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Remedy and Reparations for Climate Harm:

The Human Rights Case

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Founded in 1989, the Center for International Environmental Law (CIEL) uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. CIEL is dedicated to advocacy in the global public interest through legal counsel, policy research, analysis, education, training, and capacity building.

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THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
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and Sustainable Development

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Acronyms

AOSIS	Alliance of Small Island States
CCPR	Committee on Civil and Political Rights
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CBDR-RC	principle of Common but Differentiated Responsibilities and Respective Capabilities
COSIS	Commission of Small Island States on Climate Change and International Law
GDP	gross domestic product
GHG	greenhouse gases
HRC	UN Human Rights Council
HRTBs	human rights treaty bodies
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IFIs	international financial institutions
IMF	International Monetary Fund
IOPCF	International Oil Pollution Compensation Funds
ITLOS	International Tribunal for the Law of the Sea
LDCs	Least Developed Countries
LDF	Fund for responding to Loss and Damage
NDCs	nationally determined contributions
NHRIs	national human rights institutions
OHCHR	Office of the United Nations High Commissioner for Human Rights
SIDS	small island developing States
UNCC	UN Compensation Commission
UNCLOS	UN Convention on the Law of the Sea
UNFCCC	UN Framework Convention on Climate Change
UNGPs	UN Guiding Principles on Business and Human Rights

Key Takeaways

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 (ICJ), are poised to issue opinions clarifying States' legal obligations in the climate emergency and the legal consequences of failing to uphold them.

- **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 historical 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 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 (noneconomic) 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 reparations 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 global, regional, and national mechanisms.

- **The multilateral climate governance regime (UNFCCC) has failed to uphold the right to remedy 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 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.

Definitions

The following definitions will be used in this report:

Climate harm:

Adverse impacts of climate change-related extreme weather (e.g., hurricanes, heavy rainfall, heatwaves) and slow-onset events (e.g., sea level rise, glacier melting, desertification) on people's lives, livelihoods, and rights, and on the environment, which can be of material (economic) and/or moral (noneconomic) in nature.

Loss(es) and damage(s):

Synonym for climate harm, mainly used to describe this harm in the context of the negotiations under the UNFCCC. When capitalized, "Loss and Damage" refers to political discussions and related mechanisms under the UNFCCC.

Right to remedy for climate harm:

The human right of those facing climate harm to seek and obtain justice and reparations for their material and moral injuries resulting from violations of their rights.

Climate reparations:

Substantive redress for climate harm, which is — in addition to access to justice — critical to upholding the right to remedy in the context of climate-related human rights harm.

Introduction

With the average global temperature in 2024 at 1.2°C above preindustrial levels, the climate crisis already poses an unprecedented threat to human rights.[1] Climate-change-induced extreme weather events, including bushfires, cyclones, floods, and droughts, as well as slow-onset effects, such as increasing temperatures and sea level rise, are resulting in mounting destruction around the world. Those impacts are causing significant harm to human societies, infrastructure, and ecosystems, undermining the enjoyment of multiple human rights, including the rights to life, a healthy environment, culture, security, food, water, housing, health, education, and livelihood.[2] Such losses and damages are often classified as economic and noneconomic in nature, but the two are inextricably linked.[3] Every fraction of a degree of additional warming only aggravates these losses and damages and related human rights violations.

The climate crisis poses existential threats to certain States, Peoples, and individuals, including changing ways of life, disappearing cultures and territories, impacting traditional knowledge, and causing loss of life.[4] It perpetuates and magnifies structural inequalities,[5] disproportionately affecting those who have been made climate-vulnerable through historic marginalization, such as women, Indigenous Peoples, persons with disabilities, people living in poverty, and LGBTQI+ individuals. Indigenous Peoples, who often continue to experience the harsh consequences of past and ongoing colonial policies and practices, are at increased risk from the impacts of climate change. In addition to material harm, they may experience noneconomic losses to their cultures, languages, and traditional ways of life and may also face discrimination in accessing adaptation resources and disaster relief.[6] Children face disproportionate impacts due to unique physiological and developmental characteristics, increasing their vulnerability to climate change-related diseases[7] and violations of specific rights, for example, when education is disrupted.[8] These vulnerabilities often intersect, as is the case of disability and gender, putting Indigenous women and girls living with disabilities at higher risk from the impacts of the climate crisis.[9]

Among the most profound injustices of the climate crisis is that the people and countries that have contributed the least to it are all too often those most affected by its escalating impacts. While some types of countries, such as small island developing states (SIDS), have particular vulnerabilities and face existential threats when it comes to climate impacts, all countries in the Global South and their communities are vulnerable to climate impacts. Climate vulnerability is driven by factors such as socioeconomic development, marginalization, and historical and ongoing patterns of inequity, including those perpetuated by colonialism and its legacy.[10] A human rights lens focused on international human rights obligations and their application across borders draws attention to this disconnect between countries and communities with responsibility for the climate crisis and those with high vulnerability to its impacts and the duty of States to prevent and redress such harms.[11]

Industrialized countries with the highest cumulative emissions (hereinafter "wealthy countries") are disproportionately responsible for the greenhouse gases (GHG) that cause climate change and, therefore, for the resulting harm. Research quantifying national responsibility for climate damages demonstrates that countries classified as Annex I countries[12] (commonly referred to as "developed countries") under the UNFCCC are responsible — when taking a fair shares approach[13] — for 90 percent of excess emissions above a carbon budget that would have kept the planet within safe climate limits.[14] Allocating the responsibility for emissions generated under colonial rule to colonial powers further increases the cumulative responsibility of wealthy countries.[15]

Although major fossil fuel producers have known since at least the 1960s about the foreseeable impacts of their products on the climate, with devastating consequences for people and the planet, they have continued to expand their activities and worked actively to obstruct effective climate action through misinformation and greenwashing.[16] States have also known about the principal causes and foreseeable consequences of climate change since at least then (see Part I). Despite their legal obligations to prevent, minimize, and redress foreseeable human rights harms, States, through their action (e.g., subsidizing fossil fuels) and inaction (e.g., the lack of adequate regulation of corporate conduct) have failed and continue to fail to uphold these obligations in the context of the climate crisis. States and corporations have pursued a destructive path of continued expansion of and reliance on fossil fuels and have failed to mitigate the climate crisis. This has gone largely without any form of accountability in the context of a failing multilateral response to the climate crisis largely based on voluntary actions rather than legal obligations.

Critically, delivering accountability for climate harm *does not* require the development of new norms but *rather* the application of existing legal frameworks to new facts, **moving beyond a voluntary approach.**

Under international human rights law, individuals and Peoples facing human rights violations are entitled to remedy, and those responsible for the harms can be held accountable. Understanding the nature and scope of States' human rights obligations and related corporate duties is, therefore, fundamental to any effort to redress climate-related loss and damage. Critically, delivering accountability for climate harm does not require the development of new norms but rather the application of existing legal frameworks to new facts, moving beyond a voluntary approach. While work to strengthen and operationalize negotiated policies and agreed mechanisms on loss and damage continues, demands for such accountability are increasingly being made through human rights mechanisms and courts.

Clarifying the legal basis for climate reparations under international human rights law strengthens the mandate of various institutions to advance remedy for climate harm and highlights shortcomings in current approaches to doing so. Past and present mechanisms for providing victims of other large-scale harm with reparation and compensation offer lessons that can enrich the design and implementation of effective remedy for climate harm.

Part I

The Human Right to Remedy and Reparations

Those who bear the brunt of the climate crisis are entitled to meaningful redress under international law. International human rights law underpins the right to remedy in the context of climate harm and applies concurrently with other sources of international and domestic law, including international environmental law and the law of State responsibility.[17] State obligations and corporate duties to remedy climate harm apply vis-à-vis individuals and Peoples of present and future generations and can be linked to other principles of international law, such as the polluter pays principle. The duty to provide remedy falls primarily on States and encompasses a duty to regulate business enterprises and hold them accountable for climate-destructive corporate conduct. However, corporations also have independent obligations under international human rights law that apply in the context of the climate crisis.

State Obligations to Provide Remedy

Under international human rights law, communities and individuals who have experienced or are experiencing human rights violations are entitled to access to effective remedies. This human right is recognized by a large number of human rights treaties and instruments, including but not limited to the Universal Declaration of Human Rights,[18] the International Covenant on Civil and Political Rights,[19] the American Convention on Human Rights,[20] the European Convention on Human Rights,[21] and the African Charter on Human and Peoples' Rights.[22] Ensuring that individuals and Peoples whose rights have been violated obtain full reparation is fundamental to the obligation to provide remedy.[23]

Remedy for victims of human rights abuses or violations can only be effective when it entails both procedural access to justice and substantive redress. The former requires removing regulatory, social, or economic barriers to those seeking recourse; adopting an intersectional approach; removing constraints on the ability of youth and children to vindicate their rights;[24] and not denying individual standing based on the pervasive effects of climate change.[25]

Substantive redress is the aspect of remedy that includes what is often called "reparations." The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law[26] (hereinafter, UN Basic Principles and Guidelines on the Right to Remedy and Reparations) were adopted by the UN General Assembly in 2005 and built upon the right to a remedy for victims of violations of international human rights law found in numerous international instruments.[27] According to these principles and guidelines, reparation should be proportional to the gravity of the violations and the harm suffered and includes:

- **Restitution:** Restoration of the victim's original situation that preceded the violation of international human rights law.
- **Compensation:** Monetary reparation that may be provided, especially when restitution is impossible. Beyond covering material damages and costs for several types of assistance, compensation can be granted for physical or mental harm, lost opportunities such as education and employment, and moral losses.
- **Rehabilitation:** Actions and measures focused on functional, psychological, social, and vocational rehabilitation, which can include medical and psychological care as well as legal and social services.
- **Satisfaction:** A broad category of measures often aiming to emphasize the acknowledgment of responsibility for the violation and resulting harm, publicly and symbolically acknowledge the suffering, and respect the dignity of those who have been harmed. This can include recognition of losses or official apologies.
- **Guarantees of non-repetition:** Measures and policies aimed at preventing future violations of human rights and reinforcing the rule of law and respect for human rights.

Human rights experts and institutions have explicitly affirmed the need to fulfill the right to remedy in the context of climate harm. In various reports and statements, the UN Secretary-General,[28] the UN High Commissioner for Human Rights,[29] the Office of the UN High Commissioner for Human Rights (OHCHR),[30] and several UN Special Rapporteurs[31] have all confirmed that States and corporations responsible for the climate crisis must remedy climate-related human rights harms. This includes reparation in the form of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Such important general statements have been complemented with more specific ones, such as the recognition by the Committee on the Rights of the Child that "remedial mechanisms should consider the specific vulnerabilities of children to the effects of environmental degradation, including the possible irreversibility and lifelong nature of the harm."[32] Many UN, regional, and national human rights institutions have further elaborated on the right to remedy in the context of climate harm in relation to their specific mandates and granted compensation and other forms of reparations in this context (see Part III).

