

Climate justice: Loss and damage ([A/79/168](#))

Summary of the Report of the Special Rapporteur on the right to development, Surya Deva

In the report submitted to the United Nations General Assembly pursuant to resolutions 33/14 and 51/7, the Special Rapporteur on the right to development, Surya Deva, develops a climate justice framework comprising four pillars (mitigation, adaptation, remediation and transformation) and 12 overarching human rights principles. He proposes that climate change-related loss and damage, which undermines the right to development of individuals and communities, especially those living in developing countries, should be seen as part of the remediation pillar of the climate justice framework. The Special Rapporteur recommends a rainbow of measures that States, international financial institutions, multilateral development banks and businesses must take to address loss and damage. He also outlines several human rights principles that the World Bank, as an interim trustee of the Fund for Responding to Loss and Damage, and the Fund's Board should integrate into all aspects concerning the Fund's administration.

The concept of climate justice entails justice in the context of climate change. There is a common understanding on certain core elements of justice such as fairness, equality and responsibility. The Special Rapporteur believes that climate justice is about not harming one's neighbours through global warming and remedying the harm caused directly or indirectly in proportion to one's contributions. A broad understanding of the concept of neighbours – not limited by time, space and distance or to human species – will be crucial. For climate justice, the concept of neighbours should include not merely human beings but also non-human species and nature generally. It should also capture future generations, that is, organisms that will exist on Earth in the future, because past, present and future are intertwined for climate change purposes.

Climate justice should be able to respond to the "triple injustice" of climate change: (a) the most vulnerable to the negative impacts of climate change are those who bear little responsibility for causing it; (b) these groups are limited in their resources and capacity to cope with the effects of climate change; and (c) the costs of the green transition have a greater negative impact on such low-income and vulnerable groups. Moreover, since climate change affects all human rights, international climate law must be interpreted and developed in future in line with international human rights law.

The Special Rapporteur recommends that all stakeholders should see climate justice in terms of four interrelated pillars: mitigation, adaptation, remediation and transformation. The more ambitious the world community is in terms of mitigation and adaptation, the less will be the loss and damage and the consequent need for remediation for affected individuals and communities. On the other hand, transformation in the current economic order, business models and lifestyles will complement the goals of the other three pillars. In addition, 12 overarching human rights principles should be embedded across the four pillars of climate justice (see Figure 1).

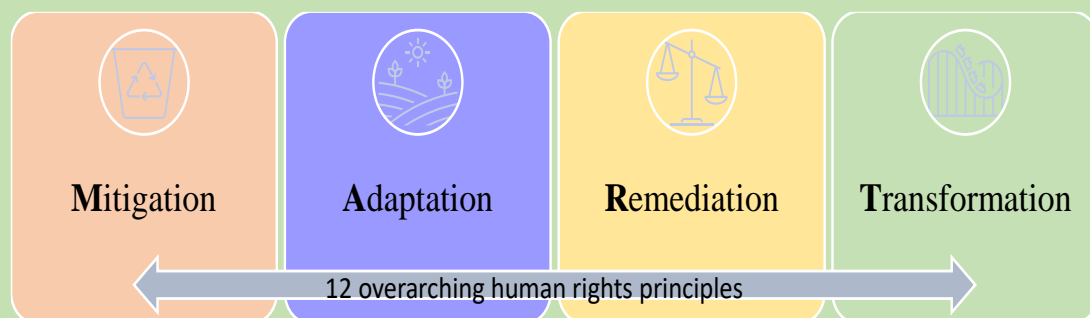


Figure 1, Four-pillar climate justice framework

Four Pillars

1. Mitigation

Mitigation entails reducing the causes of climate change by decreasing greenhouse gas emissions into the atmosphere and/or removing such gases from the atmosphere, including through carbon sinks. Mitigation strategies include phasing out fossil fuels, ending fossil fuel expansion, enhancing energy efficiency, reducing food waste, transiting towards sustainable food systems, conserving and restoring nature and building new carbon-neutral houses. Mitigation

should remain an important constant imperative for climate justice because some climate change-related impacts are irreversible or irremediable.

2. Adaptation

Adaptation entails making changes in processes, practices and structures to reduce potential damages linked with climate change. Such changes could take the form of planting trees, building sea walls, relocating to higher ground, setting up early warning systems for cyclones, switching to drought-resistant crops and building climate-resilient shelters and infrastructure. Adaptation also requires building resilience. In line with article 7 of the Paris Agreement, adaptation strategies should be gender-responsive, participatory and fully transparent. They should be based on and guided by the best available science, as well as Indigenous and local community knowledge.

