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COP 26 BRIEFING NOTE:

ESCR-Net members call on Parties to Deliver on Loss and Damage with a focus on Human Rights

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COP 26 BRIEFING NOTE

ESCR-Net members call on Parties to Deliver on Loss and Damage with a focus on Human Rights

“...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.”

Preamble, Paris Agreement

In this briefing ESCR-Net members¹ join civil society and social movements in calling on Parties, particularly Parties bearing historical responsibility for the climate crisis, as well as with the most available resources, to prioritize, and concretely deliver on, loss and damage at COP 26, including through the provision of new, additional and long-term finance for loss and damage. In doing so, we ask that Parties adopt a human rights-based approach. The briefing provides observations in relation to:

A) How does loss and damage relate to human rights? Why is a human rights-based approach important?

B) Recommendations to Parties:

1. Integrate Human Rights in Decisions to Avert, Minimize and Address Loss and Damage

- *Adopt an Intersectional Approach*
- *Ensure the Rights to Self-Determination and Participation*
- *Strengthen and Update Human Rights and Corporate Accountability Frameworks in light of the Climate Crisis*
- *Act Ambitiously on Mitigation and Adaptation to Reduce the Future Scale of Loss and Damage; Reject False Solutions*
- *Center Human Rights in Environmental Decision-Making within International Multinational Organizations and International Financial Institutions*

2. Deliver on Climate Finance in ways that Comply with Human Rights, are Gender Responsive, Proactively Address Intersectional Challenges and Support Efforts towards Fiscal Justice

- *Deliver Sufficient Climate Finance, including New, Additional and Long-Term Funding for Loss and Damage*
- *Ensure Finance is Structured and Delivered in ways that Respect Human Rights, are Gender Responsive and Proactively Address Intersectional Challenges*
- *Support Concrete Efforts towards Fiscal Justice including Debt and Tax Justice*

3. Agree on Governance Issues which would lead to Better Human Rights Outcomes on Loss and Damage

- *Establish Loss and Damage as a Permanent Standing Agenda Item*
- *Operationalize the Santiago Network, an important step in establishing the implementation apparatus of the Warsaw International Mechanism (WIM), adopting a rights-based approach*

¹ ESCR-Net - International Network for Economic, Social and Cultural Rights connects over 280 non-governmental organizations, social movements, and advocates across more than 75 countries to build a global movement to make human rights and social justice a reality for all. Several network members contributed to the strategy, research, drafting, and/or reviewing of this briefing, in particular through participation in a series of regional consultations in Asia, Africa, Latin America and the Middle East and North Africa. Special thanks to: Al Haq (Palestine); Asian Forum for Human Rights and Development (FORUM-ASIA) (Thailand); Asia Indigenous Peoples Pact (AIPP) (Thailand); Asia Pacific Forum on Women, Law and Development (APWLD) (Thailand); Association des Amoureux du Livre pour le Développement Local (ASSOAL) (Cameroon); Bangladesh Legal Aid and Services Trust (BLAST) (Bangladesh); Center for Economic and Social Rights (CESR) (United States); Centre for Human Rights and Development (CHRD) (Mongolia); Comité Ambiental en Defensa de la Vida (Colombia); Confederación Campesina del Perú (Peru); Egyptian Association for Collective Rights (Egypt); Dibeem Association for Environmental Development (Jordan); Egyptian Initiative for Personal Rights (EIPR); FIAN International; Forest Peoples Programme (UK); Foundation for the Conservation of the Earth (FOCONE) (Nigeria); Fundación Promoción Humana (Argentina); Green Advocates (Liberia); Housing and Land Rights Network (HLRN); Hakijamii (Kenya); Human Rights Law Network (India); Interamerican Association for Environmental Defense (AIDA) (Mexico, Colombia, Ecuador); Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) (United States); International Women’s Rights Action Watch Asia Pacific (IWRAP-AP) (Malaysia); Institut Prometheus pour la Démocratie et les Droits Humains (IPDDH) (Morocco); Kavita Naidu; Kenya Land Alliance (KLA) (Kenya); Land Research Center (Palestine); Lok Shakti Abhiyan (India); Manushya Foundation (Thailand); Movement for the Survival of the Ogoni People (MOSOP) (Nigeria); Organización Fraternal Negra Hondureña (OFRANEH) (Honduras); Ogiek Peoples Development Program (OPDP) (Kenya); Pakistan Fisherfolk Forum (PFF) (Pakistan); Pro Public- Forum for the Protection of Public Interest (Nepal); Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC) (Mexico); Right to Water Forum in the Arab Region (RWFAR) (Egypt); and SAPCONE-Turkana People Organization (Kenya). Much appreciation also to Monserrat Madariaga Gómez de Cuenca and Maritza Florian.

