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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Promotion and protection of human rights in the context of climate change**

### **Note by the Secretary-General\*\***

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, in accordance with Human Rights Council resolution [48/14](#).

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\* [A/77/150](#).

\*\* The present report was submitted after the deadline in order to reflect recent developments.



## **Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change**

### **Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation**

#### *Summary*

We are faced with a global crisis in the name of climate change. Throughout the world, the rights of people are being negatively affected or violated as a consequence of climate change. The Special Rapporteur on the promotion and protection of human rights in the context of climate change highlights the reference to human rights included in the preamble to the Paris Agreement and considers the human rights implications of mitigation actions. Considerable attention is given to the extensive and disastrous lack of action to address loss and damage as a result of the impacts of climate change and its related human rights impacts. The Special Rapporteur also highlights the serious disconnect between those that continue to support the fossil fuel economy and those that are most affected by the impacts of climate change. Also highlighted is the fact that those most affected by climate change have the least participation and representation in political and decision-making processes. The Special Rapporteur provides various recommendations on eliminating the use of fossil fuels, addressing the funding gap on loss and damage, improving participation and protecting the rights of indigenous and environmental human rights defenders. We are already confronted with a climate change emergency that comes with inherent serious human rights abuses. We can no longer delay. The time to actively address this emergency is now.

## I. Introduction

1. We are faced with a global crisis in the name of climate change. Throughout the world, human rights are being negatively affected and violated as a consequence of climate change. For many millions, climate change constitutes a serious threat to the ability of present and future generations to enjoy the right to life.<sup>1</sup> Human-induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced. In its article 28, the Universal Declaration of Human Rights guarantees that all human beings are entitled to a social and international order in which their rights and freedoms can be fully realized. Climate change already undermines this order and the rights and freedoms of all people. We are being confronted with an enormous climate change crisis of catastrophic proportions. It is happening now.

2. There is an enormous injustice being manifested by developed economies against the poorest and least able to cope. Unwillingness by developed economies and major corporations to take responsibility for drastically reducing their greenhouse gas emissions has led to demands for “climate reparations” for losses incurred. Some have suggested the term “atmospheric colonization” to explain the global imbalance between the impacts of climate change and the emitters of greenhouse gases.<sup>2</sup> When ranked by income, the economically most privileged 50 per cent of countries are responsible for 86 per cent of the cumulative global carbon dioxide emissions, while the economically vulnerable half are responsible for only 14 per cent.<sup>3</sup>

3. The Special Rapporteur on the promotion and protection of human rights in the context of climate change highlights the reference to human rights included in the preamble to the Paris Agreement, in which parties should, *inter alia*, “consider their respective obligations on human rights”.

4. The present report explores the functional arrangements of the United Nations Framework Convention on Climate Change and the Paris Agreement. The report will focus primarily on three key themes: mitigation (emissions reduction), loss and damage (the impacts of climate change) and participation in decision-making processes in the climate change regime. Underpinning all of these themes is the need for adequate and predictable finance and support. The implications for human rights will be considered in each of these three themes. The present report complements and updates the report by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.<sup>4</sup>

5. To prepare the present report, throughout June and July 2022, the Special Rapporteur on the promotion and protection of human rights in the context of climate change held extensive in-person consultations in Bonn, Germany, as well as in Geneva and Lisbon, and numerous online consultations. In particular, he convened a number of meetings with civil society organizations, States that have signed the Geneva Pledge for Human Rights in Climate Action, members of the Climate Vulnerable Forum, small island developing States, and other stakeholders. These consultations complemented a call for inputs to which the Special Rapporteur received approximately 90 submissions.<sup>5</sup>

<sup>1</sup> Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 62.

<sup>2</sup> Erin Fitz-Henry, “Climate change is white colonization of the atmosphere. It’s time to tackle this entrenched racism” (12 July 2022). Available at <https://phys.org/news/2022-07-climate-white-colonization-atmosphere-tackle.html>.

<sup>3</sup> Submission from Alana Institute.

<sup>4</sup> A/74/161.

<sup>5</sup> See [www.ohchr.org/en/calls-for-input/2022/call-input-promotion-and-protection-human-rights-context-mitigation-adaptation](http://www.ohchr.org/en/calls-for-input/2022/call-input-promotion-and-protection-human-rights-context-mitigation-adaptation).

## II. Human rights implications of mitigation actions

6. Mitigation efforts to reduce greenhouse gas emissions have two implications on the enjoyment of human rights. First, an inadequate response to reducing greenhouse gas emissions has a significant negative impact on the enjoyment of human rights. Second, some mitigation actions have a significant impact on the exercise of human rights.

### A. Mitigation: a catastrophically inadequate response

7. The global response to reducing greenhouse gas emissions has been grossly inadequate. The overall effect of inadequate actions to reduce such emissions is creating a human rights catastrophe. Parties to the Paris Agreement are required to produce nationally determined contributions as an indication of their actions to reduce greenhouse gas emissions. The Intergovernmental Panel on Climate Change notes that there is an implementation gap between the projected emissions with current policies and the projected emissions resulting from the implementation of the unconditional and conditional elements of the nationally determined contributions.<sup>6</sup> Subsequently, the International Energy Agency has called for an immediate end to fossil fuel expansion if the world is to decarbonize by 2050 and limit warming to 1.5°C, as required under the Paris Agreement.<sup>7</sup>

8. Tragically, there remains a huge disparity in effort and a lack of commitment by States that have been the primary historical contributors of greenhouse gas emissions, leading to the negative impact on the enjoyment of human rights. The negative impacts of failing to reduce greenhouse gas emissions are disproportionately felt by persons and communities who are already in a disadvantageous situation owing to a number of factors. Climate change aggravates already existing inequalities, marginalization and exclusion and further increases vulnerabilities.<sup>8</sup> These aspects are covered in section III of the present report.

9. Against this backdrop, the Special Rapporteur emphasizes the human rights obligation of States relating to mitigation actions. States must limit greenhouse gas emissions to prevent the current and future negative human rights impacts of climate change. Furthermore, States are obliged to take measures to mitigate climate change and to regulate the emissions of those businesses under their jurisdictions in order to prevent foreseeable negative impacts on human rights.

#### 1. Human rights obligation to prevent by limiting greenhouse gas emissions

10. States are failing in their human rights obligation to mitigate climate change and prevent its negative human rights impacts. The Intergovernmental Panel on Climate Change notes that global net anthropogenic greenhouse gas emissions during the period 2010–2019 were higher than at any previous time in human history.

11. In 2019, the world's major emitters of carbon dioxide – China, the United States of America, India, the European Union plus the United Kingdom of Great Britain and Northern Ireland, the Russian Federation and Japan – together accounted for 67 per

<sup>6</sup> Intergovernmental Panel on Climate Change, working group III contribution to the sixth assessment report (2022). Available at [https://report.ipcc.ch/ar6wg3/pdf/IPCC\\_AR6\\_WGIII\\_FinalDraft\\_TechnicalSummary.pdf](https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_TechnicalSummary.pdf).

<sup>7</sup> International Energy Agency, “Net Zero by 2050: A Roadmap for the Global Energy Sector” (Paris, 2021). Available at [https://iea.blob.core.windows.net/assets/7ebafc81-74ed-412b-9c60-5cc32c8396e4/NetZeroBy2050-ARoadmapfortheGlobalEnergySector-SummaryforPolicyMakers\\_CORR.pdf](https://iea.blob.core.windows.net/assets/7ebafc81-74ed-412b-9c60-5cc32c8396e4/NetZeroBy2050-ARoadmapfortheGlobalEnergySector-SummaryforPolicyMakers_CORR.pdf).

<sup>8</sup> Intergovernmental Panel on Climate Change, working group III contribution.

cent of total fossil carbon dioxide emissions.<sup>9</sup> The members of the Group of 20 account for 78 per cent of emissions over the past decade.<sup>10</sup> Collectively, the members of the Group of 20 are not on track to achieve their unconditional nationally determined contribution commitments, based on pre-COVID-19 projections. Five members of the Group of 20 – Australia, Brazil, Canada, the Republic of Korea and the United States – are projected to fall short and therefore require further action. By contrast, the world’s 55 most vulnerable economies have lost over half their economic growth potential owing to the impacts of the climate crisis.

