

## Submission: The impact of loss and damage from the adverse effects of climate change on human rights

La Ruta del Clima is a Costa Rican non-governmental organization (NGO) that advocates for the right of the public to participate in the climate governance process and demand climate justice.

### Introduction

The international community recognizes that climate change poses unacceptable threat to the full enjoyment of human rights.<sup>1</sup> Loss and damage, a concept used in international climate policy, refers to climate impacts that cannot be avoided through adaptation and mitigation measures, leading to devastating human rights harm, including, inter alia, irreparable damage or irreversible losses.<sup>2</sup> Developing states have emphasized the need to recognize and address loss and damage as a central component of global climate action, while the largest emitters of greenhouse gases have persistently sought to protect themselves against the provision of reparations for the effects of the climate crisis.

### Climate Reparations are a Right.

The document Our Right to Climate Reparations contains a detailed argumentation that has been submitted to the Interamerican Court of Human Rights on the right to climate reparations: <https://larutadelclima.org/download/31220/?tmstv=1701593236>

Climate Reparations is right that people and ecosystems of highly vulnerable countries can exercise to achieve justice. States have "the obligation to ensure that activities carried out within their jurisdiction or under their control do not harm the environment of other States or areas beyond any jurisdiction" in accordance with principle 21 of the Charter of the United Nations.<sup>3</sup> Sovereignty entails the obligation not to cause damage to the environment of other States.<sup>4</sup> States sovereignty is not unidimensional to their territory, but interdependent to a socionatural reality that recognizes no borderlines.

The International Court of Justice has repeatedly established that States must ensure that activities carried out within their jurisdiction or under their control do not cause damage to the environment of other States or areas outside their jurisdiction, and that they are obliged to use

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<sup>1</sup> 'La Vida Entre Pérdidas y Daños: Narrativas Centroamericanas'; <[https://larutadelclima.org/wp-content/uploads/2022/10/Centroamerica-ES\\_LRC.pdf](https://larutadelclima.org/wp-content/uploads/2022/10/Centroamerica-ES_LRC.pdf)>.

<sup>2</sup> Ibid.

<sup>3</sup> UN, 'Declaration of the United Nations Conference on the Human Environment A/CONF.48/14/Rev.1' (UN 1973) <<https://undocs.org/A/CONF.48/14/Rev.1>> accessed 16 March 2019 Art. 21 .

<sup>4</sup> UNGA, 'Rio Declaration on Environment and Development UN Doc A/CONF.151/26' (1992)

<<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>> accessed 19 March 2020 Art. 2.

all means at their disposal to prevent activities that take place in their territory, or in any area under its jurisdiction, cause significant damage to the environment of another State.<sup>5 6</sup>

It is a principle of international law and even a general conception of law, "that any breach of an international obligation that has caused damage entails the duty to make adequate reparation."<sup>7</sup> Reparation for damage caused by a breach of an international obligation consists of restitutio in integrum.<sup>8</sup> The principle of comprehensive reparation has been extensively developed, early as 1928, the Permanent Court of International Justice had already stated that "reparation must, as far as possible, eliminate all the consequences of the wrongful act and restore things to the original state in which they were before the act was committed."<sup>9</sup>

Principle 13 of the Rio Declaration that was adopted in 1992, at the same time as the UNFCCC, establishes the duty of States to "cooperate also expeditiously and more decisively in the elaboration of new international laws on liability and compensation for the adverse effects of environmental damage caused by activities within their jurisdiction, or under its control, in areas beyond its jurisdiction."<sup>10</sup> The international community recognized "the integral and interdependent nature of the Earth" and based on the general principles of international law, to facilitate the establishment of liability and compensation for the adverse effects of environmental damage, within which climate change may be included.

Article 8 of the Paris Agreement recognizes the importance of addressing damage and loss related to the adverse effects of climate change. Climate is a product of direct or indirect of human activity.<sup>11</sup> In this sense, the Global North has failed with its obligation to not damage others, through its 92% responsibility over the carbon emissions that have caused the climate break down. The Inter-American Court of Human Rights has mentioned that under the Framework Convention on Climate Change (UNFCCC) there are obligations of States for damages caused by climate change.<sup>12</sup>

This obligation implies the restoration of the previous situation and the reparation of the consequences of the infringement, including "the payment of compensation as compensation for patrimonial and extra patrimonial damages including moral damage."<sup>13</sup> In the case of the

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<sup>5</sup> Roberto F Caldas and others, 'OPINIÓN CONSULTIVA OC-23/17 DE 15 DE NOVIEMBRE DE 2017 SOLICITADA POR LA REPÚBLICA DE COLOMBIA MEDIO AMBIENTE Y DERECHOS HUMANOS' Corte Interamericana de Derechos Humanos para 97 <[https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf)>.

