

**The responsibility of developed countries to address loss and damage
under international human rights law**

Submission to the Office of the United Nations High Commissioner for Human Rights

Submitted on 31st January by:



Introduction

Developed countries, including Ireland, are not meeting their international human rights obligations due to their failure to provide adequate financial resources to address loss and damage in climate vulnerable countries. The costs have been left to fall heavily on the shoulders of the world's poorest, who are picking up the tab for a problem they overwhelmingly did not create. The most complete economic and climate modelling suggests that loss and damage financing needs in developing countries could reach US\$290-580 billion by 2030, US\$551-1,016 billion in 2040 and US\$1,132-1,741 billion in 2050.¹ In 2019, five UN human rights treaty bodies clarified that states have positive legal obligations under international human rights law in relation to taking steps to address loss and damage in vulnerable countries.² Developed countries with a historic responsibility for causing the climate crisis should therefore provide significant financial resources as part of their overall response to loss and damage in order to meet their positive legal obligation to progressively realise social, economic, and cultural rights.

This submission asserts that developed countries, including Ireland, with a historic responsibility for causing the climate crisis should provide finance for loss and damage on an obligatory basis as part of their overall response to loss and damage in climate vulnerable countries in order to meet their legal obligations under international human rights law. It looks at (1) Ireland's position on Loss & Damage; (2) Opposition to an obligatory approach to Loss & Damage Finance; and (3) A 'fair shares' approach to Loss & Damage finance and the need for innovative revenue raising measures.

1. Ireland's position on Loss and Damage

The Irish government's international development strategy, *A Better World*, published in 2019, asserts that climate action is one of its four main pillars. It does not outline a specific policy on loss and damage, but notes that Ireland's efforts will be "explicitly tilted towards giving a global voice to those most at risk", and highlighting "people living in extreme poverty, in drought-prone areas, in low-lying coastal areas and Small Island Developing States, and in Least Developed Countries, especially in Sub-Saharan Africa."³

Notably, *A Better World* stresses the importance of channeling resources to "facilitate participative solutions" informed by "the voices of those at the 'frontlines' of climate change."⁴ This orientation towards participative, locally-led action is crucial. To ensure consistency, Ireland should support the development of mechanisms to promote the meaningful input and

¹ Markandya, A. and M. González-Eguino. (2019). "Integrated assessment for identifying climate finance needs for loss and damage: A critical review" in Mechler et al. (eds.) (2019) *Loss and Damage from Climate Change: Concepts, methods and policy options*, https://link.springer.com/chapter/10.1007/978-3-319-72026-5_14, p.343

² OHCHR, 5 UN Treaty Bodies issue a joint statement on human rights and climate change, 16 September 2019. <https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and?LangID=E&NewsID=24998>

³ Government of Ireland (2019). *A Better World: Ireland's Policy for International Development*, p.14. <https://www.irishaid.ie/media/irishaid/aboutus/abetterworldirelandspolicyforinternationaldevelopment/A-Better-World-Irelands-Policy-for-International-Development.pdf>

⁴ Ibid.

participation of stakeholders on the newly established Loss and Damage Fund, which improves upon current active observer practice at other multilateral climate funds.⁵

Ireland's long standing commitment to providing untied and grant based climate finance is also crucial to ensure that its efforts to address loss and damage are based on the principles of international human rights and climate justice. Despite this, developed countries, including Ireland, have championed climate risk insurance as a core approach for addressing loss and damage at the UNFCCC and other international fora. Much of the financing which has already been pledged to address loss and damage has been earmarked for climate insurance schemes. For example, Ireland has supported the *Global Shield* initiative, which it has pledged €10 million in funding to.