12. The highest historical emitter of greenhouse gas emissions appears to be making little progress with its obligations under the United Nations Framework Convention on Climate Change or the Paris Agreement. Despite promises by the Biden Administration to reduce emissions through the 2015 Clean Power Plan, there have been legal challenges in the United States Supreme Court to the Administration’s attempts to act. The Court found that it was unlawful for federal agencies to make “major” decisions without a clear authorization from the United States Congress.<sup>11</sup>

## 2. Human rights obligation to protect by regulating

13. While there is a grave urgency to the action required to reduce emissions, the global economy is driving in the opposite direction. Studies suggest that subsidies for fossil fuels are estimated to be around \$500 billion annually.<sup>12</sup> Current nationally determined contributions provided by parties to the Paris Agreement remain seriously inadequate to achieve the climate goals of the Paris Agreement and would lead to a temperature increase of at least 3°C by the end of the century.<sup>13</sup>

14. Gaps exist in regulating major greenhouse gas emitting industries and sectors both within and outside national boundaries, making the achievement of the Paris Agreement goals more difficult. As an example, the international transport sector is a significant source of such emissions and yet this industry is taking limited action to reduce its emissions. Calls have been made for the International Maritime Organization to adopt stringent global measures to phase out the sector’s greenhouse gas emissions in line with the Paris Agreement’s 1.5°C goal.<sup>14</sup> Concerns have also been expressed that the International Civil Aviation Organization’s carbon offsetting scheme is a measure that only delays action to reduce emissions at the source.<sup>15</sup>

15. States must take substantive measures to limit emissions of greenhouse gases and mitigate climate change, including through regulatory measures, in order to protect all persons from human rights harms. Urgent and drastic action is required by States and business enterprises to reduce their emissions. The Secretary-General stated in 2022 that high emitting Governments and corporations are not just turning a blind eye, they are adding fuel to the flames.<sup>16</sup> This is exemplified by the fact that

<sup>9</sup> Environmental Justice Foundation, “In Search of Justice” (London, 2022). Available at <https://ejfoundation.org/resources/downloads/EJF-Climate-Inequality-report-2021.pdf>.

<sup>10</sup> United Nations Environment Programme (UNEP), *Emissions Gap Report 2020* (Nairobi, 2020). Available from [www.unep.org/emissions-gap-report-2020](http://www.unep.org/emissions-gap-report-2020).

<sup>11</sup> *Supreme Court of the United States, Syllabus, West Virginia et al., v Environmental Protection Agency et al.*, Certiorari to the United States Court of Appeals for the District of Columbia Circuit, No. 20-1530, Decided June 30, 2022.

<sup>12</sup> See <https://sdg-tracker.org/sustainable-consumption-production#12.C>.

<sup>13</sup> UNEP, *Emissions Gap Report 2020*.

<sup>14</sup> Submission from Opportunity Green.

<sup>15</sup> FERN, “Cheating the climate: the problems with aviation industry plans to offset emissions”, briefing note (September 2016). Available at [https://aragge.ch/wp-content/uploads/2018/04/GB\\_Fern\\_20160919\\_ICAO\\_CORSA\\_Cheating-the-climate\\_en.pdf](https://aragge.ch/wp-content/uploads/2018/04/GB_Fern_20160919_ICAO_CORSA_Cheating-the-climate_en.pdf).

<sup>16</sup> Rachel LaFortune (Human Rights Watch News), “Report Shows Climate Crisis Solutions Exist but Action Is Lacking”, 5 April 2022. Available at [www.hrw.org/news/2022/04/05/report-shows-climate-crisis-solutions-exist-action-lacking](http://www.hrw.org/news/2022/04/05/report-shows-climate-crisis-solutions-exist-action-lacking).

fossil fuel producers are using investor-State dispute settlements within the Energy Charter Treaty to sue States for compensation if they take positive policy actions to reduce the use of fossil fuels. It has been estimated that legal claims by oil and gas investors against those States that impose laws to limit fossil fuel activities could reach a total cost of \$340 billion.<sup>17</sup>

## **B. Human rights implications of certain mitigation actions**

16. A number of mitigation actions being employed by States and business enterprises have significant human rights implications. Some of these include forest-based mitigation and hydroelectric dams. Others include the location of wind turbines. New mitigation technologies associated with atmospheric changes and geoengineering also have the potential for significant human rights impacts. The impact of new technologies will be the theme of the Special Rapporteur's report to the Human Rights Council at its fifty-ninth session, in 2024.

### **1. Forest-based mitigation actions**

17. The Intergovernmental Panel on Climate Change states that the agriculture, forestry and other land use sector offers significant near-term mitigation potential at relatively low cost. Nevertheless, these predictions do not match global trends in deforestation. Deforestation in the Amazon has risen again over the past four years. Other parts of the world also face steady, or rapidly increasing, deforestation. It is estimated that while 15 billion trees are cut down every year, only 5 billion are replanted – resulting in an annual net loss of 10 billion trees.<sup>18</sup> Emissions by the agriculture, forestry and other land use sector account for around 11 per cent of the global total, with the bulk of the emissions occurring in relatively few countries.<sup>19</sup> The group of indigenous peoples that the Special Rapporteur met with in Bonn in June 2022 have indicated that forest fires in the Amazon as a result of droughts have had enormous impacts on the livelihoods of indigenous peoples.

18. Other studies suggest that the value of using forestry as a means of reducing global temperature limits may be overstated and that, while restoring ecosystems is crucial for planetary health, it is no substitute for preventing emissions from fossil fuels.<sup>20</sup> The Special Rapporteur concurs with this conclusion. It is preferable to address emissions at the source.

19. Forest-based mitigation actions have negative consequences on the exercise of human rights, particularly those that are related to land and land tenure. According to Oxfam, instead of reducing emissions at the scale and speed required to stay within a relatively safe level of warming, too many Governments and corporations are hiding behind planting trees and unproven technologies in order to claim that their 2050 climate change plans will achieve net zero emissions. Studies suggest that these land-hungry plans would require at least 1.6 billion hectares of new forests. The explosion of net zero commitments, many of which lack clarity and transparency, could lead to a surge in demand for land, particularly in low- and middle-income countries, which, if not subject to robust safeguards, could pose increasing risks to the enjoyment of

<sup>17</sup> Nour Ghantous (Energy Monitor), "The Energy Charter Treaty has not aged well", 13 July 2022. Available at [www.energymonitor.ai/policy/international-treaties/the-energy-charter-treaty-has-not-aged-well](http://www.energymonitor.ai/policy/international-treaties/the-energy-charter-treaty-has-not-aged-well).

<sup>18</sup> Phys.Org, "Why can't we simply plant more trees to clean carbon dioxide from the air?" (8 July 2022). Available at <https://phys.org/news/2022-07-simply-trees-carbon-dioxide-air.html>.

<sup>19</sup> UNEP, *Emissions Gap Report 2020*.

<sup>20</sup> K. Dooley et al. (One Earth), "Carbon removals from nature restoration are no substitute for steep emission reductions", 1 July 2022. Available at <https://doi.org/10.1016/j.oneear.2022.06.002>.

human rights to food, water, sanitation and housing, especially for people and communities whose livelihoods depend on land.<sup>21</sup>

20. Another related response with human rights implications is the mechanism for reducing emissions from deforestation and forest degradation (REDD+) developed by the United Nations Framework Convention on Climate Change in response to high deforestation rates, particularly in tropical forests. There are mixed views regarding the efficacy of the mechanism's programmes and whether they deliver real emissions reductions. The mechanism itself and associated voluntary carbon market programmes have been the source of human rights infringements, particularly of indigenous peoples in rainforest areas.<sup>22</sup> The allocation of rights to the protection of carbon in forests has been referred to as "neo-colonialism" as the land occupied by indigenous peoples is set aside for the protection of carbon stores.<sup>23</sup> This can deny indigenous peoples their traditional rights and practices.

21. Another mitigation action, associated with biomass burning, has implications for land appropriation and the exercise of human rights. Biomass burning and bioenergy, carbon capture and storage is a process where wood or other plant-based carbon (biomass) is burned as an alternative to fossil fuels. Providing the feedstock for energy production from biomass burning as a fuel source requires using existing forests or new land to grow the biomass.

22. Concerns have been expressed that sourcing trees from plantations for biomass electrical power generators in Latin America is adversely affecting the rights of indigenous peoples.<sup>24</sup> The Special Rapporteur heard concerns expressed by the Sámi indigenous peoples that their land will be appropriated for biomass fuel production.

