Call for input “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”

Input by Asociación La Ruta del Clima

16/6/2021

1. What experiences and examples are you aware of that are being faced by particularly individuals and communities in vulnerable situations (as identified above) that have suffered loss and damage due to the adverse impacts of climate change?

See Case Study on Community Perspectives: Loss and Damage in Cahuita, Costa Rica.¹

- The evidence collected through this study creates a basis for deepening empowerment actions and dialogue with community stakeholders in Cahuita on the implications of climate impacts. It also points to the need for further research and data generation regarding loss and damage in Costa Rica. The local testimonies and knowledge, in the absence of a formal climate change-related loss and damage monitoring, evaluation, and reporting system, enable us to draw a preliminary picture of the scale of climate risks facing the people and illustrate the need for reparation for loss and damage. Finally, this case study seeks to drive research on the adverse effects of climate change on communities.

See report Loss and Damage at COP26: A Central American Perspective.²

- The issue of loss and damage is particularly relevant to Central America, one of the world’s regions most exposed to the climate crisis. Furthermore, in the region, social vulnerability due to poverty, insecurity, violence, and inequity is high, and the inadequate management of soil and environmental degradation makes this territory particularly vulnerable to climate impacts. This report has detailed information on how climate impacts and loss and damage affect the region.

See publication: Loss and Damage in a Latin American Context: Summary of Data in NDCs by La Ruta del Clima. A review of the official data reported on NDCs by Latin American countries to the UNFCCC.³

Our review of the NDCs and their respective updates regarding loss and damage led to the following conclusions:

- Most Latin American countries reported economic and non-economic data related to loss and damage in their NDCs.
- The information related to loss and damage reported in the NDCs and their subsequent updates or second versions is not correlated. The data are not updated from one NDC version to the other, nor is there a format or continuity of the information reported for comparison.
- The data reported on loss and damage in the updated NDCs or second versions do not follow a uniform format and do not contain elements that are able to be compared.
- There is no uniformity in how the reported phenomena are defined or how the data are considered. There does not appear to be criteria for clearing defining how economic loss and damage are assessed.
- The Paris Agreement rulebook and NDC updating process do not seem to have generated uniformity in the way information on loss and damage occurring in Latin America is reported. It avoids suggesting mechanisms to standardize the collection and presentation of data, which directly affects the decision-making capacity to address loss and damage.
- The region’s NDCs and updates mostly recognize the importance of or at least mention the principle of Common but Differentiated Responsibilities and Respective Capabilities. The only exceptions are Costa Rica and Colombia. Moreover, of the countries analyzed, only Brazil did not make mention of loss and damage in its NDC. Almost all countries explicitly mentioned human rights in their NDCs, except for Paraguay, Nicaragua, and Ecuador. This is not to imply that they do not have human rights language within these documents; however, it is key for countries to start demanding action at an international level to gain access to funds.
- There is a huge gap in terms of how inequality and the impacts of climate change interact in Latin America, especially from different approaches, such as gender. This gap is reflected in the availability of data that can be used to inform the NDCs.
- There is also a gap in terms of indirect and secondary climate impacts, as well as material and/or immaterial impacts.
- It should be noted that these gaps in climate impacts and loss and damage in no way imply that climate impacts or loss and damage are not occurring; on the

contrary, a vast number of individuals and communities are already experiencing them. There is a wealth of evidence and testimony in this regard, but it has not been systematized.

- Gender inequality affects the vulnerability conditions of women and people identifying as gender-nonbinary, directly affecting the way they experience climate change. These inequalities present a major challenge to addressing the issue of differentiated climate impacts inclusively and comprehensively.

See publication: Movilidad Humana: Derechos Humanos y Justicia Climática.4

- There is no doubt that mobility is intrinsically linked to the issue of loss and damage. On the one hand, mobility (generally forced) responds directly to loss and damage, such as when a person loses a house or a crop. On the other hand, mobility itself generates damages and losses for the affected population, such as the loss of place and their sense of rootedness and belonging, the loss of social bonds and relationships, among others (Petra Tschakert et al., 2017). So, when situations of mobility are generated, it is important to highlight the factors related to this process since that is where the different types of damage and loss become visible.

- Therefore, mobility policies, as well as institutional responses to damage and loss, reflect power relations, since it is at the decision-making level that what is meant by residual risk and acceptable damage and loss are determined. Likewise, the populations most vulnerable to climate impacts tend to be those with the least participation and representation in political processes. Therefore, their needs are not always reflected at the political level. This situation makes these people more vulnerable to the state and institutional response of damages and losses.

- Immobility, like mobility, is a dynamic and multicausal phenomenon, which can also be voluntary or forced. Factors such as poverty, public policies, and even social factors such as attachment to the territory and family ties, interact with each other, leading to various situations of mobility and immobility. In addition, immobility is also linked to damage and loss. On the one hand, it is implicit in the act of staying in situ, since it is also a process of assessing the residual risk of the individual and the household. On the other hand, not moving can also lead to damage and loss.

- Human mobility in the context of climate change is influenced by this dialectical dynamic, between the irresponsibility of releasing more greenhouse gases and the intention not to take responsibility for the costs of adaptation or compensation for damages and losses by developed countries.

