



Advancing a human rights-based approach to the operationalization of the fund and new funding arrangements for responding to loss and damage

OHCHR submission to the fourth meeting of the Transitional Committee (2023)

1. The UN Human Rights Office (OHCHR) welcomes the opportunity to submit its views on aspects of the fourth meeting of the Transitional Committee (TC4) for the operationalization of the fund and new funding arrangements for responding to loss and damage.
2. A human rights-based approach to loss and damage is a matter of legal obligation and of effective policy. 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. 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 perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation”. In this regard, averting, minimizing and addressing loss and damage associated with the negative human rights impacts of climate change is an obligation of States under international human rights law.
3. Further, as affirmed by the IPCC in its [Summary for Policymakers](#) of the Synthesis Report of the Sixth Assessment Report (AR6), “[a]daptation and mitigation actions that prioritise equity, social justice, climate justice, rights-based approaches, and inclusivity, lead to more sustainable outcomes, reduce trade-offs, support transformative change and advance climate resilient development”, while “[r]edistributive policies across sectors and regions that shield the poor and vulnerable, social safety nets, equity, inclusion and just transitions, at all scales can enable deeper societal ambitions and resolve trade-offs with sustainable development goals” (at C.5.2). Responses to avert, minimize and address loss and damage should be grounded in human rights both as a matter of legal obligation and one of effective policy.

❖ Integration of human rights in the fund and funding arrangements

4. OHCHR notes with concern the limited reference to and integration of human rights in the submissions to the TC and in overall discussions during negotiations. To close this gap, the Office urges incorporation of explicit references to human rights in the design and governing instrument of the fund. In this regard, it is important to recognize or acknowledge the adverse effects of climate change on a wide variety of human rights, such as the right to a clean, healthy and sustainable environment and the rights to life, food, water and sanitation, health, housing, development, self-determination, and culture, among others. Explicit references to human rights, including gender equality, will support human rights compliance throughout the operationalization and implementation of the fund. Human rights principles such as transparency, accountability, inclusiveness, intergenerational equity, equality and non-discrimination, should inform the fund. The fund should also be consistent with principles of international environmental law, including the precautionary principle, common but differentiated responsibilities and respective capacities, polluter pays, and the best available science, which are also interlinked with human rights such as the rights to benefit from science and its applications and to access to justice and remedy.

❖ **Human rights based approach, fairness, and equity**

5. A fund that addresses loss and damage should deploy new and additional funding that is grant-based. Funding should be directly accessible to the people and communities affected by loss and damage from the adverse impacts of climate change, incorporating rights-based, gender-responsive, intersectional and intergenerational approaches throughout every stage of the fund's operationalization. The fund should mobilize resources in line with the principles of equity and common but differentiated responsibilities and respective capacities and State human rights obligations. Financing for and access to the fund should be guided by human rights principles and standards.
6. The fund should adopt comprehensive methodologies to cover the full scope of loss and damage experienced by those affected by climate change. It should cover the wide spectrum of harms caused to people and communities in vulnerable situations, drawing on international human rights law and standards for guidance (such as [the UN Basic Principles and Guidelines on Remedy and Reparation](#)). The fund should develop, incorporate, and monitor relevant human rights indicators in the context of climate change, keeping disaggregated data to track the varied impacts of climate change across demographic groups and enabling effective, targeted and human rights compliant climate action.
7. The fund should complement national, regional, and global strategies for addressing structural drivers or factors behind loss and damage, especially in the context of compounded effects of multiple human rights harms, such as food and water insecurity, lack of access to basic services and shelter, cultural loss, systemic inequalities, conflict and violence, and displacement, among others. The [Second Glasgow Dialogue](#) addressed the importance of ensuring contextualization, predictability and sustainability for the funds allocated to address slow on-set events whose impacts have cascading and structural impacts in communities disproportionately impacted by climate change. Specialized mechanisms should be created within the fund to advance a human rights-based approach to address climate change related human mobility and protect the rights of people on the move.

