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Submission to the Special Rapporteur on the promotion and protection of human rights in the context of climate change

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Sub: 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”

Enact Earth Foundation welcomes the Call for Input by the Special Rapporteur. Enact is a not for profit organisation that was established less than an year ago with the goal of creating a ‘Climate Literate Society’. Its current primary focus of youth engagement and empowerment within the climate space. We hope that our effort can inspire more young persons to engage with processes like these. We hope that the submission might serve some use and to inform the Special Rapporteur on the promotion and protection of human rights in the context of climate change’s report on actions to address climate change, particularly in the context of loss and damage.

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1. 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?

While vulnerabilities of individuals and communities are varied, this response will focus on livelihood-based vulnerability. Livelihood-based vulnerability is an often ignored concept, especially considering how it has far-reaching implications on various human rights of such individuals and communities.

- **Right to livelihood and Right to Food (Article 25 UDHR)**

[Rice cultivation in Stakhira, a coastal district of Bangladesh](#) is affected by saltwater intrusion caused by sea-level rise and cyclones. Farmers responded by planting salt-tolerant rice varieties, which were hampered once again by cyclone Aila, which significantly altered the salt content of the soil. Farmers lost their harvest, and the year is still short. Not only was their livelihood security compromised but also the food security of the coastal district. In many similar cases like these, the preventive measures determine whether or not people experience impacts. This leads the individuals and communities to adopt coping measures for their survival which are both monetary and non-monetary in nature.

- **Protection of Children against physical violence (Article 19 of CRC)**

Another far-reaching consequence of livelihood vulnerability is the impact on women and girls. An increase in the frequency of cyclones around Sundarbans is making life tougher to sustain in the region. Individuals and Communities are being displaced [Children and women in this distressing life are lured into traps of employment in urban areas with free food and lodging, which then ends with them being sold into forced prostitution](#). Similar is the case in [Zimbabwe, where girls are relocated due to droughts and other impacts of climate change in their villages or countryside](#). They turn to prostitution when they cannot find jobs. Women are disproportionately vulnerable to the effects of climate change, which could, in turn, exacerbate existing gender disparities.

- **Displacement and Loss of Culture (Article 22 of UDHR)**

Loss of culture due to the displacement of indigenous people is also happening. [People of Himalayan Dhye in Nepal are known for raising yaks](#), which they have been doing for many generations. It is almost impossible in their new settlement since they do not have the legal right to grazing land. Yaks not only provide wool and milk but also gives the Dhye community its identity and cultural significance. With the displacement and disbursement of the communities due to climate change individuals become disconnected from traditional ways of life, the loss of customs and cultural heritage; this might make it harder to manage climate change and damage social cohesiveness.

2. 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?

- **Application of Rights-based approach to existing law and policy**

The Warsaw International Mechanism's Executive Committee has a big potential to create human rights standards for loss and damage policies and actions, standards for carrying out human rights impact analyses, and standards for creating a specialised body to oversee compliance. It is also however important to recognise the limitations that exist within the system. Human rights law has generally been of little help in addressing L&D in reality. While states have an obligation to take positive steps to protect and fulfill the rights of individuals within their jurisdiction, this obligation is limited to their available means.

A new policy or legislation that exclusively focuses on averting, minimising and addressing loss and damage in accordance with WIM and PA would be considered ideal. In its absence, applying a rights-based approach to existing laws and policies becomes extremely necessary to protect vulnerable individuals and communities. Placing human rights at the centre of law and policy on climate change is a precondition for ensuring the legitimacy of climate change law and ensuring that measures taken on environmental grounds do not have negative human rights consequences. Focusing on the rights of those who are already vulnerable and marginalized due to poverty and discrimination, a human rights-based approach to climate change can be a useful tool to complement international efforts aimed at tackling the adverse effects of climate change.

- **Elements of Loss and Damage Policies are necessary to provide redress to vulnerable individuals and communities.**

- **Understanding vulnerability:** To reduce loss and damage, it is essential to comprehend how susceptible individuals are to stressors associated with the climate. For instance, it could be worthwhile to invest resources in figuring out why households with lower levels of education tend to be more affected by



natural disasters than households with higher education levels and suggesting policy solutions to alleviate this.

