**Indigenous Environmental Network**

**Input for the 2024 reports of the Special Rapporteur on the right to development - Climate justice: Loss and Damage**

**February 28 2024**

***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)?***

It is noteworthy that the Intergovernmental Panel on Climate Change (IPCC) identified Colonialism as a driver of global warming. It found that those who contribute the least to climate change, particularly Indigenous Peoples and local communities, and those in poverty, who are themselves predominantly people of color, are most severely affected.[[1]](#footnote-1) The policy and practice of acquiring political control over another country, occupying it with settlers, and exploiting it economically, has not changed. White Supremacy is now a privatized colonialism, practiced by transnational corporations and some national corporations in successor states.

These economies continue to mine coal and pump fossil fuels, primarily oil and coal. Their infrastructure and use displace Indigenous Peoples and communities. Antonio Guttierez, the UN Secretary General recently warned that humanity was facing collective suicide, “No nation is immune,” he said, “Yet we continue to feed our fossil fuel addiction.”[[2]](#footnote-2)

Indigenous Peoples experience this addiction, this racist colonialism as violations of our human rights, both collective and individual, the loss of our lands and our sacred relationship to it, the loss of languages, cultures and ways of life. The loss of our lands is the loss of our spiritual lives, our ceremony and song. We experience it through the extraction of our resources, continued fossil fuel development, as well as the criminalization of our human rights defenders, those who defend the Sacred. It is all about land, and our Sovereignty and Self-determination, our ability to govern ourselves, to choose our own path to our own development.

Catastrophic wildfires, droughts, floods, the warming of the oceans occur as a result of the burning of fossil fuels displace the poor and marginalized, including Indigenous Peoples.

As predatory capitalism takes our lands and resources it leaves nothing behind – except poverty.

It is about land and our role as guardians of biodiversity. Settler colonialism is still practiced in the United States today, where Indian lands and resources were and are taken by the settlers of the dominant white culture to the exclusion and removal of Indigenous Peoples.  Our practices of sustainable ecosystem stewardship and governance are violently interrupted. It separates us from our Mother Earth. This stolen wealth is accumulated by a few, primarily dominant white elites, impoverishing us all.

As Cultural Survival reports, the increase in multinational corporations that continue to seek the exploitation of minerals from  Indigenous territories for the transition to the green economy, the privatization of freshwater sources, and the ongoing criminalization of [Indigenous leaders,](https://www.culturalsurvival.org/news/memoriam-indigenous-human-rights-defenders-murdered-2020-latin-america) organizations, and Peoples that protect their territory and natural resources continue to be factors that create the situation where refugees and displaced people migrate to the United States.[[3]](#footnote-3)

Colonized Peoples, not just indigenous peoples, have been forced to leave their lands on account of severe climate events. As Annex 2 to the Kyoto Protocol demonstrates,[[4]](#footnote-4) the major carbon polluters are the so-called developed economies, primarily North America, Europe, and Japan.

Extreme droughts in many parts of the world, most severe in Africa, have forced mass migrations to cities and urban areas and indeed have urbanized many rural settlements. The Masai in East Africa have had to abandon their pastoralist life-ways and migrate to cities where they find employment as guards in private estates and residences.

For Small Island Developing States, who continue to experience rising seas and loss of land and fresh water resources, in the end, climate change is the violation of their inherent right to development and a violation of their primordial right to Self Determination.

***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?***

The duty to prevent, mitigate and remediate the impacts of climate change related loss and damage falls primarily on the State. Article 5 of the Declaration on the right to development requires States “to take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from ... all forms of racism and racial discrimination, colonialism, [and] foreign domination and occupation…”.

And although the duty to Protect, Respect and Remedy remains squarely on the State, the Guiding Principles on Business and Human Rights (United Nations, 2011)[[5]](#footnote-5) require the State to regulate, under both criminal and civil law, business enterprises, including financial institutions, doing business within its jurisdiction. The Guiding Principles further recognize a duty on the part of business enterprises, large or small, to respect human rights and take care to avoid or contribute to adverse human rights impacts through their own activities, address those impacts when they occur, and seek to prevent or mitigate adverse human rights impacts that are directly or indirectly linked to their operations, products or business relationships. (Guideline 13) The Guidelines further require “Human Rights Due Diligence: “Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation” (Principle 22).

The human person is the central subject of development and should be the active participant and beneficiary of the right to development. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

The protection and realization of the right to development is incumbent upon all elements of any given society.