A. How does Loss and Damage relate to Human Rights? Why is a Human Rights-based Approach Important?

Effectively and urgently addressing loss and damage, considered the third pillar in international climate law and policy and embedded in the Paris Agreement, is a human rights and climate justice imperative. According to emerging understanding, loss and damage from climate change relates to those impacts that cannot be avoided through adaptation and mitigation activities.² Climate-fueled extreme weather events, including bushfires, cyclones, floods, droughts, as well as slow-onset processes, like increasing temperatures and sea level rise, are resulting in loss and damage, which hugely impacts human societies and infrastructure, as well as the natural environment, and severely undermines the enjoyment of the rights to life, security, food, water, housing, health, education, livelihood, environment and other rights.³ Climate change detection and attribution science now more clearly links human-induced climate change with these extreme weather events and slow onset processes, providing a firmer causal basis to establish human rights harm in the context of climate impacts.⁴ Meanwhile, international human rights bodies and mechanisms, as well as national courts have affirmed,⁵ in some cases with direct reference to loss and damage, that Parties need to protect affected individuals and communities from climate-induced human rights harm, domestically and extraterritorially.

This year has only reinforced⁶ how loss and damage through catastrophic social and economic consequences, from wide-scale loss of life to billions of dollars of damage to crops, homes, livelihoods or infrastructure, result in serious human rights harm, cripple national economies and lead countries into further debt,⁷ which in turn limits fiscal space to take measures to avert, minimize and address loss and damage. Climate impacts are also forcibly displacing millions of people⁸ which has a cascading impact on human rights, including economic, social and cultural rights.⁹ Additionally, there are those who cannot migrate because they do not have the capability to do so. Involuntary immobile populations can frequently be among the most vulnerable to climate impacts.¹⁰ Moreover, individuals and communities are experiencing devastating non-economic harm, undermining human rights, including cumulative negative effects on human health and mobility; loss of community networks, access to lands and territories, cultural traditions and indigenous and local knowledge; depletion of livestock production; and damage to biodiversity and habitats.¹¹ Human rights, particularly of those most marginalized, are at stake with increasingly irreversible loss and damage.

Historical and present responsibility for the climate crisis lies with wealthy, highly industrialized countries and powerful corporate actors. The peoples and communities in the Global South have contributed the least to the climate crisis yet experience the worst impacts of climate change. Colonialism, extractivism and imperialism have forced the Global South

² For more, on loss and damage, *please see*, Climate Analytics, Loss and Damage, <https://climateanalytics.org/briefings/loss-and-damage/>; See also: UNFCCC, Online Guide on Loss and Damage, 2018, https://unfccc.int/sites/default/files/resource/Online_guide_on_loss_and_damage-May_2018.pdf.

³ See generally, Amnesty International, Stop Burning Our Rights: What Governments and Corporations Must Do to Protect Humanity from the Climate Crisis, 2021, <https://www.amnesty.org/en/documents/pol30/3476/2021/en/>; Also of relevance here is the Human Rights Council recognition that a clean, healthy and sustainable environment is a human right. See, UN News, Access to a healthy environment, declared a human rights by UN Rights Council, 8 October 2021, <https://news.un.org/en/story/2021/10/1102582>

⁴ For more on the linkage, please see: The Intergovernmental Panel on Climate Change (IPCC) et al., Climate Change 2021: The Physical Science Basis, Summary for Policymakers, 2021, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf; Sabin Center for Climate Change Law, Columbia Law School, Climate Attribution Database, <https://climateattribution.org/>; Nathaniel L. Bindoff et al., Detection and Attribution of Climate Change: from Global to Regional, Climate Change 2013: The Physical Science Basis, Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, 2013.

⁵ See for example: David Richard Boyd, Safe Climate: A Report of the Special Rapporteur of Human Rights and the Environment, 2019, paras 65, 91 and 92, <https://undocs.org/A/74/161>; OHCHR, Frequently Asked Questions on Climate Change and Human Rights-Fact Sheet No. 38, 2021, https://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf; UN Committee on Economic, Social and Cultural Rights (CESCR), Climate change and the International Covenant on Economic, Social and Cultural Rights, 8 October 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E>; State of the Netherlands v. Urgenda Foundation, ECLI:NL:HR:2019:2007, Judgment (Sup. Ct. Neth. Dec. 20, 2019) (Neth.)