- **Assessment of Loss and Damage:** An accurate and rigorous Community-level assessment of loss and damage is needed to address loss and damage adequately and make the appropriate evidence-based policy decisions. As the saying goes, You can only manage what you can measure, assessment of both economic and non-economic impacts becomes very crucial. Assessment will enable us to truly ‘address’ loss and damages as provided in the PA. A needs-based assessment will help identify gaps and catering to such needs will reduce L&D, ultimately making individuals and communities more resilient.
- **Integration of Risk-Related Attribution in Policies:** It is obvious that attribution science¹ is unable to determine culpability because it is primarily a political, social, or legal issue. Issues with attribution in regard to loss and damage procedures under the UNFCCC go beyond merely linking actual extreme weather to climate change. Consider the damages brought on by a severe weather event that occurred in an area that has unchecked urbanisation. Can another nation or group of nations be held responsible for this harm in this situation due to their prior greenhouse gas emissions? This example not only shows the need for a more comprehensive framework for risk-related attribution, but also shows how intimately the discussion is tied to issues of poverty and development. It is obvious that attribution science is unable to determine culpability because it is primarily a political, social, or legal issue. Different current national civil laws control the idea of culpability in different ways. However, research can determine how a specific event is connected to human-caused greenhouse gas emissions and how the harm is connected to risk factors.

3. 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 individuals and communities in vulnerable situations who have suffered loss and damage to the adverse impacts of climate change.

- **Legal Avenues to address Loss and Damage:** It seems incredibly improbable that cases alleging a state's failure to handle L&D within its own borders will be successful before human rights organisations. The petitioner would need to first prove that a state's greenhouse gas emissions made it such they could no longer exercise a certain right there. The failure of the state to take the necessary steps to prevent such greenhouse gas emissions would then need to be further supported by proof that this loss in the enjoyment of a right was caused by this failure. Last but not least, the petitioner would have to refute any plausible official arguments that the protection of human rights can be restricted in the pursuit of goals of general interest like economic development or expansion.
 - **Interstate Litigation:** The ‘no harm’ rule, and ‘polluter pays’ principle form the basis for claiming compensation for Loss and Damage. While there are challenges, creative arguments by lawyers can definitely aid in successful litigation.
- **Local or Community Level Actions by Corporates under its Corporate Social and Environmental Responsibility:** Ultimately, loss and damage mechanisms will only be successful if they are able to reach and support the most vulnerable communities. Natural disasters and climate-induced extreme weather events have their greatest impact at the local level and disproportionately affect rural households dependent on agriculture and other natural resources for their livelihoods.

4. 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.

- **Courts have played a major role in providing redress to individuals and communities in vulnerable situations.**
 - In May 2022, the Commission on Human Rights of the Philippines (CHRP) issued a [final report](#) on its years long investigation into 47 investor-owned corporations for human rights abuses tied to climate change. It recognised the rights of future generations and the responsibility state to ensure fairness between generations.
 - In the [Ugenda decision](#), the court found that “the State, in choosing measures, will also have to take account of the fact that the costs are to be distributed reasonably between the current and future generations.”
 - In the [Ashgar Leghari v. Federation of Pakistan](#) ruling, the Supreme Court of Pakistan stated that, when defining the legal obligations of the State to protect its citizens from the impacts of climate change, fundamental rights must be “read with [...] the international environmental principles of sustainable development, [...] inter and intra-generational equity and public trust doctrine.”
- **Limitations to Redressal:** A prominent example is when a [Peruvian farmer filed a claim for compensation from German energy company RWE](#), arguing that RWE is partly responsible for climate change-induced glacial retreat threatening his home town. However, the regional court in Essen, Germany, dismissed the case in December 2016,

¹ [attribution science](#): A field of research, largely used in climate studies. It seeks to test whether — and by how much — climate change may be responsible for certain extreme weather events, such as droughts, extreme flooding, hurricanes, excessive heat or odd storm trajectories.



arguing that legally no direct causal link could be established between RWE's emissions and the melting glaciers in Peru against its own citizens. On a positive note, Whether successful or not, litigation can help raise awareness of loss and damage and put additional pressure on governments and major polluters to act on climate change.

5. 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?

