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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Right to development

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right to development, Surya Deva, in accordance with Human Rights Council resolution [51/7](#).

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\* [A/79/150](#).



## **Report of the Special Rapporteur on the right to development, Surya Deva**

### **Climate justice: loss and damage**

#### *Summary*

In the present report, submitted to the General Assembly pursuant to Human Rights Council resolutions [33/14](#) and [51/7](#), the Special Rapporteur on the right to development, Surya Deva, develops a climate justice framework comprising four pillars (mitigation, adaptation, remediation and transformation) and 12 overarching human rights principles. He proposes that climate change-related loss and damage, which undermines the right to development of individuals and communities, especially those living in developing countries, should be seen as part of the remediation pillar of the climate justice framework. The Special Rapporteur recommends a rainbow of measures that States, international financial institutions, multilateral development banks and businesses must take to address loss and damage. He also outlines several human rights principles that the World Bank, as an interim trustee of the Fund for Responding to Loss and Damage, and the Fund's Board should integrate into all aspects concerning the Fund's administration.

## I. Introduction

### A. Context

1. The present report is submitted to the General Assembly pursuant to Human Rights Council resolutions 33/14 and 51/7.

2. Climate change is a common concern of humanity because it “represents an existential threat and raises human rights concerns”.<sup>1</sup> It is affecting everyone, everywhere. The adverse impact is not limited to human beings: all living organisms and the entire natural ecosystem are being changed for the worse. Moreover, the impact of climate change is not experienced equally. Peoples as well as countries are affected differently and disproportionately.<sup>2</sup> Although only one tenth of the world’s greenhouse gases are emitted by the 74 lowest income countries, they will be the most affected by the effects of climate change.<sup>3</sup>

3. Climate change requires collective, coordinated and coherent actions on the part of multiple actors to mitigate, adapt and build resilience. These actions must be taken persistently by States and other actors responsible for the current situation in line with the principle of common but differentiated responsibilities and respective capabilities of the United Nations Framework Convention on Climate Change.

4. However, mitigation and adaptation strategies cannot prevent all climate-related loss and damage. One can see in this light the decision taken at the Conference of the Parties and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement to establish a Fund for Responding to Loss and Damage to assist developing countries that are particularly vulnerable to the adverse effects of climate change (decisions 2/CP.27 and 2/CMA.4). The Fund will be accountable to and function under the guidance of the Conference of the Parties and the Meeting of the Parties. The Fund was operationalized at the twenty-eighth Conference of the Parties (decisions 1/CP.28 and 5/CMA.5). Subsequently, the Fund’s Board, comprising 26 members, was elected. The Board, at its second meeting, held in July 2024, agreed on the formal name of the Fund (Fund for Responding to Loss and Damage) and accepted the proposal of the Philippines to host the Fund.<sup>4</sup>

5. In the present report, the Special Rapporteur analyses climate change-related loss and damage in the context of climate justice, because the countries and people that are the least responsible for climate change are the most affected by it. He examines the adverse impacts of loss and damage on realizing the right to development and articulates the nature of the obligations of developed countries, multilateral development banks and large corporations in assisting climate vulnerable countries. He also outlines how a human rights-based approach to administer the Fund should look.

### B. Objectives

6. The Special Rapporteur seeks to achieve four objectives. First, building on existing normative standards and literature, he proposes a climate justice framework

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<sup>1</sup> International Tribunal for the Law of the Sea, *Advisory Opinion*, in Case No. 31, 21 May 2024, para. 66.

<sup>2</sup> See Intergovernmental Panel on Climate Change, sixth synthesis report, *Climate Change 2023*; and Agenda 2063: The Africa We Want, para. 16. See also submission of Guyana; and Oxfam Australia, *Embedding Equality in the New Loss and Damage Fund: Lessons from the Pacific and Asia* (2023).

<sup>3</sup> See <https://www.weforum.org/agenda/2023/01/climate-crisis-poor-davos2023/>.

<sup>4</sup> See <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat>.

comprising four interrelated pillars: mitigation, adaptation, remediation and transformation. Decisions across these four pillars should be informed by 12 overarching human rights principles. The Special Rapporteur also argues that addressing climate change-related loss and damage should be seen as part of the remediation pillar of the climate justice framework.

7. Secondly, the Special Rapporteur highlights the importance of interpreting loss and damage in a holistic way to encompass both economic and non-economic dimensions. He also outlines diverse ways in which climate change-related loss and damage affects the realization of the right to development. Moreover, that impact is experienced by people (such as children, women and Indigenous Peoples) and countries (such as least developed countries and small island developing States) differently and disproportionately.

8. Thirdly, the Special Rapporteur articulates legal, historical and economic reasons for a duty of developed countries and large corporations to address loss and damage by taking a range of measures. In addition to providing financial assistance, they should facilitate the transfer of green technologies, build capacity, provide technical assistance and offer migration pathways to climate-induced migrants.

9. Fourthly, the Special Rapporteur provides guidance to the World Bank, as an interim trustee of the Fund, and the Fund's Board to integrate a human rights-based approach to administering the Fund. He does so by outlining several principles that must be embedded in all policies, processes and mechanisms of the Fund.

### **C. Methodology**

10. The present report draws on international standards concerning climate change and human rights, including the right to development, the relevant literature and the practice of States and other actors. The analysis in the report is also informed by insights gained from an extensive outreach to collect input from all stakeholders in an inclusive and transparent way.

11. In response to the Special Rapporteur's call for input from States and other stakeholders, over 90 submissions were received from States, United Nations organizations, businesses, civil society organizations, community groups, academics and other individuals.<sup>5</sup> The Special Rapporteur also conducted in-person consultations in Bangkok, Dubai (United Arab Emirates), Geneva and Suva and three virtual consultations with representatives of various non-State actors from all world regions. In addition, he had several bilateral conversations with representatives of States, other experts and a small group of children. The Special Rapporteur is grateful to all stakeholders for providing input in various forms.

### **D. Scope and limitations**

12. In his report, the Special Rapporteur focuses both on climate change-related loss and damage as a concept and the Fund for Responding to Loss and Damage in the context of climate justice. Loss and damage pose a significant challenge to realizing the right to development, especially in developing countries. The Special Rapporteur outlines a range of steps that developed countries and large corporations must take to assist, in line with their legal and historical obligations, climate vulnerable countries in realizing the right to development of their people. In addition, international

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<sup>5</sup> All submissions are available at <https://www.ohchr.org/en/calls-for-input/2024/call-input-2024-reports-special-rapporteur-right-development>.

financial institutions and multilateral development banks should take steps to alleviate debt stress of developing countries.

13. The Special Rapporteur outlines several human rights principles that the World Bank and the Fund's Board should consider in administering the Fund. Considering that the Fund is a work in progress and the Board is still developing various modalities and mechanisms to administer the Fund, the Special Rapporteur makes only broad recommendations regarding the Fund. Moreover, due to space constraints, he does not go into detail about the mitigation, adaptation and transformation pillars of the climate justice framework.

## II. Unpacking climate justice

14. The concept of climate justice entails justice in the context of climate change. While justice is a contested concept, there is a common understanding on certain core elements such as fairness, equality and responsibility.

15. The Organisation for Economic Co-operation and Development (OECD) identifies three key pillars of environmental justice to address distributional, procedural and recognitional inequities.<sup>6</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR) notes that climate justice requires that “climate action is consistent with existing human rights agreements, obligations, standards and principles”.<sup>7</sup> In a similar vein, the United Nations Development Programme sees climate justice in terms of putting equity and human rights at the core of decision-making and action on climate change”.<sup>8</sup>

16. The Special Rapporteur believes that climate justice, in essence, is about not harming one's neighbours through global warming and remedying the harm caused directly or indirectly in proportion to one's contributions.<sup>9</sup> A broad understanding of the concept of neighbours – not limited by time, space and distance or to human species – will be crucial. For climate justice, the concept of neighbours should include not merely human beings but also non-human species and nature generally. It should also capture future generations, that is, organisms that will exist on Earth in the future,<sup>10</sup> because past, present and future are intertwined for climate change purposes.

17. Climate justice should be able to respond to the “triple injustice” of climate change: (a) the most vulnerable to the negative impacts of climate change are those who bear little responsibility for causing it; (b) these groups are limited in their resources and capacity to cope with the effects of climate change; and (c) the costs of the green transition have a greater negative impact on such low-income and vulnerable groups.<sup>11</sup> Moreover, since climate change affects all human rights,

<sup>6</sup> OECD, *Environmental Justice: Context, Challenges and National Approaches* (Paris, 2024), chap. 2, p. 18.

<sup>7</sup> OHCHR, “Human rights and climate change: Key messages”, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMClimateChange.pdf>.

<sup>8</sup> See <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why#:~:text=Climate%20justice%20means%20putting%20equity,relation%20to%20the%20climate%20crisis>.

