

CLIMATE JUSTICE AND LOSS AND DAMAGE: PERSPECTIVES FROM THE GLOBAL SOUTH

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The breakthrough decision at the 27th Conference of the Parties (COP 27) to the United Nations Framework Convention on Climate Change (UNFCCC) in December 2022 in Sharm el-Sheikh, Egypt to establish new loss and damage funding arrangements, including a fund for loss and damage, has garnered increased attention and interest on the topic globally (Bandari et al. 2022; Naylor/Ford 2023; Pflieger 2023; Serdeczny/Lissner 2023). In December 2023 at the COP 28 in Dubai, it is expected that the loss and damage Fund and funding arrangements is operationalised to enable dedicated loss and damage financing under the UNFCCC.

Human-induced climate change has led to devastating impacts and related losses and damages for many regions, countries and communities across the globe which will losses will escalate with increasing global warming (IPCC 2023). If this warming exceeds 1.5°C, risks and impacts will become even more pronounced and will become increasingly difficult to avoid (ibid.). Such losses and damages include loss of lives and livelihoods, degradation of territory, farmland, cultural heritage, indigenous knowledge, societal and cultural identity, biodiversity, and ecosystem services (van der Geest et al. 2019; Serdeczny 2019).

However, losses and damages are unequally distributed around the world and is being disproportionately experienced by developing countries, particularly Small Island Developing States (SIDS) and Least Developed Countries (LDCs) and by vulnerable groups such as indigenous peoples, women, children, the elderly, rural communities and low income groups who have been the least responsible for greenhouse gas emissions (Warner/van der Geest 2013; Boyd et al. 2021; Lai et al. 2022). Losses and damages due to climate change can exacerbate existing social and economic inequalities and social injustices faced by vulnerable populations which can threaten fundamental human rights (Sultana 2022; Thomas/Benjamin 2022). Loss and damage therefore can be considered a matter of climate justice. Climate

justice emphasises that the causes and impacts of climate change are not distributed nor experienced equally. It also highlights the fact that existing structural, systemic and historical factors have led to these inequities and as such, global action on climate change demands more inclusive, just and nuanced approaches (Newell et al. 2021; Sultana 2022).

This article provides an overview of the loss and damage debate, through a climate justice lens, and its relevance in ensuring equity and justice for the Global South, with particular emphasis on SIDS and LDCs. In sections 2 and 3, the term loss and damage will be unpacked and the history of loss and damage in the UNFCCC will be outlined. Section 4 provides an overview of the latest developments on the new loss and damage fund and funding arrangements including key priorities for developing countries on loss and damage finance. Finally, Section 5 concludes on the state of play for operationalizing the new loss and damage fund at COP 28 and how that aligns with climate justice for the Global South.

UNDERSTANDING LOSS AND DAMAGE

There is still no agreed definition of loss and damage, although it has been a highly contentious issue over the last three decades in the UNFCCC. Regardless, loss and damage can be broadly understood as the adverse impacts of climate change that occur despite or in absence of actions to reduce greenhouse gas emissions (mitigation) and to build resilience or adjust to current and future climate change (adaptation) (Thomas 2022; Stuart-Watt 2022). Loss and damage can occur from extreme weather events such as tropical cyclones, droughts and floods as well as slow-onset events such as sea level rise, desertification, ocean acidification, glacial retreat and salinisation. Article 8 of the Paris Agreement formalised the importance of “averting, minimising and addressing” loss and damage in the international climate change policy agenda. “Addressing loss and damage” is therefore considered the third pillar of climate ac-

tion as insufficient mitigation and inadequate adaptation leads to loss and damage (Broberg/Romera 2020). Loss and damage is considered unavoidable since it occurs beyond adaptation when 'hard' or 'soft' limits to adaptation are breached and climate risks become unavoidable (Mechler et al. 2019). These limits are especially acute in vulnerable communities which lack the requisite resources and capacity to implement effective adaptation measures (Bandari et al. 2022).

