

LOSS AND DAMAGE: THE ROAD TO COP27

AN AFRICAN PERSPECTIVE ON LOSS AND
DAMAGE IN THE LEAD UP TO THE
NEGOTIATIONS

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LIST OF ABBREVIATIONS

AGN	the Africa Group of Negotiators (AGN)
AILAC	the Independent Alliance of Latin America and the Caribbean
AOSIS,	Alliance of Small Island States
CDRFI	Climate and disaster risk financing and insurance
COP	Conference of the Parties
CVF	Climate Vulnerable Forum
GHG	Greenhouse Gases
GCF	Green Climate Fund
ICJ	International Court of Justice
ITLOS	International Tribunal for the Law of the Sea
LDC Group	Least Developed Country Group
LDFF	Loss and Damage Finance Facility
LMDC	the Like-Minded Group of Developing Countries (LMDC),
SB	Subsidiary Bodies under the UNFCCC
SNLD	Santiago Network on Loss and Damage
UNFCCC	United Nations Framework Convention on Climate Change (1992)
WIM	Warsaw International Mechanism on Loss and Damage

EXECUTIVE SUMMARY

The African continent is already experiencing extreme and debilitating impacts as a result of climate change. In this year alone, Madagascar and its African neighbours have been impacted by five cyclones in 2022. Tropical Storm Ana and Cyclones Batsirai and Emnati have destroyed thousands of houses and fields causing significant losses and damages. Recently South Africa experienced its deadliest storm on record which killed more than 400 people in April 2022, and an unprecedented drought is underway in the Horn of Africa. Debt has remained a pressing issue for African countries, which has only worsened in the context of the pandemic, the Ukraine war and the current energy crisis. For this reason, African countries have been calling for new and additional climate finance for loss and damage. They have joined with the G77 and China, in its call for a dedicated loss and damage finance facility (LDFF) at COP26 last year, asking for loss and damage to be separately financed, in a manner that is accessible and needs based.

Finance for loss and damage and the means of its provision is one of the key issues for Parties at this year's COP. Unresolved and related issues include full operationalisation of the Santiago Network on Loss and Damage (SNLD), including its structure and operational modalities to ensure that it can timeously and effectively fulfil its support function. Similarly, Parties will need to coalesce around a common understanding of what loss and damage actually is, if progress is to be made on means for its support.

The purpose of this report is to outline some of the key negotiation points and issues relating to loss and damage to a wider African audience, with a focus on loss and damage finance in the lead up to COP27. In doing so, we discuss the loss and damage landscape, including some of the key issues likely to be raised at COP27 with a view to exploring African perspectives and positions on this issue and related opportunities. We begin by tracing the history of the negotiations, the challenges with existing mechanisms, including the Warsaw International Mechanism on Loss and Damage (WIM), and some of the priorities for countries in the lead up to COP27. We then turn to one of the fundamental challenges within the debate, namely the lack of an operational and agreed definition of loss and damage. While definitional ambiguity has allowed discussions to continue, it has also fostered confusion around the difference between adaptation and loss and damage, and in turn obscured what dedicated finance for loss and damage means. Although it is likely to be highly contentious, it will be important for Parties to agree on a working definition, not only to progress discussions on finance, but also for the Global Stocktake in 2023.

We then engage with the question of loss and damage finance in some detail, highlighting its extensive negotiation history which has led to some of the positions adopted today. We unpack some of the challenges with the existing forms of support, namely insurance and disaster and humanitarian relief, focusing on how these challenges are informing the current request for, and proposed designs of, an LDFF. For instance humanitarian and development aid has been criticised for its dwindling volumes, its unpredictability and its failure to include a restorative element. Insurance has been criticised for its cost, particularly for African countries, inaccessibility, and its lack of coverage for slow onset events, migration and non-economic loss and damage. Alternatives such as a window under the GCF remain attractive, as they avoid the further fragmentation of the already existing finance landscape, but the GCF option also presents a myriad of

challenges mostly relating to its operational legacy and approach to financing that make it a highly unattractive option for many African countries. We then engage with some of the positions put forward by developed and developing countries at COP26 as well as this year's most recent Glasgow Dialogue in Bonn, including the Global Shield and the V20 Pilot facility, illustrating that there is a range of options and positions on the table. We unpack the detail of these options by assessing the merits and disadvantages of each of the potential and proposed financial mechanisms in a separate analysis entitled "Loss and Damage Financial Options".

Within that context, we turn to the special needs of African countries, showing why the significant debt distress currently felt by many of its nations, and extremely high anticipated costs of loss and damage (relative to other countries) are motivating the continent to push for primarily grant based finance. Although not all countries are focusing on public-only funds, there does appear to be a level of convergence within submissions to the UNFCCC, statements at the Glasgow Dialogue and within reports by relevant thinktanks around key principles that should inform the design of a LDFF. We briefly highlight these principles and propose that they potentially be put forward within a submission to the UNFCCC, either by the G77 plus China or by the AGN as an initial first step in reaching agreement on the establishment of an LDFF. The purpose of a submission would be to prepare parties for future COP negotiations on what its design might entail, and also to support arguments on how existing instruments, such as insurance, fail to meet these basic principles, and why a dedicated LDFF is necessary.

We conclude by identifying a series of opportunities African countries may wish to explore in the lead up to and during COP27, to further a loss and damage agenda. These include the need for loss and damage to be recognised as a permanent agenda item under the COP and CMA, and its incorporation in the formal agenda of the SB negotiations in June each year. We also touch on opportunities for how other non-financial elements of loss and damage might be better incorporated across the COP agenda this year, and discuss the merit of asking the IPCC to prepare a special report on the topic. Further opportunities for African countries include the development of loss and damage needs assessments, stronger positioning on loss and damage within the global finance negotiations around the New Collective Quantified Goal on Climate Finance, and consideration of whether African countries might want to take a position on loss and damage litigation. In respect of litigation, a vote at the UN General Assembly will take place in September this year led by Vanuatu for an advisory opinion from the International Court of Justice that clarifies the legal obligations of all countries to prevent and redress the adverse effects of climate change. It will be important for African countries to have a position on this vote, as it is likely to have ramifications for COP27.

INTRODUCTION

It is anticipated that loss and damage will be one of the central negotiation priorities for developing countries at COP27 at Sharm el-Sheikh in Egypt in November 2022. For decades developing countries have sought actionable solutions to respond to the unprecedented costs of climate change, brought about by increasing extreme weather and slower onset climate events. The IPCC's latest assessment has concluded that climate change is already leading to irreversible and existential impacts on the African continent which breach current and projected adaptation limits.¹ In 2022 alone, the continent suffered through five cyclones,² and an unprecedented drought in the Horn of Africa. Countries in Africa have also faced considerable challenges in accessing finance to respond to these impacts, where finance is either unavailable, or only available in the form of insurance with limited coverage.

Whilst negotiations on loss and damage is raised at almost every COP, the overall picture since Paris has been one of stagnation.³ Some momentum was gained in Glasgow in 2021, however, when Parties engaged on the issue of dedicated loss and damage finance and agreed to a dialogue on a proposed Loss and Damage Finance Facility (LDFF), a moment representing what the African Group of Negotiators (AGN) have called a critical juncture for loss and damage.⁴ COP27 will prove a determinative moment on whether the LDFF proposal will gain any traction and whether any progress will be achieved on the full operationalisation of the Santiago Network on Loss and Damage (SNLD) and its technical support function.

The slow progress on loss and damage in the negotiations, has been hampered by a lack of agreement on key issues, including the meaning and scope of the concepts "loss and damage", whether it should be part of adaptation policy making and finance, the nature of the liability risk should developed countries agree to finance it, the quantum of any dedicated finance and the most suitable means to channel financial support.

In this briefing note, we outline the historical background to negotiations on loss and damage highlighting some of the key negotiation items at COP27 this year, and then turn to some of the definitional debates it has provoked. We then turn to the African experience of loss and damage and how this has framed discussions on how to finance it. Thereafter, we explore some of the challenges experienced with existing sources of loss and damage finance, recent developments and country positions on this issue, and unpack some of the proposed guiding principles of a LDFF. We conclude with a section on loss and damage opportunities that African countries may wish to explore in the lead up to COP27.

¹ C Trisos et al 2022: Africa Supplementary Material. In: Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change HO Pörtner et al (eds.) (IPCC AR6).

² Climate Action Network The Loss and Damage Finance Facility: Why and How, Discussion Paper (2022).

³ Margaretha Wewerinke-Singh & Diana Hinge Salili (2020) Between negotiations and litigation: Vanuatu's perspective on loss and damage from climate change, *Climate Policy*, 20:6.