Ample evidence links the acts and omissions of a State or groups of States to cumulative GHG emissions over time and thereby to the climate harm caused by those emissions.[33] A growing body of evidence grounded in advancements in climate science, including event-, source-, and impact-attribution studies, makes it increasingly possible to link climate change to deprivations of human rights, substantiating the causal chain from State conduct to climate change to human rights harm.[34] This means that the legal elements of a violation of States' international human rights obligations can be established and attributed, triggering legal consequences for those States that have — through their generation of and failure to regulate cumulative emissions over time — caused or will foreseeably cause climate change-related harm or increased the risk of such harm to human rights. The law makes clear that it cannot be that because climate change affects everyone, no one can seek remedy,[35] or because so many countries are responsible for climate change, individual States cannot be held accountable.[36]

The law makes clear that it cannot be that because **climate change affects everyone,** no one can seek remedy, or because so many **countries are responsible for climate change,** individual States *cannot* be held accountable.

One other notable aspect in this context relates to evidence establishing State knowledge. Preventive duties under international law arise when a State knows or should know that certain conduct, including the conduct of non-State actors such as corporations, is likely to cause or contribute to harm. This duty requires States to adequately regulate the harmful practices of private actors. What many States — in particular wealthy ones — knew regarding the causes, risks, and consequences of GHG emissions and the ensuing climate change can be traced back to at least the mid-twentieth century and, in some cases, even earlier.[37] Given this, climate harm was, and is, foreseeable, and States had and continue to have a duty to prevent it. The failure to do so triggers legal consequences.

The types of injuries caused by climate impacts and the conduct of States and corporate actors that have caused them and continue to fuel the climate crisis give rise to a right to remedy for present and future generations.[38] That right triggers a corresponding duty on the part of those responsible States and corporations to ensure access to justice and to provide full reparations for the climate harm that they have caused or to which they have contributed. Examples of measures that could enhance access to justice in this context include undertaking consultative processes to ensure that reparations claims accurately reflect the demands of climate-affected communities, shifting the burden of proof to require States and corporations to prove a lack of causation between the emissions within their jurisdiction and control, and harm caused, and enabling access to attribution science.[39]

In part, the lack of accountability of major emitters for the climate-related human rights harm they have caused in the past decades can be linked to difficulties in attributing specific impacts to the climate crisis and explicitly linking emissions to corporations and States. Recent advances in climate source and event attribution science increasingly allow researchers to pinpoint the role of climate change in extreme events[40] and slow-onset events. Critically, despite these important advancements, the burden of providing such causal evidence or its potential absence should not be a barrier to justice for victims of harm, particularly for those in the most vulnerable situations. Importantly, given the overwhelming evidence of the correlation between GHG emissions and global warming, judges may not be required to demonstrate specific causation to obtain relief.[41]

The principle that full reparation encompasses *both* material and moral injuries is **particularly pertinent** in the climate context because the cost of many climate impacts *cannot* be readily assessed.

The principle that full reparation encompasses both material and moral injuries[42] is particularly pertinent in the climate context because the cost of many climate impacts cannot be readily assessed. Such harm is often called **"noneconomic loss and damage"** and can include negative effects on human health and mobility and the loss of the following:

- Lives
- Community networks' access to territories
- Indigenous and local knowledge
- Societal, cultural, and spiritual identity
- Biodiversity

Redressing these types of harms requires measures beyond immediate financial recovery — which often dominates the Loss and Damage discussion — through approaches tailored to the needs and perceptions of justice of those most affected.

Restitution and Compensation

What constitutes appropriate reparation depends on the circumstances of the victims and the nature of the injury. Restitution aims to reestablish the situation of victims before their rights were violated. When full restitution is not possible — as it is often not in the case of climate harms — States must ensure that compensation or monetary reparation is available.

Rehabilitation

Non-compensatory forms of reparation are equally critical when full restitution is not possible, and States must ensure their availability. This includes functional, psychological, social, and vocational rehabilitation. The context of the climate emergency calls for a holistic conception of rehabilitative remedies, with the aim of allowing victims to reconstruct their lives or reduce, as far as possible, the harm they have suffered or are suffering. For example, a loss of territory leading to displacement can cause severe psychological harm due to loss of homes and cultural heritage and, therefore, appropriate reparation in this context could entail ensuring alternative land is available and suitable to support the livelihoods of those affected and future generations, while also providing psychological support for those displaced.

Satisfaction

Measures of satisfaction can be used as a form of reparation. For example, for those who experience trauma from climate-induced loss of their cultural heritage and traditions, measures of satisfaction aiming to recognize wrong, acknowledge suffering, and respect the dignity of victims could partly restore what cannot be compensated monetarily.

Guarantees of Non-Repetition

Finally, guarantees of non-repetition are critical in the context of the climate crisis, given the ongoing harm due to continued reliance on fossil fuels and the destruction of carbon sinks. Such guarantees "could entail an obligation to adopt and implement enforceable legislation to protect human rights from future climate impacts."[43] While often discussed as three distinct dimensions of climate action, implementing effective mitigation and adaptation measures is critical to averting and minimizing loss and damage. The provision of public, grants-based finance to developing countries to undertake climate action is an important element of a comprehensive approach to remedying climate harm, as well as an independent obligation. Mounting emissions and related climate impacts on human rights stem from continued wrongful conduct by States, both action and inaction. The obligation to cease their wrongful conduct and offer appropriate assurances of non-repetition may, in the case of a wrongful failure to act, require a State to undertake action, such as taking sufficient measures to mitigate and adapt and providing financial resources to countries and communities in the Global South. It may also require a State to halt harmful activities such as the continued expansion of or support for the production and use of fossil fuels and deforestation.

Participation of victims — individuals, Peoples, and communities affected by the climate crisis — in the assessment of losses and damages and appropriate ways to repair related harms is critical to ensure effective and just redress. What constitutes effective redress will not be the same for everyone. As the climate crisis affects individuals and groups differently, an intersectional approach to ensuring substantive equality in the provision of reparations is critical to its effectiveness. This means that rights holders experiencing intersecting forms of marginalization merit targeted attention and tailored remediation responses. For example, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) highlights how Indigenous women and girls face distinct, intersectional forms of discrimination, including in the context of climate change.[44] The unique context and rights of Indigenous Peoples, in particular the right to self-determination, as well as the distinct losses and damages and multilayered climate injustices they face, warrant a differentiated approach to reparations.[45]

Box 1: Law of State Responsibility: "Where There is a Right, There is a Remedy"

The right to remedy and reparation under human rights law builds upon the law of State responsibility.[46] *Ubi jus, ibi remedium* — where there is a right, there is a remedy — is a bedrock principle of law, which stands for the idea that where a legal right is violated or a legal duty breached, a party injured as a result is entitled to legal remedy. In public international law, a State's breach of its international legal obligation (a primary duty) is a wrongful act triggering a corresponding secondary duty to cease the wrongful conduct, if it is ongoing, and make reparation for any resultant harm. When the primary obligation breached is an obligation under international human rights law, the State's conduct carries consequences under the law of human rights as established above and under the law of State responsibility.[47]

While human rights frameworks provide self-contained standards to secure redress for violations, the law of State responsibility and international human rights law are complementary and mutually reinforcing.[48] Human rights law articulates States' duties to provide remedy and reparations to individuals, Peoples, and communities.

The relevance of the law of State responsibility to human rights obligations has been widely acknowledged by international human rights bodies and relied upon for the interpretation of human rights treaties.[49] The law of State responsibility chiefly concerns duties States owe to another State, several States, or the international community as a whole.[50] The general law of State responsibility can be understood as "providing a structure through which redress for human rights violations can be obtained by States on behalf of the victims of the violation, or directly by victims themselves."[51] Notably, the reparatory duties of a State under the law of State responsibility do not supplant its remediation obligations under human rights law.[52]

The legal duties triggered by a breach under human rights law parallel those under the law of State responsibility, namely cessation and redress. Under the law of State responsibility,[53] legal consequences are triggered when:

- States have an international legal obligation, including under international human rights law
- States have breached this obligation
- Resulting injuries to States, Peoples, and individuals are attributable to the breach

This also applies in the context of the climate crisis.

Corporate Accountability

A relatively small number of corporations are largely responsible for the climate crisis. Research shows that just 90 fossil fuel and cement producers, so-called "Carbon Majors," have caused the majority (63 percent) of industrial GHG emissions since the start of the industrial revolution in 1751.[54] The concentration of corporate responsibility is not only a historical trend but continues to be the case, with 57 companies responsible for 80 percent of emissions since the signing of the Paris Agreement.[55] Furthermore, businesses' responsibilities are not only related to their direct and indirect emissions but also to activities that undermine State action on climate change and prolong climate-destructive practices, such as obstruction of regulations, legal claims against climate policies, denial of science, and deception of the public. The fossil fuel industry has been aware of the climate impacts of burning fossil fuels and their foreseeable effects on the environment and society for decades. Yet, as abundant, well-established evidence shows, it has interfered with climate policy and greenwashed its operations.[56]

As part of their duty to protect human rights, States must prevent, regulate, and sanction corporate conduct that may violate rights including by developing ambitious due diligence standards and robust legislative frameworks for corporate accountability in the context of the climate emergency.[57] States must ensure that companies that have caused or contributed to human rights violations related to climate change assume the costs of their reparation. Precedents from other sectors are instructive, such as tobacco companies being held accountable for the harm their products have caused to health, leading to major settlements.[58]

In a similar vein, public authorities are increasingly looking at ways to hold fossil fuel companies accountable for their actions. Over 20 US states and cities have sued fossil fuel companies to obtain compensation for damages due to climate change.[59] In one such example, California's attorney general filed a lawsuit against several large fossil fuel companies, claiming they have caused billions of dollars in climate damage and deceived the public.[60] Vermont has taken a legislative approach and passed the Vermont Climate Superfund Act, which aims to make major fossil fuel companies pay for the climate damages they have caused.[61] It is important to note, however, that these damage payments will likely not flow directly to the victims of the harm but to States and local governments and, therefore, are not necessarily providing remedy for climate harm. These existing examples also look at the costs of the damages within the State, while a transnational approach to remedy climate harm will be crucial and is possible.

In addition to State duties to realize corporate accountability, corporations also have independent obligations under international human rights law to respect human rights and, therefore, refrain from engaging in harmful conduct, regardless of the political will or capacity of States to fulfill their human rights obligations. This may include setting science-based targets in alignment with international climate goals and refraining from conduct leading to the destruction of carbon sinks and the obstruction of climate action.[62] The obligations of corporations in this context entail providing effective remedies for human rights harms that they have caused and to which they have contributed. These duties are not limited to corporations that directly contribute to GHG emissions. Business enterprises that facilitate and finance GHG-intensive business activities, such as banks and insurance companies, also have individual responsibilities to respect human rights and conduct due diligence under the UN Guiding Principles on Business and Human Rights (UNGPs) as adopted by the Human Rights Council in 2011.[63]

As is the case for States, when corporations are causing or contributing to harm or risk doing so — at any stage of their operations and throughout their entire value chain — they must take necessary steps to cease the conduct leading to harm or the threat thereof, to prevent or mitigate the chance of human rights violations. Given the widespread adverse impacts of climate change, some of which are already irreversible, GHG-intensive corporations must commit to deep, rapid, and sustained GHG reductions throughout their entire business operations and value chain and develop just transition plans.

