



Incorporating a consideration of Climate Impacts on Human Rights into the Design of the Loss & Damage Fund: Insights from Vanuatu

Authors: Stephanie Stephens, George Koran, Willy Missack, Mike Waiwai, Christopher Bartlett, Karen E McNamara, Rachel Clissold, and Ross Westoby

As the Transitional Committee undertakes its work pursuant to the mandate given in Decisions 2/CP.27 and 2/CMA.4, the Republic of Vanuatu seeks to provide additional insights into the Pacific-led proposal spearheaded by Vanuatu and others for a funding modality that is nationally-determined, based on long-term loss & damage plans, utilizes existing national and subnational systems of budgeting, tracking and disbursement, programmatic, that are flexible to emerging needs, enables predictable flows over time, inclusive of non-government channels and harnesses the full ‘mosaic of solutions’ at the national level that is demand-driven, context-defined, and promotes home-grown solutions that holistically address loss and damage from extreme events, slow onset hazards, economic and non-economic impacts.

This submission adds context to Vanuatu’s unique and critical need to address the human rights loss and damage suffered now as a result of climate change. It is clear from the science, including the IPCC’s AR6, that loss and damage to fundamental human rights is already occurring and will only increase over time.

Climate change is the “human rights challenge of the twenty-first century”¹. Human rights frameworks, such as the Universal Declaration of Human Rights, among others, guide us in our responses to climate change, and must inform the development of the Loss & Damage Fund. All states have ratified at least one of the nine core international human rights treaties, with most having ratified several. This highlights the international obligation for states to prevent the foreseeable adverse effects of climate change².

A human rights approach is particularly valuable in framing and calling attention to climate-driven loss and damage³. Human rights law provides the normative framework to assist the Transitional Committee in its work and for States to design funding arrangements and long-term plans to avert, minimise, and address loss and damage, as well as refocus the political narrative on the fundamental rights of individuals, which must be protected through well-financed action on climate change⁴. A human rights framing for the TC’s proposals for the Loss & Damage Fund will help to amplify the voices and perspectives of those who are often sidelined⁵ and not able to directly contribute to this design process.

The Republic of Vanuatu, has been identified as one of the most climate vulnerable states (by the UN’s preliminary Multidimensional Vulnerability Index) and most at-risk nations globally to environmental hazards⁶. In this context, Vanuatu has built a global coalition of countries seeking to understand how climate change affects the rights of current and future generations and the international legal responsibilities of states to protect against harm, loss and damage⁷. On the 29th of March 2023, the UN General Assembly adopted by consensus a Resolution requesting an advisory opinion from the International Court of Justice (ICJ) on the climate crisis. The ICJ has now requested States and Intergovernmental Organizations to make submissions towards rendering an opinion on climate change obligations and the legal consequences which will further enable clarity on loss and damage finance, and the operationalization of loss & damage funding arrangements.

To help the Transitional Committee ensure its design proposals are founded on science, empirical evidence and country experience with loss and damage, we present here findings of research undertaken from June-October 2022 with 118 participants from across Vanuatu¹. The aims of the research were threefold: 1) to explore how locals in Vanuatu experience climate change loss and damage in their

¹ A qualitative-quantitative survey was used, due to its speed, ease, cost-effectiveness, ability to reach geographically dispersed populations⁸.

everyday lives; 2) to identify the loss and damage to islander's human rights; and 3) to identify the most appropriate and useful ways of addressing these loss and damage impacts on human rights. The findings for each of these are presented in turn.

Experiences of climate change loss and damage in Vanuatu

Participants were asked to consider the extent to which climate change impacts have affected their everyday lives over the last year (on a Likert scale of 1=not at all to 5=very high). The overall mean was 3.94, with the majority of participants selecting 'high' (39.8%) or 'very high' (30.6%), 23.5% selecting 'medium', only 5.1% selecting 'little' and 1% selecting 'not at all'.

