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In response to the call for input for the 2024 report, from the Special Rapporteur on the Right to Development

Thank you for the opportunity to make this submission. I am a museum consultant working to empower museums, similar institutions, and their partners to contribute more effectively to sustainable development challenges, using rights-based approaches and linked to environmental and social goals.¹

As some introductory comments, the Right to Development is poorly known, and even less well applied. It is too easily interpreted as meaning ‘economic development’ or ‘growth’. ‘Development’ that furthers the interests of some groups, but comes at the same or greater cost to others, cannot be called sustainable development. The environment remains almost incidental in considering the Right to Development, while protecting and restoring the environment should be seen a core components of what constitutes ‘development’, rather than seeing nature simply as a backdrop or resource for people’s use. Protecting and fulfilling human rights on the one hand, and protecting and restoring the natural environment on the other, can be seen as two foundations, programmes of action, and goals of sustainable development. As the environment is so gravely threatened from climate change, biodiversity loss and pollution, as a result of unsustainable development, it is concerning that the environment remains so peripheral in work on the Right to Development. This may inadvertently contribute to further non-economic losses of biodiversity, worsening climate, and environmental destruction, impeding people’s rights including the Right to Development.

A. Climate justice: Loss and damage

1. How is the realisation of the right to development impacted by both economic and non-economic loss and damage from climate change?

Non-economic losses and damages may be considered in light of how they are comprised of renewable and non-renewable resources. Biodiversity, the variety of life, is a non-renewable resource, as established in the Convention on Biological Diversity. Cultural heritage, in terms of material aspects, is in many cases non-renewable. Intangible cultural heritage may be renewable, and a greater emphasis on non-

¹ curatingtomorrow236646048.files.wordpress.com/2023/11/museums-for-better-futures_2023.pdf

material aspects of cultural heritage (material aspects may predominate in Global North countries) may assist in understanding the cultural and social value of various forms of heritage to communities of interest, and how they should be evaluated.

Inequality, within and between countries, and built through imperialism and colonialism over centuries and maintained by decisions today, may mean that those who suffer higher material losses (buildings, property) are those who have benefited most from exploitation and capitalism. Losses faced by less affluent people may involve less 'things', but be more serious in non-material terms, such as intangible heritage, and erosion of their rights, and risk to health and even to life. If, under this logic, greater financial compensation will flow to those with greatest material benefits but who have experienced greater [more easily calculable] economic losses, this will only serve to maintain, and amplify current inequality. Conversely, those suffering greater non-economic losses (ways of living, traditions, livelihoods, health and lives) will not be compensated. That is a form of climate injustice. States with different scales of economy should support one another based on their historic and contemporary responsibilities.

Loss and damage is often reduced to a question of economic value, while human rights and protecting and restoring nature for current and future generations transcend economic value. Rather than reduce these non-economic assets to a money value, a greater emphasis should be placed on using 'beyond GDP' measures in political decision making and accounting.

Climate change is a symptom of a much more insidious problem, that is, the negative effects of erosive, unbridled, 'growth first' capitalism (an approach that remains in Agenda 2030 and the SDGs). That is itself an affront to the Right to Development, and to human rights more widely. Only through addressing this root cause will poverty, inequality, climate change, biodiversity loss and pollution be properly addressed. That should become a central focus for work on the Right to Development. The Right itself is not well understood, and even the language of a 'Right to Development' is too readily co-opted to mean 'unsustainable development' or growth.

Factoring the environment into the Right to Development more clearly would help to address the small part that it has in the Declaration. Similarly, clarifying what is meant by the Right to Development would help with both Agenda 2030 and the post-2030 Agenda, to make greater effort to move away from the focus of 'sustained economic growth' in the current Agenda, which is one of its weakest points. Currently, the Declaration on the Right to Development is too easily interpreted as if States have complete freedom to extract their natural resources without consideration for other States or future generations.

2. What are the obligations of States and other actors such as development finance institutions and businesses to prevent, mitigate and remediate the impacts of climate change-related loss and damage on human rights...?

States have made many promises to address climate change, as signatories to the Paris Agreement, yet their actions often do not add up to their stated promises. Other actors, notably sub-national actors, may not be required directly by States to embed climate goals and actions into their activity. Nonetheless, sub-national actors that impinge on human rights relating to climate change have a rights-based obligation to respect, protect and fulfil those rights. For example, museums could/should embrace their responsibilities to respect, protect and fulfil the right to participate in cultural life, enjoy the arts, and share in scientific advancement and its benefits, among other rights that can contribute meaningfully to climate action. Similarly, libraries can promote many rights, such as the right to information, that can contribute meaningfully to climate action.²

The Paris Agreement provides a template that sub-national actors can use to mainstream climate action into their work, whether they are required to do so by governments or not. Indeed, greater sub-national action would support bottom-up action, and hold political actors to account. All sectors – not only the business sector – should be required, legally and morally, to fully embrace their responsibilities to shift their finance and relationships away from climate-wrecking companies and sectors (such as the fossil fuel industry) to direct their financial resources to building a better future, not a worse one.