⁶ See for example, Chloe Brimicombe, Reviewing the Summer of Extreme Weather, CarbonBrief, 8 September 2021, carbonbrief.org/guest-post-reviewing-the-summer-of-extreme-weather-in-2021; Collation of articles from the Guardian, 2021, <https://www.theguardian.com/world/extreme-weather>;

⁷ Daniel Willis, There is no Climate Justice without Debt Justice, Global Justice Now, 20 September 2021, <https://www.globaljustice.org.uk/blog/2021/09/there-is-no-climate-justice-without-debt-justice/>

⁸ See for example, Ajit Niranjana, Extreme weather displaces record numbers of people as temperatures rise, DW, 20 May 2021, <https://www.dw.com/en/climate-refugees-migration-displacement/a-57585752>;

⁹ Benjamin Bathke, Greatest challenge to human rights' – UN demands support for rising number of 'environmental migrants', InfoMigrants, 22 September, 2021, <https://www.infomigrants.net/en/post/35222/greatest-challenge-to-human-rights--un-demands-support-for-rising-number-of-environmental-migrants>; Dimitri Manou et al. (eds.), Climate Change, Migration and Human Rights-Law and Policy Perspectives, 2018.

¹⁰ Kira Walker, Immobility: The neglected flipside of the climate displacement crisis, 26 April 2021, <https://www.thenewhumanitarian.org/analysis/2021/4/26/the-climate-displacement-crisis-has-a-neglected-flipside>

¹¹ UNFCCC, Non-economic losses, <https://unfccc.int/wim-excom/areas-of-work/non-economic-losses>

to confront these climate impacts with scarce resources, increasing peoples' climate vulnerabilities and undermining their adaptive capacities, resulting in immense global inequalities.¹²

The lack of commitment of Parties, particularly Parties bearing historical responsibility and with the most available resources, to address the impacts and injustices of loss and damage, amidst intersecting crises including the COVID-19 pandemic, is causing immense human suffering. Urgently addressing loss and damage through adopting a rights-based approach with a focus on equity can help shape solutions which prioritize the well-being of people and nature and are effective and sustainable in the long term. It allows Parties to comply with obligations under the Paris Agreement, as well as other international legal duties, including human rights obligations, and maintain trust and confidence in the multilateral system.¹³

At COP 26, it is vital that Parties, with developed Parties taking proportionate measures, act decisively and provide sufficient targeted finance to address loss and damage at the scale required, in ways that center human rights and climate justice.

RECOMMENDATIONS TO Parties:

At COP 26 and beyond, ESCR-Net members call on Parties to prioritize loss and damage, and in particular to:

1. Integrate Human Rights in Decisions to Avert, Minimize and Address Loss and Damage and *inter alia*:

- a. ***Adopt an Intersectional Approach:*** The climate crisis and consequent loss and damage disproportionately impacts those facing marginalization¹⁴ and exacerbates structural inequalities.¹⁵ Right-holders who belong to racial and ethnic minorities including Black People, and gender and sexual minorities including non-binary and gender nonconforming persons; women and girls; Indigenous Peoples; migrants; persons with disabilities; persons living in conflict-affected areas including situations of occupation and apartheid; and individuals and communities facing impoverishment and dispossession, for example, small-scale food producers, often experience intersecting forms of marginalization, including in the context of climate change impacts,¹⁶ that deserve targeted attention and tailored policy responses. The multi-layered forms of discrimination that such groups experience must be systematically considered and redressed when addressing loss and damage.

Human rights standards require States to ensure substantive equality, and prevent and redress intersectional discrimination that individuals and communities disproportionately impacted by the climate crisis may experience in legal, political, policy and institutional responses to their situation.¹⁷ Decisions and action at COP 26 on loss and damage and subsequently by Parties should adopt an intersectional approach grounded in human rights norms and climate justice to design solutions which effectively meet the fundamental needs of affected individuals and communities. The principle of equity, as well as the principle of common but differentiated responsibility and respective capabilities are relevant in the context of exchanging experience and expertise towards adopting such an approach and ensuring there are enough resources to adopt such an approach at scale. Parties must also collect disaggregated data in order to map disproportionate impacts and needs.

¹² It is important to recall that States have committed to reducing inequality within and among countries under Goal 10 of the Sustainable Development Goals, <https://www.un.org/sustainabledevelopment/inequality/>

¹³ See LMDC Ministerial Statement, 2021: <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/oct/doc2021101821.pdf>

¹⁴ See IPCC, Climate Change 2007 – Impacts, Adaptation and Vulnerability – Contribution of Working Group II to the Fourth Assessment Report of the IPCC, 2007, p. 374, https://www.ipcc.ch/site/assets/uploads/2018/03/ar4_wg2_full_report.pdf; See also IPCC, 2018 Special Report: Global Warming of 1.5°C, Summary for Policymakers, at B.5.1, 2018, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf [“Populations at disproportionately higher risk of adverse consequences with global warming of 1.5°C and beyond include disadvantaged and vulnerable populations, some indigenous peoples, and local communities dependent on agricultural or coastal livelihoods (high confidence)”]; UN CEDAW Committee, General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change, 7 February 2018, para. 1-9, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_37_8642_E.pdf

¹⁵ See for example, UN CEDAW Committee, General Recommendation 37 on Gender-related dimensions of disaster risk education in the context of climate change, 2018, para. 2, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_37_8642_E.pdf

¹⁶ Anna Kaijser and Annica Kronsell, Climate change through the lens of intersectionality, Environmental Politics, 2014, p. 418.

