Call for input for the 2024 reports by Special Rapporteur on the Right to Development

Submission to the Special Rapporteur on the Right to Development

Submitted on 29th March by:

christian aid

Christian Aid Ireland welcomes the call for input by the Special Rapporteur on the Right to Development on the theme of Loss and Damage.

Pursuant to the call, the Christian Aid Ireland would like to draw attention to the following points:

How is the realisation 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 unavoidable and irreversible impacts caused by increasingly frequent and severe climate disasters– referred to as loss and damage – are having a disproportionate impact on the most vulnerable countries and communities in the world.

Developing countries with the least responsibility for causing the climate crisis are left picking up the tab for the enormous economic and non-economic cost of loss and damage. The most complete economic and climate modelling suggests that loss and damage financing needs in developing countries could reach $290-580 billion by 2030.[1]

Despite the operationalisation of the long awaited Loss and Damage Fund (LDF) at COP28, legitimate concerns remain among developing countries as to whether it can deliver on its mandate and fill the loss and damage financing gap. The extent to which the LDF is enabled to carry out its mandate effectively will necessarily impact a whole range of human rights, including the right to development.

A key principle of climate finance as defined under the UNFCCC is that it should be new and additional to existing financial contributions from developed countries, such as ODA. This is recognition of the fact that development challenges like poverty reduction, healthcare provision and access to education are not diminished by climate change, but in fact have become more acute.

In practice however, existing ODA flows have been double counted significantly by developed countries towards their climate finance commitments.[2] Loss and damage finance represents an additional burden on top of existing climate finance commitments, which only provide support to mitigation and adaptation activities. It is not unforeseeable that many developed countries will seek to relabel existing climate finance and development finance flows as loss and damage finance, as has occurred with ODA.

Relabelling and/or double counting existing development and climate finance flows as loss and damage finance would seriously undermine the ability of developing countries to make progress towards realising the right to development. Rather than creating a situation whereby finance is simply moved from one pot to another, developed countries must ensure that both climate

---

[1] Markandya, A. and M. González-Eguino. (2019). "Integrated assessment for identifying climate finance needs for loss and damage: A critical review" in Mechler et al. (eds.) (2019) *Loss and Damage from Climate Change: Concepts, methods and policy options*, https://link.springer.com/chapter/10.1007/978-3-319-72026-5_14, p.343

[2] Trócaire & Christian Aid (2019). *The Cost of Inaction : Ireland's responsibilities for global climate finance.* https://www.trocaire.org/sites/default/files/resources/policy/climate-inaction-report.pdf

finance, including finance for loss and damage, and development finance increase toward their respective global commitments without resulting in a zero sum game.

Case Study: Pakistan

The devastating floods in Pakistan over the past decade and the associated economic cost demonstrate the extent to which loss and damage can adversely impact the right to development. In 2022, Pakistan experienced its worse ever flooding due to torrential rains. Over 30 million people were affected and at one stage one third of the country was underwater. But the 2022 floods were not unprecedented. Just a decade earlier Pakistan experienced similar flooding which affected 20 million people, many of whom had not fully recovered when the 2022 floods occurred.[3]

The increasing scale and frequency of climate disasters in Pakistan and the associated economic costs has severely limited the ability of the state to invest adequately in development and climate financing to build resilience. The cost of compensation for economic losses, and longer-term recovery, rehabilitation and reconstruction efforts after the 2022 flooding has been estimated at US$30 to US$40 billion, around 10% of Pakistan's GDP.[4]

Pakistan also has an extremely high debt burden, which has left little room in national budgets for building climate resilience and investing in development initiatives. In 2021 alone, debt servicing was at least $11.9 billion (32% of total government revenue), with some estimates putting the figure far higher.[5]

The cyclical nature of climate disasters in Pakistan combined with spiralling economic costs and high debt repayments has made it virtually impossible for the state to invest adequately in decent public services, education, and health, which has in turn seriously undermined the realisation of the right to development.

