

Loss and Damage: Ensuring its Integrity

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In Brief ...

***Loss and Damage refers to compensation or action taken to prevent or remedy injuries to States that is caused by climate change and that can no longer be avoided.**

***The loss and damage occurs because of the over-exploitation of the atmosphere by some States.**

***Loss and damage is important to many developing countries, because they require urgent resources to protect their people.**

***Loss and Damage should be built on a foundation of the existing rules of international law and not replace them.**

***Replacing existing rules of State responsibility under international law for climate damage consequences may result in developing States are ceding rights they have.**

***Loss and Damage must be dealt with in a manner that is consistent with international law.**

***Loss and Damage should be without prejudice to the existing consequences of State responsibility under international law.**

***Loss and Damage should be based on concrete financial commitments by States seeking to promote it and these commitments should be binding with identifiable resource contributions.**

***Loss and Damage should include reparations or action for non-materials or non-economic damages and slow onset events.**

Loss and Damage refers to a process for taking precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. It is an idea that makes much sense, but it is also an idea that needs to be developed cautiously so as not to extinguish rights that States have under international law.

There are several important points to be noted about loss and damage. First, Loss and Damage may not have been needed if all States had lived up to their obligations of mitigation in accordance with the objectives of article 2 and the obligations in the rest of the United Nations Framework Convention on Climate Change (UNFCCC). If developing States had been assisted with adequate new and addition finance, capacity building and access to technology, many developing States may not have suffered loss and damage. In other words, the loss and damage that is being addressed is the injury caused to mainly developing States by the historical over-exploitation of the atmosphere since industrialization by mainly developed States.

Second, Loss and Damage can be done in manner that is consistent with preserving the rights of developing States under international law to full, fair, just and adequate compensation for the injury they suffered, are suffering, and may suffer. This is perhaps most conveniently done by ensuring there is a statement in any agreement on loss and damage that states the agreement is 'without prejudice to the international law of State responsibility for the adverse impacts of climate change and the consequences that flow from this State responsibility'. If developed States refuse to accept such a provision, their good faith in providing assistance to developing country is at stake. Alternatively, a mechanism to deal with Loss and Damage should ensure full, fair, just, timely, and adequate compensation or action in a manner consistent with international law and ensuring accountability for its determinations.

Third, any agreement on Loss and Damage should state with as much specificity as possible where the resources to assist States suffering injury will come from. At a minimum there should be concrete legal obligations to provide resources and periodically replenish any new fund that is created or a window of the Green Climate Fund. To create a Loss and Damage mechanism without assuring its source of funding would be patently unfair developing States. At the moment, the Adaptation Fund, the Green Climate Fund, the Environmental Facility are among the various funds that are under-resourced. Even agreement to provide new and additional Fast-Track funding have not been upheld. Any new agreement to create a fund for Loss and Damage should therefore include an accountability mechanism to ensure that the funds actually materialize based on concrete legal commitments.

Fourth, any Loss and Damage agreement should either be part of the new agreement under the UNFCCC or clearly stated to be under the UNFCCC—governed by and interpreted in accordance with the provisions of the UNFCCC. This should include the application of the objective of the UNFCCC in article 2 as well as its basic principles in article 3. The UNFCCC is a treaty that has been ratified by virtually every State and forms the heart of international climate change law, providing the legal principles and the legal commitments or legal obligations upon which international climate action must be based.

Fifth, Loss and Damage should ensure compensation or action for non-material or non-economic loss and slow-onset events, but not effect the need for adequate, new and additional long-term financing. Means and methods for determining such losses should be consistent with international law.

The interests of the Association of Small Island States (AOSIS) and Least Developed Countries (LDCs) in Loss and Damage by should be respected. This is done by a meaningful agreement which is consistent with international law and that does not cede the legal rights of vulnerable States.

