

*Submission by Climate Analytics Caribbean to the Special
Rapporteur on the Right to Development 2024*

Climate Justice: Loss and Damage and the Right to Development

*Sasha Jattansingh, Rueanna Haynes and
Carlon Mendoza*

29 March 2024



Submission by Climate Analytics Caribbean¹ to the Special Rapporteur on the Right to Development 2024

Introduction

In their report² on the Science of Climate Change and the Caribbean, Thomas, Mycoo and Taylor (2024) note that:

“In terms of current impacts, much of the Caribbean region shows statistically significant warming of the atmosphere and detectable decreasing trends in precipitation. The most severe drought in the region from 2013 to 2016 was strongly related to anthropogenic warming and increased the severity of the event by 17% and the spatial extent by 7%. Small Islands of the Caribbean have experienced negative changes to terrestrial, freshwater and ocean ecosystems with adverse implications for biodiversity. Negative impacts have been observed on many human systems, including water and food security, health and well-being, and cities, settlements and infrastructure. Tropical cyclones, storms, floods, droughts and coral reef damage are exacerbating existing vulnerabilities among the population and economies of the Caribbean.”

¹ Climate Analytics is a global climate science and policy institute engaged around the world in driving and supporting climate action aligned to the 1.5°C warming limit. We connect science and policy to empower vulnerable countries in international climate negotiations and inform national planning with targeted research, analysis and support. Our international team of 130 experts and support staff work from our headquarters in Berlin and our regional offices in Africa, Australia and the Pacific, the Caribbean, North America and South Asia.

² Science of Climate Change and the Caribbean: Findings from the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Cycle (AR6). Dr Adelle Thomas, Professor Michelle Mycoo, Professor Michael Taylor. March, 2024.

For future risks, climate change poses significant challenges for the Caribbean, threatening sustainable development. Even if global warming is limited to 1.5 C, the compounding impacts of climate change are projected to contribute to the loss of critical natural and human systems, including threatening the habitability of some islands and coastal communities. Some impacts may be irreversible, such as the loss of coral reefs with significant consequences for the Caribbean including loss of coastal protection, biodiversity loss and impacts on critical livelihoods such as tourism and fisheries. Sea level rise (SLR) has been projected to impact the terrestrial biodiversity of low-lying islands and coastal regions via large habitat losses. Caribbean islands are among those projected to suffer the most habitat loss with projections of between 8.7% and 49.2% of its islands entirely submerged, respectively, from 1-m to 6-m SLR. Higher levels of global warming limit the options available for Caribbean countries to adapt to escalating risks posed by climate change.”

These findings are drawn directly from the seven reports produced in the Sixth Assessment Cycle of the Intergovernmental Panel on Climate Change and they demonstrate the extent to which climate change impacts are already resulting in losses and damages for the islands of the Caribbean as well as the extent of the risks that climate change poses to the prospects for sustainable development and future viability of the Caribbean.

These findings also strengthen the case for global climate action to be ramped up in line with limiting warming to 1.5°C - an already dangerous warming level for small island developing states in the Caribbean - but the only warming level that protects the sustainable development aspirations of SIDS. Surpassing 1.5°C is a critical threshold for SIDS, including in the Caribbean, with escalating impacts of climate change resulting in limits in the ability of people and nature to adapt³.

As countries that have, according to the IPCC contributed minimally to historical cumulative emissions, and yet bear disproportionate impacts and risks, climate justice and equity considerations must consider redress for small island developing states including through support for loss and damage and a just transition.

The following submission from Climate Analytics Caribbean is intended to inform the United Nations Special Rapporteur on the right to development, Mr. Surya Deva, to present his reports to the Human Rights Council and the UN General Assembly in 2024 on climate justice and loss and damage and its impacts on the right to development. Loss and damage from climate change is a reality for many small island developing states (SIDS) and least developed countries (LDCs) and is already adversely affecting the long-term

³ Ibid 2

social development, economic prosperity and environmental integrity of these highly climate vulnerable countries across the world.

This submission which responds to questions 4 to 6 in the call for inputs for the 2024 reports, highlights the need for a climate justice lens to addressing loss and damage in a manner that supports the right to development, particularly through integrating a human rights-based approach to the administration and operationalization of the historic Loss and Damage Fund (LDF).

The Paris Agreement⁴ recognizes that:

“Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”

This is particularly applicable in the context of loss and damage.