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• The Office of the High Commissioner for Human Rights has pointed out that the provision of resources by states to respond to the damage caused by climate change is in itself a human rights obligation.

• Human mobility in the context of climate change is a human right. The international community, based on its climate responsibility, must take measures to guarantee this right. These measures include assuming their share of responsibility for the damages and losses suffered by the people forced to mobilize to protect their dignity or with respect to those who bear the full weight of the negative impacts.

2. What legislation, policies and practices do you think are necessary to provide redress for particularly individuals and communities in vulnerable situations that have suffered and will continue to suffer loss and damage due to the adverse impacts of climate change?

See publication: Loss and Damage in a Latin American Context: Summary of Data in NDCs by La Ruta del Clima. A review of the official data reported on NDCs by Latin American countries to the UNFCCC.5

• Develop standards and mechanisms for monitoring, analyzing, and reporting on economic and non-economic loss and damage caused by climate change.
• Develop methodologies with a community based approach to the assessment of loss and damage.
• Correlate and standardize loss and damage related data reported in NDCs to allow for comparative and incremental analyses.
• Promote a regional or international definition of loss and damage to enable a formal, standardized approach.
• Support regional analysis initiatives regarding loss and damage that integrate data reported in the NDCs to develop a Latin American perspective.
• Address loss and damage from a human rights approach and the principle of Common but Differentiated Responsibilities and Respective Capabilities.
• Expand data collection on other aspects of climate impacts and loss and damage, such as immaterial and intangible manifestations, to better understand their impact on diverse populations and communities.
• There is an urgent need for more data on the differentiated impacts of climate change and for more comprehensive studies analyzing these phenomena in order to reflect these realities in public policies and climate action in Latin America.
• Anecdotal information, such as personal testimonies and field observations, is a primary source that must be leveraged as it reflects how the context affects the way in which climate change impacts people.

5 Martinez Blanco and others (n 3). Available at Publications - La Ruta del Clima (on July 2022)
3. Please provide examples of policies and practices (including legal remedies) and concepts of how States, business enterprises, civil society and intergovernmental organisations can provide redress and remedies for individual and communities in vulnerable situations who have suffered loss and damage to the adverse impacts of climate change.

N/A

4. Please provide examples of ways in which States, the business enterprises, civil society and intergovernmental organisations have provided redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage due to the adverse effects of climate change.

N/A

5. What international, regional and national policies and legal approaches are necessary to protect current and future generations and achieve intergenerational justice for particularly for individuals and communities, from the adverse impacts of climate change?

See publication: A human rights-based approach to loss and damage under the climate change regime.⁶

This article proposes the adoption of an HRBA to address loss and damage under the climate change regime. The article states that adopting an HRBA can be an important strategic tool for policymakers to strengthen the international climate change response on loss and damage. Such an approach builds on the existing human rights obligations of Parties under international law and should be based on the six guiding principles set out by the UN.

6. In 2021 at 26th session of the UN Climate Change Conference (COP26), some Parties and civil society organisations proposed a new financial facility to support loss and damage.
   a. Please provide ideas and concepts on how a new facility would operate and how the funds needed to underwrite this fund would be established and maintained.

b. Please provide ideas and concepts on how a new financial facility for loss and damage could provide redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage due to the adverse impacts of climate change.

See publication: Loss and Damage: An Introduction to Paragraph 51 and Compensation.\(^7\)

- The international climate governance conversation about loss and damage began in 1991 during the negotiation process of the United Nations Framework Convention on Climate Change. The Alliance of Small Island States (AOSIS) made a proposal during the fourth meeting of the Intergovernmental Negotiating Committee for the UNFCCC (INC 4), where it introduced both the concept of climate damage and the political call for an international fund to compensate when it is not possible to have insurance for damages caused by climate change.
- The lack of an effective response to address loss and damage is not due to the complexity or novelty of the problem. In fact, the most vulnerable countries have been proposing financing mechanisms and action plans for three decades, but they have not received a response from the international community. The current gap in terms of a response to address loss and damage is a symptom of the irresponsible policies that countries such as the United States have adopted for decades in the international negotiation process on climate change.
- This publication makes a historical review of financial mechanism proposals that have been part of the UNFCCC process in the past 3 decades. It also makes an analysis of the right of climate reparations.
- The most important message of this report is to recognize the historical struggle involved in the demands of vulnerable countries for compensation and recognition of the legal responsibility of large polluters. The invalidation and obstruction of solutions put forward by vulnerable countries responds to a structural issue of the international climate governance process that is causing harm to people’s rights. From the outset of the UNFCCC, the most vulnerable countries have made clear the need for a structural response.

that would benefit the rights of those who are disproportionately affected, and whose responsibility for causing climate change is significantly less.

7. What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisations to dramatically increase efforts to reduce emissions of greenhouse gases, including through support to developing countries, in particular small island developing States, least developed countries and landlocked developing States, to limit the human rights impacts on particularly individuals and communities in vulnerable situations to the adverse impacts of climate change?

N/A

8. What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisation to increase efforts to ensure that actions to adapt to the impacts of climate change contribute to reducing, and not exacerbating, the vulnerabilities of individuals and communities in vulnerable situations to the adverse impacts of climate change?

N/A