



Submission on Loss and Damage: Special Rapporteur on the right to development

ACT Alliance, with its members FELM and Christian Aid, have led the development of this submission drawing on experiences and additional technical input from other members of the ACT Alliance working on climate justice.

As a global faith and rights based coalition of some 140 members working in more than 120 countries, ACT collectively works on humanitarian aid, long-term sustainable development and advocacy to promote locally-led solutions, human rights, and address structural injustices.

Felm is an agency of the Evangelical Lutheran Church of Finland, and one of the largest Finnish civil society organisations working in global development.

Christian Aid is a global movement of people, churches, and local organisations working with some of the most vulnerable communities in 29 countries across the world. It exists to create a world where everyone can live a full life, free from poverty.

1. a. How is the realisation of the right to development impacted by both economic and non-economic loss and damage from climate change?

Loss and damage events result in direct and indirect economic costs which contribute to severe erosion of development gains. These further compromise the extent to which people enjoy fundamental rights and participate in development, particularly in vulnerable and poor nations. These are left to shoulder significant financial costs often forcing them into predatory financial loan arrangements. The loan arrangements increase debt burdens which limit fiscal space to fund development and jeopardise efforts to deliver essential services. This in turn compromises the basic right of people to development.¹

According to the literature and our practical knowledge, it is typically poor and marginalised communities that face the heaviest brunt of a changing climate, in particular, women and girls. The UN estimates that 80% of the people displaced by climate change are women. The right to development is not equally affected between or within population groups in countries, as intersectional inequalities are

¹ 1/CP 27 paragraph 23. https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf

exacerbated in times of crisis (as is indicated and elaborated in 1B). Specific cases in national and subnational contexts are emerging in the research. See, for instance, Bofafo et al. (2023) in Ghana² and McNamara et al. (2023) in Vanuatu³. Examples of the ways in which loss and damage hinders the right to development are found in [case studies](#) amassed by the Transitional Committee. We highlight that right to development concerns *ex-ante* action to avert and minimise loss and damage, *in situ* support to support ongoing crisis and *ex post* rehabilitation and reconstruction following loss and damage.

This necessitates capacity building for those deemed vulnerable to create timely and effective responses.⁴ Securing the right to development requires countries to enhance understanding, action, and support for victims of loss and damage stemming from climate change. This will allow victims to manage these challenges to protect lives, preserve cultural heritage, recover livelihoods and enable reconstruction. The gendered dimensions of loss and damage must be addressed to ensure gender-responsive/ transformative climate action, for example, including a gender analysis to address differentiated vulnerabilities, and ensuring women in decision-making spaces related to Loss and Damage.

b. How is the impact experienced differently and/or disproportionately by different individuals (e.g., children and women), groups (e.g., Indigenous Peoples) and States (e.g., Small Island Developing States)?

The differing vulnerabilities of countries to climate change, known for decades as vulnerability categories, were stipulated in the original Framework Convention (UNFCCC). As evidence has emerged over time, generally we see, natural events become risks and catastrophes in human societies where political power and economic capacity shape vulnerability.

² Boafo, J., Yeboah, T., Guodaar, L., Stephanie, Y., Nyantakyi-Frimpong, H., 2023. Understanding non-economic loss and damage due to climate change in Ghana, *Climate and Development*, DOI:10.1080/17565529.2023.2183074

³ McNamara, K.E., Clissold, R., Westoby, R. et al. Using a human rights lens to understand and address loss and damage. *Nat. Clim. Chang.* 13, 1334–1339 (2023). <https://doi.org/10.1038/s41558-023-01831-0>

⁴ Wallimann-Helmer, I., 2023. Resilience and Nonideal Justice in Climate Loss and Damage Governance, *Global Environmental Politics* 23:3, https://doi.org/10.1162/glep_a_00723

Regarding loss and damage, patterns of vulnerability coincide with the generalisations derived from adaptation. Being affected by climate change is highly contextual. There is also differentiation among the capabilities of organisations and policies in planning action that could decrease vulnerability.

Vulnerability differs within communities and across societies and should be thought of as changing and dynamically affecting people and places in ways that are influenced by geographic and other factors. Under this broader understanding of vulnerability, the IPCC report continues to define vulnerability in terms of particular regions and people. Furthermore, it defines global hotspots for vulnerability in regional terms as being SIDS, specific regions in Africa, central and south America and the Arctic⁵. In the view of ACT Alliance, defining vulnerability might benefit from identifying hotspots and transcending national or regional boundaries.