In this regard, Climate Analytics Caribbean is of the view that following human rights principles should form the basis in the operationalisation and administration of the LDF moving forward:

- Promoting cooperation and assistance at international, regional, national and local levels
- Ensuring access to information, public participation, and access to justice
- Enabling equality and justice in accessing the LDF to minimize discrimination.
- Ensuring accountability and transparency
- Enshrining historical responsibility and the “polluter pays” principle.
- Promoting equitable and targeted support from the LDF
- Prioritising grant-based, programmatic finance for loss and damage

⁴ Refer to the Paris Agreement:

https://unfccc.int/sites/default/files/english_paris_agreement.pdf

Question 4: In addition to making a financial contribution to the Fund, what non-financial components may be relevant from a climate justice perspective (e.g., transfer of green technologies, building of capacity and relocation pathways for climate-induced migrants)?

The Loss and Damage Fund (LDF), established at COP27 in 2022 and operationalised last year on the first day of COP28 was a momentous win for climate justice. As of February 1, 2024, pledges for the LDF amount to US\$ 661.39 million which is but a small fraction of the hundreds of billions of dollars needed to respond effectively to the scale of loss and damage each year. The current pledges demonstrate the limits of voluntary financial contribution to the LDF and that other means to ensure that the fund is well resourced must be considered and implemented.

Non-economic loss and damage (NELD) is closely interlinked to human rights. This interlinkage is also emphasised by UN Member States currently seeking an advisory opinion from the International Court of Justice on the obligations and rights of States in responding to climate change. NELD has long been under emphasised within the international climate change negotiations due to its complexity notwithstanding that it will have detrimental impacts on people, communities, and countries who are disproportionately affected by climate change if left unaddressed⁵

The LDF has a real opportunity for ensuring climate justice through the development and implementation of holistic and fit for purpose methodological approaches to identifying, assessing, and responding to NELD. Importantly, these NELD methodologies should be developed using a values-based approach which include the voices of the most vulnerable and disproportionately affected and marginalised groups and communities as a central principle⁶. This will ensure that responses to addressing NELD incorporate equity, justice, and human rights as identified and prioritised by those people, groups and communities who are disproportionately affected by loss and damage⁷.

The LDF can ensure the provision of dedicated non-financial contributions such as capacity building and technical assistance, including technical expertise for developing

⁵ Van Schie, D., McNamara, K. E., Yee, M., Mirza, A. B., Westoby, R., Nand, M. M., Ranon, R. J. K., Clissold, R., Anderson, S., & Huq, S. (2023). Valuing a values-based approach for assessing loss and damage. *Climate and Development*, 1–8. <https://doi.org/10.1080/17565529.2023.2289533>

⁶ van Schie, D., Huq, S., & Anderson, S. (2023). *The case for a values-based understanding of loss and damage*. International Center for Climate Change and Development (ICCCAD). <https://www.icccad.net/blog/values-based-understanding-loss-and-damage/>

⁷ Thomas, A., & Benjamin, L. (2023). Climate justice and loss and damage: Hurricane Dorian, Haitians and human rights. *The Geographical Journal*, 189(4), 584–592. <https://doi.org/10.1111/geoj.12484>

NELD methodologies for climate vulnerable countries, particularly small island developing states (SIDS) and least developed countries (LDCs), where data availability and financial and technical capacity constraints exist.

Non-financial contributions from developed countries to the LDF may also support climate justice if they enable climate vulnerable countries, including SIDS and LDCs, to be better prepared and have the requisite capacity to assess, plan and respond to loss and damage. These non-financial contributions to the LDF can also be provided by private sector entities, financial institutions and academia.

The LDF can also enable developed countries to provide capacity building for vulnerability and climate risk assessments to support better planning and preparation for loss and damage in climate vulnerable developing countries. In addition, the LDF can also enable developed countries to provide technical assistance in the use of climate modelling and risk scenarios in their fiscal planning to determine appropriate and multifaceted responses to loss and damage.

Question 5: How should a human rights-based approach to operationalise and administer the Fund look like (e.g., integration of considerations such as accessibility, non-discrimination, fair representation in decision making, gender responsiveness, and accommodation for marginalised communities and countries especially vulnerable to the adverse effects of climate change)?

The COP28/CMA5 decision⁸ to operationalise the new Loss and Damage Fund recalls the Paris Agreement preambular language in its own preamble:

“Acknowledging that climate change is a common concern of humankind and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”.

⁸ Refer to COP28/CMA5 decision on the Loss and Damage Fund: https://unfccc.int/sites/default/files/resource/cma5_auv_10g_LnDfunding.pdf

The decision to operationalise the LDF recognises the need to respect, promote and consider human rights obligations while also referencing the “right to a clean, healthy and sustainable environment”. Moving forward, operationalisation and administration of the new Loss and Damage Fund (LDF) must include equity, justice, and human rights at its core. Additional mechanisms and policies for the LDF are urgently needed to effectively administer the objectives and activities of the new Fund in a human-rights compatible manner.