Additionally, when harm results from corporations' activities or business relationships, they have a duty to provide for or cooperate in their remediation through legitimate processes. Access to effective remedy is a cross-cutting component of the UNGPs.[64] According to the UN Working Group on Business and Human Rights, to fulfill their human rights responsibilities in the context of climate change, corporations should "provide for effective access to remedies for rightsholders in relation to all climate change related impacts on human rights and the environment" and should ensure that these remedies "are responsive to multiple vulnerabilities, intersectional discriminations and marginalization experienced by individuals and communities such as children, women, Indigenous Peoples, and persons with disabilities."[65]

States **must ensure** that companies that have *caused or contributed* to human rights violations related to climate change **assume the costs** of their reparation.

The responsibility of businesses to remediate is correlated with the primary duty of States to provide effective remedy, and those negatively affected by climate-destructive corporate conduct are therefore entitled to reparations, including restitution, compensation, rehabilitation, and measures of satisfaction.[66] These duties also hold for corporations that facilitate and finance business activities that could foreseeably contribute to adverse human rights impacts.

Box 2: The Polluter Pays Principle and the Right to Remedy Go Hand in Hand

The polluter pays principle — recognized under international law and included in numerous domestic environmental laws globally — goes hand in hand with the right to remedy. Principle 16 of the Rio Declaration on Environment and Development (1992) lays out that States should promote "the internalization of environmental costs" and should take into account that "the polluter should, in principle, bear the cost of pollution." Principle 13 notes that States shall not only develop national laws regarding liability and compensation for victims of environmental damage and pollution but also shall cooperate to develop international law on the same. The Rio Declaration, therefore, acknowledges that people must have an avenue for remedy when there is environmental harm and that those who have caused the harm should have to provide support for remediating it.

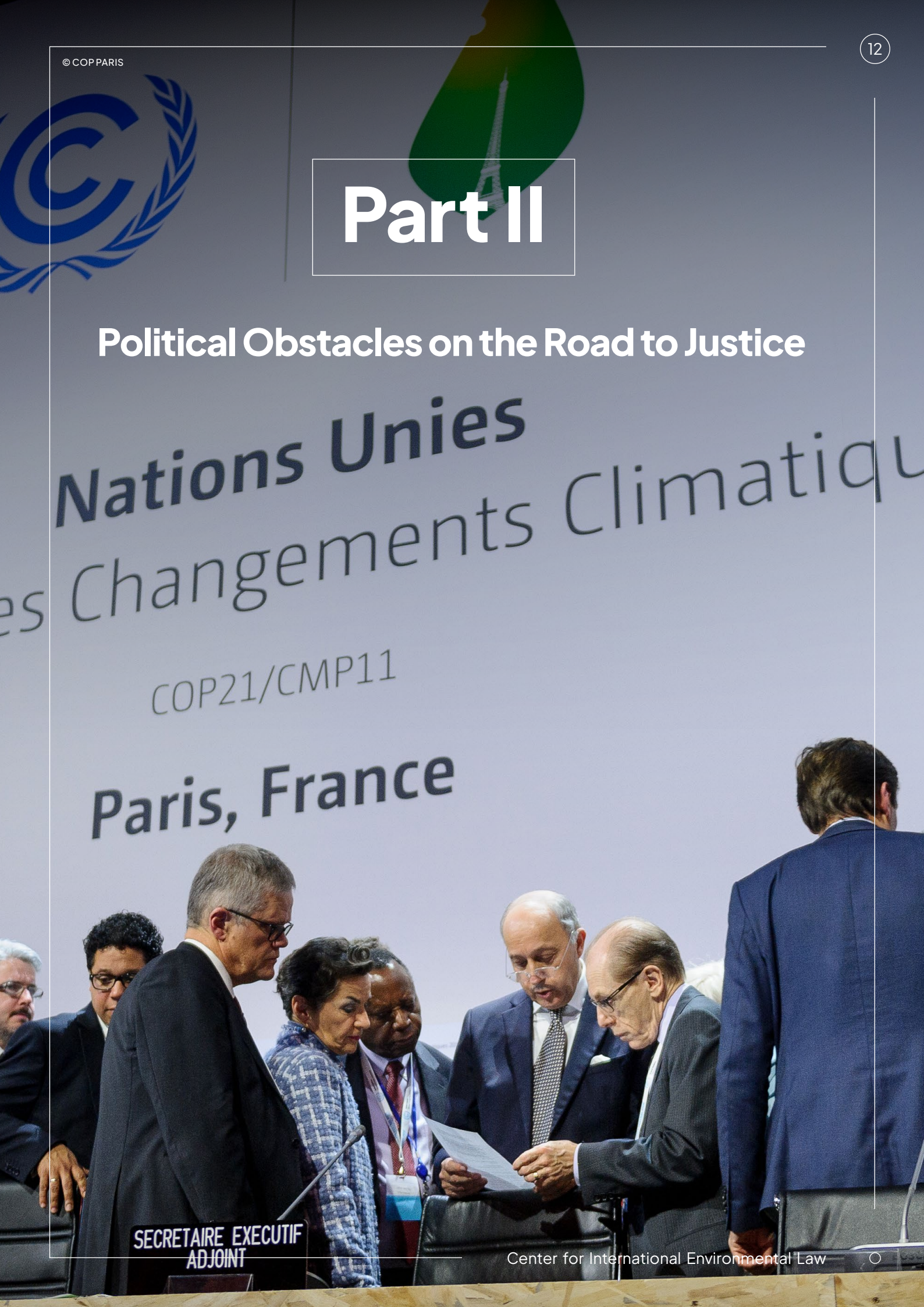
In the context of the climate crisis, polluter pays means that those responsible for climate change — large cumulative emitters, be they companies or States — should be required to pay for the damage caused by their actions or inaction. States, therefore, should put in place measures to ensure that fossil fuel companies, large agribusiness, and other major emitters contribute to reparations for human rights violations and environmental damage related to climate change, as well as contribute to mitigation and adaptation activities. These measures should not only be focused on current or future actions (e.g., a tax on current and future production of fossil fuels) but should also be based on historical emissions. For example, measures could include the establishment of international financing mechanisms, such as a fossil fuel levy or a global climate pollution tax, which can secure contributions from polluters to repair climate-related human rights violations.[67]

Measures could also include calculating the amount of climate damages and then allocating percentages to be paid by large emitters based on historic responsibility[68] or calculating the damages attributable to certain companies based on their emissions and the social cost of carbon.[69] These ideas are strongly related to civil society's demands to put alternative sources of finance in place based on the polluter pays principle, which can significantly increase the financial resources available for climate action, including addressing loss and damage. Some alternative sources proposed at the time of writing include a climate damages tax on coal, oil, and gas extraction and production, which proponents suggest could leverage up to $900 billion for the Loss and Damage Fund and national climate action.[70]

The notion that those responsible for the harm (the polluter) have to pay for remedying that harm is consistent with the right to remedy. Human rights experts have recognized the links between the right to remedy and the polluter pays principle. For example, the UN Working Group on Business and Human Rights stated that "if … an enterprise caused pollution, it should be required to restore the environment as part of the 'polluter pays' principle."[71] Measures requiring polluters to pay for the harms their activities have caused can also act as a deterrent to other entities, thus fulfilling the principle of non-repetition. Under no circumstances does applying the polluter pays principle to private actors relieve States that have enabled the polluting activities of their own responsibility for remedying harm.

Part II

Political Obstacles on the Road to Justice



Political obstacles hinder access to justice and remedy for those on the front lines of the climate crisis, while the current economic landscape exacerbates these injustices and magnifies the harm rather than redressing it. Despite the long-standing international legal obligations discussed in the preceding section, individuals and communities facing escalating climate impacts such as floods, sea level rise, and melting glaciers have long been and are still being denied justice. Attempts within the international climate governance regime to find a multilateral solution have so far failed to prevent and redress climate harm, and obstructive positioning by wealthy countries hampers any discussion on climate reparations, let alone any progress toward delivering them, without providing alternative solutions.

UNFCCC: A Track Record of Under-Delivering

Steps taken under the UNFCCC to address loss and damage remain insufficient to ensure effective remedy, particularly given their voluntary nature. Importantly, nothing that has been done or is underway within the UNFCCC precludes other claims or avenues toward climate justice or eliminates the need for complementary processes or mechanisms to deliver comprehensive reparations for climate harms. The duty to prevent, minimize, and redress foreseeable human rights violations, including in the context of the climate crisis, exists independently of the UNFCCC. Whether the UNFCCC and its mechanisms can be an avenue for redressing climate harm depends on the principles and objectives applied in its context, as well as their effectiveness.

Despite the UNFCCC objective to "achieve … stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system," its State Parties have failed to do so. The crisis is already causing significant harm,[72] and based on existing commitments, the world is on a trajectory for +2.5–2.9°C of warming above preindustrial levels.[73] If all available nationally determined contributions (NDCs) are implemented, emissions will still increase by about 8.8 percent by 2030 compared to 2010 levels.[74]

As enshrined in the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), a core principle of international environmental law, those most responsible for the climate crisis and with the highest capacity to address it must take the lead in climate action: reducing emissions, building climate resilience through adaptation, and addressing loss and damage — including by providing financial and other means for other countries to do so. However, wealthy countries with high cumulative emissions are far from doing their fair share to limit warming to 1.5°C and provide the necessary means for other countries to do so and adapt to the crisis. According to the Civil Society Equity Review, countries such as Australia, Japan, the UK, and the US, as well as the EU, would all have to at least double their NDC ambition to be on the lower end of achieving their fair share, based on historical responsibility and capacity to act.[75] High-level speeches at UN conferences about phasing out fossil fuels stand in stark contrast with how many of the historically responsible countries continue to approve new fossil fuel projects and drive expansion in developing countries.[76]

Also, climate finance commitments have not been met. A practice of generous and double counting (i.e., reporting support for developing countries twice toward different objectives, such as those related to development cooperation and those related to climate finance) allows developed countries to overstate the level of support they have actually provided. Moreover, the majority of this finance is provided in the form of loans, contributing to an existing debt crisis in many climate-vulnerable countries (see Part II, "Climate Injustice Through Debt Injustice").[77]

The commitment to provide $100 billion per year for climate finance for mitigation and adaptation to developing countries by 2020 — a politically set objective that is far off from actual needs — has also not been achieved in practice. Despite OECD reports stating this goal was finally achieved two years late,[78] critical evaluations of those numbers reveal otherwise: according to Oxfam, in the period from 2019 to 2020, of the $83.3 billion reported, only $24.5 billion can be considered "real support."[79]

Speeches at UN conferences about phasing out fossil fuels stand in **stark contrast** with how many of the historically responsible countries *continue* to approve new fossil fuel projects and drive expansion in developing countries.

