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## LOSS AND DAMAGE EXPLAINER\*

### 1. Introduction

In the climate change context, “loss and damage” does not have an agreed definition. It is generally understood as irreversible or residual results from climate change impacts where adaptation is no longer possible. Sea level rise, tropical storms, floods, droughts, wildfires etc., are examples of impacts that can lead to loss and damage. The concept refers to both economic and non-economic losses, such as loss of culture, health, and biodiversity.

In 1991, during the negotiation of the UN Framework Convention on Climate Change (UNFCCC), the Alliance of Small Island States (AOSIS) called for action to address loss and damage proposing the establishment of an International Insurance Pool “to compensate the most vulnerable small islands and low lying coastal developing countries for loss and damage resulting from sea level rise”.<sup>1</sup> It was not until 2007 at COP 13, however, that the expression “loss and damage” was first mentioned in a COP decision (the Bali Action Plan, [Decision 1/CP.13 \(para. 1.c.iii\)](#)). Since then, promotion of the implementation of approaches to address loss and damage gained momentum, culminating in the establishment of the Warsaw International Mechanism for Loss and Damage (WIM) in 2013.

However, it was not until the Paris climate conference in 2015 that developing countries succeeded in including a freestanding article on “loss and damage associated with the adverse effects of climate change” in the international climate change regime - Article 8 of the Paris Agreement, which represented global acknowledgment of the limits of humans and ecosystems to adapt to the impacts of climate change, and formally distinguished the issue from that of adaptation. However, the language used was carefully crafted to avoid creating financial commitments (and any suggestion of an obligation to compensate for loss and damage) beyond the funding of mitigation and adaptation actions on the part of developed countries.<sup>2</sup> Moreover, Article 8 does not differentiate between developed and developing countries and their potential roles in and responsibilities for addressing loss and damage.

### Loss and damage & science

Since the adoption of the Paris Agreement in 2015, scientific assessments have shone a light on the immediacy of the risk of reaching human and ecosystem limits and the urgency required to address loss and damage. In 2018, the IPCC published a [special report](#) on the impacts of global warming of 1.5°C, which states that at 1.5°C, limits to adaptation will be reached, resulting in loss and damage in particularly vulnerable developing countries. More recently in 2022, the IPCC’s Working Group II (WGII) [published](#) its contribution to the Sixth Assessment Report. For the first time, they assessed the scientific literature on loss and damage across sectors and regions linked to: adaptation constraints and limits; global warming levels; and incremental and/or transformational adaptation to climate risks.

### 2. Warsaw International Mechanism for Loss and Damage and its Executive committee

Proposals to establish a mechanism to address loss and damage were first put forward in 2008, but it was not until 2013, at COP 19, that the Parties to the UNFCCC agreed to establish the Warsaw International Mechanism for Loss and Damage (WIM) to address loss and damage associated with the impacts of climate change, in developing countries that are particularly vulnerable to climate change.

COP 19 ([Decision 2/CP.19](#)) also established the WIM Executive Committee (ExCom) to guide the implementation of the WIM’s three core functions:

- Enhancing knowledge and understanding of comprehensive risk management approaches;
- Strengthening dialogue, coordination, coherence and synergies among relevant stakeholders;
- Enhancing action and support, including finance, technology and capacity-building.

The Executive Committee has 20 members: 10 from Annex I Parties (developed countries) and 10 from non-Annex I Parties (developing countries).

\*By Hyacinthe Niyitegeka, Loss and Damage Collaboration and Dr Akouvi Okpe Abalo.

<sup>1</sup>INC, ‘Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of Its Fourth Session, Held at Geneva from 9 to 20 December 1991.’ 55 <[https://unfccc.int/resource/docs/a/15\\_2.pdf](https://unfccc.int/resource/docs/a/15_2.pdf)>.

<sup>2</sup>Valhala, L., Hestbaek, C., Framing Climate Change Loss and Damage in the UNFCCC Negotiations. *Global Environmental Politics* 16(4), 2016, pp. 111-129.