- **Need for Caution - Recognising Inherent issues in recognition and implementation:** By taking an anthropocentric view to environmental law, environmentalist principles are main-streamed into the human rights discourse. The language of human rights law is pursued for the obvious reason: it tilts the balance of advantage. Therefore, if human rights do extend to cover rights to a safe environment in some sense, such environmental rights remain ambiguous as human rights for several reasons. First, they are particularly abstract rights because they extend to persons not yet born; that is, they include an element of time not usually associated with the practice of rights. Second, they would need to be viewed as group rights because they refer to future generations as a whole. Third, they contain an unspecified relationship to non-human aspects of the external environment, especially animals, who might conceivably be protected by rights of a non-human kind.
- **Judgements by Courts on Activities or Decisions that limit the choice of Future Generations:**
 - State: In 1987 the Supreme Court of India in [M C Mehta v. Union of India and others](#), invoked the principle of intergenerational equity as provided in the Stockholm Declaration in concluding that the State must endeavour to protect and improve the environment and to safeguard the country's ecosystems.
 - Business Enterprises: In [Rodgers Muema Nzioka v. Tiomin Kenya Ltd](#), the High Court of Kenya cited the principle of intergenerational equity to grant an injunction restraining a mining company from carrying out acts that would be particularly damaging for the environment.

6. 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.

a. 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.

- **Structure:**
 - It is important first and foremost to clarify how loss and damage finance is different from Adaptation finance.
 - Establishment of Regional entities to ensure better access to finance. Example: Caribbean Development Bank Community Disaster Risk Reduction Fund.
- **Source of funds:**
 - Public Finance:
 - International Climate Finance through bilateral and multilateral agreements from developed countries
 - Disaster Funds set up within the country. (also includes funds from within the country's budget)
 - From Businesses:
 - Levies on fossil fuel industry,
 - carbon pricing for international aviation and maritime,
 - using a share of revenues from domestic or regional carbon pricing/carbon markets
 - Compensation from Litigation.
 - Top companies beyond a certain level of emissions - contribute to the fund.
- **Guiding Principles:**
 - Vulnerability²
 - Equity
 - Polluter Pays
 - Transparency and Accountability
 - Do no harm
- **Mode of funding:** Loans are to be a red flag. Primarily as investments or grants.

b. 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.

- **List of Activities to be funded by the new financial facility. (including but not limited to)**
 - Recovery and Rehabilitation of areas affected due to extreme weather events:
 - Rebuilding Infrastructure
 - Restoration of ecosystem and landscape

² The UNFCCC defines vulnerability as "the degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes".



- Restoring livelihoods
- Planned relocation or resettlement:
 - Building alternative livelihoods
 - Support for climate-induced displaced persons or affected by forced migrations
- To address non-economic loss or damage:
 - Protection of social identity and cultural heritage.
 - Active Remembrance
- Financial Protection:
 - Climate risk insurance schemes - where premiums are paid by polluting companies or developed countries.
 - Contingency funds
- **Accessibility to the funds:** Poor people are less likely to be able to access insurance or other financial products. There is a need for Capacity Building for 'Financial Inclusivity'. Contingency funds should not be overloaded with procedures, to ensure that finance reaches the individuals and communities in need in case of emergencies.
- **Setting up National Systems for Distributing L&D Finance:** Such systems, which could utilise existing national disaster funds or national accredited entities of the GCF, should be designed to ensure that finance is reaching the people who need it most, and ringfence funds for L&D as separate and additional to funding for mitigation and adaptation. Strong transparency and accountability systems are also crucial, to ensure that finance is used appropriately.
- **Event-based and Needs- based finance:** Establishing a threshold for what would be considered an L&D event becomes necessary so that the finance will be used for events that need this finance. This will ensure that the finance will not be used for any other climate-related activities, or for any model that is project based.

7. 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 policies have clear human rights dimensions. Policies to slow deforestation or to increase reforestation, for example, could affect forest communities. Hydroelectric projects, which often lead to displacement of local people and the destruction of ecosystems upon which they depend, and can also harm the health and livelihoods of people living downstream from the project by reducing river flows.

- **Human Rights Impact Assessment³ (HRIA) by Businesses:** All activities taken up by business enterprises will have to undertake an HRIA, particularly in the case of vulnerable individuals and communities. [“The centrality of the consultative process is one of the key ways in which HRIAs can be differentiated from standard economic impact assessments which tend to focus on aggregate impacts and often pay insufficient attention to the impacts on vulnerable groups.”](#)
- **Public-Private Partnership Model:** All mitigation-related projects based on a public-private partnership have additional benefits in terms of climate change and human rights. Climate mitigation processes and technologies have been [proven to be beneficial to companies](#), but businesses must be made aware and convinced of this fact. Implement more comprehensive regulation for business practices with a particular focus on companies' actions in the developing world. Involvement of Business enterprises [may increase public acceptance of climate measures](#) and involvement of the government adds to the duty of the State to protect human rights.
- **Role of state in creating an ecosystem with institutional safeguards to facilitate a higher level of mitigation actions:** Developed countries should provide financial and technological support to Developing countries, SIDS, LDCs. This is a priority since investments in expensive new emissions control technologies could divert resources from other uses and undermine a country's ability to provide an adequate standard of living. However, the recipient countries should also be prepared to receive such support and create an ecosystem to facilitate easier implementation of the support received. This means minimal procedural interventions whilst not compromise the procedural rights should be built by states to ensure that there is ease for transfer of finance and technology while ensuring that vulnerable communities are not impacted in the name of mitigation actions. Local Stakeholder Consultation and Establishment of Grievance Redressal Mechanisms should be present as well.
- [Case study of Sasan under CDM, India:](#) How not to implement a mitigation project.