⁴ William Worley "Experts outline governing principles to fund climate loss and damage" 11 February 2022 DEVEX

NEGOTIATION HISTORY OF LOSS AND DAMAGE

In 1991, the Alliance of Small Island States (AOSIS) submitted a proposal to introduce a mechanism to fund loss and damage, as part of negotiations that led to the adoption of the United Nations Framework Convention on Climate Change in 1992 (UNFCCC). Whilst the agreed text did not adopt this proposal, it remained a discussion point until 2007, where the means of addressing loss and damage were considered in the Bali Action Plan. It was, however, only in 2013, after Super Typhoon Haiyan in the Philippines cast a shadow on the COP negotiations in Warsaw, that support was galvanized for the creation of the Warsaw International Mechanism on Loss and Damage (WIM). The WIM was established to “address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.”⁵

What entrenched loss and damage into the negotiations and gave it a formal platform within the treaty regime, was the inclusion of a dedicated provision on Loss and Damage in Article 8 of the Paris Agreement. In this provision parties jointly recognise the importance of “averting, minimising and addressing” loss and damage. Article 8 further provides that the WIM is to operate under the authority and guidance of the COP. It charges Parties to work together, including through the WIM, to enhance understanding, action and support on a number of identified areas relating to loss and damage.⁶ The accompanying text to the decision, however contains a provision inserted by developed countries that states that Article 8 does not “involve or provide a basis for any liability or compensation”.⁷ This was agreed to by some developing countries who hoped to make gradual progress based on cooperation and solidarity, however several made declarations when ratifying the Paris Agreement that this provision in no way derogated from their rights under international law regarding state responsibility for the adverse effects of climate change.⁸

THE WIM AND SNLD

Although the WIM is mandated to provide “enhanced action and support”, this was slow to materialise. The WIM has been criticised for being too focused on enhancing knowledge and understanding, and strengthening dialogue instead.⁹ More broadly, the WIM has been cited as a contributing factor for the lack of tangible progress on loss and damage. As noted by Pekkarinen and others “though the creation of the WIM has often been described as a political victory for developing countries, its operation to date reflects the low priority

⁵ FCCC/CP/2013/10/Add.1 Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013.

⁶ These include early warning systems; emergency preparedness; slow onset events; Events that may involve irreversible and permanent loss and damage; comprehensive risk assessment and management; risk insurance facilities, climate risk pooling and other insurance solutions; non-economic losses; and resilience of communities, livelihoods and ecosystems (Article 8(4)).

⁷ Paragraph 51 of decision 1/CP.21.

⁸ The Cook Islands, Marshall Islands, Micronesia, Nauru, Niue, Philippines, Solomon Islands, Tuvalu and Vanuatu made such a declaration.

⁹ Practical Action [Assessing the Performance of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts](#), (2021) Practical Action, Rugby, UK.

that loss and damage has been given within the climate regime.”¹⁰ Its “excessive focus on technocratic policy solutions”¹¹ has been identified as contributing to the “depoliticizing of many of the factors that underscore arguments surrounding [loss and damage]”,¹² notably historical responsibility and differentiation.¹³ The WIM has sought to overcome some of these challenges, for example by commissioning papers on available financial support. For instance, in 2016, Parties agreed that the WIM’s secretariat would prepare a technical paper that elaborated on the sources of financial support for loss and damage available through the Financial Mechanism (the Green Climate Fund/GCF) and outside of it, and also the modalities to access such finance. This paper built on the discussions of the 2016 Forum on Financing instruments that address the risk of loss and damage,¹⁴ and 2018, the Suva Expert Dialogue, which sought to explore how to mobilise and secure expertise and enhance support (including financial support) for responding to loss and damage.¹⁵ Whilst these papers and discussions put forward the existing positions regarding difficulties in access finance and the challenges with current instruments, little traction was gained on how these would be practically overcome, nor was there any discussion of the creation of a new fund.

In 2019 at COP25 in Madrid, developing countries pressed to have (i) a technical advisory body under the UNFCCC to catalyse assistance in the implementation of relevant approaches to loss and damage using relevant organisations, networks and experts; and (ii) dedicated funding to developing countries for loss and damage. The first demand was met at COP25, where agreement was reached to establish the SNLD, whose mandate is to catalyse technical assistance for loss and damage.¹⁶ It was also agreed that the ExCom of the WIM would establish, by the end of 2020, an “Expert Group on Action and Support”.

It was hoped that the full operationalization of the SNLD at COP26 would go some way to enhancing the WIM’s role on “action and support”, for at present the SNLD is simply a website with links to bodies such as development banks that may potentially support loss and damage. Full operationalisation means allocating staff and funding to it, so it can start connecting with national governments, conduct assessments and implement changes.¹⁷ After heated negotiations, it became clear that it wouldn’t be fully operationalised at COP26, with the final text providing that “further operationalisation” would happen at subsequent meetings. However, there was agreement on the SNLD’s functions, namely that it would identify and connect interested countries with technical assistance.¹⁸ The final text also urges countries to provide funding for the SNLD’s operation, and Germany has pledged € 10 million in this regard.¹⁹

¹⁰ Veera Pekkarinen, Patrick Toussaint and Harro van Asselt, ‘Loss and Damage after Paris: Moving Beyond Rhetoric’ (2019) 13 *Carbon & Climate Law Review* 31, 38.

¹¹ Julia Kreienkamp and Lisa Vanhala, ‘Climate Change Loss and Damage’ (2017) Policy Brief: Global Governance Institute 13

¹² Karen E McNamara and Guy Jackson, “Loss and Damage: A Review of the Literature and Directions for Future Research”, 10 (2019) *Wiley Interdisciplinary Reviews: Climate Change*.

¹³ Mead, S., & Wewerinke-Singh, M. (2021). Recent Developments in International Climate Change Law, *International Community Law Review*, 23(2-3), 294-309.

¹⁴ 2016 Forum of the Standing Committee on Finance, held on 5-6 September 2016, Philippines.

¹⁵ Decision 5/CP.23 paragraph 9

¹⁶ Decision 2/CMA.2, para 43.

¹⁷ Allied for Climate Transformation 2025 (ACT2025) “COP27 Call to Action” (May 2022).

¹⁸ UNFCC, Decision -/CMA.3 Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, 2021.

¹⁹ Germany pledged €10 million to support the Santiago Network, with Canada promising to also contribute.

Based on most recent negotiations in June this year, a key issue seems to be a lack of agreement on the most optimum structure of the SNLD. The EU is desirous of a light structure so that resources can go to on the ground recipients and not bureaucracy and is against the need for an advisory board. Guinea on behalf of the AGN, on the other hand, believes the ExCom to be a policy body, which is overloaded and has failed to deliver on its functions. It believes another body is needed to provide technical and operational assistance and is desirous of robust institutional arrangements so that the SNLD is a more active mechanism.²⁰ Agreement on this issue is important so that full operationalisation of the SNLD can happen at COP27.

AGREEING ON AN LDFF

Developing countries were, however, less successful in the G77's proposal for a LDFF (discussed below), which was rejected in favour of a Glasgow Dialogue on Loss and Damage. This was deemed a major disappointment at the closing of COP26 by many developing countries and the issue has since achieved considerable traction in the media, amongst thinktanks and within civil society in the ensuing lead up to COP27. Commentators have suggested that loss and damage might become a make or break issue at COP27, noting that it is more than about money, "it about trust between developing countries and the developed world, which goes to the heart of international cooperation on climate action."²¹

LITIGATION

Impetus to address loss and damage will continue to gain momentum during the course of 2022, as countries continue to explore litigation options in the absence of a global consensus on finance. The fact that the accompanying text to the Paris Agreement provides that Article 8 is not a basis for liability or compensation does not preclude such legal claims, all it has done is to outsource the question of legal liability and any related compensation to the courts.²² For example, Vanuatu, supported by a number of civil society groups, will table a proposal at the UN General Assembly in September 2022, inviting countries to vote on a resolution seeking an advisory opinion at the International Court of Justice (ICJ). The purpose of the opinion is to clarify the legal obligations of all countries to prevent and redress the adverse effects of climate change. Such an opinion, whilst not in itself strictly binding, can be used as a climate justice benchmark for subsequent litigation, notably on the issue of loss and damage.

Similarly, Antigua and Barbuda, Tuvalu, have expressed an intention to approach various forums including advisory opinions from the International Tribunal for the Law of the Sea (ITLOS) on legal responsibility of states for climate change, marine pollution and rising sea levels. These are but two examples within the groundswell of climate litigation occurring worldwide. To date more than 1 841 climate-related court proceedings and challenges have been brought before courts at domestic, regional and international levels, as well as complaints and inquiries before human rights commissions and other quasi-judicial bodies, evidencing that

²⁰ Allied for Climate Transformation 2025 (ACT2025) "[COP27 Call to Action](#)" (May 2022).

