**Joint submission to the report on Climate Justice: Loss and damage**

*of*

**the UN Special Rapporteur on the right to development**

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# Introduction

The effects of the climate crisis go beyond environmental issues. Disasters caused by climate change negatively impact one’s access to, among others, housing, healthcare, and employment. The extent of these effects also vary along gender lines. In Asia, LGBTIQ+ persons have been documented to have been disproportionately affected by natural disasters, particularly in its aftermath, in accessing humanitarian aid, and in transitional resettlement sites.

ILGA Asia welcomes the opportunity to make a submission to the UN Special Rapporteur on the right to development with inputs received from a member organization based in Bangladesh that demonstrates that LGBTIQ+ persons are disproportionately impacted by by climate change and how the Loss and Damage Fund could be designed in a way that is non-discriminatory and gender responsive.

# The disproportionate impact on LGBTIQ+ persons of loss and damage from climate change

**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)?**

No one is immune to the harmful effects of climate change. However, vulnerable groups are more affected by these impacts. For example, natural disasters caused by climate change disproportionately affect women, children, and LGBTIQ+ communities. These groups have less access to disaster-resilient shelter homes, are victims of gender-based violence, and lack special needs provisions. The realization of the right to development is significantly affected by both economic and non-economic loss and damage from climate change. Economic impacts, such as reduced agricultural productivity and increased healthcare costs, disproportionately affect vulnerable groups like children, women, and Indigenous Peoples.[[1]](#footnote-1) Non-economic loss and damage, including the loss of cultural heritage and social cohesion, particularly impact Indigenous Peoples and marginalized communities.[[2]](#footnote-2)

**The Philippines**

In the aftermath of typhoons in the Philippines, the already existing vulnerabilities of Filipino LGBTIQ+ persons are further exacerbated by discrimination in the context of disaster and humanitarian response. In emergency operations, disaster response teams have been observed to deprioritize the rescue of gay males. In transitional resettlement sites or evacuation centers, gay males receiving training for residents of the centers are often mocked or ridiculed by training personnel who are often military personnel. Access to toilets, water, and hygiene facilities are also challenging to LGBTIQ+ persons in these sites who have reported being accused as “peeping toms” when using men’s toilets and being unwelcomed in women’s toilets. As a result, they are forced to relieve themselves in open spaces.

Livelihood programs and permanent housing are also inaccessible to Filipino LGBTIQ+ persons. Same-sex couples have reported fearing being excluded from the award of slots in a permanent resettlement site as such slots are allocated on the basis of families. Without a law allowing same-sex marriages in the Philippines, LGBTIQ+ couples, in the eyes of the law, are not families. Gay men have also been overlooked in the delivery of livelihood programs, as service providers deliberately skip LGBTIQ+-led households in the mapping of beneficiaries.[[3]](#footnote-3)

**India**

The plight of LGBTIQ+ individuals in India highlights the exacerbated marginalization faced by transwomen during climate disasters, particularly concerning access to housing and humanitarian aid. An Indian transwoman shared her experience of discrimination in the distribution of humanitarian aid, receiving only a tenth of what everyone else was given.[[4]](#footnote-4) Moreover, in resettlement sites, the hostility from other residents towards LGBTIQ+ individuals prevents transwomen from accessing temporary shelters. Police have been reported to turn away transwomen from government-organized shelters, accusing them of seeking to promote prostitution within these facilities. Even when transwomen are granted access to these shelters, they remain vulnerable to physical and sexual violence within these spaces.[[5]](#footnote-5) Consequently, other transwomen have reported opting to remain in houses located in more dangerous and disaster-prone areas instead of relocating to resettlement sites.[[6]](#footnote-6)

**Japan**

According to Japanese law, same-sex partners are considered unrelated due to the absence of recognition for same-sex marriages within the country. This lack of legal acknowledgment for Japanese LGBTIQ+ families means that during evacuations in times of disasters, same-sex partners may face separation.[[7]](#footnote-7) Moreover, transgender individuals have encountered difficulties accessing shared washrooms or public baths in evacuation centers. This issue arises from the allocation of temporary baths, which are typically designated for either men or women. Consequently, this lack of inclusivity has adversely impacted the health and well-being of individuals who refrain from using these facilities to avoid humiliation. During disasters, transgender individuals have also faced challenges in accessing hormone therapy. Similarly, individuals living with HIV struggle to obtain necessary medical treatment.[[8]](#footnote-8)

**Afghanistan**

In Afghanistan, limited data exists on the impact of climate change on the rights of LGBTIQ+ individuals, however, data collected by ILGA Asia suggests heightened vulnerability in times of disaster. The climate crisis has forced LGBITQ+ persons to flee urban areas due to violence based on sexual orientation or gender identity. Financial constraints prevent access to appropriate winter clothing, while housing options, including temporary shelters, remain scarce due to discriminatory laws which result in unemployment. This lack of access to housing exposes them to further gender-based violence, including sexual harassment and assault, with some seeking refuge in public spaces or facing exploitation by their male flatmates. Additionally, famine and drought push families to coerce LGBTIQ+ members into marriage for financial gain, utilizing dowries as income.