Participants emphasised various observations of changing weather patterns such as rainfall and extreme weather events such as cyclones. Many participants explained how there were *"more intense cyclones and storms"*, *"more frequent and intense extreme rainfall"*, *"wetter dry seasons, cyclones outside of cyclone season"* and an *"increase of cyclone power"*. The effects of these changes included long and intense periods of rainfall, which resulted in the following loss and damage: *"causes waterlog, soil erosion"*, *"landslide[s] and flooding"*, *"contaminated river source[s], streams"*, *"high sedimentation rates at water sources"*, *"rotting of crops... and more pests and diseases"*. Participants explained how *"along the road the water flows like [a] river"*. Cyclones are also *"damaging coastal land and damaging our forest and trees"*. The impacts of worsening tropical cyclones are particularly worrying as they impact *"broader areas and they are more devastating and can take a longer time to recover from"*.

Slow-events were highlighted, such as extended dry periods which cause *"crops [to] die and degrade"*. One participant explained how the *"biggest lake in South Epi, Nalema Lake is drying up in dry seasons. It has become muddy, and fish have been reduced and lost"*. Sea level rise was a major concern of participants, which were associated with other impacts such as *"saltwater intrusion [into drinking wells]", the "beach line being swept away" and "loss of land"*.

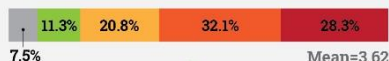
How climate change impinges on and causes loss and damage to people's human rights

Loss and damage to human rights from these changes in weather patterns, extreme events and slow-onset processes have had, and will continue to have, interrelated and diverse impacts on people's everyday lives. Impacts are affecting the availability of food and water, health, individual property and communal infrastructure (e.g., roads in particular), income sources and, in some cases as an option of last resort, the ability to remain on homelands. One participant explained how *"the future is just unpredictable... I think the future will be like this, just unexpected"*. Direct and indirect impacts related to these changes and events are impinging on people's right to lives of dignity into the future, as explored in more detail below.

Key human rights declarations and covenants provide insight on how climate change impinges on and causes loss and damage to people's human rights, including the Universal Declaration of Human Rights⁹, International Covenant on Civil and Political Rights¹⁰, International Covenant on Economic, Social and Cultural Rights¹¹, and the United Nations Declaration on the Rights of Indigenous Peoples¹². Each of these were carefully analysed, and articles with relevance for climate change were identified.

From a list of 22 human rights relevant to climate change, we thematically grouped these into the following nine overarching 'groupings': 1) cultural life, traditions, customs, and traditional knowledge; 2) family and social cohesion; 3) freedom, peace, and security; 4) identity; 5) local environment; 6) property and communal assets; 7) self-determination and agency; 8) sense of place and 'home'; and 9) standard of living. We then explored with participants 'how much' (using a Likert scale of 1=not at all to 5=very high) and 'how' each of these nine thematic groupings have been affected by the impacts of climate change. The following infographic summarises these findings.

Local environment (i.e., land, sea, rivers, forests, and biodiversity, the ability of people to own, use, develop and control their lands) (n=53 responses)
UNDRIP¹ (Articles 2, 26.1 & 29.1)



“Land and sea have been affected” (#31)

“We are experiencing coral bleaching in some areas and communities. This has [a] huge impact on coastal fisheries and livelihood[s]. If we have Category 3-5 cyclones every year, it puts a heavy burden on our ecosystem to rejuvenate to its original capacity to be able to provide us with the services we depend on for survival” (#61)

“Loss of biodiversity and ecosystem[s] is becoming [a] major threat to human livelihood because we have that strong connection to nature or environment as an organism in a food chain” (#76)

Property and communal assets (i.e., individual property such as homes and boats, and communal assets such as wells, bores, nakamals, and schools) (n=56 responses) UDHR² (Article 17)



“In our village, our house was destroyed by cyclones. When heavy winds blow, it blows branches to the roofs and also to the water source, wells, tanks. This cause[s] our house to [be] damaged and our water source was contaminated. Heavy rains cause our animals to die” (#23)

“We have nakamals that are destroyed by the rains and roads even in our capital Port Vila. And those rains are not normal” (#59)

“On Ifira which is serviced daily by a 30-minute boat ride which is home to my mother, the wharf was damaged during the cyclone and since then has not been repaired” (#82)