²¹ Ibid.

²² Patrick Toussaint "Loss and Damage and Climate Litigation the case for greater interlinkage" (2021) 30(1) *Review of European, Comparative and International Environmental Law* 16-33.

civil society and governments certainly have an appetite to bring climate change related litigation. To date, the types of cases brought are varied, with the vast majority relating environmental assessments and permitting, as well as GHG mitigation and trading.²³ They have been brought by a range of actors including civil society and industry against government, as well as civil society and local governments against industry.²⁴ At present there have not been any judgments in African courts on the issue of loss and damage, although this may well change as increased interest by civil society in bringing such cases grows.²⁵

African jurisdictions could certainly support the resolution for an ICJ opinion on the matter at the UN General Assembly in September if they wish to use this to further leverage the G77 and China submission on the LDFF in November. It is unclear how developed countries will respond to any pressure within a vote at the UN General Assembly. At worst it may harden and bifurcate negotiation lines and undermine discussions in November. At best, however, it may prompt some developed countries to soften their positions for fear of being held responsible for potentially limitless open-ended liability in the courts, as compared to a fixed sum under a LDFF.

DEFINITION AND METRICS

Loss and damage has remained an amorphous concept to which policy actors have attached different meanings.²⁶ Given the various perspectives on what loss and damage might refer to, it is unsurprising that neither the Paris Agreement nor the UNFCCC provide a formal definition of the term, and those in the field and academia apply diverging approaches.²⁷ There are some elements which are relatively uncontroversial. For instance, the UNFCCC documentation frequently refers to loss and damage as climate related impacts arising from sudden onset events (e.g. flooding and cyclones) as well as slow-onset events (e.g. sea level rise, glacial retreat, desertification).²⁸ Many also distinguish between “losses” which are impacts which are irreversible such as human deaths or species extinction, versus “damages”, which are reversible impacts such as destruction to buildings.²⁹

²³ See the Sabin Centre’s [Climate Case Chart](#).

²⁴ Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2021 Snapshot* Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2021.

²⁵ Olivia Rumble and Andrew Gilder “[Climate Change Litigation on the African Continent](#)” Konrad Adenauer Stiftung (June 2021).

²⁶ Lisa Vanhala and Cecilie Hestbaek, “Framing Climate Change Loss and Damage in UNFCCC Negotiations”, 16 *Global Environmental Politics* (2016) p. 112.

²⁷ Reinhard Mechler et al “Chapter 1: Science for Loss and Damage. Findings and propositions’ in Mechler et al (eds) *Loss and Damage from Climate Change* (2019) Springer. See also Mechler Morten Broberg & Beatriz Martinez Romera “Loss and damage after Paris: more bark than bite?” (2020) *Climate Policy*, 20:6,

²⁸ UNFCCC (2013) Decision 2/CP.19, Warsaw International Mechanism for loss and damage associated with climate change impacts, UN Doc FCCC/CP/2013/10/Add.1 and UNFCCC (2015) Decision 1/CP.21, Adoption of the Paris Agreement, UN Doc FCCC/CP/2015/10/Add.1

²⁹ Boyd E, James RA, Jones RG, Young HR, Otto “A typology of loss and damage perspectives”(2017) *Nat Clim Change* 7:723–729

However, definitions that attempt to distinguish between losses and damages are disparate and often contradictory, particularly because the science around adaptation limits is debated.³⁰ For instance, many argue that adaptation limits can be ‘hard’ and ‘soft’.³¹ A hard limit means that adaptation is impossible (for example irreversible biodiversity loss) whilst a soft limit is that adaptation is not possible at a given time but could be at a future time (for example as a result of technology or socially determined constraints in the present). Others define loss and damage using the distinction of avoided, avoidable and un-avoided impacts. They argue that both un-avoided and unavoidable impacts count as loss and damage.³²

Avoidable	Unavoidable	Un-avoided
Risks that can and will be reduced via adaptation and disaster risk reduction measures	Risks that are and will not be addressed even though avoidance is possible, because of socio-economic constraints and trade-offs such as finance and governance	Risks that which cannot be avoided and adapted to, for example slow onset impacts that have already commenced such as glacial melting and sea level rise
Both are loss and damage		

Article 8 in the Paris Agreement does little to clarify. As a standalone provision, it is significant as it recognises loss and damage as something separate within the climate treaty regime. However, its reference to “averting and minimising and addressing loss and damage”, particularly the terms “averting and minimising” create the impression that it is concerned with adaptation. Whilst “addressing” suggest it relates to post-impact responses. The list of actions for enhanced cooperation on loss and damage actions (such as early warning systems) are also actions typically associated with adaptation and the building of resilience.³³ For this reason, some suggest that Article 8 only further entrenches existing uncertainty on the delimitation between loss and damage and adaptation.³⁴

A useful position put forward by academics and civil society that draws a neat line between adaptation and loss and damage, is that adaptation is about avoiding the occurrence of harm, whereas loss and damage is

³⁰ McNamara, K. E., & Jackson, G. (2019). Loss and damage: A review of the literature and directions for future research. *Wiley Interdisciplinary Reviews: Climate Change*, 10(2), e564. pp. 1-16.

³¹ Mechler, R., Singh, C., Ebi, K., Djalante, R., Thomas, A., James, R., Tschakert, P., Wewerinke-Singh, M., Schinko, T., Ley, D., Nalau, J., Bouwer, L. M., Huggel, C., Huq, S., Linnerooth-Bayer, J., Surminski, S., Pinho, P., Jones, R., Boyd, E., & Revi, A. (2020). Loss and damage and limits to adaptation: Recent IPCC insights and implications for climate science and policy. *Sustainability Science*, 15(4), 1245–1251.

³² Reinhard Mechler et al “Chapter 1. See also Karen E McNamara and Guy Jackson, “Loss and Damage: A Review of the Literature and Directions for Future Research”, 10 *Wiley Interdisciplinary Reviews: Climate Change* (2019). Mechler, R., Calliari, E., Bouwer, L. M., Schinko, T., Surminski, S., Linnerooth-Bayer, J., Aerts, J., Botzen, W., Boyd, E., Deckard, N. D., & Fuglestedt, J. S. (2019). Science for loss and damage: Findings and propositions. In R. Mechler, L. M. Bouwer, T. Schinko, S. Surminski, & J. Linnerooth-Bayer (Eds.), *Loss and damage from climate change: Concepts, methods and policy options* (pp. 3–37). Springer. See also Morten and Broberg.

³³ It includes enhanced cooperation on early warning systems, emergency preparedness, comprehensive risk assessment and management the resilience of communities, livelihoods and ecosystems, within the eight areas for Loss and Damage cooperation, understanding, action and support.

³⁴ Morten Broberg & Beatriz Martinez Romera “Loss and damage after Paris: more bark than bite?” (2020) *Climate Policy*, 20:6, 661-668.

solely about “addressing” the harm that occurs, whether or not it could have been reduced by adaptation.³⁵ The decision text establishing the WIM appears to support this by providing that “loss and damage includes, and in some cases involves more than, that which can be reduced by adaptation.”³⁶ A similar comment was made by participants at the Glasgow Dialogue on Loss and Damage in June 2022, where it was argued that discussions should move away from talking about “averting and minimising” loss and damage, and rather we should only talk about “addressing” loss and damage.³⁷

Developing countries have tended to support this wide approach to defining loss and damage, as something that goes “beyond adaptation”,³⁸ and use this as a basis to argue that compensation or reparations should be paid for these harms brought about by the developed world.³⁹ For example Saleemul Huq, argues that loss and damage “is a euphemism for liabilities and compensation.”⁴⁰ By comparison, developed countries tend to approach loss and damage much more narrowly,⁴¹ with many pushing for it to be seen as a component of adaptation. This is achieved through repeated attempts to have loss and damage treated outside the Paris Agreement through a COP decision, or inside the text of the agreement but under the same article as adaptation.⁴² This narrower approach has contributed to developed country support for reliance on risk avoidance and insurance.⁴³ In this context, developed countries have tended to locate the loss and damage discourse under the less contested and binding disaster reduction framework, or under the wider humanitarian arena.⁴⁴

The existing vagueness in definitional and conceptual approaches, has made it possible for negotiations on the topic to advance, as it permits different, and on occasion incompatible views to co-exist,⁴⁵ however it is most likely a fundamental driver of the delay and stagnation in the negotiations. The issue will need to be dealt with if developing countries are to succeed in their argument that loss and damage is separate from adaptation and thus deserving of its own finance and a LDF. Parties will also need to coalesce around an accepted term in order to assess progress under Article 8 of the Paris Agreement under the Global Stocktake in 2023.⁴⁶

Not only is there a lack of a common definition of loss and damage, but there are data gaps, and a lack of suitable methodologies for assessing both experienced and future loss and damage. For example, as a

³⁵ Doelle, M., & Seck, S. “Loss & damage from climate change: From concept to remedy?” (2019) *Climate Policy*, 1–12.