At present, the Governing Instrument (GI) of the LDF⁹, which will guide the development and implementation of policies, procedures and processes under which the LDF must operate does not include any explicit reference to human rights. The GI however, does mention that the LDF will take a culturally sensitive and gender-responsive approach. However, the GI does not require the development of a gender policy or Indigenous Peoples policy which is relevant and appropriate to the LDF. Other UNFCCC financing mechanisms such as the Green Climate Fund and the Adaptation Fund have gender and indigenous peoples’ policies which apply to not only the funding operations but also guides participation, outreach, communication, and engagement of the fund¹⁰.

In the absence of these specific policies, the operations and administering of the LDF risks discriminating and ignoring the voices and concerns of vulnerable and marginalised groups and communities such as women, children, youth, migrants, Indigenous Peoples and people with disabilities, for example. Instead, these concerns would be primarily considered through the environmental and social safeguards of the LDF funded activities and not aligned to a human rights-based approach¹¹. **The effective administration of the LDF must include the development of LDF-specific gender and Indigenous Peoples policies that are guided by an intersectional human rights approach to respect, protect and promote human rights and advance equality, non-discrimination, and fair representation in decision-making.**

The GI also includes mention of social and environmental safeguards and mandates the LDF Board to develop “a mechanism that will help ensure the activities financed by the Fund are implemented based on high-integrity environmental and social safeguards (ESS) and fiduciary principles and standards”. The LDF is not required to develop its own environmental and social safeguards, as developed by the GCF and AF, who have their own human-rights based ESS policies, but relies instead on the environmental and social safeguard policies of implementing entities. These ESS policies are also required to achieve “functional equivalency” with the World Bank’s environmental and social safeguards. **The World Bank’s safeguards are inadequate for the LDF since they were**

⁹ Ibid 8

¹⁰ Schalatek, L., & Richards, J.-A. (2024). *The Loss and Damage Fund Board: Getting It Right from the Start*. Heinrich Böll Stiftung. <https://us.boell.org/en/2024/03/18/loss-and-damage-fund-board-getting-it-right-start>

¹¹ Ibid 10

not designed for responding to loss and damage¹². The LDF must develop its own suite of safeguards that are designed to address extreme climate events and slow onset events, economic loss and damage and non-economic loss and damage on societies, communities, ecosystems and economies that are human rights-compatible such that the LDF advances human rights and climate justice in a manner that does no harm.

The GI also does not establish an independent grievance mechanism but instead indicates that activities financed by the fund will make use of the grievance mechanisms of the implementing agencies. The GI requires the implementing agencies' grievance mechanisms to report to the LDF Board. Financing mechanisms under the United Nations Framework Convention for Climate Change (UNFCCC) including the Green Climate Fund (GCF) and the Adaptation Fund have their own independent grievance mechanisms which are considered established best practice¹³. The GCF for example, has the Independent Redress Mechanism (IRM) whose procedures and guidelines are based on the principles such as legitimacy, accessibility, transparency, and human rights-compatibility. **An LDF-specific independent grievance mechanism is imperative to ensure that individuals and groups who may be negatively impacted by any LDF funded activities have a dedicated means of access to justice.** In this regard, operationalising the LDF should integrate the development of an independent grievance mechanism that is transparent, human rights focused and accessible to ensure that the Fund is able to effectively prevent and address harms to local communities.

Question 6: How to ensure that the Fund and/or climate finance (including for mitigation and adaptation) does not result in a debt trap for developing countries?

Climate-vulnerable countries, such as SIDS and LDCs grappling with high fiscal debt, are some of the most indebted countries in the world¹⁴. Still, the estimated costs of such losses and damages borne by SIDS and LDCs are on top of the costs of reconstruction and recovery post-disaster¹⁵. As future climate change intensifies and becomes the 'new normal', climate vulnerable countries may find themselves in a vicious cycle of reconstruction and recovery, which further escalates their public debt while increasing their debt servicing costs and limiting fiscal space and capacity to deliver on critical public

¹² Center for International Environmental Law. (2024). *Promoting Human Rights in Climate Action: Report from the Dubai Climate Conference (COP28)*. <https://www.ciel.org/reports/promoting-human-rights-in-climate-action-cop28/>

¹³ Ibid 12

¹⁴ Kling, G., Lo, Y. C., Murinde, V., & Volz, U. (2018). *Climate Vulnerability and the Cost of Debt* (SSRN Scholarly Paper 3198093). <https://doi.org/10.2139/ssrn.3198093>

