



HUMAN RIGHTS AND LOSS AND DAMAGE

Key messages



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

KEY MESSAGES ON HUMAN RIGHTS AND LOSS & DAMAGE

International human rights law applies to loss and damage associated with the adverse effects of climate change, including extreme weather events and slow-onset events, resulting from anthropogenic emissions of greenhouse gases. Climate change is already having negative impacts on a wide range of human rights, such as the rights to a clean, healthy and sustainable environment, food, water and sanitation, health, housing, an adequate standard of living, life, culture, development, self-determination, and peace among others. For example, the Intergovernmental Panel on Climate Change found that climate change has exposed millions of people to acute food insecurity and reduced water security, with the largest adverse impacts observed in many locations and/or communities in Africa, Asia, Central and South America, LDCs, Small Islands and the Arctic, and globally for Indigenous Peoples, small-scale food producers and low-income households. The occurrence of climate-related food-borne and water-borne diseases and the incidence of vector-borne diseases have also increased. These losses and damages have exacerbated inequalities, including with respect to the effective enjoyment of human rights. They require a response grounded in human rights. The following Key Messages describe human rights obligations related to loss and damage from climate change.



01

Apply a human rights-based approach to averting, minimizing and addressing loss and damage from climate change

Human rights law requires urgent action to prevent climate change related violations of human rights and establish guarantees of non-repetition. It further requires that harms caused by climate change are remedied. Action to avert, minimize and address loss and damage from climate change should be structured and implemented to respect, protect and fulfil human rights by stopping future harms and ensuring the rights to access justice and effective remedy for all people. Under human rights law, the actors responsible for climate change related harms (primarily States and businesses) should be accountable for remedying them. Human rights principles and standards should inform all action to address loss and damage including needs assessments and specific measures to respect, protect and fulfil the rights of those who are often disproportionately affected by climate change such as women and girls, children, youth, older persons, persons with disabilities, Indigenous Peoples, minorities, migrants, rural workers, persons living in poverty and others in vulnerable situations.

Those experiencing loss and damage due to the adverse effects of climate change are entitled to access effective remedy. Action to address economic and non-economic loss and damage should include the following key elements provided for under international human rights law: equal and effective access to justice and to an effective remedy; adequate, effective and prompt reparation for harm suffered, in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, including as guided by 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 (GA res. 60/147); and access to relevant information concerning violations and reparation mechanisms, including through the provision of such information in accessible formats. Effective, inclusive, transparent, participatory, accountable and adequately funded mechanisms for loss and damage are needed to advance the rights of those impacted by climate change to access justice and effective remedies.

02

Operationalize the right to effective remedy for loss and damage

03

Mobilize maximum available resources to address the human rights impacts of loss and damage

International human rights law, including the International Covenant on Economic, Social and Cultural Rights, requires States, individually and through international assistance and cooperation, to mobilize the maximum available resources for the progressive realization of economic, social and cultural rights and the right to a healthy environment. States should establish domestic mechanisms to mobilize resources to address human rights harms caused by climate change and measurably advance the effective enjoyment of economic, social and cultural rights by those affected. States should adopt innovative measures to finance efforts to address loss and damage including equitable and progressive carbon taxes; wealth taxes; levies on certain sectors, e.g. fossil fuels, aviation, and shipping; and legal and policy measures to increase the accountability of businesses for climate change related harms.

In line with the principles of equity, common but differentiated responsibilities and respective capabilities, and polluter pays, wealthier States with higher historical and present responsibilities for causing climate change have greater responsibilities to provide resources for less wealthy and less responsible States to remedy human rights harms from loss and damage. These principles and the obligations of States to cooperate internationally to advance human rights apply to relevant UNFCCC negotiations and processes such as those for the establishment of the Santiago Network on loss and damage, the operationalization of a new fund for loss and damage, and the creation of a new collective quantifiable goal on climate finance. In this context, a human rights-based approach to loss and damage entails, among other things: including express references to human rights as guiding principles for the operationalization of these mechanisms; adopting human rights-based policies and safeguards applicable to decision-making, monitoring and accountability; ensuring meaningful and informed participation, particularly of those most affected by loss and damage, including in the governing bodies of mechanisms to address loss and damage; specifically addressing non-economic losses, including those arising from climate-related human mobility; respecting Indigenous, and local knowledge and cultural heritage; ensuring that sufficient financial and other resources are directly accessible to the people and communities most affected by loss and damage; and taking a gender-responsive, disability-inclusive, intersectional and intergenerational approach in the assessment, design and implementation of loss and damage measures. Care should be taken to tailor international funding to the needs of the people and States most affected by climate change, protecting against debt increases and ensuring additionality to existing funding commitments.

04

Ensure equitable, cooperative action to address loss and damage

05

Respect, protect and fulfil the human rights of persons in vulnerable situations

The Human Rights Council has expressed concern that loss and damage caused by sudden- and slow-onset events directly and disproportionately affects women and girls, children, youth, older persons, persons with disabilities, Indigenous Peoples, migrants, persons living in poverty and others in vulnerable situations, undermining their well-being and their enjoyment of a whole of range of human rights.

