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Mr. Ian Fry

Special Rapporteur on human rights and climate change

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*Ref: Call for inputs on the subject of promotion and protection of human rights
in the context of mitigation, adaptation and financial actions to address
climate change, with particular emphasis on loss and damage*

Dear Mr. Special Rapporteur

We take this opportunity to congratulate you on your new and important role. As climate change lawyers, we know that there are many linkages between climate change and human rights, but these are often not very explicit. By identifying such instances where human rights are being affected by climate change and by poor (or lack of) climate change policy and action, we trust your work will have a tremendous repercussion on the improvement of the rule of law in the context of climate change, enabling us to apply a human rights law lens over these relevant issues.

LACLIMA is a network of legal experts dedicated to the development of climate change law in Latin America. We started our activities on September 7, 2019, with a pilot project in Brazil, which will be expanded to other countries in Latin America. Currently we are more than 600 lawyers and law students across Brazil.

Our goal is to consolidate a critical mass of lawyers who can develop and disseminate knowledge, as well as support the development of legal frameworks that can enable a pathway for decarbonization and climate resilience in Latin America, consistent with the implementation of the Paris Agreement.

We appreciate the opportunity to contribute with your important work and would like to share some experiences in Brazil where vulnerable communities are suffering from loss and damage related to the adverse impacts of climate change. We hope these cases can provide some relevant data and lessons learned on the challenges faced at the local level to compensate communities for loss and damage related to climate change.

1) What experiences and examples are you aware of that are being faced by particularly individuals and communities in vulnerable situations (as identified above) that have suffered loss and damage due to the adverse impacts of climate change?

1.1. Heavy precipitation and vulnerable communities living in hillsides

The case of Recife, Pernambuco: landslides and flooding caused by intense precipitation have become frequent in Brazil and led to deaths and displacement of thousands of people. Due to the high economic inequality in Brazil, poor families have historically established unlawful housing settlements in hillsides, which are later consolidated by the local governments, who supply them with electricity and water networks. The increased frequency of heavy rainfall has led these areas to become more prone to landslides and floods. As a result, thousands of people who lived in these areas or nearby have died, entire communities have lost their homes and their possessions, and have been displaced, thus entering a situation of even more vulnerability and poverty than they already were. Climate change exacerbates issues of human rights such as access to housing and a safe environment, and failure in adapting to climate change aggravates such human rights, leading to loss and damage.

The most recent event took place in Recife, Pernambuco. In the end of May 2022, the Recife metropolitan region was hit by heavy rainfall. According to a survey released by the State Department of Social Defense, approximately 129 people lost their lives (71 women and 58 men): 120 died buried in the landslide and 9 died from drowning. Most deaths took place in neighborhoods largely populated by black and low-income communities. The city of Recife has a deficit of more than 70,000 households, forcing people to settle in riverbanks, hillsides, and slopes, where they build precarious unsafe houses. The local government provides these families with USD 50,000 worth for housing. After the incident above mentioned, the city government decided to increase the amount to approximately USD 150,000. Still, this is far from sufficient to support the costs of decent housing for a family in the capital city of Pernambuco. This situation, combined with the absence of other public services that do not reach such precarious housing locations, including sewage and solid waste treatment, as well as the deforestation of the riparian vegetation that is carried out often by the city's contractors, provides the necessary conditions for these landslides and floodings to occur.

In February 2022, other similar incidents took place in the southern region of the states of Bahia and in the northern portion of the state of Minas Gerais. In March 2022, the city of

Petrópolis, located in the Rio de Janeiro state, landslides caused by heavy rain caused the death of at least 238 people and thousands were displaced.

1.2 Water shortage affects poor communities disproportionately – the case of São Paulo:

Whereas heavy rainfall has been more frequent in many regions in Brazil, there have also been intense droughts caused by climate change, which have led to prolonged water scarcity in rural and in urban areas. Experience in Brazil shows that water shortages affect vulnerable communities more than others, due to their already precarious access to water supply and/or because of rationing policies that prioritize wealthy communities in detriment of the most vulnerable. This is worsened by inadequate public policies that fail in managing the use of local water reservoirs. As a result, poor communities in urban areas experience long periods without access to potable water and struggle to cope with their daily jobs and activities without basic sanitary conditions, at the expense of their sense of dignity and self-worth, which are sometimes already shaken by their condition as part of marginalized minority groups. Consequently, such groups may become even more vulnerable than they already were. Climate change exacerbates issues of human rights such as access to potable water and sanitary conditions, and failure in adapting to climate change aggravates such human rights and can perpetuate the vulnerable conditions of minority groups that could lead to loss and damage.