Regarding loss and damage, already in the negotiations leading up to the adoption of the UNFCCC, the Alliance of Small Island States (AOSIS) advocated for the inclusion of an "insurance mechanism" to deal with climate-related loss and damage and distributing the financial burden among wealthy countries.[80] This proposal was ultimately kept out of the Convention, and this was the start of decades of denial of the need to explicitly address loss and damage despite continued explicit attempts to put it on the agenda not only by AOSIS but also by the Least Developed Countries (LDCs) who coined the need for compensation for climate damages at COP11 in 2005.[81]

Over the three decades since the adoption of the UNFCCC, despite repeated demands by climate-vulnerable countries, the largest cumulative emitters have sought to evade and dilute their legal obligations under human rights law to respect the right to remedy in the context of climate harm, including under the climate convention. While some mechanisms for averting, minimizing, and addressing loss and damage have been set up under the UNFCCC — such as the Warsaw International Mechanism on Loss and Damage[82] and the Santiago Network,[83] and the Paris Agreement established Loss and Damage as a third pillar of climate action (Article 8) — wealthy countries insisted on excluding any additional legal basis for liability through a paragraph in the decision adopting the agreement (see Box 3). Mentioning the need for compensation in the context of Loss and Damage under the UN climate agreement had effectively become taboo in the climate negotiations, and consequently, the scope of conversations on Loss and Damage was largely reduced to aspects such as risk management, immediate responses, and insurance.

Box 3: The UNFCCC Does Not Exempt States from Liability for Climate Harm

When the Paris Agreement was negotiated, some wealthy polluters attempted to exempt themselves from liability and deny peoples' right to compensation by adding a disclaimer paragraph to the Loss and Damage article of the agreement.[84] The paragraph reads "that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation" (1/CP.21, para. 51). While paragraph 51 may limit the interpretation of Article 8 of the Paris Agreement on Loss and Damage and the Loss and Damage Fund (established at COP27),[85] in no way does it limit the interpretation and application of other long-standing State obligations under international law, including the obligations to ensure access to effective remedy and related liability. The global climate regime does not define or limit obligations related to remedy and reparations in the context of climate change: obligations in the UNFCCC and the Paris Agreement build on and complement States' concurrent and preexisting duties under other bodies of international law, including the duty to prevent, minimize, and remediate foreseeable violations of human rights resulting from the climate crisis.[86]

The Voluntary Nature of the Loss and Damage Fund

The 2022 decision to establish a "Fund for responding to Loss and Damage" (hereinafter, Loss and Damage Fund or LDF) was a historic one and a major win for vulnerable countries and frontline communities who had been advocating for such a fund for decades. However, the continued denial of responsibility is reflected in the decision and the consequent steps taken to operationalize the fund. Critically, the decision made at COP28 does not put an obligation to pay on developed country Parties, and there is no indication of the scale at which the fund will operate. Such dependence on voluntary contributions is not rooted in the duties that exist under multiple bases of international law related to international cooperation, remedy, and the polluter pays principle to contribute to loss and damage finance,[87] and will severely limit the ability of the fund to operate at the scale required. The UN Secretary-General recognizes the limitations of UNFCCC Loss and Damage mechanisms, stating that "while important ... [they] are not currently designed or intended, in and of themselves, to fulfil the human rights obligations of States to provide effective remedies for climate harms."[88]

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The pledges for the new fund made at COP28[89] — in total, less than $1 billion in the face of the hundreds of billions that are estimated to be needed on a yearly basis[90] — reflect this inability. Additionally, unless addressed, other shortcomings in the agreement will hamper its ability to bring justice and redress for those entitled to it. Particularly, the lack of an explicit recognition that the fund must operate in accordance with human rights law, standards, and principles in its Governing Instrument raises questions, as this fund, more than any climate fund, should be about addressing needs and priorities and upholding the rights of the people on the front lines of the climate crisis. Other questions around who will have access to the funds, what type of financial instruments the LDF will use, and how it will relate to the World Bank as its interim host are still under discussion or evolving and will further determine the fund's future. These are crucial to determining how effective the fund will be. Channeling loss and damage resources through the very institutions that have contributed significantly to both the debt crisis (see Part II, "Climate Injustice Through Debt Injustice") and the climate crisis[91] is unlikely to be successful or appropriate. Of particular importance to break free from existing practices of international development and climate finance will be the extent to which affected communities can directly access the funds and drive the decisions and activities made, and a recognition that only grants-based finance is appropriate to effectively deal with losses and damages.

States must continue working to ensure that any future steps taken under the UNFCCC address the shortcomings mentioned above. The LDF is an opportunity to broaden the scope again and explicitly consider how the remedy framework can effectively inform its operations. In doing so, and by aligning the UNFCCC and its mechanisms for addressing loss and damage more explicitly with human rights obligations and standards, States could work toward positioning these avenues to serve as intergovernmental avenues for the fulfillment of duties related to the right to remedy. Simultaneously, States must consider complementary and comprehensive actions at the local, national, regional, and global levels to realize effective remedies for those affected by the climate crisis.

Climate Injustice Through Debt Injustice

Debt is problematic from the perspective of the fulfillment of basic human rights.[92] It impedes countries' abilities to mitigate climate change while exacerbating the harm caused by the climate crisis as it limits the capacity to adapt and respond to disasters and provide social services that are needed to deal effectively with loss and damage.[93] Many of the countries most affected by the climate crisis are in a debt crisis. As of 2023, 93 percent of the 63 countries most vulnerable to the climate crisis are at significant risk of or in debt distress,[94] and in 2024, the debt payments of the 50 most climate-vulnerable countries are at their highest level in more than three decades after having doubled since the start of the COVID-19 pandemic.[95] According to estimates, in 2021, lower-income countries spent over five times more on external debt payments than they did on climate adaptation.[96]

The roots of this debt crisis lie in a deeply unjust and postcolonial economic system that allows Western governments and corporations to exert continued control over the economies and communities of the Global South in the pursuit of their own financial and political interests.[97] International financial institutions (IFIs) such as the World Bank and the International Monetary Fund (IMF) contribute to this crisis by encouraging Global South countries to take on more debt to fund development.[98] The repayment of foreign debt also pushes developing countries into economic models oriented toward export, often based on climate-destructive production models such as fossil fuel extraction and industrial agriculture.[99] For example, in Argentina, the IMF and the Argentinian government are promoting the fracking of oil and gas to address the debt crisis.[100]

Climate finance for adaptation and mitigation has been provided primarily in the form of loans. A large share of those loans are non-concessional (i.e., provided with a market-based interest rate), pushing developing countries further into debt[101] (and even highly concessional loans can exacerbate a country's debt). The economic cost of climate-related loss and damage exacerbates this even more, as climate-vulnerable countries dealing with recovery and reconstruction have to borrow large sums of money, often at high rates,[102] and become stuck in a debt-disaster-debt cycle.[103] An illustrative case is Dominica, an SIDS which, due to its geographic location, faces a yearly cyclonic season, the impacts of which have significantly increased in the last decade. In 2015, Dominica faced Tropical Storm Erika, which generated total losses and damages estimated at $483 million, equivalent to 90 percent of Dominica's gross domestic product (GDP).[104] Two years later, Dominica was profoundly impacted by Hurricane Maria, which again severely disrupted the island's infrastructure and resulted in losses surpassing 225 percent of its annual GDP, equal to $1.37 billion.[105] After the hurricane, the government of Dominica borrowed $65 million from the World Bank for post-disaster reconstruction,[106] representing approximately 13 percent of the country's GDP in 2017.[107] The charge of this debt burdens the States' public finances, further undermining its ability to provide basic services and undertake mitigation, adaptation, and loss and damage action. As is the case for adaptation, loans are ill-designed to address irreversible losses and incompatible with the concept of remedy. Borrowers seeking money to address loss and damage will not be investing those funds in ways that will generate income and enable them to pay the loan back.

States should consider redressing harm affecting States or individuals and communities by creating more fiscal space to address climate impacts. Such measures include ensuring debt and tax justice (e.g., wealth and fossil fuel levies), ending illicit financial flows, canceling debts, and reforming the global financial architecture.[108] Breaking the cycle of the mutually reinforcing debt and climate crises ultimately requires a comprehensive approach to climate reparations that includes but also goes beyond compensation for past harm and encompasses debt restructuring and cancellation.[109] Such an approach aligns with a human rights approach, as confirmed by the former UN Special Rapporteur on the right to development in his 2021 report on climate change to the UN General Assembly, stating that "historical carbon debt could justify cancelling debts that will only keep low-income countries impoverished."[110]

As long as unjust economic structures that push countries into debt and unsustainable economic models are not changed, attempts to redress the harm caused by the climate crisis — be it through political or legal pathways — will continue to be undermined. Legal pathways are critical to uphold the right to remedy, but such an approach is only part of the puzzle. A truly systemic approach to repairing climate harm requires economic and political transformation.

Legal pathways are critical to uphold the right to remedy, but such an approach is **only part of the puzzle.** A truly systemic approach to repairing climate harm requires *economic* and *political* transformation.

CIEL staff member Luisa Gómez at the 2024 World Bank Meetings

Part III

Legal Pathways: The Role of Long-Standing Obligations in a Changing Context

In light of such obstacles and, more generally, the lack of global response to climate harm, legal pathways remain critical to achieving climate justice. National, regional, and international human rights bodies, mechanisms, and experts have long recognized the strong interlinkages between the climate crisis and international human rights law, and through their varying mandates and processes, have an important role to play in the context of realizing effective remedy for climate-related harm. While they might be limited in the remedies that they can provide, by clarifying and applying norms — and setting out new norms — they can provide critical guidance for litigation, global climate governance, and other mechanisms, thereby advancing progress toward reparation of climate harm.[111] Climate litigation, increasingly underway at the domestic, regional, and international levels, contributes to these (quasi-)judicial efforts to clarify and apply norms by adding an additional element of accountability and the opportunity to provide substantive redress.

Norms in Principle: Standard-Setting and Evolution

The climate crisis is a human rights crisis of unprecedented scale. As climate science has considerably evolved, it is critical for the human rights framework to continue to interpret existing legal frameworks in the context of new facts to ensure that human rights and other international law remain relevant in the context of a changing world. Human rights bodies and institutions and international courts are mandated to contribute to the clarification and evolution of existing norms in the context of specific topics and issues, and they have done so extensively in the context of the climate crisis and related human rights harm.

Human Rights Institutions and Mechanisms

The UN Human Rights Council (HRC) adopted its first climate-specific resolution in 2008 and has adopted a wide range of resolutions on and related to climate change since, shedding light on how international human rights law can inform effective climate action and the responsibilities of States in this context. In July 2023, the HRC adopted its first resolution specifically on climate-related loss and damage, recognizing how it undermines the fulfillment of human rights and disproportionately impacts marginalized groups. The same resolution also mandated the UN Secretary-General to "conduct an analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same."[112] This study lays out specific obligations and duties for States and corporations in the context of remedy and reparations for climate harm.[113]

Also critical to the interpretation of human rights norms in the context of specific topics are UN Human Rights Special Procedures (Special Rapporteurs, Independent Experts, and Working Groups). These are (groups of) experts appointed by the HRC, acting in their individual capacity to report and advise on human rights. Several Special Procedures exist that are relevant to climate-related loss and damage and the right to remedy, such as the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change and the UN Special Rapporteur on the human right to a clean, healthy and sustainable environment, and have published reports and statements in this context. For example, in his Framework Principles on Human Rights and the Environment, the UN Special Rapporteur on Human Rights and the Environment affirmed that "States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human

rights."[114] Most recently, the UN Special Rapporteur on the right to development published a report on climate justice and loss and damage, explicitly placing climate-related loss and damage under a pillar of remediation and confirming that States have obligations under international human rights law to realize effective remedies for climate harm — and pay in the LDF — regardless of the limitations of the UNFCCC.[115]

Critical to normative development are human rights treaty bodies (HRTBs), which are committees of independent experts established by each one of the nine core international human rights treaties to monitor the implementation by States of their legal obligations under each specific treaty. As part of their mandate, they produce General Comments/General Recommendations or authoritative guides on the interpretation of the obligations of the States under the treaty in question. Several General Comments have addressed the scope of existing States'obligations in the context of climate change.[116] For example, in its General Comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, the Committee on the Rights of the Child encourages States "to take note that, 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."[117]

International Court Advisory Proceedings

States are increasingly looking to regional and international courts for guidance and accountability. Three advisory opinions about legal obligations in the context of the climate crisis represent a historic moment that will set the stage for climate action, accountability, and justice for decades to come. The International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR), and the International Court of Justice (ICJ) have all published or are working on strong guidance on climate-related obligations under international law, and the legal consequences of breaching them. Such advisory opinions hold significant weight as they are authoritative statements that provide interpretation and clarification of the law in response to specific questions after a robust legal process informed by the submissions of individual States.

