**CAN Adaptation and L&D Working Group Response to the call for input**

“Promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage” issued by the Special Rapporteur on the promotion and protection of human rights in the context of climate change

*The following input was prepared jointly by the Climate Action Network working group ‘Adaptation and Loss and Damage’ and CAN-I. In case of questions, please contact the working group coordinators Laura Schäfer (**schaefer@germanwatch.org**) and Adrian Martinez (**adrian.martinez@larutadelclima.org**).*

# What experiences and examples are you aware of that are being faced by particularly individuals and communities in vulnerable situations (as identified above) that have suffered loss and damage due to the adverse impacts of climate change?

**Climate Action Network’s World We Want campaign**[[1]](#footnote-1) has been documenting the devastating impacts of climate change on people and communities. Through video documentation, the campaign shows what it means to lose everything that means ‘home’, safety and security from the impacted people and communities themselves. A harrowing picture of suffering from climate impacts emerges

A cross section of examples include:

* [**Kasese District, Uganda**](https://www.youtube.com/watch?v=jxQfa-wp0XE)- glacial melt is causing devastating floods, causing a loss of lives, livelihoods, critical infrastructure, and hope. In this video we hear a mother speak of the devastating effect of losing everything. She says “our children are living in fear”.
* [**Fayoum, Egypt**](https://www.youtube.com/watch?v=OOsxHLSdQz8) - Failing mango crops has seen 200k farmers experience an 80% decrease in productivity. This video shows the exasperation and the difficulty of the situation from one small farmer's perspective.
* [**Kidomole, Tanzania**](https://www.youtube.com/watch?v=3_0dlqDRWqA)- Pastoralists whose survival depends on free pastures and land have lost almost a quarter of their livestock due to prolonged droughts. In this video we hear a pastoralist’s ask “for now we are facing hunger and fever but also we are being forced to migrate from places since these rangelands are not ours. Where do they expect us to go?”
* [**Providencia Island, Colombia**](https://vimeo.com/487340834?signup=true) - This video shows the devastation of Hurricane Iota which left the 5000 inhabitants of the small island of Providencia “practically without anything”. We hear the shock Iota had to culture and families and the action the community is taking by filing a lawsuit against the government of Colombia to demand that it fulfill the Paris Agreement
* [**Pune District, India**](https://vimeo.com/678489811/a99949fdc1) - Pastoralists are being impacted by unexpected and extreme weather events. We hear a pastoralist ask “What choice do we have when our animals die? The government does not pay or heed our plight when we tell them, so the farmer or livestock owner has to deal with the loss.”

Women and girls are at the forefront of climate impacts acting as societal shock absorbers[[2]](#footnote-2) and whilst their negative externalities increase (greater risks of violence, morbidity, mortality, curtailed freedoms and capabilities) they are key contributors to disaster risk reduction, post-disaster management and climate change mitigation and adaptation strategies.

**The following figure provides a comprehensive overview of the potential loss and damage (L&D) resulting from slow-onset processes**. It is based on a extensive literature review, conducted by Germanwatch and ENDA, published in a study on ‘Slow-onset Processes and Resulting Loss and Damage’[[3]](#footnote-3).



Please also refer to submission by [La Ruta Del Clima](https://larutadelclima.org/wp-content/uploads/2019/10/Call-Input-LRC-2022-.pdf)[[4]](#footnote-4) for further examples.

# What legislation, policies and practices do you think are necessary to provide redress for particularly individuals and communities in vulnerable situations that have suffered and will continue to suffer loss and damage due to the adverse impacts of climate change?

# **A right’s based approach guided by the principle of Common But Differentiated Responsibility and Respective Capabilities (CBDR-RC)** is necessary to provide redress for individuals and communities in vulnerable situations that have suffered and will continue to suffer L&D due to the adverse impacts of climate change. An example for a ‘Human Rights-based Approach to Climate and Disaster Risk Financing’ (Schäfer/Künzel/Jorks 2021) can be found here: <https://www.germanwatch.org/sites/default/files/Human%20Rights%20Based%20Approach%20to%20CDRF_0.pdf>.