¹⁵ Monsod, T. M. C., Majadillas, M. A., & Gochoco-Bautista, M. S. (2023). Unlocking the flow of finance for climate adaptation: estimates of 'Fiscal Space' in climate-vulnerable developing countries. *Climate Policy*, 23(6), 735–746. <https://doi.org/10.1080/14693062.2023.2224281>

spending on health, education, infrastructure, water security and food production which can impede achieving sustainable development and building long-term climate resilience¹⁶. The new LDF and other climate finance should not create additional debt burdens for already indebted climate vulnerable countries that are the least responsible for loss and damage. **The LDF and other climate finance should primarily prioritise grants and non-debt finance (and not loans) to climate vulnerable developing countries and incorporate the use of blended finance instruments that are responsive and appropriate to the specific needs and circumstances of these climate vulnerable countries.**

Untied grant-based loss and damage finance should be programmatic rather than project based-finance so it is flexible, predictable, and long-term and can be utilised according to national priorities and changing climate change realities based on countries' own national loss and damage plans and strategies rather than for short-term projects. Untied grant-based loss and damage finance will further enable climate vulnerable countries like SIDS and LDCs to invest and prioritise building their climate resilience in the long-term and undertake comprehensive risk management that addresses the full spectrum of climate impacts, which includes loss and damage¹⁷.

Pacific SIDS have championed this “nationally determined programmatic approach” for the LDF which enables country ownership and context-specific loss and damage responses. Countries will have the flexibility to utilise these funds according to changing needs and their evolving national priorities in the face of a rapidly warming climate.

Moreover, developing holistic national loss and damage response programmes may further allow climate vulnerable countries to become better prepared across sectors and regions¹⁸. Climate vulnerable countries can also utilise these untied grant-based loss and damage finance to leverage and pool other sources of climate finance including private finance, philanthropic funds, insurance, and official development assistance to address loss and damage and thus potentially helping to alleviate the debt burdens caused by loss and damage¹⁹. Such a modality enables climate vulnerable countries to better manage, disburse and deliver loss and damage finance and other climate finance according to local needs and priorities.

¹⁶ Jattansingh, S. (2024). Climate justice and loss and damage: Perspectives from the Global South. In *Österreichische Entwicklungspolitik 2023: Green Development Finance? From Climate Crisis to Global Justice* (pp. 27–34). Österreichische Forschungstiftung für Internationale Entwicklung (ÖFSE). <https://climateanalytics.org/publications/climate-justice-and-loss-and-damage-perspectives-from-the-global-south>

¹⁷ Bharadwaj, R. (2024). *Loss and damage fund: two funding frameworks reimagining climate finance delivery*. International Institute for Environment and Development (IIED). <https://www.iied.org/loss-damage-fund-two-funding-frameworks-reimagining-climate-finance-delivery>

¹⁸ Serdeczny, O., Pandey, Sneha, & Dhakal, Manjeet. (2023). *Loss and damage: two options in play for fund's makeup*. Climate Analytics. <https://climateanalytics.org/blog/2023/loss-and-damage-two-options-in-play-for-funds-makeup/>

¹⁹ Ibid 17

Blended finance instruments can be designed to be gender-responsive, non-debt creating and human-rights compatible for building long-term climate resilience and addressing loss and damage in climate vulnerable countries, communities and sectors.

Blended finance instruments which harness existing national funds and systems are already being designed and rolled out around the world, such as Antigua and Barbuda's Sustainable Island Resource Framework Fund (SIRF Fund). The SIRF Fund blended finance window (BFW) has been designed to be gender-responsive with a focus on micro-equity and targets small and microenterprises (SMEs) in Antigua and Barbuda in the agriculture and fisheries sectors, which are extremely climate sensitive economic sectors.

In particular, the BFW consists of a technical assistance grant package to support technical, financial and business development; an in-kind microequity investment for the adoption and transfer of green technology that builds climate resilience for SMEs where the technology remains the property of the SIRF Fund until the full cost of the technology is recovered, and legal ownership is transferred to the SMEs according to a long-term flexible schedule which can be repaid via in-kind or cash payments; and a very low interest concessional loan that is repaid according to an agreed schedule²⁰. The SIRF Fund BFW is a good example of how blended finance instruments can be utilised by the LDF and other climate finance funds to enable addressing loss and damage through building long-term climate resilience by promoting the adoption and transfer of green or climate-smart technology to climate-vulnerable groups while also potentially alleviating debt on these groups and sectors and countries.

²⁰ Commonwealth Secretariat. (2024). *The SIRF Fund Gender-Responsive Blended Financing Window: Synthesis Report*. Commonwealth Secretariat. <https://thecommonwealth.org/publications/sirf-fund-gender-responsive-blended-financing-window>