time, non-economic losses such as the forced displacement and relocation of communities due to climate impacts can result in irreparable loss of biodiversity, cultural heritage, among many others. If such impacts are not addressed in a timely and equitable manner, they could impede the full realization of human rights of peoples and vulnerable communities, especially those located in developing and least developed countries.

Most recently at COP 28 in Dubai, the international community rightly acknowledged that “climate change is a common concern of humankind and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, 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”<sup>4</sup>. However, much still remains to be done to reduce the adverse impacts of climate-related loss and damage on the full enjoyment of human rights.

### Interlinkages between climate change-related loss and damage and human rights

The indivisible and interdependent nature of all human rights makes it challenging to address loss and damage through a single-issue approach. For instance, the violation of a single human right, such as the human right to a clean, safe and healthy environment, can have cascading effects on other human rights, including the right to life, education, health and development among others. The Intergovernmental Panel

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<sup>1</sup> WMO, 2023 shatters climate records, with major impacts, 30 November 2023. <https://wmo.int/news/media-centre/2023-shatters-climate-records-major-impacts>

<sup>2</sup> <https://reliefweb.int/report/world/2023-review-climate-disasters-claimed-12000-lives-globally-2023>

<sup>3</sup> Christopher W. Callahan, Justin S. Mankin, Globally unequal effect of extreme heat on economic growth. *Sci. Adv.* 8, eadd3726(2022). DOI:10.1126/sciadv.add3726

<sup>4</sup> Operationalization of the new funding arrangements, including the fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4, FCCC/CP/2023/L.1–FCCC/PA/CMA/2023/L.1, 29 November 2023.

on Climate Change (IPCC) has stated with high confidence that “Existing vulnerabilities and inequalities intensify with adverse impacts of climate change. These impacts disproportionately affect marginalised groups, amplifying inequalities and undermining sustainable development across all regions. Due to their socioeconomic conditions and the broader development context, many poor communities, especially in regions with high levels of vulnerability and inequality, are less resilient to diverse climate impacts”<sup>5</sup>.

This can be clearly seen in the climate-induced displacement of indigenous populations and people working in rural areas, including farmers and fishing communities, which has led to their further marginalization and limitations to their participation in decision making, thereby violating their human rights. Addressing loss and damage therefore requires a comprehensive and rights-based approach to ensure that the most vulnerable populations, including women and children, are protected.

The elements of equity, solidarity and climate justice should be foremost when identifying the linkages between human rights and loss and damage, given that ambition on climate action is not limited to the implementation of commitments made by countries as part of their Nationally Determined Contributions (NDCs). Protecting and fulfilling human rights will require the implementation of new frameworks toward enabling a just and equitable transition in developing countries. This must include an integrated and holistic approach that takes into account the need for sustainable development, poverty eradication, the implementation of the right to development, ending hunger and ensuring food security. In addition, it should ensure that mechanisms to provide reparations and effective remedies are available to those people who suffer from losses and damages due to climate change.

Several resolutions adopted by the Human Rights Council (HRC) have identified the impacts of climate change on the full enjoyment of human rights, most recently in Resolution 53/6 adopted in July 2023<sup>6</sup>. International agreements on the promotion of human rights in the protection of the environment<sup>7</sup> have also been adopted in recent years. Yet, further efforts are necessary to clearly identify the links between the adverse impacts of loss and damage on human rights and to establish mechanisms which can address these issues.

#### Challenges from the Global South perspective

For developing countries, actions addressing ‘loss and damage’ need to be effective, appropriate, based on principles of justice, equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC). Such actions must also consider that the impacts of climate change are also linked to issues such as food insecurity, malnutrition, environmental degradation and increased human displacement and migration, thereby posing a threat to the fulfilment and realization of human rights globally<sup>8</sup>.

Particular emphasis has to be given to addressing the adverse impacts of climate exacerbated natural disasters in developing countries. Recent reports show that globally 1.84 billion people are drought stricken, and 85 percent of people affected by droughts live in low-or middle-income countries<sup>9</sup>. Adverse impacts are particularly amplified in conflict areas, leading to greater risks to human rights. For e.g. a report

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<sup>5</sup> Birkmann, J., E. Liwenga, R. Pandey, E. Boyd, R. Djalante, F. Gemenne, W. Leal Filho, P.F. Pinho, L. Stringer, and D. Wrathall, 2022: Poverty, Livelihoods and Sustainable Development. In: *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 1171–1274, doi:10.1017/9781009325844.010.

<sup>6</sup> Resolution 53/6 on Human rights and climate change, adopted by the Human Rights Council on 12 July 2023, A/HRC/RES/53/6.