Existing research on the impact of climate change focuses on losses and damages that are easier to measure and quantify⁶. There are still substantial knowledge gaps about development impacts (especially long-term), and few countries can report or investigate non-economic loss and damage. These include the loss of social cohesion, sense of place, and identity. It might be that a sense of loss about cultural traditions is more severely felt among older generations, who may not be as physically vulnerable as children. Understanding the impact of climate change on humankind (and, correspondingly, the identification of the best response strategies) is interdisciplinary, arising from the interplay between disciplines such as geophysics, oceanography, biology, ecology, economy, sociology, and psychology.⁷

While hazards are neutral, disasters are not. It is the 'condition' of the people where the disaster strikes which leads to a hazard becoming a disaster.⁸ Disasters are on some level the result of socially-created risk.⁹ Every phase and aspect of a disaster including causes, vulnerability, preparedness, results,

⁵ McDonnell S. The COP27 decision and future directions for loss and damage finance: Addressing vulnerability and non-economic loss and damage. *RECIEL*. 2023; 32(3): 416-427. doi:10.1111/reel.12521

⁶ Bofo, J., Yeboah, T., Guodaar, L., Stephanie, Y., Nyantakyi-Frimpong, H., 2023. Understanding non-economic loss and damage due to climate change in Ghana, *Climate and Development*, DOI:10.1080/17565529.2023.2183074

⁷ Balzter, H.; Macul, M.; Delaney, B.; Tansey, K.; Espirito-Santo, F.; Ofoegbu, C.; Petrovskii, S.; Forchtner, B.; Nicholes, N.; Payo, E.; et al. 2023. Loss and Damage from Climate Change: Knowledge Gaps and Interdisciplinary Approaches. *Sustainability*, 15, 11864. <https://doi.org/10.3390/su151511864>

⁸ Cannon, T. (1994). Vulnerability Analysis and the Explanation of "Natural" Disasters. In A. Varley (Ed.), *Disasters, Development and Environment* (1st ed., pp. 14-30). John Wiley & Sons Ltd.

⁹ Indicators of Disasters Risk and Risk Management (2005). Main Technical Report. Instituto de Estudios Ambientales – IDEA, Universidad Nacional de Colombia, Campus Palogrande, Manizales, Colombia

response and construction is to a greater or lesser extent a social calculus.¹⁰ Typically, women, children, the elderly, people with disabilities, and indigenous people experience the effects of disasters more robustly within a societies divided by class, gender, ethnicity and faith. This is due to the social system and associated power relations they live in and, therefore, it is critical that an intersectional framework is adopted to addresses differentiating exposure to risks.

The most disadvantaged social groups are trapped in a vicious cycle of inequality and climate change. Existing inequalities at the individual and community level, or a lack of income, resources and power mean they suffer disproportionately from adverse climate impacts, leading to greater subsequent inequality.¹¹ Individuals' and communities' high dependency on natural resources, their limited capacity or resources to adapt to a changing climate, and living arrangements in climate-sensitive locations mean they are severely and disproportionately impacted by climate change.¹² The ongoing, tangible and widespread climate impacts on Indigenous and local communities affect multiple elements of their social and ecological systems depending on where they live and their livelihood activities.¹³

For example, the people of Manta, Bangladesh – one of the country's oldest fishing communities, located in the south-west coastal region – find it increasingly difficult to hold on to their traditional lifestyle and livelihood practices in a changing climate.¹⁴ This community relies on fishing - they live on boats, and their lives are interwoven with water. Unpredictable weather patterns have made fishing riskier. Their fishing nets are often damaged by riverbank erosion, and competition from commercialised fishing businesses means they are now falling into debt. Parents fear their children won't be able to make a living due to intense climate events and are concerned about their children's increasing number of illnesses. Struggling with the loss of livelihood and health, this community seeks

¹⁰ Smith N (2005) There's No Such Thing as a Natural Disaster. Retrieved from:

<https://www.items.ssrc.org/understanding-katrina/theres-no-such-thing-as-a-natural-disaster/>

¹¹ Climate Change and Social Inequality* Department of Economic & Social Affairs

By S. Nazrul Islam and John Winkel. DESA Working Paper No. 152, ST/ESA/2017/DWP/152, October 2017

¹² Poverty and Climate Change. Retrieved from: <https://www.oecd.org/env/cc/2502872.pdf>