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?

While the UNFCCC and Paris Agreement make no explicit reference to obligations on states to address the impacts of loss and damage on human rights, the responsibility of developed countries to support developing countries efforts to address climate change is well established under the core UN climate treaties and predicated on the principles of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) and equity.[6]

---

[3] Henson, B. (2022). *Cruel echoes of a 2010 disaster in Pakistan's catastrophic 2022 floods,* Yale Climate Connections. https://yaleclimateconnections.org/2022/08/cruel-echoes-of-a-2010-disaster-in-pakistans-catastrophic-2022-floods/

[4] Lazer, K. et al. (2022). *Filling the gap: Addressing climate-driven crises in Pakistan*, Development Initiatives, p. 10. https://devinit-prod-static.ams3.cdn.digitaloceanspaces.com/media/documents/Climate-driven_crises_in_Pakistan.pdf

[5] Ibid.

[6] Roberts, E., & Huq, S. (2015). *Coming full circle: the history of loss and damage under the UNFCCC.* International Journal of Global Warming, 8(2), p. 129. https://doi.org/10.1504/IJGW.2015.071964

The signing of the landmark Paris Agreement in 2015 recognised for the first time the importance of “averting, minimizing and addressing loss and damage”. However, Article 8 came with the caveat that loss and damage “does not involve or provide a basis for any liability or compensation.” The long term resistance of wealthy countries to the creation of state obligations to provide finance to developing countries has arguably been the most significant impediment to addressing the impact of loss and damage on human rights, including the right to development.

The historic decision to establish a new loss and damage fund at COP27 provided a clear political signal of the need to recognise loss and damage alongside mitigation and adaptation as the “third pillar” of climate action.[7] This decision also indicated for the first time a potential willingness on behalf of developed countries to accept the principle that states should have obligations to address loss and damage, including by the provision of significant financial resources to developing countries.

Despite meeting five times over the course of 2023, the UN Transitional Committee that was set up to decide on the technical details of the LDF failed to reach agreement on many of the core political questions – including the crucial issue of which countries should have obligations to pay into the fund.

In the end, developed countries successfully managed to delete all references to obligations on states to address loss and damage and to pay into the fund. The entirely voluntary basis on which the fund will operate not only undermines well established principles of CBDR-RC and equity but also represents a backward step for UN climate negotiations which have previously codified obligations on states to address other aspects of climate change.

However, the obligations on states to address the impacts of loss and damage on human rights has been recognised explicitly elsewhere in the UN system. Most notably, in 2019, five UN human rights treaty bodies clarified that states have positive legal obligations under international human rights law in relation to taking steps to address loss and damage in vulnerable countries.[8]

The treaty bodies noted that the failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.[9]

In 2018, the UN Committee on economic, social and cultural rights found that states are required to respect human rights, refrain from the adoption of measures that could worsen

---

[7] United Nations Climate Change (2022) ’ COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries’: https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries

[8] OHCHR, 5 UN Treaty Bodies issue a joint statement on human rights and climate change, 16 September 2019. https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and?LangID=E&NewsID=24998

[9] CRC Concluding Observations on Spain (2018), para 36; CRC Concluding Observations on the UK (2016), para 68; Statement of the CESCR on Climate Change and the International Covenant on Economic, Social and Cultural Rights, 8 October 2018; CESCR Concluding Observations on Australia (2017); CEDAW General Recommendation #37 (CEDAW/C/GC/37), para 14; CEDAW Concluding Observations on Norway (2017).

climate change and effectively regular private actors to ensure that their actions do not worsen climate change.[10]

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?

Legal Basis

The two principle UN climate treaties clearly set out the legal basis for states to provide finance to combat climate change. Article 4.3 of the UNFCCC and Article 9 of the Paris Agreement outline that it is the responsibility of developed countries to provide climate finance to developing countries.

