



Subject: Input to the United Nations Special Rapporteur on the Right to Development addressing climate justice with a particular focus on loss and damage

Dear Mr. Surya Deva,

This submission is made on behalf of a group of members of the Working Groups on Environment and ESCR and Corporate Accountability of the International Network for Economic, Social and Cultural Rights (ESCR-Net¹).

A. Right to development and the reality of loss and damage²

Development aggression fueled by the historical conditions of colonialism and neoliberal economic system continue to put profit over peoples, destroy the environment, and deprive communities of their economic, social, and cultural rights. Governments and corporations neglect climate-induced and exacerbated disasters while continuing to support development aggression and militarisation including through destructive infrastructure projects in fragile ecological areas.

For the **Pessamit – an Indigenous community of the Innu Nation in the province of Quebec, Canada**, rising temperatures have led to reduced coastal ice, ice thawing in winter and changes in rainfall. Retreating ice leaves coastal areas exposed to storm waves, accelerating coastal erosion. The Pessamit Nation has also been experiencing harmful impacts of 13 hydroelectric power stations and 16 hydroelectric dams which have been built on their ancestral territory since 1952. These projects were built and are operated by the state-owned corporation Hydro-Québec have contributed to flooding, destroyed cultivated land and forests, altered fishing, irrigation, navigation in the affected rivers, and access to the territory; changing the way of life of the surrounding populations and their sources of income.³

The **Lepcha Indigenous communities in north-eastern state of Sikkim in India** experienced a glacial lake outburst in October 2023 which broke two hydropower sites⁴ and caused intense flash floods where 30 people died, 105 people went missing, on top of the irreparable damage to roads, houses and public structures. Similarly, the construction of hydroelectric dams in Latin America has had significant impacts on local communities and river ecosystems. For example, the **Belo Monte dam project in Brazil** has

¹ ESCR-Net is a network consisting of more than 300 groups of social and feminist movements, Indigenous Peoples, NGOs, and environmental and human rights defenders spread across 80 countries globally. For 20 years and counting, the Network continues to work towards social justice through human rights including the right to development.

² **Addressing question (1) - How is the realisation of the right to development impacted by both economic and non-economic loss and damage from climate change? How is the impact experienced differently and/or disproportionately by different individuals (e.g., children and women), groups (e.g., Indigenous Peoples) and States (e.g., Small Island Developing States)?**

³ Any Tidal Wave Could Drown Us: Stories from the Climate Crisis. Amnesty International. 2022: <https://www.amnesty.org/en/documents/ior40/6145/2022/en/>

⁴ 'Ticking time bombs': Sikkim floods a reminder of why locals opposed dams in the Himalayas for years. Vaishnavi Rathore. 2023: <https://scroll.in/article/1057269/ticking-time-bombs-sikkim-floods-a-reminder-of-why-locals-opposed-dams-in-the-himalayas-for-years>



resulted in the flooding of forested areas and affected indigenous and riverine communities that depend on the river for livelihoods.

The linkages between climate change and forced displacement are evident globally. Climate change directly leads to extreme conditions such as famine, loss of livelihoods and irreversible damage to infrastructure which force communities to migrate. Women of **Carteret Islands in Papua New Guinea** might be considered among the world's first climate refugees due to the impacts of loss and damage. The forced migration reinforced the existing inequalities and women's vulnerabilities to gender-based violence. Geographical isolations and lack of public services have caused loss of livelihoods, increase in infant mortality, and deaths of women in the temporary camps during childbirths and from curable diseases.⁵

In the **municipality of Marcovia, Gulf of Fonseca region, in the south of Honduras**, communities depend mainly on artisanal fishing. Climate change induced marine intrusion caused the loss of productive land, housing, a decrease in the income of subsistence artisanal fishing families, and the modification of ecosystems that represent an indispensable livelihood for the population. These impacts resulted in forced displacement, food insecurity, exacerbation of poverty, lack of access to education and health services, exclusion and inequality, with women disproportionately affected.⁶

The Haruku indigenous community in Indonesia faced the worst tidal flood followed by erosion in July 2022 which led to 200 houses being impacted and 750 community members displaced. In response, the Haruku community is advocating for a more sustainable approach to climate mitigation by incorporating community knowledge and customary laws for protecting their natural resources.⁷

