



The Role of International Human Rights Law in Addressing Loss and Damage due to Climate Change

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ARTICLE DETAILS	ABSTRACT
Research Paper	
Keywords : <i>Climate Change, Human Rights, Loss and Damage, International Law, Climate Justice.</i>	<i>Climate change represents not only an environmental crisis but also a profound challenge to human rights and global justice. The increasing frequency of extreme weather events, rising sea levels, droughts, and ecosystem degradation have caused irreversible losses and damages, disproportionately impacting vulnerable populations who have contributed least to global emissions. While international climate agreements such as the UNFCCC and Paris Agreement recognize the concept of “loss and damage,” the linkage between these mechanisms and human rights obligations remains underdeveloped. This paper explores how international human rights law can play a transformative role in addressing loss and damage from climate change by framing state accountability, ensuring equity, and safeguarding the rights of affected communities. It examines global frameworks, judicial developments, and policy innovations that integrate human rights principles into climate governance. The study concludes by emphasizing the need for a human rights-based approach to climate action that aligns adaptation, mitigation, and compensation mechanisms within an equitable global framework.</i>

1. Introduction

Climate change has emerged as the most formidable threat to humanity in the twenty-first century, affecting the survival, dignity, and well-being of billions of people. Beyond its environmental implications, climate change poses a direct challenge to the realization of fundamental human rights such

as the right to life, health, food, water, housing, and culture. The concept of “loss and damage” — referring to the adverse effects of climate change that cannot be avoided through mitigation or adaptation — has gained prominence in global discourse, particularly after the Warsaw International Mechanism (WIM) and the establishment of the Loss and Damage Fund under the 2022 Sharm el-Sheikh Implementation Plan.

However, the absence of clear legal obligations and enforcement mechanisms for compensating affected communities underscores a critical gap in international law. While environmental law focuses on prevention and mitigation, human rights law centers on the protection of individuals and communities from state and corporate negligence. Bridging these two domains offers a promising pathway to enhance accountability, ensure equitable remedies, and promote climate justice. The present study seeks to analyze the role of international human rights law in addressing loss and damage, drawing upon key treaties, judicial interpretations, and evolving state practice.

2. Understanding Loss and Damage: Conceptual and Legal Dimensions

Loss and damage from climate change encompass both economic losses (such as property, infrastructure, and income) and non-economic losses (such as life, culture, biodiversity, and heritage). The IPCC’s Fifth Assessment Report (2014) recognized that certain impacts of climate change are “beyond adaptation.” For instance, the complete submergence of low-lying islands or the extinction of species represents irreversible harm. The UNFCCC initially focused on mitigation and adaptation, but the issue of loss and damage emerged forcefully at COP19 (Warsaw, 2013), leading to the creation of the Warsaw International Mechanism.

From a legal perspective, loss and damage have roots in the principles of state responsibility, polluter pays, and transboundary harm — long recognized in international environmental law. Yet, these principles remain inadequately enforced due to the absence of a binding liability regime. Human rights law, with its emphasis on state obligations to respect, protect, and fulfill rights, provides a normative and ethical foundation to demand justice for those most affected. When a government fails to mitigate emissions, adapt effectively, or provide redress for harm, it violates both environmental and human rights duties.

3. The Human Rights Implications of Climate Change

Climate change affects nearly every dimension of human rights. The right to life, recognized under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), is threatened by disasters and food insecurity. The right to health, enshrined in Article 12 of the International Covenant on Economic, Social



and Cultural Rights (ICESCR), is undermined by heatwaves, vector-borne diseases, and pollution. Similarly, the rights to water, food, housing, and self-determination are directly compromised by changing environmental conditions.

The UN Human Rights Council (HRC) has repeatedly affirmed that “climate change poses an immediate and far-reaching threat to people and communities around the world.” The 2021 recognition of the right to a clean, healthy, and sustainable environment as a universal human right (Resolution 48/13) marked a watershed moment, providing a legal and moral basis for climate-related claims. Moreover, the Office of the High Commissioner for Human Rights (OHCHR) has emphasized that states have extraterritorial obligations to prevent human rights harms arising from their emissions.