05

Respect, protect and fulfil the human rights of persons in vulnerable situations (cont'd)

5.1

Advance women's rights and gender equality

Persons in vulnerable situations may have reduced adaptive capacity making them particularly at-risk from human rights harms caused by climate change. Under human rights law, States should take action to empower persons at-risk from or experiencing climate change related loss and damage and uphold their rights. This includes taking action to:

Women and persons with diverse gender identities often face systemic discrimination, harmful stereotypes and social, economic and political barriers that can limit their adaptive capacity. These include limited or inequitable access to financial assets and services, education, land, property, resources, and decision-making processes, as well as fewer opportunities and less autonomy, including relating to work and care responsibilities. As a result, women are particularly exposed to human rights harms resulting from loss and damage. Indigenous women, women with disabilities, rural women, women living in poverty, and older women, among others, face even higher risks of experiencing discrimination and loss and damage. At the same time, women can and do make important contributions to rights-based climate action. A human-rights based approach to loss and damage empowers women, protects their rights, and addresses the gendered impacts of climate change, integrating intersectional approaches. This includes: specific consideration and integration of women's rights and gender equality in all policies and programmes; improved understanding of the gendered impacts of loss and damage and climate action informed by lived experiences; effective measures to address and prevent sexual and gender-based violence in the context of climate change, including through women's meaningful and effective participation in the design and implementation of humanitarian, migration and disaster risk reduction plans and policies; and ensuring that climate funding systematically integrates women's human rights and gender equality into governance structures, project approval, implementation processes, and public participation mechanisms.

Children are often disproportionately impacted by climate change due to their unique metabolism, physiology and developmental needs. The negative impacts of climate change, including the increasing frequency and intensity of natural disasters, changing precipitation patterns, food and water shortages, and the increased transmission of communicable diseases, threaten the enjoyment by children of a wide range of rights. A Climate change also has a disproportionate impact on, inter alia, children with disabilities, children on the move, poor children, children separated from their families, and Indigenous children. A human-rights based approach to loss and damage requires specific consideration and action by States to respect, protect and fulfil the rights of children. As noted in General Comment 26 of the Committee on the Rights of the Child, governments should consider children's rights in all decisions made about climate change and consider climate change in all decisions being made about children. This includes ensuring that: children's rights are specifically addressed in climate, disaster risk reduction, and development policies and programmes; adequate resources are mobilized domestically and through international cooperation to address the specific situation of children, in particular those children disproportionately impacted by climate change; children are empowered to participate in climate policymaking through education and consultative mechanisms; and children have access to effective remedies when they suffer harm from climate action and inaction, including by businesses.

5.2

Advance children's rights

5.3

Advance the rights of Indigenous Peoples

According to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Indigenous Peoples around the world are exposed to the worst impacts of climate change. The displacement of Indigenous Peoples and the potential loss of their traditional lands, territories and resources threatens their cultural survival, traditional livelihoods and right to self-determination. A human-rights based approach to loss and damage requires specific consideration and action by States to respect, protect and fulfil the rights of Indigenous Peoples, in accordance with the requirements inter alia of International Labour Organization Convention (No. 169) concerning Indigenous and tribal peoples and the United Nations Declaration on the Rights of Indigenous Peoples.

5.3

Advance the rights of Indigenous Peoples (cont'd)

These include: ensuring that the rights of Indigenous Peoples are specifically addressed in climate, disaster risk reduction and development policies and programmes; mobilizing adequate resources domestically and through international cooperation to address their specific situation, including the possibility of granting them direct access to international funding arrangements for loss and damage; ensuring meaningful and informed participation in decision-making processes; ensuring access to effective remedies when Indigenous Peoples suffer harm from climate action and inaction, including by businesses; and developing adequate domestic and international measures to address the permanent loss of land and territories and their associated ecosystems, livelihoods, culture and heritage.

Climate-induced mobility increases exposure to climatic hazards, reduces adaptive capacity and increases vulnerability to discrimination, inequality and structural dynamics that lead to diminished and unequal enjoyment of rights. People on the move, including especially women and girls, children, and persons with disabilities, often have less or no access to basic necessities, such as food, water, adequate healthcare and housing. A human-rights based approach to loss and damage requires specific consideration and action by States to respect, protect and fulfil the rights of persons moving in response to climate change, including: promoting and expanding safe, regular, dignified and accessible pathways for human mobility such as specific protection mechanisms; refraining from returning migrants to territories affected by climate change that can no longer sustain livelihoods consistent with their human rights; providing protection for persons who are unable to return to their homes as a result of climate change; facilitating the integration of climate change-related migrants in host communities, the regularization of their legal status and their access to labour markets; ensuring meaningful and informed participation of all in decision-making processes relating to climate change and human mobility; and establishing legal protections, globally regionally, and nationally, for persons internally displaced and displaced across international borders as a consequence of climate change.

5.4

Advance the rights of migrants

5.5

Advance the rights of persons with disabilities

Persons with disabilities suffer from disproportionately higher rates of morbidity and mortality in emergencies, and face challenges in accessing emergency support. Both sudden-onset natural disasters and slow-onset events can affect the access of persons with disabilities to safe drinking water and sanitation, food and nutrition, health-care services and medicines, adequate housing, education and decent work. A human-rights based approach to loss and damage requires specific consideration of the rights of persons with disabilities under the Convention on the Rights of Persons with Disabilities including: ensuring that their situation is specifically addressed in climate, disaster risk reduction, development, housing, education and healthcare policies and programmes; mobilizing adequate resources domestically and through international cooperation to address their specific situation; ensuring meaningful and informed participation in decision-making processes, including through the provision of relevant information in accessible formats; and providing access to effective remedies when they suffer harm from climate action and inaction, including by businesses.