In the **community of Garita Palmera, in the municipality of San Francisco Menéndez, Ahuachapán, in El Salvador**, the climate crisis has not only displaced communities but also deprived them of their livelihoods due to slow-onset changes such as changes in the salinity of water.⁸

In the **Caribbean island of Haiti**, communities from Machiabel and Vieux David Roy villages who earn their livelihood from agriculture and livestock have been affected by the soil and crop loss caused by climate-related natural disasters such as droughts, hurricanes, and cyclones. The increase in natural disasters and the political instability in the country have worsened unemployment and criminality rates.⁹

⁵ Impacts on Climate Refugees of the Carterets Islands, Papua New Guinea. Asia Pacific Forum on Women, Law and Development. 2015: <https://apwld.org/wpcontent/uploads/2014/12/flyer-lnwda.pdf>

⁶ Estudio "Impacto del cambio climático en los recursos costeros y medios de vida en las comunidades de Guapinol, Cedeño y Punta Ratón, Marcovia, Choluteca." desarrollado por FIAN en el 2021 and "Any Tidal Wave Could Drown Us: Stories from the Climate Crisis", Amnesty International 2022, <https://www.amnesty.org/en/documents/ior40/6145/2022/en/>

⁷ Indigenous communities in Indonesia integrate community-led development with customary practices. International Accountability Project. 2023: <https://accountability.medium.com/integrating-customary-practices-in-community-led-development-of-haruku-indigenous-communities-in-1732c8de512e>

⁸ El futuro consumido: extractivismo y cambio climático en Centroamérica. La Ruta del Clima. Parte 1: Acuicultura y minería. N°21 Serie de Justicia Climática en América Latina. 2023: <https://larutadelclima.org/el-futuro-consumido-extractivismos-y-cambio-climatico-en-centroamerica/>

⁹ Addressing climate change impacts through community-led research in rural communities in Haiti. International Accountability Project. 2023: <https://accountability.medium.com/community-led-research-paves-the-way-for-climate-adaptation-in-rural-communities-in-haiti-639a29fc2f22>



Oil exploitation in areas such as the **Ecuadorian Amazon**¹⁰ and **the Niger Delta** has left a legacy of environmental pollution and damage to the health of local communities. For decades, oil companies, often funded by developed countries, have operated in these regions without sufficient environmental controls, contaminating soil and water, with serious harm to the lives of Indigenous and peasant communities.¹¹

Undoubtedly, it is extremely challenging to engage in meaningful participation and exercise the right to development in a context where socio-environmental conflicts, economic interests of the extractive industry, and the climate change impacts are increasingly heightened. The historical refusal of Global North countries to be accountable and the failure of global climate negotiations to establish a fund grounded on social and climate justice for communities and countries most vulnerable to climate change, increasingly put at stake the social condition of different groups to exercise their human rights including their right to development.¹²

B. State obligations and corporate accountability in addressing the impacts of loss and damage¹³

We must quash the unregulated power of corporations and States captured by the profit making agenda of the corporate elite.¹⁴ Radical reforms are necessary to curb the accumulation of wealth to the elites and lead us to redrawing international trade and investment agreements - as well as the global financial architecture. It is of critical importance to highlight the significant influence of State and corporations in perpetuating dependence on fossil fuels as it exposes the truth that the right to development is in fact being hindered by the actions of the State and corporations in their endless greed for economic growth - co-opted as 'development'.

State obligations

States bear the duty to effectively regulate businesses, domestically and extraterritorially in line with their human rights obligations.¹⁵ In addressing loss and damage, Global North countries must be bound by their extraterritorial obligations, regulate their corporations and be held accountable for their

¹⁰ The Amazonian area of Ecuador covers around 48% of the national territory. Approximately five per cent of the Ecuadorian population live in that area. It is important to underline the existence of peoples who voluntarily remain without contacts with society, such as the Tagaeri, Taromenane and Oñamenane. The main economic activity imposed into the territory of Ecuadorian Amazon is the extraction of oil, gold and copper, causing constant social conflicts and environmental damages.

