

The University of Sydney, 2006

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Dear Special Rapporteur

Submission on the *Climate justice: loss and damage* report

This investigation highlights climate change as one of the major disruptors to realising the right to development. Given the thorough documentation of climate-induced disasters in the Intergovernmental Panel on Climate Change's (IPCC's) 2012 *Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*, we support the focus of the inquiry into *Climate justice: Loss and damage*. In 2013, COP 19 to the *UN Framework Convention on Climate Change* established the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts under the Cancun Adaptation Framework. Crucially, this Framework acknowledges that adaptation and risk management strategies cannot reduce all losses. The Executive Committee of the Warsaw Mechanism has established a work program which has reported on human displacement following climate disasters. In 2022 at COP 28, the UNFCCC Parties established a Loss and Damage Fund to be hosted by the World Bank for an initial period of four years with approximately USD800-million being committed by some Parties. The Special Rapporteur's report on *Climate Justice: Loss and Damage* focuses on the interface between the right to development and loss and damage from climate change. We submit that the Special Rapporteur's investigation and report should locate itself within these frameworks but move beyond an exclusive focus on intra-human justice to include a Multispecies Climate Justice perspective.

Humans at the centre of the Right to Development and the Sustainable Development agenda

Humans have always been placed at the centre of international approaches to the Right to Development. Art. 1 of the UN General Assembly *Declaration on the Right to Development*, established in 1986, reads 'The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized'. This right needs to be recast today in light of subsequent environmental degradation and intensification of climate change.

At the time of UNGA's 1986 declaration, the Brundtland Commission had not yet published its 1987 *Report of the World Commission on Environment and Development: Our Common Future*, which concluded that '[s]ustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. Shortly thereafter, the 1992 UN Conference on Environment and Development produced the *Rio Declaration, Agenda 21*, the *UN Framework Convention on Climate Change*, the *Convention on the Conservation of Biological Diversity*, and the *Statement of Principles for the Sustainable Management of Forests*. The *Rio Declaration* proclaimed human beings, entitled to a healthy and productive life in harmony with nature, to be at the centre of concerns of sustainable development (Principle 1). The 2015 *Transforming our world: the 2030 Agenda for Sustainable Development* established 17 Sustainable Development Goals for human development and the environment. From this time onwards, the Right to Development was to be realised in the context of sustainable development.

The 2015 *Paris Agreement*, and the *Sendai Framework for Disaster Risk Reduction 2015-2030* focus heavily on the impacts of climate-induced disasters on humans. It is, however, now well understood that human well-being and the well-being of the environment, and the more-than-human world more broadly, are inseparable. Indeed, at the heart of the current crises is the view that the environment and the more-than-human can be treated as merely resources for human exploitation.

The interdependence of human and more-than-human species in the context of development

The IPCC's Sixth Assessment Report found: '[h]uman and ecosystem vulnerability are interdependent' and '[n]ear-term warming and...extreme events will place many...ecosystems at high or very high risks of biodiversity loss'. The 2019 IPBES *Global Assessment on Biodiversity and Ecosystem Services* suggests

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that '[c]omparisons of projected climate velocity (the rate of movement of the climate across a landscape) and species displacement rates across landscapes showed that many terrestrial species ... will be unable to move fast enough to track suitable climates under medium and high rates of climate change'. Further, '[u]nless action is taken to reduce the intensity of drivers of biodiversity loss', 'around 1 million species already face extinction' and for many this threat will realise 'within decades'. The 2021 joint IPCC-IPBES *Biodiversity & Climate Change* report emphasised the need 'simultaneously [to] address synergies between mitigating biodiversity loss and climate change...[to] help meet development aspirations for all'. At COP 26 in 2021, the *Glasgow Leaders' Declaration on Forests and Land Use* '[e]mphasise[d] the critical and interdependent roles of forests of all types, biodiversity and sustainable land use in enabling the world to meet its sustainable development goals.' Finally, the 2022 *Kunming-Montreal Global Biodiversity Framework* confirms that 'the biosphere, upon which humanity as a whole depends, is being altered to an unparalleled degree across all spatial scales'; and that 'biodiversity...is declining faster than at any time in human history'. Intended to work alongside the *Kunming Framework* is the Nature Positive Plan which intends to 'halt and reverse nature loss by 2030 on a 2020 baseline, and achieve full recovery by 2050'.

Yet, despite these acknowledgements of both human inter-dependence on functioning more-than-human systems, and the intrinsic value of biodiversity, to date there is no international mechanism on loss and damage, or on climate displacement, for the more-than-human – and insufficient attention is given to the risks widespread collapse of ecosystems and biodiversity loss pose for the right to development.

Recognition of multispecies climate justice

Multispecies Justice (MSJ) scholars reject the dominance of legal and political thought in which the sole subjects of justice and moral concern, and hence of rights, are individual humans, or even (in the case of the Right to Development) human communities. Based on recent developments in ecological, biological and social sciences, and drawing on Indigenous knowledge systems, MSJ understands humans as embedded in webs of ecological relations, insisting that others in that web also merit moral consideration and should be accorded the status of subjects of climate justice. MSJ recognises the vitality and agency of all beings, and that human and the more-than-human beings are co-constitutive and in complex relationships. In the climate emergency and biodiversity crisis, it is imperative that approaches to climate justice be grounded in recognition of the primacy of relationships, that humans be understood as striving alongside other living forms, and our shared 'flourishing' and vulnerabilities be acknowledged. Beyond this theoretical shift, the practical questions we must now answer concern how to understand communications of and with the more-than-human; and how the more-than-human can be represented in decision-making processes.

MSJ recognises that in the context of climate disasters, the capabilities of the more-than-human must be enabled. This requires legal protection for their rights to exist, persist, thrive, flourish, function, regenerate, recover, be restored, and evolve. These capabilities have been legally expressed in some jurisdictions in constitutions, courts and statutes as Rights of Nature, legal personality and 'biocultural' rights.

SUBMISSION: the Right to Development must now be considered in the context of the climate emergency and the biodiversity crisis. We submit that humans and the more-than-human will 'live and flourish, or unravel and die' together in these crises. We request that the Special Rapporteur consider multispecies climate justice in the context of reporting on Climate Justice: Loss and Damage.

Yours sincerely



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