## 2. Hydroelectric dams

23. The development of hydroelectric dams is creating significant human rights implications for people displaced by dams and for downstream users of water. Climatological studies suggest that downstream countries along the Mekong River have suffered low water supplies despite ample upstream rainfall, because of water being withheld by upstream dams.<sup>25</sup> This has significant implications for access to safe drinking water and food security for downstream countries.

24. Indigenous peoples of the Amazon region are also experiencing the effects of hydroelectric dams. Dam construction and related infrastructure have displaced indigenous peoples from their land. The Special Rapporteur heard from indigenous peoples that changes to river flows have had significant implications for the ecological maintenance of riverine systems, which in turn affect the ability for indigenous peoples to seek sources of sustenance.

<sup>21</sup> Aditi Sen and Nafkote Dabi, *Tightening the Net: Net zero climate targets – implications for land and food security* (Oxfam, 2021). Available at <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621205/bp-net-zero-land-food-equity-030821-en.pdf?sequence=1>.

<sup>22</sup> John Cannon (Mongabay), "Indigenous leader sues over Borneo natural capital deal", 17 December 2021. Available at <https://news.mongabay.com/2021/12/indigenous-leader-sues-over-borneo-natural-capital-deal/>.

<sup>23</sup> Renata Bessi and Santiago Navarro F (Avispa Media), "REDD, Neo-Colonialism in the Land of the Pataxo Warriors", 14 December 2014. Available at <https://avispa.org/redd-neo-colonialism-in-the-land-of-the-pataxo-warriors/>.

<sup>24</sup> Global Forest Coalition, "Annual Report 2021". Available at <https://globalforestcoalition.org/wp-content/uploads/2022/07/GFC-Annual-Report-2021.pdf>.

<sup>25</sup> Paul G. Harris (Hong Kong Free Press), "Water is power: How Southeast Asia pays the price for China's dam-building frenzy", 10 July 2022. Available at <https://hongkongfp.com/2022/07/10/water-is-power-how-southeast-asia-pays-the-price-for-chinas-dam-building-frenzy/>.

### 3. Other technologies

25. The Sámi indigenous peoples have expressed concern to the Special Rapporteur that they were not properly consulted and had not given free, prior informed consent to the erection of wind turbines on their land. Furthermore, serious concerns have been brought to the attention of the Special Rapporteur about the potential environmental and human rights impacts from deep seabed exploration and mining for minerals that could be used in battery production for electric vehicles and other forms of electrical storage.

## III. Loss and damage: a litany of human rights impacts

26. In its article 8, the Paris Agreement states that “Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change”. From a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation.

27. In its sixth assessment report, the Intergovernmental Panel on Climate Change describes how observed and predicted changes in climate are adversely affecting billions of people and the ecosystems, natural resources and physical infrastructure upon which they depend. This number is rising dramatically.<sup>26</sup> Many of these effects are highlighted in the present report.

28. Climate change has already harmed human physical and mental health. In all regions, health impacts often undermine efforts for inclusive development.

### A. Loss and damage by climate change disasters (in physical form)

29. About 3.3 billion people are living in countries with high human vulnerability to climate change. Analysis by the International Federation of Red Cross and Red Crescent Societies found that 97.6 million people were affected by climate- and weather-related disasters in 2019.<sup>27</sup> The intersection of gender with race, class, ethnicity, sexuality, indigenous identity, age, disability, income, migrant status and geographical location often compound vulnerability to climate change impacts, exacerbate inequity and create further injustice. Climate change manifests itself in many physical forms, which in turn, creates a multitude of human rights impacts. The hard realities of the enormity of the losses and damages suffered by people, particularly by those in the global South, are explored below.

#### 1. Floods, heavy rains and strong winds

30. By 2050, the number of people at risk of floods will increase from its current level of 1.2 billion to 1.6 billion. In the early to mid-2010s, 1.9 billion people, or 27 per cent of the global population, lived in potential severely water-scarce areas. In

<sup>26</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Working Group II Contribution to the Sixth Assessment Report, Technical Summary (Intergovernmental Panel on Climate Change and World Meteorological Organization, 2022). Available at [www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_FinalDraft\\_TechnicalSummary.pdf](http://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FinalDraft_TechnicalSummary.pdf).

<sup>27</sup> International Federation of Red Cross and Red Crescent Societies and International Committee of the Red Cross, “Humanitarian sector joins forces to tackle ‘existential threat’ of climate change” (News Release, 21 June 2022). Available at [www.icrc.org/en/document/red-cross-red-crescent-humanitarian-sector-joins-forces-tackle-existential-threat-climate](http://www.icrc.org/en/document/red-cross-red-crescent-humanitarian-sector-joins-forces-tackle-existential-threat-climate).



2050, this number will increase to 2.7 to 3.2 billion people.<sup>28</sup> Citing initial reports, the United Nations High Commissioner for Refugees said more than 12,000 refugees had been affected by heavy rainfall, while an estimated 2,500 shelters had been damaged or destroyed.<sup>29</sup>

31. The Special Rapporteur received many submissions highlighting examples of tropical cyclones, floods, hurricanes and typhoons in all regional areas of the world. A representative sample of the impacts on the enjoyment of human rights is presented below.

32. In Madagascar, an estimated 4,300 people were temporarily displaced and 2 killed after the adverse impact of tropical cyclones in December 2020 and February 2021. In Zimbabwe, an estimated 60,000 people were internally displaced in 2019, while an estimated 270,000 were affected. In Mozambique, 160,000 people were internally displaced and 1.72 million were affected.<sup>30</sup> In April and May 2022, flooding in the KwaZulu-Natal province in South Africa caused the deaths of 461 people, with 88 people missing. In addition, 8,584 houses were completely destroyed and 13,536 damaged. A total of 6,000 people are still homeless (as at 13 June 2022); 630 schools were affected, with over 100 inaccessible in the aftermath; and the entire province was without water for weeks, with some communities without water two months later.<sup>31</sup> In Malawi, for example, in 2019 the country was hit by Cyclone Idai, which affected about 975,000 people, with 86,976 displaced, 60 killed and 672 injured. In South Sudan, floods have displaced hundreds of thousands of inhabitants, forcing them to move, causing conflicts between herders and farmers. These events have affected women, children and the aged, and have caused property losses and the loss of animal and human life.<sup>32</sup> In the Chimanimani and Chipinge districts of Zimbabwe, people faced risks of statelessness in the aftermath of Cyclone Idai in 2019.<sup>33</sup> In Rwanda, flooding caused the deaths of more than 130 people.<sup>34</sup> In 2021, over 1.2 million people in West and Central Africa were affected by flooding.<sup>35</sup>

33. In 2020, Hurricanes Eta and Iota hit Central America and the Caribbean. Many families lost their crops and the animals they had raised for food. As a consequence, poverty and child malnutrition has increased. The hurricanes caused young people and children to interrupt their education owing to displacement and the initial isolation suffered by many communities.<sup>36</sup> In El Salvador, Guatemala and Honduras, the number of food insecure people reached an estimated 6.4 million people in October 2021.<sup>37</sup> Heavy rains in Guatemala in June 2022 killed at least 15 people in a dozen mudslides affecting more than 500,000 people.<sup>38</sup> In Guatemala, storms have caused internal displacement, thus contributing to irregular migration, school dropouts and the vulnerability of indigenous girls and women.<sup>39</sup> In the period 2010–2020 alone, El Salvador experienced 18 extreme rainfall events of varying

<sup>28</sup> UN-Water, “Water and Climate Change” (2022). Available at [www.unwater.org/water-facts/climate-change/](http://www.unwater.org/water-facts/climate-change/).

<sup>29</sup> ABC News, “Bangladesh camp housing Rohingya refugees floods, thousands become homeless” (29 July 2021). Available at [www.abc.net.au/news/2021-07-29/bangladesh-coxs-bazar-refugee-camp-flooded-rohingya/100335472](http://www.abc.net.au/news/2021-07-29/bangladesh-coxs-bazar-refugee-camp-flooded-rohingya/100335472).

<sup>30</sup> Submission from Human and Civil Rights Organizations of America.

<sup>31</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>32</sup> Submission from African Women’s Development and Communications Network.

<sup>33</sup> Submission from Zimbabwe.