¹¹ See for example Amnesty International's ongoing work documenting and campaigning against oil pollution in the Niger Delta which harms the rights of the Indigenous Ogoni People: <https://www.amnesty.org/en/search/oil%20niger/page/20/>

¹² Justicia Un Reclamo Radical: Financiación de daños y pérdidas. Adrian Martinez. Editorial La Ruta del Clima. 2023: <https://larutadelclima.org/wp-content/uploads/2023/05/Justicia-un-Reclamo-Radical.pdf>

¹³ **Addressing Question (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, including the right to development?; and Question (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?**

¹⁴ For more information on corporate capture in State decision making please visit: https://www.escr-net.org/sites/default/files/manifestation_-_en.pdf

¹⁵ Human Rights, Climate Change and Business - key messages. Office of the High Commissioner for Human Rights: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>



extractive and exploitative business practices focusing merely on economic growth while undermining ecological sustainability and human rights.

States are responsible to mobilise the maximum available resources to avert, minimise and address loss and damage and its impacts to the full enjoyment of human rights. *“a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilise the maximum available resources in an effort to do so”* could constitute a breach of domestic and extraterritorial obligations under treaty law.¹⁶ Moreover, States must also adopt and implement National Action Plans on Business and Human Rights (NAPs) that centre communities and are grounded in human rights.

The Inter-American Court of Human Rights, the Escazú Agreement, and the General Comment No. 26 on Children's Rights and the Environment¹⁷ reaffirm that the human right to reparation is a principle of international law. The Inter-American Court in particular stated that any breach of an international obligation that has caused damage entails the duty to make adequate reparation.¹⁸ Therefore, States, in accordance with the principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), must restore what has been damaged and compensate, both in financial and non-financial forms¹⁹, for what has been lost. It is also a duty for the States to develop measures to facilitate full implementation of Article 8 of the Paris Agreement.²⁰ Establishment of liability and due compensation for loss and damage is critical to ensure the full implementation of Article 8 and must be complementary to the Article.

States are obliged to ensure intergenerational equity and justice²¹ in addressing the impacts of loss and damage. This principle continues to be applied in international and domestic jurisprudence.²² According to the Maastricht Principles on the Human Rights of Future Generations, States must refrain from conduct which will deprive future generations of their rights.²³ The Principles further spell out the obligation of ensuring that the burdens of mitigating and remedying climate change and other forms of environmental destruction are not shifted to future generations.

¹⁶ Climate change and the International Covenant on Economic, Social and Cultural Rights, Statement of the Committee on Economic, Social and Cultural Rights, United Nations, 8 October 2018, paras 5-6.

¹⁷ General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change CRC/C/GC/26. (2023). Convention on the Rights of the Child.

¹⁸ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras (Inter-American Court of Human Rights 1989). https://www.corteidh.or.cr/docs/casos/articulos/seriec_07_esp.pdf

¹⁹ See United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

²⁰ Our Right to Climate Reparations. La Ruta del Clima. 2023: <https://larutadelclima.org/reparations/>

²¹ Intergenerational equity and justice holds the current generation accountable for preserving the planet for the well-being of the generations to come and ensure full enjoyment of their human rights, particularly their right to a clean, healthy and sustainable environment and their right to development.

²² In *Future Generations v Ministry of the Environment*, the Supreme Court of Colombia ruled in favour of 25 youth and children in Colombia and found that future generations can bring suit to protect their rights to a healthy environment, life, food, access to water, and health, and that the Colombian Amazon is an entity subject of rights entitled to legal protection. See also *Leghari vs. Federation of Pakistan*, Lahore High Court (2015).

²³ See Maastricht Principles on the Human Rights of Future Generations:

<https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>



States must also recognise the role and contribution of women in combating climate crises including addressing the impacts of loss and damage.²⁴ This is essential to address historical inequalities between men and women, and ensure that women's knowledge and lived experiences are at the core of decision-making processes on climate action particularly concerning the Loss and Damage Fund.

Corporate accountability

Transnational corporations continue to be one of the largest drivers causing and profiting from the climate crisis. Only 108 corporations - so called carbon majors - are responsible for at least 70% of global greenhouse gas emissions since industrial times.²⁵ Multilateral development banks (MDBs) also continue to provide investments to companies and governments for fossil fuel-based industries.²⁶ 10 MDBs including the World Bank Group which is set to host the Loss and Damage Fund have allocated 14.5 billion USD towards the oil and gas industry from 2022-2024.²⁷ Out of these investments, 66 per cent was allocated via private finance to 61 private actors.