4. The Evolution of Climate Justice under International Human Rights Law

The intertwining of climate change and human rights is not entirely new. The 1992 Rio Declaration, in Principle 1, recognized that human beings are “at the center of concerns for sustainable development” and are “entitled to a healthy and productive life in harmony with nature.” The Kyoto Protocol (1997) and Paris Agreement (2015) further incorporated justice and equity principles, though they did not explicitly frame them in human rights terms.

The Paris Agreement represents a subtle yet significant shift toward recognizing loss and damage as a distinct pillar of climate governance, alongside mitigation and adaptation. Article 8 acknowledges the importance of “averting, minimizing, and addressing loss and damage associated with the adverse effects of climate change.” However, its non-liability clause (Decision 1/CP.21, paragraph 51) prevents claims of compensation, reflecting the political resistance of developed nations to financial accountability. Here, human rights law becomes essential — it transcends political bargaining and anchors state obligations in universally recognized norms.

The integration of human rights principles — particularly equality, participation, accountability, and non-discrimination — strengthens the legitimacy and enforceability of climate actions. It shifts the discourse from voluntary assistance to binding duties owed to affected populations.

5. Case Law and Jurisprudential Developments

Judicial forums worldwide have begun to recognize the intersection between climate change and human rights. The **Urgenda Foundation v. The Netherlands (2019)** is a landmark decision in which the Dutch Supreme Court held that the government’s inadequate climate action violated Articles 2 and 8 of the European Convention on Human Rights (right to life and private life). Similarly, in **Leghari v. Federation**

of Pakistan (2015), the Lahore High Court declared climate inaction as an infringement of fundamental rights, ordering the government to implement adaptation measures.

In the **Torres Strait Islanders v. Australia (2022)**, the UN Human Rights Committee found that Australia's failure to protect island communities from climate impacts violated their rights under the ICCPR. These cases demonstrate an emerging trend of human rights bodies addressing loss and damage claims, thereby filling gaps left by traditional environmental treaties. The forthcoming **ICJ Advisory Opinion on State Obligations Regarding Climate Change** (requested by the UN General Assembly in 2023) may further clarify the scope of international responsibility.

6. Equity, Common but Differentiated Responsibilities, and Human Rights

The principle of **Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC)**, central to the UNFCCC, reflects equity considerations in global climate governance. Developed countries, as historical emitters, bear greater responsibility for financing mitigation, adaptation, and loss and damage measures in developing nations. From a human rights perspective, equity entails not only differentiated obligations but also procedural fairness in decision-making processes.

The **Warsaw International Mechanism (WIM)** and **Santiago Network** aim to enhance coordination and technical support for vulnerable countries. Yet, funding gaps persist, as pledges often remain unfulfilled. A rights-based approach requires predictable, adequate, and accessible finance mechanisms that empower affected communities rather than perpetuating dependency. The creation of the **Loss and Damage Fund at COP27 (Sharm el-Sheikh)** marks a critical advancement, but its operationalization must be grounded in human rights norms of participation, transparency, and justice.

7. The Role of International Institutions

Several international institutions contribute to integrating human rights into loss and damage governance. The **UNFCCC** provides the institutional architecture, while the **OHCHR**, **UNDP**, and **UNEP** promote human rights-based climate policies. The **Green Climate Fund (GCF)**, established in 2010, incorporates gender and social inclusion safeguards, though its reach remains limited. The **Human Rights Council's Special Rapporteur on Human Rights and the Environment** plays a key advocacy role, emphasizing that climate inaction violates human rights obligations under international law.

Regional systems, such as the **Inter-American Court of Human Rights**, have also recognized the environmental dimension of human rights. In its Advisory Opinion OC-23/17 (2017), the Court affirmed that the right to a healthy environment is autonomous and essential for the realization of other rights. This

decision provides a jurisprudential foundation for linking loss and damage to enforceable state responsibilities.