ECONOMIC AND NON-ECONOMIC LOSS AND DAMAGE

Loss and damage is often categorised as either economic or non-economic. Economic losses and damages are adverse effects on resources, goods and services that are commonly traded in markets to which monetary value can be assigned such as the cost of rebuilding infrastructure and property that was destroyed during a hurricane or the loss of revenue from agricultural produce and supply chain disruptions due to flooding (Bandari et al. 2022; Stuart-Watt 2022). Non-economic losses and damages on the other hand cannot be easily be assigned a monetary value and include loss of biodiversity or ecosystems, trauma from experiencing a tropical cyclone or loss of cultural identity and community due to the mass displacement of people. Non-economic loss and damage is more difficult to quantify and monetize but can have detrimental and long-lasting impacts on the well-being and quality of life of communities (Bandari et al. 2022; Serdeczny 2019).

CLIMATE JUSTICE, VULNERABILITY AND LOSS AND DAMAGE

Climate justice enables the reframing of the loss and damage debate to critically consider equity and justice concerns. Climate justice demonstrates that loss and damage is due to the complex interaction of historical inequities and injustices that create vulnerability and is not just a result of biophysical processes (Naylor et al. 2020; Boyd et al. 2021; Sultana 2020). Examining the unequal socioeconomic processes and power relationships can untangle the root causes of vulnerability of marginalised populations that are disproportionately affected by climate change impacts (Naylor et al. 2020). These differentiated vulnerabilities when examined in a historical context, can highlight the underlying social,

economic and political inequities which compound the scale and extent of loss and damage on these vulnerable groups (Boyd et al. 2021). Applying a climate justice approach to the loss and damage debate thus highlights how climate change impacts countries, people and societies unevenly, differently and disproportionately due to differentiated vulnerabilities, and also allows the development of climate solutions which address these vulnerabilities, inequities and injustices in fair and equitable ways (Naylor/Ford 2023; Sultana 2020).

THE COSTS OF LOSS AND DAMAGE FOR THE GLOBAL SOUTH

Economies are especially hard hit by loss and damage and are expected to worsen as climate change intensifies. Extreme weather events can severely damage infrastructure, reduce quality of health and livelihoods of communities, lead to loss of biodiversity and ecosystem degradation and more. After Hurricane Ivan ravaged Grenada, in 2004 as a category 4 hurricane, the damages amounted to more than twice the country's GDP (World Bank 2009). Similarly, after hurricanes Irma and Maria pummelled through the Caribbean in 2017, 90 % of Dominica's building stock was damaged at an estimated cost of USD 382 million. Nearly the entire population of Dominica (74,000 people) were also affected due to widespread damage to critical infrastructure such as roads, bridges, water, electricity and telecommunication systems in the aftermath of Hurricane Maria (Government of Dominica 2017; ACAPS 2018). The extreme flooding in Pakistan in 2022, affected 33 million people with 1,600 lives lost and resulted in estimated losses of up to USD 40 billion with an estimated 2 million houses destroyed, 13,000 km of roads damaged and 18,000 km² of agricultural lands ruined (OCHA 2022; Otto et al. 2023). Furthermore, the economic impacts from climate-related events can last long beyond the initial impact, with economies not recovering for decades to come (IMF 2017). Global efforts to mitigate and adapt to climate change continue to be insufficient to avert, minimise or address loss and damage which could cost developing countries an estimated USD 290 to 580 billion in 2030 which could reach USD 1 to 1.8 trillion in estimated costs of loss and damage in 2050 (Markandya/González-Eguino 2019).

Slow-onset events such as sea-level rise and drought are projected to cause more extensive economy-wide

damages, especially in the future. Notably, climate vulnerable countries are projected to experience the largest economic and social impacts, an estimate already visible by comparing the difference between 1.5°C and 2°C warming (IPCC 2023). Heatwaves are expected to become the 'new normal' under current emission trajectories which can hamper economic production in exposed societies as temperatures soar above critical thresholds which lower labour productivity and decrease agricultural yields (ibid.). The record-breaking heatwaves experienced in parts of Asia such as Bangladesh, India, Thailand, China and Lao PDR in 2023 resulted in numerous deaths due to heatstroke, increased hospital admissions due to heat-related illnesses and power outages across many countries (Zacariah et al. 2023a, 2023b). In addition, the heatwave disproportionately affected vulnerable groups who are more susceptible to heat (e.g. age, disability, pre-existing conditions) and those who are more exposed due to their livelihoods such as farmers, fishers and outdoor workers. This vulnerability was intensified by existing social and economic inequities affecting these groups (Zacariah et al. 2023b).