More efforts are being undertaken to hold global emitters to account in court by launching climate lawsuits all across the globe, using existing legal frameworks such as tort law and civil law. For instance, the case of *Asmania et al. v. Holcim*, where four members of the **Pari Island community in Indonesia** have sued the Swiss company Holcim, the largest cement producer and one of the biggest CO2 emitters in the world, using Swiss civil law.²⁸ It is the second transnational climate lawsuit where people from the Global South are seeking to hold a company from the Global North to account for their responsibility for climate change, and the first one that demands both emission reduction for the future, and compensation for losses and damages as well as contribution to adaptation measures.

In **Ecuador**, citizens are using their right to vote to protect their environment and to reduce fossil fuel production. In a historic referendum in 2023, Ecuadorians voted to halt the development of all new oil wells in the Yasuní national park in the Amazon. The binding referendum permanently bans oil drilling in the Ishpingo-Tambococha-Tiputini (ITT) oil project, also known as oil block 43, although the decision remains under threat.²⁹

While some countries such as the United Kingdom and Australia have introduced The Modern Slavery Act and are taking stronger steps to regulate supply chains, without an independent and strong oversight body, companies face no accountability for the worsening impact of the climate crisis. Laws introduced by France and Germany that impose duties on companies to exercise human rights and environmental

²⁴ The Paris Agreement affirms not only that States Parties must comply with the principles of "gender equality, women's empowerment and intergenerational equity," but also highlights the importance of adaptation action to ensure a gender-transformative, participatory and fully transparent approach.

²⁵ Update of Carbon Majors 1965 - 2018. Climate Accountability Institute. 2020: <https://climateaccountability.org/pdf/CAI%20PressRelease%20Dec20.pdf>

²⁶ Energy Finance Tracker: Monitoring Energy Finance Trends to Demand for a Community-Led and Just Energy Transition. International Accountability Project. 2024: https://accountabilityproject.org/wp-content/uploads/2024/02/FINAL-REPORT_Energy-Finance-Tracker.pdf

²⁷ Energy Finance Tracker. International Accountability Project. 2024: https://public.tableau.com/app/profile/iaptableau/viz/GlobalEnergy_16895902797750/GlobalEnergyProjects

²⁸ Call for climate justice. Call for Climate Justice. <https://callforclimatejustice.org/en/webreport/>

²⁹ Ecuador's oil drilling vote could be delayed by the new president (climatechangenews.com)



due diligence in their operations and along their supply chains still remain to prove their effectiveness, with several proceedings against companies for violation of these duties still pending before national authorities. Also, the new European Union Corporate Sustainability Due Diligence Directive is a step in the right direction. However, substantive weaknesses in the law make it questionable on how effective it can be in ensuring corporate accountability and ending corporate impunity.³⁰

The adoption of an international legally binding instrument to regulate corporate power is of critical importance. It would be key for the Special Rapporteur to recommend that States engage in good faith in urgently advancing a strong and actionable legally binding Treaty that would put forward collective demands³¹ of peoples affected by corporate capture, and development aggression exacerbated by the climate crisis.³² There must also be a clear articulation of legal liability for both States and corporate entities as negotiations advance.³³

C. Addressing loss and damage: Beyond financing³⁴

Immediate phase out of fossil fuels

Beyond financing, States must take positive steps towards the fulfilment of economic, social and cultural rights and must not take measures that would lead to the retrogression of ESCR. In this light, States must reject false solutions³⁵ while promoting human rights-centred climate actions to address loss and damage. Global North countries must drastically cut off emissions through immediate, just and equitable phase out of fossil fuels as a precondition to address their historical responsibilities.

End militarism and divest from the arms industry

With military expenditures across the world significantly rising in recent years³⁶, the impact on the

³⁰ EU due diligence directive: Member states reach political agreement. International Federation for Human Rights. 2024: <https://www.fidh.org/en/issues/business-human-rights-environment/business-and-human-rights/eu-due-diligence-directive-member-states-reach-political-agreement>

³¹ Advocacy Paper: Human Rights and Business. International Network for Economic, Social and Cultural Rights (ESCR-Net) 2021: https://www.escr-net.org/sites/default/files/advocacy_paper_igwg_-_english_.pdf

³² Collective submission to the Special Rapporteur on human rights and climate change. Corporate accountability in the context of human rights and climate change. International Network for Economic, Social and Cultural Rights (ESCR-Net). 2023: <https://www.escr-net.org/news/2023/escr-net-corporate-accountability-and-climate-input-56th-session-human-rights-council-2024>

³³ General Comment No.24 (2017) on States obligations in the context of business activities. See: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2017-state-obligations-context>

³⁴ Addressing 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)?