Standard of living (i.e., access to food and water, education, reliable income and work, means of subsistence, social and health services, and physical and mental health) (n=56 responses)
UDHR (Articles 23-26), ICCPR³ (Article 1.2), ICESCR⁴ (Articles 1.2, 6.1, 11.1, 11.2, 12.1 & 13.1), UNDRIP (Articles 14.2, 21.1 & 24.2)



“Shifts in crop seasonality have affected access to local food for me and my family. We rely on processed food for meals. Non-communicable disease has been a result of health problems we face at home” (#19)

“Rainfall disturb[s] me to go to school. Since I walk to school every day, when there is rain, I did not go to school since water runs on roads like rivers and busses do not like to service at our streets since the roads have lots of holes [caused] by heavy rain” (#23)

Family and social cohesion (i.e., to have a family, as the natural and fundamental group unit of society, and the bonds and bridges that bind community life) (n=54 responses)
UDHR (Article 16), ICCPR (Articles 23.1 & 23.2), ICESCR (Article 10.1)



“Because of climate change, our community protocols have no longer been followed and all our families are falling apart” (#57)

“All examples are linked, again weather patterns and poor productivity for crops in Vanuatu, draining out most male to work abroad and it does affect family” (#64)

“Traditional landmarks that have been culturally significant for generations can be affected, lost or displaced by severe weather events and cause disputes over land ownership and property boundaries” (#72)

Cultural life, traditions, customs, and traditional knowledge (i.e., spiritual and religious traditions, traditional medicines, and the ability to pass these down through generations) (n=55 responses)
UDHR (Article 27), ICESCR (Article 27), UNDRIP (Articles 8.1, 11.1, 12.1, 13.1, 24.1 & 31.1)



“Most of our weaving materials have been damaged... and we no longer practice our cultural practices” (#57)

“Medicinal plants are becoming more difficult to find due to plants [being] destroyed by cyclones” (#71)

“Before climate change it was easier to teach children about how to predict weather... however it has become harder to do so with unpredictable weather patterns meaning that cultural/traditional practices and knowledge sometimes lose their value because people can no longer rely on such knowledge” (#73)

Freedom, peace, and security (i.e., to live as a distinct people and not be subjected to any act of violence or harm) (n=51 responses)
UDHR (Article 3), ICCPR (Article 6.1), UNDRIP (Articles 7.1 & 7.2)



“Food security and peace are affected due to climate change... People are losing their freedom and fundamental rights. During Cyclones Pam and Harold, the schools were destroyed, and our children missed classes for two years. Our neighbour friends can't have access to clean drinking water as their boreholes are contaminated by salt-water intrusion due to sea-level rise” (#59)

“We are not safe anymore” (#61)

“I believe freedom and peace are affected by the thoughts of the future, especially the impacts of climate change on our next generations. Life will be very costly and dangerous” (#64)

Self-determination and agency (i.e., the ability of people to freely pursue economic, social, and cultural development, participate in decision-making, and freely make decisions about their life and the things that affect it) (n=51 responses)
ICCPR (Article 1.1), ICESCR (Article 1.1), UNDRIP (Articles 3, 20.1, 23 & 32.1)



“As I get older, my decisions around my ability to pursue financial stability, such as purchasing a home / land, is greatly impacted by my pessimism regarding rising sea levels, coastal erosion, and overall degradation of our natural environment exacerbated by climate change” (#80)

“I think our self-determination ability is affected to some degree, especially to pursue economic aspirations because you're limited by your budget and capacity [by] always [being] in the recovery process all the time” (#61)

“When a whole island population was displaced to several other islands communities / businesses stopped, and customers dispersed – how does one maintain self-determination?” (#78)

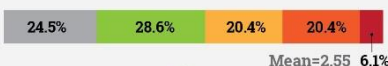
Identity (i.e., the things that contribute to people being who they are, and what they value in accordance with customs and traditions) (n=52 responses)
UNDRIP (Article 33.1)



“If the situation keeps on escalating, then I will definitely lose my identity as a tribe of the yam, because people will not be regarding my tribe anymore and disrespecting us” (#61)

“As an individual, I feel like [the] impacts of climate change have had some impact on who I am as a person. I still believe in what my grandfathers have taught me about traditional weather knowledge and traditional medicines, although I've lost belief in some” (#73)