However the legal basis for states to contribute finance to address loss and damage is highly contested. The above articles create obligations for two facets of climate action: emissions reductions (mitigation) and building resilience (adaptation). Unlike for mitigation or adaptation, there are currently no binding state obligations to provide loss and damage finance under the UNFCCC or Paris Agreement.

Wealthy states have long resisted efforts to create obligations that would require them to provide finance to address loss and damage. The Governing Instrument of the new loss and damage fund makes minimal progress in this regard. Rather than creating clear legal obligations on states to provide loss and damage finance to the LDF, the final text notes that the fund can "receive contributions from a wide variety of sources of funding".

The absence of explicit references to historical responsibility and the failure to create legal obligations on wealthy countries to provide loss and damage finance not only undermines core principles of climate justice but will negatively impact on the ability of developing countries to allocate resources effectively to progress the realisation of the right to development.

Moral Basis

The moral basis for states to contribute finance to the loss and damage fund is indisputable. It is crucial to understand that loss and damage finance is not a question of charity. It is recognition of the ecological debt owed to developing countries, on the basis of historical responsibility, wealth and equity.

It is poorer communities who are being disproportionately impacted by the impacts of the climate crisis, despite having least responsibility for global warming and least resources to adapt. The IPCC's Sixth Assessment Report recognises that the world's poorest and most vulnerable people will be worst affected by climate change, despite having done little or nothing to cause the problem.[11]

The scale of the inequality is staggering. The poorest half of the world, nearly 4 billion people, are responsible for just 12% of all greenhouse gas emissions. Those in poverty tend to live in

---

[10] CESCR Statement on Climate Change and the ICESCR (2018) https://www.ohchr.org/en/statements/2018/10/committee-releases-statement-climate-change-and-covenant

[11] IPCC (2023). Synthesis Report of the IPCC Sixth Assessment Report (AR6), pp. 12-15.

areas more susceptible to climate change, in less secure housing, and with far more exposed livelihoods, lacking the support of comprehensive social safety nets or deep personal wealth. On this basis, in 2019 the UN Special Rapporteur on Extreme Poverty and Human Rights warned that developing countries were estimated to bear 75% to 80% of the cost of the climate crisis.[12]

Rich, industrialised countries in the Global North bear the primary responsibility for creating the climate crisis, from the colonial period to the present day. In historic terms, rich countries have contributed over 90% of human-induced CO2 emissions and are responsible for 37% of current emissions (although they are home to only 15% of the world's population).[13] By contrast, developing countries have contributed relatively little. Kenya, Ethiopia, Somalia and South Sudan are responsible for only 0.1% of global emissions, while India is responsible for 3% of historic emissions.[14]

In short, wealthy, high emitting countries have burned through their fair share of the global carbon budget and therefore have a moral responsibility in addressing the impacts of loss and damage, including by contributing significant financial resources to the loss and damage fund.

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)?

A human rights based approach to addressing loss and damage is essential to ensuring that the needs of the communities most vulnerable to climate impacts are prioritised. As the core, coordinating body for loss and damage funding at the international level, the LDF should therefore be anchored by core principles CBDR-RC, equity, and human rights.

It is important to note that a human rights-based approach to loss and damage is a matter of legal obligation. The General Assembly in its resolution 76/300 of July 2022 recognized that a clean, healthy, and sustainable environment is a human right and affirmed that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of multilateral environmental agreements under the principles of international environmental law.[15]

Moreover, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, in his report A/77/226 of 2022, noted that "from a human rights

---

[12] Alston, P. (2019) 'Report of the Special Rapporteur on extreme poverty and human rights': https://www.ohchr.org/en/press-releases/2019/06/un-expert-condemns-failure-address-impact-climate-change-poverty

[13] Hickel, J. (2020). *Quantifying national responsibility for climate breakdown: an equality-based attribution approach for carbon dioxide emissions in excess of the planetary boundary*, Lancet Planet Health 2020; 4: pp. 399–404. https://www.thelancet.com/action/showPdf?pii=S2542-5196%2820%2930196-0

