

HABITAT INTERNATIONAL COALITION Housing and Land Rights Network





Land Research Center - Jerusalem

Assessing Loss and Damage Impacts Associated with Climate Change

This input to the 2024 report by the Special Rapporteur on the right to development Mr. Surya Deva to the Human Rights Council and the General Assembly addresses climate justice: loss and damage. Habitat International Coalition (HIC), its Housing and Land Rights Network (HLRN), members Land Research Center (Palestine) and Red Habitat (Bolivia) and partners are facing displacements as a common hazard of climate change. This combined input reflects that urgent priority.

Question 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 legal and moral basis for states and other actors must be grounded in human rights principles, commitments and obligations, as well as equitable burden and benefit sharing, including the principles of common-but-differentiated responsibility enshrined in the UN Framework Convention on Climate Change. Accordingly, developed countries bear a greater responsibility for greenhouse-gas emissions and their consequences to support less-developed countries that have fewer resources and capacities to remedy climate-change impacts.

The authors of this input simultaneously endorse and apply here, as well as in other analysis and capacity development, two sets of climate-justice principles that relate to both climate-justice processes and outcomes, respectively:

- 1. The climate-justice process criteria provided by the Mary Robertson Foundation call us to:
- Respect, protect [and fulfil] human rights;
- Support the right to development:
- Share benefits and burdens equitably;
- Ensure that decisions on climate change are participatory, transparent and accountable;
- Gender equality and equity;
- Harness the transformative power of education for climate stewardship;

- Use effective partnerships to secure climate justice.¹
- 2. Added are those outcomes envisioned in HIC President Adriana Allen's 2021 related statement:
- Profound economic redistribution, including democratic control of climate finance and support for SPH, ending forced evictions, displacement;
- Recognition of differences and invisibilities, requiring convergence of urban, rural and Indigenous social movements across the human habitat, developing globalism, practicing non-discrimination and providing for special needs;
- Gender parity in political participation, particularly in climate action, both preventive and remedial;
- Making human rights habitat, not war, which paraphrases the 1960s anti-war slogan and pursues rural and urban peace;
- Valorising mutual care, solidarity and social responsibility across environment, social and governance dimensions.²

This understanding is informed also by the construct of sustainable development, with its environmental, social and economic dimensions, upheld by respect, protection and fulfilment of all human rights, resting on all three peace-and-security, development and human-rights pillars of the UN Charter.

Under international human rights law and the corresponding obligations of all states, communities and individuals having experienced human rights violations are entitled to access and benefit from effective remedy. The human rights to life, food, water, adequate housing, sanitation, health, a clean, healthy and sustainable environment, and an adequate standard of living, as well as collective rights to land³ and culture, are all affected by climate impacts.

The related human rights standards form the foundation of this IAT methodology, including states' individual, collective, domestic and extraterritorial human rights obligations. Fulfilling these obligations requires operating treaty-bound implementation principles such as self-determination, non-discrimination, gender equality, rule of law, progressive realization of human rights and progressive improvement of living conditions, the maximum of available resources and international cooperation,⁴ as well as substantive equality, inclusion, intersectionality and other good-governance approaches across affected social groups.

This aligns not only with principles, commitments and obligations in the UNFCCC and Paris Agreement, including its preamble, but also on the policies at the Adaptation Fund and Green Climate Fund. By extension, these form operative principles for the emerging Loss & Damage Fund (LDF).

Regarding the human right to adequate housing, the normative framework of this quantitative method respects the prohibition against forced evictions and the safeguards required for legal evictions, or evacuations, as the case may be.⁵ Applying these criteria not only prevent a displacement from becoming a gross violation of human rights,⁶ but also avoids turning climate change-affected urban areas into conflict zones.



Question 1. 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)?

To realize the right to development, peoples' self-determination, decolonization and defeating apartheid⁷ are indispensable to the required enjoyment of composite civil, cultural, economic, political and social rights,⁸ amid disarmament.⁹ In the 2030 Agenda, states pledge "further effective measures and actions to be taken, in conformity with international law, to remove the obstacles to the full realization of the right of self-determination of peoples living under colonial and foreign occupation, which continue to adversely affect their economic and social development as well as their environment." But they have failed to do so.

From 1948 through 2023, Israel has demolished over 520,000 Palestinian homes, and displaced over 3,500,000 Palestinian citizens, confiscating over 19 million dunams of Palestinian land.¹¹

In Palestine's West Bank and East Jerusalem,¹² Israel's illegal occupation has persistently destroyed Palestinian agricultural land and crops, poisoned living creatures, uprooted trees, and appropriated water resources, while its military operations contaminate the soil, upon which future generations depend for adequate food and livelihood. This patterned practice is Israeli policy aimed to push Indigenous Palestinian farmers and pastoralists out of their land for residential, agricultural, and pastoral colonies of illegal Israeli settlers, committing the serious crime of population transfer as Israel's *raison d'état*.