8. Accountability and Compensation Mechanisms

Effective redress for climate-related loss and damage requires clear accountability structures. International human rights law obliges states to provide remedies for violations within their jurisdiction. Mechanisms such as the **UN Human Rights Committee, Committee on Economic, Social and Cultural Rights**, and **regional human rights courts** offer quasi-judicial avenues for victims. Strategic litigation has emerged as a powerful tool to compel governments and corporations to align their policies with climate justice.

Compensation for loss and damage, however, remains politically contentious. Developed countries often resist legal liability, preferring voluntary or humanitarian assistance frameworks. A human rights approach can transform this paradigm by framing compensation as a duty derived from the principles of equality, justice, and reparation. Incorporating these obligations into national laws, as seen in countries like the Philippines and South Africa, enhances domestic enforceability.

9. The Indian Perspective

9.1. India's Dual Approach: Global Advocacy and Domestic Recognition

India's response to the issue of loss and damage operates on two interlinked levels — international diplomacy and domestic constitutional jurisprudence.

At the global level, India has consistently advocated for climate justice, a principle rooted in fairness and historical responsibility. This means India believes that developed countries, who have historically emitted the majority of greenhouse gases since the Industrial Revolution, must take greater responsibility for funding climate action and compensating developing countries for their losses and damages resulting from climate impacts such as floods, droughts, cyclones, and rising sea levels.

At the domestic level, India has a robust record of judicial activism that expands the scope of Article 21 of the Constitution — the Right to Life — to include the right to a clean and healthy environment. This judicial interpretation ensures that environmental protection is not merely a policy choice but a fundamental right enforceable in court.

9.2. Judicial Recognition of Environmental Rights

The Supreme Court of India and various High Courts have played a pioneering role in recognizing environmental rights as integral to human rights. Two landmark judgments illustrate this principle:

9.2.1. Subhash Kumar v. State of Bihar (1991) – The Supreme Court held that the right to life includes the right to enjoyment of pollution-free water and air for full enjoyment of life. This case arose from pollution of the Bokaro River, and the Court’s decision established that environmental degradation directly infringes on constitutional rights.

9.2.2. M.C. Mehta v. Union of India (1987) – Through a series of cases led by environmental lawyer M.C. Mehta, the Supreme Court expanded environmental jurisprudence in India. It introduced principles such as the polluter pays principle, precautionary principle, and absolute liability for hazardous industries. These judgments made environmental protection a core component of public interest litigation (PIL) and a vital aspect of human rights enforcement.

Together, these rulings affirm that climate-related harms, which include floods, air pollution, and resource scarcity, violate fundamental rights and thus create legal obligations on the government to take preventive and remedial action.

9.3. India’s Position in International Climate Negotiations

On the global stage, India has emerged as a key voice for the Global South in climate negotiations. It consistently upholds the principles of:

- **Equity:** All countries must contribute to climate action, but responsibilities should be proportionate to their historical emissions and capabilities.
- **Common but Differentiated Responsibilities (CBDR):** Recognized under the UNFCCC (1992), this principle asserts that developed nations must take the lead in reducing emissions and providing financial and technological assistance to developing countries.
- **Historical Responsibility:** India maintains that industrialized nations owe a climate debt to poorer nations due to centuries of unsustainable development that has caused global warming.

Through these principles, India argues that loss and damage funding should not be seen as charity or aid but as a moral and legal obligation of developed nations to compensate vulnerable countries for climate-induced harm. This approach underlines India’s commitment to both justice and sovereignty in global climate governance.

9.4. The National Action Plan on Climate Change (NAPCC): Integrating Human Rights Principles

Domestically, India has not yet enacted a comprehensive climate change law, but its policy framework is guided by human rights principles, particularly through the National Action Plan on Climate Change (NAPCC) launched in 2008.

The NAPCC focuses on inclusive and sustainable development and operates through eight national missions, including:

- National Solar Mission – promoting renewable energy,
- National Water Mission – ensuring water efficiency,
- National Mission for Sustainable Agriculture, and
- National Mission on Sustainable Habitat – improving energy efficiency in urban areas.

These missions directly relate to protecting socio-economic rights such as the right to food, health, water, and livelihood — all of which are threatened by climate change. The emphasis on equity, inclusivity, and sustainable livelihoods reflects India's belief that climate action must respect and promote human dignity rather than hinder economic growth.