***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?***

Climate change is rooted in Inequality. The moral basis for States’ contribution to the Fund is agency, equity, equality and rights.

The impact of climate funds are a result of a history and dynamics rooted in colonialism. The stories of environmental degradation, Indigenous genocide and wealth accumulation are inseparable. It was the expansion of colonial capitalism by countries in the Global North, which was only possible through the dispossession and exploitation of Indigenous Peoples, that brought environmental degradation to the point of our current planetary crisis. This trajectory of environmental destruction has of course been parallel to the ability of the Global North to generate and accumulate wealth.

Given this history of exploitation and inequality, climate justice is not just about money. Real solutions to climate change do not revolve around money, but instead center Indigenous sovereignty, Indigenous rights, climate reparations, and demarcation of ancestral Indigenous lands and territories.

Reparations are absolutely vital in addressing the historical exploitation of Indigenous People (and other groups and peoples) upon which Global North wealth is built. Reparations are not just about money and wealth but about creating new relationships of power guided by reciprocity instead of extraction. Of course, there are no climate reparations without land reparations. Indigenous control of land is not only integral in terms of addressing climate change – after all, 80% of the world’s remaining biodiversity is in Indigenous Lands and territories – but is crucial to Indigenous culture, livelihood, survival and sovereignty. Real solutions and meaningful climate action must start with Indigenous sovereignty, full recognition of Indigenous inherent relationship and jurisprudence, reparations and land back

***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)?***

With the advent of even more frequent and intense climate events, a climate justice perspective requires “justice” for those States and regions who are least responsible for global warming from those most responsible, the industrialized North (Europe, North America and Japan). Transfer of technologies such as desalinization plants, sea walls, and the technological means of preservation of land and water resources are required for least developed and Small Island States.

For Indigenous Peoples and affected communities, climate justice centers around a human rights-based approach to reparations and technical assistance. Justice demands the return of lands and the end of colonialist extraction. Climate justice does not revolve solely around money, but instead center Indigenous sovereignty, Indigenous rights, climate reparations, and demarcation of ancestral Indigenous lands and territories. Reparations are absolutely vital in addressing the historical exploitation of Indigenous People (and other groups) upon which Global North wealth is built.

Non-financial components for Climate Justice require from States: Recognition and respect, by the States, of our Indigenous rights, sovereignty, and assertion of Self Determination to control and manage our ancestral lands, waters, and territories and all natural resources inclusive of our own laws, values, customs and traditions. Our lands and territories are at the core of our existence – we are the land and the land is us; we have a distinct spiritual and material relationship with our lands, waters and atmosphere.

Our sky and lands and territories are our survival. They include Treaty lands and un-ceded lands and waters taken without consent and extend not only to hunting, fishing, food, plant and medicine gathering, but also to our sacred sites and protection of our watersheds and airsheds, as well as the subsoil.

States must create policies that harmonize the duty to consult with Indigenous Nations and their peoples with the terms of Free Prior Informed Consent (FPIC). FPIC is a basic underpinning to protect indigenous rights and interest that provides Indigenous Peoples with adequate and accessible information and where consensus and consent is determined in accordance with Indigenous Peoples’ customary laws and practices and free from any external manipulation or coercion. This includes participation in setting the terms and conditions addressing the economic, societal, cultural, spiritual and environmental and climate impacts.

All economic activity must be rooted in an understanding and respect of our sacred relationships with Mother Earth and Father Sky. We have our place and our responsibilities within Creation’s sacred order. The interdependence of humanity and nature is primary. We recognize that there is no separation between how we treat nature and how we treat ourselves; the demand for the recognition of Indigenous rights and the Rights of Mother Earth are one and the same.

We require a system change for Indigenous and non-Indigenous Peoples, to become true caretakers of the places in which they live, including writing new laws that recognize the rights of local ecosystems to maintain their vital cycles and eliminate harmful projects. These systems of Earth-Law or Earth Jurisprudence focuses on our responsibilities to foster natural ways and preempt corporate rights, property ownership, and financial speculation.

***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)?***

There is no internationally agreed upon definition of climate finance. Broadly, it refers to the process through which efforts to address climate change are financed. It is often used in the context of projects in the Global South being funded by governments and institutions in the Global North, typically multilateral development banks (MDBs) and other international financial institutions. The World Bank is the MDB responsible for administering a significant portion of the money dedicated to climate change mitigation and adaptation projects.