¹⁷ See for example, UN CESCR, General Comment No. 20 on Non-discrimination in Economic, Social and Cultural Rights, 2009, para. 8, <https://www.refworld.org/docid/4a60961f2.html>; UN CESCR General Comment No. 16 on The equal right of men and women to the enjoyment of all economic, social and cultural rights, 2005, <https://www.refworld.org/docid/43f3067ae.html>; UN CEDAW Committee, General Comment No. 28 on the core obligations of Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 2010, para. 18, <https://www.refworld.org/docid/4d467ea72.html>

- b. ***Ensure the Rights to Self-Determination and Participation:*** Core to effectively addressing loss and damage is acknowledging and enforcing the right to self-determination, an overarching principle of international law.¹⁸ Indigenous Peoples and other peoples, including those in situations of conflict, occupation and apartheid, have a fundamental right to shape responses to loss and damage and prioritize their collective well-being as part of their right to self-determination, including the right to freely dispose of their natural wealth and resources. Rights must be upheld on the basis of their inherent value, and doing so can support sustainable and successful mitigation and adaptation efforts which helps prevent loss and damage.¹⁹ For example, secure land rights are an essential element of the right to self-determination of Indigenous Peoples,²⁰ and strengthening such rights can lead to effective mitigation and adaptation²¹ and supports addressing loss and damage in ways that are more responsive to the well-being of people and nature.²²

Further, there is a need to strengthen related rights including rights to ownership of land, territory and resources, the principle of free, prior, and informed consent²³ and the rights to effective participation, for rural and urban populations, in all decision-making in relation to how loss and damage is addressed, averted and minimized, and more broadly in climate-related decision-making.²⁴ On participation, wide ratification and enforcement of the Escazú Agreement (Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean) (2018) would be an important step for governments to effectively meet loss and damage obligations under the Paris Agreement. This Latin American treaty is very relevant for the shaping of Nationally Determined Contributions (NDCs) and climate change commitments in the region, as it guarantees access to environmental information and public participation on environmental matters. Ensuring that civil society organizations and citizens participate in the NDC formulation process, as well as measures to address mitigation, adaptation and loss and damage, is essential. In this context, it is important to address the structural barriers to women's access to participation. The Escazú agreement is one way to promote participation,²⁵ especially in countries where the right to participation is under-recognized in national legislation.²⁶ Further, the agreement guarantees protection of environmental defenders. The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) is also relevant in the context of participation.²⁷ Considering frameworks similar to Escazú and Aarhus across legal jurisdictions would be helpful in supporting work on loss and damage to advance effectively. For effective participation, the rights to information and transparency are also critically important. That includes unrestricted access to high-quality and disaggregated data on measures taken in relation to mitigation, adaptation and loss and damage. Parties must center the rights to self-determination and participation, as well as related rights, in all relevant decisions and action on loss and damage at COP 26 and afterwards.

- c. ***Strengthen and Update Human Rights and Corporate Accountability Frameworks in light of the Climate Crisis:*** To effectively meet the goals of the Paris Agreement as relates to loss and damage under Article 8, Parties will need to fundamentally strengthen and overhaul legal and policy frameworks in relation to human rights and corporate accountability at international, regional and national levels.²⁸ Towards this, at COP 26 and beyond, Parties must

¹⁸ Aureliu Cristescu, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, The Right to Self-Determination: Historical and Current Development based on United Nations Instruments, United Nations, 1981, <https://undocs.org/pdf?symbol=en/E/CN.4/Sub.2/404/Rev.1>

¹⁹ On the self-determination rights of peoples over their natural wealth and resources being a pre-requisite for climate change adaptation options, please see, Suha Jarrar, Adaptation Under Occupation: Climate Change Vulnerability in the Occupied Palestinian Territory, Al-Haq, 2019, https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf

²⁰ Indigenous Peoples Release Rio +20 Declaration, 19 June 2012, para. 3, <https://www.forestpeoples.org/en/topics/sustainable-livelihoods/publication/2012/indigenous-peoples-release-rio-20-declaration>

²¹ Hannah Mowat and Peter Veit, The IPCC Calls for Securing Community Land Rights to Fight Climate Change, 8 August 2019, <https://www.wri.org/insights/ipcc-calls-securing-community-land-rights-fight-climate-change>

²² See for example, Food and Agricultural Organization of the United Nations (FAO) et al., Indigenous Peoples' food systems: Insights on sustainability and resilience in the front line of climate change, 2021, pp.6-8, 14, <https://doi.org/10.4060/cb5131en>.