# Obligations of States and other actors to prevent, mitigate, and remediate the impacts of climate change

**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?**

Industrialized developed countries, militaries, and factories are largely to blame for climate change. Therefore, the state is responsible for preventing, mitigating, and remediating the impacts of climate change. States need to make climate-friendly decisions and be held accountable to prevent loss of lives. The obligations of States, 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, are multifaceted. States must take prompt action to reduce greenhouse gas emissions, support vulnerable communities in adapting to climate impacts, and ensure equal access to remedies for all individuals.

Further, States have the obligation to address the underlying social and political reasons that cause the effects of the climate crisis to disproportionately fall upon the LGBTIQ+ persons. This includes addressing the lack of capacity among humanitarian actors to effectively collect data on SOGIESC in times of disasters as well as the lack of gender-sensitivity of disaster response teams. Moreover, the heteronormative assumptions embedded within the design of disaster programs also have to be dismantled in favor of a more inclusive system. The provision of humanitarian aid or temporary housing on the basis of legally-recognized families or the lack of gender neutral toilets or baths in resettlement shelters are examples of policies that are a direct result of these heteronormative assumptions. [[9]](#footnote-9)

**The Philippines**

The Philippine Commission on Human Rights, in its findings in the inquiry Re: Greenpeace Southeast Asia and Others, recognized the obligation of business to conduct human rights due diligence and offer redress to human rights abuses stemming from their operations.[[10]](#footnote-10)

For businesses, the conduct of human rights due diligence is necessary. This process should identify, prevent, and mitigate climate-related human rights impacts. Businesses must be mindful that the effects of their operations, including the pollution they create, may vary along gender lines. Therefore, incorporating a gender lens into human rights due diligence ensures that the unique vulnerabilities of LGBTIQ+ persons are not overlooked. Moreover, businesses must take responsibility for remedying climate-related human rights violations that they cause. This includes establishing effective grievance mechanisms to address environmental concerns raised by affected individuals, including LGBTIQ+ persons. Participating transparently and in good faith in legal or non-legal proceedings aimed at promoting accountability for climate harms is essential.

Development finance institutions also play a crucial role in funding climate mitigation and adaptation efforts, providing technical assistance, and supporting capacity-building initiatives. Meanwhile, businesses are responsible for reducing their emissions, adapting their operations to climate risks, and respecting human rights in their activities. By fulfilling these obligations collectively, they can contribute to building a more sustainable and equitable future for all.

# Basis for States and other actors to contribute to the loss and damage fund

**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 bases for States, other actors, and businesses to contribute to the Fund for climate change-related loss and damage are established in international agreements such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. Similar principles are likewise found in the United Nations Guiding Principles on Business and Human Rights as well as the ASEAN Human Rights Declaration. Further, domestic laws may also be relevant especially in relation to providing for legal obligations of businesses.

On a moral basis, contributing to the Fund reflects a sense of global solidarity and responsibility towards vulnerable communities most affected by climate change. Upholding principles of climate justice and equity necessitates addressing the disproportionate impacts of climate change, justifying contributions to the Fund to support adaptation and resilience efforts. Moreover, businesses have a moral obligation to contribute to initiatives addressing social and environmental challenges, aligning with corporate social responsibility principles.

**ASEAN Countries**

In relation to ASEAN-member countries, the ASEAN Human Rights Declaration provides for the obligation of member states to not only recognize the people’s right to development but also to observe gender-responsiveness in relation to the sustainability of the environment:

*36. ASEAN Member States should adopt meaningful people-oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.*

In addition to this, the general principles of the Declaration also recognizes the people’s right to equality and non-discrimination.

