

New Quantified Collective Goal Decision and Loss and Damage

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*This advice is provided by third parties in response to **Query 107 & 108/24***

Query:

Can paragraph 5 of the Decision adopted at CMA 6 on the NCQG (the “**Decision**”)¹ be interpreted as meaning that “loss and damage” contributions in Nationally Determined Contributions (“**NDCs**”) will be supported? For example, Vanuatu has costed their Loss and Damage contributions in their NDC.² (“**Query 1**”); and

The FRLD is an operating entity of the Financial Mechanism of the United Nations Framework Convention on Climate Change (the “**Convention**”). What implications does paragraph 16 of the Decision have for the provision of public resources to the FRLD? Paragraph 16 also decides to at least triple annual outflows from those Funds listed from 2022. The FRLD did not receive pledges until 2023. What implication does this have for the FRLD? (“**Query 2**”)

Advice:

Executive Summary:

Query 1:

Our view is that paragraph 5 does not reflect an intention by the parties for the NCQG to meet funding needs for loss and damage. There is no express reference to loss and damage in paragraph 5 to support the contrary conclusion and we are not persuaded that an intention can be implied. In particular, paragraph 1 of the Decision makes clear that the intended purpose of the NCQG is to contribute to “*accelerating the achievement*” of the global average temperature targets contained within the Paris Agreement and “*increasing the ability to adapt to the adverse impacts of climate change*”. No explicit reference is made to loss and damage. While paragraph 5 refers to adaptation, we do not consider this to extend to the funding of loss and damage. This interpretation is consistent with our understanding that:

¹ [Decision](#), agreed by the CMA on 24 November 2024.

² [Vanuatu's Revised and Enhanced First NDC](#), August 2022.

- Whether loss and damage would form a component of the NCQG was a highly controversial issue in the lead up to, and at, COP29, which parties had extremely diverging views on.
- While the parties considered including loss and damage, they appear to have been unable to agree to its inclusion and therefore it is not expressly referenced in relation to the NCQG.
- In this context, without an express inclusion of loss and damage, we think that the text of the Decision, pre-sessional and negotiating documents and state practice all suggest that the parties did not intend for the NCQG to be put towards loss and damage.
- While the reference in paragraph 5 to the “*needs and priorities of developing countries*” might in isolation be given a very open-ended interpretation, we think that in the context of the text of the Decision this was intended by the parties to refer to the “*needs and priorities of developing countries*” in relation to mitigation and adaptation.

Notwithstanding our conclusions above, we note that within Vanuatu’s NDC loss and damage contributions are several items that might reasonably be said to amount to adaptation, and these could be funded pursuant to the NCQG.

Query 2: Given our conclusions on Query 1, while not expressly excluded, we do not consider it likely that it was intended by the parties that paragraph 16 would apply to the FRLD, given that its financial mandate is focused on loss and damage and not mitigation and adaptation. This is supported by the fact that paragraph 16 cross-refers to paragraph 8 which refers to mitigation and adaptation actions, not loss and damage. On this basis, we think that contributions to the FRLD will not contribute to the finance goal in paragraph 8 of the Decision nor will the goal of tripling outflows impact the FRLD.

Advice:

1 Scope of review

1.1 We have reviewed the following key documents in preparing this advice:

- i. the adopted CMA 6 Decision on the NCQG (the “**Decision**”);
- ii. other relevant decisions of the Conference of Parties (the “**COP**”) and Conference of Parties serving as the meeting of the Parties to the Paris Agreement (the “**CMA**”);
- iii. the United Nations Framework Convention on Climate Change (the “**Convention**”);
- iv. the Paris Agreement;
- v. CMA 6 pre-sessional and negotiating documents, including:
 - a. The Summary Report by President on 2024 High-level Ministerial Dialogue on the NCQG.
 - b. Materials prepared by the Ad hoc Working Program on the NCQG (the “**AHWP**”), including the Draft Negotiating Text, the Co-Chairs Report presented at COP29 and the Co-Chairs’ Input Papers.
 - c. Materials prepared by the Standing Committee on Finance (“**SCF**”) including its Second Report on the Determination of the Needs of Developing Country Parties.
- vi. The Governing Instruments of the FRLD and the other operating entities of the Financial Mechanism;
- vii. Decisions and reports of the FRLD;
- viii. State submissions on the NCQG; and
- ix. Various states’ most updated NDCs, as well as the 2023 and 2024 NDC Synthesis Reports.

2 Background

The Decision

- 2.1 The Decision was agreed by the parties at COP29 and establishes the NCQG, the newest global climate finance goal, which includes tripling annual finance to developing countries and asking all actors to scale up finance to developing countries to at least USD 1.3 trillion annually by 2035.³ The Decision is the result of extended negotiations between the parties and replaces the pre-existing climate finance goal.⁴ The Decision is unlikely to be legally binding on states under international law when formally adopted, as the provisions of the Paris Agreement it is made pursuant to (primarily article 9) are non-binding and the terms of the Decision itself do not evidence an intention by the parties to impose binding obligations.⁵ However, the Decision reflects the agreement of the parties and will therefore likely have significant influence over how states interpret their obligations under the Convention and the Paris Agreement.

