



# WHAT DOES A HUMAN RIGHTS-BASED APPROACH TO ADDRESSING LOSS AND DAMAGE LOOK LIKE?

Key Demands for the Outcomes of COP 27  
at the Intersection of Loss and Damage  
and Human Rights

**HUMAN RIGHTS  
& CLIMATE CHANGE**  
WORKING GROUP

الشبكة العالمية  
للحقوق الاقتصادية  
والاجتماعية والثقافية



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# MESSAGES

“COP27 is taking place in a world of aggravated inequalities and uncertainty, and it is also a world where many governments and corporations are using these crises to increase resource extraction and environmental destruction. Tackling climate change means confronting the gross inequalities in wealth, power, and opportunities both historically and in the present — not just to save future generations, but to address the reality of how climate impacts already affect those where these multiple injustices fuse together.”

“In a world where loss and damage is causing 100s of billions of dollars of damage every year - in some countries greater than their entire GDP - forcing countries to take away from investments in health care, education and social services, the wealthy States have to do better.”

“The protection of human rights is at the heart of our struggle for climate justice. We are witnessing how climate induced losses and damages are undermining people’s rights in every way. With the climate crisis escalating, billions of people across the world, and particularly in developing countries, are being denied their fundamental rights- the right to food, water, shelter, property, freedom of movement, livelihoods, health and a clean environment. Addressing climate-induced loss and damage is therefore an assertion to uphold these rights which form the fundamental basis for a safe and just future for all.”

“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.”



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# EXECUTIVE SUMMARY



As human rights and climate justice advocates from around the world, we have outlined in this briefing our key demands for the outcomes of COP27 at the intersection of loss and damage and human rights. The briefing note first discusses principles for a human rights-based approach to addressing loss and damage and second translates these principles into concrete recommendations for COP27, including:

- a. New and additional finance for loss and damage that is needs and rights-centred, public and grant-based, and gender-responsive;
- b. An Executive Committee (ExCom) of the Warsaw International Mechanism for Loss and Damage that protects the rights of those most affected;
- c. A rights-based operationalization of the Santiago Network;
- d. A Global Stocktake (GST) that centres human rights and integrates loss and damage;
- e. A strengthened Gender Action Plan (GAP) that includes loss and damage as an area of improvement.

## INTRODUCTION



The Working Group II contribution to the IPCC sixth assessment report on Impacts, Adaptation and Vulnerability starkly details the devastating climate impacts we are experiencing today, and will continue to experience, amidst intersecting crises, leading to human rights violations and the destruction of our ecosystems. This year we have seen increasing climate-fuelled extreme weather events, including intensifying floods, wildfires, droughts and cyclones, as well as slow-onset processes, like increasing temperatures and sea level rise. Countries and regions such as Pakistan, Nigeria, the Philippines, Honduras, Germany, the United States, Canada, the Caribbean and the Mediterranean have experienced extensive loss and damage, severely undermining the enjoyment of the rights to life, security, food, water, housing, health, education, livelihood, environment, cultural and other rights.

What does loss and damage look like in concrete terms? To consider just one example, according to preliminary estimates, the recent floods in Pakistan inundated one third of the country displacing over 30 million people<sup>1</sup> while the death toll is over 1500, with 552 children among the dead<sup>2</sup>. More than 1 million homes have been damaged or destroyed along with buildings and bridges<sup>3</sup>. 65% of Pakistan's main food crops have been swept away while 45% of agricultural land is now destroyed<sup>4</sup>. Nearly 70% of livestock have perished in South Western Balochistan triggering 40% less production in meat and milk. This is predicted to escalate the food crisis and has crippled rural livelihoods<sup>5</sup>. 23,900 schools and 1460 health facilities have been damaged, and

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12,000 kilometres of roads are under water<sup>6</sup>. The cost of flood related damage is estimated to be 30 billion USD<sup>7</sup>.

The science is clear: historical and present responsibility for the climate crisis lies primarily with wealthy, highly industrialized countries and powerful corporate actors. Yet countries, people, and local communities, especially Indigenous Peoples and those in the Global South, who have contributed the least to the climate crisis, are the hardest hit in terms of loss and damage. Progress is needed on all issues across the climate spectrum at COP27 and we hope that this analysis provides useful lessons for decision makers working on not only loss and damage but other items as well. We turn now to discuss the principles for a human rights-based approach to addressing Loss and Damage.