<sup>9</sup> Lord Atkin's neighbour principle articulated in United Kingdom of Great Britain and Northern Ireland, House of Lords, *Donoghue v. Stevenson*, Appeals Case No. 562 (1932) could be adapted in the context of climate change.

<sup>10</sup> See <https://unitingworld.org.au/wp-content/uploads/2024/07/TUAKOI-%E2%80%98LEI-DECLARATION.pdf>.

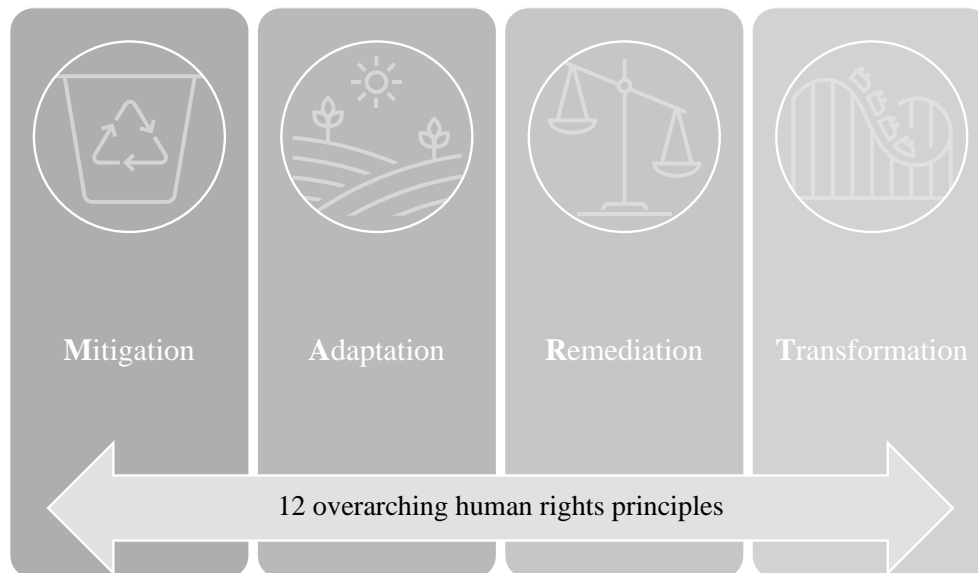
<sup>11</sup> See <https://en.unesco.org/inclusivepolicylab/learning/inequality-and-climate-change-how-untangle-injustice>.

international climate law must be interpreted and developed in future in line with international human rights law. Otherwise, climate actions will not be just.

## A. Four pillars

18. The Special Rapporteur recommends that all stakeholders should see climate justice in terms of four pillars: mitigation, adaptation, remediation and transformation. The four pillars, derived from international climate law and international human rights law, are interrelated. The more ambitious the world community is in terms of mitigation and adaptation, the less will be the loss and damage and the consequent need for remediation for affected individuals and communities. On the other hand, transformation in the current economic order, business models and lifestyles will complement the goals of the other three pillars. In addition, 12 overarching human rights principles should be embedded across the four pillars of climate justice (see figure I).

Figure I  
Four-pillar climate justice framework



### Mitigation

19. Mitigation entails reducing the causes of climate change by decreasing greenhouse gas emissions into the atmosphere and/or removing such gases from the atmosphere, including through carbon sinks.<sup>12</sup> Mitigation strategies include phasing out fossil fuels, ending fossil fuel expansion, enhancing energy efficiency, reducing food waste, transiting towards sustainable food systems, conserving and restoring nature and building new carbon-neutral houses.<sup>13</sup>

20. Mitigation should remain an important constant imperative for climate justice because some climate change-related impacts are irreversible or irremediable. Phasing out of fossil fuels, in line with the just transition principle elaborated below, must be a priority. This will require addressing both the supply side (phasing out the

<sup>12</sup> See <https://unfccc.int/topics/introduction-to-mitigation>.

<sup>13</sup> A/HRC/56/46 (forthcoming), paras. 7–14.

production of fossil fuels) and the demand side (promoting energy efficiency and incentivizing use of renewable energy).<sup>14</sup>

21. The International Energy Agency estimates that the world now invests almost twice as much in clean energy as it does in fossil fuels.<sup>15</sup> This is encouraging, but the concern remains that many of the least developed economies are being left behind in such progress towards renewable energy, including due to their high levels of debt.<sup>16</sup> Moreover, upstream oil and gas investment is expected to increase by 7 per cent in 2024 to reach \$570 billion, mostly due to Middle East and Asian national oil companies increasing their investments in oil and gas by over 50 per cent since 2017.<sup>17</sup>

### **Adaptation**

22. Adaptation entails making changes in processes, practices and structures to reduce potential damages linked with climate change.<sup>18</sup> Such changes could take the form of planting trees, building sea walls, relocating to higher ground, setting up early warning systems for cyclones, switching to drought-resistant crops and building climate-resilient shelters and infrastructure. Adaptation also requires building resilience.

23. In line with article 7 of the Paris Agreement, adaptation strategies should be gender-responsive, participatory and fully transparent. They should be based on and guided by the best available science, as well as Indigenous and local community knowledge. International cooperation is critical for adaptation, including to meet the needs of developing countries. Over the years, States have taken several measures, with a varying degree of success, to strengthen the adaptation response.

24. In 2001, an Adaptation Fund was established to finance adaptation projects and programmes in developing countries that are particularly vulnerable to the adverse effects of climate change. In 2010, the Cancun Adaptation Framework established national adaptation plans to formulate and implement medium- and long-term adaptation needs and develop and implement strategies and programmes to address those needs.<sup>19</sup> At its sixteenth session, the Conference of the Parties to the United Nations Framework Convention on Climate Change established an Adaptation Committee to promote the implementation of stronger adaptation action by providing technical support and guidance to countries. At the twenty-sixth session of the Conference, countries adopted the Glasgow Climate Pact, which calls for a doubling of finance to support developing countries' adaptation needs and recognizes nature-based solutions as a critical way of restoring nature and ecosystems.

### **Remediation**

25. Current mitigation and adaptation policies and actions are clearly insufficient.<sup>20</sup> Moreover, with "increasing warming, adaptation options will become more constrained and less effective".<sup>21</sup> Hence, remediation will increasingly become critical for climate justice.

<sup>14</sup> Amnesty International, *Stop Burning Our Rights! What Governments and Corporations Must Do to Protect Humanity from the Climate Crisis* (2021), p. 11.

<sup>15</sup> See <https://iea.blob.core.windows.net/assets/60fcd1dd-d112-469b-87de-20d39227df3d/WorldEnergyInvestment2024.pdf>.

<sup>16</sup> *Ibid.*, p. 8.

<sup>17</sup> *Ibid.*, p. 12.

<sup>18</sup> See <https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/introduction>.

<sup>19</sup> See <https://unfccc.int/topics/adaptation-and-resilience/workstreams/national-adaptation-plans>.

<sup>20</sup> See Intergovernmental Panel on Climate Change, sixth synthesis report, p. 57.

<sup>21</sup> *Ibid.*, p. 78.

26. Remediation is often not treated as an integral component of the climate change discussion. When harms to climate change-related human rights occur, all those affected must have access to effective remedies in line with international human rights law.<sup>22</sup> The right to an effective remedy or effective access to justice has both procedural and substantive elements: both the process and the outcome should be effective.<sup>23</sup> Considering that the majority of climate change is anthropogenic in nature,<sup>24</sup> the people most responsible for this change have a duty to remediate adverse impacts on the human rights of those who have historically contributed the least. In practical terms, that would mean a remediation obligation of States, businesses and investors that have caused or contributed to climate change over the years or failed to take adequate preventive measures.

27. Remediation in the context of climate change should be interpreted in the sense of full reparation, comprising restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>25</sup> The affected individuals and communities should be able to seek remedies for past, current and future climate change-related loss and damage. Moreover, remediation should be available for both the impacts of climate change on human rights and for adverse human rights impacts of climate finance projects concerning mitigation or adaptation. The Independent Redress Mechanism of the Green Climate Fund, for example, provides recourse to those affected or who may be affected by projects or programmes of the Climate Fund.<sup>26</sup>

28. Preventive remedies such as injunctions against projects that would cause or contribute to excessive greenhouse gas emissions will be especially relevant to prevent climate change-related loss and damage. Recognizing an international crime of ecocide will also deter corporations from indulging in wanton damage to the environment. Moreover, the protection of climate defenders, including young climate activists, will also be vital because they not only conduct advocacy but also often act as remedy enablers.

29. Considering that climate justice poses unique problems in relation to remedy challenges, such as those related to causation, attribution of responsibility, burden of proof and legal standing to bring an action, innovative remedies should be developed. For example, collective remedies such as setting up a joint climate remediation fund by companies at the national, regional and global levels to compensate affected communities may be desirable. Courts may also order the establishment of “intergenerational committees, in which children are active participants, to determine and oversee the expeditious implementation of measures to mitigate and adapt to the impacts of climate change”.<sup>27</sup>

### **Transformation**

30. Transformation is needed in the current economic order, including the international financial architecture, business models and lifestyles, because they are merely promoting cumulative economic growth, creating inequalities both within and among countries and destroying the planet.<sup>28</sup> These transformations cannot be achieved through current mitigation and adaptation strategies operating within a neo-liberal, neo-colonial capitalist economy. A transformative shift is required, as

<sup>22</sup> See <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>, p. 5; and submission of Centre for International Environmental Law.