²³ See generally, UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Free, prior and informed consent: a human rights-based approach, 10 August 2018, <https://undocs.org/A/HRC/39/62>

²⁴ See for example, UN Human Rights Office of the High Commissioner (OHCHR), 5 UN Treaty Bodies issue a joint statement on human rights and climate change, 16 September 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998>

²⁵ On gender specifically, please see: Articles 3 (a) and 7 (10), Escazú Agreement (Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean), 2018, https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf

²⁶ Madariaga, M., Policy brief, Observatorio Ley de Cambio Climático | Participación Ciudadana en el Proyecto de Ley Marco de Cambio Climático, 9 June 2020, <https://www.cr2.cl/policy-brief-observatorio-ley-de-cambio-climatico-participacion-ciudadana-en-el-proyecto-de-ley-marco-de-cambio-climatico/>

²⁷ Also relevant, The Rio Declaration on environment and development, 1992, Principle 10, https://culturalrights.net/descargas/drets_culturals411.pdf

²⁸ On human rights frameworks, see for example, Dominique Calañas et al., Tied Hands: Fact Finding Mission Report on Harawa-Charawa: Debt, Poverty and Climate Change in Dhanusha, Nepal, FORUM-ASIA, pp. 62-65, <https://www.forum-asia.org/uploads/wp/2021/06/Tied-Hands-Nepal-Fact-Finding-Mission-Report-on-Harawa-Charawa-FORUM-ASIA.pdf>

ensure that relevant decisions align strongly with human rights and corporate accountability norms and frameworks to protect peoples' rights from loss and damage. Reaching consensus on frameworks and mechanisms to deliver targeted finance and resources will allow for concrete support to people affected by loss and damage. Such support should include setting up, safeguarding and expanding social protection systems,²⁹ establishing universal renewable energy as a common good,³⁰ and increasing investment in public services, including health care, utilities for drinking water supply, sanitation and waste management, care work and education. Parties must urgently address climate induced forced displacement and migration, through *inter alia*, enhanced legal protections for persons forcibly displaced by disasters and climate change³¹ and the rejection of militarized responses, as seen, for instance, at the borders of the United States and Europe.³² Further, it is vital to integrate human rights into – and devote more resources, in addition to development aid to risk assessment and mitigation actions as well as disaster preparedness and humanitarian response. Moreover, given the outsized role of corporations under the dominant neoliberal economic system in causing and worsening the climate crisis and consequent human rights harm, Parties must effectively regulate businesses, domestically and extraterritorially.³³

- d. **Act on Mitigation and Adaptation and Reject False Solutions:** If we continue our current trajectory,³⁴ we will emphatically fail to keep warming below 1.5 degrees, climate impacts will increase in scale and intensity, and the consequent loss and damage will entail enormous human rights harms for individuals and communities. Effective action on mitigation and adaptation is essential to reduce the future scale of loss and damage. Decisions towards immediate and full divestment from fossil fuels, ending all fossil fuel subsidies, enhanced ambition and transparency in emission reduction to real zero to ensure a just and equitable transition, centering human rights, gender equality and climate justice, are a COP 26 priority. It is outrageous that according to new research the fossil fuel industry is currently benefitting from subsidies of 11 million dollars per minute.³⁵

Parties must submit new and updated NDCs with the highest possible ambition and take decisive action on mitigation and adaptation within strong monitoring and accountability frameworks. We also urge Parties to ensure compliance with human rights in the context of mitigation and adaptation measures, which otherwise can create environmental damage and cause negative effects for a range of human rights at a systemic level. For example, forcible dispossession to set up facilities for renewable energy production³⁶ or fortress conservation³⁷ or dominant

²⁹ See for example, ActionAid & Rosa Luxemburg Stiftung, *Avoiding the Climate Poverty Spiral: Social protection to address climate-induced loss and damage*, 2021, <https://actionaid.org/publications/2021/avoiding-climate-poverty-spiral-social-protection-avoid-climate-induced-loss>

³⁰ See for example, Lucy Cadena, *People Power NOW- An Energy Manifesto*, Friends of Earth International, 2018, <https://www.foei.org/wp-content/uploads/2018/11/14-FoEI-PPN-manifesto-ENG-Ir.pdf>

³¹ See for example, The Manila Initiative on the Rights of Climate Migrants, 2019, <https://climatemigrationforum.net/wp-content/uploads/2019/10/Manila-Initiative.pdf>; Harjeet Singh et al., *Costs of Climate Inaction: Displacement and Distress Migration*, Action Aid and others, December 2020, <https://actionaid.org/sites/default/files/publications/ActionAid%20CANSAs%20-%20South%20Asia%20Climate%20Migration%20-%20Dec%202020%20-Final.pdf>