¹³ Reyes-García, V., García-del-Amo, D., Álvarez-Fernández, S. et al. Indigenous Peoples and local communities report ongoing and widespread climate change impacts on local social-ecological systems. *Commun Earth Environ* 5, 29 (2024). <https://doi.org/10.1038/s43247-023-01164-y>

¹⁴ Climate Chronicles of the Manta Community: Life on the river, battling the water woes. Retrieved from:

<https://www.iccd.net/blog/climate-chronicles-of-the-manta-community-life-on-the-river-battling-the-water-woes/>

support from local government organisations and NGOs to build safe homes and develop alternative income-generating options.

2. *What are the obligations of States and other actors such as development finance institutions and businesses to prevent, mitigate and remediate the impacts of climate change-related loss and damage on human rights, including the right to development?*

States have the ultimate responsibility to ensure that those vulnerable to climate change do not merely survive but can secure their rights to full and prosperous lives.

While emphasis should be on the rapid operationalisation of the loss and damage fund and securing adequate funding, new and additional capital alone will not solve the loss and damage finance issue. A variety of mechanisms within the new funding arrangements - including through international financial institutions, multilateral development banks, central banks, and social safety net programs - are required to shape and channel support for people's needs.

Responses to climate-related emergencies are channelled through humanitarian funding and emergency payouts provide temporary shelter, food, and basic life support. Debt instruments such as loans, bonds, and budget reallocations currently finance reconstruction and recovery¹⁵. Scientific understanding about which instruments are best suited to specific locations and events needs to be developed.¹⁶

3. *What is the legal and/or moral basis for States and other actors including businesses to contribute to the Fund for climate change-related loss and damage?*

The most obvious path in understanding obligations to contribute to the Loss and Damage Fund would be those that are based on the liability of those who created the emissions and corresponding compensation for victims of loss and damage despite developed countries' long-standing opposition to integrating loss and damage into global climate policy.¹⁷

¹⁵ Warner, K., Weisberg, M., 2023 A funding mosaic for loss and damage, *Science* 379 (6629), . DOI: 10.1126/science.adg5740

¹⁶ Serdeczny, O., Lissner, T. 2023. Research agenda for the loss and damage fund. *Nat. Clim. Chang.* 13, 412. <https://doi.org/10.1038/s41558-023-01648-x>

¹⁷ 1/CP 21, para 51 <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>

The Loss and Damage Fund needs to operate in a situation that is referred to as a non-ideal justice. This describes situations that concern either challenges in realising justice under partial compliance or obstacles to realising justice due to unfavourable societal conditions.¹⁸ For human rights to be respected in a changing climate, a perspective of transitional justice needs to be applied. Any f a resolution must be based on liability and compensation.

4. In addition to making a financial contribution to the Fund, what non-financial components may be relevant from a climate justice perspective (e.g., transfer of green technologies, building of capacity and relocation pathways for climate-induced migrants)?

McDonnel *et al* (2023) lists four main gaps in loss and damage finance relevant to identifying additional avenues to protect the right to development in the face of loss and damage (risk transfer finance, accessible insurance, well-funded social protection schemes) Decision 2/CP 27 underscored the need to construct the loss and damage financial architecture (the fund and funding arrangements) in a manner that considers speed, eligibility, time and access to finance in the context of specific type of loss and damage event. Achieving this coherence cannot be put onto the shoulders of a singular fund as coherence comes from multiscale and sectoral cooperation.

We underscore the role of building evidence on L&D and in particular building linkages to questions of liability. While policies to respect human rights in a changing climate might be in place, they lack teeth without a robust understanding of the links between a changing climate and its negative effects on the realisation of human rights¹⁹. Increase scientific evidence is needed to counter the claims of scientific ambiguity²⁰ used to stall political and legal commitments.

¹⁸ Wallimann-Helmer, I., 2023.

¹⁹ Otto, F.E.L., Fabian, F., 2023. Equalising the evidence base for adaptation and loss and damages, *Global Policy*. 00:1–11. DOI: 10.1111/1758-5899.13269

²⁰ Noy, I., Wehner, M., Stone, D. *et al.* 2023. Event attribution is ready to inform loss and damage negotiations. *Nat. Clim. Chang.* **13**, 1279–1281 (2023). <https://doi.org/10.1038/s41558-023-01865-4>

States must also consider the impacts of climate change on human mobility in all contexts, including loss and damage. Affected populations face a wide variety of consequences related to their mobility, which can include displacement, various forms of migration, as well as involuntary immobility, in situations where moving out of harm's way would be required to reduce risk, but affected communities lack the means to do so. In all of these scenarios, human rights violations occur. This leads the impacted groups to experience their situation as an instance of L&D.