The Paris outcome on loss and damage expanded the WIM Executive Committee functions. It now operates through its five thematic expert groups, which play an advisory role and operate within the framework of the five strategic work areas of the committee's five-year work plan. These cover slow-onset events, non-economic losses, global risk management, human mobility, and action and support. As of 31 August 2023, 65 technical experts were engaged as members of expert groups comprising individual experts, representatives of constituted bodies and external organisations, many of whom are accredited observers in the UNFCCC process.<sup>3</sup>

The Executive Committee was invited to create a risk transfer clearinghouse, 'which serves as a repository of information on insurance and risk transfer, to facilitate Parties' efforts to develop and implement comprehensive risk management strategies'. The Fiji Risk Transfer Clearinghouse, launched at COP 23, contains information on, among other things, institutions that could help countries design and implement risk transfer approaches, case studies and tutorials.

The Executive Committee is working with the IPCC, as part of the work of the Task Force on Displacement, to develop a technical guide on integrating the links between human mobility and climate change into national planning processes. At COP 27 in Sharm El Sheikh, the second five-year rolling work plan for the period 2023-2027 was adopted. This work plan engages a wide range of stakeholders, including indigenous peoples, researchers, civil society organisations, environmental organisations, youth and women, whose engagement is identified as a key cross-cutting element to be considered. Lastly, the Executive Committee is encouraged to collaborate with the entities that are part of the funding mechanisms, including the fund and with the Santiago network.<sup>4</sup>

The Paris Agreement integrates the WIM within its institutional architecture (article 8.2), specifying that the WIM is subject to the authority and guidance of the CMA. However, it remains open to interpretation whether this provision indicates that the role of the COP in the governance of the WIM has been superseded by the CMA. The question of WIM governance has become a political issue and remains unresolved. In the meantime, decisions relating to WIM are generally negotiated within the CMA and approved by the COP. Consideration of the

WIM's governance issues should continue at COP 29. For more information on this issue and the potential legal implications of each option, please consult LRI's [legal opinion](#) on the subject.<sup>5</sup>

### 3. Santiago Network on Loss and Damage

The outcome of the second revision of the WIM (2019) included the creation of the Santiago Network for Loss and Damage (Santiago Network) to catalyse technical assistance from relevant organisations, bodies, networks and experts (OBNEs) for the implementation of relevant approaches at local, national and regional levels in vulnerable developing countries. At COP 26, the Parties agreed on the functions of the Santiago Network, which include catalysing demand-driven technical assistance by identifying, prioritising and communicating needs and priorities, linking those seeking assistance with those providing it, and facilitating the discussion of substantive issues, access to information and technical assistance. The parties also agreed to the establishment of a hosted secretariat to provide the administrative and infrastructural support necessary for its operationalisation (Decision 12/CMA.4) under the supervision of an Advisory Board.

A call for proposals was then launched for the selection of the host of the Santiago network secretariat (Decision 12/CMA.4). The Caribbean Development Bank and the United Nations Offices for Disaster Risk Reduction and Project Services submitted their applications and at COP 28, the Parties selected UNOPS-UNDRR for an initial period of five years, with renewal periods of five years. The consortium was then asked to carry out a cost-effectiveness analysis to identify the location for the secretariat's headquarters.<sup>6</sup> It initially shortlisted five countries<sup>7</sup> and then recommended the city of Nairobi in Kenya as the optimal location. This recommendation was put forward for consideration and decision at the opening meeting of the Santiago Network Advisory Board, held in March 2024 in Geneva, which opted for the city of Geneva in Switzerland. It should be noted that the Swiss government had announced its commitment to providing financial support to the secretariat.<sup>8</sup>

These are important steps in the operationalisation of the Santiago network, whose work will complement that of the Loss and Damage Fund, thus linking the network's technical assistance to the Fund's programmatic approaches.

<sup>3</sup>FCC/SB/2023/4, Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage from Climate Change Incidents, 21 September 2023.

<sup>4</sup>Decision 3/CP.28

<sup>5</sup>Legal Response International, « Moving the Warsaw Mechanism for Loss and Damage ».

<sup>6</sup>Selection criteria include: family location, time zone, UNDRR presence, privileges and immunities, operational costs, operational efficiency, relationship with host government, security and stability, environmental impact, accessibility, infrastructure, manpower (...).

<sup>7</sup>The five shortlisted locations are: Addis Ababa, Ethiopia; Bonn, Germany; Brussels, Belgium; Geneva, Switzerland and Nairobi, Kenya. UNOPS, UNDRR, SNAB/2024/1/07.

<sup>8</sup><https://www.undrr.org/news/reduction-global-loss-and-damage-step-closer-selection-geneva-santiago-network-host-city-consulted> on 13 May 2024.