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ISMUN

International Youth and Student Movement
for the United Nations

Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity

Preamble:

The Conference of the Parties

Recalling the relevant provisions of the Convention,

Also recalling decisions 1/CP.16 and 7/CP.17 and the relevant conclusions of the Subsidiary Body for Implementation at its thirty-fourth and thirty-sixth sessions,

Recognizing the need to strengthen international cooperation and expertise in order to understand and reduce loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events,

Highlighting the important and fundamental role of the Convention in addressing loss and damage associated with climate change impacts, especially in developing countries that are particularly vulnerable to the adverse effects of climate change, including by promoting leadership, collaboration and cooperation, at the national, regional and international levels and for a broad range of sectors and ecosystems, in order to enable coherent and synergistic approaches to address such loss and damage,

Operative paragraphs

1. Acknowledges the need to enhance support, including finance, technology and capacity-building, for relevant actions;

3. Also notes that there are important linkages between extreme weather events and slow onset events, and the importance of building comprehensive climate risk management approaches;

4. Agrees that comprehensive, inclusive and strategic responses are needed to address loss and damage associated with the adverse effects of climate change;

5. Also agrees that the role of the Convention in promoting the implementation of approaches to address loss and damage associated with the adverse effects of climate change includes, inter alia, the following:

(a) Enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts;

(b) Strengthening dialogue, coordination, coherence and synergies among relevant stakeholders;

(c) Enhancing action and support, including finance, technology and capacity-building, to address loss and damage associated with the adverse effects of climate change;

6. Invites all Parties, taking into account common but differentiated responsibilities and respective capabilities and specific national and regional development priorities, objectives and circumstances, to enhance action on addressing loss and damage associated with the adverse effects of climate change, taking into account national development processes, by undertaking, inter alia, the following:

(a) Assessing the risk of loss and damage associated with the adverse effects of climate change, including slow onset impacts;

(b) Identifying options and designing and implementing country-driven risk management strategies and approaches, including risk reduction, and risk transfer and risk-sharing mechanisms;

(c) The systematic observation of, and data collection on, the impacts of climate change, in particular slow onset impacts, and accounting for losses, as appropriate;

(d) Implementing comprehensive climate risk management approaches, including scaling up and replicating good practices and pilot initiatives;

(e) Promoting an enabling environment that would encourage investment and the involvement of relevant stakeholders in climate risk management;

(f) Involving vulnerable communities and populations, and civil society, the private sector and other relevant stakeholders, in the assessment of and response to loss and damage;

(g) Enhancing access to, sharing and the use of data, at the regional, national and subnational levels, such as hydrometeorological data and metadata, on a voluntary basis, to facilitate the assessment and management of climate-related risk;

7. Acknowledges the further work to advance the understanding of and expertise on loss and damage, which includes, inter alia, the following:

(a) Enhancing the understanding of:

(i) The risk of slow onset events, and approaches to address them;

(ii) Non-economic losses and damages;

(iii) How loss and damage associated with the adverse effects of climate change affects those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability, and how the implementation of approaches to address loss and damage can benefit those segments of the population;

(iv) How to identify and develop appropriate approaches to address loss and damage associated with the adverse effects of climate change, including to address slow onset events and extreme weather events, including through risk reduction, risk sharing and risk transfer tools, and approaches to rehabilitate from loss and damage associated with the adverse effects of climate change;

(v) How approaches to address loss and damage associated with the impacts of climate change may be integrated into climate-resilient development processes;

(vi) How impacts of climate change are affecting patterns of migration, displacement and human mobility;

(b) Strengthening and supporting the collection and management of relevant data, including gender-disaggregated data, for assessing the risk of loss and damage associated with the adverse effects of climate change;

(c) Enhancing coordination, synergies and linkages among various organizations, institutions and frameworks, to enable the development and support of approaches to address loss and damage, including slow onset events and comprehensive climate risk management strategies, including risk transfer tools;

(d) Strengthening and promoting regional collaboration, centres and networks on strategies and approaches, including to address loss and damage associated with the adverse effects of climate change, including slow onset events, including through risk reduction, risk sharing and risk transfer initiatives;

(e) Enhanced capacity-building at the national and regional levels to address loss and damage associated with the adverse effects of climate change;

(f) Strengthening institutional arrangements at the national, regional and international levels to address loss and damage associated with the adverse effects of climate change;

8. Requests developed country Parties to provide developing country Parties with finance, technology and capacity-building, in accordance with decision 1/CP.16 and other relevant decisions of the Conference of the Parties;

9. Decides to establish, at its nineteenth session, institutional arrangements, such as an international mechanism, including functions and modalities, elaborated in accordance with the role of the Convention as defined in paragraph 5 above, to address loss and damage associated with the impacts of climate change in developing countries that are particularly vulnerable to the adverse effects of climate change....