<sup>6</sup> ICJ, Case of the pulp mills on the Uruguay River (Argentina v. Uruguay). Sentence of 20 April 2010, paras. 101 and 204, and ICJ, Certain activities carried out by Nicaragua in the border area (Costa Rica Vs. Nicaragua), Construction of a highway in Costa Rica along the San Juan River (Nicaragua Vs. Costa Rica). Judgment of December 16, 2015, paras. 104 and 118.

<sup>7</sup> *Caso Velásquez Rodríguez Vs Honduras* (Corte Interamericana de Derechos Humanos) [25].

<sup>8</sup> *ibid.*

<sup>9</sup> *Caso Fábrica Chorzow (Alemania V Polonia)* 186 (Corte Internacional de Justicia); Marcos A Orellana and David R Boyd, 'ESCRITO AMICUS CURIAE CORTE CONSTITUCIONAL DEL ECUADOR CASO NO. 974-21-JP' <[http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcBldGE6J2VzY3JpdG8nLCB1dWlkoic5YzlhM2U3Yi0zZDQ5LTRlMmUtOTQwOS1mZWl0OTBjNDUwZjUucGRmJ30=>](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcBldGE6J2VzY3JpdG8nLCB1dWlkoic5YzlhM2U3Yi0zZDQ5LTRlMmUtOTQwOS1mZWl0OTBjNDUwZjUucGRmJ30=>)>.

<sup>10</sup> UNGA (n 4) para 13.

<sup>11</sup> UNFCCC, 'Paris Agreement' (UNFCCC 2015) Art. 8.

<sup>12</sup> Caldas and others (n 5) para 126.

<sup>13</sup> *Caso Velásquez Rodríguez Vs. Honduras* (n 7) para 25.

adverse effects of climate change, such reparation and compensation should be based on the provisions of Article 8 and 2.2 of the Paris Agreement, in accordance with the principle of common but differentiated responsibilities to restore what has been damaged and compensate what has been lost.

It is an obligation of the parties to the UNFCCC and related instruments, to implement mechanisms for restitution to the state prior to the damage, restoration, compensation or payment of an economic penalty, satisfaction, guarantees of non-repetition, care for affected persons and financial instruments to support reparation. This is our base line to analyze how loss and damage is addressed by the UNFCCC.

## Impacts of loss and damage on the full enjoyment of human rights in Costa Rica

Studies carried out in Costa Rica, Honduras, Guatemala and El Salvador identify the claims and experiences suffered by our communities regarding damages and losses caused by the adverse effects of climate change, which allow us to affirm that there is an existential crisis, that human rights are being violated and that the communities have the right to reparations.<sup>14</sup> More detailed information available at: [La Vida entre Pérdidas y Daños: Narrativas Centroamericanas](#)

On recent research project in Costa Rica, we can provide information regarding the cases of the urban community of Linda Vista and the coastal community of Cahuita.

### Cahuita

Cahuita is a community located in the Caribbean coast of Costa Rica. For the population of Cahuita, climate change is described in two ways, as changes in water and temperature cycles, particularly increased heat and reduced rainfall, and the impacts that these changes have on their territory and community. For the community, the greatest effect of changes in climate is the impossibility of associating times of the year with rainfall and temperature patterns.

The community highlights among the main impacts of climate change, the loss of livelihoods such as infrastructure, damage to crops and the drastic reduction of fishery resources and marine species due to the warming of the sea, as well as a setback in the effective fulfillment of their rights to political and democratic participation, the imposition of a development model based on extensive tourism and, somehow as a result of the previous two, the inability to stop extractive projects that impact the ecosystems and territories on which they depend "by not being able to participate in their decisions, they have not been able to stop projects that have affected their marine-coastal zone, being that this is the main economic and cultural area of the zone" (Personal communication with artisanal fisherwoman, community underwater archaeologist and representative of the organization Ambassadors of the Sea, 2023). This case can be further elaborated in the document Cahuita: Exploring Pathways to Climate Justice, soon available at <http://www.LaRutadelClima.org> and the publication [Perspectiva Comunitarias: Pérdidas y Daños en Cahuita](#)

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<sup>14</sup>\_'La Vida Entre Pérdidas y Daños: Narrativas Centroamericanas'; (n 1).

## Linda Vista

Linda Vista is an urban community located in the Capital of Costa Rica, severely affected by climate impacts and marginalization. Linda Vista and the neighborhoods that make up this community, as well as the areas near the Quebradas ravine, have faced serious problems related to landslides and floodings in recent years.