## 4. Financing mechanisms: The Loss and Damage Fund

At COP 26, the Alliance of Small Island States (AOSIS) proposed the creation of a mechanism to finance loss and damage. This proposal was supported by the G77 and China, but opposition from developed countries blocked its adoption in favour of establishing a ‘Glasgow Dialogue for Loss and Damage’ between Parties, relevant organisations and stakeholders to discuss the arrangements for the funding of activities to avert, minimise and address loss and damage associated with the adverse impacts of climate change until the SB 60 (June 2024). However, many vulnerable developing countries persisted on the need to create this fund. Their request was finally included on the agenda of the COP and the CMA at COP 27 (Egypt), which created new funding arrangements and a fund dedicated to loss and damage. According to decision [2/CP.27](#) and [2/CMA.4](#), this fund constitutes a multilateral financing channel that aims “to assisting developing countries that are particularly vulnerable to the adverse effects of climate change, in responding to loss and damage with a focus on addressing loss and damage by providing and assisting in mobilizing new and additional resources”. A Transitional Committee was set up, tasked with presenting recommendations for the operationalisation of the fund and the financing arrangements at COP 28. In Dubai, on the first day of COP 28, the countries took the unprecedented step of adopting the recommendations of the Transitional Committee (TC) and defining the operating rules of the dedicated Loss and Damage Fund through Decisions [1/CP.28](#) and [1/CMA.5](#) on the operationalisation of new financing mechanisms, including a fund, to respond to the loss and damage referred to in paragraphs 2 and 3 of decisions [2/CP.27](#) and [2/CMA.4](#).

Decisions [1/CP.28](#) and [1/CMA.5](#) on the operationalisation of the Fund determine various aspects. In terms of scope, the support provided by the Fund also includes humanitarian actions undertaken immediately after an extreme weather event; medium or long-term recovery, reconstruction or rehabilitation; and the fight against slow-onset events.

The loss and damage fund is based on the principles of cooperation and facilitation and does not involve liability or compensation. In functional terms, the principles of transparency, accountability, efficiency and effectiveness are highlighted. The fund is designed to be scalable, flexible and to engage in continuous learning guided by monitoring and evaluation processes and will hold legal personality and appropriate legal capacity for the exercise of its functions, the realisation of its objectives and the protection of its interests.

Contractual arrangements are also envisaged at COP 29 (November 2024) and CMA 6 (November 2024), between the

COP, the CMA and the Board of the Fund to ensure the operation of the Fund under the guidance of the Conference of the Parties (COP) and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA).

The Loss and Damage Fund will have a streamlined and rapid approval process with simplified criteria and procedures, while maintaining high fiduciary standards, environmental and social safeguards, financial transparency standards and accountability mechanisms. The decision explicitly authorises all developing countries to access the Fund's resources directly, including through sub-national, national and regional entities. However, it is possible that the operational modalities, as well as the financial instruments and financing structures, still to be defined by the Board will limit access and give priority to particularly vulnerable developing countries, in line with the Fund's objective.<sup>9</sup>

The Fund's Board is made up of 26 members as follows: 12 from developed countries; 3 from Asia-Pacific States; 3 from African States; 3 from Latin American and Caribbean States; 2 from Small Island Developing States; 2 from Least Developed Countries and 1 from a developing country not included in the regional groups and constituencies referred to in paragraph 17(b to f) above. The Fund is provisionally hosted by the World Bank for an interim period of four years!<sup>10</sup> The World Bank will only play a fiduciary role, particularly with regard to the management of day-to-day operations under guidance of the Board.

The Loss and Damage Fund held its first meeting from the 30th of April to the 2nd of May 2024. During its three-day meeting, the Board took several important decisions, including electing Jean-Christophe Donnellier of France and Richard Sherman of South Africa as Co-Chairs, agreeing and starting a process to select its Executive Director and launched work on access modalities, financial instruments, modalities and facilities, arrangements for establishing and operationalizing the annual high-level dialogue, and ensuring active participation of observers in the Board meetings and related proceedings. The meeting also provided the first opportunity for the newly constituted Board to engage with the World Bank on establishing the Fund as a World Bank-hosted financial intermediary fund (FIF). The Board and the World Bank exchanged their views on the conditions for establishing a FIF, including ensuring that the most vulnerable people on the frontlines of climate impacts are able to access support from the Fund, including through direct access to Fund resources. Key next steps include the World Bank confirming its ability and willingness to host the Fund as a FIF by granting any waivers necessary to fulfil the conditions set out in the COP and CMA decisions. The deadline for this confirmation is 12 June 2024.<sup>11</sup>

<sup>9</sup>See FCCC/CP/2023/11/Add.1; Paragraph 42 of appendix 1, Decision 1/CP.28

<sup>10</sup>At the end of COP 28, some fifteen countries and international organisations, including Germany, France, Italy and the United Arab Emirates, pledged around \$700 millions of the \$100 billion requested by developing countries for this new fund.