3. Remediation

When harms to climate change-related human rights occur, all those affected must have access to effective remedies in line with international human rights law. The right to an effective remedy or effective access to justice has both procedural and substantive elements: both the process and the outcome should be effective. Considering that the majority of climate change is anthropogenic in nature, the people most responsible for this change have a duty to remediate adverse impacts on the human rights of those who have historically contributed the least. In practical terms, that would mean a remediation obligation of States, businesses and investors that have caused or contributed to climate change over the years or failed to take adequate preventive measures. Remediation in the context of climate change should be interpreted in the sense of full reparation, comprising restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

4. Transformation

Transformation is needed in the current economic order (including the international financial architecture), business models and lifestyles, because they are merely promoting cumulative economic growth, creating inequalities both within and among countries and destroying the planet. These transformations cannot be achieved through current mitigation and adaptation strategies operating within a neo-liberal, neo-colonial capitalist economy. A transformative shift is required, as reflected in the Bridgetown Initiative and the call for a human rights economy. As part of this shift, the Special Rapporteur has suggested that the world needs to move towards a model of “planet-centred participatory development”. The reform of the current international financial architecture has to be part of such a transformation because it continues the colonized legacy of hegemonic dominance and systemically discriminates against developing countries and their peoples’ right to development. A fundamental shift is also needed in how businesses operate in society. Moreover, a shift is required in current lifestyles, especially of rich people.

12 overarching principles

The four pillars of climate justice articulated above should be informed by the following 12 overarching principles rooted in international human rights law:

1. **Multi-species justice:** Climate change-related loss and damage affects not merely human beings, but also biodiversity and the entire natural ecosystem. The rights of non-humans and of nature should be taken seriously, including because the survival of humans and non-human entities is intertwined.
2. **Intergenerational equity:** As climate change will affect future generations, present generations should factor in how climate change will affect their human rights or their capabilities to realize those rights. Moreover, the concept of future generations should not be confined to human beings: rather, the impact of climate change on all organisms as part of an ecosystem approach should be considered.
3. **Non-discrimination:** States must ensure that existing multilayered inequalities are not exacerbated by climate change.
4. **Participation:** Individuals and communities should be able to participate in all climate action decisions. The participation should be active, free and meaningful. The participation of children, youth, women, peasants and Indigenous Peoples, who are a source of innovative solutions and a repository of traditional knowledge, as agents of change should be especially ensured.

5. **Intersectionality:** Children, women, LGBTIQ people, ethnic, racial or religious minorities, Indigenous Peoples, persons with a disability, migrants, older persons, rural populations, peasants, refugees and stateless people will be affected differently or disproportionately by climate change. Since climate change is affecting people differently and disproportionately, an intersectional approach must be adopted.
6. **Prevention:** Prevention of environmental harm is a customary principle of international environmental law. Preventing further climate change-related loss and damage should continue to be a key priority, rather than continuing the current model of destructive development under the assumption that loss and damage could be remediated.
7. **Precaution:** In line with the United Nations Framework Convention on Climate Change and the Paris Agreement, the lack of scientific certainty should not be used to delay action and the precautionary principle must be adopted in relation to climate change.
8. **Polluter pays:** As acknowledged in principle 16 of the Rio Declaration on Environment and Development, the polluter should bear the cost of pollution. States and businesses that caused or contributed the most to climate change must pay in proportion to their contributions.
9. **Common but differentiated responsibilities:** While all States must act decisively with the highest possible ambition and within maximum available resources, their responses, in order to be just, have to accommodate differences in respective contributions and capabilities.
10. **Just transitions:** The much-needed transitions concerning energy, food and infrastructure should be just, fair and equitable so as not to leave behind marginalized or vulnerable groups of people.
11. **Transparency:** Greenwashing and corporate capture of regulators pose serious challenge to effective climate action. While many large companies continue to make a commitment to respect human rights, some of these – including fossil fuel companies – have used strategic lawsuits against public participation to silence their critics. Carbon credit markets pose another risk by creating false sense of GHG emissions' reduction or inaccurately describing the positive reduction.
12. **International cooperation and solidarity:** Effective climate action requires collective action on the part of States in line with the principle of international cooperation and solidarity. Climate change-related loss and damage will affect disproportionately least developed countries, lower-middle income countries and small island developing States. However, because of an interconnected world and the transboundary nature of climate change, such impacts would have consequences for developed countries in the form of social conflicts and forced migration. International cooperation is therefore not merely an option but a compulsion to deal with climate change.