Sense of place and 'home' (i.e., any disruptions caused by displacement, relocation, or migration) (n=49 responses)
UDHR (Articles 13 & 15), ICCPR (Article 12.1), UNDRIP (Articles 6, 9 & 10)



“Losing our coastal lands due to sea-level rise and our houses due to cyclones push us to find places in high lands and also to re-build houses that feel like living in someone [else's] house. The feeling of belonging had changed and lost over time” (#42)

“We no longer feel safe because we have to move to other place or relocate” (#57)

“Loss of traditional custom land due to increase in sea level rise” (#58)



¹ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

² Universal Declaration of Human Rights (UDHR)

³ International Covenant on Civil and Political Rights (ICCPR)

⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR)

The first key finding to be gleaned from the infographic is that the **most severe impacts are on people's rights to a healthy environment** and ability to own, use, develop and control lands, followed closely by high impacts on rights to property and communal assets, standard of living, and family and social cohesion. Pacific Islanders have deep connections to land, which is a foundation of culture, livelihoods, and identity¹³. This foundation is what is considered to be the most severely affected human right due to the impacts of climate change. As one participant expressed: "I am more concerned about sea level rise, which is washing away our land, which our forefathers have inherited over many generations and with it being washed away, it means our family's access to equitable land for gardening is limited".

The second key finding to highlight is that the impacts of climate change on people's human rights are having **cascading impingements on numerous, other interconnected human rights and can transcend across generations**. Examples include climate-induced losses to traditional medicines which impact directly on health but can also significantly affect other interconnected human rights such as customs, traditional knowledge, family, agency, and identity. Flooding of low-lying areas not only impacts people's properties and communal infrastructure, but also other interconnected rights such as cultural heritage (i.e., through the destruction of gravesites) and standard of living (i.e., salinisation of freshwater tables that then impinge on potable water). To illustrate this further, we provide two

Example 1: Cascading impacts on human rights

One participant from Ambrym explained how yam is the "main commodity of value for exchange" and that the "rituals, rites, and customs of the yam... are the main social fabric that holds our kinship, tribe and communities, and society, together" (#61). The deterioration and physical loss of the yam due to increased climate variability and extreme weather has impinged on human rights on multiple fronts, violating Vanuatu's social fabric, culture and traditions, agency, identities, and food security:

"The yams are significant in our culture. Its harvest is marked by special cultural rituals and ceremonies, but the climate had affected the harvest sessions which resulted in a big delay in harvest and that makes people lose their normal cultural rhythm and ritual...

The cultural ways of planting are not adaptive to these fast changes caused by the climate which is now leading to a loss of cultural practices and knowledge. This is a cultural right that can never be recovered and re-built if we lose it due to climate change. No financial means can recover those non-economic losses, which are our heritage and dignity. And climate change is taking these rights away from us" (#59).

The centrality of yam to identity, social cohesion, culture, tradition, and food security illustrates the impacts of climate change on Vanuatu's biocultural heritage and the complex, cascading human rights impingements from the loss of one singularly important crop species¹⁴. The loss of identity is associated with a substantial rupture to one's sense of self and the agency to control how one can identify themselves with respect to the world around them¹⁵.

Photos taken by Ramou Iapatu Missack (top) and Karen McNamara (middle and bottom)





Example 2: Cascading losses to human rights across generations

One participant painted a clear picture of how a changing climate is affecting current generations, but also poignantly how this will see extensive losses for a wide variety of human rights for future generations:



"My family is from a coastal village, and we learn from an early age to be self-sustainable. From growing our own food in our backyard gardens to going fishing on the reef or collecting edible seashells/crabs after school and on the weekends.

Nowadays, because the coral reefs are dying, the fish have gone. Our coastal waters have less and less to provide, all that's left is dead limestone and seaweed. Our crops are producing less yield because of weather changes. Root crops are rotting before they become ready to harvest because of the unusually large amounts of rain that we experience. We have had to spend more money on food now than we ever did in the past. In the future I do not expect for there to be anything left in the waters or in the bush. The knowledge that my grandparents passed onto my cousins and I about which plants to eat in the bush or which fish is safe to eat will die with my generation. We will be lucky if there are any left for us to show our grandchildren.