³² Todd Miller, et al., *Global Climate Wall: How the world's wealthiest nations prioritise borders over climate action*, Transnational Institute, October 2021, <https://www.tni.org/files/publication-downloads/global-climate-wall-report-tni-web-resolution.pdf>; Ruby Russell, *Building Walls to Keep Refugees Out*, DW, 11 April 2019, <https://www.dw.com/en/building-walls-to-keep-climate-refugees-out/a-48273469>

³³ See UN OHCHR, *Human Rights, Climate Change and Business: Key Messages*, p. 1, 5, 7, <https://www.ohchr.org/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>. See also UN Guiding Principles on Business and Human Rights, 2011, Principle 1, https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf; UN CEDAW Committee, *General Recommendation 37 on Gender-related dimensions of disaster risk education in the context of climate change*, 2018, para. 49; UN Committee on the Rights of the Child, *General Comment 15 on the right of the child to the enjoyment of the highest attainable standard of health*, 2013, para. 5, 71, <https://www.refworld.org/docid/51ef9e134.html>; UN CEDAW Committee, CESCR, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Joint Statement on Human Rights and Climate Change*, 16 September 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>;

David Richard Boyd, *Safe Climate: A Report of the Special Rapporteur of Human Rights and the Environment*, 2019, paras 52, 65, <https://undocs.org/A/74/161>; Also relevant here is a recent case, in which the Hague District Court recognized the responsibility of a corporation based on the Civil Code's unwritten standard of care, holding Royal Dutch Shell accountable for the impact of their CO₂ emissions on climate change and ordered the Shell group to reduce such emissions by net 45% in 2030, compared to 2019 levels, through their corporate policy. In its ruling, the Court factored in human rights, such as Articles 2 and 8 of the ECHR, in its interpretation regarding the civil standard of care. See, *The Hague District Court, Milieudefensie et al. v. Royal Dutch Shell (English)*, 26 May 2021: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339#_924824fc-f061-4321-b9ec-95e763787836.

³⁴ UNFCCC, *Nationally determined contributions under the Paris Agreement- Synthesis report by the secretariat*, 17 September 2021, <https://unfccc.int/documents/306848>

³⁵ Damian Carrington, *Fossil fuel industry gets subsidies of \$11m a minute, IMF finds*, *The Guardian*, 6 October 2021,

<https://www.theguardian.com/environment/2021/oct/06/fossil-fuel-industry-subsidies-of-11m-dollars-a-minute-imf-finds>

³⁶ Business and Human Rights Resource Centre, *Renewable Energy and Human Rights Benchmark*, 20 June 2020, <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>; GI-ESCR, *Renewable Energy and Gender Justice*, 2020;

<https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/5fcd89224ef20e41a29d3390/1608288572840/2020-Briefing-paper-renewable-energy-and-gender-justice.pdf>

³⁷ See for example, Irene Wabiwa Betoko and Savio Carvalho, *To protect nature, bring down the walls of fortress conservation*, *Greenpeace*, 20 October 2020, <https://www.greenpeace.org/international/story/45497/indigenous-people-biodiversity-fortress-conservation-power->

corporate-driven climate narratives aiming to make agriculture ‘climate smart’, have perpetuated dynamics of expulsion, land concentration and violence against nature and people and are rendering communities and ecosystems more vulnerable and less able to cope with climate impacts.

- e. **Center Human Rights in Environmental Decision-Making within International Multilateral Organizations and International Financial Institutions (IFIs):** As climate change rises on the international agenda, States increasingly address issues relevant to loss and damage via international forums, international multilateral organizations, and international financial institutions (IFIs) such as the International Monetary Fund and the World Bank, including in the realm of international cooperation and assistance. Decisions taken in these contexts have far-reaching consequences on local communities worldwide and may result in adverse human rights impacts on their lives. We call on Parties at COP 26 to commit to integrating a human rights-based approach in decisions made within international multilateral organizations and international financial institutions or within their executive organs.³⁸ This includes centering mandatory human rights due diligence into decision-making about funding and grants to be provided with a purpose to mitigate climate change effects, adapt thereto or address loss and damage; ensuring robust and enforceable human rights safeguards, including liability, monitoring and accountability frameworks; and eliminating engagement with false solutions.³⁹

In relation to Nationally Determined Contributions (NDCs), whether submitting new ones or updating existing NDCs before COP 26 or beyond, we call on Parties to include a loss and damage component which centers a human rights approach. Similarly, where human rights have been mentioned in NDCs, they should be linked in the implementation phase or when updated, to measures to address, avert and minimize loss and damage, given the strong interrelationship. COP 26 must provide clear direction in terms of concrete action on loss and damage which centers a human rights and climate justice approach and advances efforts holistically, in collaboration with other relevant international and regional frameworks and agencies as well as relevant national stakeholders, while accounting for other intersecting crises exacerbating the human costs of loss and damage, including the debt crisis and the COVID-19 pandemic.