Thus, policy measures need to ensure the protection of the rights of people whose mobility is being affected by climate change. This would include the provision of regular pathways for migration to enhance the protection of migrants in situations of vulnerability, including as a result of the impacts of climate change and disasters,²¹

5. How should a human rights-based approach to operationalise and administer the Fund look like (e.g., integration of considerations such as accessibility, non-discrimination, fair representation in decision-making, gender responsiveness, and accommodation for marginalised communities and countries especially vulnerable to the adverse effects of climate change)?

L&D fund should aim to deliver transformational change over and addressing loss and damage in an incremental manner. Incremental activities are normally at the risk of reinforcing existing vulnerabilities or introduce new risks in vulnerable regions and contexts. Inadequate metrics of success are among the factors creating this unfair situation.²² Consequently, from the local to the global, the fight against climate change is inextricably linked to the fight against poverty and inequality.²³ A gender transformative response is needed for full, meaningful and equal participation and leadership of women in the operationalisation of the Loss and Damage Fund. A human rights-based approach must centre the determination of programming response areas and the approaches of the fund and its financial arrangements.

²¹ See UN Network on Migration, "Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability" July 2021 https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/resources_files/guidance_note-_regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf

²² Balzter, H.et al., 2023.

²³ Women on the Front Line. (2021). Retrieved from: <https://www.christianaid.org.uk/sites/default/files/2022-08/women-on-the-front-line-final-report.pdf>

Financial and technical support must reach those who need it most, respond to intersecting and gendered risks, and enable people to define their own paths to resilience and prosperity. To promote and strengthen national responses for addressing loss and damage²⁴, the contributions of grassroots women-led organisations in humanitarian response, disaster risk reduction, and adaptation must be sufficiently acknowledged. Loss and damage finance needs to be decentralised so that it reaches women-led and women's rights civil society organisations. They are best placed to understand and respond to the needs of marginalised women and bring about long-lasting improvements. Equally, the inclusion of migrants and displaced people in climate vulnerable contexts must be ensured.

6. *How to ensure that the Fund and/or climate finance (including for mitigation and adaptation) does not result in a debt trap for developing countries?*

Climate finance obligations are not to be delivered as loans, as these have watered down the implementation of the USD 100 Billion commitment.²⁵ Continuing to deliver commitments through loans would be detrimental to the coming loss and damage fund.

We acknowledge that market-based instruments have a substantial role, especially in the private sector, to allow industrial-scale transitions. Similarly, public finance has a central role to play in supporting climate action with public benefits. This is particularly true of adaptation and loss and damage, including in remote community areas. Additionally, public finance can leverage private finance by buying down risk. Provision, mobilisation and delivery of climate finance must consider the enabling fiscal space of developing countries.²⁶

The interaction between public fiscal policy and finance, with private finance trying to mobilise at-scale climate finance, must be based on terms that do not increase the debt burden of countries nor place the marginalised in unfair and discriminatory arrangements that limit their right to development. The risk of

²⁴ Operationalisation of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2-3 of decisions 2/CP.27 and 2/CMA.4. Draft decision -/CP.28-/CMA.5. Proposal by President https://www.unfccc.int/documents/634215?qclid=CjwKCAiAk9itBhASEiwA1my_6xNSqheOG5cE-LfjiD3nQ5yRQ9nPk0_5LJEk8cSdZpJHeaXzk-64MBocOCEQAvD_BwE

²⁵ Roberts, J.T., Weikmans, R., Robinson, Sa. et al. 2021. Rebooting a failed promise of climate finance. Nat. Clim. Chang. 11, 180–182,. <https://doi.org/10.1038/s41558-021-00990-2>

²⁶ CMA 5 Global Stocktake Outcome, paragraph 69



increasing debt should be mitigated by offering financing in grants and concessional terms. Furthermore, loans should be primarily directed to the private sector where businesses pursue profit and can deploy a wide range of financial instruments to manage capital and raise revenue. In such instances, investors can manage the debt risk. Problems have historically emerged when loans are given to states – or businesses which are too big to fail, leading states to intervene.

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