

Non-Party stakeholders' input for the Talanoa Dialogue

TALANOA input on Loss and Damage and Human Rights

Where are we?

Climate change is likely to be the human rights challenge of the 21st century. According to the recent IPCC Special Report on 1.5°C, “climate-related risks to health, livelihoods, food security, water supply, human security and economic growth are projected to increase” with 1.5°C warming and further with 2°C.¹ Since we are currently on a trajectory towards 3°C², certain adverse climate impacts on human and natural systems will be unavoidable. Loss and damage resulting from climate change poses a serious threat to the human rights of affected populations. The current international response to loss and damage under the UNFCCC takes human rights insufficiently into account. There is a clear need for a stronger integration of human rights and climate governance frameworks to address the human rights implications of loss and damage. Moreover, the adoption of a human rights-based policy approach can make a significant contribution to advancing the policy debate on loss and damage under the UNFCCC towards just, sustainable and equitable outcomes. Such an approach proposes including human rights as a central criterion in the design, implementation, and evaluation of loss and damage policy at the international level.

Where do we want to go?

Adopting a human rights-based approach, places the fundamental human rights of the individual at the center of decision-making. While the ongoing policy debate frames loss and damage in abstract terms, as an eventuality befalling vulnerable developing countries, in particular

¹ IPCC (2018), *Global Warming of 1.5°C*, para B5.

² Rogelj, et al. (2016), ‘Paris Agreement climate proposals need a boost’, 634; and UNFCCC, *Synthesis Report on the Aggregate Effect of the Intended Nationally Determined Contributions*. UN Doc. FCCC/CP/2015/7, 30 October 2015, paras 33-42.

small island developing states, adopting a human rights-based approach helps to focus attention on the people behind this abstraction. A human rights-based approach emphasizes the obligations States already have under existing international and regional human rights treaties. It thus serves as a reminder that climate policy does not exist in isolation from the general obligations of international law. Also, it reminds us of the obligation of States to take meaningful actions to cooperate and assist regarding the enjoyment and fulfillment of human rights.³ These obligations exist not only between countries but towards individuals.⁴

The preamble⁵ of the Paris Agreement explicitly asks that Parties should consider their respective obligations on human rights, as the human person is at the center of sustainable development and climate action.⁶ To date, each UN member State has ratified at least one of the core international human rights treaties, and 80% have ratified four or more.⁷ International human rights law is an available tool to provide judicial recourse, parameters for policy implementation and to influence public opinion on climate policy. Human rights bodies and courts thus play an important role in ensuring enforcement of affected rights and accountability for violations.

Adopting a human rights-based approach in the loss and damage context therefore requires recognition of the existing linkages between loss and damage and human rights obligations in international and regional human rights instruments. The table in the annex below illustrates the principal human rights implications of certain loss and damage types and the rights affected as enshrined in core international human rights treaties. With recent advances in attribution science, it is becoming evident that already today many natural disasters occurring at a higher frequency and with greater intensity than previously recorded can be linked to climate change and cause loss and damage in both developed and developing countries.

³ UN Charter, Articles 1, para. 3, 55 and 56.

⁴ Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, paragraph 87.

⁵ Paris Agreement, preamble.

⁶ Paris Agreement, Article 2 and Articles 2, 3.1 of the UNFCCC.

⁷ Office of the High Commissioner for Human Rights (OHCHR) United Nations. Retrieved on the 29 of October 2019 from <https://goo.gl/RGFcYeN>



How do we get there?

Ensuring that human rights are sufficiently recognized and safeguarded by international loss and damage policy requires a stronger integration of human rights and climate governance frameworks. The rules, modalities, and procedures of the Paris Agreement must address all aspects of climate action and loss and damage cannot be disassociated from this effort.

With COP24 on the doorstep, the Paris rulebook is perhaps the most crucial among the few policy avenues available to ensure that human rights are sufficiently taken into account in the UNFCCC policy response on loss and damage.⁸ As the central guidance document for States and policy-makers in the implementation of the Paris Agreement, the rulebook offers an important opportunity to translate the treaty's preamble reference to human rights into practice. It thus serves as an important gateway for operationalizing a human rights-based approach in the UNFCCC's loss and damage response.

In particular, the guidelines for the Transparency Framework for Action and Support⁹, the NDC guidance¹⁰, and the modalities for the Global Stocktake¹¹ provide key points for anchoring a human rights-based approach. Already in the current draft negotiating text of the draft rulebook, suggestions were made to include human rights and loss and damage. This is a necessary step forward towards achieving the sustainable development outcomes that form an essential part of the mandate of the Paris Agreement. Any progress towards the Paris goals should be pursued with a view to safeguarding the protection of human rights in order not to fall foul of the sustainable development mandate set out under the Paris Agreement.

The periodic review¹² and the principle of ambition¹³ that are at the core of the Paris Agreement must translate into an effort by parties to report and monitor the human rights implications of climate actions. Such human rights reporting and monitoring can serve as an essential tool for the international community to ensure the sustainability of climate action and safeguard the enjoyment of human rights in the implementation of the Paris Agreement.