Still, the estimated costs of losses and damages borne by climate vulnerable countries are on top of the costs of reconstruction post-disaster. As the frequency and intensity of future climate impacts and ensuing losses and damages becomes the 'new normal', developing countries and particularly SIDS and LDCs, may find themselves in a vicious cycle of reconstruction and recovery which escalates their public debt, while increasing debt servicing costs and limits fiscal space for designing and implementing long-term climate action (Monsod et al. 2023). Over the past ten years alone, additional interest payments on government debt by 40 highly vulnerable countries amounted to USD 40 billion (UNEP 2018; Kling et al. 2018). This progressively undermines developing countries' ability to repay debts, thus increasing the costs to invest (ex-ante) in climate-resilient infrastructure or to insure against climate and non-climate related shocks (World Bank 2017). Furthermore, many SIDS with their high climate vulnerability and small economies, are already rated below investment grade by Moody's (2017) which make it difficult for them to maintain and attract new investments in the face of decreasing economic strength. This will therefore severely affect the future capacity of climate vulnerable countries to access capital markets and fund any (ex-post) reconstruction or long-term recovery phases to slow onset or extreme climate impacts.

HISTORY OF LOSS AND DAMAGE IN THE UNFCCC

Loss and damage has long been a hotly contested topic both inside and outside the international climate negotiations due to its climate justice dimensions of equity, fairness and historical responsibility for climate change and the issues related to compensation and liability that arise (Wallimann-Helmer et al. 2019; Boyd et al. 2021). The term was first introduced in 1991 by Vanuatu on behalf of the Alliance of Small Island States (AOSIS) who proposed an international insurance scheme for particularly vulnerable countries as compensation for loss and damage associated with sea level rise. This proposal was ultimately rejected and excluded from the UNFCCC text when it was adopted in 1992. Fifteen years later, loss and damage formally appeared in the Bali Action Plan in 2007, which called for enhanced action on adaptation through, inter alia, "means to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change" (UNFCCC 2007).

In 2010, loss and damage was anchored in the Cancun Adaptation Framework when the Work Programme on Loss and Damage was established with the aim of considering approaches to address loss and damage. Three years later, the issue of loss and damage was formally institutionalised with the establishment of the Warsaw International Mechanism (WIM) on Loss and Damage whose aims are enhancing knowledge, strengthening coordination and increasing action and support including finance, technology and capacity building on loss and damage.

In 2015, at COP 21, a significant milestone was achieved with the adoption of the Paris Agreement where loss and damage has its own stand-alone article, Article 8, securing its permanence in the UNFCCC. Article 8 calls for loss and damage to be regarded as a third pillar of international climate policy and action under the UNFCCC, elevating its importance alongside mitigation and adaptation. Article 8 also provided greater political legitimacy for loss and damage finance that is separate and distinct from mitigation and adaptation finance (Roberts et al. 2016; Serdeczny 2019). Notwithstanding, the Paris Agreement failed to establish a legal basis for financing loss and damage as stated in paragraph 51 that "Article 8 of the Agreement does not involve or provide a basis for any liability or compensation" (UNFCCC 2015).

At COP 25 in 2019, the Santiago Network on Loss and Damage was established as part of the WIM, to ramp up technical assistance to vulnerable developing countries on comprehensive approaches to addressing loss and damage. However, loss and damage finance has continued to be overlooked despite continued calls from developing countries. AOSIS and its 58 SIDS members, for example, have fiercely and consistently called for loss and damage financing in the UNFCCC which they argue is necessary when mitigation and adaptation are insufficient and ineffective for avoiding climate change and associated loss and damage (Roberts/Huq 2015).

Ahead of COP 26 in 2021, developing countries, especially AOSIS and the LDC Group demanded a tangible outcome on loss and damage finance with a proposed creation of the Glasgow Facility for Financing Loss and Damage that would ensure actual financial support be provided on loss and damage (Serdeczny et al. 2021; Huq 2022). Unsurprisingly, this loss and damage facility was strongly opposed by developed countries and instead was downgraded to the Glasgow Dialogue on Loss and Damage to discuss the arrangements for the funding of activities to avert, minimize and address loss and damage (Serdeczny et al. 2021).