Impacts on the right to development

Climate change-related loss and damage has both direct and indirect impacts on the realisation of the right to development in the following ways:

- a. cutting pathways to economic, social, cultural and political development such as loss of schools, house, livelihood or culture;
- b. diversion of resources affecting access to basic needs such as food, education and health facilities;
- c. inability to adapt and build resilience due to limited financial or technological capabilities;
- d. climate finance for mitigation and adaptation worsening debt burdens and in turn triggering austerity measures or diversion of resources meant for realising human rights; and
- e. climate-induced forced displacement exacerbating various vulnerabilities.

Rainbow of actions

Climate change-related loss and damage requires States, multilateral development banks, businesses and other actors adopting a rainbow approach: a range of remedial actions on the part of several actors. As noted above, these actions can take the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Figure 2 provides a list of illustrative rainbow actions that should be taken by States, multilateral development banks and businesses.

In particular, innovative additional sources of funding would be required such as taxing super-rich people, requiring fossil fuel companies to pay carbon tax and imposing a consumption tax on luxurious activities.

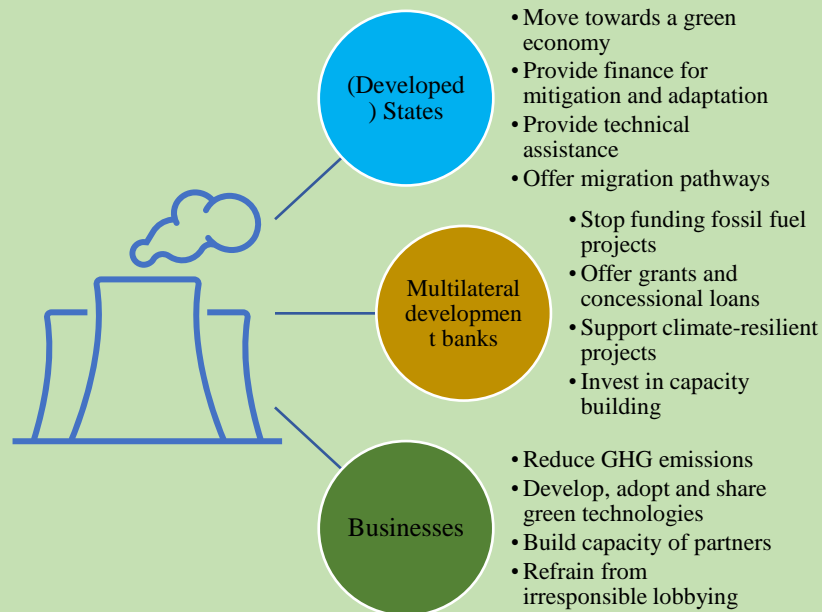


Figure 2: Rainbow response to climate change-related loss and damage

Human rights-based approach to the Fund Responding to Loss and Damage

The Special Rapporteur recommends that the World Bank as an interim trustee, as well as the Fund's Board, embed the following nine human rights principles in implementing the Fund's mandate:

1. **Adequate.** Since the Fund is meant to remediate adverse human rights impacts of climate change-related loss and damage, it should have additional adequate resources to provide support to affected individuals and communities.
2. **Equitable.** The Fund should be funded primarily from contributions made by historical polluters. Moreover, the Fund should mostly offer grants, so as not to worsen the existing debt burden of climate vulnerable countries and consider how loss and damage will affect the human rights of future generations while funding projects.
3. **Inclusive coverage.** All developing countries and the affected communities from these countries should be able to access the Fund in line with its wide scope under the governing instrument.
4. **Accessible.** The Fund should be accessible to affected communities and local civil society organizations in terms of availing grants. There should be non-cumbersome pathways for communities experiencing loss and damage to access the Fund directly.
5. **Non-discriminatory.** The Fund's processes should not result in sidelining remote, marginalized or vulnerable communities.
6. **Gender-transformative.** Due to the intertwined nature of climate change and inequality, the Board should see the Fund as an opportunity to change patriarchal norms and unequal power relations that underpin discrimination, gender-based violence and gender stereotyping.
7. **Participatory.** The Fund's decision-making process should involve active, free and meaningful participation of climate vulnerable countries and affected communities, as well as the civil society organizations representing them. The needs and priorities of developing countries should shape the Fund's future.
8. **Transparent.** The administration of Fund should be transparent with provisions of independent audit and annual reporting in an accessible format.
9. **Remediability.** The Fund's loss and damage projects should not cause any harm to human rights. The Fund should establish an independent remedial mechanism in line with principle 31 of the UN Guiding Principles on Business and Human Rights.