*1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.*

*2. Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.*

*3. Every person has the right of recognition everywhere as a person before the law. Every person is equal before the law. Every person is entitled without discrimination to equal protection of the law.*[[11]](#footnote-11)

**The Philippines**

In 2015, the CHR released their findings with respect to the responsibility of businesses causing climate change and ocean acidification. Citing the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the CHR found that climate change violates the principle of equality and non-discrimination. This is because individuals already facing social, economic, or other forms of marginalization are most susceptible to its effects. This vulnerability arises from their heavy reliance on natural resources, increased exposure to climate change impacts, and limited resources for adaptation. Among the most vulnerable groups are the LGBTIQ+ community. The Commission additionally determined that significant fossil fuel corporations are required to uphold human rights as outlined in the United Nations Guiding Principles on Business and Human Rights.[[12]](#footnote-12)

**Indonesia**

In the case of the Ministry of Environment and Forestry v. PT Arjuna Utama Sawit, the Indonesian Supreme Court, interpreting domestic law, established a corporation's liability for damages caused by wildfires resulting from its operations. This highlights that domestic laws may also have rules on establishing the responsibilities of businesses for the disasters the cause, including financial obligations which may be complied with through contributions to the Loss and Damage Fund.[[13]](#footnote-13)

**Nepal**

In the case of Amarnath Jha v. Office of the Prime Minister and Council of Ministers, the Supreme Court of Nepal referenced the Paris Agreement and UNFCCC in its ruling on a petition concerning the 2017 monsoon disaster. The court recognized violations of constitutional rights due to the government's failure to mitigate floods, emphasizing climate change's impact on future disasters and emphasized governmental responsibility for climate change mitigation and disaster risk reduction. The court ordered immediate relief and long-term rehabilitation measures, including flood prevention infrastructure. This case illustrates that these treaties are a strong legal basis to establish state obligations for climate disasters. Such obligations may include reparations which could then justify contributions to the Loss and Damage Fund.[[14]](#footnote-14)

# Other relevant non-financial components

**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)?**

In addition to financial contributions to the Fund, non-financial components relevant from a climate justice perspective include facilitating the transfer of green technologies, building the capacity of vulnerable communities, establishing relocation pathways for climate-induced migration and climate change refugees, promoting low-carbon strategies, and enhancing data collection and research efforts. These measures empower communities, protect rights, and foster resilience in the face of climate change impacts.

Further, reparations schemes, more than providing compensation for human rights violations, should further aim to dismantle discriminatory structures that make LGBTIQ+ persons more vulnerable to natural disasters. This can be done through capacity building and provision of technical assistance in the design and implementation of gender-responsive and non-discriminatory disaster response policies.[[15]](#footnote-15)

# Human rights-based approach to the administration of the 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 operationalizing and administering the Fund should prioritize accessibility, non-discrimination, fair representation in decision-making, gender responsiveness, and accommodation for marginalized communities and countries vulnerable to climate change. This entails simplifying access, ensuring fair treatment, including diverse voices in governance, prioritizing gender equality, and providing targeted support for marginalized groups. Such an approach ensures fairness, inclusivity, and effectiveness in addressing climate change impacts.

The Fund's design should eliminate heteronormative and cisnormative assumptions, ensuring inclusivity for all individuals regardless of sexual orientation, gender identity, expression, or sex characteristics. This includes allowing claims from LGBTIQ+-led households, even in the absence of conventional documents like marriage certificates. It's crucial to acknowledge the disproportionate impact of the climate crisis on marginalized groups, such as LGBTIQ+ persons, whose vulnerabilities are exacerbated. Moreover, the registration process should be gender-sensitive, offering various channels for LGBTIQ+ persons to access services without further stigmatization. In contexts where being a member of the LGBTIQ+ community carries high stigma, reparations programs should be designed to minimize harm and protect the identities of claimants. By adhering to these principles, the Loss and Damage Fund can effectively address historical injustices while promoting equality and inclusivity.[[16]](#footnote-16)

# Preventing developing countries from falling into a debt-trap

**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?**

Authoritarian and corrupt governments are most likely to fall into the debt trap because they spend money on projects that are overly ambitious but ultimately unsustainable. Funds allocated for these projects often end up being siphoned through corruption. Consequently, the projects fail, leading the state into a debt trap. These issues should be taken into consideration when granting loans. Additionally, project loans should be rigorously assessed to ensure environmental friendliness. Moreover, the interest rates on loans should be kept low.

To prevent climate finance from resulting in a debt trap for developing countries, it's essential to prioritize grants and concessional financing, offer debt relief and restructuring, provide capacity building and technical assistance, ensure transparent and accountable governance, promote coordination and collaboration, and conduct comprehensive risk assessment and management. These measures can help ensure that climate finance supports climate action without burdening developing countries with unsustainable debt.

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