2. Deliver on Climate Finance in ways that Comply with Human Rights, are Gender Responsive, Proactively Address Intersectional Challenges and Support Efforts towards Fiscal Justice

Adequate resources are imperative to effectively address loss and damage while foregrounding human rights. Parties and the international institutions of which they are members, must offer international assistance and cooperation in fiscal matters, and create an enabling global governance environment with the goal of achieving the full realization of human rights.⁴⁰ To realize rights and meet their Paris Agreement obligations, at COP 26 and after, Parties must mobilize, allocate, and utilize *sufficient* public resources in ways that conform to the principles of transparency, participation and accountability.⁴¹ In particular, in line with the principles of equity and common and differentiated responsibility and respective capabilities, we call on Parties to:

- a. **Deliver Sufficient Climate Finance:** In doing so, at COP 26 Parties must prioritize those most affected by climate impacts, including, at the minimum, creating more fiscal space for developing countries by meeting the current 100 billion dollar a year commitment, which has already been unacceptably delayed.⁴² However, this figure needs to be significantly increased. It is not close to the scale needed to address the climate crisis. Consider that just the

[shift/#:~:text=Restoring%20balance%20requires%20governments%20to,Indigenous%20Peoples%20and%20local%20communities](#); Manushya Foundation, Joint statement: Thai authorities must release 22 Bang Kloi Karen and drop all forest encroachment charges, 6 March 2021, available at:

<https://www.manushyafoundation.org/joint-statement-save-bangkloi>

³⁸ Particularly relevant here is Principle 15, Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 2013,

https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf

³⁹ The lack of such safeguards in the past has led to human rights violations. See for example, Friends of the Earth, REDD+ The Carbon Market and the California-Acre-Chiapas Cooperation: Legalizing Mechanisms of Dispossession, June 2017, available at: https://www.foei.org/wp-content/uploads/2018/01/REDD_The-carbon-market-and-the-California-Acre-Chiapas-cooperation.pdf; CIFOR, Rights abuse allegations in the context of REDD+ readiness and implementation: A preliminary review and proposal for moving forward, 2017, <https://www.cifor.org/knowledge/publication/6630/>; For more on false solutions, see, for example, Just Transition Alliance, False Solutions to Climate Change, <http://jtalliance.org/wp-content/uploads/2020/02/False-Solutions.pdf>; See also, Ronnie Hall, The great REDD gamble, Friends of the Earth International, 2014, <https://www.foei.org/wp-content/uploads/2014/09/The-great-REDD-gamble.pdf>

⁴⁰ Initiative for Human Rights Principles in Fiscal Policy et al., Principles for Human Rights in Fiscal Policy, May 2021, Principle 13,

https://derechosypolitica.fiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf

⁴¹ See for example, Initiative for Human Rights Principles in Fiscal Policy et al., Principles for Human Rights in Fiscal Policy, May 2021, Principle 1.2,

https://derechosypolitica.fiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf

⁴² Megan Rowling, ‘Shameful’ failure to meet climate finance goal risks undermining COP26 talks, Reuters, 25 Oct 2021,

<https://www.reuters.com/business/cop/shameful-failure-meet-climate-finance-goal-risks-undermining-cop26-talks-2021-10-25/>

estimated economic cost of loss and damage by 2030 is between 290 and 580 billion in developing countries alone.⁴³ There are also the non-economic costs to consider. Parties must also increase the proportion of existing climate finance directed to adaptation which currently is very low compared to finance allocated for mitigation.⁴⁴ While mitigation is of course essential, adaptation is equally important (and for some Parties more of a priority) to prevent, where possible, loss and damage. **It is important that Parties provide new, additional and long-term funding for loss and damage⁴⁵ at the scale needed to meet real needs.**

