



CENTER for INTERNATIONAL
ENVIRONMENTAL LAW

Remedy and Reparations for Climate Harm

The Human Rights Case

© Denis Onyodi / IFRC/DRK



© October 2024

The forthcoming report, *Remedy and Reparations for Climate Harm: The Human Rights Case*, sets out the legal basis for demanding that States and corporations uphold their obligations to provide redress for mounting climate harm. The report describes how the human right to remedy applies to loss and damage in the context of the climate change-driven human rights crisis and examines the shortcomings of existing mechanisms under the United Nations Framework Convention on Climate Change (UNFCCC). An overview of the evolution and enforcement of norms related to remedy for climate harm underscores the important role of human rights institutions and courts in delivering climate justice.

Given the scale and scope of climate harm, providing effective remedy to those whose human rights have been, are being, and will be violated due to climate change requires complementary legal and policy approaches. The report's key messages, outlined below, are particularly timely as States seek to ensure effective operation of the loss and damage fund and international courts, including the International Court of Justice, are poised to issue opinions clarifying States' legal obligations in the climate emergency and the legal consequences of failing to uphold them.

Key Takeaways

- **The climate crisis is undeniably a human rights crisis.** Intensifying extreme weather events and slow-onset effects such as rising temperatures, persistent drought, and sea-level rise are leading to widespread human rights violations. Those impacts are disproportionately affecting individuals, Peoples, and communities who are in vulnerable situations due to historic and present marginalization and intersecting forms of discrimination, oppression, exploitation, inequality, and violence.
- **States have legal obligations to prevent, minimize, and remedy foreseeable human rights violations, including those due to the climate crisis.** Such climate-related harm, also called loss and damage, is now widespread due to a failure to mitigate and provide adequate resources for adaptation.
- **Under international law, those whose human rights are violated have a right to remedy, including full reparation for climate-related harms.** This right and corresponding State duties are found under existing law, and ensuring accountability for climate harm does not require the development of new norms but the application of existing legal frameworks.
- **All States have a legal duty to cease wrongful climate-destructive conduct and redress climate-related harm they have caused or contributed to.** States have known about the principal causes and foreseeable consequences of climate change for well over half a century and have a duty to act to prevent, minimize, and remedy the harm from those impacts.
- **These legal obligations extend to corporate conduct and accountability.** States must adequately regulate corporations under their jurisdiction, including by ensuring they prevent and redress climate harm, and corporations have independent duties to do so.
- **Applying the polluter pays principle to remedy for climate harm means making the industries driving the crisis cover the costs of resulting loss and damage.** The right to remedy and the polluter pays principle go hand in hand and are a basis for putting in place finance mechanisms to generate resources from fossil fuel and other polluting industries to redress climate harm.
- Applying a remedy lens to climate-related harm or loss and damage is of legal and practical importance. International law defines effective remedies to entail access to justice and substantive redress, which may include **restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.** Given the variety and large scale of climate harm of material (economic) and moral (non-economic) nature, building on the extensive jurisprudence and practical application of the right to remedy will be critical to guide approaches and ensure a comprehensive approach.
- **Existing national, regional, and international reparation mechanisms provide precedents and examples from which experience could be drawn for repairing climate harm.** The climate crisis is unique in the nature, scope, and severity of its impacts, but it is not the first time society has dealt with large-scale human rights harm. Lessons learned from this body of practice can guide thinking on the practical delivery of climate reparations.
- While all reparation mechanisms will be context-specific, **six principles based on lessons learned from existing reparations mechanisms can help guide the development of climate reparation programs:** they should be victim-centric, inclusive and comprehensive, intersectional, adequate and accessible, accountable for causally-linked harm, and trackable and adaptable. These principles are relevant for national, regional, and global mechanisms.
- **The multilateral climate governance regime (UNFCCC) has failed to uphold the right to remedy for climate harm.** Decades of denial of the need for action to address loss and damage, reliance on voluntary approaches, and persistent attempts to circumvent and avoid liability for climate harm have prevented progress on redressing climate harm.
- **The UNFCCC mechanisms for addressing loss and damage should be restructured to align more explicitly with human rights obligations and standards, as well as reparations principles.** This includes moving beyond voluntary finance, ensuring that affected individuals, Peoples, and communities drive solutions and can access resources directly, and putting in place dedicated mechanisms and policies to realize substantive equality in a context of intersecting forms of discrimination. Doing so would advance the fulfillment of States' duties related to the right to remedy for climate harm. Even with such changes, UNFCCC loss and damage mechanisms will not be exhaustive. Complementary approaches will remain necessary to deliver climate justice and address mounting climate harms.
- **The absence of effective remedy under the UNFCCC does not preclude remedy for climate harm through other avenues.** The UNFCCC and the Paris Agreement do not define or limit human rights obligations related to remedy and reparations in the context of climate change. Given the scale of climate harm, upholding those obligations requires action at the global, regional, and national levels.
- **Human rights institutions and mechanisms and international, regional, and national courts are key** to norm development and enforcement in the context of climate harm. Individuals, Peoples, and communities experiencing climate-related human rights harms and climate-vulnerable States are increasingly seeking justice and accountability through these avenues.
- **The legal advancements that these judicial and quasi-judicial institutions provide are critical to inform policy solutions.** Yet human rights institutions have done too little to contribute to the effective enjoyment of the right to remedy in the context of climate harm. The continued mobilization of these institutions will be critical to ensure that the rights of those most impacted by climate-induced impacts are protected.
- **Both negotiated and litigated solutions have a role to play in delivering climate justice. Policy and legal strategies are necessary and complementary means of securing full and effective remedy for climate harm through a variety of mechanisms.**