

Input for the 2024 reports by the UN Special Rapporteur, Mr. Surya Deva, on the right to development (on the theme “climate justice: loss and damage”)

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How is the realization of the right to development impacted by both economic and non-economic loss and damage from climate change? 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 realization of the right to development is profoundly affected by economic and non-economic losses and damages resulting from the impacts of climate change. 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- as climate change exacerbates the inequalities and social injustices already existing across a wide range of human rights².

In Nepal, the consequences of climate change manifest through heightened instances of poverty, floods, landslides, and other extreme weather events. These events not only reshape Nepal’s social and cultural landscape but also critically scrutinize human rights. Climate change exacerbates existing inequalities, pushing impoverished and marginalized communities further to the margins. As these vulnerable groups face the consequences of such events, asserting their rights becomes increasingly difficult, impeding their ability to live independently without sufficient support systems.

Climate-induced disasters cause approximately 65% of annual casualties in Nepal³. The Jure landslide on August 2, 2014; the Melamchi flooding on June 15, 2021, as well as the Kagbeni flood in 2023 are some of the recent examples of loss and damages incurred by extreme climate events. It should be noted that these events are trigger points, and the impacts of these events will be faced by marginalized individuals and communities for many generations to come. It impacts their right to food, right to health, right to life, right to shelter, right to education, and rights to development in the longer run.

In 2021, DCA Nepal⁴ assessed loss and damage in three different municipalities for two different hazards- landslides and floods. The overall economic loss was USD 388,355 with an average cost of USD 4,176 including losses in agriculture, livestock, physical properties such as houses, land, and storage of food grains. There was a residual gap in all three Municipalities. The residual gap in the case of the landslide-

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² OHCHR, Key Messages On Human Rights And Loss & Damage- <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/2023-key-messages-hr-loss-damage.pdf>

³ Ministry of Forest and Environment, Nepal, 2021

⁴ When The Climate Becomes A Threat- Evidence of Climate Change Induced Loss and Damage in Nepal, DCA Nepal, 2021

affected ranged from USD 1,000 to 2,300) and from USD 70 to 13,580 in the flood-affected communities. To recover, around 82% of landslide- and flood-affected households were forced to take out loans from local cooperatives, with only 38% having cleared the loan while 62% were struggling to pay it back. There was a forced displacement of 9% because of the climate-induced disaster.

In February 2024⁵, LWF Nepal conducted focus group discussions (FGDs) and key informant interviews with the most marginalized groups (i.e. ex-bonded labourers representing lower caste groups “*Dalits*”) and local government representatives in Doti and Kanchanpur districts to understand economic and non-economic losses and damages to them due to climate extreme weather events (e.g. flood, drought, windstorm, etc.). 60 Dalit women, men, girls, and people with disabilities participated in the focus group discussions. There were only a few men in the FGDs as almost 95% of households had their men in India for employment. Almost all households were landless and had a small one-room house. Women were the ones left behind to take care of elders, children, people with disabilities and work as agricultural labourers for their livelihoods.

The study indicated that more girls, particularly those with disabilities than boys faced drop-out, irregular attendance, or complete disruption to their education. There were higher negative impacts on the health of women and girls (e.g. diarrhea, eye irritation, pneumonia, fever, etc.) and their WASH (due to increased time taken for fetching and refilling water) due to climate-induced disasters. There was increased migration of youth and men for employment, caste-based discrimination, untouchability, child marriage, child labour, discriminatory behaviour, and attitudes towards people with disability. Women and girls from poor socio-economic status, who often have less access to resources and decision-making power, are disproportionately affected by climate change, exacerbating existing gender and social inequalities, and hindering their ability to participate fully in development processes.

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?