<sup>34</sup> Submission from African Women’s Development and Communications Network.

<sup>35</sup> Submission from Association Jeunes Agriculteurs.

<sup>36</sup> Submission from Continental Network of Indigenous Women of the Americas (children).

<sup>37</sup> [A/HRC/50/57](https://www.unhcr.org/refugees-and-asylum-seekers/2022/06/15-dead-half-million-impacted-by-heavy-rains-in-guatemala.html).

<sup>38</sup> Phys.Org, “15 dead, half million impacted by heavy rains in Guatemala” (4 June 2022). Available at <https://phys.org/news/2022-06-dead-million-impacted-heavy-guatemala.html>.

<sup>39</sup> Submission from Guatemala.

magnitudes and impacts.<sup>40</sup> In Colombia, Hurricane Iota left the 5,000 inhabitants of the small island of Providencia with practically nothing.<sup>41</sup> In Brazil, in peripheral urban areas with greater socioeconomic vulnerability, children, especially poor children and children of African descent, are the most affected by the greater intensity and occurrence of extreme events of floods and landslides.<sup>42</sup>

34. In 2020, hurricanes devastated the honey and milpas crops of the Mayan people who live on the Yucatán Peninsula of Mexico.<sup>43</sup>

35. In 2022, flooding along the Brahmaputra river in the north-eastern Indian state of Assam inundated close to 1,500 villages, affecting nearly 500,000 people.<sup>44</sup> In the coastal districts of Pondicherry and Villupuram, flooding damaged houses and exacerbated sanitation issues, particularly for women and children.<sup>45</sup> In the state of Odisha, multiple cyclones have caused considerable damage and the loss of identity documents, which are prerequisites for gaining access to compensation payments.<sup>46</sup>

36. In Bangladesh, a single flood in 2007 submerged over 2 million hectares of cropland, destroyed 85,000 homes and caused more than 1,000 deaths.<sup>47</sup> In 2020, Cyclone Amphan caused 500,000 families to lose their homes, and destroyed 149,000 hectares of agricultural lands, along with 18,235 water points and almost 41,000 latrines. In coastal districts, nearly 1,100 km of roads, 200 bridges and numerous dams sustained damage.<sup>48</sup> In July 2021, more than 21,000 Rohingya refugees in Cox's Bazar, Bangladesh, were affected by flash floods and landslides. This compounded existing human rights violations already being suffered by the Rohingya community in Myanmar.<sup>49</sup>

37. In 2020, the Philippines suffered Typhoon Quinta/Molave, followed by Typhoon Rolly/Goni, and Typhoon Ulysses/Vamco. This was preceded by two years of severe drought that affected over 2,444,959 individuals.<sup>50</sup> In 2021, Super-Typhoon Rai killed at least 407 people and caused losses of \$336 million to agricultural goods and \$75 million to fishing boats and gear, as well as \$565 million in damages to homes, roads and electricity and water lines.<sup>51</sup>

## 2. Coastal storms, floods and sea level rise

38. The Intergovernmental Panel on Climate Change notes that coastal settlements with high inequality, for example, those with a high proportion of informal settlements, as well as deltaic cities prone to land subsidence (e.g., Bangkok; Jakarta; Lagos, Nigeria; New Orleans, United States; and those along the Mississippi, Nile and Ganges-Brahmaputra deltas) and small island developing States are highly vulnerable and have experienced impacts from severe storms and floods in addition to, or in combination with, those from accelerating sea level rise.

<sup>40</sup> Submission from El Salvador.

<sup>41</sup> Submission from CAN Adaptation and Loss and Damage Working Group.

<sup>42</sup> Submission from Alana Institute.

<sup>43</sup> Submission from Interamerican Association for Environmental Defense.

<sup>44</sup> Skand Agarwal (Climate Homes News), "Deadly heatwaves show why India needs to get serious on climate adaptation", 6 July 2022. Available at [www.climatechangenews.com/2022/06/07/deadly-heatwaves-show-why-india-needs-to-get-serious-on-climate-adaptation/](http://www.climatechangenews.com/2022/06/07/deadly-heatwaves-show-why-india-needs-to-get-serious-on-climate-adaptation/).

<sup>45</sup> Submission from Good Living Eco Foundation.

<sup>46</sup> Submission from Society for the Protection of the Rights of the Child.

<sup>47</sup> Adam Day and Jessica Caus, *Conflict Prevention in an Era of Climate Change: Adapting the UN to Climate-Security Risks* (United Nations University, New York, 2020).

<sup>48</sup> Submission from International Federation of Red Cross and Red Crescent Societies.

<sup>49</sup> Submission from the Office of the United Nations High Commissioner for Refugees (UNHCR).

<sup>50</sup> Submission from Climate Change Network for Community-based Initiatives, Inc.

<sup>51</sup> Submission from Foundation for Mutual Aid.

39. In small island developing States, the agriculture and fisheries sectors are suffering from the compounded effects of extreme events and slow-onset events. In Timor-Leste, Cyclone Seroja in 2021 washed away houses and belongings, including legal documentation.<sup>52</sup> In the Marshall Islands, climate change displacement dispossessed women of their traditional ownership of land, limiting their access to the resources and opportunities associated with it.<sup>53</sup>

### 3. Impacts of increased carbon dioxide concentrations

40. Increased carbon dioxide concentrations promote crop growth and yield but reduce the density of important nutrients in some crops with projected increases in undernutrition and micronutrient deficiency.<sup>54</sup> This is leading to malnutrition in children and stunting their growth, with devastating effects on their physical, cognitive and emotional development.<sup>55</sup>

41. Climate change has slowed the productivity gains of world agriculture over the past 50 years. Malnutrition has increased, mainly affecting children, pregnant women and indigenous peoples.<sup>56</sup>

### 4. Droughts

42. Over 1.4 billion people were affected by droughts in the period 2000–2019. Africa suffered from drought more frequently than any other continent, with 134 droughts, of which 70 occurred in East Africa.<sup>57</sup> It is estimated that one person is likely to die of hunger every 48 seconds in drought-ravaged Ethiopia, Kenya and Somalia.<sup>58</sup>

43. Droughts have claimed the lives of 650,000 people since 1970, mostly in countries that have least contributed to the factors intensifying the effects of drought.<sup>59</sup> Greater burdens and suffering are inflicted on women and girls in emerging and developing countries in terms of education levels, nutrition, health, sanitation and safety. Almost 160 million children are exposed to severe and prolonged droughts; by 2040, it is estimated that one in four children will be living in areas with extreme water shortages.<sup>60</sup>

44. In communities where there is no drinking water, especially when the rivers dry up and there is a shortage of water, diseases proliferate among people, especially children. If water sources dry up, women and girls must walk further to fetch water.<sup>61</sup> In all states of Somalia, drought and COVID-19 have brought about more widespread economic challenges, higher rates of girls dropping out of school and increases in cases of female genital mutilation. Multiple studies show that women are several times more likely to die from climate disasters than men, and the greater the gender

<sup>52</sup> Submission from Oxfam International.

<sup>53</sup> Submission from the Marshall Islands.

<sup>54</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*.

<sup>55</sup> Submission from Make Mothers Matter.

<sup>56</sup> Submission from the Alana Institute.

<sup>57</sup> United Nations Convention to Combat Desertification, “Drought in numbers 2022: restoration for readiness and resilience” (2022). Available at [www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf](http://www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf).

<sup>58</sup> Submission from Oxfam.

<sup>59</sup> UNEP (UNEP News), “Around the globe, as the climate crisis worsens, droughts set in”, 15 June 2022. Available at [www.unep.org/news-and-stories/story/around-globe-climate-crisis-worsens-droughts-set#:~:text=As%20Riziki%20Bwanake%20walks%20along,and%20an%20abundance%20of%20fish](http://www.unep.org/news-and-stories/story/around-globe-climate-crisis-worsens-droughts-set#:~:text=As%20Riziki%20Bwanake%20walks%20along,and%20an%20abundance%20of%20fish).

<sup>60</sup> United Nations Convention to Combat Desertification, “Drought in numbers”.