³⁵ False solutions are those that pose as 'climate actions' but in reality, do not address the root causes of the climate catastrophe. They can be largely characterised by the neoliberal corporate capture of climate action and corporate greenwashing, essentially perpetuating climate injustices. For more information, see: False Solutions: Climate Colonialism and Tragedy of the Commons. Asia Pacific Forum on Women, Law and Development. 2023: <https://apwld.org/wp-content/uploads/2023/12/FALSE-SOLUTIONS-BRIEFER-Final.pdf>

³⁶ For more information please visit: <https://worldpopulationreview.com/country-rankings/military-spending-by-country>



climate has been undeniable³⁷. Conflicts and war in regions ravaged by extreme climate conditions are exacerbating the impacts of loss and damage on individuals and communities with few avenues to seek redress through remedy and reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as safe pathways to migration. As a means to guarantee the right to development, regulating the arms industry is required along with the divestment of public and private finances from this harmful sector to the common public good as well as to fund for loss and damage.

Address the non-economic impact of loss and damage to cultural heritage and identity

The impacts of non-economic loss and damage are tied to economic, social and cultural rights including community's right to cultural heritage and identity. In this regard, States must provide legal, ethical, spiritual and scientific recognition of the inherent, inalienable rights of nature, the rights of Mother Earth, and the non-human components of the Earth system. Examples include Bolivia adopting the Universal Declaration of the Rights of Mother Earth, Ecuador articulating Nature's Rights in its constitution, New Zealand recognizing the Whanganui River, India recognizing the Ganga and Yamuna Rivers, and Colombia recognizing the Atrato River.³⁸

Strengthening community-led data to shape climate policies based on experience and knowledge of the affected communities

Addressing the climate crisis requires promoting and strengthening evidence-based research informed by the perspectives of frontline communities facing direct impacts of loss and damage.³⁹ Several ESCR-Net members⁴⁰ are leading these important initiatives to strengthen participation of communities in key decisions and policy making processes.

The Loss and Damage Fund must provide direct support to ensure that affected communities have the resources to directly collect their own data free from interference from the state, corporate actors or other powerful entities. The Fund setup must also ensure that community-led data and evidence inform key decisions around all its projects and activities. This would enable Indigenous Peoples to exercise their right to self-determination, which includes but is not limited to their right to Free, Prior and Informed Consent (FPIC), distinct identity, and self-determined development.

³⁷ The climate costs of war and militaries can no longer be ignored. The Guardian. 2024:

<https://www.theguardian.com/commentisfree/2024/jan/09/emission-from-war-military-gaza-ukraine-climate-change>

³⁸ Cullinan, Cormac. (2019). 'Nature Rights'. In: Kothari et al. (eds). The Pluriverse: A Post-Development Dictionary. Pp. 243-246.

³⁹ For example, the UN Permanent Forum on Indigenous Issues affirmed that "climate change policies led by Indigenous Peoples incorporate their crucial knowledge of land management and natural resource administration while protecting health, equity, justice and sustainability." (Report on the 22nd session of the Permanent Forum on Indigenous Issues (with oral modifications): E/2023/43-E/C.19/2023/7, para 44.)

⁴⁰ See for example: a) ESCR-Net Community-led research initiative:

<https://www.escr-net.org/news/2023/announcement-second-community-led-research-loss-and-damage-resulting-climate-change> b) APWLD's

Feminist Participatory Action Research Initiative: <https://apwld.org/feminist-participatory-action-research-fpar/>; c) the International

Accountability Project's Global Advocacy team: <https://accountabilityproject.org/work/community-organizing/global-advocacy-team/>



In line with a human-rights based approach to data,⁴¹ communities should also be meaningfully involved in shaping official data collection efforts led by states - for instance in determining what kinds of impacts should be assessed and how.