³⁶ Decision 2/CP.19, preamble.

³⁷ Comment by Saleemul Huq, Director of the International Centre for Climate Change & Development, at the Glasgow Dialogue on Loss and Damage, Bonn, June 2022.

³⁸ Karen E McNamara and Guy Jackson, “Loss and Damage: A Review of the Literature and Directions for Future Research”, 10 *Wiley Interdisciplinary Reviews: Climate Change* (2019).

³⁹ Carbon Copy [The Legal Liability Pandora’s Box Holding Back Finance for Loss and Damage](#) 17 December 2021)

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Elisa Calliari, Swenja Surminski and Jaroslav Mysiak “Chapter 6 The Politics of (and Behind) the UNFCCC’s Loss and Damage Mechanism” in Mecheler et al (eds) *Loss and Damage from Climate Change* (2019) Springer.

⁴³ Lisa Vanhala and Cecilie Hestbaek, “Framing Climate Change Loss and Damage in UNFCCC Negotiations”, 16 *Global Environmental Politics* (2016) p. 112.

⁴⁴ Elisa Calliari, Swenja Surminski and Jaroslav Mysiak “Chapter 6 The Politics of (and Behind) the UNFCCC’s Loss and Damage Mechanism” in Mecheler et al (eds) *Loss and Damage from Climate Change* (2019) Springer.

⁴⁵ Boyd, E *A typology of loss and damage perspectives*.

⁴⁶ Daniel Puig “Loss and damage in the global stocktake” (2022) *Climate Policy*, 22:2, 175-183,

technical paper by the WIM's Secretariat pointed out, there is no single set of universally accepted outcomes or impact metrics for adaptation or for non-economic losses from climate change.⁴⁷ Whilst various funds use output metrics, there are no agreed on metrics/indicators as to how to measure the success of adaptation interventions; that is, whether vulnerability has been reduced or adaptive capacity and resilience increased.⁴⁸ Agreed methodologies for assessing incurred loss and damage need to be settled, with more robust mechanisms that identify a baseline and the extent to which a loss and damage has occurred or will occur relative to that baseline.⁴⁹ In this regard the LDC Group has called for policy guidance on how to undertake loss and needs based assessments in vulnerable developing countries. In 2019, COP25 responded to this call and requested the WIM's Executive Committee to develop such technical guidelines.⁵⁰

All of the above, has impacts on the ability to estimate loss and damage and also to track financial flows towards it. The establishment of an LDFF in principle does not require a credible target for loss and damage finance and current estimates can serve in the interim, however, if the facility is to be meaningfully useful in future, a scientifically supported estimate, together with an agreed methodology for estimating/assessing losses and damages is important. In this regard, it would be useful for the IPCC to undertake a special report on loss and damage, as discussed towards the end of this paper.

FINANCE

NEGOTIATION BACKGROUND

Finance for loss and damage has remained the topic of intense debate since 1991 when AOSIS first proposed that the financial burden be equitably distributed amongst industrialised developed countries. Developed country positions on finance have been consistently unsupportive since then, primarily as a result of concerns that it may invite legal liability. In Paris, in 2015, developed countries rejected compensatory language in the text (such as “rehabilitation”, “compensation” and “liability”) arising from these concerns.⁵¹ This led to the disclaimer in the accompanying text that Article 8 does not involve or provide a basis for any liability or compensation. The reluctance of the US, as explained by Former U.S. Secretary of State, John Kerry was that “we’re not against [loss and damage]. We’re in favour of framing it in a way that doesn’t create a legal remedy because Congress will never buy into an agreement that has something like that...the impact of it would be to kill the deal.”⁵²

⁴⁷ UNFCCC “Elaboration of the sources of and modalities for accessing financial support for addressing loss and damage” (2019) UNFCCC Document: FCCC/TP/2019/1

⁴⁸ Ibid.

⁴⁹ Ibid. See also Anil Markandya and Mikel González-Eguino “Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage: A Critical Review” in Mecheler et al (eds) *Loss and Damage from Climate Change* (2019) Springer.

⁵⁰ Allied for Climate Transformation 2025 (ACT2025) “[COP27 Call to Action](#)” (May 2022).

⁵¹ Elisa Calliari, Swenja Surminski and Jaroslav Mysiak “Chapter 6 The Politics of (and Behind) the UNFCCC’s Loss and Damage Mechanism” in Mecheler et al (eds) *Loss and Damage from Climate Change* (2019) Springer.

⁵² Goodell J (2015) [John Kerry on climate change: the fight of our time](#). In: Rolling- Stone.

As climate impacts and associated costs have escalated over time, calls for separate financing for loss and damage have reached a crescendo. Whilst it was never listed as a standalone agenda item, finance for loss and damage became a key negotiation point at COP26, primarily as a result concerted pressure from developing country delegations and civil society. Developing countries were adamant that finance needed to address the scale of loss and damage and be needs based. At COP26, The G77 and China, representing 134 developing countries, proposed the creation of an LDFF mandated under Article 9 of the Paris Agreement to provide new and additional support to developing countries. Specifically the G77 wanted to see language that spoke to the operational aspects of how loss and damage finance can be scaled up and accessed.⁵³

More than 300 civil society organisations supported this proposal, arguing that the LDFF should provide finance at a scale able to meet the needs of developing countries.⁵⁴ The notion of providing dedicated loss and damage finance also gained traction through pledges from the Scottish Government to provide GBP 2 million and government of the Belgian region of Wallonia to provide EUR 1 million to finance loss and damage. Five philanthropic funds also pledged a total of \$3 million to the Glasgow LDFF.⁵⁵

Initially developed countries took the position that the discussion should part of the climate finance negotiation rooms (and not under the loss and damage agenda item), and it was proposed that it should rather be considered at the political ministerial level during the second week of the COP.⁵⁶ The US raised questions on whether it was necessary to have a new institution and whether existing institutions could not fulfil this role, speaking to the already quite fragmented climate finance landscape.⁵⁷ The EU supported finance for the SNLD's operation, but said it needed more time to consider the LDFF proposal. Following the EU's position statement representatives of the various developing country constituency groups including AOSIS, the Like-Minded Group of Developing Countries (LMDC), the Independent Alliance of Latin America and the Caribbean (AILAC), the Africa Group of Negotiators (AGN) and Least Developed Country Group (LDC Group) all supported the G77 proposal. On the final day the US stated that it had no ability to engage on a funding facility so close to the closing of a COP, and the EU echoed this stating that its negotiators lacked a mandate and instruction from member states and the Union to agree to a facility. It did agree that it may be time to increase support for loss and damage and expressed openness to a dialogue. New Zealand made similar remarks to the EU. Japan indicated it had no mandate but would be open to talks in 2022.

Various developing countries in turn then spoke in support of the G77 proposal, suggesting that it be structured under the Subsidiary Bodies, and focused on the eventual establishment of a finance facility, in a time bound process. After some deliberations on whether there was still time to insert new text to this effect, the COP Presidency released a new text on the final day, in terms of which parties agreed to “establish the Glasgow Dialogue between Parties, relevant organizations and stakeholders to discuss the arrangements for

⁵³ Third World Network “[Glasgow Climate News Update](#)”. 19 November 2021.

⁵⁴ Climate Action Network International, ‘[COP26 Must Deliver on Loss and Damage Finance](#)’ (2022).

⁵⁵ The Children’s Investment Fund Foundation (CIFF), the European Climate Foundation, the Hewlett Foundation, the Open Society Foundations and the Global Green Grants Fund.

⁵⁶ Third World Network “[Glasgow Climate News Update](#)”. 19 November 2021

⁵⁷ Ibid.

the funding of activities to avert, minimize and address loss and damage”. The Dialogue is set to take place over a two-year period during (but separate from) annual subsidiary body meetings, concluding in June 2024.

On closing the G77 plus China expressed extreme disappointment with the decision text but agreed to it in the spirit of compromise. It made it clear that it only accepted the Dialogue on the basis that its conclusion would lead to the establishment of a finance facility that met current needs. This is understandable in light of concerns that the dialogue just will be yet another repeat of the (unsuccessful) Suva Dialogue on loss and damage in 2018.