<sup>61</sup> Submission from ActionAid International.

and economic inequality, the greater the disparity. In total, 80 per cent of people displaced by climate disasters are women. Due to the power imbalance caused by patriarchal systems, women of various classes, castes and creeds are disproportionately affected socially and economically, in particular indigenous and disabled women.<sup>62</sup> For vulnerable households with minimal economic buffers, which is often the situation for women-headed households, the climate-induced loss of or damage to homes, land, crops, food or livelihoods can push people into spiralling poverty and destitution.<sup>63</sup>

45. In parts of the United Republic of Tanzania, pastoralists whose survival depends on free pastures and land have lost almost a quarter of their livestock owing to prolonged droughts.<sup>64</sup>

46. Since 2010, Chile has suffered a “mega-drought”. In total, more than 5,000 people have migrated since 2006, when the drought intensified.<sup>65</sup> In 2013 and 2014, the states of São Paulo, Rio de Janeiro and Minas Gerais in Brazil suffered a prolonged period of drought. This situation left millions of people with limited access to water. In 2020, the Pantanal region in Brazil was hit by the biggest fire in history.<sup>66</sup> In the northwest of Haiti, climate change is making the land drier and unproductive, contributing to crop failure and food shortages.<sup>67</sup>

47. In 2021, abnormally high summer temperatures and the lack of irrigation water during the growing season in Kyrgyzstan caused a reduction in the yield of grain and other crops.<sup>68</sup> In 2019, Afghanistan experienced both drought and flash floods, leading to losses in crop production and subsequent human displacement.<sup>69</sup>

## 5. Extreme heat

48. Between 2005 and 2015, more than 5 million deaths were associated with non-optimal temperatures annually, with over half of all excess deaths occurring in Asia.<sup>70</sup> The impact of this phenomenon is greater among children: approximately 1 billion children live in extremely high-risk countries, with 820 million children currently highly exposed to heatwaves.<sup>71</sup> Studies have found that heat worsens maternal and neonatal health outcomes, with research suggesting that an increase of 1°C in the week before delivery corresponds with a 6 per cent greater likelihood of stillbirth.

49. Higher sea surface temperatures are causing coral reef bleaching, affecting the viability of reefs and the complex ecosystems they support. This is affecting the right to food for people reliant on coral reefs as a food source.<sup>72</sup>

50. In May and June 2022, at least 90 people were estimated to have died in India and Pakistan owing to heat-related causes. Heat waves in Pakistan in 2021 resulted in disproportionate impacts on people living in poverty and day-wage workers, and women have been particularly exposed to extreme heat.<sup>73</sup> In Australia, discriminatory practices are compounded at times of extreme heat. Studies suggest that indigenous

<sup>62</sup> Submission from Women’s Rehabilitation Centre.

<sup>63</sup> Submission from ActionAid International.

<sup>64</sup> Submission from CAN Adaptation and Loss and Damage Working Group.

<sup>65</sup> Submission from Chile.

<sup>66</sup> Submission from LACLIMA.

<sup>67</sup> Submission from Church World Service.

<sup>68</sup> Submission from Kyrgyz Indigo.

<sup>69</sup> Submission from International Federation of Red Cross and Red Crescent Societies.

<sup>70</sup> Ibid.

<sup>71</sup> Environmental Justice Foundation, “In Search of Justice”.

<sup>72</sup> Submission from the Alliance of Small Island States.

<sup>73</sup> Ibid.

peoples are denied access to public swimming pools because of segregation policies.<sup>74</sup> Other studies in Australia show how higher temperatures in remote indigenous communities in the Northern Territory will drive inequities in housing, energy and health.<sup>75</sup> In Hong Kong, China, heat stress was deeply distressful for persons with physical and mental disabilities as opportunities for relief were limited.<sup>76</sup>

51. The indigenous peoples of the Sierra Nevada de Santa Marta in Colombia, the Arhuaco, Kogui and Kankuamo, have witnessed the melting of glaciers that threatens their access to water. Indigenous peoples across the Arctic are facing losses to their cultures and traditional ways of living owing to changes to the thaw cycle, drought and unpredictable summer weather.<sup>77</sup>

52. Migrant workers in the Gulf region are vulnerable to occupational heat exposure, or heat stress, which can provoke health problems that increase the risk of certain diseases and affect their ability to maintain healthy and productive lives. A 2020 study on Kuwait found that the overall number of deaths doubles on extremely hot days, but triples for non-Kuwaiti men, who form the majority of the low-income workforce.<sup>78</sup>

## B. Economic losses: the overall economic costs of climate change

53. A report by Oxfam found that United Nations humanitarian appeals in response to extreme weather disasters rose by more than 800 per cent between 2000 and 2021. Since 2017, funder nations have met 54 per cent of these appeals on average, leaving an estimated \$28 billion to \$33 billion shortfall. By 2030, the unavoidable economic losses due to climate change are projected to reach \$290 billion to \$580 billion.<sup>79</sup> A report on 55 economies hit hard by climate change found they had lost about \$525 billion in the past two decades owing to the impacts of global warming.<sup>80</sup> According to the United Nations Convention to Combat Desertification, between 1998 and 2017, droughts had led to global economic losses of approximately \$124 billion.<sup>81</sup>

54. Annual funding requests related to climate-linked disasters stood on average at \$15.5 billion in the period 2019–2021, up from about \$1.6 billion in the period 2000–2002 – but rich countries have only met just over half of these appeals since 2017, leaving a huge shortfall.<sup>82</sup>

55. In 2020, Cyclone Amphan was one of the strongest storms on record in the Bay of Bengal. The economic loss in South Asia amounted to \$15 billion, making it the costliest tropical cyclone of the year. It affected 10 million people in Bangladesh.<sup>83</sup>

<sup>74</sup> Submission from Beth Goldblatt.

<sup>75</sup> Simon Quilty and Norman Frank Jupurrurla ([Phys.Org](https://phys.org)), “How climate change is turning remote Indigenous houses into dangerous hot boxes”, 17 June 2022. Available at <https://phys.org/news/2022-06-climate-remote-indigenous-houses-dangerous.html>.

<sup>76</sup> Submission from CarbonCare InnoLab.

<sup>77</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>78</sup> Submission from [Migrant-Rights.org](https://migrant-rights.org).

<sup>79</sup> Tracy Carty and Lyndsay Walsh, *Footing the bill: Fair finance for loss and damage in an era of escalating climate impacts* (Oxfam International, 2022). Available at <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621382/bp-fair-finance-loss-and-damage-070622-en.pdf>.

<sup>80</sup> Thomson Reuters Foundation (Eco-Business), “Vulnerable nations demand funding for climate losses, fearing UN ‘talk shop’”, 10 June 2022. Available at [www.eco-business.com/news/vulnerable-nations-demand-funding-for-climate-losses-fearing-un-talk-shop/](https://www.eco-business.com/news/vulnerable-nations-demand-funding-for-climate-losses-fearing-un-talk-shop/).

<sup>81</sup> United Nations Convention to Combat Desertification, “Drought in numbers”.

<sup>82</sup> Ibid.

<sup>83</sup> Environmental Justice Foundation, “In Search of Justice”.

56. In the past 40 years, climate-linked disasters have affected more than 150 million people in Southern Africa, left about 3 million homeless and led to economic damages of more than \$14 billion.<sup>84</sup> In Durban, South Africa, flooding has cost \$760 million in damage.<sup>85</sup> It has been estimated that the cost of climate-related disasters per year will increase from \$250 billion to \$300 billion today to \$415 billion by 2030.<sup>86</sup>

57. In the Pacific, it is estimated that climate change-induced migration of tuna stocks will potentially reduce total annual fishing access fees earned by the 10 Pacific small island developing States by an average of \$90 million per year compared with the average annual revenue received between 2015 and 2018.<sup>87</sup> The economies of the Vulnerable Twenty Group of countries<sup>88</sup> have lost on aggregate \$525 billion because of the effects of climate change during the period 2000–2019.<sup>89</sup>

58. It has been estimated that the United States alone has inflicted more than \$1.9 trillion in damage to other countries from the effects of its greenhouse gas emissions.<sup>90</sup> This puts the United States ahead of China, currently the world's leading emitter, and the Russian Federation, India and Brazil, the next largest contributors to global economic damage through their emissions. The total estimated cost of the emissions by the United States, China, the Russian Federation, India and Brazil comes to \$6 trillion in losses worldwide, or about 11 per cent of annual global gross domestic product, since 1990.