The 2015 Paris Agreement reinforces the reference to human rights, gender equity, and intergenerational equity in its preamble (UNFCCC, 2015). Nepal Climate Change Policy 2019⁶ envisions a country spared from the adverse impacts of climate change, by considering climate justice, through the pursuit of environmental conservation, human development, and sustainable development – all contributing toward a prosperous society. Article 30 (1) of the Constitution of Nepal⁷ guarantees a “clean environment” as a fundamental right and elaborates that “every citizen shall have the right to live in a clean and healthy environment”. Climate change has created an existential threat to the rights of Nepali citizens and impair their constitutional rights to (i) live with dignity, (ii) live in a healthy and clean environment, (iii) access basic healthcare services, and (iv) food and protection from starvation.

The state is hence mandated to ensure that human rights aren’t curtailed by climate change impacts and that climate-induced loss and damage don’t hamper their right to development. The states should provide the required finance to mitigate risks from climate-induced hazards, facilitate

⁵ Study of climate change related loss and damage to the most marginalized groups in Nepal. LWF Nepal, February 2024.

⁶ National Climate Change Policy 2019.

⁷ Constitution of Nepal

resources and technology to ensure effective climate adaptation as well as quantify and compensate for climate-induced loss and damages.

With federalism and devolution of power, it is now the responsibility of local governments to develop plans and policies to safeguard natural resources, ensure environmental welfare, and facilitate climate adaptation and disaster risk reduction. However, in practice, there is a huge mismatch between the authority at the local and provincial levels as compared to the federal level in terms of authority and institutional capabilities- particularly for opportunities to access and mobilize knowledge and financial resources⁸. LWF Nepal's key informant interviews with six local government representatives in Doti and Kanchanpur in February 2024 indicate that their awareness of climate change impacts and climate justice, and resource allocation for climate change adaptation were very limited. Climate relevant budget allocated by local governments in the Sudurpaschhim Province in the fiscal year 2023/24 was only 10%⁹.

As we mentioned earlier, women and girls are disproportionately impacted by the effects of climate change. Women and girls are as much as 14 times more likely to die because of disasters resulting from climate change than men and boys¹⁰. Women are more often poor, have less access to finance and information, and more frequently have domestic responsibilities, limiting their mobility. Furthermore, women's unequal participation in decision-making processes and labour markets compounds inequalities and prevents women from fully contributing to climate-related planning, policy-making, and implementation. Though no one denies that it is vital to acknowledge women as agents of change for climate justice, it has not yet been in practice in Nepal's development contexts.

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 UNFCCC, under the Paris Agreement, requires each Party to prepare, communicate, and maintain successive Nationally Determined Contributions (NDCs) that set out the Party's long-term planning and development priorities and provide a vision and direction for future development. The Paris Agreement includes provisions for financial, technical, and capacity-building support to assist developing countries in their efforts to mitigate and adapt to climate change. This support is intended to help developing countries transition to low-carbon and climate-resilient pathways. The Paris Agreement reaffirms that developed countries should take the lead in providing financial assistance to countries that are less endowed and more vulnerable, while for the first time also encouraging voluntary contributions by other Parties. Climate finance is needed for mitigation because large-scale investments are required to significantly reduce emissions. Climate finance is equally important for adaptation, as significant financial resources are needed to adapt to the adverse effects and reduce the impacts of a changing climate. The finance for adaptation and loss and damage should be new and additional to the ongoing development assistance.¹¹

The Common but Differentiated Responsibilities and Respective Capabilities is a principle within the United Nations Framework Convention on Climate Change that also acknowledges the different

⁸ Multi-scale politics in climate change: the mismatch of authority and capability in federalizing Nepal, 2020

⁹ Climate Change Budget. Federal Government of Nepal. Budget of FY 2023/24. Prakriti Resources Centre.

¹⁰ UN Women, Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development, 2018.

¹¹ Paris Agreement text, UNFCCC, 2015

capabilities and differing responsibilities of individual countries in addressing climate change. This principle mandates that developed countries should support developing nations through finance, technical support, and capacity building to facilitate climate action and ensure their rights to development despite climate change.