<sup>7</sup> For e.g. the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

<sup>8</sup> See: FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2021*, p. 65

<sup>9</sup> International Drought Resilience Alliance and United Nations Convention to Combat Desertification, *Global Drought Snapshot 2023*.

[https://www.droughtglobal.org/\\_files/ugd/184219\\_4dcb7a4451514f2281981f604c3848cc.pdf?index=true](https://www.droughtglobal.org/_files/ugd/184219_4dcb7a4451514f2281981f604c3848cc.pdf?index=true)

has indicated that nearly 50 million people are “expected to go hungry in West and Central Africa next year due to a combination of conflict, climate change and high food prices”<sup>10</sup>.

Many developing countries do not have the financial resources necessary to address and recover from adverse climate impacts. For e.g. the 2022 floods in Pakistan led to flood damages and economic losses of over US\$ 30 billion, while reconstruction requires over US\$ 16 billion<sup>11</sup>. At the same time, the country needs “upwards of \$22 billion to service external debt, make interest payments, and finance its current account for FY24”<sup>12</sup>. This situation is even more difficult for impacted communities, which often face barriers in accessing justice to seek redress for any climate-related harms. Ongoing impacts of climate change including associated loss and damage will continue to constrain the financial ability of countries, especially low and middle-income countries, thereby limiting their ability to adapt and build resilience against climate disasters. The absence of adequate funding for adaptation and recovery efforts thus hinder the protection of human rights in the aftermath of climate-related events.

### Use of climate change-related strategic litigation

Several developing countries have sought to have the impacts of climate change on human rights, and the associated obligations of States, examined by international courts through the use of their advisory jurisdiction. For example, in a group of countries led by Vanuatu were instrumental in passing the UN General Assembly Resolution 77/276, requesting the International Court of Justice to provide an advisory opinion on the obligations of States in respect of climate change<sup>13</sup>. A request for an advisory opinion on the ‘Climate Emergency and Human Rights’ was also submitted to the Inter-American Court of Human Rights (IACtHR) by Colombia and Chile<sup>14</sup>; and also to the International Tribunal for the Law of the Sea (ITLOS) by the Commission of Small Island States on Climate Change and International Law<sup>15</sup>.

There have also been a number of claims filed in the domestic courts in developing countries which focus on the impacts of climate change and associated loss and damage on the human rights of children and future generations<sup>16</sup>. In the case of *Demanda Generaciones Futuras v. Minambiente*, the Supreme Court of Colombia recognized that “the protection of fundamental rights not only involves the individual, but implicates the “other” (...) this includes the unborn, who also deserve to enjoy the same environmental conditions that we have. The court then directed to set up an “intergenerational pact for the life of the Colombian Amazon,” to adopt measures (...) directed towards climate change adaptation”<sup>17</sup>. Similarly, in *Africa Climate Alliance et. al., v. Minister of Mineral Resources & Energy et. al.*, the petitioners have challenged the setting up of new coal-fired power plant, stating that they represent “a severe threat to the

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<sup>10</sup> Food insecurity and malnutrition reach new highs in West and Central Africa as funding to address acute needs dwindles, World Food Programme, 12 December 2023. <https://www.wfp.org/news/food-insecurity-and-malnutrition-reach-new-highs-west-and-central-africa-funding-address-acute>

<sup>11</sup> Pakistan: Flood Damages and Economic Losses Over USD 30 billion and Reconstruction Needs Over USD 16 billion - New Assessment, World Bank, Press Release, 28 October 2022. <https://www.worldbank.org/en/news/press-release/2022/10/28/pakistan-flood-damages-and-economic-losses-over-usd-30-billion-and-reconstruction-needs-over-usd-16-billion-new-assessme>

<sup>12</sup> Ariba Shahid, Why Pakistan badly needed the deal with the IMF, Reuters, 30 June 2023. <https://www.reuters.com/world/asia-pacific/why-pakistan-badly-needed-deal-with-imf-2023-06-30/>

<sup>13</sup> Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, Resolution adopted by the General Assembly on 29 March 2023, A/RES/77/276, 4 April 2023.

<sup>14</sup> Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023. [https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2023\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf). See also South Centre’s submission to the IACtHR here: <https://www.southcentre.int/sc-submission-to-iacthr-december-2023/>

<sup>15</sup> Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law. <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>

<sup>16</sup> United Nations Environment Programme (2023). Global Climate Litigation Report: 2023 Status Review. Nairobi.