[14] ASTM (2022). *A matter of responsibility. Luxembourg's fair contribution to the financing of global loss and damage due to climate change*, p. 3. https://astm.lu/wp-content/uploads/2022/11/EN-Loss-Damage-Policy-Paper-2022.pdf

[15] UN General Assembly Resolution 76/300.

perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation".[16]

It is clear from the above that addressing loss and damage associated with the negative human rights impacts of climate change is an obligation of States under international human rights law.[17]

It is deeply concerning therefore that the Governing Instrument of the LDF provides no guidance to ensure the Fund will operate in compliance with human rights, beyond a single reference to gender responsiveness in the section on objectives and purpose.

This needs to change. The Special Rapporteur should make it clear to members of the LDF Board that human rights should guide and inform all operations, modalities, and policies of the LDF on the basis of state obligations.[18]

The following section will outline key human rights principles that should guide how the LDF responds effectively to the span of human rights that are being impacted by loss and damage.

Effective Remedy

The right to effective remedy is a core feature of international human rights law. The remedy framework as set out by the UN Basic Guidelines can serve as important guidance to the approach of the LDF in addressing loss and damage.

Financial compensation is an important component of providing remedy for climate harm, as evidenced by the numerous international climate funds that have been set up to create frameworks for redress for human rights and environmental harm.

However the final text on the LDF agreed at COP28 undermines the right to effective remedy by failing to establish explicit obligations on developed countries to provide finance to those most impacted by loss and damage.

In the absence of obligations to provide financial compensation, the Board of the LDF should encourage developed countries to take the lead in providing funds, with a particular focus on those countries who have not yet made a financial contribution.

Beyond financial compensation, the LDF can provide for a range of measures, from restoring the actual situation where possible, such as rebuilding destroyed infrastructure in case of a natural disaster, to assisting victims through planned relocation in the context of slow onset events that render an area inhabitable, to providing medical and psychological care, legal and social services, and official apologies.

---

[16] Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change (2022). https://www.ohchr.org/en/documents/thematic-reports/a77226-promotion-and-protection-human-rights-context-climate-change

[17] Office of the High Commissioner of Human Rights (2023). *OHCHR submission to the fourth meeting of the Transitional Committee.* *https://unfccc.int/sites/default/files/resource/OHCHR%20Submission%20on%20Loss%20and%20Damage%20for%20TC4%202023_Oct2023.pdf*

[18] Heinrich Boll Stiftung (2024). *The Loss and Damage Fund Board: Getting it right from the Start.* *https://us.boell.org/en/2024/03/18/loss-and-damage-fund-board-getting-it-right-start#3.C.IV.bottom*

Provision of finance based on the polluter pays principle

Developed countries with a historic responsibility for causing the climate crisis should provide significant financial resources as part of their overall response to loss and damage in order to meet their legal obligations under international human rights law and the core UNFCCC principles of CBDR-RC and equity.

There is a growing body of research which indicates that this funding should be raised in advance and on the basis of a fair shares approach.[19]For example, using a fair shares approach, Christian Aid Ireland and Trocaire have calculated that Ireland should contribute at least €1.5 billion in loss and damage finance by 2030.[20]

The vast gulf between existing contributions and the projection of global annual need for loss and damage financing by 2030 underscores the case for "innovative" financing sources. This was acknowledged in the COP28 decision on the operationalisation of the Loss & Damage Fund, albeit in very general terms.[21]

Innovative sources could include more progressive, coordinated taxation of excessive profits, extreme wealth and fossil fuel production; progress on debt relief; and new levies on aviation and shipping.[22]

The implementation of some or all of these measures at the international level, as well as the application of a fair shares approach, could both help to relieve pressure on domestic budgets and enable developed countries to meet their obligations under international human rights law to take steps to address loss and damage.