<sup>23</sup> A/72/162, paras. 14–15.

<sup>24</sup> Intergovernmental Panel on Climate Change, sixth synthesis report, p. 42.

<sup>25</sup> A/72/162, para. 42; and Committee on the Rights of the Child, general comment No. 26 (2023), para. 89.

<sup>26</sup> See <https://irm.greenclimate.fund/>.

<sup>27</sup> Committee on the Rights of the Child, general comment No. 26 (2023), para. 89.

<sup>28</sup> A/78/160, para. 90.



reflected in the Bridgetown Initiative<sup>29</sup> and the call for a human rights economy.<sup>30</sup> As part of this shift, the Special Rapporteur has suggested that the world needs to move towards a model of planet-centred participatory development.<sup>31</sup> This will ensure that development is both inclusive and sustainable. Otherwise, “climate change could result in an additional 100 million people living in extreme poverty by 2030”,<sup>32</sup> because poor people are more vulnerable to spikes in food prices, natural disasters and climate change-related health issues.<sup>33</sup> The reform of the current international financial architecture has to be part of such a transformation<sup>34</sup> because it continues the colonized legacy of hegemonic dominance and systemically discriminates against developing countries and their peoples’ right to development.<sup>35</sup>

31. A fundamental shift is also needed in how businesses operate in society by reorienting the purpose of business, changing irresponsible business models and going beyond the “do no harm” approach.<sup>36</sup> Most of the current business models are rooted in exploiting the vulnerabilities of consumers, workers and suppliers, disregarding planetary boundaries, externalizing risks for the poor, exporting hazardous substances to developing countries and capturing regulators, policymakers and the media. Alternative businesses models for inclusive and sustainable development would need to be built, including by changing the legal architecture that facilitates irresponsible or unsustainable business practices.

32. Moreover, a shift is required in current lifestyles, especially of rich people. For instance, in 2019 the super-rich 1 per cent were responsible for 16 per cent of global carbon emissions, which is the same as the emissions of the poorest 66 per cent of humanity (about 5 billion people).<sup>37</sup> Curbing consumerism,<sup>38</sup> stopping food waste,<sup>39</sup> putting limits on luxurious activities such as use of private jets and massive mansions,<sup>40</sup> promoting eating of locally grown seasonal fruits and vegetables<sup>41</sup> and constructing new carbon-neutral houses with use of renewable materials is the need of the hour.<sup>42</sup> In other words, adopting sustainable consumption patterns will go a long way towards taming the climate emergency.<sup>43</sup> The same could be said about moving towards a circular economy.

## B. 12 overarching principles

33. All four pillars of climate justice articulated above should be informed by the following 12 overarching principles rooted in international human rights law:

<sup>29</sup> See <https://www.bridgetown-initiative.org/history/>.

<sup>30</sup> See <https://www.ohchr.org/en/stories/2023/04/building-economics-place-peoples-human-rights-center>.

<sup>31</sup> See A/HRC/54/27.

<sup>32</sup> World Bank Group, *Shock Waves: Managing the Impacts of Climate Change on Poverty* (2016), p. 2.

<sup>33</sup> See <https://www.imf.org/en/Publications/fandd/issues/2021/09/climate-change-and-inequality-guivarch-mejean-taconet>.

<sup>34</sup> Submission of Argentina.

<sup>35</sup> United Nations, “Our Common Agenda policy brief 6: reforms to the international financial architecture”, May 2023.

<sup>36</sup> A/78/160, paras. 68–80.

<sup>37</sup> Oxfam, *Climate Equality: A Planet for the 99%* (2023).

<sup>38</sup> A/HRC/56/61, para. 11.

<sup>39</sup> See A/74/161.

<sup>40</sup> A/HRC/55/43, para. 3.

<sup>41</sup> See <https://theconversation.com/the-worlds-affluent-must-start-eating-local-food-to-tackle-the-climate-crisis-new-research-shows-185410>.

<sup>42</sup> See A/HRC/52/28.

<sup>43</sup> See <https://www.un.org/en/actnow/ten-actions>.

(a) **Multi-species justice.** Climate change-related loss and damage affects not merely human beings, but also biodiversity and the entire natural ecosystem. The rights of non-humans and of nature should be taken seriously,<sup>44</sup> including because the survival of humans and non-human entities is intertwined.<sup>45</sup> In the 2050 Strategy for the Blue Pacific Continent it is acknowledged that “all Pacific peoples have an undeniable connection to their natural environment”.<sup>46</sup> Therefore, the multi-species justice approach should be adopted to deal with climate change as well as to respond to loss and damage;

(b) **Intergenerational equity.** Intergenerational equity is one of the overarching principles of the right to development, as well as of sustainable development.<sup>47</sup> As climate change will affect future generations, present generations should factor in how climate change will affect their human rights or their capabilities to realize those rights. Moreover, the concept of future generations should not be confined to human beings: rather, the impact of climate change on all organisms as part of an ecosystem approach should be considered;

(c) **Non-discrimination.** States must ensure that existing multilayered inequalities are not exacerbated by climate change.<sup>48</sup> People living in vulnerable areas (e.g. small islands, low-lying coastal zones) or in marginalized or vulnerable situations should not be left behind in building adaptive capacities.<sup>49</sup> Nor should such people be unable to seek remediation due to additional barriers;

(d) **Participation.** Individuals and communities should be able to participate in all climate action decisions.<sup>50</sup> The participation should be active, free and meaningful. Such a participation requires access to reliable and accessible information as well as adequate civic space and no intimidation of environmental human rights defenders. The participation of children, youth, women, peasants and Indigenous Peoples, who are a source of innovative solutions and a repository of traditional knowledge, as agents of change should be especially ensured. Participation processes should embed an intersectional approach and pay special attention to ensure the representation of marginalized or vulnerable individuals and communities. Moreover, as climate change-related loss and damage will also affect non-human beings and future generations, their representatives should also be able to participate in decision-making processes and mechanisms;

(e) **Intersectionality.** There is evidence to indicate that children, women, LGBTIQ people, ethnic, racial or religious minorities, Indigenous Peoples, persons with a disability, migrants, older persons, rural populations, peasants, refugees and stateless people will be affected differently or disproportionately by climate change.<sup>51</sup> Moreover, marginalized individuals and communities such as Dalits, Roma, Haratine, Burakumin and Quilombolas, who continue to experience discrimination based on

<sup>44</sup> See Daniel P. Corrigan and Markku Oksanen, eds., *Rights of Nature: A Re-examination* (Routledge, 2021).

<sup>45</sup> Submission of Rosemary Lyster, Danielle Celermajer, Ed Couzens and Phillipa McCormack.

<sup>46</sup> See <https://forumsec.org/sites/default/files/2023-11/PIFS-2050-Strategy-Blue-Pacific-Continent-WEB-5Aug2022-1.pdf>.

<sup>47</sup> A/HRC/54/27, para. 13.

<sup>48</sup> United Nations Entity for Gender Equality and Empowerment of Women (UN-Women), “Explainer: How gender inequality and climate change are interconnected”, 28 February 2022, available at <https://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected>.

<sup>49</sup> OHCHR, “Key messages”.

<sup>50</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; and Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

<sup>51</sup> See Intergovernmental Panel on Climate Change, sixth synthesis report, p. 51; and submissions of Loss and Damage Collaboration and Indigenous Environmental Network.

work and their descent in different world regions, will be worse off due to climate change and might not be able to access adaptation funds.<sup>52</sup> Nomadic herders will experience devastating losses to their livestock due to climate change, while fishing communities in low-lying island countries might need to relocate and might lose their livelihoods due to the rise of sea levels.<sup>53</sup> Indigenous Peoples' right to self-determination will also be at peril due to loss and damage. Since climate change is affecting people differently and disproportionately, an intersectional approach must be adopted;

(f) **Prevention.** Prevention of environmental harm is a customary principle of international environmental law. Preventing further climate change-related loss and damage should continue to be a key priority, rather than continuing the current model of destructive development under the assumption that loss and damage could be remediated. In any case, certain impacts such as extinction of species and loss of cultural heritage linked to land erosion or submersion are irreversible and irremediable. Prevention will require, among other things, effective impact assessment or due diligence on the part of States. In addition, States must also require businesses to conduct due diligence to identify and prevent adverse impacts of climate change. While the due diligence obligation is often seen in terms of an obligation of conduct, the standard is stringent considering the irreversible and serious nature of the harm and it should be able to achieve the result of preventing climate change-related loss and damage;<sup>54</sup>