In December 2022, after two weeks of intense negotiations on loss and damage, COP 27 closed with a historic decision to establish a Fund and new funding arrangements to assist vulnerable developing countries to respond to loss and damage. Furthermore, countries agreed that the outcomes would be “based on cooperation and facilitation, and not involve liability or compensation” (UNFCCC 2022). A Transitional Committee (TC) was established to coordinate work on the new Fund and develop recommendations for the operationalisation of the Fund, to be considered for adoption at COP 28). However, despite the historical breakthrough for this new loss and damage Fund many questions remain around how this Fund will operate, who can access it, how it will be funded and who will pay into the Fund.

PROGRESS ON THE LOSS AND DAMAGE FUND

Currently, the Transitional Committee is undertaking the arduous task of fleshing out the new Fund despite the tight deadline, high expectations and the deeply entrenched climate justice issues surrounding loss and

damage finance. The TC comprises 24 members of which 14 are from developing countries, including two SIDS and two LDCs members. The TC is mandated to develop concrete recommendations for institutional arrangements, modalities, structure, and governance for the new Fund, defining the elements of the new funding arrangements, identifying, and expanding sources of funding, and ensuring coordination and complementarity with existing funding arrangements (UNFCCC 2022).

The TC has had three meetings so far with its fourth and final meeting to be held in October 2023. In support of their work, the UNFCCC Secretariat has organised two expert workshops on loss and damage and have reported the workshop outcomes to the Committee. In addition, the second Glasgow Dialogue in June 2023, also considered the new Fund and funding arrangements which have informed the TC in their deliberations (UNFCCC 2023a). Calls for submissions ahead of TC meetings were also launched and have garnered diverse views on the structure, governance and operations of the new fund and funding arrangements from a range of stakeholders. However, there is still much work to be done by the TC ahead of COP 28.

Two options for the Fund’s structure have emerged – programmatic and responsive. A programmatic approach supports enhancing national loss and damage policies and programmes which could be the mechanism to trigger eligibility and can also enable country ownership and application to context-sensitive interventions (Serdeczny et al. 2023). This approach, however, could cause unnecessary access barriers for developing countries due to high data burdens and technical capacity requirements. SIDS and LDCs already face difficulties in accessing the GCF due to the complicated application processes which require significant scientific data and vulnerability assessments that are usually not available (IEU 2020, 2023). On the other hand, a responsive approach is structured around thematic funding windows where pots of money are dispersed based on a spectrum of needs to address loss and damage. Such an approach could simplify access for developing countries since the mechanism to trigger eligibility is the climate event (Serdeczny et al. 2023). Still, a responsive approach is more applicable to extreme events rather than slow onset events which are more difficult to demonstrate attribution to climate change. The new Fund is expected to be a blend of both programmatic and responsive approaches – where national loss and damage policies and programmes are

eligible for funding while also having provisions for funds to be rapidly dispersed immediately following a climate disaster (UNFCCC 2023b).

At the time of writing, the third TC meeting was recently concluded in early September 2023. Here, TC members considered issues surrounding the scope and purpose of the fund and funding arrangements, institutional arrangement such as the placement of the fund, governance of the fund and access and eligibility of the Fund (UNFCCC 2023a). There is significant divergence on the placement of the Fund itself. Developed countries favour the placement of the new Fund within a multilateral development bank (MDB) and, in its recent TC submission, the United States proposed a World Bank-hosted financial intermediary fund (FIF) citing the efficiency and ease of setting up a new Fund by utilising the World Bank's legal personality and existing administrative and operational systems to support delivery of loss and damage finance at scale (UNFCCC 2023b). Developing countries instead have proposed that the new Fund be an operating entity of the financial mechanism of the UNFCCC and serving the Paris Agreement as per decision 2/CP.27 (ibid.). This enables full flexibility in the design of institutional arrangements that enables a responsive and fit for purpose terms of reference on access and use of the new fund for addressing loss and damage. However, this is time and labour intensive, given the need to establish a legal entity for the new Fund as well as administrative and operational policies, procedures, and systems. This remains a fundamental design question for the new Fund which has implications on its institutional arrangements and operations among others, on which the TC has yet to reach agreement.