"The international climate change regime provides limited avenues for remedial action. Its failure to deliver climate justice is precisely why citizens, organizations, and States are increasingly taking to the courts to seek accountability and redress."

— Ralph Regevanu,
Minister of Climate Change Adaptation, Meteorology and Geo-Hazards, Energy, Environment and Disaster Management of Vanuatu

ITLOS:
The first request for an advisory opinion on climate change and international law was made by the Commission of Small Island States on Climate Change and International Law (COSIS) to ITLOS in December 2022. ITLOS assesses the obligations of State Parties to the UN Convention on the Law of the Sea (UNCLOS). The Court was asked to clarify the obligations of States with regard to preventing, reducing, and controlling anthropogenic GHG emissions as the primary driver of climate change, ocean acidification, and related harms to the marine environment and to protecting and preserving the marine environment from such harms. In its advisory opinion,[118] ITLOS confirms that GHG emissions pollute the marine environment, and State Parties must take all necessary measures to prevent, reduce, and control them. The opinion explicitly underlines how State responsibilities to address the climate crisis are not limited to the UNFCCC or the Paris Agreement.

What this means in practice is that, even if State Parties are in compliance with the Paris Agreement, if they fail to fulfill their obligation to take all necessary measures to prevent, reduce, and control marine pollution from anthropogenic GHG emissions, they could face international responsibility or — in other words — liability under UNCLOS. The Tribunal clarified that States' international responsibility may be engaged for the breach of these obligations, suggesting that it could be possible for reparations claims to be brought under UNCLOS for loss and damage or climate-related harm to the marine environment.[119]

IACtHR:
In 2023, Chile and Colombia requested that the IACtHR clarify State obligations in the context of the climate emergency for State Parties to the Inter-American Convention on Human Rights. The request put before the Court a range of issues related to State duties with respect to climate change, such as adaptation, mitigation, and remediation of losses and damages, as well as environmental defenders and CBDR-RC. The IACtHR previously issued an advisory opinion on human rights and the environment[120] — confirming legal obligations to provide redress for environmental harm, including transboundary harm — and the Inter-American Commission on Human Rights adopted a resolution on the climate emergency, confirming that "for the effective protection of human rights, States must take appropriate measures to mitigate greenhouse gases, implement adaptation measures and remedy the resulting damages."[121]

The Court has a rich and progressive jurisprudence on remedy and reparation, including in the environmental context.[122] The case of *La Oroya v. Peru*, in which the Court found several human rights violations, including violation of the right to a healthy environment, may be considered the most advanced jurisprudence of the IACtHR in terms of reparation for environmental damage and an important precedent for climate justice. The Court condemned Peru for failing to regulate toxic industrial pollution and ordered the State to undertake several remediation measures, such as defining and implementing actions in the short, medium, and long term required for the remediation of contaminated areas (restitution), free medical treatment (rehabilitation), carrying out a public act of acknowledgment of international responsibility (satisfaction), and establishing regulations related to air pollution in line with the standards of the World Health Organization and available scientific information (non-repetition), as well as several measures to regulate corporate conduct and realize redress, such as the design and implementation of an environmental compensation plan to ensure that the operations of the corporation include a commitment to the integral recovery of the affected ecosystem.[123]

The advisory opinion on the climate emergency can build on these groundbreaking precedents by, for example, confirming States' extraterritorial legal obligations to provide remedy for climate harm. Oral hearings saw strong pleas by States, civil society, and Indigenous Peoples to the Court to uphold the right to reparations in the context of the climate crisis. Once delivered, the Court's climate advisory opinion will be of critical importance in and of itself, as well as in the way it will inform the advisory opinion of the ICJ.

ICJ:

A campaign to bring the "world's biggest problem" to the world's highest court driven by Pacific youth[124] and supported by Vanuatu[125] led to a UN General Assembly resolution adopted by consensus, requesting that the ICJ issue an advisory opinion on the obligations of States in respect of climate change.[126] The request builds on a wide body of international law[127] and asks the Court to look into "the obligations of States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs for States and for present and future generations" and — importantly — the legal consequences of breaching such obligations, with respect to affected States, Peoples, and individuals of present and future generations.

The relevance of these questions with regard to remedy for climate harm cannot be underestimated. They bring together a large body of international law and explicitly dive into the legal consequences of causing significant harm to the climate system. Legal consequences for breaching international obligations ultimately entail remedy and reparations for injury caused (see Part I). The ICJ has previously pronounced on such legal consequences.[128] It can, therefore, be expected that the ICJ will provide further clarity on the duties of States to provide remedy and reparation for climate harm.

Norms in Practice: Applying Human Rights Law to Remedy Climate Harm

In the absence of an effective multilateral response to the climate crisis, litigation is a key tool to enforce existing norms to realize ambitious climate action and seek justice in the context of escalating climate impacts. Increasingly, victims of the climate crisis — be they individuals, communities, municipalities, or States — are turning to the Court to demand accountability and justice for the losses and damages they are facing. Climate litigation against governments and corporations is on the rise[129] and increasingly building on human rights law.[130]

In the absence of an effective **multilateral response to the climate crisis,** litigation is a *key* tool to enforce existing norms to realize **ambitious climate action** and seek justice in the context of escalating climate impacts.

ICJ earing
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Quasi-Judicial Processes

The majority of HRTBs can consider an individual communication or complaint from any individual or group of individuals claiming a violation of their rights under the human rights treaty monitored if the State in question has accepted to be subjected to such communications. The consideration of such communications follows a quasi-judicial process and results in a decision that carries political and legal weight, as it can inform the interpretation of human rights norms concerning climate change in human rights-based climate litigation before national and regional courts and tribunals.

Already, three such communications claiming that a State or several States have failed to uphold their obligations in the context of climate change-related harms have been submitted to HRTBs.[131] In *Teitiota v. New Zealand*, a Kiribati family petitioned the Human Rights Committee (Committee on Civil and Political Rights, CCPR) after being denied asylum in New Zealand on the grounds of climate impacts in Kiribati, including sea level rise, flooding, and salinization of drinking water as threats to the right to life. The CCPR rejected the claim as it considered that there was still enough time to put in place adaptation measures to protect the right to life, but importantly, it stated that the effects of climate change could violate the right to life and trigger non-refoulement obligations.[132]

Flooded home in Kiribati
© Semi Duaibe / Plan International Australia

Box 4: Torres Strait Islanders Case *(Billy et al. v. Australia)*

The case of a group of residents of the Torres Strait Islands who filed a petition against Australia to the CCPR[133] is groundbreaking as it led to the first decision by an HRTB that establishes the State Party's duty to protect people under its jurisdiction from climate impacts and refers to the obligation to provide effective remedy.[134] In September 2022, the CCPR published its decision in the case *Billy et al. v. Australia* (3624/2019). The Torres Strait Islander petitioners claimed that their islands would become uninhabitable in 10–15 years and that Australia had violated several of their and their children's rights under the International Covenant on Civil and Political Rights (ICCPR) by failing "to adopt mitigation measures to reduce greenhouse gas emissions and cease the promotion of fossil fuel extraction and use" as well as by failing "to implement an adaptation programme to ensure the long-term habitability of the islands."[135]

The Committee found that the State Party had violated the right to family life and the right to culture by failing to take adequate adaptation measures. It asked Australia to provide full reparation, which included "provid[ing] adequate compensation, to the authors for the harm that they have suffered; engag[ing] in meaningful consultations with the authors' communities in order to conduct needs assessments; continu[ing] its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor[ing] and review[ing] the effectiveness of the measures implemented and resolv[ing] any deficiencies as soon as practicable."[136]

It added that the State Party is also under an obligation to take steps to prevent similar violations in the future. While this is an important decision, it must be noted that this petition only invited the CCPR to consider harm within national borders. Given the transboundary nature of climate harm, such a decision could also be envisaged extraterritorially. The Committee decided not to address whether Australia's failure to effectively reduce GHG emissions had resulted in the violation of its human rights obligation under the ICCPR, which is a glaring gap in the decision that future communications should address.

Also, at the national level, human rights institutions can support the application of norms and the realization of access to justice for individuals, Peoples, and communities affected by the climate crisis. National human rights institutions (NHRIs) have a wide range of mandates and functions depending on the institutional setup at the national level, and many are mandated to undertake independent investigations (see Box 5). This important quasi-judicial function comes in addition to other important roles that NHRIs play in monitoring the effective implementation of human rights obligations at the national level and working with the government to protect and promote human rights. An example can be found in Fiji, where the Human Rights and Anti-Discrimination Commission documented the impacts of climate change on human rights, presented it to the Fijian government, and conducted a community awareness campaign on human rights and climate change.[137]

Box 5: Commission on Human Rights of the Philippines' Inquiry on Climate Change

In a groundbreaking national inquiry requested by citizens and civil society in the aftermath of a series of devastating typhoons in the country, including Super Typhoon Haiyan (Super Typhoon Yolanda), the Commission on Human Rights of the Philippines concluded that 47 Carbon Majors have contributed to climate-related human rights violations and could be found legally and morally liable.[138]

Through a seven-year-long investigation based on people-centered interviews, roundtables, consultations, community dialogues, and public hearings, the Commission detailed how various human rights, such as the right to life, the right to health, and the right to self-determination, are affected by the climate crisis in the Philippines.[139] It concluded that people harmed are entitled to remedy and access to justice,[140] stating that "States should also establish legal frameworks to compensate victims of climate change impacts, through courts or quasi-judicial bodies, with revenues derived directly from polluters. This framework should allow for compensation to be fair, meaningful, and accessible."[141]

The inquiry highlighted the role of the Carbon Majors in causing the climate crisis through their generation of GHG emissions, with awareness and knowledge about the potential impacts of those emissions, as well as their systematic obfuscation of climate science and misinformation of the public.[142] The Commission also provided recommendations for States to uphold their responsibilities to regulate corporate actors in the context of the climate crisis.