### C. Non-economic losses of climate change, including climate change displacement

59. The impacts of climate change are also contributing to losses that are not easy to place in economic terms. These are known as non-economic losses and include, inter alia, loss of life, human health, cultural heritage and sovereignty.<sup>91</sup> In Samoa, for instance, sea level rise and storm surges are eroding cultural sites.<sup>92</sup>

60. Climate change displacement can be considered a non-economic loss, although the movement of people away from regular employment often has significant economic costs. According to the Intergovernmental Panel on Climate Change, since 2008, an annual average of over 20 million people have been internally displaced annually by weather-related extreme events, with storms and floods being the most

<sup>84</sup> Mongabay, "In Africa, temperatures rise, but adaptation lags on West's funding failure" (19 January 2022). Available at <https://news.mongabay.com/2022/01/in-africa-temperatures-rise-but-adaptation-lags-on-west-s-funding-failure/>.

<sup>85</sup> Chloé Farand (Climate Home News), "Vulnerable nations set to design and test loss and damage funding facility", 25 April 2022. Available at [www.climatechangenews.com/2022/04/25/vulnerable-nations-set-to-design-and-test-loss-and-damage-funding-facility/](http://www.climatechangenews.com/2022/04/25/vulnerable-nations-set-to-design-and-test-loss-and-damage-funding-facility/).

<sup>86</sup> Submission from Maat for Peace Development and Human Rights.

<sup>87</sup> J.D. Bell et al, "Pathways to sustaining tuna-dependent Pacific Island economies during climate change", *Nature Sustainability*, No. 4, pp. 900–910 (2021). Available at <https://doi.org/10.1038/s41893-021-00745-z>.

<sup>88</sup> The current members of the V20 Group that self-identify as those most vulnerable to the impacts of climate change now number 55. See [www.v-20.org/members](http://www.v-20.org/members).

<sup>89</sup> Vulnerable Twenty Group, "Climate Vulnerable Economies Loss Report: 2000–2019" (2022). Available at <https://www.v-20.org/resources/publications/climate-vulnerable-economies-loss-report>.

<sup>90</sup> C.W. Callahan and J.S. Mankin, "National attribution of historical climate damages", *Climatic Change*, No. 172 art. 40. Available at <https://link.springer.com/article/10.1007/s10584-022-03387-y>.

<sup>91</sup> A. Telesetsky, "Climate-Change Related 'Non-economic Loss and Damage' and the Limits of Law", *San Diego Journal of Climate and Energy Law*, Vol. 11, No. 97, 2020. Available at <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1096&context=jcel>.

<sup>92</sup> Submission from Samoa.

common.<sup>93</sup> Studies estimate that up to 216 million people could be forced to migrate by 2050, largely owing to drought, together with other factors such as water scarcity, declining crop productivity, sea-level rise and overpopulation.<sup>94</sup>

61. In India alone, more than 3.8 million people were internally displaced in 2020, mostly owing to weather-related disasters. In the same period, China counted more than 5 million and the United States more than 1.7 million new displacements.<sup>95</sup>

62. Displaced people now make up more than 80 per cent of the urban population of Bangladesh, the vast majority working in the informal sector and residing in insecure slums.<sup>96</sup>

63. Climate change fuels disasters and displacement within and across borders in Southern Africa. Southern Africa has experienced slow-onset disasters, notably in Madagascar, where 1.5 million people are affected by emergency-level food crisis following consecutive droughts. It has also caused internal displacement as people flee in search of food and work. An estimated 2.3 million people in Angola are also affected by drought, which has generated the internal displacement of approximately 60,000 people, in addition to 10,000 people crossing the border to Namibia.<sup>97</sup>

64. Climate change-induced displacement has many linkages between non-economic losses and the enjoyment of human rights. Displacement has affected the mental health of communities owing to the trauma of losing their habitats, homes and livelihoods.<sup>98</sup> Other studies suggest that climate-displaced persons face economic vulnerability, social exclusion and limited support for upholding cultural identity. Relocation may lead to loss of nationality of origin, particularly for individuals who do not have or retain identity documentation.<sup>99</sup>

65. Risks of statelessness can arise for persons forcibly displaced owing to climate change. In these circumstances, statelessness may result in such situations where individuals are unable to prove their nationality because of a loss of documentation or the inability to obtain replacement documentation. In addition, protracted or permanent displacement outside of one's country can sometimes result in passive loss of citizenship. Being stateless or undocumented implies that people may not be able to enjoy access to food, water, medical services or any support or subsidies provided by the Government.

66. The Special Rapporteur will dedicate his report to the Human Rights Council at its fifty-third session, in 2023, to the theme "Addressing the human rights implications of climate change displacement, including legal protection of people displaced across international borders".

## **D. Response to loss and damage**

### **1. International response and funding gap**

67. In response to growing concerns about loss and damage, in 2012, the parties to the United Nations Framework Convention on Climate Change established the Warsaw International Mechanism for Loss and Damage associated with Climate Change

<sup>93</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*.

<sup>94</sup> United Nations Convention to Combat Desertification, "Drought in numbers".

<sup>95</sup> Environmental Justice Foundation, "In Search of Justice".

<sup>96</sup> Day and Caus, *Conflict Prevention*.

<sup>97</sup> Submission from UNHCR.

<sup>98</sup> Submission from Laiakini Waqanisau.

<sup>99</sup> Submission from International Center for Advocates Against Discrimination.

Impacts. To date, the Mechanism has focused mainly on enhancing knowledge and understanding and strengthening dialogue, coordination, coherence and synergies. The Special Rapporteur notes that, despite considerable resistance from the United States and the European Union, parties to the Framework Convention agreed to include loss and damage as a separate article under the Paris Agreement (article 8).

68. Since then, progress on advancing action and support, a key pillar of article 8, has been extremely limited.<sup>100</sup> The Special Rapporteur has observed that the United States continues to stall negotiations on the basis of a procedural debate as to whether the Mechanism now only serves the Paris Agreement. Furthermore, the Special Rapporteur observes that negotiations around the operationalization of the Santiago Network for Averting, Minimizing and Addressing Loss and Damage, which was created at the twenty-fifth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change to catalyse technical assistance, continue to be stalled by developed countries.

69. Despite a unanimous call from the Group of 77 and China at the twenty-sixth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Glasgow, United Kingdom, for a new funding mechanism for loss and damage, the proposal was rejected by influential developed countries. In the end, developing countries were pressured by wealthy nations into settling for a three-year “dialogue” on a funding arrangement for loss and damage, with no decision-making powers.<sup>101</sup> Nevertheless, there were some funding pledges made at the twenty-sixth session of the Conference of the Parties. Scotland pledged \$2.4 million for a loss and damage fund, the Wallonia Region of Belgium dedicating \$1 million to the fund, and Germany pledged \$10.4 million to support the Santiago Network. While welcomed, these piecemeal pledges do little to bridge the gap in what is needed for loss and damage finance. Effectively, the major emitting countries have abandoned their duty to cooperate in line with the principles of international cooperation.

70. While funding is provided internationally through the United Nations and bilateral disaster relief support, this funding is generally on an ad hoc basis and well below what is needed.<sup>102</sup> Furthermore, there is also a large time gap between the event of the disaster and the receipt of the relief money.<sup>103</sup> Other funding for disaster risk reduction agendas primarily focus on risk assessment and place the onus on affected countries and communities to fund their own losses. Views expressed to the Special Rapporteur and submissions received suggest that these arrangements are inadequate to address loss and damage both in the short and longer term.<sup>104</sup> Data presented in the present report would strongly support this perception. Current funding arrangements at the international, regional and national levels are either difficult to gain access to, do not address all loss and damage or are poorly capitalized. Ironically, existing funding arrangements may incur more debt in the process of gaining access to them.<sup>105</sup> Little funding is provided to help particularly vulnerable developing countries, especially small island developing States, to cover the costs of loss and damage associated with slow-onset events, such as the resettlement of populations from areas

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<sup>100</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>101</sup> J. Lo and C. Farand (Climate Homes News), “EU blocks bespoke fund for climate victims as rich nations moot alternatives”, 17 June 2022. Available at <https://www.climatechangenews.com/2022/06/17/eu-blocks-bespoke-fund-for-climate-victims-as-rich-nations-moot-alternatives/>.

<sup>102</sup> Carty and Lyndsay Walsh, *Footing the bill*.

<sup>103</sup> Submission from Good Living Eco Foundation.