During 2023, the Israeli occupation has uprooted and destroyed 21,508 fruit-bearing trees in the West Bank, while ravaging and destroying 3,638 dunams¹³ of agricultural land, and destroying 448 water sources, including water-harvesting tanks and cisterns. In addition, Israel's occupation forces with bulldozers have demolished 1,160 Palestinian homes and facilities, rendering habitats homeless. The targeted homes sheltered 18,982 people, of which 7,909 are children and 9,290 females. Israel has confiscated 30,160 dunams of West Bank Palestinian land, where it has prepared 137 construction plans favoring illegal Israeli colonists, many already implemented. One week before this submission, Israel seized 8,000 dunams of Palestinian land in the West Bank.¹⁴

Across Palestine's West Bank and Gaza Strip, Israel, the occupying power, has repeatedly destroyed sanitation and agricultural infrastructure, razed cultivated lands, ¹⁵ and used banned phosphorus weapons. ¹⁶ The environmental legacy of Israel's Gaza blockade ¹⁷ has left little possibility to adapt to climate change under occupation. ¹⁸ Observers have accused Israel of having long waged an "invisible environmental war," ¹⁹ making the Gaza Strip "uninhabitable," ²⁰ with a "toxic ecology," "biosphere of war," ²¹ "environmental apartheid," ²² threatening human viability ²³ of the occupied Palestinian territory well before Israel escalated its genocide against the Indigenous Palestinian People in October 2023.

During Israel's ongoing genocide in Gaza, Israel's destruction has substantially degraded the health and density of crops by January 2024, due to razing, heavy vehicle activity, bombing, shelling, and other military acts, already affecting 178 km² of permanent crop fields, arable and



fallow land, or approximately 49% of the total area of the Gaza Strip. Meanwhile, damage to Deir al-Balah's permanent crop fields and arable land had reached 56%.²⁴

In the 170 days before this submission, the Gaza Strip has, once again, undergone a brutal Israeli assault, under which Palestinians have been subjected to genocide and forced population transfer more brutal than any previous, while under a 16-year blockage. As of 24 March 2024, Israeli planes have dropped 70,000 tons of explosives on the densely populated Strip, some of which contain internationally forbidden depleted uranium, for their proven impacts on climate.

Afforestation Hastening Climate Change

A debate over the trend of introducing coniferous trees in ecosystems that cannot support them has emerged recently in the Middle East and globally out of the contradictions in the practices of the Jewish National Fund (JNF/KKL) throughout Palestine. Not only do JNF/KKL forestation projects conceal the evidence of depopulated villages of the dispossessed and evicted Indigenous Palestinian People, planting any coniferous trees triggers the Israeli claim over that land as a "forest reserve," which pretext is used to ban Palestinians from using their land. Meanwhile, the fast-growing and short-lived evergreens absorb more of the sun's heat than the natural landscape, altering the microclimate and ecosystem, and are unsustainable without costly and unsustainable irrigation.²⁵ Israel has similarly afforested some 10,00,000 dunams of Palestine's lands for various reasons over its 76 years.²⁶

Drought like the one afflicting the region in 2010 showed that as much as 80% of such coniferous plantations could be lost in a single weather event. In August 2019, a forest fire west of Jerusalem also revealed the underlying terraced agriculture, which the 1948-depopulated Palestinian Arab villages had practiced for millennia, which JNF/KKL intended the newly denuded forestation to conceal.

Beyond the environmental consequences, the link between JNF/KKL "reforestation" and the serous crime of population transfer by denying land to Palestinians and implanting settler colonies has finally reached global consciousness.²⁷ And the ambitious premise of creating "green walls" in incompatible climates is coming under critical interrogation by environmentalists more generally.²⁸







Figure 1: Before and after shots of the forest west of Jerusalem that burned in August 2019, revealing the 1948 ethnically cleansed Indigenous Palestinian People's terraced agricultural infrastructure. Source: Tarek Bakri.

The plantings are conducted under the heading of "agroforestry" without public oversight. The Society for the Protection of Nature in Israel (SPNI) has petitioned that such plantings are not agriculture, but forestry, and, therefore, undergo standard planning processes.²⁹



This activity does not correspond with Israel's commitment to conserve biodiversity within the National Outline Plan for Forests and Reforestation (NOP 22), with the obligation to conserve protected natural values and with JNF/KKL's declaration that it is committed, purportedly, to afforestation that works with natural systems, and not against them.³⁰ Its practices deviate from the Aichi Biodiversity Targets 7, 11 and 12,³¹ thus, hastening climate change.

JNF/KKL has been accepted as an observer organization at the CBD, although ECOSOC rejected its application for consultative status in 2007 for two reasons: being a state institution, not an NGO, and violating UN-Chartered principles.

Question 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?

Right to Development v. 'Resilience'

The 1986 Declaration³² defines development as a comprehensive economic, social, cultural and political process that aims at "the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom." Meanwhile, "States have the right and the duty to formulate appropriate national development policies that aim at [such] constant improvement."³³ With the Declaration's reference to the Covenants, states party to ICESCR are obliged to ensure "the progressive realization"³⁴ of the covenanted rights and "the continuous improvement of living conditions."³⁵ These rights and corresponding obligations must not be derogated during climate change.