While focused on the Philippines, the findings of the investigation are of direct relevance to all national jurisdictions. The inquiry also demonstrates the important role NHRIs can play in supporting those harmed by the climate crisis to seek justice and amplify their voices.[143] Similar petitions have been filed in Indonesia and Malaysia.[144]

Corporate Loss and Damage Litigation

Loss and damage litigation can be understood "to include cases that challenge the particular emissions contributions of certain stakeholders to adverse climate change impacts, where claimants seek reparations for climate harm"[145] and have been categorized according to the actors seeking justice (States, citizens, and civil society, or subnational actors) and those being held accountable (States or corporations).[146] Recent examples demonstrate that transnational corporate loss and damage litigation is on the rise, linking climate harms across the globe with the conduct of large corporations, often Carbon Majors. These cases form an important legal avenue for climate reparations but are still relatively limited, with only 15 percent of rights-based climate cases being classified as loss and damage cases related to remedy.[147] Other cases seeking to hold corporations accountable for their contributions to climate harm rely on tort law, civil law, or other domestic provisions.

While mostly an adaptation-focused case, *Luciano Lliuya v. RWE AG* is relevant from a loss and damage perspective because of the approach taken by the Court. In a case filed in the District Court in Essen, Germany, in 2015, Saúl Luciano Lliuya, a Peruvian farmer and mountain guide, claimed that the German energy company RWE, by knowingly contributing to climate change, is in part responsible for the glacier melt and related flood risk near his home in Huaraz, potentially leading to massive destruction and loss of life.[148]

Based on RWE's contribution to global emissions (0.47 percent[149]), the case seeks compensation for that share of the incurred costs of flood protection measures (i.e., $21,000), which can be considered adaptation measures. The appeals court decided that the case was admissible and provided for a general claim of compensation as the legal basis for moving forward with the case. In a critical development, the Court recognized that a corporation could be held liable for climate-related damage in the "global neighborhood" — highlighting the global nature of GHG emissions and its related damage.[150]

As of October 2024, the Court is in the process of examining the evidence on the flood risk to Lluiya's home and then determining whether the science supports a causal link between RWE's emissions and the climate risks faced by Lliuya. In May 2022, also as a first of its kind outside of a court's jurisdiction, an on-site visit was held to gather evidence about the threat posed by floods and mudslides to Lluiya's home.[151] Based on this evidence and evidence about how much RWE's emissions have contributed to this threat, a decision will be made on the liability of RWE, as well as related costs for adaptation measures and incurred loss and damage.[152] While not a human rights-based case, this case is a first of its kind where a Carbon Major faces legal responsibility in Europe for climate damages caused abroad, notably in the Global South.

A similar case that explicitly builds on human rights obligations is *Asmania et al. v. Holcim*.[153] Four inhabitants of Indonesia's Pari Island, supported by Indonesian and other NGOs, are suing Holcim, a Swiss-based cement company and Carbon Major. Pari Island is significantly impacted by flooding related to sea level rise and is expected to disappear largely by 2050. The case was filed in 2022, asserting that climate impacts on the claimants' lives, the lives of their families, the island ecosystems, and the island's population as a collective are infringing on their rights to physical integrity, personal freedom, private and family life, mental integrity, and economic advancement. The claimants rely on Swiss civil law, specifically referring to the Swiss Federal Constitution[154] and the European Convention on Human Rights.[155] The Pari Islanders are demanding that the cement company rapidly reduce its GHGs, pay up for damage already incurred from sea level rise, and contribute to further adaptation measures to protect against floods.[156] It is the first transnational case that combines claims for mitigation, financing of adaptation, and compensation for climate harm.[157] Holcim's asserted share of responsibility for the harm is based on its historical emissions between 1950 and 2021, attributing projected climate impacts to the cement company.[158] The nature of the claims makes this a groundbreaking case, which could have a potentially outsized impact if it is accepted by the Swiss Court.[159]

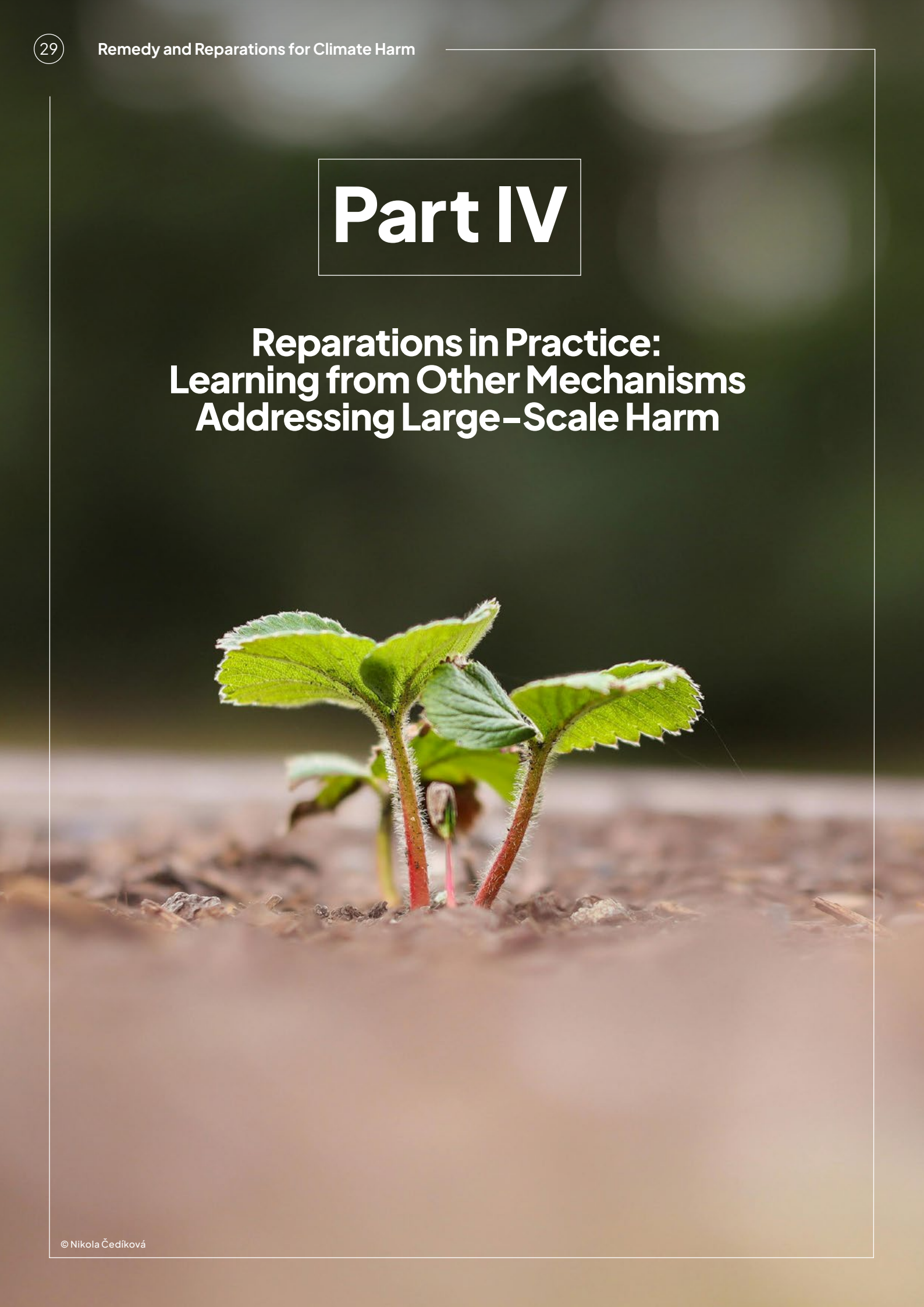
Although, to date, no corporate loss and damage case has succeeded on the merits, these examples demonstrate that people harmed by the climate crisis do not accept the lack of accountability that the global climate governance regime provides and will seek justice. What is critical about these cases is their extraterritorial nature, with Global South plaintiffs seeking to hold multinational corporations accountable for their harms before courts in the Global North, bringing in an additional equity element as compared to similar Global North-based compensation cases such as *Comer v. Murphy Oil* and *Native Village of Kivalina v. ExxonMobil Corp.* in the US.[160]

These ongoing cases have the potential to set important precedents and establish a basis for new cases. However, it will not be possible for all climate victims to go through the courts to seek remedy and reparations for the harm incurred, underscoring the need for complementary mechanisms. Individuals who actually succeed in obtaining compensation will not only see their personal harm redressed but will also contribute to setting precedents that can inform further litigation efforts worldwide and structural solutions at the local, national, regional, and international levels based on the principle of accountability and the right to remedy.

RWE power plant
© Semi Duaibe / Plan International Australia

Part IV

Reparations in Practice: Learning from Other Mechanisms Addressing Large-Scale Harm



Experience with reparative efforts in other contexts of wide-scale harm can provide inspiration for the design and implementation of reparations for climate harm.[161] The database of reparations maintained by Queen's University Belfast contains domestic and global examples from more than a hundred countries.[162] Reparations mechanisms are not a one-size-fits-all, and existing mechanisms do not necessarily address the same types of harms or build on the same bodies of law. They also often operate at different levels, as existing mechanisms have mostly focused on a single State or limited sets of States, while climate reparations mechanisms will largely have to be transnational in scope. Despite such differences, the diversity of experience with reparation mechanisms, each of which stems from historically rooted conflicts and responds to specific vulnerabilities, can help shape reparations programs tailored to the contours of climate harm, which varies based on geography and individual and group characteristics, such as gender, age, and disability, as well as socioeconomic status, culture, and ways of life. Learnings from existing reparations mechanisms could also be important to make mechanisms that are not currently designed to provide remedy, such as the LDF, more effective and just. The breadth of experiences with reparations also serves as a reality check that the difficulties surrounding climate reparations, such as political contestation and the scale of the harm, should not be a reason not to pursue them. Political contestation is not the exception but the rule when it comes to reparative programs, and most have evolved through implementation, as the nature of providing redress for harms at scale is more fully understood.

A closer look at the range of reparative experiences allows for the identification of principles that can be applied to a wide range of approaches to remedy climate harm, from multilateral institutions to bilateral and even internal approaches. Part IV of this report builds on the analysis by Sonja Klinsky and Luke Moffet[163] of existing reparations mechanisms and identifies six interrelated principles proposed to guide the development of effective and just climate reparations mechanisms (see Table 1). These principles are also firmly rooted in international law. While this is not an exhaustive list and climate reparations programs will have to be defined in a context-specific way, these principles and their practical implications for climate reparations should, at a minimum, be explicitly considered when designing a program — be they global, regional, bilateral, or domestic.

Table 1: The Six Principles of Effective and Just Climate Reparations Mechanisms

Principle	Practical Implications for Climate Reparations
Victim-Centric	• Meaningful participation • Direct access for communities • Avoiding revictimization
Inclusive and Comprehensive	• Utilizing all forms of repair • Supporting harm identification • Non-closure of partial claims • Remedy for all victims
Intersectional	• Prioritizing those most affected • Tackling specific barriers
Accessible and Adequate	• Simplified and accessible procedures • Maximizing available resources • Managing resource limitations
Accountable for Causally Linked Harms	• Additionality of reparations • Minimizing the burden of proof • Accountability
Trackable and Adaptable	• Transparency • Monitoring and revision

Principle 1: Victim-Centric

The foundational purpose of reparations is to address the suffering of those who have experienced harm, as they are uniquely focused on victims.[164] Central to any reparations mechanism should, therefore, be the victim.[165] This has three major implications for how a reparations program should be designed and implemented, all of which are directly relevant to the climate context.