Reports from the National Emergency Commission have documented since 1992, about the worrying situation of the population of Río Azul and Linda Vista, highlighting the frequent overflows of water and landslides. These events have become frequent due to various causes, including poor urban planning, lack of channeling and rainwater and wastewater disposal systems, the indiscriminate use of landfills on hillsides without retaining walls, vertical cuttings, displacement of landfills on slopes or terraces, construction of houses on water channels, the presence of cracks in the ground or homes, high environmental pollution, very small and unsuitable land for construction, and inappropriate septic tank systems located on hillsides.<sup>15</sup>

We still present in the community of Linda Vista in La Unión, with the objective of identifying climate impacts, analyzing vulnerabilities and threats due to loss and damage faced by the community. Our work has made it possible to identify a series of socio-environmental challenges that have arisen as a result of climate changes and transformations in its environment. These challenges affect not only the daily life of its inhabitants, but also their long-term well-being and security.

One of the most significant events that had a profound impact on people's lives occurred on July 8th, 2005, in the area known as Carvajal Street. This event was triggered by heavy rains, which resulted in a landslide that had serious consequences. Unfortunately, two people lost their lives, in addition to causing material damage and affecting public infrastructure, including the pipes of the Costa Rican Institute of Aqueducts and Sewerage (AYA), and numerous homes were partially or totally destroyed.<sup>16</sup>

This case can be reviewed in the document "Climate Impacts in Marginalized Urban Communities" in the following link:  
<https://larutadelclima.org/download/31194/?tmstv=1701593670>

## Mechanisms and tools to measure, monitor, report on, and evaluate the impacts of loss and damage.

To develop a mechanism for monitoring or reporting on the impacts of loss and damage, it is essential to have a multidisciplinary approach. It is important to consider to plan strategies that respond to local and global needs. This approach will allow effective and sustainable actions to be found over time for the prevention, mitigation and adaptation to climate change in cities.

This approach is a priority for La Ruta del Clima's field research. For example, one of our latest projects made in the community of Linda Vista of La Unión in Cartago, aimed to collect

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<sup>15</sup> National Commission for Risk Prevention and Emergency Care. (2014). Technical report: *Assessment of the degree of vulnerability of some communities in the districts of Río Azul, San Diego, San Rafael and Tres Ríos*

<sup>16</sup> La Ruta del Clima. (2023). *Climate impacts in marginalized urban communities: The Case of Linda Vista de Río Azul*

qualitative information through a methodological proposal with the objective of understanding of the impacts of climate change from the perspective of its residents. The importance of this type of mechanism is the understanding of people's narratives and perspectives, as well as the interconnections between the economic and non-economic impacts of climate change on their daily lives. It is essential to use the results of this exploratory research as a basis for the development of deeper research or processes that allow building or identifying actions to address Loss and Damage related to climate impacts in this community. This should be done considering the needs, concerns and expectations of the community. It should be noted that the research was carried out in an ethical manner, respecting the confidentiality of the participants and obtaining their informed consent at each stage of the process. The objective of this methodology was to generate meaningful knowledge and empower Linda Vista residents in decision-making to address the impacts of climate change and promote resilience in their environment.<sup>17</sup>

### Public policies, legislation and institutional arrangements to avert, minimize and address loss and damage

Costa Rica does not have a specific legislation on climate change. However, this has not prevented climate change from being addressed through other environmental regulations, executive decrees and public policies of national scope. The biggest gap is found in the regulation of issues such as climate justice, climate migration, loss and damage, etc. Despite these challenges, climate policies have been developed, that in one way or another attempt to consider human rights, climate impacts and risks.

For example, the National Adaptation Policy 2018-2030, defines its objectives as to strengthen capacities and resilience conditions, reduce vulnerability, as well as damages and losses and take advantage of opportunities.<sup>18</sup>

In our publication, "[A Climate Framework Law in Costa Rica: Basic Structures and Examples](#)", it is possible to inquire with greater precision of the initiatives developed and the work being done by La Ruta del Clima regarding a concrete proposal of elements that a Climate Change Law in Costa Rica should contain to contribute to the strengthening of legislation and public policies.<sup>19</sup>

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<sup>17</sup> La Ruta del Clima. (2023). *Climate impacts in marginalized urban communities: The Case of Linda Vista de Río Azul*.

<sup>18</sup> Gobierno de Costa Rica, 'Política Nacional de Adaptación al Cambio Climático' <file:///C:/Users/adxw1/Downloads/Politica-Nacional-de-Adaptacion-al-Cambio-Climatico-Costa-Rica-2018-2030.pdf>.

<sup>19</sup> La Ruta del Clima. (2023). *A Climate Framework Law in Costa Rica: Basic Structures and Examples*.