There are many other agencies involved at the global and governmental levels, such as USAID and conservation non-governmental organizations (C-NGOs). Financing is typically organized in the form of an investment such as a loan or bond. Financialization refers to the process by which climate change mitigation mechanisms become absorbed into the logic of financial markets and financial instruments. A good example is carbon markets. This goes one step beyond the commodification of climate change, which seeks to treat climate solutions as buyable and sellable units in a market, and proceeds to adopt a logic of risk coupled with the goal of capital accumulation.

A human rights-based approach to climate finance centers Indigenous sovereignty, Indigenous rights, climate reparations, and demarcation of ancestral Indigenous lands and territories. Reparations are absolutely vital in addressing the historical exploitation of Indigenous People (and other groups) upon which Global North wealth is built. Reparations about creating new relationships of power guided by reciprocity instead of extraction.

 Of course, there are no climate reparations without land reparations. Indigenous control of land is not only integral in terms of addressing climate change – as 80% of the world’s remaining biodiversity is in Indigenous Lands and territories – but is crucial to Indigenous culture, livelihood, survival and sovereignty. Real solutions and meaningful climate action must start with Indigenous sovereignty, full recognition of Indigenous inherent relationship and jurisprudence, reparations and the return of land that has been stolen and continues to be stolen by an increasingly predatory colonialist capitalism.

***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?***

While current financing focuses mainly on adaptation and mitigation, financing for loss and damage (L&D) will be a focus in the lead up to 2024. Established under Article 8 of the 2015 Paris Agreement, L&D refers to finance allocated to address the loss and damages incurred as a result of climate change that could not be avoided through mitigation and adaptation. Like adaptation and mitigation finance, L&D finance would originate in the Global North. Currently, there is a push by countries in the Global South to establish a Loss and Damage Finance Facility (LDFF), which was first proposed at COP26 as a means to systematize L&D funds, but was ultimately not established.

Discussions on the Loss and Damage Funding Facility at the coming COP are crucial, given that proponents of the LDFF claim that it would provide funding for Indigenous and vulnerable local communities in developing countries that would support rebuilding and repairing communities in the face of extreme weather events, as well as the violence of climate change. Proponents of the LDFF argue that having direct access to L&D funds means that there may be the possibility to include principles of Traditional Indigenous Knowledge (TIK), and for free prior and informed consent (FPIC) regarding how funds are used.

Further, some see LDFF as a move towards self-determination and sovereignty that comes with the power to decide how, when, and by whom the funds are used. However, given that the name of the LDFF includes “finance facility” the likelihood of any funding distributed directly to Indigenous Peoples and impacted communities is very low. The establishment of the LDFF may very well replicate past climate change-related finance facilities that have generated financial returns through infrastructure projects and public-private partnerships that benefit the fossil fuel industry.

Further, the risk of deepening the current North/South power imbalance within the LDFF is immense. It is imperative that any and all future L&D funding does not follow the shady and rigged financing and financialization models used in climate adaptation and mitigation. This means that funding must **not** be ‘given’ as financialized loans and bonds, but demanded as grants that are not financialized – not tied to any form of investment or financial markets. This money is an historical debt owed to the Global South.

A successful way to move money would enable the Global South to access funds without governments and institutions in the Global North positioning themselves as the sole decision-makers and administrators. It is highly likely that history will repeat itself by setting the foundation to create yet another climate financing mechanism that will exploit those most impacted by climate change.

From ending Common but Differentiated Responsibilities (CBDR), to creating carbon markets, to REDD+, and the false solutions embedded in the Green Climate Fund (GCF), the work of the UNFCCC has time and time again resulted in the dispossession of Indigenous Peoples and frontline communities, all while emissions have been steadily increasing. More broadly, the overarching mission of the UN is rooted in the colonial notion of ‘development’, which has gone hand in hand with the exploitation and genocide of Indigenous Peoples and those in the Global South. This begs the question: how can the UN process and the work of the UNFCCC still have legitimacy? At what point must trust in the UN process be abandoned?

We must build on our own power, our own Self Determination over our own lands. We must continue to support a grant-making funding mechanism that does not attach conditionalities to funding. Traps can be avoided by developing countries, small island States and Indigenous peoples, by the exercise of Self Determination over their own global warming priorities.

We must also continue to support front-line communities in their struggles against colonialist transnational extraction and exploitation.

We must trust in ourselves and our youth and generations to come.

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