Defining “loss and damage”

- 2.2 One of the difficulties in interpretation presented by both queries is that there is no agreed definition of “loss and damage” in the international climate change regime, despite its inclusion in article 8 of the Paris Agreement, which recognizes the importance of “*averting, minimizing and addressing loss and damage associated with the adverse effects of climate change*”.⁶ Absent a specific definition, the rules on treaty interpretation provide that a treaty is to be interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in light of its object and purpose.⁷
- 2.3 Our view is that the ordinary meaning of “loss and damage” is the adverse effects of climate change that cannot be, or are not, avoided or reduced by adaptation (i.e. steps taken to avoid the impacts of climate change).⁸ This approach includes, for example, climate-related emergencies, such as the impacts of sea level rises and extreme weather events, including relocation.⁹ While some developed states and commentators argue that much, or all, of loss and damage can be avoided through mitigation or adaptation measures, it is more generally

³ [Decision](#), paras. 7 and 8.

⁴ [Decision 2/CP.15](#), para. 8; [Decision 1/CP.21](#), para. 53; [Decision 1/CMA.1](#); [Decision 9/CMA.3](#); [Decision 5/CMA.4](#); [Decision 8/CMA.5](#).

⁵ [Bodansky, “Legally Binding vs. Non-Legally Binding Instruments, in Towards a Workable Effective Climate Change Regime” \(eds. S. Barrett et. al.\), Center for Economic Policy Research, August 2015.](#) For more detail on the status of COP decisions in the context NCQG, see LRI’s advice on “[Legal Basis of the NCQG and its link to art 9 of the Paris Agreement](#)”, June 2024

⁶ [Paris Agreement](#), art. 8(1).

⁷ [Vienna Convention on the Laws of Treaties](#), art 31.

⁸ [Decision 2/CP.19](#), fourth preambular paragraph; [IPCC’s 6th Assessment Report](#), 2022; [IPCC AR4 Synthesis Report](#), 2007, p. 65; UNEP website, “[About Loss and Damage](#)”.

⁹ [Decision 5/CMA.5](#), Annex 1, Governing Instrument of the FRLD, para. 6.

understood that loss and damage covers irreversible or residual results of climate change where adaptation is no longer possible.¹⁰

- 2.4 We therefore think that the better view is that “loss and damage”, while having some potential overlap with adaptation, includes climate change impacts which cannot be avoided through adaptation. We find this view being increasingly reflected in CMA decisions and in state practice.¹¹ Accordingly, this advice considers that references to adaptation in the Decision are not intended by the parties to cover financial support for loss and damage.

3 Query 1: the Decision and Loss and Damage

Do the terms of the Paris Agreement support “loss and damage” contributions in NDCs or the provision of financial support for loss and damage?

- 3.1 A preliminary issue raised by Query 1 is whether the terms of the Paris Agreement support (a) the inclusion of loss and damage contributions within states’ NDCs and (b) more generally, the provision of funding to address loss and damage.
- 3.2 The Paris Agreement does not specify precisely what content is to be included in states’ NDCs.¹² Article 3 provides that NDCs are to reflect “*ambitious efforts*” to achieve the goals of the Paris Agreement and cross-references key articles on mitigation and adaptation, but notably makes no reference to article 8 on loss and damage. Traditionally, states’ NDCs have been mitigation-centered and focused on emissions targets, in part due to the obligation under article 4(2) on states to “*pursue domestic mitigation measures*” aimed at achieving their NDCs.¹³
- 3.3 However, there is nothing in the text of the Paris Agreement which precludes the inclusion of “loss and damage” contributions in NDCs. Indeed, an increasing number of states, such as Vanuatu, have included references to loss and damage in their most recent NDCs.¹⁴ As a matter of treaty interpretation, such state practice does not conflict with the terms of the Paris Agreement.

¹⁰ See e.g., Toussaint, ‘Loss and Damage, Climate Victims, and International Climate Law: Looking Back, Looking Forward’, *Transnational Environmental Law* (2024) 13(1), 134–159, p. 137 citing Boyd, ‘A Typology of Loss and Damage Perspectives’ (2017) 7 *Nature Climate Change*, p. 724.

¹¹ [Decision](#), para. 19; [Decision 2/CP.19](#), fourth preambular paragraph; [Decision 5/CMA.5](#), [Decision 2/CMA.4](#). For a more detailed consideration on this issue, see our previous advice, “[Meaning of ‘averting, minimising and addressing’ loss and damage](#)”, November 2022 and [UNFCCC Introduction to Loss and Damage](#).