CHALLENGES WITH EXISTING MECHANISMS AND PROPOSED ALTERNATIVES

The call for a dedicated LDFF comes in the context of challenges with existing sources of finance for loss and damage. As a first point, the volume of existing available finance is incredibly low. The V20 estimates that there is a massive 98% financial protection gap for climate and disaster risks.⁵⁸ Research by Oxfam suggests that funding requirements for UN humanitarian appeals linked to extreme weather are eight times higher today than they were 20 years ago,⁵⁹ but in the last five years, only 54% of appeals were funded on average. They estimate a funding shortfall of \$28–\$33bn for these appeals.⁶⁰

The sources of finance and means of distribution are also challenging. Existing financial mechanisms for loss and damage mainly constitute humanitarian aid and disaster risk reduction (DRR) and insurance. Humanitarian aid is described as short lived and designed to address a situational specific need, whilst DRR is only meant to act as a buffer to shocks.⁶¹ Humanitarian and development aid has also been criticised for its failure to include a restorative element.⁶² In particular it does not address the wide range of loss and damage finance needs including emergency response, recovery and rehabilitation, finance for migration, insurance and other social protection measures, measures to support new livelihoods and build new skills, and response measures to address non-economic losses (including heritage and culture).⁶³ Moreover, it has been argued that humanitarian aid principles that govern the provisions of aid require independence, necessitate that finance should not come from states responsible for the harm.⁶⁴ This is at odds with loss and damage discussions that focus on equity and the polluter pays principle. Moreover, it has been criticised for being sporadic and donor driven, often only in relation to large scale events.⁶⁵ It is also largely underfunded with most donors failing to meet their existing ODA commitments.⁶⁶ For instance, levels of ODA have been dropping precipitously as a

⁵⁸ V20 “Vulnerable Economies Loss Report 2000-2019” (June 2022)

⁵⁹ Oxfam International “Footing the Bill: Fair Finance for Loss and Damage in an Era of Escalating Climate Impacts” (June 2022) (Oxfam 2022).

⁶⁰ Ibid.

⁶¹ Climate Action Network International 2022.

⁶² Oxfam 2022

⁶³ Oxfam 2022.

⁶⁴ Oxfam 2022, citing the OCHA Humanitarian Principles.

⁶⁵ Oxfam 2022.

⁶⁶ Oxfam 2022.

result of the pandemic and the Ukraine war,⁶⁷ as has humanitarian aid. In this context, it is unsurprising that developing countries are calling for more predictable and needs based forms of finance.

Insurance has also attracted considerable criticism. As The IPCC pointed out, insurance is a risk transfer mechanism for middle and high-income countries, yet is less widely available in Lower Middle Income Countries (LMICs - most African countries are LMICs),⁶⁸ primarily for affordability and availability reasons. Where insurance options do exist in LMICs, these are not usually available to large populations living or operating in the informal sector.⁶⁹ As Palau pointed out at the Glasgow Dialogue, it cannot afford the premiums for loss and damage (even with global initiatives such as InsuResilience). Sudan also observed that where it does set aside funds to respond to loss and damage, these eliminate its budget for other social objectives like health and education. Moreover, as the scale of climate change impacts increases, premiums are likely to become more expensive and some assets may become uninsurable, ultimately shifting the burden to the host country. Insurance has also been criticised for being ill equipped to address slow onset events or small scale cumulative/“wear and tear” events. Vanuatu made a similar point at the Glasgow Dialogue stating that when slow onset disasters happen, the parameters of parametric insurance aren’t triggered and as a result insurance doesn’t work. Insurance is also not designed to compensate for non-economic loss and damage, including the loss of cultural heritage. Many also argue it is inequitable to require developing countries to pay for premiums without considering the degree to which the country is responsible for contributing to climate change. Again these mechanisms have also been criticised for only covering a fraction of the cost. For example in the case of Malawi’s flood and drought in 2015, insurance from the African Risk Capacity only addressed 2% of the total humanitarian need.⁷⁰ It first paid out only \$8.1 million, 9 months after the country sustained US\$366 million in loss and damage.⁷¹

On the other hand, insurance does have many benefits to it- albeit far from enough. It can be impactful in high magnitude and infrequent events, such as crop losses. It also avoids the project finance based approach of other mechanisms, and can be rapidly deployed if the right parametric indicators are used. There are also a number of existing schemes that already fund a wide range of loss and damage risks, which could be leveraged if expanded to a sufficient scale and with adequate/full premium support for developing countries (an assumption that may not be necessarily feasible in practice). Worthy of mention is the InsuResilience Global Partnership for Climate and Disaster Risk Finance and Insurance Solutions (InsuResilience). The initiative was launched by the G20/V20 initiative at COP23 in 2017. It seeks to insure more than 500 million people with pilots across the world, but ostensibly with mixed results.⁷² One of its aims is to link up with other initiatives to increase coherence and coordination, and it supports regional insurance tools such as the Caribbean Catastrophe Risk Insurance Facility (CCRIF), the Pacific Catastrophe Risk Assessment and Financing Initiative (PCRAFI) as well as the

⁶⁷ See for example Vince Chadwick [“Sweden Pulls \\$B in foreign aid for Ukrainian Refugees at Home”](#) (5 May 2022) DEVEX

⁶⁸ IPCC AR6.

⁶⁹ IPCC AR6.

⁷⁰ Linnéa Nordlander, Melanie Pill & Beatriz Martinez Romera (2020) Insurance schemes for loss and damage: fools’ gold?, *Climate Policy*, 20:6, 704-714

⁷¹ Oxfam 2022.

⁷² Saleemul Huq [“Finance for Loss and Damage must be Ensured”](#) (25 May 2022). See further

African Risk Capacity (ARC). An interesting aspect of InsuResilience is that it remains a V20/G20 initiative from 2017. The V20 is however also fully behind a dedicated LDFF.

As also discussed in the report “Loss and Damage Financial Options”, proposals to finance loss and damage have also suggested that it be a new window of finance within the Green Climate Fund (GCF), or be financed by the Adaptation Fund. These have the benefit of being existing mechanisms that avoid a duplication of administrative and other efforts in their operation, and which have a limited degree of experience in financing loss and damage. But using either of these instruments will also bring about challenges. The call for a dedicated loss and damage facility comes from developing country general frustrations with the existing climate finance architecture, including the GCF. This has been an ongoing issue highlighted since 2015, that was explored in considerable detail in the submissions to the WIM in the lead up to its review at COP25 in 2019, and in the Information and Technical Papers the WIM has produced since 2016.⁷³ This includes the fact that climate finance tends to be ad-hoc and unpredictable, insufficient in volume (noting that there is no target for loss and damage finance generally under the regime), and challenging to access.⁷⁴ Difficulties in access are wide-ranging but include challenges in accessing the GCF and other climate funds as a result of onerous procedures and costly or impossible evidentiary requirements imposed upon applicants.⁷⁵ It is also project finance based, which is unsuitable to disaster response, with project applications also taking between 12 to 24 months to approve. Ease of access is particularly relevant in a loss and damage context where countries need immediate and direct access to finance in post disaster situations. Similarly, the majority of climate finance tends to be concessional. It tends to be unaffordable for many countries which are often required to carry most of the financial risk, with very little levels of concessionality.⁷⁶ This can exacerbate the debt burden, particularly for African Countries, as Zambia recently pointed out on behalf of the AGN.⁷⁷ Reforming the GCF to overcome these challenges, particularly in relation to the project based approach and limitations around accessibility and the financing of non-mitigation activities, would mean a fundamental ideological and operational shift, in the context of a trust deficit in the ability of the GCF to address its own legacy institutional reform challenges.⁷⁸

Lastly, the V20 Joint Multi-Donor Fund and the Climate Vulnerable Forum (CVF) and the Global Environment Facility (GEF) are working to finalise an agreement to set up a pilot loss and damage fund. It aims to demonstrate that loss and damage funding is possible at scale. The facility was announced in April this year, and the V20 Ministers issued a global call to support the initiative with additional resources, in the spirit of

⁷³ UNFCCC “Elaboration of the sources of and modalities for accessing financial support for addressing loss and damage” (2019) UNFCCC Document: FCCC/TP/2019/1; Executive Committee of the WIM “[Best Practices, Challenges And Lessons Learned From Existing Financial Instruments At All Levels That Address The Risk Of Loss And Damage Associated With The Adverse Effects Of Climate Change](#)” (August 2016).

⁷⁴ See for example the submission by Vanuatu to the WIM in 2018.

⁷⁵ Andrew Gilder and Olivia Rumble “[Implications of COVID-19 for Climate Finance in Africa](#)” South African Institute of International Affairs (May 2021) and Olivia Rumble, Elizabeth Sidiropoulos; Saliem Fakir “[A New South African Climate Diplomacy: G7; G20 and Beyond](#)” (22 October 2021).

⁷⁶ Andrew Gilder and Olivia Rumble “[Implications of COVID-19 for Climate Finance in Africa](#)” South African Institute for International Affairs (2021)

⁷⁷ [Submission by the Republic of Zambia on behalf of the African Group of Negotiators: Views on the new collective mobilization goal on climate finance](#) (23 May 2022).