(g) **Precaution.** In line with the United Nations Framework Convention on Climate Change and the Paris Agreement, "the best available scientific knowledge" should guide States' response to climate change. At the same time, lack of scientific certainty should not be used to delay action and the precautionary principle must be adopted in relation to climate change. For example, if the world does not know enough about how deep-sea mining might affect marine life and the entire ocean ecosystem generally, the precautionary principle should be applied in granting exploration licences. The same could be said about unproven carbon mitigation, capture and storage technologies;

(h) **Polluter pays.** As acknowledged in principle 16 of the Rio Declaration on Environment and Development, the polluter should, in principle, bear the cost of pollution. States and businesses that caused or contributed the most to climate change must pay in proportion to their contributions. The Carbon Majors database, which traces cumulative historical emissions of 122 industrial producers from 1854 to 2022, reveals that over 70 per cent of global CO<sub>2</sub> emissions historically can be attributed to just 78 corporate and State producing entities;<sup>55</sup>

(i) **Common but differentiated responsibilities.** While all States must act decisively with the highest possible ambition and within maximum available resources, their responses, in order to be just, have to accommodate differences in respective contributions and capabilities. This principle has been enshrined in the Rio Declaration as well as the United Nations Framework Convention on Climate Change and the Paris Agreement. On a per capita basis, emissions are about 20 metric tons of CO<sub>2</sub>-equivalent a person a year in the United States – approximately double the amount per person in the European Union or in China, and almost 10 times the amount in India.<sup>56</sup> Responsibilities should be proportional to contributions. Similarly, if

<sup>52</sup> Submission of Global Forum of Communities Discriminated on Work and Descent.

<sup>53</sup> Submission of FIAN Honduras.

<sup>54</sup> International Tribunal for the Law of the Sea, *Advisory Opinion*, Case No. 31.

<sup>55</sup> See <https://carbonmajors.org/briefing/The-Carbon-Majors-Database-26913>.

<sup>56</sup> See <https://www.imf.org/en/Publications/fandd/issues/2021/09/climate-change-and-inequality-guivarch-mejean-taconet>.

colonization and other factors have undermined the financial or technological capabilities of certain States, that should be taken into consideration;

(j) **Just transitions.** The much-needed transitions concerning energy, food and infrastructure should be just, fair and equitable so as not to leave behind marginalized or vulnerable groups of people. For example, there is evidence that the push for renewable energy could be irresponsible,<sup>57</sup> because a quest for critical minerals might displace Indigenous Peoples without free, prior and informed consent,<sup>58</sup> force children trapped in poverty to work in hazardous mining operations or leave other mining workers without any jobs. Similarly, the phasing out of fossil fuels should be complemented with access to affordable renewable means of energy for poor people;

(k) **Transparency.** Greenwashing and corporate capture of regulators pose serious challenge to effective climate action.<sup>59</sup> The 2024 Social Benchmark, which assesses the world's 2,000 most influential companies on their responsibility to meet society's fundamental expectations towards respecting human rights, providing decent work and acting ethically, reveals that only 11 per cent of these companies have established a policy that publicly sets out their lobbying and political engagement approach and a mere 5 per cent of them disclose data on their lobbying expenditures.<sup>60</sup> While many large companies continue to make a commitment to respect human rights, some of these, including fossil fuel companies, have used strategic lawsuits against public participation to silence their critics.<sup>61</sup> Carbon credit markets pose another risk by a creating a false sense of reductions in greenhouse gas emissions or inaccurately describing the positive reduction;<sup>62</sup>

(l) **International cooperation and solidarity.** Effective climate action requires collective action on the part of States in line with the principle of international cooperation and solidarity. The Charter of the United Nations (Arts. 1, 55 and 56), the Declaration on the Right to Development (arts. 3–4) and various other international instruments underscore the importance of cooperation among States. Climate change-related loss and damage will affect disproportionately least developed countries, lower-middle income countries and small island developing States. However, because of an interconnected world and the transboundary nature of climate change, such impacts would have consequences for developed countries in the form of social conflicts and forced migration. International cooperation is therefore not merely an option but a compulsion to deal with climate change. Such cooperation entails sharing good practices, building capacity, providing technical assistance, sharing green technologies, offering financial aid, providing early warning about extreme weather events and negotiating in good faith.

### C. Relation with loss and damage

34. Loss and damage have been long recognized as an essential component of climate action under various international instruments or agreements, such as the

<sup>57</sup> See <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>.

<sup>58</sup> Submission of Indigenous Environmental Network.

<sup>59</sup> Julia Dehm, "Beyond climate due diligence: fossil fuels, 'red lines' and reparations", *Business and Human Rights Journal*, vol. 8, No. 2 (2023), p. 151; see also <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>.

<sup>60</sup> See <https://www.worldbenchmarkingalliance.org/publication/social/findings/opaque-lobbying-by-companies-with-revenue-of-almost-half-of-global-gdp-risks-undermining-progress-on-the-sdgs/>.

<sup>61</sup> A/HRC/55/43, para. 30.

<sup>62</sup> Submission of Indigenous Environmental Network.

Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, the Paris Agreement, the Bali Action Plan and the Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change.

35. For various reasons, however, the discussion about loss and damage has not been framed in terms of remediation and accountability. In fact, developed countries were able to include in the decision adopting the Paris Agreement that “article 8 of the Agreement does not involve or provide a basis for any liability or compensation”.<sup>63</sup> The same language has been carried forward in decisions establishing the Fund at the twenty-seventh session of the Conference of the Parties and operationalizing it at the twenty-eighth session. However, even if it is assumed that there is no hierarchy between different branches of international law, international human rights law should enjoy a *primus inter pares* status over other branches of international law.<sup>64</sup> For this and other reasons,<sup>65</sup> these declarations under international climate law cannot exclude or override the obligations of States under international human rights law to provide remediation for climate change-related harm to human rights.<sup>66</sup>

36. The Special Rapporteur recommends that this politically inconvenient shift must take place. Climate change has clear consequences for the realization of all human rights. It is a well-established principle of international human rights law that effective remedies must be available for violations of human rights by States or other actors. In fact, access to remedy and justice is also a fundamental human right.<sup>67</sup> We should therefore see the response to loss and damage as part of the remediation pillar of climate justice.

### III. Loss and damage and its effect on the right to development

#### A. Defining loss and damage

37. Loss and damage refer to negative impacts of climate change that occur despite adaptation and mitigation efforts.<sup>68</sup> There are different ways to categorize loss and damage: direct and indirect loss and damage; and avoided, unavoided and unavoidable loss and damage.<sup>69</sup> Another distinction is made on the basis of whether loss and damage is economic or non-economic. Non-economic loss and damage are defined as the loss of resources, goods and services that are not commonly traded in

<sup>63</sup> Decision of the Conference of the Parties 1/CP.21, para. 52.

<sup>64</sup> Surya Deva and Tara Van Ho, “Addressing (in)equality in redress: human rights-led reform of the investor-State dispute settlement mechanism”, *The Journal of World Investment & Trade*, vol. 24, No. 3 (2023), p. 398.

<sup>65</sup> The International Tribunal for the Law of the Sea recently held that the Paris Agreement is not *lex specialis* to the Convention on the Law of the Sea and preferred to adopt a harmonious interpretation between the two conventions. International Tribunal for the Law of the Sea, *Advisory Opinion*, Case No. 31, para. 224.

<sup>66</sup> Submission of Center for International Environmental Law.

<sup>67</sup> Universal Declaration of Human Rights (art. 8), International Covenant on Civil and Political Rights (art. 2) and Convention on the Rights of Persons with Disabilities (art. 13). See also the 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.

<sup>68</sup> A/76/154, para. 45.

<sup>69</sup> United Nations Environment Programme (UNEP), “Loss and damage: the role of ecosystem services” (2016), available at <https://www.unep.org/resources/report/loss-and-damage-role-ecosystem-services#:~:text=This%20report%20tries%20to%20advance,for%20societal%20losses%20and%20damages,pp.2-4>.

markets.<sup>70</sup> Examples of non-economic loss and damage include loss of life, loss or damage to biodiversity and habitats, forced displacement, psychological trauma, loss of ancestral land, cultural heritage and Indigenous or local knowledge, and loss of livelihoods.<sup>71</sup>

38. We should not see economic and non-economic loss and damage as two watertight compartments because even economic loss and damage might have non-economic consequences and vice versa.<sup>72</sup> For instance, extreme heat and water shortages may trigger forced migration,<sup>73</sup> and loss of homes is also likely to have mental effects. Alternatively, a climate change-related impact could have both economic and non-economic dimensions. Climate-induced migration is a case in point. The definition of loss and damage should therefore capture all economic and non-economic dimensions of climate change-related loss and damage.