COP 21 decided that, before 2025, the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall set a new collective quantified goal on climate finance (NCQG) from a floor of USD 100 billion per year, considering the needs and priorities of developing countries. The developed countries had already missed the targeted deadline of jointly mobilizing 100 billion USD of climate finance 2020 and hence 2024 and 2025 are crucial years for climate finance negotiations regarding NCQG.

As with the delivery plan, negotiations for the post-2025 climate finance goal should not only set a goal that better reflects the needs of developing countries, but they should also focus on qualitative elements linked to access, including the channels through which finance will be delivered and whether these channels are fit-for-purpose, especially for delivering climate finance to the most vulnerable including women, girls and people with disabilities. In this sense, the process of determining the goal will be highly relevant and should be as inclusive as possible to ensure that any outcome reflects the needs and positions of the most vulnerable including women, girls, and people with disabilities.

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, the building of capacity, and relocation pathways for climate-induced migrants)?

The climate justice concept revolves around the fact that vulnerable and marginalized communities' right to survive and thrive shouldn't be curtailed by climate change impacts. The climate-vulnerable communities, who have less share in global climate change should receive financial and technical resources to ensure effective mitigation, adaptation as well as compensation for climate change. Climate change is an existential threat. Climate Justice is about making sure that all the solutions to climate change are fair and accessible to everyone regardless of where they live- and that their rights to survive and develop are ensured despite climate change impacts. Apart from Finance, climate-vulnerable communities hence require technical support and improved capabilities to choose and implement tools and techniques that can support climate change adaptation and mitigation.

Climate-induced displacement and migration is a growing issue. Extreme weather events, including heavy rainfall and droughts, have already caused “an average of more than 32 million people to leave their homes and move to other areas in their countries each year¹²”. According to the Migration Data Portal, in 2022 about 8.7 million people in “88 countries and territories were living in internal displacement as a result of disasters”. In Nepal, there have been many cases of internal displacement- mostly owing to floods, landslides, and water scarcity.

The study conducted by DCA in 2021 and LWF Nepal in 2024, also shared that after any disaster event, most of the non-financial support is limited to food and temporary shelter. Neither of the communities and the most marginalized groups received any international aid post-disaster except the above-mentioned support from non-state actors.

¹² IDMC-GRID 2023 report <https://www.internal-displacement.org/global-report/grid2023> (page 9)

Women generally bear the greatest burden of the climate crisis. Yet states, non-state actors, and donors generally overlook the risk of inadvertently perpetuating gender inequalities in their activities by failing to recognize women as agents of change. Women are often targeted as beneficiaries, but very often they are not reflected in the leadership or decision-making while tackling climate change. As Mary Robinson (former UN High Commissioner for Human Rights) said, “If we took away the barriers to women’s leadership, we would solve the climate change problem a lot faster”, we need stronger mechanisms for integrating women as agents of change to all climate action and we need to avoid perpetuating harmful gender norms or gender inequalities.

How should a human rights-based approach to operationalize 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 marginalized communities and countries especially vulnerable to the adverse effects of climate change)?

Climate change impacts, directly and indirectly, an array of internationally guaranteed human rights. Climate justice requires that climate action is consistent with existing human rights agreements, obligations, standards, and principles. Those who have contributed the least to climate change unjustly and disproportionately suffer its harms; and that is not just. There are six pillars for achieving climate justice: Just Transition; Social, Racial, and Environmental Justice; Indigenous Climate Action; Community Resilience and Adaptation; Natural Climate Solutions; and Climate Education and Engagement¹³.

Key human rights principles such as universality and inalienability, indivisibility, interdependence and interrelatedness, non-discrimination and equality, participation and inclusion, accountability, and the rule of law should guide climate action. A human rights-based approach should be integrated with any climate change adaptation or mitigation measures, such as the promotion of alternative energy sources, forest conservation or reforestation projects, resettlement schemes, and others. Affected individuals and communities must participate, without discrimination, in the design and implementation of these projects. They must have access to due process and to remedy if their rights are violated.