In 2013/2014, the states of São Paulo, Rio de Janeiro and Minas Gerais suffered a prolonged period of drought. This situation left millions of people with access to water impaired, which was exacerbated by the main crisis management instrument used by the State of São Paulo: pressure reduction. This generated a distortion, especially regarding the more peripheral and higher neighborhoods, including subnormal urban agglomerations (slopes, tops of hills, etc.)

In this context, those who live in vulnerable areas are facing the lack of water for more than a day. Particularly relevant, is the growth of people with five days or more of interruption over the years. According to Datafolha research, 41 % of the families that earn monthly five salaries can face a lack of water supply at home five days a week. Among those whose household income of more than ten salaries the percentage drops to 20%.

The Public Prosecutor's Office has been seeking compensation for the loss and damage suffered by said vulnerable population, but still without success, due to the incipient status of the discussions about the legal arguments around such climate change loss and damage in Brazil.

2) What legislation, policies and practices do you think are necessary to provide redress for particularly individuals and communities in vulnerable situations that have suffered and will continue to suffer loss and damage due to the adverse impacts of climate change?

As we've seen in the Brazilian cases above, many adverse impacts can probably be avoided with better adaptation policies and planning. However, most adaptation measures are costly and may require severe infrastructure change, which poses a challenge as to how to ensure

sufficient finance for such measures. On the other hand, because adaptation policies will not always be effective and we might not be able to implement all the necessary adaptation measures timely, there needs to be specific measures to redress the loss and damage that may result out of the adverse impacts of climate change. This is also an issue of securing the financial resources that can cover such losses. In developing countries, although sometimes there may be certain public funds to provide insurance to such situations, the amounts involved are normally negligible. More public funds need to be allocated by national and local governments for such purposes, and support from developed countries could also make a difference in leveraging this finance.

We acknowledge, though, that sometimes governments in developing countries may fail to properly utilize and account for the international climate finance received. One such example is Brazil's bilateral agreement for funding forest conservation with the governments of Norway and Germany – the so-called Amazon Fund. The Brazilian government unilaterally changed the governance structure of the fund, thereby changing the decision-making process for allocating the funds to projects, thus violating the agreement with the funders. Approximately 2.8 billion Brazilian Reais are currently frozen in the Amazon Fund because such constituted bodies were dissolved, and the funds cannot be allocated to any specific project.

Therefore, we understand that, at the local level, governments also need to have strong laws and institutions that enable them to be recipients of such international funds without being so sensitive to political changes and in a manner that ensures the proper accountability and permanence of such long-standing arrangements.

3) Please provide examples of policies and practices (including legal remedies) and concepts of how States, business enterprises, civil society and intergovernmental organisations can provide redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage to the adverse impacts of climate change.

In Brazil, as we've seen in the cases above, there have been attempts by the public prosecutor's office to file lawsuits against the government to claim compensation for the individuals and families that suffered loss and damage related to the adverse impacts of climate change. However, this is not an optimal solution in Brazil, since the judicial system is too slow to respond to the grave needs of the victims, who sometimes lost everything and need to be able to quickly recover. Furthermore, Brazilian law allows flexibility for the government to pay such judicial debts, and victims may need to wait in line to receive such compensation, competing with other public debts.

On the other hand, strategic climate litigation has been an important approach to raise awareness among judges about the connections between extreme weather events, environmental issues and climate change, which may educate the courts and lead to better rulings, which then can make governments increasingly more accountable for taking action in climate change and can lead to behavioral changes at the government level.

A recent wave of climate-related judicial cases in Brazil is challenging the constitutionality of the environmental policies adopted by the Federal Government. Political parties, the Federal Public Ministry and civil society appealed to the Supreme Court.

The proceedings and judgment of these actions were assembled in what is known as the Pauta Verde (Green Agenda), whose content tackles exactly these actions and omissions of the Brazilian State that violate fundamental rights and international climate commitments, as follows:

ADPF 760: requests the resumption of the Action Plan for Prevention and Control of Deforestation in Amazon.