<sup>104</sup> Submission from Alliance of Small Island States.

<sup>105</sup> Submission from Samoa.



rendered uninhabitable owing to climate change and measures to address permanent loss of, among other things, ecosystems and heritage.<sup>106</sup>

## 2. National approaches to funding loss and damage

71. Despite the lack of progress on funding at the international level, some States have established national funding arrangements to address loss and damage. Many government agencies have “quick response funds” or built-in budget allocation that represent pre-disaster or standby funds for agencies in order to immediately assist areas stricken by disasters and calamities. These funds are used to purchase family food packs, implement cash or food-for-work programmes, provide shelter assistance and send additional relief supplies.<sup>107</sup> But too often, these are intermittent, short-term and location-specific.<sup>108</sup>

72. It has been found that disaster insurance schemes can increase inequalities, as without substantial and well-targeted subsidies, women are more likely to be excluded from microinsurance schemes owing to affordability, political, social discrimination or economic marginalization.<sup>109</sup> Overall national funding for loss and damage relies on the fact that the countries that are affected by loss and damage are the ones having to pay for the financial costs incurred by major greenhouse gas polluting countries. This is not consistent with the polluter-pays principle.

## IV. Participation and the protection of climate rights defenders

### A. “Participation disconnect”

73. It is a regretful indictment of the current decision-making process that those who are most affected and suffering the greatest losses are the least able to participate in current decision-making. New participatory processes need to be found urgently.

74. There is a serious disconnect between those that continue to support the fossil fuel economy and those that are most affected by the impacts of climate change. While this disconnect continues, actions to address climate change will be limited. Furthermore, it is evident that business elites with interests in the fossil fuel and carbon intensive industries have disproportionate access to decision-makers, a phenomenon that is described as “corporate capture”. These fossil industry elites and the politicians they sponsor have a human rights responsibility and need to be held accountable for the human rights abuses they are underwriting.

75. There is also a disconnect between those who are most vulnerable to climate change impacts and those who actually participate and are represented in political and decision-making processes. The Special Rapporteur reiterates that the voices of those most affected must be heard and the losses and damages they are suffering must be understood and accounted for. During consultations, oral testimonies provided to the Special Rapporteur by youth groups, gender groups, indigenous peoples, persons with disabilities, faith-based groups, groups representing children, people of African descent and other people from ethnic minorities all emphasized the need for greater participation in decision-making processes. Many are calling for far greater participation of and climate justice for vulnerable groups. The Special Rapporteur lends support to those calls.

<sup>106</sup> Submission from Alliance of Small Island States.

<sup>107</sup> Submission from Community Organizers Multiversity.

<sup>108</sup> Submission from Indigenous Peoples’ International Centre for Policy Research and Education the Indigenous Peoples Rights International and Elatia.

<sup>109</sup> Submission from Oxfam.

## B. Levels of participation

76. There are many levels of participation that need to be addressed. At the international level, these include the United Nations and its institutions, and leaders' summits (such as the Group of Seven and the Group of 20), and their participation in international, national and local courts, meetings of the parties to the United Nations Framework Convention on Climate Change and the Paris Agreement, and other bodies associated within the process of the Framework Convention. At the national level, these include national parliaments, central and local government meetings and communities. Within all these forums, it must be recalled that "public participation is one of the fundamental pillars of instrumental or procedural rights, because it is through participation that the individual exercises democratic control of a State's activities and is able to question, investigate and assess compliance with public functions".<sup>110</sup>

### 1. Conferences of the parties to the United Nations Framework Convention on Climate Change and to the Paris Agreement

77. Among the many forums in which participation must be a fundamental pillar, the Special Rapporteur wishes to highlight the conferences of the parties to the United Nations Framework Convention on Climate Change and to the Paris Agreement. The Special Rapporteur heard numerous calls for such conferences to be opened up for greater participation by indigenous peoples, young people and other civil society representatives. The Special Rapporteur observed that indigenous peoples and civil society organizations are often excluded from observing some negotiations and have virtually no input into the negotiation of outcomes apart from brief interventions in the opening plenary meetings of these conferences. Other international bodies are not so restrictive. For example, the Special Rapporteur draws attention to the Convention on Biological Diversity, which allows for textual inputs from civil society organizations. Furthermore, he notes that the conferences of the parties to the Framework Convention and to the Paris Agreement are virtually two unconnected meetings in one. One meeting involves negotiations of textual decisions held by government representatives, and the other is a series of side events and discussions organized by non-State actors. There is little cross-fertilization of inputs and exchanges of views apart from daily newsletters, such as "Eco".

78. Despite some progress, the participation of women in these conferences of the parties is still problematic. Despite the fact that the numbers of women and men in party delegations are almost equal (49 per cent women and 51 per cent men), men accounted for 60 per cent of the speakers and 74 per cent of the speaking time in plenaries.<sup>111</sup> The Special Rapporteur concurs with calls that have been made to revise the Gender Action Plan of the United Nations Framework Convention on Climate Change to make it more relevant and effective. Others affected by the impacts of climate change have the least ability to make change in the Conference of the Parties process. The Special Rapporteur refers to this as "the participation disconnect". The Special Rapporteur regrets that the process of conferences of the parties to the

<sup>110</sup> Inter-American Court of Human Rights, Advisory Opinion) C-23/17 of 15 November 2017. Requested by the Republic of Colombia: The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2 of the American Convention on Human Rights.

<sup>111</sup> A. Dazé and C. Hunter, "Gender-Responsive National Adaptation Plan (NAP) Processes: Progress and promising examples – NAP Global Network synthesis report, 2021–2022" (International Institute for Sustainable Development, Winnipeg, Canada, 2022). Available from <https://napglobalnetwork.org/resource/gender-responsive-nap-processes-progress-promising-examples/>.

Framework Convention and to the Paris Agreement is denying some people the right to participate effectively.

79. Youth groups have demanded the establishment of a youth advisory committee on loss and damage to allow their participation in the decision-making processes at the national and international levels.<sup>112</sup> With respect to the Santiago Network for Averting, Minimizing and Addressing Loss and Damage, there has been a call for the operational modalities to be inclusive and transparent.<sup>113</sup> Similarly, there have been calls for indigenous peoples to be involved in the decision-making mechanisms to define climate finance, specifically in the setting up of a financial mechanism on loss and damage.<sup>114</sup>

80. Furthermore, during interactions in Bonn, the Special Rapporteur heard several concerns that procedural arrangements set up under the United Nations Framework Convention on Climate Change and the Paris Agreement, such as the Local Communities and Indigenous Peoples Platform, are not adequate substitutes for meaningful and active participation in negotiations. In addition, the Conference of the Parties process has become more like a “world expo” rather than a venue for negotiations and meaningful participation. The locations of such conferences are becoming more expensive and difficult to attend for indigenous peoples and civil society organizations. Stateless people displaced by climate change or people who have lost their identification papers due to climate change disasters have little or no chance of being represented at these conferences.

## **2. Inclusion in governmental planning processes**

81. In the process of preparing, implement and monitoring the planning for nationally determined contributions, adaptation plans and loss and damage planning, there is a call for indigenous peoples, especially women and young people, to be included in decision-making.<sup>115</sup> If done well, social protection measures can be a critical way for States to fulfil their commitments to protect human rights and advance sustainable development, including through responsive and scaling-up approaches to address climate impacts and strengthen resilience as needed.<sup>116</sup>

## **3. National and local courts**

82. Regarding access to climate change litigation and other judicial processes, in a consultation, the Special Rapporteur was presented with a call for children and young people to be able to have full access to courts. While youth groups have been successful in a number of climate change litigation cases, standing and justiciability remain challenges.<sup>117</sup>

## **4. National parliaments**

83. There have been calls for young people to be represented in national parliaments to ensure that public authorities comply with their obligations under multilateral

<sup>112</sup> Loss and Damage Youth Coalition, open letter to the Presidency of the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, available at <https://actionnetwork.org/petitions/open-letter-to-cop27-presidency>.

<sup>113</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>114</sup> Submission from Indigenous Peoples’ International Centre for Policy Research and Education, Indigenous Peoples Rights International and Elatia.

<sup>115</sup> Submission from Continental Network of Indigenous Women of the Americas.

<sup>116</sup> Submission from ActionAid International.