However, climate risk insurance is not a comprehensive strategy for addressing loss and damage – and in many ways it is deeply unjust, inadequate, and undermines a human rights based approach. A major limit of climate risk insurance is that it typically only pays out a very small proportion of the total costs, sometimes as little as 2% of what is needed.⁶ For example, Typhoon Haiyan devastated the Tacloban region of the Philippines in November 2013, causing approximately US\$10 billion damage, but only US\$300-700 million was covered by insurance.⁷ Another limitation of insurance is the fact that it does not cover slow onset events such as sea level rise. Above all, insurance schemes tend to shift the burden of payment onto affected communities and countries least responsible for causing the climate crisis, an approach which can increase inequality.⁸

In line with its strong support for grant-based climate finance and climate justice principles, the Irish government should therefore reconsider the emerging emphasis on climate risk insurance and instead advocate within the EU bloc and at UN level for a grant based approach to loss and damage financing, which is aligned with a human rights based approach.

2. Opposition to an obligatory approach to Loss & Damage Finance

Loss and damage finance is not a question of charity. It is recognition of the ecological debt owed to developing countries, on the basis of historical responsibility, wealth and equity. Both the UNFCCC and Paris Agreement clearly set out that climate finance is a responsibility of developed countries.⁹ However, these treaties only create financial obligations on developed countries for two facets of climate action: emissions reductions (mitigation) and building climate resilience (adaptation).

⁵Schalatek, L. (2023). *Compromise Transitional Committee Outcome Falls Short of Expectations and Climate Justice*. <https://www.boell.de/en/2023/11/15/compromise-transitional-committee-outcome-falls-short-expectations-and-climate-justice#2B>

⁶ Richards et al. (2022), 'Global Shield: solution or distraction?' <https://www.lossanddamagecollaboration.org/pages/global-shield-solution-or-distractio> p.8

⁷ Paul, H. (2019) *Market solutions to help climate victims fail human rights test: Finance through innovative and public sources must be raised to address loss & damage and protect human rights*, <https://actionaid.org/publications/2019/market-solutions-help-climate-victims-fail-human-rights-test>, p.22

⁸ Bernard, N. Africa Policy Research Initiative (2023). *The Global Shield: Lights and Shadows of Insurance Schemes in the Fight Against Climate Change*, <https://afripoli.org/the-global-shield-lights-and-shadows-of-insurance-schemes-in-the-fight-against-climate-change>

⁹ Article 4.3, UNFCCC (1992). Article 9, Paris Agreement (2015).

The historic decision to establish a new loss and damage fund at COP27 provided a clear political signal of the need to recognise loss and damage alongside mitigation and adaptation as the “third pillar” of climate action, as well as the need for a dedicated funding mechanism to provide finance to developing countries on the basis of historical responsibility and equity.

However, subsequent technical meetings of the UN Transitional Committee mandated to set up the new fund failed to create explicit obligations on developed countries to pay into the fund.¹⁰ This was due to concerted efforts by developed countries, including Ireland, to ensure an entirely voluntary approach to loss and damage finance provision and to row back on existing commitments to historical responsibility and Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC).

The final text on the operationalisation of the loss and damage fund agreed at COP28 reflects these shortcomings and thus undermines core human rights principles of effective redress and remedy.¹¹ The failure to establish explicit obligations on developed countries to provide finance will limit the ability of the loss and damage fund to provide effective remedy to those most affected by the climate crisis in such a way that does not put additional pressure on public budgets of developing countries.¹²

3. A ‘fair share’ approach to Loss & Damage finance and the need for innovative revenue raising measures

Developed countries with a historic responsibility for causing the climate crisis should provide significant financial resources as part of their overall response to loss and damage in order to meet their positive legal obligation to progressively realise social, economic, and cultural rights.¹³ This funding should be raised in advance and on the basis of ‘fair share’ contributions.

A growing body of academic research has focused on dividing up international climate targets into national ‘fair shares’, including for financial support.¹⁴ These estimates depend on different assumptions and relative weighting afforded to key factors: contribution to global greenhouse gas emissions (*historic responsibility*), current financial capacity (*capability*), projections of future loss and damage and associated costs (*need*), and differential pathways to staying within the global target of 1.5 degrees of warming.

¹⁰ Schalatek, L. (2023).

¹¹ Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 2.