Direct access of marginalised communities

It is absolutely essential that communities most impacted by loss and damage are enabled to access funding directly, without being hindered by complex bureaucratic processes. This is key to ensuring rapid disbursement of funding when disaster strikes and can play an important role in limiting adverse impacts on human rights.

The Governing Instrument of the LDF outlines that the Board will develop various access modalities to facilitate access to the Fund's resources including "access to small grants that support communities, Indigenous Peoples and vulnerable groups". It is crucial that this small grant window is operationalised effectively to allow for community and civil society access to the fund.

This funding window could build upon the experiences of a number of existing small grant programmes, including the Dedicated Grant Mechanism for Indigenous Peoples and local communities under the Forest Investment Programme, the Adaptation Fund's direct access

---

[19] Climate Action Tracker (2023) 'Summary of Fair Share Methodologies': https://climateaction-tracker.org/methodology/cat-rating-methodology/fair-share/; World Resources Institute (2021) ' Are Countries Providing Enough to the $100 Billion Climate Finance Goal?':

[20] Christian Aid Ireland & Trócaire (2023). *The Cost of Inaction: Ireland's fair share of loss and damage finance.* https://www.christianaid.ie/sites/default/files/2023-11/the-cost-of-inaction_report.pdf

[21] UNFCCC (2023). Operationalization of the new funding arrangements for responding to loss and damage and the fund established in paragraph 3 of decisions 2/CP.27 and 2/CMA.4. https://unfccc.int/sites/default/files/resource/cp2023_09_cma2023_09.pdf

[22] Christian Aid Ireland & Trócaire (2023). Chapter 13.

pilot program for NGOs, and the Global Environment Facility (GEF)/UNDP experience with the small grant window.

The LDF policy on access modalities should make it clear that small grants provision to affected communities must be a substantial share of LDF funding allocation and can be pursued simultaneously via a number of parallel access modalities.

Gender responsiveness

A human rights based approach to administering the LDF must be underpinned by a gender and feminist analysis, taking into account the structural discrimination faced by differently situated women, so that the specific impacts that they face can be addressed.

The need for a gender responsive LDF is underscored by clear evidence that climate change impacts women in distinctive, intersectional and often disproportionate ways.[23]

Women are 14 times more likely to die from climate disasters as men,[24] and the greater the gender and economic inequality, the greater the disparity between men and women's chances of survival. Women and people marginalised by their "race, class, ethnicity, sexuality, indigenous identity, disability, income, migrant status and geographical location" are subjected to greater inequality and experience greater vulnerability to climate change impacts.[25]

Needs assessments should include the analysis of gender specific impacts and gender disaggregated data on the impacts of loss and damage.

Women must be represented on the board of the LDF and have a central role in designing and implementing its mandate in order to ensure adequate focus and remedy for women and to address substantive inequality.

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?

Developing countries have faced increasingly unsustainable debt burdens since the 2008 financial crisis. Developing country debt payments increased by 120% between 2010 and 2021, and now stand at their highest level since 2001.[26] The economic fallout of the Covid-19 pandemic has made the situation worse, increasing the public debt of most developing countries.[27] 54 countries that are home to more than half of the world's poorest people

---

[23] Intergovernmental Panel on Climate Change (2022). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* p.11. https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf
[24] UN Women (2018). Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development, UN Women. https://www.unwomen.org/en/digital-library/publications/2018/2/gender-equality-in-the-2030-agenda-for-sustainable-development-2018
[25] Ibid. p. 53
[26] CAN International (2022) https://climatenetwork.org/wp-content/uploads/2022/10/Debt-and-the-Climate-Crisis-Briefing-October-2022.pdf p.4; Underlying data and methodologies can be found at https://data.debtjustice.org.uk/
[27] Eurodad (2021), 'A debt pandemic: Dynamics and implications of the debt crisis of 2020', https://www.eurodad.org/2020_debt_crisis

currently face a debt crisis, including 28 of the world's countries that are especially vulnerable to climate impacts.[28]