* **Legislative reform** to ensure 1) Paris Agreement commitments is enshrined in law; 2) the legal framework to enable mitigation, adaptation and disaster risk management is in place
* **Strengthening and supporting quantitative, qualitative science** for the attribution, quantification of costs, and the non economic impacts of L&D
* **Establishing and scaling-up instruments and measures that allow addressing economic and non-economic L&D from both, extreme weather events and slow-onset processes.** For a list of measures to address L&D please see: p.14 in Schäfer et al. 2021[[5]](#footnote-5) and p. 8 in Germanwatch 2021[[6]](#footnote-6).
* **Restorative justice** is integral for vulnerable communities impacted by climate change L&D. With continued failure in the provision of restorative justice, communities are turning to litigation for redress. The delay in mitigation and adaptation action coupled with the evolution of legal mechanisms and attribution science of accountability, has seen climate change litigation more than double since 2015 and this is projected to grow[[7]](#footnote-7).
* **Strengthening effectiveness of universal access to gender responsive social protection**[[8]](#footnote-8). Resilience to disasters can be supported via equitable access to education, employment, training & healthcare in addition to unconditional cash transfers, maternal care and child social protection schemes; disability benefits and pensions.
* **Enabling safe, orderly and dignified movement of climate change displaced people and communities** as well as ensuring climate-induced migration is on the agenda of inter-governmental bodies[[9]](#footnote-9)
* **Participatory approaches** are necessary for effective strategic planning to address and respond to L&D[[10]](#footnote-10)
* An annual stocktake of national financial L&D needs and L&D funding available in a **L&D finance gap report.[[11]](#footnote-11)**

# Please provide examples of policies and practices (including legal remedies) and concepts of how States, business enterprises, civil society and intergovernmental organisations can provide redress and remedies for individual and communities in vulnerable situations who have suffered loss and damage to the adverse impacts of climate change.

* **By strengthening and clarifying the linkages between climate change impacts and Human Rights** can define obligations between and within States to their citizens facing L&D
* **Gender-responsive social protection** such as unconditional cash and food transfers, can significantly and strategically help families and communities cope with the L&D from the impacts of climate change[[12]](#footnote-12).
* **Cooperation and Solidarity of developed countries to developing countries through the provision of finance to address L&D. This can be achieved by setting up a Loss & Damage Finance Facilit**y adhering to the principles of: 1) international solidarity, historical responsibility and the polluter pays principle; 2) new and additional; 3) needs-based, adequate, predictable and precautionary; 4) locally driven with subsidiarity - enveloping gender responsiveness and equitable representation; 5) public and grant-based; 6) balanced and comprehensive.
* In the absence of restorative justice:
	+ - Small Island States are **engaging legal levers** to hold historical polluters accountable by establishing a Commission of Small Island States on Climate Change and International Law thereby creating a body for the development and implementation of fair and just global environmental norms and practice. Additional legal and legislative actions are being taken or called for at the local, national, and international levels.
		- Saúl versus RWE: in 2015 a Peruvian farmer and mountain guide filed a lawsuit against the German utility RWE citing the threat to family, property and the city of Huaraz from the massive emissions of the company[[13]](#footnote-13)

# Please provide examples of ways in which States, the business enterprises, civil society and intergovernmental organisations have provided redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage due to the adverse effects of climate change.

