

Loss & Damage

PARIS CLIMATE JUSTICE BRIEFS

DEC 2015 #1

What loss and damage is, why it is important, and what outcomes are important for COP21

LOSS AND DAMAGE REFERS TO HARM CAUSED BY CLIMATE CHANGE THAT IS UNAVOIDABLE

The world community's failure to prevent climate change to date is having increasingly severe impacts, often on those who are in already vulnerable positions.

We are seeing harm that is already locked in as result of climate change to which it is not possible to adapt.¹ This kind of harm is referred to as "loss and damage" in the climate negotiations and the question of how to address it within the Paris agreement will form a key part of the negotiations in December.

The key development so far in the area of loss and damage was in November 2013 the Warsaw International Loss and Damage mechanism (WIM) was established under the UNFCCC framework.

LOSS AND DAMAGE COVERS EXTREME WEATHER EVENTS AND SLOW ONSET EVENTS

The kinds of loss and damage that are most often covered in media reports come from extreme weather events such as hurricanes. However, the term also includes "slow onset events," such as sea level rise and land degradation which are actually

LOSS AND DAMAGE COMMITMENTS NEEDED IN PARIS

- A clear, strong and distinct reference to the importance of addressing loss and damage in the Paris agreement text.
- A structural framework to address loss and damage in the agreement, building upon and developing the work of the Warsaw International Loss and Damage mechanism. This should include finance, a climate displacement facility and approaches to address permanent loss and damage.

likely to impact more people during the coming decades than extreme weather.

Permanent losses such as loss of land and ecosystems need to be addressed and the mechanism could play a role in providing the research and information needed to do this, for example by establishing baselines through which such loss can be assessed, so that developing countries do not have to produce expensive reports and analysis in their own right.

¹ For case-studies on loss and damage see: <http://aol.it/1Q0QI2s> and <http://bit.ly/1lpciLK>

THIRD WORLD NETWORK
EARTH IN BRACKETS
PHILIPPINES MOVEMENT FOR CLIMATE JUSTICE
LDC WATCH

ASIAN PEOPLES' MOVEMENT ON DEBT AND DEVELOPMENT
FRIENDS OF THE EARTH - ENGLAND
WALES & NORTHERN IRELAND

TIPPING POINT COLLECTIVE
ACTION AID
FRIENDS OF THE EARTH INTERNATIONAL

FINANCIAL SUPPORT IS NEEDED AS WELL AS FINDING WAYS TO ADDRESS NON-ECONOMIC LOSS

Developing countries are entitled to financial support to address loss and damage as well as risk-sharing and risk transfer approaches to minimise impacts. However it is equally important to address non-economic losses, such as loss of statehood due to sea level rise. For example, there are currently big gaps in the policy and legal framework to protect those displaced or forced to flee as a result of climate change. The Paris agreement should include a structure that addresses all facets of loss and damage.

The communities most impacted by climate change should also have the ability to participate directly in the work of the mechanism.

ACTION TO ADDRESS LOSS AND DAMAGE IS REQUIRED UNDER INTERNATIONAL LAW

It is a clearly established principle of international environmental law that states should not cause harm outside their jurisdiction.² The text of the UNFCCC itself requires parties to take action to prevent dangerous climate change and obliges developed country parties to reduce their greenhouse gas emissions.³ The failure of developed country parties to do this, to the extent that developing countries now face loss and damage is arguably a wrongful act under international law.

In addition, the “polluter pays” principle⁴ also provides a basis for establishing liability. The International Law Association’s draft principles on climate change underline the need to “make good” or provide some form of compensation for the unequal use of the global atmosphere in the past by industrialized countries.⁵

Any reference to formal legal liability for loss and damage in the Paris agreement is deeply controversial for developed countries and is likely to be completely absent from the agreement.

EU GOVERNMENTS SHOULD SUPPORT THE G77 LOSS AND DAMAGE PROPOSAL

There is currently a text proposal for loss and damage to be in the Paris outcome, which is supported by all 134 countries in the G77 plus China grouping. This is set out as “Option 1” of

Article 5 of the current negotiating text. It reflects political concessions made by the G77 group: for example it does not contain specific references to language on compensation, or to the specific responsibilities of developed countries in the context of loss and damage.

There is an alternative Option II, which would remove Article 5/any reference to loss and damage from the negotiation text entirely. This is a proposal from the Umbrella group, a grouping of countries including Canada, Australia and the US, supported by Switzerland (although the latter is not a member of the Umbrella group). Given the ongoing and serious nature of the loss and damage that is occurring and the likelihood that this will only increase in the future, this is not a tenable position.

The EU has so far not expressed a position and it is understood that there are a range of views within its member states. The Environmental Integrity Group has also not expressed a position (other than Switzerland, as mentioned above). We are calling on these groupings to support the G77 proposal for including loss and damage in the text.

As set out above, we view it as vital that the importance of addressing loss and damage is given appropriate recognition by anchoring it into the Paris agreement, with a clear institutional framework to act on it.

² This principle is set out in the Stockholm and Rio declarations and the International Court of Justice’s 1996 advisory opinion on nuclear tests, where the court confirmed the general obligation on states set out above.

³ See article 4.2 on the obligations of Annex 1 countries in re this.

⁴ This states that damages caused by harmful activities should be imposed on the people who conduct them or profit from them in order to compensate those who are harmed by them.

⁵ See academic analysis in The International Law Association’s Legal Principles on Climate Change and Climate Liability Under Public International Law Christoph Schwart, Will Frank, *Climate Law* (4) (2014) 201-206