Meaningful Participation

There is a large diversity of harms in the climate context, and similar climate impacts may lead to varying harms for victims due to differences in vulnerability and exposure, as well as how individuals and communities place different values on the same type of harm.[166] The process of designing and implementing a reparations program must ensure that those who have been harmed are directly and meaningfully involved in articulating what these harms are and what appropriate remedy would be.[167] Such meaningful and effective public participation is a human right and strongly rooted in international law.

Programs should be designed to include support for effective victim engagement in the definition and implementation of reparations.[168] What this engagement looks like and requires will vary. In Peru, for example, following two decades of internal conflict and authoritarian rule, victims' organizations and NGOs were involved in designing their reparations program.[169] In Argentina, following the transition to democracy after a military dictatorship, which included a variety of human rights abuses, including the forced disappearance of persons, human rights organizations — several of which were directly tied to victims and their families — were central in shaping the reparations program.[170]

Direct Access for Communities

Any resources intended to redress harm must be received and enjoyed by those who have experienced harm. Other reparations mechanisms have realized such direct access by making payouts directly to victims or allowing them to apply directly for funds based on clear frameworks of who can receive what for which type of harms. Direct community access, which is already being discussed for the LDF, is critical.[171] Ensuring that this principle is met requires including those who have experienced harm when evaluating the effectiveness of the reparative program (see Principle 6).

Avoiding Revictimization

Any reparative effort must avoid revictimizing those experiencing harm, which can happen in several ways, from stigma[172] to having to invest substantial resources in recognition of claims[173] to setting the bar for causal evidence too high for those being harmed. Other reparative programs, such as those in Peru[174] and Colombia,[175] have addressed this by facilitating claims-making processes. Similarly, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) explicitly calls upon States to make documentation available for displaced peoples, recognizing that the absence of such documents can impede access to rights, including reparations.[176] Any climate reparative program would have to put in place measures to facilitate claims adjusted to different contexts and take an appropriate approach to evidence (see Principle 5).[177]

Principle 2: Inclusive and Comprehensive

To truly respond to the needs and priorities of those harmed, reparations mechanisms have to be inclusive and comprehensive, seeking to cover all victims across many forms of harm. Again, the climate context is not unique in that it has to address diverse harms. Many, if not most, reparations programs have addressed a wide range of harms. Specific challenges related to this principle in the context of climate harm are the great diversity of harms and the fact that they are actively unfolding, so they are not yet all identifiable. It also requires thinking about the responsibilities of States to redress harm to victims in various jurisdictions, including those with high degrees of responsibility for the climate crisis.

Utilizing All Forms of Repair

Given the scale and variety of climate harm, all forms of redress, as recognized under international law (see Part I), should be considered — including and extending beyond compensation. Such an approach can be seen across reparations mechanisms. The Canadian Truth and Reconciliation Commission, which focused on the losses experienced by Indigenous Peoples due to State-sanctioned forced attendance in residential schools, investigated losses related to sexual violence, death, loss of territory, loss of language, loss of cultural identity and cohesion, intergenerational trauma, lost earning potential, and lost political voice and representation, among others.[178] While compensation is important in certain situations, for some forms of harm, it is unlikely to be adequate or culturally appropriate.

Compensation has sometimes been seen as "blood money" and has been either refused or accepted only because victims feel like they have few other choices. For example, after the Supreme Court of the United States found that the State had illegally seized the Black Hills, the Sioux Indigenous Nation was offered a large financial settlement as compensation, but they did not and still do not accept financial redress for the loss of their homeland, and they have refused the settlement.[179] Similarly, in its efforts to provide redress for military rule, which included forced disappearances and executions, removal of *campesinos* from their land, and widespread persecution, Chile developed a multifaceted reparations program that included economic reparations. However, economic reparations to Mapuche communities in Chile were seen as potentially harmful to community cohesion and culturally inappropriate,[180] while some recipients in Argentina also felt that economic reparations were disrespectful of the actual harms experienced.[181]

These experiences underline how essential it is that those harmed delineate the appropriate form of repair and the inadequacy of relying only on compensation. Other forms of repair, such as rehabilitation, in which efforts are made to reestablish social, health, education, or other essential systems, may include and go beyond financial arrangements. Similarly, others, such as restitution, could include measures such as land swaps, special migration or citizenship arrangements, or other in-kind redress intended to replace or rebuild what was lost or damaged.[182]

Supporting Harm Identification

The development of mechanisms for identifying contemporary and emerging harms in a dynamic context is critical to ensuring inclusivity and comprehensiveness, in particular, due to the dynamic quality of climate harms. Climate change is not unique in that it deals with harms that are still actively emerging. For example, reparative and reconciliation-oriented programs in settler-colonial contexts such as New Zealand[183] and Canada[184] have explicitly included both historically rooted and contemporary harms, as the implications of settler colonialism are still unfolding for Indigenous Peoples.[185] Similarly, the United Nations Compensation Commission (UNCC) was established by the UN Security Council[186] in the aftermath of the 1990–1991 Gulf War. Iraq was held liable for its breach of international law resulting from its unlawful invasion and occupation of Kuwait for "any loss, damage and injury arising in regard to Kuwait and third States, and their nationals and corporations." This included claims for processes to investigate long-term ecological harms, recognizing that the full implications of these would take time to emerge.[187]

Other reparative programs have been paired with mechanisms such as fact-finding efforts, truth commissions, and archival or documentation-oriented processes designed to identify harms. For example, Peru's reparations program is built on recommendations from its Truth and Reconciliation Commission process.[188] In the climate context, a category of repair could include investments in the gender-, age-, and disability-disaggregated data collection systems that would be required to identify both contemporary and emerging harms, especially in highly climate-vulnerable regions for which little data is currently available.

Non-Closure of Partial Claims

Due to the dynamic nature of climate change, care would need to be taken to ensure that redress provided for contemporary harms does not preclude the capacity to receive further redress should harms recur or intensify over time. There are two components to this. First, redress for one harm does not satisfy the right to reparation for others. In cases like Peru or Chile, where a comprehensive approach has been taken, multiple forms of redress are available to victims. Accessing one form of reparation does not preclude the use of others because each form responds to a particular facet of overlapping harms. Similarly, in the climate context, as harms multiply or intensify over time, each facet should be seen as deserving of redress. Second, interim or partial redress does not satisfy the right to repair. In programs such as compensation for forced labor during World War II, limited munificence resulted in partial awards, which were not closed so that full payment could occur should additional funds be located. Artificial closure, such as by granting very limited repair but declaring the harm addressed, is rarely successful. For example, following thirty years of authoritarian rule characterized by widespread political repression and human rights abuses, Malawi developed several mechanisms for redress.[189] However, the limited scope of these efforts, combined with a presumption of closure in which the past was left behind, has led to widespread frustration and concerns that the program has undermined efforts toward more substantive justice. Developing mechanisms to manage the dynamic nature of climate harms would require care to avoid political concerns from predominantly developed countries regarding "never-ending" claims, while also not forcing artificial closure before harms are fully identified.[190]

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Remedy for All Victims

Reparations cannot be seen as giving preferential treatment to some and not others: remedy for all victims is essential. However, in the climate context, this is complicated by the scale of global disparities, including in terms of responsibility for climate change. While most of those facing the most serious harm will reside in countries with low cumulative emissions, there are many communities that have experienced and will experience serious harm and reside within jurisdictions with high historical responsibility. However, people living in poverty or Indigenous Peoples residing in wealthy countries can hardly be said to have benefited from the system that created the climate harm, which raises complications for straightforward notions of separating out potential victims. As reparation mechanisms also have to be guided by other principles of international law, such as the principle of CBDR[191] for global mechanisms, the approach should focus redress mechanisms on communities in developing countries, while special considerations can be put in place for Indigenous Peoples in wealthy countries. But States also have responsibilities to redress harm within their national context, and wealthy countries with high cumulative emissions should put in place domestic climate reparations programs focusing on those most affected and vulnerable within their jurisdictions.

Principle 3: Intersectional

Reparations must be sensitive to systemic disparities in power and resources that do not exacerbate marginalization or undermine the capacity of those suffering from harm to enjoy their human rights. Using an intersectional approach that recognizes that people are navigating multiple intersectional forms of oppression and exploitation can help ensure that reparations are designed in ways that are sensitive to the lived experiences of those they intend to benefit and address the cumulative effect of their experienced discrimination. This principle is a widely held perspective,[192] reinforcing several of the other principles, such as victim-centricity, inclusivity and comprehensiveness, and adequacy and accessibility, while also having dedicated practical implications.

Prioritization of the Most Affected

In the context of wide-scale climate harm and limited resources, transparent strategies of prioritization based on intersectional approaches to needs and climate vulnerability may be required. While principles of inclusivity and comprehensiveness (Principle 2) and adequacy (Principle 4) strongly argue for the adequate provision of resources in accordance with needs, such adequacy is — particularly in the near term — unlikely, given the scale of climate harm and the current political landscape. Programs have tackled the issue of scale in various ways. For instance, the Colombian reparations program for the armed conflict limited claims to a specific window when violence was particularly intense.[193] While such time-bound limitations are not appropriate for climate harm, a prioritization could be considered based on comprehensive needs assessments within domestic contexts, taking into account sources of varied vulnerability and an intersectional approach to avoid arbitrary decisions.

Tackling Specific Barriers

Processes for accessing reparations should explicitly address the specific barriers experienced by particular individuals, Peoples, and communities. While some broad guidelines are required for legitimacy, these must be complemented with mechanisms of tailoring administrative processes to the concrete lived experiences of those facing harm and dedicated policies to ensure the redress meets their needs. For example, in Colombia, a set of public servants were trained specifically to help victims understand and articulate their harms and navigate the reparations process.[194] This could take many forms and be implemented at multiple scales. For example, at the global level, existing UN human rights mechanisms or UNFCCC Loss and Damage mechanisms could support and be given the responsibility to help create tools and frameworks that could be used to identify harms, help claimants lodge claims, and navigate administrative processes. At the national level, inclusive expert boards could be created that include representatives of existing mechanisms focused on realizing substantive equality, such as human rights and gender institutions, with capacities tied to climate-specific loss and damage. Climate reparations programs should also have dedicated policies in place to ensure that groups with specific contexts, such as Indigenous Peoples and persons with disabilities are included, and redress is tailored to their needs and priorities. Since some communities will almost certainly be unfairly denied redress, especially in the early stages of any program, or other harms could occur as a result of activities through reparations programs, grievance mechanisms for appeal and redress also need to be put in place.

Principle 4: Adequate and Accessible

The legitimacy of reparations programs aimed at bringing justice to those who have suffered harm rests on the extent to which they are genuinely accessible to victims and adequate to the scope of the harm. Arbitrary or politicized allocations or empty reparative processes that are inadequate or inaccessible can undermine the ultimate purpose of reparations. For example, the piecemeal, slow, and incomplete nature of South Africa's reparations program has led to continued debates, leaving many to question the utility of the Truth and Reconciliation Process, which initially identified the need for reparations.[195] Similar examples in Nepal[196] and Malawi[197] underline the importance of an adequate, nonarbitrary, and accessible program.