* Some States have included L&D in their Nationally Determined Contributions however it remains that within the multilateral climate regime there is currently no mechanism through which to address L&D
* Bangladesh Climate Change and Strategy and Action Plan (BCCSAP) saw the creation of two funds to finance a variety of climate change related activities[[14]](#footnote-14)
* The Framework for Resilient Development in the Pacific (2017-2030) espouses an integrated approach to cope with climate change impacts[[15]](#footnote-15)
* In a landmark inquiry in May 2022, the Commission on Human Rights of the Philippines issued the final report of its multi-year investigation into 47 investor-owned carbon-major corporations for human rights harms resulting from their actions triggering climate change. The report offers a legal basis for asserting that climate-destructive business activities by fossil fuel and cement companies contribute to the violation of human rights.
* According to a study on the countries of the Climate Vulnerable Forum (CVF), those countries are already taking action to manage climate risks and deal with concrete impacts by using national financial instruments and mechanism. However, the scope of actions differs significantly between countries. In 81%17 of the CVF countries, at least one national financial mechanism or instrument to deal with climate risks and impacts exists. These include Contingency Funds, Disaster Management Funds or national Insurance Schemes like the Kenyan National Drought Emergency Fund (NDEF), the Kenya Livestock Insurance Program (KLIP) (agricultural insurance), the Philippines National Disaster Risk Reduction and Management Fund (NDRRM Fund), the Nepalese disaster fund for emergency relief or the Costa Rican National Emergency Fund among others. Most CVF countries without a national instrument/mechanism are part of a regional mechanism [[16]](#footnote-16).

# What international, regional and national policies and legal approaches are necessary to protect current and future generations and achieve intergenerational justice for particularly for individuals and communities, from the adverse impacts of climate change?

* The initiative, being led by Vanuatu, seeking an **Advisory Opinion from the International Court of Justice on climate change** as it specifically affects developing countries particularly exposed to the adverse effects of climate change will be an opportunity to raise awareness about the impact of the climate crisis and its impact on vulnerable and marginalized populations. An Advisory Opinion would recognise that climate change is disproportionately felt by persons in vulnerable situations, particularly those living in geographically vulnerable developing countries. An Advisory Opinion from the ICJ would therefore provide a baseline for achieving climate justice by linking human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable and sharing the burdens and benefits of climate change and its resolution equitably and fairly.
* **The delivery and implementation of greatly enhanced NDCs to be in line with the temperature goal of 1.5oC** with historical polluters rapidly and significantly scaling efforts foremost whilst supporting developing countries is necessary for intergenerational equity. Major polluters and all nations will have to follow soon after but it is the responsibility of historical polluters to do so first and foremost.

# In 2021 at 26th session of the UN Climate Change Conference (COP26), some Parties and civil society organisations proposed a new financial facility to support loss and damage.

## Please provide ideas and concepts on how a new facility would operate and how the funds needed to underwrite this fund would be established and maintained.

Please refer to the paper: [Loss & Damage Finance Facility: Why and How](https://climatenetwork.org/resource/ldff/) for a more detailed perspective on how a L&D finance facility would operate

* A new Loss & Damage Finance Facility (LDFF) should make a significant and ambitious contribution to combat climate change by focusing exclusively on addressing L&D. To be best aligned with the principles of justice and equity, the LDFF be established as an operating entity acting as the third pillar of the Financial Mechanism of the UNFCCC which also serves the Paris Agreement. As both a coordination and financing mechanism, it should be the primary vehicle to coordinate, mobilise and channel new, additional, adequate and predictable financial resources to address L&D for developing countries and affected communities and people
* A function of the LDFF would be providing oversight over funding for addressing L&D from within existing funds under the UNFCCC Financial Mechanism and the Financial Mechanism of the Paris Agreement, as well as for funding mobilised and disbursed outside of the UNFCCC framework, including by determining its additionality to financing provided for averting and minimising L&D.
* The LDFF should provide grant based funding. Based on equity and justice, the sources for the rapid mobilisation of finance include:
	+ Climate damages tax on the fossil fuel industry[[17]](#footnote-17)
	+ A 4% annual reduction in fossil fuel subsidies by G20 countries could raise US$245 billion to support efforts to address L&D between now and 2030[[18]](#footnote-18)
	+ Potential capitalisation through unused Special Drawing Rights

## Please provide ideas and concepts on how a new financial facility for loss and damage could provide redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage due to the adverse impacts of climate change.