Any solutions to improve access to finance for the most vulnerable including women, girls and people with disabilities will have to focus not only on building capacity in developing countries but also on reducing barriers linked to the current climate finance architecture from the providers’ side, including the processes and requirements that are not fit-for-purpose, high levels of discretionality and lack of transparency. If gender sensitivity is not ingrained in climate-related development finance, there is a risk that gender inequalities will be exacerbated. This requires understanding which populations are more vulnerable to climate change impacts and ensuring that vulnerable communities can adapt.

Intersectional and multiple layers of social biases and discriminations (based on gender, sexuality, castes/ethnicities, class, and disability, etc.) and power structures as ingrained in Nepali societies perpetuate unequal access to resources, subordination of marginalized groups and bear witness that any action to achieve climate justice is also an issue of gender and social justice. Because the

¹³ University of California, Center for Climate Justice, 2022

inequitable distribution of rights, resources, power, and norms constrains many marginalized people's ability to take actions on climate change.

A pervasive gender and social inclusion gaps in environmental leaderships often marginalize perspectives of women and socially marginalized groups and hinder their abilities to advocate for inclusive and equitable policies. Discriminatory sociocultural norms and systemic biases reinforce these gaps, further limiting their access to platforms where climate decisions are made. Moreover, the disproportionate impact of climate change on women, particularly in vulnerable communities, underscores the urgency of including them in policy discussions. Balancing domestic responsibilities, inadequate representation and limited access to resources further hinder women's participation in climate decision-making. The climate finance without considering these aspects will be waste such as filling water in a pot with holes.

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 Change is a justice issue. The communities that are most vulnerable to climate change have the least contribution to it; hence they shouldn't be facing the brunt of climate change. Countries need funds to address the climate crisis now. However, many global south countries are trapped repaying vast sums to their creditors every year, hampering their ability to respond to the mounting impacts and costs of the climate crisis. At the same time, extreme climate events and insufficient grant-based climate finance are forcing indebted countries deeper into debt, keeping many locked in fossil fuel production, as the main source of income to guarantee debt service payment, and creating a vicious cycle that can be impossible to escape. What's more, climate finance itself continues to push vulnerable countries into debt as over 70% is provided as loans.¹⁴

According to the World Bank, the economic costs of natural disasters in South Asia have been significant, with losses averaging around \$30 billion annually. These losses can contribute to increased borrowing and debt accumulation, particularly for countries like Nepal that are vulnerable to climate-related hazards¹⁵. After a decade of consistent gross domestic product (GDP) growth (averaging 4.9 percent), Nepal achieved lower middle-income status in 2020. It is estimated that unaddressed climate risks will result in a loss of 1.5-2 percent of Nepal's current GDP per year by mid-century (MoSTE, 2014) and 2.2 percent of GDP by 2050 (WB, 2021). The economic cost of climate vulnerability in the agricultural sector alone is estimated at 1.5-2 percent of GDP in 2020, according to the Climate Country Development Report (WB, 2022)¹⁶.

Ensuring that climate finance is new and additional is crucial to avoid crowding out official development assistance. It should also be predominantly in the form of grants rather than loans. The World Bank, which has recently been appointed as an interim host to facilitate Loss and Damage Finance, must uphold the principles of human rights and climate justice by ensuring that Loss and Damage Funds are not provided in the form of loans or soft loans, but rather in the form of grants that also efficiently and rapidly reach the most vulnerable populations affected by climate change.

¹⁴ Why climate justice must include debt justice.

¹⁵ <https://documents1.worldbank.org/curated/en/099062323152517268/pdf/P17454108d3f440c208af704f01d0a8bb68.pdf>

¹⁶ https://www.adpc.net/lgo/category/ID1861/doc/2023-uAQc62-ADPC-Accessing_Climate_Finance_in_Nepal_ForWeb.pdf