Access to justice

Effective grievance and redressal mechanisms must be established and access to justice shall be guaranteed. Failure to do so will lead to the continuation of the historic and ongoing dispossession and alienation of Indigenous Peoples from nature and their ancestral lands, territories and resources. For rural women and girls, having overall access to legal systems and health services does not only empower them but also support their protection in instances of sexual assault and harassment. For human rights defenders, concrete mechanisms should be put into place to ensure protection against violence, intimidation, threats and arbitrary arrest and detention.

D. Human rights based approach in operationalising the Loss and Damage Fund⁴²

Financing for loss and damage must be delivered grounded in human rights on the basis of equity and cannot be seen as a charity or a relief fund. The administration and operationalisation of the Loss and Damage Fund must:

Operate based on Polluter Pays and CBDR-RC principles. Climate debt of the Global North countries must be paid based on the principles of Polluters pay and CBDR-RC. They provide a clear standard on how historic polluters must contribute significantly to the Fund. States have the obligation to explore innovative ways and sources ranging from increasing the tax on fossil fuel industry to debt cancellation and debt relief. There must be separate lines of funding between 'development aid' (ODA), humanitarian relief/aid and loss and damage. The Global North countries are responsible to fund all these sectors instead of conflating the issues and pulling finances from one sector to divest in another.

Create no-debt and be granted in the form of public finance. Under international human rights law, wealthy industrialised countries must provide new, additional, needs-based, rights-compliant, predictable, grant-based and sustainable public finance for loss and damage, at the scale required, in light of the legal duties of international cooperation. In its operationalisation, the LDF must provide grant-based finance to prevent the creation of new debts⁴³ adding to the burden of the Global South countries vulnerable to the impact of loss and damage.

⁴¹ Collective Position: Data for Economic, Social, and Cultural Rights. International Network for Economic, Social, and Cultural Rights (ESCR-Net). 2022: https://www.escr-net.org/sites/default/files/attachments/collective_position_data_2022_complete_en.pdf

⁴² Addressing 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)?; and 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?

⁴³ Submission to UNFCCC for the 2nd Glasgow Dialogue. Human Rights as a Compass for Operationalising the Loss and Damage Fund. Amnesty International and the Center for International Environmental Law. 2023: https://www.ciel.org/wp-content/uploads/2023/02/Human-Rights-as-a-Compass-for-Operationalizing-the-Loss-Damage-Fund_submission-Amnesty-and-CIEL_Feb-2023.pdf

الشبكة العالمية
للحقوق الاقتصادية
والاجتماعية والثقافية



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Réseau-DESC

Ensure meaningful and effective participation of frontline communities disproportionately affected by the impacts of loss and damage. Addressing loss and damage requires adequate access to information, and meaningful and effective participation of the frontline communities facing the impacts of loss and damage⁴⁴ such as Indigenous Peoples, rural women, peasants, fisherfolk and other small-scale food producers, and children. The Loss and Damage Fund must create a mechanism that enables meaningful participation of the frontline communities particularly in decision-making processes related to modalities, disbursement, implementation, and monitoring of the Fund. One demand that has been echoed globally is to ensure direct access of communities is through a small-grant community window.

Recognise and respect the collective rights of Indigenous Peoples. Strengthening collective rights such as FPIC and the right to self-determination of Indigenous Peoples, as well as rights to ownership of land, including coastal land, territory and resources, and tenure rights may lead to reducing vulnerability in the context of loss and damage.⁴⁵ This means that adequate information related to activities of the Fund that may affect the rights of Indigenous Peoples must be provided timely in a form accessible and culturally appropriate to the respective groups.

Ensure transparency and accountability. The Loss and Damage Fund must ensure transparency at all levels including in its reporting. Transparent reporting is crucial to help ensure accountability of the Fund. To enhance this, effective safeguards and redress mechanisms in line with international human rights standards and instruments, as well as the Paris Agreement, must be in place to prevent human rights violations and enable access to justice in the operationalization of the LDF.

⁴⁴ Addressing loss and damage: our call for accountability and justice. International Network for Economic, Social and Cultural Rights (ESCR-Net). 2023: <https://www.escr-net.org/news/2023/addressing-loss-and-damage-our-call-accountability-and-justice>

⁴⁵ Submission in response to the call for input from the Special Rapporteur on Climate Change on: 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. International Network for Economic, Social and Cultural Rights. 2022: https://www.escr-net.org/sites/default/files/eng_unsr_final_submission_escr-net.pdf