⁷⁸ Olivia Rumble and Andrew Gilder “[Improving Sub-Saharan Access to Climate Finance- An Alternative View](#)” South African Institute for International Affairs (2019)

solidarity and without invoking liability for compensation. The annual meetings of the IMF/World Bank, GEF and implementing entities will inform the V20 Ministerial which will review progress of the programme's implementation in 2022, with the hope of showcasing initial results and lessons learned of the programme from first funded projects at COP27. Little is publicly known about the design of the facility, but it will be launched fully at COP27.

There are also a number of other different options for funding and structuring financial mechanisms to support loss and damage that have been put forward by negotiators, NGOs and academics, such as independent solidarity funds, funding by the Adaptation Fund and Least Developed Countries Fund, as well as novel sources of finance such as repurposing fossil fuel subsidies or debt for climate swaps, all of which are discussed in further detail in the analysis "Loss and Damage Financial Options".

GLOBAL POSITIONS AND DEVELOPMENTS ON THE LDFF

The first Glasgow Dialogue took place at the same time as the 56th Subsidiary Body negotiations in June in Bonn 2022 (SB negotiations). According to participants, the Dialogue was not elevated to a formal agenda item for the SB negotiations, making it difficult for the issue to gain the necessary traction needed for COP27. Fortunately, a submission by the G77 and China to make "matters relating to funding arrangements for addressing loss and damage" a provisional agenda item for COP27 and CMA4 this year, was accepted insofar as it was made an agenda item at COP27 and its CMA. It is not a standing item for successive COPs however and Parties still need to work towards making it one. Moreover, the Glasgow Dialogue, needs to be integrated within the formal agenda of June SB intersessionals.

Corridor discussions from the Glasgow Dialogue suggest that there is a considerable appetite within developing countries to constructively talk about the potential shape and form of a finance facility. The G77, including India and China still appear to be united in their position on the LDFF. AOSIS, the LDC group (chaired by Senegal), and the AGN continued to support this position too. AOSIS reiterated the position of the G77 plus China that they would only agree to dialogue if it led to a LDFF. At the same meeting Vanuatu pointed out that two thirds of the parties and groups in the room were in support of a dedicated loss and damage finance facility. This speaks to the design of any future finance mechanism: it is unlikely that anything short of dedicated financial facility for loss and damage will satisfy the demands of developing countries. Some developing countries made much of the existing expenditure by the global north on military aid and fossil fuel projects and sentiment was that this finance should be rechannelled to finance loss and damage. Timor-Leste, commenting on behalf of the LDC group, underscored that finance should adhere to the principles of solidarity, historic responsibility and the polluter pays principle. South Africa's position was more equivocal. It suggested that finance should come from sources that are readily available, but then also later pointed out that there were no existing arrangements for loss and damage under the Convention. It has been suggested that in other forums South Africa tends to be supportive of the GCF, for example having a new window for loss and damage under the GCF, however at the Glasgow Dialogue it pointed out the many flaws with and difficulties in accessing the GCF. Zambia pointed out that any finance must be new and additional and that adaptation finance should not suffer as a result of loss and damage finance. Whilst there was broad consensus between developing countries on the need for a LDFF, there was not consensus between them on whether it should be

primarily grant based or not. For instance Vanuatu was open to other forms of finance, whilst Sudan at the Glasgow Dialogue and Zambia via its submission on behalf of the AGN on climate finance more broadly, are adamant that it needs to be primarily grant based and not increase levels of debt.

The same corridor reports suggest that the US is still unsupportive of focusing on a new source of funding for loss and damage with the country stating that it is “still in listening mode”. It acknowledged that it needed to “double down” in efforts to respond and support, and that it may be useful to explore the GCF and incorporate loss and damage more into its strategy, and align relevant institutions including multilateral development banks and insurance, but that it was still in the process of understanding the available landscape. Possibly this more neutral position might be because the US is not wanting to isolate itself in case an LDFF is established, in which case they would wish to have a say in its design. The EU appeared generally unsupportive of a LDFF, stressing that it already provided a lot of funding to the GCF, was the world’s largest disaster and humanitarian aid donor, and that there was already a complex network of support available beyond the UNFCCC, and that no single actor can address the range of needs for avoiding minimising and addressing loss and damage. They argued rather for the removal of barriers and more agile and flexible support from existing mechanisms. Within the EU, France perceived by some as being generally unsupportive whilst Germany and Ireland are considered to be more open. Similarly Japan maintains the view that the GCF could rather be used to finance loss and damage, noting that an LDFF would take too long to become operational and that the issue was too urgent to delay. There is also a view expressed that there might be less money available for adaptation if it were to be channelled to a LDFF. Singapore has expressed a view that a network of insurance facilities may be more appropriate. Switzerland also believes there is scope for an interplay and complementarity of different existing funding sources. Whilst Australia noted that current estimates for loss and damage were extremely high and that there was a need to explore options in the spirit of the Paris Agreement and to assess the whole financial system’s role, including global investments and risk, it also underscored the importance of expanding existing mechanisms and drawing greater resources into them.

Some South East Asian middle income developing countries, which would be expected to hold a position, have been relatively silent on their views on the LDFF, for example Malaysia and Indonesia (which holds the G20 presidency this year) have made no express comments on the issue during SB56 negotiations or Glasgow Dialogue on Loss and Damage. Notable in its absence is any mention of loss and damage within the Indonesian G20 Working Group agenda for Environment and Climate Sustainability, which only mentions the goals of energy transitions, green economies, adaption, resilience and nature based solutions.⁷⁹ It has not yet been ruled out whether Indonesia is aligning with Japan and the US, with Japan being a lead counterpart for Indonesia’s deal negotiations for a Just Transition, that entails a comprehensive approach to delivering a climate finance package, instead of for individual streams.

Encouragingly, New Zealand at the sessions stated that finance to “address” loss and damage (as opposed to just avert and minimize it) needs to be available. This comes in the wake of comments by Canada’s Environment and Climate Change Minister Steven Guilbeault who is seeking to bring countries closer to an

⁷⁹ G20 Indonesia Sherpa Track Working Groups: [Environment and Climate Sustainability](#) (2022).

agreement on a number of climate finance issues including loss and damage finance. Whilst he has stated that he “cannot in good conscience put Canadian taxpayers at liability risks that could be limitless,” he has stated that there needs to be a “new way of doing international development ... [that shifts] conversation away from liabilities to this”⁸⁰ thereby creating room between parties to have the discussions that need to be had. This suggests Canada may be open to supporting loss and damage finance if language regarding liability and reparations is avoided.

Put as a spectrum, at the Glasgow Dialogue, attendees reported that, on the one end of the spectrum, most were in favour of a dedicated finance facility, on the other end were supporters of using existing initiatives such as insurance and humanitarian aid, and in the middle was a proposal to use a new loss and finance window within existing coordinating entity such as the GCF under the UNFCCC.⁸¹ These are but a spectrum of the potential options available, as discussed in analysis “Loss and Damage Financial Options”.

LOSS AND DAMAGE WITHIN AFRICA

Estimates on loss and damage finance needs differ according to the choice of model used, data availability and sensitivity of the estimation.⁸² Current models are unable to capture the breadth of non-economic losses, and so generally loss and damage estimates tend to underestimate the extent of losses and damages incurred. With those caveats in mind, indicative assessments from the African Development Bank state that loss and damage costs due to climate change are projected to range from \$289.2 billion (in the low warming scenario) to \$440.5 billion (in the high warming scenario) for Africa.⁸³ The bank projects that East and West Africa will account for the largest shares of \$72–\$131 billion, followed by North Africa (\$64.2–\$85 billion), Central Africa (\$35–\$49 billion), and Southern Africa (\$29.2–\$47 billion). Other researchers have come in at lower albeit significant estimates of up to \$112 billion by 2030 for Sub Saharan Africa, caveating that the estimation of losses and damages and associated modelling techniques requires further refinement.⁸⁴

As noted earlier, Madagascar and its African neighbours have already been impacted by five cyclones in 2022. Tropical Storm Ana and Cyclones Batsirai and Emnati have destroyed thousands of houses and fields causing significant losses and damages.⁸⁵ Recently South Africa experienced its deadliest storm on record which killed more than 400 people in April 2022. Unprecedented drought is underway in the Horn of Africa, with climate change being cited as a cause of the crisis. As many as 13 million people are currently experiencing acute food and water shortages and an estimated 25 million will face a similar fate in the coming months.⁸⁶

⁸⁰ Canada’s National Observer “Guilbeault says international climate conversation should shift away from liability” (26 May 2022)

⁸¹ Loss and Damage Collaboration [Twitter post](#) 11 July 2022.