- b. ***Ensure Finance is Structured and Delivered in ways that Comply with Human Rights, are Gender Responsive and Proactively Address Intersectional Challenges:*** This includes providing finance in ways that are accessible to communities and movements who are on the frontlines addressing community needs.⁴⁶ Keeping in mind equity considerations and historical injustices, it is vital to ensure the provision of finance as direct transfers rather than loans or other non-grant instruments as is unacceptably the case with 80% of finance delivered so far. Of this 80%, about half has been non-concessional, which means loans were offered on ungenerous terms.⁴⁷ In the absence of direct grants, climate finance ends up adding to the fiscal stress of countries rather than supporting the most affected. This fails to meet basic human rights standards. There is a need to establish appropriate mechanisms to deliver climate finance. Currently, the lack of such mechanisms leaves those impacted by loss and damage without much-needed redress.
- c. ***Support Concrete Efforts towards Fiscal Justice, including Debt⁴⁸ and Tax Justice,⁴⁹*** to free up more resources towards meeting the urgent needs of those most affected. Developing countries must not be asked to take on more debt in these times of dire crisis. On debt justice, for example, the Women & Gender Constituency is calling for a Ministerial declaration from COP 26 towards the establishment of a sovereign debt workout mechanism under the auspices of the United Nations which can support Parties in restructuring or canceling their debts in an equitable manner with all creditors.⁵⁰

3. Agree on Governance Issues which would lead to better Human Rights Outcomes on Loss and Damage

Governance issues are vital to advance a human rights approach to loss and damage. At COP 26, we call on Parties to:

- a. ***Establish Loss and Damage as a Permanent Standing Agenda Item:*** To protect human rights from devastating climate impacts, it is imperative that loss and damage is at the center of climate discourse. Towards this end we support calls urging Parties to establish a permanent agenda item for loss and damage.⁵¹
- b. ***Operationalize the Santiago Network:*** Parties must agree to fully operationalize the Santiago Network (which was conceptualized to catalyze technical assistance on loss and damage), an important step in establishing the implementation apparatus of the Warsaw International Mechanism (WIM). This must be done in a way that adopts a rights-based approach, including specific reference to human rights. We support calls asking Parties to ensure that the network goes beyond technicalities and being just a website and fosters a genuine space for exchange of

⁴³ For more details, see, Heinrich-Böll-Stiftung, Dossier: Unpacking finance for Loss and Damage, 2021, <https://us.boell.org/en/unpacking-finance-loss-and-damage>

⁴⁴ Oxfam, Climate Finance Shadow Report 2020, <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621066/bp-climate-finance-shadow-report-2020-201020-en.pdf>; Poor countries must not be forced to take on debt to tackle climate crisis, The Guardian, 2021,

<https://www.theguardian.com/environment/2021/oct/02/poor-countries-must-not-be-forced-to-take-on-debt-to-tackle-climate-crisis>; AFRODAD et al., Debt and the Climate Crisis: A Perfect Storm, 2021, p. 4, <https://jubileedebt.org.uk/wp-content/uploads/2021/09/Debt-and-the-Climate-Crisis-a-Perfect-Storm.pdf>;

⁴⁵ From COP 26 onwards as well as in the post-2025 climate finance target. We join calls urging Parties to provide dedicated Loss and Damage finance. See for example, Open Letter to World Leaders: COP26 must deliver on Loss and Damage Finance, 26 October 2021, <https://climatenetwork.org/cop26/cop26-must-deliver-on-loss-damage/>;

⁴⁶ IIED, Least developed countries get less than 3% of money needed to transform to face climate change, Press release, 14 July 2021, <https://www.iied.org/least-developed-countries-get-less-3-money-needed-transform-face-climate-change>

⁴⁷ Oxfam, Climate Finance Shadow Report 2020, p. 4 <https://oxfam.app.box.com/s/dixmq18v80tkuac8xjwrpoch7bf7prjs/file/729355846954>

⁴⁸ See Sheikh Hasina, Prime Minister, Government of the People's Republic of Bangladesh, Statement in Response to Sixth IPCC Report of IPCC, 2021; AFRODAD et al., Debt and the Climate Crisis: A Perfect Storm, 2021, <https://jubileedebt.org.uk/wp-content/uploads/2021/09/Debt-and-the-Climate-Crisis-a-Perfect-Storm.pdf>;

⁴⁹ See for example, Harpreet Kaur Paul, Market solutions to help climate victims fail human rights test, ActionAid, 2019, <https://actionaid.org/sites/default/files/publications/Loss%20and%20Damage%20Finance%20and%20Hum....pdf>; Jacqueline Cottrell and Tatiana Falcão, A Climate of Fairness Environmental Taxation and Tax Justice in Developing Countries, Vienna Institute for International Dialogue and Cooperation, 2018, https://d3n8a8pro7vhm.cloudfront.net/eurodad/pages/512/attachments/original/1590681420/A_Climate_of_Fairness.pdf?1590681420

⁵⁰ Women and Gender Constituency, Key Demands for COP 26, October 2021, https://womensgenderclimate.org/wp-content/uploads/2021/10/WGC_KeyDemandsCOP26_EN.pdf

⁵¹ This must create substantive space for discussion and action and go beyond the report of the WIM.

strategies and support for solutions. It must be given sufficient resources and empowered to support concrete solutions and mechanisms for effective remedies at scale, to address loss and damage at the country level.

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