39. It is often difficult to quantify non-economic loss and damage. Yet, transparent and standardized methodologies should be developed to quantify non-economic loss and damage, especially because non-quantification may result in taking such loss and damage less seriously. At the same time, remedying non-economic loss and damage may require adopting a restorative justice approach with apologies playing an important role.<sup>74</sup>

## B. Effect on the realization of the right to development

40. Climate change affects the realization of all civil, political, economic, social and cultural human rights.<sup>75</sup> The right to development is no exception. Climate change-related extreme weather events, natural disasters, rising sea levels, floods, heat waves, droughts, desertification and the spread of vector-borne diseases will affect all four facets of the right to development: economic, social, cultural and political.<sup>76</sup> Climate-induced mobility will also affect the cultural facet of the right to development, including of Indigenous Peoples. It is also difficult to obtain affordable insurance coverage for climate change-induced natural disasters, thus making it harder for a developing country to rebuild, recover and continue on its development path.<sup>77</sup> Climate change-induced natural disasters and sea level rise will affect the right to self-determination of peoples living in low-lying island States as well as Indigenous Peoples generally by threatening the territorial integrity and loss of traditional territories, cultural practices and sources of livelihoods.<sup>78</sup>

41. Climate change-related loss and damage has both direct and indirect impacts on the realization of the right to development.<sup>79</sup> The Special Rapporteur suggests the

<sup>70</sup> FCCC/TP/2013/2, p. 12.

<sup>71</sup> United Nations Conference on Trade and Development (UNCTAD), *Taking Responsibility: Towards a Fit-for-purpose Loss and Damage Fund* (2023), p. 1.

<sup>72</sup> See <https://www.sei.org/publications/operationalizing-the-loss-and-damage-fund/>.

<sup>73</sup> Submission of Saudi Arabia.

<sup>74</sup> Submission of Caritas Internationalis.

<sup>75</sup> See A/HRC/57/30 (forthcoming) and A/77/226; Amnesty International, *Stop Burning Our Rights*; submissions of Amnesty International and the Center for International Environmental Law; and amicus brief submitted by the United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, the Special Rapporteur on human rights and the environment and the Special Rapporteur on the right to development to the Inter-American Court of Human Rights, November 2023, available at <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/amicus-curiae/iacthr-advisory-opinion-amicus-curiae-boyd-orellana-deva-en.pdf>.

<sup>76</sup> A/76/154, para. 7; and submissions of Chile and Asia-Pacific Youth Advisory Group.

<sup>77</sup> Submission of the Bahamas.

<sup>78</sup> Amnesty International, *Stop Burning Our Rights*, p. 44.

<sup>79</sup> Submission of Loss and Damage Collaboration.

following non-exhaustive typology of impacts on the right to development: (a) cutting pathways to economic, social, cultural and political development such as loss of schools, houses, livelihoods or cultures; (b) diversion of resources affecting access to basic needs such as food, education and health facilities; (c) inability to adapt and build resilience due to limited financial or technological capabilities; (d) climate finance for mitigation and adaptation due to worsening debt burdens, which in turn trigger austerity measures or diversion of resources meant for realizing human rights; and (e) climate-induced forced displacement exacerbating various vulnerabilities.

42. It is worth noting that the realization of the right to development of people in the global South will be disproportionately affected by loss and damage, although their net anthropogenic greenhouse gas emission per capita is the lowest in the world (such as those living in Africa, Southern Asia, South-East Asia and the Pacific).<sup>80</sup> For example, it is estimated that about 64 million people in Asia will be exposed to sea level rise by 2040, many more than in any other world region.<sup>81</sup> In addition, people in the global South may also struggle to adapt or hold accountable companies responsible for climate change.

### C. Capturing differentiated and disproportionate impacts

43. Climate change does not affect countries or people equally.<sup>82</sup> The frequency and intensity of hurricanes in the Caribbean region have increased due to climate change, while the rising seawater temperatures are severely affecting small fishing businesses.<sup>83</sup> It is paradoxical that States (least developed countries and small island developing States) that have contributed the least to climate change are the most exposed to its impacts.<sup>84</sup> Least developed countries and small island developing States are discriminated against by market forces and face higher borrowing costs. They are also less capable of adapting to climate change-related loss and damage due to limited financial or technological capacity. Moreover, it is unclear whether they could reap the benefits of the creation of new jobs or economic opportunities due to a transition to a zero-carbon economy.<sup>85</sup>

44. In addition, climate change affects people differently and disproportionately.<sup>86</sup> Children are a case in point: climate-related loss and damage has exacerbated child poverty and restricted children's developmental opportunities by undermining access to nutrition and education.<sup>87</sup> Climate change affects women's reproductive health rights, increases their burden of performing household chores and caring responsibilities and exposes them to child marriage or human trafficking. Moreover, disaster risk reduction and humanitarian aid policies may discriminate against LGBTIQ individuals.<sup>88</sup> Older persons and persons with a disability will similarly suffer more from climate change, for example the health impacts of extreme weather events. Moreover, Indigenous Peoples are not only risking a disconnection from their cultural heritage due to loss of land from rising sea levels but are also facing forced

<sup>80</sup> Intergovernmental Panel on Climate Change, sixth synthesis report, p. 9.

<sup>81</sup> *Ibid.*, p. 65.

<sup>82</sup> A/76/154, paras. 8–10. See also Oxfam, *Climate Equality*; and submission of Loss and Damage Collaboration.

<sup>83</sup> Submission of the Bahamas.

<sup>84</sup> Least developed countries and small island developing States have much lower per capita emissions (1.7 tCO<sub>2</sub>-eq and 4.6 tCO<sub>2</sub>-eq, respectively) than the global average (6.9 tCO<sub>2</sub>-eq) (Intergovernmental Panel on Climate Change, sixth synthesis report, p. 44).

<sup>85</sup> Submission of Pradeep Narayanan.

<sup>86</sup> Submissions of Colombia, Mozambique, Just Associates and Roots & Shoots.

<sup>87</sup> Submissions of Save the Children and Loss and Damage Collaboration.

<sup>88</sup> Submissions of Noboprobhaat Foundation and International Lesbian and Gay Association, Asia.

dislocation for carbon credit projects or extraction of critical minerals needed for renewable energy.<sup>89</sup>

45. If these children, women, older persons, peasants, migrants, persons with a disability and Indigenous Peoples live in developing countries, they will experience “dual disproportionality” of climate change: one for being who they are and a second due to the countries in which they live.

## IV. Obligations of various actors and the nature of their responses

### A. Basis of obligations

46. There are moral, legal, historical and economic reasons why developed countries and large corporations have a duty to prevent, mitigate and remediate climate change-related loss and damage.<sup>90</sup> In addition to refraining from causing or contributing to climate change-related human rights violations, all States have a duty under international human rights law to protect people from climate change-related harms by taking multiple measures both individually and collectively.<sup>91</sup> Such a duty will include regulating corporate behaviour effectively. These State obligations also have an extraterritorial dimension, which is especially relevant in the context of the transboundary nature of climate change-related loss and damage.

47. International climate law is also instructive. In line with the principle of common but differentiated responsibilities and respective capabilities set out in the United Nations Framework Convention on Climate Change, developed countries agreed to provide financial resources to assist developing countries in implementing the objectives of the Convention. A purposive interpretation of articles 8 and 9 of the Paris Agreement will support the position that developed countries have a heightened obligation to avert, minimize and address climate change-related loss and damage. Article 9 (3) provides that developed countries should continue to take the lead in mobilizing climate finance, taking into account the needs and priorities of developing countries, which has to include loss and damage.

48. Moreover, the polluter pays principle applies in the context of climate change-related loss and damage too. States and corporations that contributed to climate change-related loss and damage must pay for their role.<sup>92</sup> If the responsibility for emissions under colonial rule is added to former colonial powers, that would further increase the historic responsibility of developed countries as major polluters.<sup>93</sup>

49. The principle of unjust enrichment can provide another basis. Joshua Castellino makes a case for the liability of former colonial powers as well as their corporate hands for historical actions perpetrating climate change, including loss and damage, resulting from the wanton destruction of finite resources.<sup>94</sup> Addressing such unjust enrichment in a systemic way will also require a reform of the current international financial and economic architecture, which embodies the colonial character.

<sup>89</sup> Submission of Loss and Damage Collaboration.

<sup>90</sup> Submissions of Christian Aid Ireland and Indigenous Environmental Network.

<sup>91</sup> Amicus brief of Special Rapporteurs to the Inter-American Court of Human Rights.

<sup>92</sup> Oxfam, *Climate Equality*, pp. xii–xvii.

<sup>93</sup> See <https://www.carbonbrief.org/revealed-how-colonial-rule-radically-shifts-historical-responsibility-for-climate-change/>.

<sup>94</sup> Joshua Castellino, *Calibrating Colonial Crime: Reparations and the Crime of Unjust Enrichment* (Bristol, Bristol University Press, 2024).