¹² See e.g., the parties continued work on [Further Guidance on features of NDCs](#) and [Decision 1/CP.21](#), para. 26.

¹³ [Paris Agreement](#), art. 4(2).

¹⁴ See e.g., [Vanuatu’s Revised and Enhanced First NDC](#), August 2022, pp. 35-39; [Saint Lucia’s Updated NDC](#), January 2021, pp. 5-6; [The Bahamas Updated NDC](#), November 2022, pp. 12, 60, 62; [St. Kitts and Nevis Updated NDC](#), October 2021, pp. 13-15; [Timor-Leste NDC](#), November 2022, pp. 7, 14, 46; [Sri Lanka’s Updated NDC, September 2021, pp. 50-52](#) and [Myanmar’s NDC, July 2021, pp. 34-35, 43-45](#).

3.4 Similarly, the text of the Paris Agreement leaves it open for the parties to agree to provide funding for loss and damage more generally.¹⁵ Article 8 does not create an express obligation on parties to provide financial assistance for loss and damage. Article 8 also makes no similar cross-reference to article 9 on climate finance as the articles on mitigation and adaptation do (articles 4 and 7). However, this does not necessarily preclude the voluntary funding in respect of loss and damage, if a state chooses to do so. Indeed, even states adamantly opposed to binding financial obligations in respect of loss and damage appear to accept that voluntary contributions are *possible* under the Paris Agreement's terms, should a state wish to provide it.¹⁶

3.5 Therefore, the terms of the Paris Agreement do not preclude the inclusion of "loss and damage" within NDCs or the provision of funding on this basis.

The text of the Decision

3.6 The text of the Decision suggests that the parties did not intend for the NCQG to be put towards loss and damage contributions within parties' NDCs.

3.7 Under paragraph 1 of the Decision, the aims of the NCQG are "accelerating the achievement" of the global average temperature targets under article 2 of the Paris Agreement, increasing the ability to adapt to the adverse impacts of climate change and to make finance flows consistent with low emissions and climate-resilient development. There is no reference made to loss and damage.

3.8 Paragraph 5, which provides more specifically what the NCQG is to support, also does not expressly reference loss and damage. Paragraph 5 provides that the CMA:

"Decides that the new collective quantified goal on climate finance will support the implementation of developing country Parties', inter alia, nationally determined contributions, national adaptation plans and adaptation communications, including those submitted as adaptation components of nationally determined contributions; contribute to increasing and accelerating ambition; and reflect the evolving needs and priorities of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing states".

3.9 We note that while paragraph 5 refers to "adaptation components" of NDCs, in our view adaptation does not include funding for loss and damage.¹⁷

3.10 The only express references made to "loss and damage" within the draft Decision are contained in contextual and non-decisive paragraphs:

¹⁵ For a more detailed consideration on this issue, see our previous advice, "[Finance for Loss and Damage](#)", June 2023.

¹⁶ See e.g, the [US's Written Submissions on the International Court of Justice Pending Advisory Opinion on Obligations of States in respect of Climate Change](#), dated 22 March 2024, pp. 48-51.

¹⁷ See paragraphs 2.2 to 2.4, above.

- 3.10.1 Paragraph 14 provides that the CMA “...acknowledges the need for public and grant-based resources and highly concessional finance, particularly for adaptation and responding to loss and damage in developing country Parties” (emphasis added);¹⁸ and
- 3.10.2 Paragraph 19 provides that the CMA: “Acknowledges the significant gaps that remain in responding to the increased scale and frequency of loss and damage, and the associated economic and non-economic losses and recognizes the need for urgent and enhanced action and support for averting, minimizing and addressing loss and damage associated with climate change impacts” (emphasis added).¹⁹
- 3.11 In paragraph 19, the parties appear to acknowledge that the NCQG leaves a gap in addressing loss and damage. While this is far from definitive, it potentially indicates that the parties intended to exclude loss and damage from the NCQG.
- 3.12 The Decision’s preambular paragraphs references articles 2 and 9 of the Paris Agreement and do not refer to article 8 on loss and damage.²⁰ This is consistent with previous CMA decisions which have repeatedly linked the NCQG to “climate finance” under article 9(3) of the Paris Agreement.²¹ In contrast, no past CMA decisions on the NCQG have expressly referred to article 8 or loss and damage.²²
- 3.13 In summary, the starting point is that the text of the Decision provides no express reference to loss and damage, only mitigation and adaptation, and the contextual paragraphs of the Decision do not indicate that the parties were able to agree to loss and damage’s inclusion.