<sup>17</sup> *Demanda Generaciones Futuras v. Minambiente*, 2018. <https://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>

constitutional rights of the people of South Africa, especially their environmental rights, the best interests of the child, the rights to life, dignity and equality, among others”<sup>18</sup>

However, some of the gaps also lie in the implementation of existing frameworks which could promote the protection and fulfilment of human rights in the face of climate change. For example., in the case of *Ridhima Pandey v. Union of India*<sup>19</sup>, the young petitioner sought for directives to the government to “take effective, science-based action to reduce and minimize the adverse impacts of climate change” through better implementation of the existing laws and policies addressing environmental protection and climate change<sup>20</sup>.

These actions clearly show the active role that national stakeholders are taking to address the global climate challenge. However, ensuring effective implementation and just transition requires urgent delivery of means of implementation (capacity-building, climate finance, and technology development and transfer) to developing countries to meet their climate change needs, limit loss and damage and protect human rights. Beyond the (still unfulfilled) pledges by developed countries to annually provide \$100 billion in climate finance to developing countries for mitigation and adaptation, sustained efforts are required to fill the new Loss and Damage fund and ensure that it meets the urgent needs of developing and least developed countries. At the same time, proposals are also being advanced to address loss and damage through the “the establishment of new compensation mechanisms at the international level, introducing private-actor responsibility in the form of mandatory levies or taxes that would feed into L&D funds”<sup>21</sup>.

### Recommendations

**Climate Finance:** The need for reliable, grant-based climate finance is critical for developing countries to address loss and damage. Greater efforts need to be made by developed countries, multilateral development banks and private investors to achieve this, while supporting the high priorities of developing countries to reduce poverty, hunger and food insecurity. Further financial resources need to be mobilized to support vulnerable communities in coping with and recovering from loss and damage. While \$700 million USD was pledged for the Loss and Damage Fund, it is still “only 0.2% of actual needs of \$400 billion USD” required by developing countries<sup>22</sup>.

**Technical Assistance:** Catalyzing increased technical assistance for averting, minimizing and addressing loss and damage in developing countries is critical for building resilience and protecting human rights. Further capacity building for stakeholders in developing countries is required in this regard. The ‘Santiago network’ for averting, minimizing and addressing loss and damage should be further strengthened with participation of actors and stakeholders from the Global South.

**Enhancing international cooperation:** Scaling up of climate action for loss and damage at the multilateral level, in particular for financing, transfer of technology and capacity-building to assist developing countries remains essential in averting, minimizing and addressing loss and damage. Further efforts are needed towards creating international enabling conditions that can support developing countries.

**Strengthen coordination among human rights mechanisms:** Capturing the synergies among the existing national, regional and international human rights mechanisms working on the impacts of climate change on human rights will be useful for ensuring the respect of human rights in climate actions across different

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<sup>18</sup> Africa Climate Alliance et. al., v. Minister of Mineral Resources & Energy et. al., Climate Change Litigation Database. <https://climatecasechart.com/non-us-case/africa-climate-alliance-et-al-v-minister-of-mineral-resources-energy-et-al-cancelcoal-case/>

<sup>19</sup> *Ridhima Pandey v. Union of India*, Original Application No. 187/2017, National Green Tribunal of India

<sup>20</sup> Meera Gopal, Children step up to force government action on climate change, The Third Pole, 17 April 2017. Available from <https://www.thethirdpole.net/en/climate/children-step-up-to-force-government-action-on-climate-change/>

<sup>21</sup> Venn, A. (2021). Legal Claims for Reparation of Loss and Damage. *Debating Climate Law*, 329–348. doi:10.1017/9781108879064.025

<sup>22</sup> Julie-Anne Richards and Tariq Jowahir, 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?, The Loss and Damage Collaboration, 11 December 2023. <https://www.lossanddamagecollaboration.org/pages/the-loss-and-damage-fund-and-pledges-at-cop28-shall-i-compare-thee-to-a-summers-day-or-to-the-annual-earnings-of-a-megastar-footballer>

levels. Any findings with respect to effects of climate change on human rights and regarding the operations of the loss and damage fund should be fully implemented.

**Integrating human rights-based approaches:** Any initiatives to address loss and damage must integrate human rights standards, and guard against risks of human rights violations or increase in poverty and inequality, within and across countries. Incorporating human rights considerations and sustainable development priorities would be particularly important in the operations of climate finance mechanisms, such as the loss and damage fund.

**Strengthening Resilience:** Further investment is needed in measures that can enhance the resilience in community to the adverse impacts of climate change. This can include the development of early warning systems, having social safety nets, building resilient infrastructure, and promoting sustainable livelihood practices which supports the full enjoyment of all human rights.