



## **The Impact of Loss and Damage from the adverse effects of climate change on human rights**

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**Submission to the UN Office of the High Commissioner for Human Rights**

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### **Introduction**

The Rights and Resources Initiative (RRI) is pleased to provide the following submission to the UN OHCHR in response to the Human Rights Council's call for input on the impact of Loss and Damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same.

RRI is a global Coalition of over 150 organizations dedicated to advancing the forestland and resource rights of Indigenous Peoples, Afro-descendant Peoples, local communities, and the women within them. The comments and observations presented herein do not necessarily reflect the perspective of RRI's partners and collaborators.

### **Equitable approaches to the Loss and Damage Fund**

As already recognized by UN HRC resolution 53/6 on climate change and human rights, climate change has contributed and continues to contribute to the impacts that adversely affect the full enjoyment of all human rights. The 2030 Agenda for Sustainable Development commitment to leave no one behind requires that all measures to combat climate change, including the Loss and Damage Fund, consider and operationalize international human rights law, including all of States' human rights obligations therein.

### **The rights of Indigenous Peoples, Afro-descendant Peoples, and local communities must be at the forefront**

When it comes to Indigenous Peoples, Afro-descendant Peoples, and local communities, the design of the Loss and Damage Fund must strengthen, respect, and recognize the protections already built through collective efforts in international instruments, including:

1. The distinct and differentiated rights of Indigenous Peoples, as affirmed by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Indigenous and Tribal Peoples Convention, 1989 (ILO Convention 169);
2. The rights of local communities, Afro-descendant Peoples, and other marginalized ethnic groups, as affirmed by multiple instruments including ILO Convention 169 (applicable to “Tribal Peoples”), the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, and the Convention of the Elimination of All Forms of Racial Discrimination (ICERD) and its general recommendations 34 (racial discrimination against people of African descent) and 23 (Indigenous Peoples);
3. The equal roles and rights of women within these peoples and communities, as affirmed by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), along with the Committee on the Elimination of Discrimination against Women (CEDAW Committee) general recommendations, namely General Recommendations 39 (on the rights of Indigenous Women and Girls), 37 (on Gender-related dimensions of disaster risk reduction in the context of climate change), and 34 (on the rights of rural women); and,
4. The equal roles and rights of youth, within these peoples and communities, with special attention to the rights of girls, as affirmed by the Convention on the Rights of the Child, along with the Committee on the Rights of the Child general comments, namely general comments No. 11 on Indigenous children and their rights and No. 26 on children’s rights and the environment with a special focus on climate change; and the CEDAW Committee’s General Recommendation 39 as it pertains to the rights of Indigenous girls.

To ensure the inclusion of the recognized rights of Indigenous Peoples, Afro-descendant Peoples, and local communities, and the women, youth, and elderly within these communities in the development of the Loss and Damage Fund, it is key to take at a minimum the following steps:

1. **Rightsholder-led Process Development:** The design, development, implementation, and monitoring of the Loss and Damage Fund must be inclusive and ensure the protection of procedural rights of the aforementioned communities throughout all such processes. This can be achieved by: i) ensuring ongoing and regular dialogue with Indigenous Peoples, Afro-descendant Peoples, and local communities; ii) involving them as rightsholders and decision-makers; and iii) providing communities with a voice and a right to vote, including for women, youth, and elders. Indigenous Peoples, Afro-descendant Peoples, and local communities

must be involved as leaders and thought partners throughout all stages of these processes and not merely consulted.

**2. Heritage and Traditional Knowledge:** The co-development of such processes must include guarantees to safeguard the cultural heritage and traditional knowledge of Indigenous Peoples, Afro-descendant Peoples, and local communities and the women, youth, and elders within these communities. The communities are collectively the owners of such knowledge. The Loss and Damage Fund should integrate such knowledge to ensure accessibility, socialization, and direct benefit for those most impacted while respecting and safeguarding the intellectual property and heritage rights of these communities.

**3. Accessible Information and Climate Finance:** The Loss and Damage Fund must develop and share resources that provide objective, complete, transparent, accessible, and locally adapted information on climate financing sources and mechanisms. These are seldom available in the current climate financing ecosystem, making it difficult for rightsholders to independently assess the social and environmental integrity of proposed initiatives, their value, and actual and potential benefits, and to anticipate likely impacts on community rights. Similarly, there must be dedicated funding and channels for impacted communities to have independent and accessible support to access sustainable, direct funding and the benefits resulting from such funding.

**4. Rightsholders as Custodians and Leaders:** Funding access and use should not be merely State or government led. International mechanisms and norms should prioritize the development and capitalization of direct financing mechanisms and emerging territorial funds to advance locally defined climate and biodiversity actions and strengthen the decision-making autonomy of rightsholders. Experiences with voluntary climate finance markets to date show that proponent-led interventions tend to be perceived as counterproductive to the realization of community self-determination and joint problem-solving. In turn, associated capacity building initiatives tend to be technical and top-down in nature, thus reinforcing power structures that fail to recognize the historical responsibilities of rightsholders as custodians of nature, the importance of traditional knowledge in reducing and mitigating climate-related risks, and their essential role in the realization of sustainable, equitable, and just climate solutions. Consequently, the Loss and Damage Fund should prioritize a portion of its granting portfolio to fund bottom-up approaches by ensuring the establishment of a direct access mechanism for and governed by rightsholders themselves.