* A new Loss & Damage Finance Facility (LDFF) could start out initially with two distinct funding windows with differentiated **‘fit-for-purpose’ programming modalities** and application procedures to be developed in response to differing needs and time-frames for funding :

i) urgent response to **rapid-onset events** in the aftermath of climate disasters (such as storms and floods) and

ii) for **slow-onset events** and L&D planning and policy frameworks and transformative programming (such as for permanent relocation and addressing the loss of culture, language etc.).

* **All developing country Parties to the Convention and the Paris Agreement should be eligible to receive funding support from the LDFF**, irrespective of a potential contribution to the LDFF and its scale, to cover economic and non-economic losses and damages.
* **The LDFF should provide simplified access to funding.** A menu-approach of accepted parametric criteria could be utilised which could include a specified percentage loss of GDP, an unprecedented weather-related event, a percentage of the population impacted, or in the case of a population-rich country, a minimum threshold of at least one million people affected.

# What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisations to dramatically increase efforts to reduce emissions of greenhouse gases, including through support to developing countries, in particular small island developing States, least developed countries and landlocked developing States, to limit the human rights impacts on particularly individuals and communities in vulnerable situations to the adverse impacts of climate change?

* **Mitigation efforts need to be urgently scaled up now and in line with equity and CBDR-RC in order to stay within the 1.5 °C temperature goal.** In the Glasgow Climate Pact, Parties acknowledged limiting global warming to **1.5 °C** requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by **45 per cent by 2030 relative to the 2010** level and to net zero around mid-century as well as deep reductions in other greenhouse gases. **Parties NDCs are overshooting 1.5°C significantly to the extreme detriment of people, and ecosystems.**
* In this decade, Parties must rapidly scale up the deployment of clean power generation and energy efficiency measures, whilst also accelerating the just phasedown of coal power and the just phase-out of fossil fuels and subsidies, in a manner that supports the poorest and most vulnerable, recognising national circumstances and just transition. **All sectors will need to be holistically transformed.** In order to do this developing countries rapidly need scaled and urgent **means of implementation support**.

# What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisation to increase efforts to ensure that actions to adapt to the impacts of climate change contribute to reducing, and not exacerbating, the vulnerabilities of individuals and communities in vulnerable situations to the adverse impacts of climate change?

* Finance is a key enabler for adaptation. As such scaled, accessible, new and adequate finance for adaptation through the Financial Mechanism of the UNFCCC is necessary
* The same principles for L&D finance should apply to adaptation finance. Transparent, accountable with local-level ownership and gender-responsiveness adaptation is necessary to ensure people-centered, human-rights-based and locally appropriate adaptation that respects indigenous and local knowledge and expertise.
* Developing nationally and locally appropriate Monitoring, Evaluation & Learning systems that can provide evidence to inform priorities for actions to preempt and adapt, and prevent severe loss & damage.
* Locally led adaptation principles have been endorsed by almost 70 governments and institutions.[[19]](#footnote-19)
1. [#WorldWeWant](https://www.youtube.com/playlist?list=PLQd-WCiNEx1hrXvIh1Y6jqIybXgPDsh2p) [↑](#footnote-ref-1)
2. ActionAid. 2021: Invisible women: [A gender analysis of climate-induced migration in South Asia](https://actionaid.org/publications/2021/invisible-women-gender-analysis-climate-induced-migration-south-asia#downloads) [↑](#footnote-ref-2)
3. Schäfer, L., Jorks, P., Seck, E., Koulibaly,O., Diouf, A. 2021: [Slow-onset Processes and Resulting Loss and Damage - An introduction](https://www.germanwatch.org/sites/default/files/FINAL_Slow-onset%20paper%20Teil%201_20.01.pdf). Available at: <https://www.germanwatch.org/sites/default/files/FINAL_Slow-onset%20paper%20Teil%201_20.01.pdf>. [↑](#footnote-ref-3)
4. [La Ruta Del Clima - Submission](https://larutadelclima.org/wp-content/uploads/2019/10/Call-Input-LRC-2022-.pdf) [↑](#footnote-ref-4)
5. Schäfer, L./Jorks, P./ Seck, E. 2021: Financing instruments and sources to address L&D from slow-onset processes. Available at: https://www.germanwatch.org/sites/default/files/part\_3\_-\_financing\_instruments\_and\_sources\_to\_address\_loss\_and\_damage\_from\_slow-onset\_processes\_0.pdf. [↑](#footnote-ref-5)
6. Germanwatch 2021: Potential for loss and damage finance in the existing UNFCCC financial architecture. Available at: https://www.germanwatch.org/sites/default/files/potential\_for\_loss\_and\_damage\_finance\_in\_the\_existing\_unfccc\_financial\_architecture\_0.pdf. [↑](#footnote-ref-6)
7. Setzer, J & Highman, C. 2021: [Global trends in climate change litigation: 2021 snapshot](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf) [↑](#footnote-ref-7)
8. ActionAid. 2020. [Costs of Inaction: Displacement and Distress Migration](https://www.google.com/url?q=https://actionaid.org/sites/default/files/publications/ActionAid%2520CANSA%2520-%2520South%2520Asia%2520Climate%2520Migration%2520report%2520-%2520Dec%25202020.pdf&sa=D&source=docs&ust=1655979112281827&usg=AOvVaw0E_csa9745OL4MtoHNkyHS) [↑](#footnote-ref-8)
9. ibid [↑](#footnote-ref-9)
10. Anderson, T., & Singh, H. 2020: [Participatory methodologies enable communities to assess](https://www.apn-gcr.org/bulletin/article/participatory-methodologies-enable-communities-to-assess-climate-induced-loss-and-damage/)