Negotiations leading up to NCQG

- 3.14 The lack of express reference to loss and damage in paragraph 5 appears to be a conscious choice by the parties. The negotiating documents at COP29 included drafting options with an express reference to loss and damage, but these were not adopted:
- 3.14.1 The AHWP’s Draft Negotiating Text contained drafting options which included “loss and damage” expressly as a goal of the NCQG and offered for the NCQG quantum to be broken into sub-categories of mitigation, adaptation and loss and damage;²³
- 3.14.2 The AHWP Co-Chair’s Report recommended that one of the elements for political consideration by the parties was “whether [the NCQG] should have sub-goals for mitigation, adaptation and loss and damage”;²⁴ and
- 3.14.3 The Summary Report by the President on the Ministerial Dialogue recommended that, prior to, and during, CMA 6 the parties consider clarifying “the scope of the

¹⁸ [Decision](#), para. 14.

¹⁹ [Decision](#), para. 19.

²⁰ [Decision](#), preambular paragraphs 1 and 2.

²¹ [Decision 1/CP.21](#), para. 53; [Decision 14/CMA.1](#); para. 1; [Decision 14/CMA.3](#) and [Decision 13/CMA.5](#), para. 2.

²² [Decision 8/CMA.5](#); [Decision 9/CMA.3](#); [Decision 5/CMA.4](#).

²³ [AHWP Co-Chairs’ Report on the NCQG \(Addendum\)](#), October 2024, paras. 25 and 26.

²⁴ [AHWP Co-Chairs’ Report on the NCQG](#), October 2024, para. 139(b).

*NCQG, including by elaborating on potential options for how financing for responding to loss and damage could be considered under the NCQG”.*²⁵

- 3.15 Whether “loss and damage” was to be included as part of the NCQG was part of a wider long-running debate between the parties as to the NCQG’s structure and whether it should include thematic or quantum subgoals.²⁶ Such sub-goal proposals were not adopted in the text of the Decision.
- 3.16 In the lead up to COP29, the parties remained divided on the issue of whether the NCQG should include financial support for loss and damage:
- 3.16.1 The Summary Report of the Ministerial Dialogue observed that there was “*divergence remaining on whether [the NCQG] should also cover finance for responding to loss and damage*”;²⁷ and
- 3.16.2 At the 2024 Bonn Climate Conference there was reported to be “*substantial misalignment persisting*” between developing and developed states on this issue.

Does the reference to NDCs in paragraph 5 implicitly include “loss and damage” contributions?

- 3.17 While there is no express reference to “loss and damage” in paragraph 5, it might be argued that “*support[ing] the implementation of developing country Parties’, inter alia, nationally determined contributions*” includes loss and damage contributions within states’ NDCs.
- 3.18 An increasing number of developing states, and in particular small island states, have chosen to reference loss and damage in their most recent NDCs.²⁸ It has been reported that as many as one third of recent NDCs (across all countries) mention loss and damage, in varying amounts of detail.²⁹ Vanuatu’s NDC has one of the most detailed references, including the amount of finance required for addressing loss and damage as a component of its calculated total NDC climate needs (with loss and damage accounting for nearly 15% of the total).³⁰
- 3.19 However, the increasing inclusion of references to loss and damage within states’ NDCs does not in our view mean that the Decision can be interpreted as allowing the NCQG to be put towards such contributions for the following reasons.

²⁵ [Summary Report by President on 2024 High-level Ministerial Dialogue on the NCQG](#), November 2024, para. 48(b).

²⁶ [AHWP Co-Chairs’ Report on the NCQG](#), paras. 58-63 and [AHWP Co-Chairs’ Input Paper on the NCQG](#), May 2024, paras. 192, 312.

²⁷ [Summary Report by President on 2024 High-level Ministerial Dialogue on the NCQG](#), November 2024, [25].

²⁸ See e.g., [Vanuatu’s Revised and Enhanced First NDC](#), August 2022, pp. 35-39; [Saint Lucia’s Updated NDC](#), January 2021, pp. 5-6; [The Bahamas Updated NDC](#), November 2022, pp. 12, 60, 62; [St. Kitts and Nevis Updated NDC](#), October 2021, pp. 13-15; [Timor-Leste NDC](#), November 2022, pp. 7, 14, 46; [Sri Lanka’s Updated NDC, September 2021, pp. 50-52](#) and [Myanmar’s NDC, July 2021, pp. 34-35, 43-45](#).

²⁹ The Politics of Climate Change Loss and Damage, “[How does Loss and Damage feature in NDCs?](#)”, October 2021, p. 2; Project Muse, “[What Does Loss and Damage Mean at the Country Level? A Global Mapping Through NDCs](#)”, dated August 2023.

³⁰ [Vanuatu’s Revised and Enhanced First NDC](#), August 2022, p. 39.