50. There is also an economic reason why developed countries and large corporations should act to remediate climate change-related loss and damage. Extreme weather patterns or events will not leave unscathed developed countries due to the transboundary effects of climate change.<sup>95</sup> Moreover, climate change-induced natural disasters are likely to trigger conflicts and forced migration, which will ultimately affect developed countries and the existence of a stable environment for doing business. Similarly, if the current levels of greenhouse gas emissions continue, it might become unviable for businesses to operate in certain climate vulnerable countries.

## **B. Role of States and other actors**

51. Developed countries must show leadership in responding to climate change-related loss and damage. The United Nations Framework Convention on Climate Change is grounded in the need for equity between the global North and the global South. Article 3 of the Convention calls upon State parties to address climate change “on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities”. In addition, article 4 provides for technology transfer from developed to developing countries.

52. Developed countries and other actors should make financial contributions to the Fund in line with the overarching principles of climate justice articulated above.<sup>96</sup> Affected local communities should be in the driver’s seat in identifying their needs and devising projects to deal with climate change-related loss and damage. Developed countries should also contribute to the strengthening of universal social protection systems in developing countries, which could be utilized to deal with climate change-related loss and damage.<sup>97</sup>

53. Multilateral development banks committed in 2018 to align financial flows with the objectives of the Paris Agreement.<sup>98</sup> In line with this commitment, these banks should prioritize support for climate-resilient projects and accelerate climate finance. They should also stop funding new fossil fuel projects and phase out, in line with the just transition principle, their current investment in such projects. It is therefore a concern that the World Bank continues to fund fossil fuel projects.<sup>99</sup> Moreover, international financial institutions should change their governance structures, policies and practices that contribute to debt traps for developing countries.

54. Climate finance provided to developing countries by developed countries or multilateral development banks should mostly be in the form of grants and concessional long-term loans. This type of financing avoids negative impacts on human rights, for example caused by developing countries resorting to austerity measures. It also reduces the cost of borrowing and the risk of debt distress, making it a vital tool for supporting sustainable development in climate vulnerable countries.<sup>100</sup> Moreover, as 93 per cent of the countries that are the most vulnerable to climate impacts are also in debt distress or at significant risk thereof,<sup>101</sup> debt waivers should be seriously considered to free up funds for climate mitigation and adaptation.

<sup>95</sup> UNCTAD, *Taking Responsibility*, p. 2.

<sup>96</sup> Submission of Cuba.

<sup>97</sup> [A/HRC/57/30](#) (forthcoming).

<sup>98</sup> See [https://thedocs.worldbank.org/en/doc/784141543806348331-0020022018/original/Joint\\_DeclarationMDBsAlignmentApproachtParisAgreementCOP24Final.pdf](https://thedocs.worldbank.org/en/doc/784141543806348331-0020022018/original/Joint_DeclarationMDBsAlignmentApproachtParisAgreementCOP24Final.pdf).

<sup>99</sup> Submission of Center for International Environmental Law.

<sup>100</sup> Submission of the Bahamas.

<sup>101</sup> ActionAid International, “The vicious cycle: the links between debt crisis and climate crisis”, April 2023, p. 2.

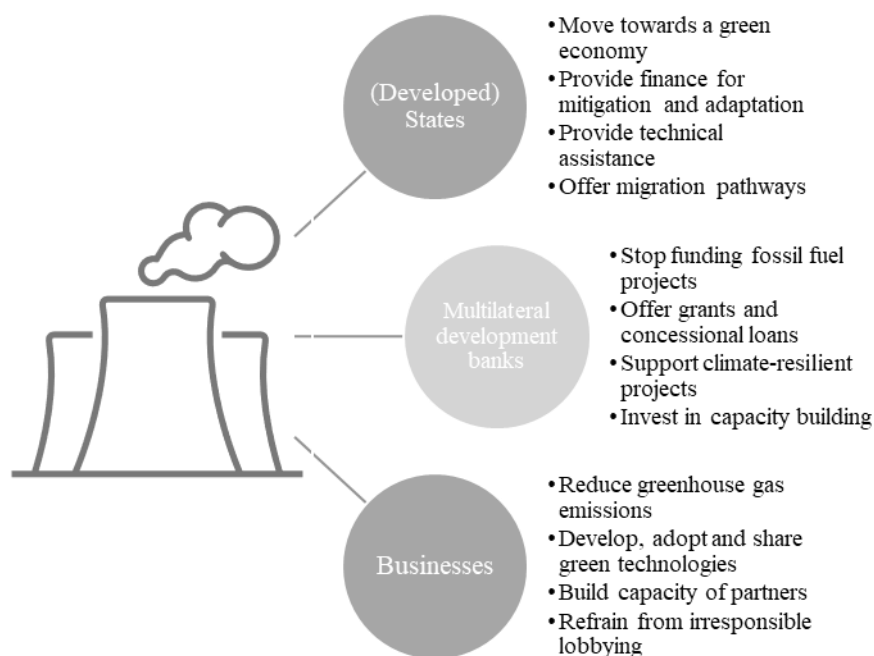
55. Businesses are part of the problem of climate change-related loss and damage. They should aim, however, to become part of the solution. They can do so by conducting human rights due diligence, mitigating greenhouse gas emissions, reporting transparently on their climate actions, developing climate risk management capacity, investing in projects that effectively prevent, manage or address loss and damage and participating in open innovation processes to develop effective solutions.<sup>102</sup>

### C. Nature of responses to loss and damage

56. Climate change-related loss and damage requires States, multilateral development banks, businesses and other actors to adopt a rainbow approach: a range of remedial actions on the part of several actors. As noted above, these actions can take the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Figure II provides a list of illustrative rainbow actions that should be taken by States, multilateral development banks and businesses. There is, of course, a role for other actors too. For example, cultural institutions such as museums can raise awareness about climate change, facilitate participation of communities and mainstream climate action.<sup>103</sup>

Figure II

#### Rainbow response to climate change-related loss and damage



57. Mobilizing financial resources is essential in order to tackle climate change-related loss and damage. Operationalizing the Fund therefore marks an important step. To ensure efficiency, the Fund's Board should coordinate with climate finance initiatives at the national, regional and global levels. The Green Climate Fund and the

<sup>102</sup> Submissions of Climate Finance Group for Latin America and the Caribbean, FIAN Zambia, and European Center for Constitutional and Human Rights, Swiss Church Aid HEKS and Wahana Lingkungan Hidup Indonesia.

<sup>103</sup> Submission of Henry McGhie.

Adaptation Fund will be obvious candidates for such a coordination. In addition, there are national initiatives, such as the Italian Climate Fund, which seeks to support climate and environmental protection in partner countries through a wide range of financial instruments, including financing, investments in funds, guarantees and non-repayable grants.<sup>104</sup>

58. It is critical that contributions to the Fund do not result in diversion of climate finance from adaptation or mitigation. Nor should climate finance to deal with loss and damage take the form of repackaging of existing development aid,<sup>105</sup> or worsen existing debt burdens: grants are preferable for this reason.<sup>106</sup> Hence the call for natural disaster and pandemic clauses in debt instruments as a means to resolve debt traps.<sup>107</sup> In the event of loss and damage, such clauses effectively pause debt repayments so that those resources may be dedicated to fully addressing loss and damage.<sup>108</sup>

59. In addition to financial contributions, States, United Nations organizations, development partners, businesses, universities and other actors can respond to loss and damage by offering technical assistance. This may be in the form of technical assistance for developing gender-responsive and non-discriminatory disaster response policies.<sup>109</sup> The Santiago network should be strengthened and awareness raised about its potential to offer technical assistance to respond to loss and damage.

60. Building capacity and the transfer of green technologies should also be part of the rainbow approach.<sup>110</sup> In addition, States and businesses must keep central consideration of Indigenous sovereignty and the rights of Indigenous Peoples, including the requirement to obtain free, prior and informed consent.<sup>111</sup>

61. There will also be a role for providing relocation and migration pathways to people,<sup>112</sup> especially to those living in low-lying island countries. In November 2023, Tuvalu and Australia, for example, entered into a cooperation agreement under which Australia will arrange for a special human mobility pathway for citizens of Tuvalu to access Australia.<sup>113</sup> More such agreements should be concluded in advance.

#### D. Innovative additional sources of funding

62. There are different estimates as to how much is needed annually to address climate change-related loss and damage; the figure ranges from \$100 billion every year to \$525 billion to recover from the last 20 years of economic losses from anthropogenic climate change.<sup>114</sup> Prior to the coronavirus disease (COVID-19) pandemic, loss and damage costs in developing countries were projected to be as much as \$580 billion per year by 2030.<sup>115</sup> Another estimate projects that \$400 billion are needed by 2030, with another \$1–2 trillion required by 2050 based on loss and damage costs for developing countries.<sup>116</sup> Irrespective of these variations, it is worth

<sup>104</sup> Submission of Italy.

<sup>105</sup> Submission of Pradeep Narayanan; and UNCTAD, *The Least Developed Countries Report 2023: Crisis and Resilient Development Finance* (United Nations publication, 2023), p. 9.