Simplified and Accessible Procedures

Simplified processes to file claims are needed to ensure access to justice and avoid undue burdens on claimants and arbitrary decision-making. This could entail a number of strategies depending on the form and scale of the reparative program, such as institutional arrangements to help claimants communicate their experiences in ways that can be easily administered.[198] Many reparations programs have developed guidelines that clearly outline what kinds of redress are possible for specific harms and have processes to help claimants navigate this. Peru's program featured registrars traveling to rural communities to facilitate claims-making.[199] In the climate context, some proposed strategies have included creating standing committees of experts for facilitation,[200] as well as other institutional processes that "match" bottom-up experiences with top-down categories of redress.[201] Also critical to accessibility is allowing those seeking justice to do so in their language of choice.

Maximizing Available Resources

Reparations programs must seek to be adequate in scale. States' human rights duties related to realizing effective remedies for climate harm include an obligation to provide adequate financial resources and regulate private sector reparations. Together with the polluter pays principle, this forms the basis for putting in place equity-based finance mechanisms. Lessons learned from existing reparations mechanisms based on voluntary contributions demonstrate that they have consistently struggled with insufficient resourcing.[202] The funds to pay for compensation under the UNCC were derived from a share of proceeds of Iraq's petroleum exports, providing an example of how to ensure a steady and defined source of funding from the responsible State. Another interesting example is the International Oil Pollution Compensation Funds (IOPCF), established after a major 1967 oil spill in the UK. This case exposed the absence of an international framework on liability and compensation in the context of oil spills. The IOPCF collects resources from oil companies[203] and uses these contributions to compensate individuals and companies directly for damages from tanker oil spills.[204]

Managing Resource Limitations

As experience with reparations mechanisms demonstrates that resource limitations are a persistent challenge, strategies to manage with inadequate resources will be necessary. These could include allocating smaller partial or interim awards that do not represent "closure" and could be expanded when additional resources are made available. This would be a starting point to allow a great number of recipients to receive redress.[205] Such strategies have been used in other contexts, such as in the reparations program for forced labor during World War II.[206] Another example can be found in the UNCC, where environmental claims were only given partial coverage to address reasonable mitigation in recognition that there were insufficient resources for complete ecological restoration.[207] Clear guidelines are important to ensure transparency and nonarbitrariness in the allocation of support to ensure some fairness, even if awards are inadequate.

Principle 5: Accountable for Causally Linked Harms

Reparations are not charity but the consequence of the duty to provide redress for harms caused by particular actions and omissions and, therefore, a form of accountability. This element of responsibility entails eligibility for repair. Harms must be explicitly linked to wrongdoing, although the causal driver can be an entire system, as in the case of reparations for harms embedded in apartheid in South Africa. While legal liability may feature in some reparative cases, in others, this approach has not been sought because the set of harms was either too complicated or too large to fit within the existing legal system. For example, the recommendations emerging out of the Canadian Truth and Reconciliation Process targeted diverse actors across the entire society as it recognized that the violence suffered by Indigenous Peoples was a direct product of settler colonialism.[208] In such a case, legal liability was thought to be inadequate for moving toward the societal accountability that appropriate and adequate redress required. Regardless of the exact role of legal liability in reparations mechanisms, the causal link that is required has several implications in the climate context.

Additionality of Reparations

Climate reparations stem from a duty to address harms from climate change directly, which comes in addition to duties related to preventing and minimizing harm through mitigation and adaptation, and in particular, duties related to international cooperation in that context. Therefore, accountability in this context means reparations must be distinct from and, therefore, additional to ongoing efforts to ensure adequate climate finance for adaptation or mitigation and from existing funding for humanitarian assistance related to climate-related impacts. It is essential that reparations do not replace efforts to address climate change and reduce suffering generally, regardless of causation.

Minimize the Burden of Proof

Claims for climate reparations will need to establish a causal link between the harm at issue and climate change. As with other reparative programs, care will need to be taken to ensure that evidentiary thresholds are set appropriately so that persistent inequalities in access to evidence do not lead to exclusion, especially of those with the least resources. Proving damage from climate or environmental impacts is very costly and sometimes impossible for many reasons, requiring flexibility and mechanisms to shift the burden of proof away from victims. This is crucial in the context of climate harm. While attribution science is advancing (see Box 1), such studies continue to be geographically uneven due to historically rooted inequalities in data availability, and it may not be possible for all forms of harm or in all geographies.[209]

Other mechanisms have used a "plausibility" or "balance of probabilities" approach due to a combination of missing evidence, concerns about revictimization, and efficiency.[210] In such approaches, claimants need only show that it is either plausible or more likely than not that a harm is linked to a specific causal event to be eligible for redress. For example, in the Forced Labour Compensation Programs, claimants had to declare that they had been in a concentration camp or similar form of confinement or forced to work under extremely harsh conditions resembling imprisonment and provide whatever details they could.[211] This could serve as an example of climate-affected areas, such as in the context of rising sea levels or large disasters such as the 2022 Pakistan floods. Another relevant approach could be to create categories of harm eligible for climate reparations programs by using climate models to avoid relying on attribution studies.[212] Allowing a variety of forms of evidence, including oral history and Indigenous and traditional knowledge, will also be crucial to ensuring that this principle aligns with other principles, such as inclusivity and accessibility.

Accountability

Because reparations are about repair, which includes repairing relationships, they must be connected to the recognition of responsibility or accountability. Different reparations programs have navigated accountability differently, but actors that have been held accountable have included individuals, subnational actors such as policy forces or military organizations, social groups or entities, corporations, and States. For example, although not always implemented in practice, multiple programs have sought funding for reparations through reductions in military budgets as a form of accountability.[213] Similarly, companies that benefited from forced and slave labor under Nazi occupation contributed to the German Forced Labour Compensation Fund.[214] Specific challenges for accountability in the climate context relate to the systemic nature of climate harm and dispersed responsibility — with some actors having direct liability and a more complicated evidentiary trace for others who may have benefitted from systems that led to widespread harm. These challenges are not unique, for instance, they are also seen in the transition from apartheid in South Africa and the Truth and Reconciliation Process in Canada. The process in Canada resulted in recommendations for change aimed at a wide range of actors, including churches, professions (including those in the legal and medical arenas), and educators, in addition to the government.[215]

The responsibility of certain actors in the context of the climate crisis can be clearly pinpointed, increasingly so through attribution studies (see Part I). To truly ensure accountability, climate reparations programs should be based on formal guidelines for the provision of repair based on States' and corporations' conduct and fair shares of historical cumulative emissions and the principle of CBDR-RC. In this context, linking reparations to other mechanisms, such as Truth Commissions, could support the development of such guidelines.

António Guterres, United Nations Secretary-General

Principle 6: Trackable and Adaptable

Since each context is unique, each reparative program is a prototype and will inherently require processes to track its effectiveness and make adaptations so that it can be truly victim-centric, inclusive and comprehensive, intersectional, adequate and accessible, and based on accountability.

Transparency

There must be mechanisms to track what actions are taken and what forms of support are provided. While transparency mechanisms in the climate context have largely focused on assessing the extent to which actors have taken the actions they promised, a reparative program would also require transparency about contributions to reparations. This could build on burgeoning efforts to bring increased transparency to the provision of climate finance but would require the development of expertise, particularly to ensure the avoidance of double counting or substitutions for existing development or humanitarian assistance.

Monitoring and Revising

Processes for revising reparative programs have been critical to the effectiveness of such programs. For example, the truth and reconciliation process in Colombia made over a thousand recommendations for its reparative program. Furthermore, those who experience harm must be able to meaningfully participate in such processes.[216] The reparations program in Chile was significantly revised when it initially excluded those who had suffered torture.[217] A number of systems have included victims in advisory boards or other mechanisms to ensure these voices are included in evaluative efforts. For example, in the German Forced Labour Compensation system, the International Organization for Migration set up a steering committee through which victims organizations could provide regular feedback on the design and implementation of the program.[218] Such mechanisms are particularly crucial in the climate context as the nature of harms will shift as climate change intensifies. In addition to bottom-up indicators, it may be worth considering science-based triggers for the reevaluation of program adequacy, potentially tied to levels of atmospheric concentrations of GHGs or global temperature rise, as what might be adequate provisions for reparations at 1.5°C of warming above industrial levels are unlikely to be adequate at 3°C.[219]

Conclusion: The Legal and Practical Imperative of Human Rights–Based Remedy for Climate Harm

In conclusion, applying a remedy and reparations lens based on international human rights law and related duties to address climate harm is critical for legal and practical reasons. In doing so, it is important to recognize that steps to provide climate reparations to individuals or States are likely to be undermined by an unjust economic system that continues to push climate-vulnerable countries into a debt cycle, and legal avenues for remedy for climate harm are only one part of the puzzle leading to true climate justice.

Legally, upholding the right to remedy for climate harm means shifting from a voluntary approach that has not delivered any meaningful redress to date to one of obligations and accountability. Wealthy countries with high cumulative emissions have an obligation to provide access to effective remedies for those harmed by the climate crisis, which ultimately entails an obligation to provide finance for mechanisms dealing with climate harm or loss and damage. Under this obligation, States must also ensure that companies under their jurisdiction and control that have caused or contributed to human rights violations related to climate change assume the costs of their reparation, providing a strong basis for the need to create international finance mechanisms and levies based on the polluter pays principle, which could significantly contribute to the resources available to deal with climate harm. Additionally, a legal approach can offer avenues, especially in the context of corporate accountability, for those seeking redress beyond traditional climate finance, which has largely failed to effectively meet the needs and priorities of frontline communities.

From a practical perspective, the well-established jurisprudence on remedy and practical application in the context of reparations mechanisms is of particular relevance to inform effective and just solutions to provide remedy for climate harm, including Loss and Damage mechanisms under the UNFCCC. Applying the typology of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition and underlying approaches leads to a comprehensive understanding of the needs, perception of justice, and meaningful redress of those whose human rights are harmed by the climate crisis — whether these consist of one or a combination for the listed categories. By understanding the lessons learned and practices of reparations mechanisms that have been designed and implemented to deal with large-scale harm in other contexts and under varying bodies of law, important principles emerge that should guide any reparations program, from the global to the local level. These principles are victim-centric, inclusive and comprehensive, intersectional, adequate and accessible, accountable for causally linked harms, and trackable and adaptable. Even in the absence of global mechanisms for climate reparations, States can consider arrangements to realize remedy for climate harm at the regional, national, and local levels and be guided by such principles.

In view of the main themes and examples explored in this report, the following high-level recommendations emerge:

1.

States must uphold their legal obligations to provide remedy and reparations for climate harm, including with regard to the regulation of private actors.

2.

National, regional, and international human rights institutions must consider the extent to which they can contribute to upholding the right to remedy in the context of climate harm.

3.

Existing and future mechanisms to remedy climate harm or address loss and damage, including those under the UNFCCC, must be fully informed by human rights law and lessons learned from existing reparations mechanisms.

Despite long-standing legal obligations, climate-related human rights harm is escalating. The ongoing and intensifying nature of this harm is no reason to delay action on loss and damage. On the contrary, national, regional, and international human rights institutions have a critical role to play in advancing this action. Putting legal obligations and principles and their real-life implications for victims of climate harm into practice is necessary, urgent, and feasible. All States must assume responsibility and take all possible measures to repair climate-related injuries while doubling down on efforts to prevent and minimize further harm.

Endnotes

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