- 3.20 First, paragraph 5 specifically refers to “*national adaptation plans and adaptation communications*” and is explicit that this includes the “adaptation components” of NDCs for support under the NCQG. If the parties had intended to adopt a similar position in relation to loss and damage communications or components of NDCs, then they arguably could have done so using similar language for loss and damage.
- 3.21 Second, it is clear from the state practice and negotiations leading up to the Decision (referred to above at paragraphs 3.13 to 3.15), that the inclusion of loss and damage was a controversial issue which the parties disagreed on. The parties were consequently unable to agree to expressly including loss and damage within the NCQG. Interpreting paragraph 5’s references to NDCs as including loss and damage would seem to go against the parties’ inability to agree on the inclusion of an express reference to loss and damage.
- 3.22 It might be argued that paragraph 5 and the reference to “NDCs” is an example of constructive ambiguity, in that it is deliberately vague language adopted by the parties to reach consensus and leaves scope for the parties apply their own interpretations.³¹ However, we do not think the text of paragraph 5 lends itself to this degree of constructive ambiguity. We think it is clear the reference to implementing “NDCs” under paragraph 5 is a reference to implementing mitigation measures. To read this language to include loss and damage, an issue which was highly controversial between the parties, would go beyond the agreed text of the parties.
- 3.23 Similarly, while the phrase “*inter alia*” in paragraph 5 does suggest that the items listed in paragraph 5 are not exhaustive, we do not think that this means loss and damage contributions can be read in. We think that the inclusion of this phrase was to provide flexibility as to the form of mitigation and adaptation needs that the NCQG might be put towards, whether they are in NDCs or in other communications made to the Secretariat, rather than to allow parties to assert new bases for funding, such as loss and damage.
- 3.24 Third, we do not think that the increasing practice of states including loss and damage contributions within their NDCs supports a broader meaning for “NDCs” in paragraph 5 so as to allow it to extend to such contributions. The inclusion of loss and damage within states’ NDCs, does not necessarily reflect a consensus by those states that such matters are to be funded by other states. Such state practice is, in any event, of limited value in the context of the Decision which establishes a new goal. Moreover, whether it is appropriate for states to include loss and damage within their NDCs is not agreed between states. For example:
- a) In the Compilation of Submissions on the Further Guidance on the Features of NDCs, only the African Group of Negotiators submitted that “*all NDCs shall include components on Loss & Damage*”, with Saudi Arabia referring to loss and

³¹ For further arguments on how constructive ambiguity might arise in respect of loss and damage, see Vanhala, “[Putting the constructive ambiguity of climate change loss and damage into practice: The early work of the UNFCCC WIM ExCom](#)”, dated 24 May 2023.

damage as an element which might inform guidance on possible finance features;³² and

- b) The majority of states' current NDCs make no reference to loss and damage.³³ This might change, however, as countries submit new and updated NDCs.

3.25 Additionally, there are practical difficulties in applying the NCQG to such loss and damage contributions. Many of the references to loss and damage within states' NDCs are at a high level of generality and not as a costed need that the NCQG could practically be put towards. For example:

3.25.1 The Work on the Needs of Developing Countries, reported that only 1% of costed needs across developing countries' most recent NDCs referred to minimizing and addressing loss and damage (as opposed to 79% and 16% for mitigation and adaptation respectively).³⁴ It noted that a sectoral break down or costed need for averting, minimizing and addressing loss and damage was only available for five NDCs.³⁵

3.25.2 The following NDCs reference loss and damage, but only at a general level:

- a) Brazil noted in its NDC that *"it looks forward to multilateral progress and international cooperation on the topics of Loss and Damage"*.³⁶
- b) The UAE's NDC only referred to advocacy and investment efforts *"contributing to Mitigation, Adaptation, response to Loss and Damage, and sustainable development"*.³⁷
- c) Philippines' NDC conveyed its *"mitigation commitment and adaptation challenges and requirements, including addressing residual loss and damage, in pursuit of low carbon, sustainable and climate and disaster-resilient development"*.³⁸ and
- d) Similarly, Antigua and Barbuda's NDC promises a *"significant increase in scope and ambition...specifically in mitigation ambition and adaptation, with supporting actions in the areas of loss and damage response"*.³⁹

3.26 Vanuatu's detailed approach, which would practically enable finance to be put towards loss and damage contributions, is therefore not reflective of the broader practice of states and other developing states. However, this might change in the future as states submit updated NDCs.

³² [Further Guidance on features of NDCs](#), November 2024.

³³ [SCF Second Report on the Determination of the Needs of Developing Country Parties](#), October 2024, para. 23. See e.g., [United Kingdom's NDC](#), September 2022; [United States' NDC](#), December 2024; [Australia's NDC](#), June 2022; [Chile's NDC](#), April 2020; [Ghana's NDC](#), November 2021.

³⁴ [SCF Second Report on the Determination of the Needs of Developing Country Parties](#), October 2024, para. 20.

³⁵ [SCF Second Report on the Determination of the Needs of Developing Country Parties](#), October 2024, para. 23.