8. 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?

Adaptation policies raise comparable human rights concerns. Both the failure to adapt and the implementation of adaptation measures can interfere with human rights, particularly for the most vulnerable. For example, if communities

³ An Human Rights Impact Assessment is an evidence-based process that analyses how businesses affect the local community, workers and consumers.



or individuals are forcibly removed from disaster or flood-prone areas, or, less forcibly, expected to conform to new economic policy imperatives (by adopting different cash crops or energy sources, for example). Another concern is that some adaptation programs may benefit one group to the detriment of another—as might be the case for coastal fortifications that protect one community while exposing another to a greater risk of erosion and/or flooding. There is also the risk that adaptation measures will be undertaken without the necessary public consultation and may result in outcomes that adversely affect the very persons they aim to protect.

- **Recognition of Procedural Environmental Rights:** In particular - access to information and public participation prior to adaptation-related decisions. Many a time, adaptation solutions are imposed on the community by the states without necessarily considering making an impact assessment on implementation of the solution. (Actors: State, BE and CS)
- **Integration of Human rights in the National Adaptation Plans:** NAP actors and stakeholders can refine and develop detailed guidance on social, political, administrative, and legal entry points for human rights-based approaches to be integrated into the NAP process. (Actors: State)
- **Avoiding Maladaptation:** Designing adaptation plans to guarantee that climatic changes cause no or little harm may seem simple enough. The worst-case scenario is that they will be ineffectual and a waste of money, right? No, actually. Ineffective adaptation measures may lead to maladaptation, in which the effects of the action taken increase exposure and sensitivity to the effects of climate change. Maladaptation, then, is when a course of action produces outcomes that are worse than the conditions that the original methods were meant to address. It is not merely a waste of time and resources. Maladaptation is a process by which people increase their likelihood of being badly impacted by climate change, not a state of being poorly adapted to it. (Actors: State, BE and CS)
- **Role of Civil Society:** A link between CC and Human Rights thus requires anchoring advocacy within broader governance efforts that promote the participation of vulnerable populations in national development, pressure for greater transparency, accountability of duty bearers, and spotlighting discriminatory governance practices.

Additional Reading and References:

- [Microsoft Word - Submission on the Strategic Workstream on Loss and Damage Finance_CJP HBF SOP_Feb 2017.docx \(unfccc.int\)](#)
- [Financing Instruments and Sources to Address Loss and Damage from Slow-onset Processes \(germanwatch.org\)](#)
- [Legal Responses to Climate Change Induced Loss and Damage | SpringerLink](#)
- [Spotlighting the Finance Gap - Loss and Damage brief 3.pdf \(boell.org\)](#)
- [human-rights-in-the-process-of-national-adaptation-planning-insights-from-a-review-of-submitted-naps.pdf \(sei.org\)](#)
- [Designing a fair and feasible loss and damage finance mechanism - SEI](#)
- [States-Human-Rights-Obligations-in-the-Context-of-Climate-Change_2022.pdf \(ciel.org\)](#)
- [Unpacking finance for Loss and Damage | Heinrich Böll Stiftung | Washington, DC Office - USA, Canada, Global Dialogue \(boell.org\)](#)
- [The Current State of Play on Financing Loss and Damage | World Resources Institute \(wri.org\)](#)
- [Handbook for assessing loss and damage in vulnerable communities \(unu.edu\)](#)
- [A human rights-based approach to loss and damage under the climate change regime: Climate Policy: Vol 20, No 6 \(tandfonline.com\)](#)
- [Loss and damage attribution \(escholarship.org\)](#)
- [untitled \(actionaid.org\)](#)
- [policy-brief-loss-and-damage.pdf \(ucl.ac.uk\)](#)
- [Maladaptation: When Adaptation to Climate Change Goes Very Wrong - ScienceDirect](#)