⁸ A note on the WIM: A recent study on the interlinkages of international loss and damage policy and human rights found that there is little explicit human rights language in COP decisions on loss and damage and in the technical work of the WIM (Harmeling 2018, 99)

⁹ Decision 1/CP.21, paragraph 91.

¹⁰ Decision 1/CP.21, paragraph 26.

¹¹ Paris Agreement, Article 2.1.

¹² Paris Agreement, Article 14.

¹³ Paris Agreement, Article 4.3.



Regarding loss and damage, the monitoring and reporting of human rights considerations will be essential to account for the impact that the unavoidable or unavoids adverse effects of climate change has on the well-being, livelihoods, and dignity of rights-holders. Furthermore, it will enable policy makers, non-state actors and rights-holders themselves to measure, assess and then call upon States to fulfill their obligation cooperate and assist in the protection of human rights affected by loss and damage.

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Annex: Table 1

Mapping the Human Rights Implications of Loss and Damage		
Climate Impact	Human Impact	Human Rights Implicated
Extreme Weather Events <ul style="list-style-type: none"> Tropical cyclones Storm surges Droughts Heatwaves Floods ... 	<ul style="list-style-type: none"> Displacement of populations Contamination of water supply Damage to infrastructure; delays in medical treatment, food crisis Psychological distress Increased transmission of disease Damage to agricultural lands Disruption of educational services Damage to tourism sector Massive property damage 	<ul style="list-style-type: none"> Life [ICCPR, 6] Health [ICESCR, 12] Water [CEDAW, 14; ICRC, 24] Means of subsistence [ICESCR, 1] Adequate standard of living [ICESCR, 12] Adequate and secure housing [ICESCR, 12] Education [ICESCR, 13] Property [UDHR, 17]
Sea Level rise <ul style="list-style-type: none"> Flooding Sea surges Erosion Salinization of land and water 	<ul style="list-style-type: none"> Loss of territory and/or loss of sovereignty due to inundation Drowning, injury Lack of clean water, disease Damage to coastal infrastructure, homes and property Loss of agricultural lands Threat to tourism, lost beaches Loss of cultural heritage 	<ul style="list-style-type: none"> Self-determination [ICCPR; ICESCR, 1] Life [ICCPR, 6] Health [ICESCR, 12] Water [CEDAW, 14; ICRC 24] Means of subsistence [ICESCR, 1] Standard of living [ICESCR, 12] Adequate housing [ICESCR, 12] Culture [ICCPR, 27] Property [UDHR, 17]
Changes in Precipitation <ul style="list-style-type: none"> Change in disease vectors Erosion Impact on fisheries 	<ul style="list-style-type: none"> Outbreak of disease Changes in traditional fishing livelihood and commercial fishing Threat to tourism, lost coral and fish diversity 	<ul style="list-style-type: none"> Life [ICCPR, 6] Health [ICESCR, 12] Means of subsistence [ICESCR, 1]
Desertification <ul style="list-style-type: none"> Soil erosion Water stress 	<ul style="list-style-type: none"> Loss of land /agricultural lands Loss of traditional livelihoods Food and water stress 	<ul style="list-style-type: none"> Health [ICESCR, 12] Means of subsistence [ICESCR, 1] Adequate standard of living [ICESCR, 12] Water [CEDAW, 14; ICRC 24]
Ocean acidification <ul style="list-style-type: none"> Coral bleaching Impact on fisheries 	<ul style="list-style-type: none"> Changes in traditional fishing livelihood and commercial fishing Threat to tourism, lost coral and fish diversity 	<ul style="list-style-type: none"> Life [ICCPR, 6] Means of subsistence [ICESCR, 1] Adequate Standard of living [ICESCR, 12]
Land and Forest Degradation <ul style="list-style-type: none"> Change in disease vectors Flooding and erosion 	<ul style="list-style-type: none"> reduced food production and water quality spread of disease 	<ul style="list-style-type: none"> Life [ICCPR, 6] Health [ICESCR, 12] Means of subsistence [ICESCR, 1] Adequate standard of living [ICESCR, 12]
Glacial retreat <ul style="list-style-type: none"> glacial lake outburst floods reduced runoff and river flows 	<ul style="list-style-type: none"> Long-term water shortages supporting livelihoods, irrigation, hydropower Death and injury from floods Property damage 	<ul style="list-style-type: none"> Water [CEDAW, 14; ICRC 24] Life [ICCPR, 6] Health [ICESCR, 12] Means of subsistence [ICESCR, 1] Property [UDHR, 17]
Biodiversity Loss <ul style="list-style-type: none"> Loss of ecosystem services 	<ul style="list-style-type: none"> Changes in traditional livelihoods and commercial fishing Threat to tourism 	<ul style="list-style-type: none"> Life [ICCPR, 6] Means of subsistence [ICESCR, 1] Adequate Standard of living [ICESCR, 12]
Sudden onset events	Slow-onset events	Adapted from <i>Submission of the Maldives to the Office of the UN High Commissioner for Human Rights</i> , 25 September 2008, < https://www.ciel.org/wp-content/uploads/2015/05/Maldives_Submission_29Sep08.pdf >, 18