³⁶ [Brazil's NDC](#), November 2024, p. 35.

³⁷ [The United Arab Emirates' Third NDC](#), November 2024, p. 13.

³⁸ [Philippines' NDC](#), April 2021, p. 5.

³⁹ [Antigua and Barbuda's Updated NDC](#), September 2021, pp. 10-11.

3.27 For completeness, we note that many of the items listed in Vanuatu’s loss and damage section, might reasonably be considered adaptation and will therefore fall within the scope of paragraph 5 and what the NCQG might be directed towards.

Argument that loss and damage is included in the “evolving needs and priorities of developing country Parties”

3.28 Another argument might be to seek to rely on the final part of paragraph 5, which provides that the NCQG shall “reflect the evolving needs and priorities of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change”. This “needs and priorities” language has repeatedly been referred to in CMA decisions leading to the NCQG,⁴⁰ and comes from article 9(3) of the Paris Agreement.

3.29 Loss and damage is increasingly being referred to as a need and priority by developing states and in particular small island developing states:

3.29.1 The SCF’s Second Report on the Determination of the Needs of Developing Countries noted that averting, minimizing and addressing loss and damage had been referenced in developing countries’ national reports as a costed need;⁴¹

3.29.2 In the lead up to COP29, many developing countries and country groups expressed their views that the NCQG should include loss and damage. Such submissions were made by the SUR Group, the African Group Negotiators on Climate Change (AGN), AILAC, AOSIS and LDC.⁴² The submissions of the G77 and China even stated that the NCQG must include loss and damage to “address developing countries’ evolving needs”;⁴³ and

3.29.3 As discussed above, this is reflected in the growing number of developing states that are referencing loss and damage in their NDCs, with some even including exact contributions, such as Vanuatu.

3.30 It might therefore be argued that loss and damage is a “need and priority” for developing states, or might become one over time, and on this basis a future broadening of paragraph 5 of the Decision to include loss and damage contributions could be possible.

3.31 However, we do not find this argument persuasive. This interpretation would run contrary to the wording of paragraph 5 which expressly avoids referencing loss and damage. We think the better view is that the references to “reflect[ing] the evolving needs and priorities” and “inter alia” in paragraph 5 both indicate that the NCQG is not limited to *mitigation* and *adaptation* actions that are in NDCs, rather than referring to loss and damage.

⁴⁰ [Decision 9/CMA.2](#), para. 16; [Decision 1/CP.21](#), para. 53; [Decision 14/CMA.1](#), para. 1; [Decision 5/CMA.4](#), paras. 8-10; [Decision 8/CMA.5](#), para. 26.

⁴¹ [SCF Second Report on the Determination of the Needs of Developing Country Parties](#), October 2024, para. 19.

⁴² [SUR submission on the NCQG](#), February 2024, p. 2; [AGN submission on the NCQG](#), February 2024, pp. 1 and 3; [AILAC submission on the NCQG](#), April 2024, p. 2; and [LDC and AOSIS submission on the NCQG](#), June 2024, p. 2.

⁴³ [G77 and China Submissions on the NCQG](#), September 2024.

3.32 In summary, without evidence of the parties making a positive decision to include loss and damage within paragraph 5 of the Decision, we think the only reasonable conclusion is that it was intended to be excluded.

4 Query 2: the Decision and the FRLD

Background on the FRLD

4.1 The FRLD was established at COP27 as a new fund to assist developing countries that are particularly vulnerable to the adverse effects of climate change in responding to economic and non-economic loss and damage.⁴⁴ At COP28, the parties agreed to the terms of the FRLD's operationalization and designated it as an entity entrusted with the operation of the Financial Mechanism of the Convention and serving the Paris Agreement.⁴⁵ The FRLD is therefore accountable to and functions under the guidance of the COP and the CMA.⁴⁶

4.2 The FRLD's mandate is to assist developing countries in responding to loss and damage, including addressing challenges associated with the adverse effects of climate change, such as climate-related emergencies, sea level rise, displacement, relocation and migration.⁴⁷ The Fund can receive contributions from public, private and innovative sources.⁴⁸ Funding is allocated based on a resource allocation system, which is to account for matters such as the priorities and needs of developing countries that are particularly vulnerable and to the scale the impacts of climate events.⁴⁹

4.3 The FRLD only opened for pledges once it was operationalized at COP28 at the end of 2023. As of 21 November 2024, the FRLD has officially reported receipt of pledges from 23 contributors amounting to USD 731 million.⁵⁰ The FRLD's current workplan outlines that Board decisions on operations, access, resource and funding matters will take place throughout the course of 2024 and 2025, with a target of mid-2025 for the first approval of funding decisions.⁵¹ The Board has approved draft arrangements between the COP, the CMA and the Board, as developed by the SCF.⁵²

Lack of clarity on whether paragraph 16 was intended to include FRLD

4.4 While the FRLD is a designated operating entity of the Financial Mechanism and there is some ambiguity in the text of paragraph 16,⁵³ we think it is unlikely that the parties intended for

⁴⁴ [Decision 2/CMA.4](#), para. 2; [Decision 5/CMA.5](#), Annex 1, Governing Instrument of the FRLD, para. 2.