<sup>106</sup> Submissions of Mexico, Save the Children and Associazione Comunita Papa Giovanni XXIII.

<sup>107</sup> See <https://news.un.org/en/story/2022/11/1130247>.

<sup>108</sup> Submission of Christian Aid Ireland.

<sup>109</sup> Submissions of Noboprobhaat Foundation and International Lesbian and Gay Association, Asia.

<sup>110</sup> Submission of Save the Children.

<sup>111</sup> Submission of Indigenous Environmental Network.

<sup>112</sup> Submission of FIAN Zambia.

<sup>113</sup> See <https://www.dfat.gov.au/sites/default/files/australia-tuvalu-falepili-union-treaty.pdf>.

<sup>114</sup> UNEP, *Adaptation Gap Report 2023: Underfinanced. Underprepared.*, p. 73.

<sup>115</sup> UNCTAD, *Taking Responsibility*, p. vii.

<sup>116</sup> Ibid.

noting that most of these estimates may not be fully capturing the true cost of all non-economic loss and damage.

63. In 2009, developed countries committed to a goal of mobilizing jointly \$100 billion a year by 2020 to address the climate finance needs of developing countries.<sup>117</sup> According to new figures from OECD, developed countries mobilized \$115.9 billion in climate finance for developing countries in 2022, exceeding the annual \$100 billion goal for the first time.<sup>118</sup> As 69.4 per cent of about \$92 billion of the reported amount was provided as public finance, legitimate concerns have been raised about the true nature of such climate finance, because this may be adding to the already unsustainable debt levels of developing countries.<sup>119</sup>

64. Moreover, only about \$661 million have been pledged to the Fund for Responding to Loss and Damage by States so far.<sup>120</sup> This is a drop in the ocean of how much is needed for climate change-related loss and damage. Therefore, innovative additional sources of funding will be required.<sup>121</sup> States should come together to tax super-rich people: Oxfam has estimated that a wealth tax on the world's millionaires and billionaires could generate over \$1.7 trillion per year.<sup>122</sup> Brazil, as part of its presidency of the Group of 20, has proposed a 2 per cent minimum tax on the world's billionaires' wealth, which would generate \$200 to \$250 billion in revenue per year.<sup>123</sup> Moreover, fossil fuel companies must be required to pay a carbon tax on their net annual profit and the fossil fuel subsidy should be diverted to the Fund. Such a targeted taxation against super-rich individuals and corporations should be pursued in a way that they are unable to evade regulation by creative compliance.

65. In addition to targeting the super-rich and the carbon majors (i.e. the big oil, coal and gas producers), consumers also have a role to play. The 10 per cent of households with the highest per capita emissions contribute 34 to 45 per cent of global consumption-based household greenhouse gas emissions.<sup>124</sup> A consumption tax on such households or luxurious activities could generate billions of dollars for the Fund. The Fund may also accept donations from companies and philanthropic foundations without comprising its independence.

## V. World Bank's role as an interim trustee of the Fund

66. Human rights are one of the three pillars of the Charter of the United Nations. International human rights standards are applicable to all actors, irrespective of their nature (public, private, public-private partnerships or non-profit), scale (small, medium or large size operations) or level (local, national, regional or international).

67. Historically, human rights were not part of the DNA of the World Bank and it has faced criticism for not paying adequate attention to its international human rights

<sup>117</sup> FCCC/CP/2009/L.7, para. 8.

<sup>118</sup> See <https://www.oecd.org/en/about/news/press-releases/2024/05/developed-countries-materially-surpassed-their-usd-100-billion-climate-finance-commitment-in-2022-oecd.html>.

<sup>119</sup> <https://www.oxfam.org/en/press-releases/rich-countries-overstating-true-value-climate-finance-88-billion-says-oxfam>.

<sup>120</sup> See <https://unfccc.int/process-and-meetings/bodies/funds-and-financial-entities/loss-and-damage-fund-joint-interim-secretariat/pledges-to-the-loss-and-damage-fund>.

<sup>121</sup> UNCTAD, *Taking Responsibility*, pp. 23–24.

<sup>122</sup> Oxfam, *Climate Equality*, p. xxiii.

<sup>123</sup> See <https://www.g20.org/en/news/at-the-g20-brasils-proposal-to-tax-the-super-rich-may-raise-up-to-250-billion-dollars-a-year>.

<sup>124</sup> Intergovernmental Panel on Climate Change, sixth synthesis report, p. 44.

obligations.<sup>125</sup> Over the years, the Bank has slowly started to see the relevance of human rights standards to its mandate.<sup>126</sup>

## A. Importance of starting right

68. As an interim trustee, it will be critical for the World Bank to get off to a right start with the Fund for Responding to Loss and Damage. It should see the Fund as an opportunity to reflect on its mandate and address some of the long-standing criticisms that the World Bank has faced for not meaningfully considering the impacts of its policies and decisions on human rights and climate change.

69. The governing instrument of the Fund mandates the Board to develop a mechanism that will help to ensure that the activities financed by the Fund are implemented based on high-integrity environmental and social safeguards and fiduciary principles and standards.<sup>127</sup> Moreover, the Fund is required to maintain high fiduciary standards and environmental and social safeguards while adopting a rapid approval process with simplified criteria and procedures.<sup>128</sup> It will also ensure that best practice environmental and social safeguard policies are applied to its activities as well as by each implementing entity.<sup>129</sup>

70. Although there is no explicit reference to human rights in the governing instrument, the Special Rapporteur believes that the term “social safeguards” is broad enough to cover human rights. The Fund’s Board should ensure that the Fund’s modalities, frameworks and policies are based on international human rights standards, because human rights are the default norms that are applicable to any governance architecture. Considering that the World Bank’s environmental and social safeguards have faced legitimate criticisms for being weak on human rights and cannot be regarded as best practice by any means,<sup>130</sup> the Board should establish its own environmental and social safeguard policies. Doing so will ensure that the Fund is fit for its purpose, that is, it will address adverse human rights impacts of climate change-related loss and damage.

## B. Embedding a human rights-based approach

71. The Special Rapporteur recommends that the World Bank as an interim trustee, as well as the Fund’s Board, embed the following human rights principles in implementing the Fund’s mandate.<sup>131</sup>

72. **Adequacy.** Since the Fund is meant to remediate adverse human rights impacts of climate change-related loss and damage, it should have additional adequate resources to provide support to affected individuals and communities. Since climate change impacts in the coming decades will become more frequent, severe, deadly and costly, UNCTAD has proposed \$150 billion a year as a floor for the Fund, rising

<sup>125</sup> Human Rights Watch, “Abuse-free development: How the World Bank should safeguard against human rights violations”, 22 July 2013; and Sigrun Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavandish Publishing, 2001).

<sup>126</sup> See <https://www.worldbank.org/en/programs/humanrights>.

<sup>127</sup> FCCC/CP/2023/L.1-FCC/PA/CMA/2023/L.1, annex I, para. 22 (f).

<sup>128</sup> *Ibid.*, para. 41.

<sup>129</sup> *Ibid.*, para. 68.

<sup>130</sup> Vanessa Richard, “Can multilateral development banks be more environmentally effective? Perspectives from the practice of international accountability mechanisms” in *The Effectiveness of Environmental Law, Proceedings of the 3rd Environment Law Forum*, Sandrine Maljean Dubois, ed. (2018), p. 313.

<sup>131</sup> Submission of Ordo Juris.

progressively with annual replenishment targets of \$300 billion by 2030.<sup>132</sup> As noted above, resources should primarily come from contributions of countries and businesses that have caused or contributed the most to loss and damage historically. In addition, innovative sources of funding such as a wealth tax on super-rich individuals, carbon tax on fossil fuel companies, diversion of subsidies on fossil fuels and donations from philanthropic foundations should be used to supplement the Fund.

73. **Equitable.** The Fund should embrace various strands of equity. It should be funded primarily from contributions made by historical polluters.<sup>133</sup> The Fund should mostly offer grants, so as not to worsen the existing debt burden of climate vulnerable countries. The Fund should also consider how climate change-related loss and damage will affect the human rights of future generations and integrate this consideration into funding projects, for example to support climate resilient infrastructure.

74. **Inclusive coverage.** All developing countries and the affected communities from these countries should be able to access the Fund. Moreover, in line with its wide scope (as set out in paragraphs 6 to 9 of the governing instrument), the Fund should cover all climate change-related adverse impacts (both extreme weather events and slow onset events), as well as responses required to manage such impacts (e.g. building sea walls, rehabilitation, reskilling and mental health services). The Fund should be adaptable in its approach, including how it responds to loss and damage from slow onset events.<sup>134</sup>

75. **Accessible.** The Fund should be accessible to affected communities and local civil society organizations in terms of availing grants. There should be non-cumbersome pathways for communities experiencing loss and damage to access the Fund directly, at least for small grants with lower due diligence requirements and faster approval.<sup>135</sup> Direct access will not only be efficient but also ensure quick response in times of climate-induced disasters. It will also be especially critical in situations where a Government ignores climate change-related sufferings or the priorities of minorities and vulnerable groups. In addition, the Fund may make a provision for direct cash transfers to affected individuals in certain circumstances.