High debt levels reduce the fiscal space for public spending, limiting investment in loss and damage as well as other climate measures, meaning that countries cannot adequately prepare for and protect against climate impacts.[29] For example, Zambia is due to spend over four times more on debt payments than on addressing climate impacts in the next decade unless debt relief or cancellation is agreed.[30] Or, to take another example, Pakistan's external debt totalled $136 billion even before the floods (see case study), with 40% of government revenue ($18 billion) expected to be allocated to external debt interest and repayments in 2022.[31]

Climate vulnerability increases debt distress, since countries facing higher climate risks, especially SIDS and low-income states, pay considerably more to access finance.[32] Research commissioned by the UN Environment Programme found that climate risks have cost V20 countries over US$40 billion in higher interest payments over a decade (to 2018).[33]

Debt relief and cancellation can help to avoid a worsening spiral of debt and climate vulnerability. At a minimum, Ireland and other wealthy states should ensure that loss and damage financing is grant-based so as not to increase the debt burdens faced by national or local governments or communities.[34] More broadly, a new approach to climate and debt is needed so that when a climate-related disaster such as a tropical storm occurs, it can trigger an immediate, interest-free suspension of all debt payments from that country. This could be followed by a debt restructuring, including cancellation, via an independent and universally applied framework based on the needs of a particular country.[35]

---

[28] Lars Jensen, UNDP, (2022) *Avoiding 'Too Little Too Late' on International Debt Relief.* https://www.undp.org/publications/dfs-avoiding-too-little-too-late-international-debt-relief p.4
[29] Eurodad (2021) p.3, 'A debt pandemic: Dynamics and implications of the debt crisis of 2020'; CAN International (2022), p.9, 'The debt and climate crises: Why climate justice must include debt justice', https://climatenetwork.org/wp-content/uploads/2022/10/Debt-and-the-Climate-Crisis-Briefing-October-2022.pdf
[30] CAN International (2022), 'The debt and climate crises: Why climate justice must include debt justice', p.6https://climatenetwork.org/wp-content/uploads/2022/10/Debt-and-the-Climate-Crisis-Briefing-October-2022.pdf p.6
[31] CAN International (2022), p.5, 'The debt and climate crises: Why climate justice must include debt justice' (2022), Debt-and-the-Climate-Crisis-Briefing-October-2022.pdf (climatenetwork.org)
[32] Klusak, P. et al. (2021). *Rising Temperatures, Falling Ratings: The Effect of Climate Change on Sovereign Creditworthiness* https://www.bennettinstitute.cam.ac.uk/wp-content/uploads/2020/12/Rising_Climate_Falling_Ratings_Working_Paper.pdf ; Beirne, J., N. Renzhi and U. Volz (2021) "Feeling the heat: Climate risks and the cost of sovereign borrowing" International Review of Economics & Finance Volume 76, pp. 920-936, https://doi.org/10.1016/j.iref.2021.06.019
[33] Buhr, B. and Volz, U., UNEP, (2018), 'Climate Change and the Cost of Capital in Developing Countries', https://unepinquiry.org/publication/climate-change-and-the-cost-of-capital-in- developing-countries/ p.25
[34] Developing Country Transitional Committee Constituency1 Key Considerations for TC2: https://unfccc.int/sites/default/files/resource/25_05_24_Final_Submission%20-%20TC2.pdf ; Sharma-Khushal et al. (2022), p.19
[35] See Climate Action Network (2022) 'The Debt and Climate Crises': https://climatenetwork.org/wp-content/uploads/2022/10/Debt-and-the-Climate-Crisis-Briefing-October-2022.pdf; Christian Aid (2023) 'Public debt in private hands, challenging private creditors holding sovereign debt': https://www.christianaid.org.uk/sites/default/files/2023-01/public-debt-in-private-hands.pdf