**5. Sustainable Financing: Immediate and Long-term needs Addressed:** Funding for averting, minimizing, and addressing Loss and Damage associated with the adverse effects of climate change, including for mitigation, adaptation, and emergency response, should be regarded in terms of both immediate and long-term needs. When responding to climate emergencies, immediate needs are often prioritized over sustainable, long-term implementation, monitoring, and capacity building. Long-term needs of communities must be addressed to build sustainable finance and strengthen mitigation, adaptation, and future response mechanisms. A lack of long-term focus results in debilitating impacts on communities and those most vulnerable within those communities, gaps within mitigation and adaptation mechanisms due to a lack of needs-based planning, and additional erosion of livelihoods and rights over time as energy and resources are diverted to address unforeseen shocks and disturbances.

**6. Participatory and Inclusive Processes:** All Loss and Damage mechanisms must ensure that all members within Indigenous Peoples, Afro-descendant Peoples, and local communities are included in decision-making, development, and monitoring. Mechanisms must take into account the rights of Indigenous Peoples, as affirmed by the UN Declaration on the Rights of Indigenous Peoples and ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169); the rights of local communities, Afro-descendant Peoples, and other marginalized ethnic groups, as affirmed by multiple instruments including ILO Convention No. 169 (applicable to “Tribal Peoples”), the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, and the Convention of the Elimination of All Forms of Racial Discrimination (ICERD) and its general recommendations 34 (racial discrimination against people of African descent) and 23 (Indigenous Peoples). These mechanisms must also have differentiated and specific plans to ensure the equal roles and rights of women within these peoples and communities, as affirmed by the aforementioned legal instruments and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), along with its general recommendations, namely General Recommendations 39 (on the rights of Indigenous Women and Girls), 37 (on Gender-related dimensions of disaster risk reduction in the context of climate change), and 34 (on the rights of rural women); the equal roles and rights of youth, within these peoples and communities, with special attention to the rights of girls, as affirmed by the aforementioned legal instruments and the Convention on the Rights of the Child, along with the Committee on the Rights of the Child general comments, namely general comment No. 11 on Indigenous children and their rights and the CEDAW Committee’s General Recommendation 39 as it pertains to the rights of Indigenous girls.

**7. Repairing Past Damages:** Any Loss and Damage Fund must not only address the need for funding regarding future climate change related impacts and response mechanisms, but it must address all the historic and ongoing damages suffered by Indigenous Peoples, Afro-descendant Peoples, and local communities, and the women, youth, and elderly within these communities as a result of climate change. A rights-based approach to climate finance must recognize past, present, and future impacts of climate change, including the provision of effective remedies, reparations, and redress mechanisms as applicable. Redress mechanisms should be independent, accessible, equitable, predictable, transparent, human rights-compatible, designed and implemented based on engagement and dialogue with Indigenous Peoples, Afro-descendant Peoples, and local communities, and deemed to be legitimate by these rightsholders.

**8. No Erosion of Rights:** Ensure that climate finance mechanisms, including the Loss and Damage Fund, are not exacerbating violations and challenges faced by Indigenous Peoples, Afro-descendant Peoples, and local communities, and the women, youth, and elderly within these communities to secure their tenure rights. Tenure rights are often already vulnerable for these communities when an emergency occurs. It is key to ensure that financing does not exacerbate that vulnerability and lead to a loss of rights resulting from a lack of capacity-building, knowledge, autonomy, and decision-making for rightsholders in climate finance mechanisms. Emergencies and disasters must not be opportunities for self-determination rights to be eroded, minimized, or deprioritized. Other climate finance schemes have for example, resulted in the nationalization of certain resources (i.e. carbon rights/atmospheric benefits), taking away the fulsome tenure rights of Indigenous Peoples, Afro-descendant Peoples, and local communities, and the women, youth, and elderly within these communities. The self-determination and tenure rights of these communities over the natural resources or the benefits arising from their collective lands and waters or the lands they use and occupy are key components to sustainable responses to climate change related impacts.

Please see attached a summary report resulting from a September 2023 dialogue with over 70 rightsholder representatives and their allies on the ways in which climate finance can or should support their vision for the future in a world impacted by climate change. Rights and Resources would like to take this opportunity to thank your office for the opportunity to provide input regarding the impact of Loss and Damage from the adverse effects of climate change on human rights. If you have any questions regarding this submission, please do not hesitate to contact Rights and Resources' Legal Analyst, Isabel Davila Pereira at [idavila@rightsandresources.org](mailto:idavila@rightsandresources.org).

## ABOUT THE RIGHTS AND RESOURCES INITIATIVE

The Rights and Resources Initiative is a global Coalition of 21 Partners and more than 150 rightsholders organizations and their allies dedicated to advancing the forestland and resource rights of Indigenous Peoples, Afro-descendant Peoples, local communities, and the women within these communities. Members capitalize on each other's strengths, expertise, and geographic reach to achieve solutions more effectively and efficiently. RRI leverages the power of its global Coalition to amplify the voices of local peoples and proactively engage governments, multilateral institutions, and private sector actors to adopt institutional and market reforms that support the realization of their rights and self-determined development. By advancing a strategic understanding of the global threats and opportunities resulting from insecure land and resource rights, RRI develops and promotes rights-based approaches to business and development and catalyzes effective solutions to scale rural tenure reform and enhance sustainable resource governance. RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, DC. For more information, please visit [www.rightsandresources.org](http://www.rightsandresources.org).

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