76. **Non-discriminatory.** The Fund's processes should not result in sidelining remote, marginalized or vulnerable communities.<sup>136</sup> For instance, informal economy workers or LGBTIQ individuals should not fall off the radar due to definitional issues or cultural norms.<sup>137</sup> Moreover, in line with the principle of substantive equality, the Fund should prioritize vulnerable or marginalized groups in allocating resources.<sup>138</sup>

77. **Gender-transformative.** Due to the intertwined nature of climate change and inequality, the Board should see the Fund as an opportunity to change patriarchal norms and unequal power relations that underpin discrimination, gender-based violence and gender stereotyping.<sup>139</sup> Girls and women are not merely affected differently and disproportionately by climate change,<sup>140</sup> they are also agents of change with unique knowledge, experiences and skills that the Board should leverage to promote substantive gender equality.

78. **Participatory.** The Fund's decision-making process should involve active, free and meaningful participation of climate vulnerable countries and affected

<sup>132</sup> UNCTAD, *Taking Responsibility*, p. 3.

<sup>133</sup> Submission of Brazil.

<sup>134</sup> UNCTAD, *Taking Responsibility*, pp. 2–3.

<sup>135</sup> See <https://www.sei.org/publications/operationalizing-the-loss-and-damage-fund/>.

<sup>136</sup> Submissions of the Bahamas and Egypt.

<sup>137</sup> Submission of Loss and Damage Collaboration.

<sup>138</sup> Submissions of STRENGTH Team, Save the Children Philippines and Save the Children Nepal.

<sup>139</sup> A/HRC/41/43, para. 39.

<sup>140</sup> Submission of Egypt.

communities, as well as the civil society organizations representing them. The needs and priorities of developing countries should shape the Fund's future.<sup>141</sup> Special efforts should be made to ensure the participation of children, youth, women, persons with a disability, discriminated communities based on work and descent and Indigenous Peoples in designing, implementing and revising the policies of the Fund, as well as in all Board meetings. To ensure meaningful participation, enabling conditions should be created such as access to information, visa support and funding for technical preparatory assistance, translation facilities, language interpretation and travel.<sup>142</sup> In addition to inviting active observers, the Fund should establish, in line with paragraph 28 of its governing instrument, an advisory panel comprising a diverse group of civil society organizations, trade unions, community leaders and climate activists.

79. **Transparent.** The administration of Fund should be transparent with provisions of independent audit and annual reporting in an accessible format. Local civil society organizations and community-based organizations should be involved in key Board decisions, as well as in monitoring the efficient implementation of projects.

80. **Remediability.** The Fund's loss and damage projects should not cause any harm to human rights.<sup>143</sup> The governing instrument of the Fund requires it to use the implementing entity's independent grievance redress mechanism to address complaints related to activities financed by the Fund (para. 71). The reliance on the World Bank's grievance mechanism is problematic for various reasons. In due course, the Fund should establish an independent remedial mechanism, in line with principle 31 (Effectiveness criteria for non-judicial grievance mechanisms) of the Guiding Principles on Business and Human Rights, to deal with human rights grievances related to its funding of activities. Doing so will be in line with international human rights law.

## VI. Conclusions and recommendations

### A. Conclusions

81. **Climate change-related loss and damage affects all human rights (including the right to development) and the entire natural ecosystem. The impact is experienced by people and countries differently and disproportionately. Climate change is also exacerbating existing inequalities and may worsen the debt stress faced by developing countries. Individuals and communities living in least developed countries and small island developing States thus face dual disproportionality of climate change.**

82. **Since climate change has an impact on human rights, international climate law must be interpreted and developed in future in line with international human rights law. Combining these normative standards, the Special Rapporteur has developed a climate justice framework comprising four pillars and 12 overarching human rights principles that should guide climate actions of States, multilateral development banks, businesses and other actors.**

83. **In addition to focusing on mitigation, adaptation and remediation, the international community should act to transform the current economic order (including the international financial architecture), business models and lifestyles. A bold shift is needed to salvage the planet from decades of destructive**

<sup>141</sup> Submissions of El Salvador and Spain.

<sup>142</sup> Submission of Manushya Foundation.

<sup>143</sup> Submission of Accountability Counsel.

development and leave no one behind. Climate justice has a vital role to play in such a shift. Only then would we be able to achieve the plan of action for people, planet and prosperity embodied in the Sustainable Development Goals.

84. International human rights law must also inform how the Fund is administered by its Board and the World Bank as an interim trustee. The Special Rapporteur has outlined several human rights principles to enable the Fund to respond to climate change-related loss and damage in a way that addresses climate inequalities. Developed countries, large corporations and super-rich people contributing the most greenhouse gas emissions over the years must fund the Fund for Responding to Loss and Damage. Also, the Fund must mostly offer grants so as to not create new debt burdens for developing countries.

## **B. Recommendations**

85. The Special Rapporteur recommends that States:

(a) Embrace the climate justice framework, comprising four pillars and 12 overarching principles, in their policies, decisions and negotiation positions;

(b) Embrace a whole-of-government approach in embedding climate justice as a cross-cutting issue for all government ministries, departments and agencies;

(c) Incorporate human rights-based climate mitigation and adaptation strategies in trade and investment agreements, as well as in policies and programmes aimed at attracting foreign investment;

(d) Accept their obligations under international human rights law to contribute to the Fund in proportion to their contribution to greenhouse gas emissions over the years;

(e) Adopt an ambitious new global climate finance deal, the new collective quantified goal, at the twenty-ninth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, in Baku, to cover all four pillars of the climate justice framework;

(f) Mobilize resources to address loss and damage, including by taxing super-rich individuals, as well as luxurious activities, and by imposing a carbon tax on fossil fuel companies;

(g) Take decisive measures to address disproportionate effects of climate change-related loss and damage on realizing the right to development in least developed countries and small island developing States;

(h) Integrate an intersectional approach to all climate actions to ensure that no one is left behind;

(i) Move towards universal social security to ensure that climate change-related loss and damage does not leave behind millions of people from fulfilling their basic needs;

(j) Enable meaningful participation of children, youth, women, peasants, persons with a disability, Indigenous Peoples and marginalized groups in all climate change-related decision-making processes;

(k) Protect climate activists and environmental human rights defenders;

(l) Address both the supply and the demand sides of fossil fuels by taking individual and collective measures in line with the just transition principle;



(m) **Ensure that renewable energy is also responsible in terms of impacts on human rights;**

(n) **Offer incentives to businesses to mitigate greenhouse gas emissions and invest in developing green technologies;**

(o) **Require large corporations to conduct human rights due diligence in a holistic way and hold them accountable for climate change-related loss and damage, including by creating the crime of ecocide.**

**86. The Special Rapporteur recommends that multilateral development banks:**

(a) **Take decisive steps to reduce the debt burden of developing countries to enable effective climate actions on their part;**

(b) **Offer grants and long-term concessional loans to the most vulnerable countries, such as small island developing States and least developed countries, and provide them with support for technical assistance and capacity-building;**

(c) **Stop funding fossil fuel projects and phase out their current investment in such projects in line with the just transition principle;**

(d) **Ensure meaningful participation of community representatives and civil society organizations in their decision-making processes;**

(e) **Establish effective grievance mechanisms to remediate human rights harms caused by projects funded by them, including those supporting the transition to a green economy.**

**87. The Special Rapporteur recommends that the World Bank and the Board of the Fund for Responding to Loss and Damage:**

(a) **Embed the human rights principles proposed by the Special Rapporteur in all policies, processes and mechanisms aimed to implement the Fund's mandate;**

(b) **Create conditions for an active, free and meaningful participation of climate vulnerable countries and affected communities, as well as the civil society organizations representing them;**

(c) **Mobilize adequate resources for the Fund and offer mostly grants to climate vulnerable countries so as not to worsen their debt burdens;**

(d) **Establish an effective grievance mechanism to address complaints related to the Fund's projects.**

**88. The Special Rapporteur recommends that businesses:**

(a) **Reduce greenhouse gas emissions throughout their operations, including by conducting human rights due diligence in meaningful consultation with relevant stakeholders;**

(b) **Declare their Scope 1, Scope 2 and Scope 3 emissions in an objective, transparent and verifiable manner;**

(c) **Develop, use and share green technologies;**

(d) **Contribute annually to the Fund as part of their social responsibilities;**

(e) **Refrain from lobbying to undermine ambitious climate actions at the national, regional and global levels.**

89. **The Special Rapporteur recommends that civil society organizations:**

(a) **Use the climate justice framework in their advocacy with Governments, United Nations organizations, multilateral development banks and businesses;**

(b) **Continue to raise the voices of affected individuals and communities in decision-making processes at the local, national, regional and international levels and push for corporate accountability for climate change.**

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