While institutional arrangements are another polarising issue being considered by the TC there is broad convergence on the governance structure of the new Fund. The new Fund will have a Board, Secretariat and Trustee with the general agreement that the World Bank will be invited to serve as (interim) Trustee (UNFCCC 2023b). Nevertheless, divergent views remain on the specifics including the role and authority of the Board and Trustee, composition of the Board and mandate of the Board, which ultimately depend on the placement of the Fund. Developing countries agree that the Board composition should have balanced representation of developed and developing countries including seats for SIDS and LDCs. The United States, however, have proposed a Board structure consisting of 29 members, with ten from

developing countries, eleven from developing countries, four members from the largest financial contributors and the remaining four from civil society (ibid.). However, the four largest financial contributors are expected to be wealthy developed countries (Lo 2023). Such an imbalance in the Board composition of the new Fund favours developed countries which could undoubtedly lead to developing countries' needs and priorities being under-represented and ignored.

Another contentious issue is the scope of the new Fund which has implications on access and eligibility. Developing countries, in their recent TC submission, envision an expansive fund with a broad scope that is responsive and fit for purpose (UNFCCC 2023b). Developing countries also emphasised that "all developing countries that have suffered climate-related loss and damage" to receive financial resources from the Fund "without discrimination or any form of exclusion" (ibid.). Developing countries maintain that available funds should be allocated equitably based on the scale and magnitude of climate disasters so that the eligibility mechanism for triggering a disbursement from the Fund considers how severe the impacts of the climate disaster is and the country's existing capacity to address them (Mrinali 2023). Developed countries, however, have argued that countries "particularly vulnerable to the adverse effects of climate change" do not extend to all developing countries which could exclude some countries from accessing the new Fund based on criteria such as Gross Domestic Product (GDP) or population size (ibid.). The United States have also proposed the use of sub-funds to define the scope of the Fund (UNFCCC 2023b). This use of sub-funds earmarks allocations based on specified activities and eligibility criteria thus limiting who can access to the Fund and for what.

Who will pay into the Fund is closely tied to the historical responsibilities for climate change and the implications for compensation and liability for loss and damage that arise. Developing countries strongly advocate that the new Fund should be capitalised largely by grant-based public financing from developed countries based on the "principles of equity and common but differentiated responsibilities and respective capabilities" (UNFCCC 2023b). The new Fund should also primarily provide grants and non-debt finance to developing countries and consider the use of blended finance instruments that are responsive and appropriate to the specific needs and circumstances of affected countries (ibid.). Developing

countries agree that new Fund should provide a minimum USD 100 billion a year by 2030 which is considered a minimum commitment since “estimates for future loss and damage are subject to great uncertainty, but recent events suggest they could be as high as USD 150 to 300 billion by 2030 to cope with immediate impacts and for subsequent reconstruction” (Independent High-Level Expert Group on Climate Finance 2022). Developed countries instead, continue to emphasise that the Fund should be capitalised by a mosaic of “new and existing funding arrangements” from diverse public and private sources but have not proposed a finance goal for the new Fund (ibid.). This new Fund has yet to attract any financial contributions from developed countries from both public and private finance sources.

CONCLUSION

Looking ahead to COP 28 in December 2023, the Transitional Committee has a mammoth undertaking ahead of them over the next few months to develop robust recommendations to operationalise the Loss and Damage Fund. Many fundamental issues on the design of the Fund, its placement, how it will operate, who can access it, who will pay into the Fund and the sources of funding are still to be addressed. These issues are deeply entrenched in climate justice concerns of equity, fairness, justice, and historical responsibility for climate change. The battle lines have already been drawn by developing countries and developed countries alike on where they stand on the new Fund and funding arrangements. Throughout the TC process, however, developing countries have continued to maintain a unified position on the different elements of the new Fund and funding arrangements that is responsive and grounded in ensuring climate justice for all developing countries experiencing loss and damage. What is agreed at COP 28 on how this Fund will be operationalised remains to be seen. Still, while the negotiations on the Fund continue, the stark reality remains that climate change is real and already happening, with losses and damages being unequally distributed and disproportionately experienced by developing countries who are the least responsible for the climate crisis.

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