ADPF 735: questions the presidential decree that removes Ibama's autonomy in environmental crime surveillance and transfers it to the Armed Forces for the Operação Verde Brasil (Operation Green Brazil).

ADPF 651: requests the unconstitutionality of the decree that excludes civil society from the deliberative council of the National Environment Fund.

ADO 54: accuses the federal government of omission in the fight against deforestation

ADO 59: requests the reactivation of the Amazon Fund, the repass of financial resources from already approved projects, and the evaluation of projects in the consultation phase.

ADI 6148: questions the Conama's resolution that establishes air quality standards, without setting a deadline for the change.

ADI 6808: contests a provisional measure that allows automatic environmental licensing for companies considered to have a medium risk level and prevents licensing bodies from requesting additional information beyond that informed to Redesim (National Network for the Simplification of Company and Business Registration and Legalization).

4) Please provide examples of ways in which States, the business enterprises, civil society and intergovernmental organisations have provided redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage due to the adverse effects of climate change.

In 2020, the Pantanal was hit by the biggest fire in history. Thirty percent of the biome was consumed by fire, causing unprecedented environmental, economic and social damage. Besides its exuberant beauty and biodiversity, the Pantanal is home to hard-working people and a rich culture that should not be forgotten.

The fires that ravaged the region in 2020 had enormous consequences for entire communities, and in the face of all this chaos, the SOS Pantanal civil society organization raised resources to provide immediate assistance.

In addition, after the fires, they developed a project to provide training to the communities to act as firefighters, because during the fires the residents put out the fire without any protective equipment.

The organization was responsible for making the logistical feasibility and organizing all the training sessions, equipped all the brigades for firefighting, supplied personal protection equipment for the volunteers, and accompanied and documented each of these moments. The training sessions were attended by employees of farms and residents of traditional communities in the Pantanal and surrounding areas.

As a result, today the communities can contain the outbreaks of fire more easily, thus reducing the severe fires of the last two years.

5) What international, regional and national policies and legal approaches are necessary to protect current and future generations and achieve intergenerational justice particularly for individuals and communities, from the adverse impacts of climate change?

Stronger international laws that recognize such connections between climate change, intergenerational equity and human rights can provide the legal grounds to bring governments and private entities accountable for loss and damage resulting from the adverse impacts of climate change. From a policy perspective, this can also help actors at the domestic level in justifying the need for implementation of such policies and measures to prevent or address cases of loss and damage, such as the allocation of funds for compensation.

- 6) In 2021 at 26th session of the UN Climate Change Conference (COP26), some Parties and civil society organisations proposed a new financial facility to support loss and damage.**
- a. Please provide ideas and concepts on how a new facility would operate and how the funds needed to underwrite this fund would be established and maintained.**
 - b. Please provide ideas and concepts on how a new financial facility for loss and damage could provide redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage due to the adverse impacts of climate change.**
 - c. What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisations to dramatically increase efforts to reduce emissions of greenhouse gases, including through support to developing countries, in particular small island developing States, least developed countries and landlocked developing States, to limit the human rights impacts on particularly individuals and communities in vulnerable situations to the adverse impacts of climate change?**
 - d. What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisation to increase efforts to ensure that actions to adapt to the impacts of climate change contribute to reducing, and not exacerbating, the vulnerabilities of individuals and communities in vulnerable situations to the adverse impacts of climate change?**

We believe a new international financial facility dedicated to loss and damage as a result of the adverse impacts of climate change would provide the scale of financial resources that are needed in terms of compensation across the developing world, and particularly to vulnerable countries. Such international financial mechanism could build upon the experiences of the other UNFCCC financial mechanisms where applicable, but also use experiences of insurance mechanisms and “superfunds”. Access to such funds need to be facilitated, including to the local communities and subnational governments, and at the same time there needs to be clear and precise eligibility criteria, as well as guidelines that ensure the funds will flow with priority to where they are most needed. Capacity building may be required to ensure access to such funds will be expedited and that there will be the proper national institutional arrangements in place to allocate the funds and report adequately to the financial mechanism.

Kind Regards,

LACLIMA (Latin American Climate Lawyers Initiative for Mobilizing Action)

Climate Justice Working Group