<sup>11</sup><https://unfccc.int/news/the-board-of-the-fund-for-responding-to-loss-and-damage-holds-its-historic-first-meeting>

## 5. Communicating about loss and damage

There are no compulsory actions for countries to take in relation to loss and damage in the UNFCCC regime. However, the parties have the possibility of communicating, among other things, to set a benchmark for the types and levels of damage suffered by its population, environment and economy; identify support needs and request the cooperation and support of the international community to deal with the loss and damage.

### *Inclusion in NDCs*

Parties are not obliged to include information on loss and damage in their NDCs. However, according to an [academic review](#) of NDCs updated in the run up to COP 26 (as of 15 September 2021), one third of these mentioned loss and damage explicitly. Haiti's [NDC](#), for example, provides costed measures planned to avert, minimise and address loss and damage, while Sri Lanka's [NDC](#) assigns time-frames for five nationally determined contributions on loss and damage.

### *Inclusion as part of adaptation information*

Parties have an opportunity to include information on climate impacts, risks and vulnerabilities, which could include loss and damage, in the adaptation communication that they are encouraged to regularly submit and update (Paris Agreement Article 7.9 - 7.11 and Decision 9/CMA.1, Annex)

### *Inclusion in Biennial Transparency Reports (BTRs)*

There is a further opportunity to include information on loss and damage, when reporting on climate change impacts and adaptation, in the BTRs that Parties will be required to submit every two years under the new enhanced transparency framework of the PA. The information may relate to observed or potential impacts, activities to prevent, reduce or remedy adverse effects and institutional arrangements to facilitate the implementation of these activities. These should be submitted by 31 December 2024.

## 6. Inclusion in the GST process

The decision on the first global stocktake, which was approved on 13 December 2023, includes a sub-chapter on loss and damage (paragraphs 121 to 135) which acknowledges significant gaps, including finance, in responding to the increased scale and frequency of loss and damage, and the associated economic and non-economic losses and expresses deep concern on the consequences of loss and damage for developing country Parties, including reduced fiscal space and constraints in realizing the Sustainable Development Goals.

As a forward-looking element, it calls on the Parties to improve coherence and synergies between efforts relating to disaster risk reduction, humanitarian assistance, rehabilitation, recovery and reconstruction, as well as planned displacement, resettlement and migration, and slow-onset events, in order to avoid, minimise and respond to loss and damage. The Parties also request the Executive Committee of the Warsaw International Mechanism on Loss and Damage (WIM ExCom) to prepare voluntary guidelines to improve the collection and management of data and information to guide the development of BTRs.

Following from the first GST decision parties will be able to continue to communicate about loss and damages in their submissions to the GST process.

### **Loss and Damage in 2024: next steps and mandated events**

**WIM:** consideration of governance of the WIM will continue at COP 29.

**Santiago Network:** The next step upon receipt of the Advisory Board's decision on the preferred location of the headquarters, is to proceed with the recruitment of the director and headquarters staff through a merit-based, open and transparent process and continue with the operationalisation of the Santiago Network.

#### **Funding Loss & Damage:**

- **Glasgow Dialogue:** The third and final session of the dialogue is scheduled for June 2024 at SBI 60.
- **Loss and Damage Fund:** After a first meeting held on 30 April - 2 May 2024, the Fund's Board will have 3 more meetings during 2024 (in July, September-October and December). Before its second meeting, the World Bank will need to confirm they will be in a position to host the fund, leading to the establishment and operationalization of the L&D Fund at the World Bank as specified in the COP28 and CMA 5 decisions.
- Before or during COP29, the mandated **annual high-level dialogue on coordination** and complementarity with representatives from the main entities that form part of the funding arrangements will take place. The dialogue will be co-convened by the Fund and the UN Secretary-General (Decision 5/CMA.5, annex II, para. 11)
- During COP 29, discussions on the **New Collective Quantified Goal (NCQG)** could consider the inclusion of a L&D sub-goal.

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