I am concerned about the impacts of climate change on our environment and on our culture. That the love and respect we had towards nature will fade away into nothing and the deep cultural ties to our waters will be lost when we will have to start teaching our children their heritage from books and not from taking them out to sea on a canoe and pointing out fish like it was done for us" (#15).

Photos taken by Karen McNamara

Concrete actions to address loss and damage to human rights

In the design of the Fund and funding arrangements, COP 27 and CMA 4 also decided that the Transitional Committee will be informed by, inter alia (c) The priority gaps for which solutions should be explored.

To support the TC's design work, Vanuatu would like to highlight local communities' perceptions of the most appropriate solutions and practical ways of addressing climate change induced loss and damage on people's human rights.

These can be categorised into five key approaches which complement each other and should be funded and implemented as part of a human rights restoration package:

1. recording and safeguarding Indigenous knowledge
2. promoting cultural continuity

3. restoring the socio-ecological system
4. building back better
5. investing in education.

These approaches can partly address loss and damage of and to human rights, including through reducing the losses and damages that people experience and actively investing in the protection and conservation of critical resources. These approaches can help address the impacts of climate change on human rights through reducing the losses and damages that people experience and actively investing in the protection and conservation of critical resources. Participants noted that investments in these approaches should be considered holistically and in the context of and in support of investment in mitigation and adaptation.

Beyond investment in specific approaches, participants made it clear that **compensation is an appropriate and justice-based financial response to climate-induced human rights violations, and must be considered as a part of the Funding Arrangements to be proposed by the Transitional Committee.** In the context of human rights, the calculation of compensation for some loss and damage is more difficult than others.

“Compensation will be challenging as we cannot compensate for the loss of a culture... But for economic compensation, climate finance must be given, and also a justice process must be given to countries that cause more of these losses due to their GHG emissions”.

There is *“more climate ambition”* needed from polluting countries, and *“a legal authoritative agency [should exist] to put moral weight and obligation to states to do more”* and *“live up to their promises and pledges”*.

Participants also emphasised the importance of a supportive policy and institutional environment for loss and damage compensation: *“A robust national plan that is linked to a funded implementation roadmap/strategy [is needed]...Operationalisation of a ‘national vulnerability assessment framework’ to guide investments to address (‘restore’) the impacts of climate change...”*

Participants also emphasised the responsibility of national and provincial governments in efficiently providing emergency funding, through a range of direct access modalities, for families to re-establish themselves after disaster events.

“Climate change is costly, it needs to be factored especially on government budgets narrowed down to provincial budgets”.

The following infographic summarises the key approaches to be funded that would be articulated in parties’ long term Loss & Damage Plans and financed by the UNFCCC’s Loss & Damage Fund and other funding arrangements.



Investing in education: Using education and awareness-raising as a vehicle for increasing consciousness about key issues, improving recovery capacities and resilience, and empowering people to act and understand their rights.



"...identifying the most appropriate way of restoring useful information where all could benefit from such as educational resources in storytelling, recording of traditional knowledge and direct action/activism" (#58)

"Advocate school students and Government to invest more in climate change – more awareness" (#63)

"Educating people on importance of adaptation and living with climate change" (#73)



Recording and safeguarding Indigenous knowledge: Ensuring that traditional knowledge and practices are developed and sustained across generations through promoting the recording, dissemination, sharing, and ownership of knowledge amongst local peoples.



"Promote and protect my cultural knowledge is very important" (#57)

"Recording traditional knowledge to preserve knowledge so that it is not lost for our descendants. Direct action/activism so that you personally are taking action which will empower yourself and those around you, while at the same time making a difference" (#68)

"Funds to a local NGO or institution to help record and store traditional knowledge in a database that can be accessed by all stakeholders" (#73)



Promoting cultural continuity: Strategies and activities that help ensure the transmission of meanings, values, and historical traditions of a culture through time and generations, and the connection and continuous engagement of people with culture.

"Protect, preserve and promote cultural knowledge and cultural heritage" (#57)

"Passing or sharing our unique tradition knowledge and culture of ways our ancestors taught us should be one of our greatest goal[s]" (#76)

"Ways to help old people and younger generation maintain their traditions" (#78)

Approaches for addressing climate change impacts on human rights ...