Promoting 'resilience' of those effected as a commendable trait does not obviate states' obligations. As refugee ambassador Mary Maker has asserted, "we never want to be resilient," that otherwise fashionable development term is no substitute for the right-to-development standard. Victims should never be expected to bear the onus of empowering themselves to recover from external shock, especially in case of habitat-related human rights violations, only to regain some previous level of squalor.

As the Committee on World Food Sovereignty has determined, progressive realization must take place also in protracted crises with policy coherence that aligns short-term emergency relief aligned with longer-term development approaches, within the preventive and remedial human rights obligations.³⁷ The World Humanitarian Summit concluded with similar commitments.³⁸

These prevailing standards extend to the UNFCC Conference of Parties (CoP) state obligations and should also form the normative and operational dimensions of the new LDF, guiding it in fulfilling the human rights of the victims. Central to HLRN's IAT model is the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, a.k.a. the 'Remedy and Reparations Framework' (RRF).³⁹ The RRF already has served as important guidance for the applications summarized here, just as it should serve as guidance on matters related to the LDF's activities, content, scope, and eligibility. By virtue of their inalienable human rights, victims of harm should have remedy and reparations independently from the allocation of responsibility and liability for the harm caused.



Question 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)?

Since 2009, HLRN has been assessing material and non-economic values at stake in actual and prospective displacements, namely the real costs, losses and damage (CL&D) arising from such events and developments. These experiences and resulting lessons document economic and non-economic CL&D incurred from destruction, dispossession and displacement, among the most-common extreme-event and slow-onset climate change impacts. The human-rights methodology of HLRN's Impact-assessment Tool (IAT), adapted and applied in 30 diverse cases across eight countries, guides users to capture data required for remedy and reparations, while also serving pre-emptive efforts to anticipate and prepare for climate change-associated loss and damage to come.

The IAT's design and applications are intended to provide community-level specificity. However different their contexts, they reveal the commonality of values at stake and the material and non-material needs to realize the human right to remedy. Correspondingly, these exercises have produced data at various scales and for various purposes: monitoring and reporting, litigation, policy reviews/reform and transitional-justice processes. Community-level applications also fill gaps left by complementary tools for sector-wide or national-scale climate-risk assessments and the related big data revolution in climate-risk management.⁴⁰

Question 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)?

The HLRN quantification method ensures democratic participation of affected and empowerment communities in decision making and response to climate impacts. It has been applied to capture their values and assets at stake in all phases of displacement, quantifying them: (1) as an inventory of values and assets or baseline study before any displacement, dispossession or destruction; (2) changes in values and assets upon notice or threat of impact; (3) changes in values and assets during impacts; and (4) changes in values and assets impacted after impact. The method provides for assessing the change in values in the short run, as well as the long run (based on predetermined periods for follow-up), based on the experience of displacement. In all cases of application, these stages, or phases of destruction, dispossession and displacement must reflect accumulated CL&D, as they typically increase with each phase and the passage of time before remedy.

In all categories, the values recorded must be *replacement* costs and values. Notably also, with reference to collective rights such as land and culture, remedy (replacement) requires a combination of measures, not cash compensation. And in any case, cash compensation is never a remedy for land, including and especially collective tenure.

The HLRN quantification model covers the following dimensions:



- Victims' material values and assets:
- Victims' non-material/non-economic values and assets;
- Additional material values and assets affecting indirect victims and the public; and,
- Additional non-material/non-economic values and assets (indirect and social).

The types of values and assets to be quantified for each stage of the climate impact involving displacement include:

- A: Household Values and Assets,
- B: Household Expenditures,
- C: Household's Social Assets,
- D: Civic Values and Assets, and
- E: Public/State Values and Assets.

The Public/State Values and Assets are important to quantify and document, but their remedy and reparation may require channels and processes distinct from the LDF serving victims.

Certain values do not lend themselves to monetary quantification. These correspond to non-economic losses and damage, require qualitive assessments and corresponding remedies, as appropriate.

For further details on the HLRN IAT and methodology, its applications, survey instruments, outcome reports and other related materials, consult the HLRN website at https://hlrn.org/spagenew.php?id=qnE=, HLRN's submission to the LDF Transitional Committee and/or contact hlrn@hlrn.org.

Question 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?

Civil society capacity building and monitoring of all climate finance are indispensable to check resulting indebtedness; however, such efforts are at a rudimentary stage. HIC-HLRN has developed simple tools for the task. Examples are found in matrices for tracking climate finance applied to Egypt, Jordan and Yemen. These and their accompanying analyses ⁴¹ reflect the proportion of debt to grant for climate actions over the foregoing 10-year period. This model provides a first step in realizing the human right to information required to undertake this essential forensic task.

Conclusion

The HIC-HLRN approach and quantification methodology provide detailed guidance for each value category, based on experience of numerous applications. Each application involves a process of localization and adaptation to the specific case and the purposes of capturing the values. While this methodology is versatile and subject to further adaptation to cases of loss and damage associated with climate change, it is designed to capture—and restore—the values and assets to the affected people through the envisioned LDF community grant access window.





Endnotes:

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