⁸² Climate Action Network International, 2022.

⁸³ African Development Bank “[African Economic Outlook 2022](#)” (2022)

⁸⁴ Markandya, A., González-Eguino, M. (2019). Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage: A Critical Review. In: Mechler, R., Bouwer, L., Schinko, T., Surminski, S., Linnerooth-Bayer, J. (eds) Loss and Damage from Climate Change. Climate Risk Management, Policy and Governance. Springer, Cham.

⁸⁵ Climate Action Network International, 2022.

⁸⁶ UNEP “[On verge of record drought, East Africa grapples with new climate normal](#)” (28 March 2022)

The IPCC’s latest AR6 report, whilst noting important evolutions in the science of event attribution, and methodological constraints in estimating loss and damage,⁸⁷ indicated the scale of the financial challenge through various case studies. In respect of Africa, the report highlighted that climate change on the continent is leading to irreversible and existential impacts which breach current and projected adaptation limits. It underscores that “key development sectors have already experienced widespread loss and damage attributable to anthropogenic climate change, including biodiversity loss, water shortages, reduced food production, loss of lives and reduced economic growth.”⁸⁸

Africa is particularly vulnerable to these impacts owing to high levels of poverty and low levels of adaptive capacity, hosting 70% of the world’s Least Developed Countries. For many African countries, even small shocks such as low precipitation levels or elevated food prices can precipitate a call for humanitarian intervention and emergency response. Low levels of resilience have been exacerbated by the pandemic and the Ukraine war which heightens food insecurity and is triggering further instability in the world economy, including a global energy price crisis. The AFDB’s African Economic Outlook 2022, suggests that approximately 30 million Africans were compelled into extreme poverty in 2021, and 22 million jobs were lost as a result of the pandemic. This is expected to continue in 2022 and 2023.⁸⁹

Even though Africa contributes only about 3.8% of global greenhouse gas emissions, because it is the least resilient to climate change, as a continent its GDP is expected to be most at risk as a result of its impacts.⁹⁰ For LDCs, as well as countries who are members of the Climate Vulnerable Forum (CVF), climate impacts are expected to reduce GDP by 19.6 per cent by 2050 and by 63.9 per cent by 2100, assuming current policies are implemented.⁹¹ A recent report by the V20 observes that over the past 20 years, the most at risk economies of the V20 have lost more than half of their economic growth potential due to climate change, and on average a fifth of the GDP of the 55 member countries has been eliminated.⁹² They estimate aggregate losses as a result of climate impact for V20 countries between 2000 and 2019 at approximately US\$525 billion, with South Sudan, DRC, Ethiopia, Eswatini and Tunisia being the top five most affected countries in Africa.

These considerations inform the positions of African negotiators in relation to climate finance, including finance for loss and damage. Recently the African Ministers on Environment noted that:

“...[t]he pandemic has also accelerated a trend whereby international support, especially for middle income African countries, has been in significant decline and grant based public sector funding is giving

⁸⁷ IPCC AR6 report. It noted that Loss and Damage “is an area of increasing focus, although yet to be fully developed in terms of methods of assessing including non-economic losses and damages as well as identifying means to avoid and reduce both economic (loss of asset, infrastructure, land etc.) and non-economic (loss of societal beliefs and values, cultural heritage, biodiversity and ecosystem services) losses and damages”.

⁸⁸ Ibid.

⁸⁹ African Development Bank “[African Economic Outlook 2022](#)” (2022). The report notes that these “Values are based on Bank data” but seem to be extrapolated from NDCs.

⁹⁰ Economist Intelligence Unit [Climate Change Resilience Index](#) (June 2019).

⁹¹ Ware Andrijevic, M., Ware, J. (2021). [Lost & Damaged A study of the economic impact of climate change on vulnerable countries](#). Christian Aid.

⁹² V20 “[Vulnerable Economies Loss Report 2000-2019](#)” (June 2022).

way to commercial arrangements with the private sector, in the form of loans. These loans are coming with ever higher levels of conditionality and co-financing, either excluding many countries from eligibility for support, or potentially exacerbating the debt trap which many countries are facing.”

Debt has remained a pressing issue for African countries. Even before the pandemic, the costs of servicing debt for developing countries and emerging economies doubled between 2000 and 2019.⁹³ Facing a mounting debt crises, a steep drop in commodity prices, considerable export contractions, a loss of remittances, and unprecedented capital outflows, African countries are likely to experience more extensive and longer economic repercussions from the pandemic than developed countries,⁹⁴ an issue that will only be exacerbated by the war in Ukraine.

In that context, it is unsurprising that the AGN has taken the position that climate finance (including any finance for loss and damage) should only count as climate finance if it is provided by countries from public sources and that it is “new and additional, predictable, in line with needs identified by developing countries, reflects progression, provided directly or through intermediaries, including bilateral, multilateral channels and the operating entities of the financial mechanism, or other climate related funds, on a grant and or concessional basis.”⁹⁵ At the Glasgow Dialogue African countries underscored the public finance need for loss and damage arguing that it must be primarily grant based and not increase levels of debt. This was reiterated in Zambia’s position on general climate finance on behalf of the AGN in May this year. For instance, representatives of the AGN, have noted that loans should be a red flag.⁹⁶ This is not a universally shared position amongst developing countries, (for instance Columbia agrees with it but Vanuatu does not necessarily align), but it forms the basis of at least one of the founding principles that African countries would most likely want to see in the design of any LDFF, namely that it be primarily in the form of grants and not increase debt. There are a number of other guiding principles for the provision of Loss and Damage finance which have gained broad acceptance between developing countries, which are discussed in more detail below.

PRINCIPLES FOR FINANCE

Many issues and challenges faced by the African continent when it comes to loss and damage finance are shared with its developing country counterparts. This has led to converging positions within the G77 around some of the key principles that finance for loss and damage should address. These have been identified and discussed in this note as they are pivotal to reaching agreement on a LDFF and its possible future design.

Speaking at an event prior to the SB negotiations, representatives of the AGN, put forward the view that funding should be accessible, as should data about climate events requiring funding, and that there should be

⁹³ UN Department of Economic and Social Affairs, “Covid-19 and Sovereign Debt” (Policy Brief 72, UN/DESA, New York, May 14, 2020).

⁹⁴ Andrew Gilder and Olivia Rumble “Implications of COVID-19 for Climate Finance in Africa”

⁹⁵ African Group of Negotiators, “Submission by the Republic of Gabon on Behalf of the African Group of Negotiators (AGN) on Operational Definition of Climate Finance”, 2020.

⁹⁶ See William Worley “Experts outline governing principles to fund climate loss and damage” 11 February 2022 DEVEX.

equity in relation to who pays for loss and damage.⁹⁷ How equity is to be achieved remains controversial, but many have suggested it should follow the guiding principles of the UNFCCC and be based on the principle of Common but Differentiated Responsibility and Respective Capabilities (CBDRRC) and the polluter pays principle.⁹⁸

In 2021, Guinea on behalf of the G77 and China, again emphasised the need for an additional finance stream for loss and damage that was additional to existing \$100 billion climate finance commitment of developing countries,⁹⁹ and be delivered in an agreed and predictable manner. During the most recent SB Dialogues, participants underscored that any financial mechanism needs to be highly accessible to vulnerable countries and overcome some of the procedural, project based, delay and evidentiary challenges encountered at the GCF. It should also be funding directed towards addressing loss and damage and not just averting and minimising it. An important component is that it must be needs based and address the full suite of loss and damage needs, including slow onset events, migration, and finance for non-economic loss and damage (including heritage).

Building from these positions, much of the current commentary and dialogue is on founding principles that should form a basis for any loss and damage facility and how it is funded. These are captured in the submissions of Ethiopia on behalf of the LDC Group in 2017,¹⁰⁰ and more recently have been augmented through various papers by thinktanks such as Climate Action Network and Oxfam.¹⁰¹ The principles and considerations encompass both the terms and manner upon which finance is provided to a mechanism as well as the mechanism’s operational principles. We address them jointly as the form and manner that finance is provided is integrally related to the means used to channel the finance. These principles and considerations include the following:

Terms of finance	Mechanism for distribution	
Equity Finance should be provided on the basis of principles of solidarity, Common Differentiated Responsibility and Respective Capabilities (CBDR-RC), and the polluter pays principle	Adequate and needs based The volume of finance should sufficient to respond to actual needs on the ground, with a mechanism that is able to account for what such needs are	Balanced and comprehensive mechanism should cover claims for non-economic losses and damages, migration, and slow onset events
New and Additional Finance should go beyond existing ODA and mitigation and adaptation finance	Public based Primarily grant finance and the mechanism should not entail any cost/ increase debt	National ownership over the distribution of finance, that is people and gender responsive, enables subsidiarity, and support for its national level distribution
Predictable Finance should come from reliable sources that supports long term planning	Accessible Procedures to access should be simple and should allow for immediate access in some cases	Accountable and transparent modalities should ensure finance is correctly classified, monitored and transparently accounted for.