# PRINCIPLES FOR A HUMAN RIGHTS-BASED APPROACH TO ADDRESSING LOSS AND DAMAGE

International human rights bodies and mandate holders, as well as national courts, have affirmed, in some cases with direct reference to loss and damage, that States need to protect affected individuals and communities from climate-induced human rights harm, domestically and extraterritorially<sup>8</sup>. Five United Nations treaty bodies affirmed in a joint statement that *"States must cooperate in good faith in the establishment of global responses addressing loss and damage suffered by vulnerable countries."*<sup>9</sup>

Given existing human rights obligations including in relation to international cooperation and assistance, and the provision of effective remedy, and in light of extensive knowledge of the drivers and harms of climate change, Parties, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities,<sup>10</sup> must take adequate and urgent action to reduce emissions, support people to adapt to climate change and provide redress to those whose rights have been violated as a result of loss and damage. Meaningful and urgent action at scale is essential to foster international cooperation and global solidarity, and to maintain faith in multilateralism and a functioning climate regime.



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At COP27, it is vital that Parties act urgently and decisively to address loss and damage at the scale required, in ways that centre human rights and climate justice, including in relation to non-economic loss and damage and climate-related forced displacement and migration.<sup>11</sup>

There must be policy coherence across relevant multilateral spaces whether the UNFCCC or relevant regional and international human rights bodies, to ensure consistency in shaping and implementing a human rights-based approach to loss and damage.

Across technical tracks, the following human rights principles form a foundational basis for shaping an effective response to loss and damage.

- *Promoting international cooperation and assistance*
- *Guaranteeing access to information, public participation and access to justice*
- *Enforcing substantive equality, and preventing and redressing intersectional discrimination that individuals and communities disproportionately impacted by the climate crisis may experience in legal, political, policy and institutional responses to their situation*
- *Ensuring accountability, including in relation to extraterritorial obligations*
- *Providing effective remedy*

The section below will consider the integration of these key human rights principles in relation to concrete openings at COP27 on loss and damage.

# KEY DEMANDS FOR COP27 AT THE INTERSECTION OF LOSS AND DAMAGE AND HUMAN RIGHTS

# IV

Several ongoing processes and relevant work streams at COP27 provide important entry points for acknowledging and integrating a human-rights based approach for addressing loss and damage in important mandates under the UNFCCC and Paris Agreement. This section addresses these processes in turn.

# NEW AND ADDITIONAL FINANCE FOR LOSS AND DAMAGE THAT IS NEEDS AND RIGHTS-CENTRED, PUBLIC AND GRANT-BASED AND GENDER-RESPONSIVE

Although the Paris Agreement recognizes the importance of averting, minimizing and addressing loss and damage, existing climate finance mobilized and delivered has centered on mitigation (averting) and adaptation (minimizing), while largely ignoring this last, crucial aspect of providing dedicated financing for addressing loss and damage as the third climate finance pillar. It is critical that existing finance for mitigation and adaptation is scaled up; however, new and additional finance that is needs and rights-centred, public and grant-based, and gender-responsive must also be provided in order to protect human rights in the context of climate-induced loss and damage and to provide remedy for those whose rights have been negatively affected.

Based on state obligations, including extraterritorially, under international human rights law, such as the duty of international cooperation and assistance, the notion of international solidarity, and important principles under the international climate regime, such as equity and common but differentiated responsibilities and respective capabilities (CBDR-RC), countries with a more powerful position in the global economy, more fiscal space and more historical responsibility for climate change have to take the lead in providing a significant share of the required funding<sup>12</sup>. However, as stated by the UN Special Rapporteur on human rights and climate change: *“the major emitting countries have abandoned their duty to cooperate in line with the principles of international cooperation”*<sup>13</sup>. Research shows that existing sources of finance including humanitarian and development aid as well as insurance that are used to support people in at least some contexts relevant for loss and damage, for example in the immediate aftermath of climate impacts, are painfully inadequate and are at best only partial solutions. They are inadequate in scale and scope, being provided on an ad hoc basis de-linked from responsibility, with most donors failing to meet their development aid commitments<sup>14</sup>. The Independent Expert on Human Rights and International Solidarity considers the unwillingness of some to develop the loss and damage agenda in the most robust way, notably through extending strong financial support, as an *‘acute gap in human rights-based international solidarity, demanding a substantive enhancement thereto.*<sup>15</sup>

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The proposal made by the G77+China<sup>16</sup> to establish a Loss and Damage Finance Facility was rejected at COP26. Instead, the three-year Glasgow Dialogue to discuss funding arrangements for loss and damage, was a disappointing and weak outcome. The dialogue must lead to concrete outcomes that provide adequate, new, and additional finance for people most directly impacted. The dialogue should use a human rights-based approach and be inclusive and transparent, allowing for meaningful participation of affected communities and people, and be rooted in the principles of equity, CBDR-RC, justice, fairness, and access, and the polluter pays and do-no-harm principles. Moreover, the dialogue should focus on addressing existing gaps and complement any process to establish and operationalise a Loss and Damage Finance Facility<sup>17</sup>.