## Promising practices and critical challenges in the promotion, protection, and fulfilment of the full enjoyment of human rights in the context of loss and damage

The exercise of human mobility in the context of climate change poses many challenges for the full enjoyment of human rights. We have addressed this issue in depth in the following report: [Movilidad Humana: Derechos Humanos y Justicia Climática](#)

We have researched about human mobility in the context of climate change regarding communities in Costa Rica. In the document [“Human mobility in the Climate Context”](#), it is discussed that planned relocation referring to the strategy of moving communities or populations in an anticipated and organized manner in order to respond to the impacts of climate change, has a difficulty related to the coordination between entities to deal with emergencies, which will determine how fast the affected people are provided with a solution. Among the experiences in Costa Rica, the cases of Calle Lajas in Escazú and Barrio Fátima in Santo Domingo in Heredia stand out. In the case of the community of Calle Lajas, the community suffered a landslide in 2010, so it had to be relocated while, in Barrio Fátima, a process of relocation took place due to it being a human settlement at high risk of disasters. These cases demonstrate the importance of counting with rigorous studies to determine the risk of communities and the need to have efficient mechanisms for housing solutions in these situations. However, there are shortcomings in training, prevention and follow-up to risk management and victim care.<sup>20</sup>

In addition, it has been identified that there's a clear lack of preparedness at both individual and collective levels to face an emergency, which leads to worse consequences during climate events and to a continuous sense of preoccupation and insecurity in the communities that live in constant fear of being affected by an event that they are not prepared for.<sup>21</sup> The difficult access to environmental data and the lack of institutional transparency also presents a challenge for researchers and for communities to address climate events. There's a need to have up-to-dated, first-hand information to address these events and in most cases this data does not exist.<sup>22</sup>

## Recommendations on how to address the critical challenges identified.

According to the Paris Agreement, States should, when taking action to address climate change, “respect, promote and consider their respective obligations on human rights,” especially those of local communities, Indigenous Peoples and people in vulnerable situations. According to the United Nations High Commissioner for Human Rights, international human

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<sup>20</sup> La Ruta del Clima. (2023) Human mobility in the climate context. [Movilidad Humana en el contexto climático: Costa Rica – La Ruta del Clima](#)

<sup>21</sup> La Ruta del Clima. (2023). *Climate impacts in marginalized urban communities: The Case of Linda Vista de Río Azul.*

<sup>22</sup> La Ruta del Clima. (2023). *Climate impacts in marginalized urban communities: The Case of Linda Vista de Río Azul.*

rights law applies to loss and damage associated with the adverse effects of climate change.

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The Paris Agreement itself has recognized in Article 8 the importance of "avoiding, minimizing and addressing loss and damage associated with the adverse effects of climate change." In the same sense, Article 3.1 of the United Nations Framework Convention on Climate Change establishes that: "the Parties should protect the climate system for the benefit of present and future generations, on the basis of equity and in accordance with their common but differentiated responsibilities and their respective capabilities." Meaningfully addressing loss and damage entails redress on the basis of human rights, and with a focus on equity.<sup>24</sup>

States must be urged to support and strengthen the measures taken at the global cooperation level to respond to loss and damage in line with their human rights obligations. This implies that their actions must be consistent with their responsibilities to provide reparations and be directed towards the promotion of justice and it is essential to implement strategies and approaches to strengthen community participation in decision-making and implementation of actions that improve their quality of life. Part of the process of insertion and participation in the community must be strengthened through capacity building processes, through programs aimed at academic, technical and humanistic processes for the strengthening of skills, as well as fostering leadership to promote strategies and solutions to the problems that affect the community<sup>25</sup>

Citizen participation plays a fundamental role in the processes of adaptation and reparation to the impacts of climate change. Community organization and socio-environmental education are key to an effective response to emergencies and climate events. It is essential to recognize the interdependent relationships between human beings and their natural environment. All voices, from the perspective of communities to the reality of women, men, children, youth and civil society in general, must be heard.<sup>26</sup>

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<sup>23</sup> OHCHR, (2023). "General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change CRC/C/GC/26, 2023". Párrafo 106, Recuperado de:

<https://www.ohchr.org/en/documents/general-comments-and-recommendations/crccgc26-general-comment-no-26-2023-childrens-rights>

<sup>24</sup> La Ruta del Clima et al (2023). *Climate reparations are right*. [Declaración ¡Reparaciones Climáticas son un Derecho! – La Ruta del Clima](#)

<sup>25</sup> La Ruta del Clima. (2023). *Climate impacts in marginalized urban communities: The Case of Linda Vista de Río Azul*.

<sup>26</sup> La Ruta del Clima et al (2023). *Climate reparations are right*. [Declaración ¡Reparaciones Climáticas son un Derecho! – La Ruta del Clima](#)