❖ **Types, sources and complementarity of finance**

8. Access to the fund should not impose an additional burden to recipient States and beneficiary communities. Disbursement of funds should be public and grant-based and avoid the use of financial instruments that would create debt burdens for developing countries already affected by economic and non-economic loss and damage. To secure sustainability and ensure maximum available resources, the fund should be flexible to seek funding from diverse sources and advance innovative funding schemes involving the private sector and other actors responsible for climate change impacts in line with the [UN Guiding Principles on Business and Human Rights](#) and the polluter pays principle. In line with human rights obligations of States, equity, and common but differentiated responsibilities and respective capacities, developed countries that historically contributed most to climate change should contribute their fair share to financing the fund.
9. The funds allocated for loss and damage should be complementary to other financial instruments including those for environmental action created in the context of the UNFCCC, regional organizations and instruments, and Official Development Assistance. The institutional arrangements should prevent double counting or relabelling in the use of funds. The fund should incorporate provisions for securing direct access by States, communities, and rights-holders through expeditious processes and independent oversight mechanisms. This is especially important in the context of measures benefiting populations in situations of vulnerability and when urgent responses to sudden-onset disasters are required at the local or national level, demanding rapid, contextualized, and specialized approaches. Social security, cash transfers, and other approaches that empower people and communities as decisionmakers should be considered.

❖ **Ensuring public participation and inclusive governance**

10. The fund's institutional and governance arrangements should be inclusive and participatory, ensuring meaningful participation and active involvement of people in the operationalization of the Fund. There

should be clear and mandatory procedures to ensure the meaningful and informed participation of all people, including Indigenous Peoples, and those directly affected by climate change. Governance mechanisms of the fund should take into account not only the concerns and expectations of State Parties but also those of rights-holders, beneficiary communities and those advocating on their behalf. For this purpose, the fund should establish direct participatory mechanisms. Open and accessible platforms or communications channels should be created to receive inputs, present claims, and make recommendations for the effective implementation of the Fund.

❖ **Guaranteeing access to information, transparency, and accountability**

11. The Office has received concerning allegations from different stakeholders on the limitations faced by observers, constituency representatives, and other grassroots actors to their right to meaningful and informed participation in TC negotiations. These include the incremental use of closed meeting sessions, limited access to information and documents, reduction in the number of observers permitted access to the discussions, delayed notification to constituencies around key moments of the TC meetings, as well as messages that discourage participation in person. Observer participation is imperative to the success and legitimacy of the fund. Observer contributions to climate discussions and advocacy on behalf of the ultimate beneficiaries of the fund is critical. OHCHR urges States to act on their obligation to respect, protect and fulfil the right to meaningful and informed participation in decision-making throughout the process of developing and operationalizing the fund.
12. The TC should work with the UNFCCC Secretariat and others to guarantee meaningful and informed participation of observers in its discussions. Further, its recommendations to operationalize the fund should include rules to ensure transparency, accountability and inclusiveness in decision-making, assessment, implementation and follow-up processes. This includes the sharing of information through formal and informal channels in accessible formats and different languages as well as the establishment of periodic and comprehensive reporting and evaluation mechanisms. It also involves having policies in place to centre the needs of affected communities and rights-holders while addressing undue business influence and power imbalances in funding decisions and implementation.
13. The prevention of any adverse collateral impacts or harmful consequences deriving from fund interventions should be ensured. In that regard, robust social and environmental safeguards are needed to prevent adverse impacts (direct, indirect, cumulative, and transboundary, among others). Participatory and consultative processes should be established to ensure populations directly exposed to loss and damage as a result of climate change have a voice in funding arrangements. An independent mechanism is also needed to receive complaints and assess actions relating to the implementation of the fund. Aside from general recommendations, this mechanism should be allowed to suggest precautionary and remedial measures and rapid interventions aimed at preventing irreversible, imminent, or disproportionate harm to States, communities, and rights-holders.