There must also be a standing agenda item on loss and damage finance established at COP27 under both the Conference of the Parties to the UN Framework Convention on Climate Change (COP) and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA). This would be separate to the Glasgow Dialogue but should be complementary. The discussions on a New Collective Quantified Goal (NCQG) on international climate finance post-2025 must redress the failures by developed country Parties to fulfil their outstanding commitments to support developing countries with USD100 billion per year by 2020. This must inform the ongoing discussions, which should be based on finance needs on the ground, and include a specific sub-goal for new and additional, grant-based finance for loss and damage, as a third finance pillar beyond mitigation and adaptation. When not provided as direct grants, climate finance may add to the fiscal stress of countries rather than supporting those most affected<sup>18</sup>. This fails to meet basic human rights standards.

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At COP27:

- Parties should agree on **the adoption of the provisional agenda item** “Matters relating to funding arrangements for addressing loss and damage” as a sub-item of “Matters relating to finance” under the COP and CMA as a standing consideration.
- Parties should **decide to establish a Loss and Damage Finance Facility** to be fully operationalised as part of a time-bound process with concrete deliverables by no later than COP29 in 2024, that will provide new, additional, public, grants- and needs based finance to address and remedy the human rights impacts of loss and damage, structured and delivered in ways that are gender-transformative and comply with human rights, including by ensuring that the resources are directly accessible to local communities, and Indigenous Peoples on the frontlines.
- Parties should insist on the inclusion of loss and damage finance in the ongoing work of the technical expert dialogues to determine **the New Collective Quantified Goal (NCQG) on climate finance** with strong political guidance coming from the first high-level ministerial dialogue on the NCQG for a strengthened consideration in 2023.
- Parties should support **ambitious and unconditional debt cancellation** of unsustainable and illegitimate debts<sup>19</sup> to free up funds to address loss and damage.



## AN EXCOM THAT PROTECTS THE RIGHTS OF THOSE MOST AFFECTED

The Warsaw International Mechanism for Loss and Damage (WIM) was established to address loss and damage in developing countries that are particularly vulnerable to the adverse effects of climate change, and therefore its work is inherently about human rights. Its policy arm, the Executive Committee (ExCom), in guiding the implementation of the functions of the WIM, has an important role to play in furthering human rights-based approaches to addressing loss and damage. At COP 27, the ExCom will present its second five year rolling work plan<sup>20</sup>, as it was adopted at its 17th session. This work plan does not match the needs of communities on the ground and the urgency to address these needs. Despite the 2019 review of the WIM, the work plan still focuses mainly on the two first functions of the WIM, neglecting the third function on action and support. Regarding the integration of human rights in the work of the ExCom, there is progress compared to the first work plan, and there are entry points for further deepening this in the implementation of the plan. The COP must play an important role in strengthening the focus of the ExCom on action and support, ensuring synergies between the ExCom and UN Human Rights institutions, and guiding the ExCom towards a rights-based implementation of its second work plan.

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At COP27:

- Parties should urge the ExCom to **strengthen its work plan** with regards to the third function of the WIM, enhancing action and support, including finance, technology and capacity-building.
- Parties should recommend the ExCom to **take a human rights-based approach when implementing its second five year rolling work plan**, including by enabling meaningful observer participation, and engagement of those on the frontlines of climate change, including women, youth, Indigenous Peoples, local communities, and persons with disabilities.
- Parties should encourage the ExCom to **strengthen and formalize connections with national and UN Human Rights institutions and mechanisms** (such as the Office of the High Commissioner for Human Rights (OHCHR) and relevant UN Mechanisms and Special Procedures).

# A RIGHTS-BASED OPERATIONALISATION OF THE SANTIAGO NETWORK

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The Santiago Network is the implementation arm of the WIM. It is not yet operational. It was established in 2019 following the review of the WIM where Parties identified that the WIM was not delivering on its third function, to enhance action and support including finance, technology and capacity building. The Santiago Network would address this gap by catalysing the technical assistance of organisations, bodies, networks and experts (OBNEs), for the implementation of approaches to address loss and damage. Parties have agreed its functions but have not finalised negotiations on its institutional arrangements. At COP27 Parties will be negotiating the structure of the Santiago Network including its governance arrangements, the arrangements for a secretariat/coordinating body and selection process for an organisation to host that body. They will also discuss other elements that need to be resolved to fully operationalise the Santiago Network, including the connection with the national level and other stakeholders, the role of the ExCom to ensure that the work of the two bodies is complementary, and funding arrangements both for operations and for technical assistance.