Building back better: Building resilience by using the post-disaster phases to restore physical infrastructure, societal systems and institutional structures, and revitalise livelihoods, economies and the environment in ways that reduce risk and strengthen recovery capacity.

"Building and construction practices, building safer homes in non-flood prone areas. Building water systems and toilets so that people have access to clean safe water and sanitation facilities" (#72)

"Communities awareness and build flood and cyclone resistant infrastructure" (#74)

"We need infrastructure, good roads and sustainable water and a clinic. We need our land to be sorted out so that we can build strong cyclone proof houses" (#79)



Restoring the socio-ecological system: Preservation of the socio-ecological system and the critical people-ecology interactions that underpins culture, community, knowledge, wellbeing, health, and identity.

"Going into the future, people adapt to changes in weather by planting other food crops, replanting of trees, and engaging local partners to find ways to sustain their livelihoods" (#48)

"Encouraging of planting trees... and planting more tree near the coastal [areas]" (#63)

"Loss of biodiversity and ecosystem is becoming major threat to human livelihood because we have that strong connection to nature or environment as an organism in a food chain" (#76)

Key Takeaway Messages and Recommendations to the Transitional Committee

- The Loss and Damage Fund modalities must finance nationally-determined, long-term loss & damage plans, that utilize existing national and subnational systems of budgeting, tracking and disbursement and are flexible to emerging needs.
- The benefit of financing national loss & damage programs are that they will be demand-driven, context-defined, and promote home-grown solutions that holistically address loss and damage from extreme events, slow onset hazards, economic and non-economic impacts over appropriate timescales.
- Finance flows from the Loss and Damage Fund must be grant-based, programmatic, enable predictable flows over time, be inclusive of non-government channels and harnesses the full ‘mosaic of solutions’ in a complementary and coordinated way at the national level
- It is clear from the science, including the IPCC’s AR6, that loss and damage to fundamental human rights is already occurring and will only increase over time.
- A human rights approach and Human rights law provides the normative framework to guide the Transitional Committee in its design work and will help to amplify the voices and perspectives of sidelined indigenous pacific communities not able to directly contribute to this design process.
- Vanuatu encourages all States, Intergovernmental Organizations, Specilized UN Agencies and others to make progressive submissions to the International Court of Justice (ICJ) towards rendering an opinion on climate change obligations under international law and the legal consequences which will further enable clarity on loss and damage finance, and the operationalization of the loss & damage Fund and funding arrangements.
- Indigenous people and communities in Vanuatu are already experiencing existential economic and non-economic loss and damage from extreme events and slow onset events, the loss and damage to human rights is increasing worsening over time
- The most severe loss and damage now undermining Vanuatu people’s rights are related to the right to a healthy environment and ability to own, use, develop and control lands, as well as high impacts on rights to property and communal assets, standard of living, and family and social cohesion.
- Loss and Damage to Vanuatu people’s human rights are having cascading impingements on numerous, other interconnected human rights and can transcend across generations (e.g. interconnected human rights to custom, traditional knowledge, family, agency, and identity.)
- The Loss & Damage Fund must finance nationally determined plans to address human rights loss and damage, including by investing in;
 - recording and safeguarding Indigenous knowledge
 - promoting cultural continuity
 - restoring the socio-ecological systems
 - building back better
 - investing in education.
- Compensation is an appropriate and justice-based financial response to climate-induced human rights violations, and must be included as a part of the Funding Arrangements to be proposed by the Transitional Committee.
- National and provincial governments have an obligation to efficiently provide loss and damage finance, through a range of direct access modalities enabled by the loss & Damage Fund, for families and communities to address loss and damage to human rights



Photos taken by
Karen McNamara

“Vanuatu will become the beacon of peace and unity and the world will learn from this process. Climate justice must and will become the pivot to strike the balance between high-income countries and low-income countries. The climate crisis is a crisis of conscience and moral conscience is needed to guide the climate decisions.

When our fundamental rights are taken away by the impact of climate change, is that justice? I think we need to explore the option of climate justice for the betterment of all” (#59).



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