[climate-induced loss and damage](https://www.apn-gcr.org/bulletin/article/participatory-methodologies-enable-communities-to-assess-climate-induced-loss-and-damage/) [↑](#footnote-ref-10)
11. See p. 16 in: Schäfer, L./Künzel, V. 2019: Steps towards closing the Loss&Damage finance gap. Available at: https://www.germanwatch.org/sites/default/files/Policy%20Briefing\_Steps%20towards%20closing%20the%20Loss%26Damage%20finance%20gap\_0.pdf [↑](#footnote-ref-11)
12. Anderson, T. 2021: [Avoiding the climate poverty spiral: Social protection to address climate-induced loss & damage](https://actionaid.org/sites/default/files/publications/Avoiding%20the%20climate%20poverty%20spiral_0.pdf) [↑](#footnote-ref-12)
13. GermanWatch, 2022. [The Climate Case: Saúl versus RWE](https://www.germanwatch.org/en/huaraz) [↑](#footnote-ref-13)
14. Kreienkamp, J., & Vanhala, L. 2017.[Climate Change Loss and Damage](https://www.ucl.ac.uk/global-governance/sites/global-governance/files/policy-brief-loss-and-damage.pdf) [↑](#footnote-ref-14)
15. Pacific Resilience Partnership, nd. [Framework for Resilient Development in the Pacific](https://www.resilientpacific.org/en/framework-resilient-development-pacific) [↑](#footnote-ref-15)
16. Künzel, K., & Schäfer, L. 2021: [National Financial Instruments and Mechanisms to Manage Climate Risks and Impacts - Status quo, Challenges and Gaps in Climate Vulnerable Forum Countries in Dealing with Loss and Damage](https://www.germanwatch.org/sites/default/files/Germanwatch_National%20Financial%20Instruments%20and%20Mechanisms%20to%20Manage%20Climate%20Risks%20and%20Impacts_0_1.pdf) [↑](#footnote-ref-16)
17. Stamp Out Poverty, nd. [How to make polluters pay](https://www.stampoutpoverty.org/climate-damages-tax/) [↑](#footnote-ref-17)
18. Sharma, S., Schalatek, L., Singh, H. & White, H. (2022). [Loss & Damage Finance Facility: Why and How](https://climatenetwork.org/resource/ldff/) [↑](#footnote-ref-18)
19. IIED, 2021. [Principles for Locally Led Adaptation](https://www.iied.org/principles-for-locally-led-adaptation). [↑](#footnote-ref-19)