The technical assistance delivered by the Santiago Network should prioritise the needs of those who have been made vulnerable through historic marginalisation, and be aimed at respecting, promoting and protecting their human rights. The guiding principles that drive the Santiago Network and its terms of reference should explicitly include human rights, the rights of Indigenous Peoples - including ensuring their right to Free, Prior and Informed Consent, and the rights of local communities. The OBNEs should include international, regional and national human rights institutions. The operational modalities should be inclusive and transparent, allowing for meaningful public participation, for those most affected by loss and damage. The activities it catalyses should be needs-based, demand-driven, locally-led, gender-transformative, promote substantive equality and non-discrimination, and address all types of loss and damage: economic and non-economic, and sudden and slow-onset. The Santiago Network can play an important role in supporting the conduct of inclusive and participatory Loss and Damage Needs Assessments (LDNAs), to allow for an understanding of how economic and non-economic loss and damage relate to human rights harms, and developing effective responses to these harms. Using a human rights-based approach to inform the LDNA will enable the identification of a wide spectrum of loss and damage, capturing its full extent, while inclusion and meaningful participation will help building consensus and support. An effective and efficient Santiago Network also requires the availability of sufficient resources.

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At COP27:

- Parties should decide on **guiding principles for a human rights-based elaboration of the institutional arrangements** of the Santiago Network, leading to:
  - Meaningful participation of those on the frontlines of climate change impacts such as Indigenous Peoples, local communities, women, youth and children and persons with disabilities
  - Demand-driven, locally-led, gender-responsive solutions, which promote substantive equality and non-discrimination, and are guided by the best available science including Indigenous and local knowledge
  - Simplified and facilitated direct access for those most marginalised
  - Transparency and accountability
- Parties should establish **a representative and inclusive Advisory Body** for the Santiago Network, enabling it to provide oversight that ensures that the delivery of technical assistance is compliant with human rights and based on needs on the ground.
- Developed country Parties should commit to **substantial funding** of the Santiago Network both for its operations and the provision of technical assistance.

## A GLOBAL STOCKTAKE (GST) THAT CENTRES HUMAN RIGHTS AND INTEGRATES LOSS AND DAMAGE

# D

The first Global Stocktake (GST) on progress in the implementation of the Paris Agreement was initiated at COP26 as a technical expert review and will be concluded at COP28. The GST formally focuses on mitigation, adaptation and means of implementation (finance, technology and capacity-building). According to the decision laying out the modalities of the GST (19/CMA.1), loss and damage ‘may be taken into account’ as it relates to those topics. In the first round of Technical Dialogues, happening at the Bonn Climate Conference in June 2022, despite specific guiding questions on it proposed by the SB chairs, loss and damage did not receive the equal attention it deserves. Parties need to make sure that loss and damage, and related human rights impacts and the gaps in addressing them, are adequately included in the Technical Dialogue happening at COP27, and the final outcome of the GST.

Similarly, cross-cutting issues of human rights and gender equality have received little attention in the technical review. Technical meetings at COP27 and leading toward the GST conclusion and political outcome at COP28 should prominently integrate human rights and gender equality,

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and recommendations to address loss and damage in the light of significant gaps and shortcomings of mitigation and adaptation actions. They need to particularly highlight that the mitigation and adaptation action gaps, aggravated by the failure of developed countries to fulfil their financing obligations, increases the likelihood and severity of loss and damage for the poorest and most marginalized people and communities in developing countries with devastating implications for human rights.

## A STRENGTHENED GENDER ACTION PLAN (GAP) THAT INCLUDES LOSS AND DAMAGE AS AREA OF IMPROVEMENT

At COP27, parties will continue their intermediate review of the progress in implementing the UNFCCC's gender action plan (GAP) under the ongoing five-year Enhanced Lima Work Programme on Gender which began in June this year. Parties and observers have already identified loss and damage in submissions as a missing area of focus under the GAP. Parties should recommend further work on loss and damage to be undertaken under the GAP's priority area of activities. Integrating loss and damage towards gender-responsive or gender-transformative implementation, finance capacity-building and technology will support assessing and addressing the disproportionate impact of loss and damage on women and girls.

## CONCLUSION

The Paris Agreement recognizes that:

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

This is especially relevant in the context of loss and damage. The failure of Parties, particularly Parties bearing historical responsibility and with the most available resources, to meaningfully address loss and damage is causing immense human suffering, and is not compliant with international legal duties, including human rights obligations. **COP27 will be an important moment to change this course.**

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# V

“ **The failure of Parties, particularly Parties bearing historical responsibility and with the most available resources, to meaningfully address loss and damage is causing immense human suffering, and is not compliant with international legal duties, including human rights obligations.**”

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## IMAGE CREDITS

1. Pakistani women wade through floodwaters as they take refuge in Shikarpur district of Sindh Province, of Pakistan. Image credit: [Fareed Khan/AP/Shutterstock](#)
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