⁴⁵ [Decision 5/CMA.5](#), para. 5 and Annex 1, Governing Instrument of the FRLD, para. 11.

⁴⁶ [Decision 5/CMA.5](#), para. 5 and Annex 1, Governing Instrument of the FRLD, para. 11.

⁴⁷ [Decision 2/CMA.4](#), para. 3; [Decision 5/CMA.5](#), Annex 1, Governing Instrument, paras. 2 and 6.

⁴⁸ [Decision 5/CMA.5](#), Annex 1, Governing Instrument of the FRLD, para. 54.

⁴⁹ [Decision 5/CMA.5](#), Annex 1, Governing Instrument of the FRLD, para. 60.

⁵⁰ [Report of the Board of the FRLD](#), dated 31 October 2024, para. 14. We note that online the FRLD [website](#) as states a slightly higher total of USD 731 million as of December 2024.

⁵¹ [The FRLD Board Decisions at the Second Board Meeting](#), Annex IV, Workplan of the Board for 2024-2025. The CMA officially welcomed this workplan at COP29: [Draft Decision CMA6 on Report of FRLD and Guidance to the Fund](#), para. 17.

⁵² [Report of the Board of the FRLD, dated October 2024, para. 34. As per Decision 1/CP.28, para. 7 and Decision 5/CMA.5, para. 7.](#)

⁵³ [Decision 5/CMA.5](#), para. 5 and Annex 1, Governing Instrument, para. 11.

paragraph 16 to apply to the FRLD, given our conclusions on Query 1 above and given FRLD's mandate is limited to the provision of funding for loss and damage.⁵⁴

4.5 Paragraph 16 outlines the funding mechanisms for the NCQG and provides that the CMA:

“Decides that a significant increase of public resources should be provided through the operating entities of the Financial Mechanism, the Adaptation Fund, the Least Developed Countries Fund and the Special Climate Change Fund and also decides to pursue efforts that at least triple annual outflows from those Funds from 2022 levels by 2030 at the latest with a view to significantly scaling up the share of finance delivered through them in delivering on the goal contained in paragraph 8 above.”

4.6 Paragraph 16 thus cross-references paragraph 8 of the Decision: the goal of tripling annual finance to developing countries for climate action, specifically for mitigation and adaptation by 2035, with the lead to be taken by developed countries. Arguably, this narrows the scope of paragraph 16 to those entities whose mandates enable them to contribute to this goal.

4.7 As discussed above, whether the NCQG was to be put towards loss and damage was a highly contentious issue at, and in the lead up to, COP29.⁵⁵ The debate around whether the NCQG should have sub-goals also extended to the channels of finance, with some parties arguing that the goal should have clear sub-channels for different financial entities.⁵⁶ As we have expressed, our view is that the text of the Decision (in particular, paragraph 5) indicates that the parties were unable to agree on the inclusion of loss and damage and therefore did not do so. This would tend to suggest the parties did not agree to include the FRLD within the *“operating entities of the Financial Mechanism”* as its mandate is limited to loss and damage financing.

4.8 In comparison to the FRLD, the Financial Mechanism's other two operating entities, the Global Environment Facility (*“GEF”*) and the Green Climate Fund (*“GCF”*),⁵⁷ both have much broader mandates, better suited to the NCQG's purpose stated in paragraph 5 of the Decision (i.e. supporting the implementation of developing states' NDCs). The GEF provides financial support for the activities and projects of developing countries in achieving international environmental goals, with the GCF fulfilling a similar function with a climate-specific focus.⁵⁸ Moreover, both the GEF and the GCF manage the Special Climate Change Fund and the Least Developed Countries Fund, which are also referred to in paragraph 16. All the financial entities listed in paragraph 16 (excluding the FRLD) fund activities directly related to mitigation and adaptation and align well with the text of paragraphs 5 and 8.

4.9 The surrounding text of Paragraph 16 and the negotiations of the parties in the lead up to COP29 shed little light on the parties' intentions as to the inclusion of the FRLD within *“operating entities”*.

⁵⁴ [Decision 2/CMA.4](#), para. 3; [Decision 5/CMA.5](#), Annex 1, Governing Instrument, paras. 2 and 6.

⁵⁵ See paragraphs 3.13 to 3.15.

⁵⁶ [AHWP Co-Chairs' Report on the NCQG](#), October 2024, para. 136(a).