The UN system often considers sub-national actors as meaning business and civil society, but there are other sectors (education, cultural sector, university and college sectors) that are also huge consumers of resources and have great potential to support climate action, if they are more directly encouraged and empowered to do so (the Glasgow Work Programme on Action for Climate Empowerment, from COP26, specifies a non-exclusionary list of key actors in this area of work in the Preamble).

Climate action is too easily left in the hands of State governments and authorities, who do not provide opportunities for people or communities to raise their own concerns and aspirations. Indeed, shrinkage of civic space, either through physical closure or by applying economic mindsets to civic space, erode people's and communities' opportunities for 'active, free and meaningful' participation in climate transitions. For example, poorly managed economic transitions that put large numbers of people out of employment without making alternative plans, inflict a form of non-economic loss and damage on them, through their loss of status and opportunity, as well as an economic loss.

² curatingtomorrow236646048.files.wordpress.com/2022/03/museums-and-human-rights3-2020.pdf

3. What is the legal and/or moral basis for States and other actors including businesses to contribute to the Fund for climate change-related loss and damage?

A starting point can be readily found in States' existing promises that remain to be met. Fulfilling the obligations States themselves made, for the Paris Agreement and in the Sustainable Development Goals, should not require a legal or moral determination by others, but represent a minimum standard that 'promises should be kept', as in the Vienna Convention on the Law of Treaties. Such a commitment is necessary for good faith to exist between States, from which trust can be maintained and built.

'Other actors' should be more clearly clarified, to identify which sectors have which responsibilities, whether economic or more generally. A rights-based approach may assist in this, but a more basic principle of 'polluter pays' extended beyond governments to include businesses and other actors (cultural sector, libraries, universities and colleges, and others) would be beneficial. However, such a move should be proportionate, so that those making bigger negative impacts on society and the environment, bear a heavier burden, both financially and administratively.

4. In addition to making a financial contribution to the Fund, what non-financial components may be relevant from a climate justice perspective?

Climate change will require radical collaboration, creativity and technical and human capacity to reduce and minimise impacts. Good will is essential, beyond financial considerations. Capacity building at all levels requires all individuals, sectors and systems/policies to shift radically to meet the challenges facing people and nature, everywhere. This was recognised in the Rio Declaration, which provides excellent guidance and a normative framework for involvement of people and communities to contribute to creating and agreeing on climate actions. Yet, policies and sectors are slow to change. In other words, many human capacities, including in sectors and in wider society, should be strengthened through greater attentiveness to the challenges of climate change, and the necessary transformations in economies and societies everywhere. 'Soft' technologies, in the form of political commitment, collaboration, networks, commitments to respect, protect and fulfil human rights, commitments to a multilateral system and cross sector collaboration, are all foundational in supporting effective responses to climate change. Such non-financial components can be found widely in climate justice frameworks (eg. from the Mary Robinson Foundation), empowering people and communities; supporting people's active, free and meaningful participation; empowering women and girls, and marginalized/underserved social groups; and supporting education for climate action everywhere.

5. How should a human rights-based approach to operationalise and administer the Fund look like?

Whatever approach is used, it should ensure that Loss and Damage is not simply used as a marketplace to justify unsustainable practices, or where large corporations buy

themselves some innocence while they continue to cause much greater harm as part of their basic business model.

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?

The fund should ensure that those in receipt of funding are free to use it as they wish, within some general principles, to ensure they do not get trapped into particular relationships with countries providing finance (which may result in neocolonialist actions). Climate finance should not be in the form of loans, but as grants.

To conclude,

- The post-2030 Agenda should recognise that the current Agenda has not managed to shift the dial to true sustainable development. Ensuring the Right to Development is a tool for sustainable development, and not used, or abused, as a tool for unsustainable development, will be essential for a good life for all.
- Further outlining what constitutes development, in light of human rights and protecting and restoring the natural environment, and the recognition of the right of everyone to a clean, healthy and sustainable environment, will be a powerful tool to kickstart the post-2030 Agenda, and to make greater use of the Right to Development.
- Greater emphasis on the bottom up aspects of development, through people's 'active, free and meaningful participation', in the creation and deliberation of options is desirable.
- The greatest acts for protecting and fulfilling the Right to Development in light of climate change are concerted climate action, in terms of reducing emissions, adapting to climate impacts, making finance flow to those who need it, and in recognition on the principle of CBDR-RC. Those are nothing more than the goals of the Paris Agreement. Ensuring countries honour those commitments should not be seen as the goal of a Right to Development, but the essential actions from which the Right to Development can be fulfilled.

Thank you for the opportunity to make this submission. I remain at your disposal should you have any questions or want clarification on any of the points raised.

A handwritten signature in black ink, appearing to read 'Henry McGhie'. The signature is fluid and cursive, with a long horizontal stroke that loops back under the name.

Henry McGhie, museum consultant, Curating Tomorrow