9.5. Participation in Global South Coalitions

India's coalition-building role in groups such as BASIC (Brazil, South Africa, India, China), G77 + China, and LMDCs (Like-Minded Developing Countries) has been crucial in shaping international discourse on loss and damage.

Through these alliances, India has:

- Demanded operationalization of the Loss and Damage Fund (adopted at COP27, 2022).
- Advocated for equitable governance structures where developing nations have a say in how funds are distributed.
- Highlighted that adaptation and loss and damage must be separate pillars of climate policy — with loss and damage specifically addressing irreversible harms like displacement, livelihood destruction, and cultural loss.
- India's diplomacy thus ensures that vulnerable communities in developing countries are not sidelined in the global climate finance architecture.

9.6. Rights-Based Climate Diplomacy

India's climate diplomacy integrates rights-based governance both at home and abroad. By linking climate change with developmental rights, India asserts that environmental protection should not come at the cost of poverty alleviation or energy access.

This approach aligns with Article 253 of the Indian Constitution, which empowers the government to implement international agreements. Through initiatives such as International Solar Alliance (ISA) and



LiFE (Lifestyle for Environment) mission, India promotes sustainable living practices that protect the environment while upholding social justice.

Furthermore, India's submission of its Nationally Determined Contributions (NDCs) under the Paris Agreement emphasizes sustainable growth, adaptation support, and technology transfer — all guided by fairness and human rights values.

9.7. India as a Model for Developing Nations

By aligning its international advocacy with domestic constitutional principles, India serves as a model for other developing nations seeking equitable outcomes in global climate governance. Its approach demonstrates that environmental justice is inseparable from social and economic justice. In India's view, addressing climate change is not merely about reducing emissions but also about protecting people's lives, livelihoods, and rights.

This dual framework — combining moral leadership abroad and judicial activism at home — positions India as a bridge between the developed and developing world, advancing both environmental protection and human welfare.

In essence, India's approach to loss and damage rests on three pillars:

1. **Global Justice:** Advocating for financial responsibility of developed nations through equity and historical accountability.
2. **Domestic Rights Protection:** Judicial recognition of environmental rights as part of the right to life under Article 21.
3. **Integrated Policy Framework:** Incorporating sustainability and inclusion in national plans like the NAPCC.

By merging human rights principles with environmental governance, India illustrates that climate action must be people-centric. Its stance underscores that addressing climate change is not only a matter of science and economics but also a matter of justice, rights, and moral duty.

10. Challenges and the Way Forward

Despite growing recognition, several challenges impede the realization of human rights in addressing loss and damage. The fragmentation of legal regimes, lack of enforceable obligations, and geopolitical tensions between developed and developing countries hinder progress. Moreover, procedural barriers often exclude

marginalized communities — particularly women, Indigenous peoples, and small island inhabitants — from meaningful participation in decision-making.

To advance justice, international law must evolve toward binding commitments that link emissions accountability with human rights enforcement. The establishment of the Loss and Damage Fund must be complemented by clear eligibility criteria, equitable representation, and grievance redress mechanisms. Incorporating loss and damage obligations into national human rights frameworks, enhancing transparency, and strengthening international cooperation are essential steps.

11. Conclusion

The human rights dimensions of climate change are no longer peripheral; they lie at the heart of the struggle for survival and justice in the Anthropocene. Loss and damage are not merely economic concerns but questions of dignity, fairness, and accountability. International human rights law provides both a moral compass and a legal framework to guide equitable responses. By grounding loss and damage governance in the principles of human rights — equality, participation, accountability, and reparation — the international community can transform the rhetoric of solidarity into actionable justice.

A rights-based approach demands that climate finance mechanisms respect the autonomy of affected communities, that global institutions uphold transparency and inclusivity, and that states accept their shared but differentiated responsibilities. Ultimately, addressing loss and damage through a human rights lens is not only a legal imperative but a moral necessity — one that ensures that no nation or person is left behind in the age of climate crisis.

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