<sup>117</sup> E. Donger, “Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization”, *Transnational Environmental Law*, vol. 11, iss. 2, pp. 263-289, July 2022. Available at <https://doi.org/10.1017/S2047102522000218>.

treaties, such as the United Nations Framework Convention on Climate Change and the Paris Agreement.<sup>118</sup> In this respect, some useful examples have been tried. Twelve members of the organization Children’s Parliament aged 7 to 12 years participated in the deliberative Climate Assembly process in Scotland.

### C. Protecting climate rights defenders

84. As groups and communities become increasingly frustrated with the lack of action on climate change and the subsequent loss and damage that has occurred and will occur into the future, protests and public interventions have taken place to bear witnesses to the climate emergency. Protests and other forms of intervention have precipitated reprisals from Governments and businesses supporting the fossil fuel industry. Some climate rights defenders have been killed. In one country in Latin America, for instance, a Government has been accused of criminalizing popular leaders and social movements that dare to question the socio-environmental impacts of climate change and large mitigation projects in the region. In one country in Asia, the passing of anti-terrorism legislation endangered the lives of climate justice advocates. Furthermore, some civil society organizations are being red-tagged and vilified, and some human rights advocates have been imprisoned on the basis of false charges, while others have been murdered.

85. In North America, at least one environmental organization has been labelled by a national enforcement agency as a domestic terrorist threat.<sup>119</sup> Trade unions’ campaigns on climate change and its impact on workers have been targeted in some countries.<sup>120</sup>

86. Indigenous peoples defending their rights have been the target of serious attacks and human rights abuses. In 2020, there was a total of 227 lethal attacks against land and environmental defenders. A disproportionate five out of seven mass killings of defenders recorded in 2020 were of indigenous peoples. Indigenous women acting as environmental defenders face additional obstacles to their well-being, such as sexual violence, sexual discrimination, harassment of their children and families and increased vulnerability to mistreatment from State forces and armed groups.<sup>121</sup>

87. Concerns have also been expressed to the Special Rapporteur that climate change activists may be targeted for recrimination and harassment if they are involved in protests during the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held in Egypt.<sup>122</sup> The Special Rapporteur is particularly concerned about the safety of activists based in Egypt.

## V. Conclusion and recommendations

**88. We are faced with a global crisis in the name of climate change. Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the right to, inter alia, life, health, food, development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery. Human-**

<sup>118</sup> Submission from Alana Institute.

<sup>119</sup> H. Alberro (The Conversation), “Radical environmentalists are fighting climate change – so why are they persecuted?”, 11 December 2018. Available at <https://theconversation.com/radical-environmentalists-are-fighting-climate-change-so-why-are-they-persecuted-107211>.

<sup>120</sup> Submission from International Trade Union Confederation.

<sup>121</sup> Submission from Natural Justice.

<sup>122</sup> Oral testimony by civil society organizations, Bonn, June 2022.

induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced. The human right to a clean, healthy and sustainable environment was endorsed by the Human Rights Council in its resolution 48/13. Urgent action is needed to address the climate change crisis. The set of recommendations below require urgent attention by the General Assembly.

#### **Recommendations with respect to bridging the mitigation gap**

89. The Special Rapporteur maintains that all of the recommendations made by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in his report to the General Assembly in 2019 with respect to mitigation action<sup>123</sup> are still relevant and should be considered as recommended in the present report. In addition, the below recommendations should be considered.

90. With respect to mitigation, the Special Rapporteur on the promotion and protection of human rights in the context of climate change recommends that the General Assembly:

(a) Request the Secretary-General to host a high-level mitigation commitment forum as part of the Summit of the Future conference. The aim of the forum would be to deliver commitments to reduce global emissions by at least 55 per cent by 2030;

(b) Recommend the repeal of the Energy Charter Treaty;

(c) Agree to establish an internationally legally binding fossil fuel financial disclosure mechanism, to require Governments, businesses and financial institutions to disclose their investments in the fossil fuel and carbon intensive industries;

(d) Establish an international human rights tribunal to hold accountable Governments, business and financial institutions for their ongoing investments in fossil fuels and carbon intensive industries and the related human rights effects that such investments invoke;

(e) Pass a resolution to ban any further development of fossil fuel mining and other harmful mitigation actions;

(f) Recommend that the International Criminal Court include an indictable offense of ecocide.

91. Also with respect to mitigation, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

(a) Include human rights considerations in their nationally determined contributions and other planning processes and ensure that market-based mechanisms have effective means for protecting human rights and effective compliance and redress mechanisms to this effect;

(b) Ensure that food security and the protection of the rights of indigenous peoples take precedent over land-based mitigation actions.

92. With respect to loss and damage, the Special Rapporteur recommends that the General Assembly:

<sup>123</sup> A/74/161, sect. IV.A.

- (a) Agree to establish a loss and damage finance facility;
- (b) Agree to establish a consultative group of finance experts to define the modalities and rules for the operation of the loss and damage finance facility;
- (c) Agree that the consultative group of finance experts should be appointed by the Secretary-General and should comprise representatives from financial institutions that have experience in funding loss and damage, and should include representatives from various rights holders mentioned in the present report and not include State climate change negotiators;
- (d) Agree that the consultative group of finance experts be given one year to complete its work and provide recommendations for agreements to the General Assembly at its seventy-eighth session;
- (e) Agree that the consultative group of finance experts, in undertaking its work, shall be guided by the following modalities and principles:
  - (i) Funding for the group should be new and not repurposed climate finance;
  - (ii) The group should be based on the “polluter pays” principle;
  - (iii) The group should be based on an inclusive, human rights-based approach and give priority to marginalized groups and other rights holders in situations vulnerable to the impacts of climate change;
  - (iv) Funding for the group should come from innovative sources and should be at scale to meet current and future needs with respect of loss and damage. Such sources could include: a climate damages tax on the fossil fuel industry; the redirection of fossil fuel subsidies; international levies on commercial air passenger travel and emissions from international shipping; and a debt cancellation and debt relief mechanism;
- (f) Develop international legal measures to address the permanent loss of land and ocean territories and their associated ecosystems, livelihoods, culture and heritage;
- (g) Create a sovereign debt relief mechanism as a means of restructuring or cancelling debts in an equitable manner with all creditors as a means of delivering on climate justice;
- (h) Create a redress and grievance mechanism to allow vulnerable communities to seek recourse for damages incurred, including legal measures to determine criminal, civil or administrative liability, and providing comprehensive restitution and guarantee of non-repetition;
- (i) Establish international legal protections to persons internally displaced and displaced across international borders as a consequence of climate change;
- (j) Explore legal options to close down tax havens as a means of freeing up taxation revenue for loss and damage.

93. Also with respect to loss and damage, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

- (a) Establish an interim financial window for funding urgent loss and damage under the Green Climate Fund;

(b) Invite the United Nations Environment Programme to create an annual loss and damage finance and action gap report, with a view that the present report will inform the global stocktake.

#### **Recommendations for enhancing the participation and protection of climate rights defenders**

94. The Special Rapporteur recommends that the International Law Commission be mandated to develop, within a two-year time frame, an international legal procedure to give full and effective protection to environmental and indigenous human rights defenders, including by establishing an international tribunal for the prosecution of perpetrators of violence against and the killing of environmental and indigenous human rights defenders.

95. The Special Rapporteur recommends that the International Law Commission be mandated to include in the definition of ecocide those actions against environmental and indigenous human rights defenders.

96. The Special Rapporteur recommends that the General Assembly request the Secretary-General to call for all major meetings, such as those of the Group of Seven and the Group of 20, to include the participation of human rights holders affected by the impacts of climate change.

97. The Special Rapporteur also recommends that the General Assembly encourage all Member States to include youth representatives in national parliaments to highlight climate change concerns.

98. The Special Rapporteur further recommends that the General Assembly encourage all States to give standing to children and young people, including indigenous children and young people international, national and subnational court systems.

99. With respect to the participation and protection of human right defenders, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

(a) Pass an omnibus decision that allows for the full and effective participation of indigenous peoples and civil society organizations in decision-making processes at all levels of the Conference of the Parties process;

(b) Establish a youth advisory committee on loss and damage;

(c) Establish a process to revise and improve the Gender Action Plan, for agreement at the twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

#### **Summit of the Future recommendation**

100. The Special Rapporteur encourages the Summit of the Future to endorse all of the recommendations contained in the present report.