⁹⁷ Ibid.

⁹⁸ Vanuatu 2018. Oxfam 2022

⁹⁹ G77 Statement on the Report of the WIM Executive Committee (1 November 2021).

¹⁰⁰ Submission by Ethiopia on behalf of the Least Developed Countries Group on the type and nature of actions to address loss and damage for which finance may be required (6 March 2017).

¹⁰¹ Oxfam (2022) and Climate Action Network International (2022).

OPPORTUNITIES

As the momentum to COP27 builds, there are a number of opportunities that African countries can pursue that could meaningfully build on gains made at COP26 last year, the position papers and discussions put forward this year, as well as the most recent SB Negotiations and Glasgow Dialogue. They include the following:

- **Agreeing on Principles:** at COP27, African countries will have an opportunity push for agreement on a LDFF, using the existing negotiation blocs to which it is a party, including the G77 plus China, the AGN, the LDC Group, and in some cases the V20 and the LMDC Group. Historic experience of COPs, including the establishment of the SNLD, suggests that in-principle agreement on such a facility is likely to be a first step with subsequent deliberations on form, governance and function to be deliberated at subsequent COPs. For this reason, it may be useful at this early juncture, if an LDFF is agreed to, to first agree upon the guiding principles that would inform the design and operation of a LDFF and the basis upon which dedicated finance is provided, so that form follows principle and also to bolster arguments why existing mechanisms are insufficient and fail to meet these principles. At a minimum, African countries will want to see finance that is predictable, adequate, accessible, additional, and fit-for-purpose, but there are many other principles as discussed elsewhere in this report that warrant consideration. To this end African countries may want to either:
 - o Separately put forward a position statement or a simple publication of the AGN that supports the G77 plus China position on a LDFF, and suggest the minimum guiding principles they would like to see guiding the design of the LDFF. The merit of this would be to strengthen the number of negotiation blocs taking a position on the need for a LDFF, however it may risk diluting the key message of the G77 and China and splinter and possibly undermine discussions in the event of the AGN taking a nuanced or different position (for example on the issue of it being primarily grant based finance); alternatively, or in addition
 - o motivate the G77 plus China to supplement its request for a LDFF with a set of key guiding principles for its development. This anchors the submission within one bloc, and keeps the negotiation focused between a limited number of voices and positions, since on its own the G77 and China submission holds considerable weight. On the other hand, the G77 may not be willing to supplement its position with principles, and any submission may not adequately reflect or agree on unique priorities that African countries may want to put forward.
- **A permanent agenda item:** Critical to ensuring that the LDFF is negotiated at an early stage during COP27 and in the lead up thereto is to establish loss and damage as a permanent standalone agenda item. On 13 June 2022, the G77 and China submitted a letter to the UNFCCC Secretariat, asking for “matters relating to funding arrangements for addressing loss and damage” to be included as a standing agenda sub-item. In late June, the Executive Secretary agreed put it on the “provisional agendas for COP27 and CMA4” however, the decision did not go so far as to make it a standing item for annual COPs. In addition, the June Glasgow Dialogues, still need to be integrated within the formal agenda of June SB intersessionals. At this year’s COP, it would be helpful if parties could agree that:

- “finance for addressing loss and damage” (or some permutation of this language that goes beyond “funding arrangements” to include, for example, loss and damage finance targets) is inserted as a permanent agenda item for annual COPs and CMAs; and
- the Glasgow Dialogue should be included as a formal agenda item for Subsidiary Body meetings SB57 and SB58 in 2023 and 2024 respectively (noting that the Glasgow Dialogue is due to end in 2024) and that there is country level participation in settling the agenda of the dialogue itself.
- **Agreement on definitions:** It will be important for Parties to also engage on what they consider loss and damage to entail, to overcome conceptual differences and to argue for a position that finance for loss and damage should be about finance to “address” loss and damage that has already occurred, and that it is additional to adaptation finance. This is important, not only to advance discussions around the LDFF, but also for agreement on the new collective quantified goal on climate finance which is being negotiated for 2025. It also has relevance for the Global Stock Take, which will need to assess progress on loss and damage.
- **The COP27 Agenda:** Since the UNFCCC Executive Secretary has assented to the inclusion of a sub-agenda item of “Matters relating to funding arrangements for addressing loss and damage” in the provisional agendas of COP27 and CMA4, it would be useful for the COP Presidency to support this formal process by encouraging the approval of side events that address loss and damage, and finding other entry points within the formal agenda for discussions on the meaning and scope of loss and damage more generally. To this end the COP Presidency, who has considerable sway in finessing the detailed content of the agenda and programme, may wish to consider having a session on the meaning of and methodologies for assessing loss and damage. In addition, or in alternative to this a session on research required to understand the scale of loss and damage (see the IPCC Special Issue point below in this regard), could also be included in the existing agenda by attaching it to an agenda item that relates to loss and damage (for example an existing agenda item relating to adaptation). It is undeniable that loss and damage will be raised by developing countries at COP27, irrespective of the formal agenda. Integrating the non-financial aspects loss and damage thoughtfully within the agenda can ensure these discussions have an appropriate forum and do not undermine already tabled agenda items.
- **Operationalisation of the SN:** The further operationalisation of the SN will also be a key issue at COP27. Whilst there is agreement on its six main functions, further work at COP27 is needed to create effective institutional structures, operational modalities and financial arrangements for the SN. If African countries continue to maintain their position around why a technical advisory body is necessary, it may be useful to document in writing the Excom’s deficiencies and its policy mandate and the role of such a body in supporting the Excom.
- **Domestic actions:** African countries may wish to consider the establishment of a process to better identify the scale of funding needed to address loss and damage at a national level, including funding and technical support for such a process and to advance in its position statements to the WIM and the COP for additional support for such studies, and to garner support from donors for funding.
- **IPCC:** In this context, African parties may want to also motivate for the Intergovernmental Panel on Climate Change (IPCC) to prepare a special report on Loss and damage (a suggestion made by Ghana on behalf of the Climate Vulnerable Forum at the SB Negotiations). The IPCC itself has acknowledged

that more empirical research is needed on loss and damage, particularly from slow-onset processes and non-economic loss and damage in vulnerable countries.

- **New Collective Quantified Goal on Climate Finance:** In the May 2022 submission by Zambia on behalf of Africa on climate finance more broadly, the role of loss and damage finance within the New Collective Quantified Goal on Climate Finance was unclear. For example, in the demand for \$1.3 trillion in finance, mention was made only of an equal split of finance for mitigation and adaptation, and no mention was made of loss and damage as a component of this global amount (noting that the submission did identify overall loss and damage finance needs). Ideally going forward, African positions should clarify how it anticipates New Collective Quantified Goal on Climate Finance to be split to accommodate mitigation, adaptation and loss and damage finance.
- **UNGA:**
 - o The COP27 Presidency may wish to engage with the UN Secretary General, to include climate change loss and damage within the programme of the “SDG Moment” (convened by the UN Secretary General) of the 77th Session of the UN General Assembly in September 2022. In this way, parties can discuss loss and damage to gauge any recent developments and positions prior to formal negotiations in November.
 - o There is strategic merit in considering whether African countries individually or as a bloc would want to support Vanuatu’s vote at the General Assembly in September on whether to request the ICJ to draft an opinion on the legal liability for states. Doing so would suggest the request is broadly supported and perceived as legitimate, anticipating that reaching consensus at the UNGA will be difficult. The merit of doing so may be that developed countries are more supportive of a LDF, instead of potential unlimited liability within multiple courtrooms that an ICJ opinion might unleash. On the other hand it may also undermine efforts to pursue a partnership and solidarity dialogue at the negotiations, with the effect of further polarising existing discussions.
- **Collaboration:** Lastly, there are also a number of partner institutions and organisations that African countries may wish to engage with and pursue a loss and damage Agenda, including:
 - o Climate Action Network (CAN), who have been at the forefront of developing options and design proposals for a LDF. Their proposal which unpacks potential principles, functions, operational modalities, and where it should be situated is one of the most clearly articulated and detailed to date.
 - o The Loss and Damage Collaboration:¹⁰² a relatively new group of practitioners, researchers, activists, practitioners and decision makers from both the global North and South that have been following and reporting closely on loss and damage at the negotiations and advancing positions that are broadly aligned with those of the various negotiation blocs including AOSIS and the LDC Group.

¹⁰² <https://www.lossanddamagecollaboration.org>

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