¹² Centre for International Environmental Law and Amnesty International (2023). *Human Rights as a Compass for Operationalizing the Loss and Damage Fund*. https://www.ciel.org/wp-content/uploads/2023/02/Human-Rights-as-a-Compass-for-Operationalizing-the-Loss-Damage-Fund_submission-Amnesty-and-CIEL_Feb-2023.pdfCentre

¹³ In 2019, five UN human rights treaty bodies clarified that states have legal obligations to “*co-operate in good faith in the establishment of global responses addressing loss and damage suffered by vulnerable countries*”. See: <https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and?LangID=E&NewsID=24998>

¹⁴ Climate Action Tracker (2023) ‘Summary of Fair Share Methodologies’: <https://climateaction-tracker.org/methodology/cat-rating-methodology/fair-share/>; World Resources Institute (2021) ‘Are Countries Providing Enough to the \$100 Billion Climate Finance Goal?’: <https://www.wri.org/insights/developed-countries-contributions-climate-finance-goal>; Athanasiou, Holz & Kartha (2022) ‘Fair Shares – lesson from practice, thoughts on strategy’: https://climatenetwork.org/wp-content/uploads/2022/08/Fair-Shares.-Lessons-from-Practice-Thoughts-on-Strategy_CAN-CERP.pdf

Christian Aid Ireland and Trócaire calculate Ireland's fair share of loss and damage financing to be at least **€1.5 billion by 2030**.¹⁵ We used two measures of fair shares: first from the Overseas Development Institute (ODI), and then the Climate Equity Reference Framework developed by Eco Equity and the Stockholm Environment Institute. The CERF, as an equity-based framework, also attempts to take into account inequality within countries, essentially exempting those below a certain development threshold from calculation of a national fair share.

In addition to the opposition of developed countries to any clear obligation to provide loss and damage finance, the vast gulf between existing contributions and the projection of global annual need for loss and damage financing by 2030 underscores the case for "innovative" financing sources. This was acknowledged in the COP28 decision on the operationalisation of the Loss & Damage Fund, albeit in very general terms.¹⁶

It is both practically as well as ethically compelling to rely on general, progressive taxation, levied at the national level, as the core starting point for developed countries to meet their fair share of loss and damage finance.¹⁷ Beyond this, there is strong case to be made for the introduction of additional revenue-raising measures.¹⁸ These include more progressive, coordinated taxation of excessive profits, extreme wealth and fossil fuel production; progress on debt relief; and new levies on aviation and shipping.¹⁹

The implementation of some or all of these measures at the international level, as well as the application of a fair shares approach, could both help to relieve pressure on domestic budgets and enable developed countries to meet their positive obligations under international human rights law to take steps to address loss and damage in vulnerable countries and provide effective remedy to the those experiencing the worst impacts of the climate crisis.²⁰

Conclusion

By failing to provide significant financial resources to climate vulnerable countries, developed countries are failing to meet their obligations under international human rights law to provide effective remedy and to progressively realise economic, social, and cultural rights.

This needs to urgently change. Developed countries with a historic responsibility for causing the climate crisis should provide their fair share of finance as part of their overall response to loss and damage. While progressive taxation at the national level should be the starting point for providing loss and damage finance, states should also work co-operatively at the international level to implement innovative tax raising measures to raise the scale of finance required.

¹⁵ Christian Aid Ireland & Trócaire (2023). *The Cost of Inaction: Ireland's fair share of loss and damage finance*. https://www.christianaid.ie/sites/default/files/2023-11/the-cost-of-inaction_report.pdf

¹⁶ UNFCCC (2023). Operationalization of the new funding arrangements for responding to loss and damage and the fund established in paragraph 3 of decisions 2/CP.27 and 2/CMA.4. https://unfccc.int/sites/default/files/resource/cp2023_09_cma2023_09.pdf

¹⁸ For further detail on innovative sources, see chapter 13 of: Christian Aid Ireland & Trócaire (2023). *The Cost of Inaction: Ireland's fair share of loss and damage finance*. https://www.christianaid.ie/sites/default/files/2023-11/the-cost-of-inaction_report.pdf

¹⁹ Christian Aid Ireland & Trócaire (2023). Chapter 13.

²⁰ OHCHR, 5 UN Treaty Bodies issue a joint statement on human rights and climate change, 16 September 2019, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998