⁵⁷ Global Environment Facility: [Decision 9/CP.1](#), para. 1; Green Climate Fund: [Decision 1/CP.16](#), para. 102; [Decision 3/CP.17](#), para. 3; [Decision 1/CP.21](#), paras. 58 and 62.

⁵⁸ See e.g., [Governing Instrument of the GCF](#); [Governing Instrument of the GEF](#).

- 4.10 For instance, paragraph 17 appears to suggest a focus on adaptation and mitigation, given it notes that the *“provision of scaled-up financial resources should aim to achieve balance between adaptation and mitigation”*. However, the same paragraph goes on to say that such finance should reflect the *“needs and priorities”* of developing countries, which as discussed above, might be viewed as allowing for any development funding priority of the country.⁵⁹
- 4.11 Similarly, the negotiations of the parties leading up to Decision do not indicate whether the parties intended to include the FRLD by referring to *“operating entities”* in paragraph 16. The draft negotiating text considered by the parties at COP29 did not contain a similar paragraph on the Financial Mechanism, operating entities or any Funds.⁶⁰
- 4.12 In the lead up to COP29 an AHWP Input Paper summarizing the parties’ positions suggested that one option was for the NCQG to *“establish funding mechanisms to ensure the predictability and increasing funding for the operating entities of the Financial Mechanism, such as the GCF, GEF, Adaptation Fund, including the Fund for Loss and Damage.”*⁶¹ At another point, the Input Paper referred to the *“current operating entities of the Financial Mechanism”* as *“i.e. Global Environment Facility and Green Climate Fund”* and made no reference to the FRLD.⁶² The Input Paper appears to indicate that even in the early stages of negotiations, there was to a lack of consensus between the parties as exactly what *“operating entities”* meant in the context of the NCQG.
- 4.13 The COP29 pre-session documents relating to the FRLD agenda items made no reference at all to the potential agreement of the NCQG and whether this would impact the FRLD.⁶³ While this partly reflected the order of the agenda,⁶⁴ it is consistent with the approach taken in the previous two COPs of keeping the NCQG and issues relating to the FRLD as entirely separate agenda items, with no cross-references.⁶⁵ This tends to suggest that the potential links between the NCQG and the FRLD are disputed between the parties. In contrast, the link between the FRLD and the GCF appears more established in the pre-negotiation documents. For example, the SCF’s Report for COP29 on the GCF, called on developed countries to increase their contributions to the GCF to fulfil their obligations relating to the future NCQG.⁶⁶
- 4.14 Practically, it is even less clear whether, and if so how, the decision to triple 2022 outflows by 2030 applies to the FRLD. As discussed above, the FRLD’s work plan provides for first outflows to be approved from mid-2025 and this workplan was welcomed by the parties at COP29.⁶⁷ One reading of paragraph 16 might be that outflows are to be tripled across the financial

⁵⁹ See paragraph 3.25, above.

⁶⁰ [Draft Negotiating Text for the AHWP on the NCQG](#).

⁶¹ [AHWP Co-Chairs' Input Paper for Second Meeting on the NCQG](#), para. 471.

⁶² [AHWP Co-Chairs' Input Paper for Second Meeting on the NCQG](#), para. 508.

⁶³ [Report of the Board of the FRLD](#) and [Report of the Board of the FRLD \(Addendum\)](#).

⁶⁴ The NCQG was agreed on 24 November 2024 and the FRLD agenda items were considered on 21 November 2024.

⁶⁵ See e.g., [CMA 6 Agenda](#), [CMA 5 Agenda](#) and [CMA 4 Agenda](#).

⁶⁶ [SCF Report, Draft Guidance to the GCF \(Addendum\)](#), para. 123.

⁶⁷ [The FRLD Board Decisions at the Second Board Meeting](#), Annex IV, Workplan of the Board for 2024-2025; [Draft Decision CMA6 on Report of FRLD and Guidance to the Fund](#), para. 17.

entities collectively, rather than individually. This approach would mean that the FRLD is not precluded from contributing just because it did not have any 2022 outflows.

- 4.15 In summary, we think it seems unlikely that the parties agreed that the reference in paragraph 16 was to include the FRLD, given our conclusions in Query 1, the FRLD's mandate for loss and damage and the extremely controversial nature of finance for loss and damage forming part of the NCQG.
- 4.16 However, we cannot be certain at this stage. It may be that the general reference to "operating entities" was a compromise position and reflected some parties' wishes that the FRLD and loss and damage be included within the NCQG now or possibly in the future. This might reflect the increasing calls amongst states for complementarity between climate finance mechanisms.
- 4.17 If paragraph 16 excludes the FRLD, as we think is likely, then the FRLD contributions will not count towards the USD 300 billion target contained in paragraph 8 of the Decision. The FRLD will therefore be relatively unaffected, as a fund focused on loss and damage, rather than adaptation and mitigation. Similarly, the goal of tripling outflows will not be applicable.

END