

# Addressing Loss and Damage for Climate Justice in the Global South: An Analysis

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## Abstract

*The global response to climate change has evolved due to its shifting impacts — due to the limitations of mitigation and adaptation, the focus has shifted to 'loss and damage' to combat climate change. Climate risk is intensifying frequently, rendering mitigation and adaptation strategies ineffective. To mitigate climate risk and promote climate justice, the concept of 'loss and damage' deserves due consideration from all stakeholders. Surprisingly, countries experiencing the greatest loss and damage have contributed insignificantly to the causation of climate change. Climate justice demands equitable allocation of responsibilities and the sharing of burdens in combating climate change, as well as compensating less affluent countries for the impacts of climate change. To achieve climate justice, those countries must be compensated. The question now pertains to who will provide compensation and the criteria for such compensation. Historical polluters have a moral obligation and should assume the consequences of climate change resulting from their past emissions. Therefore, it is necessary to activate the loss and damage fund practically, decide who will pay for it, who will receive it and on what basis. At the Conference of Parties (COP 28), an agreement was reached to implement the fund established at COP 27 to resolve loss and damage and advocate for a new dedicated fund under the UNFCCC. Thus, this research paper will analyze different national approaches regarding loss and damage, responses to loss and damage, funding for loss and damage, management of loss and damage fund and how climate justice can be ensured by proper utilization of the fund. By applying a doctrinal research approach and utilizing primary and secondary sources, this paper concludes that although COP 28 marked a breakthrough by activating the Loss and Damage fund established at COP27, practical implementation remains unclear.*

**Keywords:** *Climate Change, Loss and Damage, Climate Justice, Loss and Damage Fund*

## I. Introduction

The detrimental effects of climate change have undoubtedly resulted in several environmental and socio-economic concerns. The notion of 'loss and damage' has surfaced as a critical aspect of global climate dialogue amidst these concerns. Loss and damage are inevitable harm that occurs despite implementing adaptive and mitigation strategies. It is now clear that mitigation and adaptation

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initiatives have failed to avert loss and damage resulting from climate change.<sup>1</sup> The global reaction to climate change has evolved due to the shifting impacts of climate change. Initially, emphasis was placed solely on mitigation strategies to reduce greenhouse gas emissions and prevent climate change. Then, it was found that climate change had already occurred, and some repercussions were inevitable. Consequently, initiatives for adaptation measures have been implemented to address the evolving challenges of climate change. Subsequently, Small Island States recognized that certain impacts of climate change are unavoidable despite adaptation measures, necessitating a third degree of response: loss and damage. 'Loss and damage' is substantiated by climate science due to the constraints of adaptation and mitigation strategies, as well as the inherent limitations of both humans and nature in terms of adaptability.<sup>2</sup> Mitigation cannot eliminate all the effects of climate change, and adaptation cannot prevent all the damage resulting from those effects.<sup>3</sup> Addressing loss and damage is urgently necessary for developing countries, especially those in the Global South and small island states.

The reasons and impacts of unavoidable climate phenomena (loss and damage) must be given a wider interpretation. 'Loss and damage' are 'residual impacts' arising out of climate change, which mostly affects the poorest countries, which contribute less to climate change. Addressing loss and damage and responding to it face political and economic challenges.<sup>4</sup> Due to the failure of the United Nations Framework Convention on Climate change (UNFCCC) and the Paris Agreement, developing countries continuously push to address loss and damage.<sup>5</sup> Though in 2015, article 8 of the Paris Agreement first inserted the concept of 'loss and damage' in the UNFCCC, it has not gained as much attention as mitigation and adaptation.<sup>6</sup> Article 8 lacks binding legal obligation as it does not involve or provide a basis for any liability or compensation, and promotes cooperation and support on 'loss and damage' through voluntary actions like knowledge sharing and financial assistance rather than imposing concrete duties. Since the adoption of UNFCCC, the core intention of the global community has been to combat the adverse impacts of climate change.<sup>7</sup> Various response mechanisms have emerged to tackle those harmful effects, though the notion of 'loss and damage' is new. Warsaw International Mechanism (WIM) for loss and damage was created at COP 19 in 2013. It had the objective of addressing loss and damage associated with climate change impacts, including extreme events and slow onset events in countries particularly vulnerable to the impacts of climate change.<sup>8</sup>

<sup>1</sup> Julie-Anne Richards & others, 'The Loss and Damage Finance Landscape', *Heinrich-Böll-Stiftung*, 2023, p. 5, available at [https://us.boell.org/sites/default/files/2023-05/the\\_loss\\_and\\_damage\\_finance\\_landscape\\_hbf\\_ldc\\_15052023.pdf](https://us.boell.org/sites/default/files/2023-05/the_loss_and_damage_finance_landscape_hbf_ldc_15052023.pdf), accessed on 6 February 2025.

<sup>2</sup> Gregor Vulturius & Marion Davis, 'Defining Loss and Damage: The Science and Politics around One of the Most Contested Issues within the UNFCCC', *Stockholm Environment Institute*, 2016, available at <http://www.jstor.com/stable/resrep02775>, accessed on 2 June 2024.

<sup>3</sup> Ibid.

<sup>4</sup> Andrew Gilder & Olivia Rumble, 'An African Perspective on Loss and Damage', *South African Institute of International Affairs*, 2022, available at <https://www.jstor.org/stable/resrep41928>, accessed on 5 June 2024.

<sup>5</sup> Ibid.

<sup>6</sup> 'Loss and Damage in the Paris Agreement', *Climate Focus*, 2015, p. 3, available at [https://climatefocus.com/wp-content/uploads/2022/06/20160214-Loss-and-Damage-Paris\\_FIN.pdf](https://climatefocus.com/wp-content/uploads/2022/06/20160214-Loss-and-Damage-Paris_FIN.pdf), accessed on 10 January 2025; Guy Jackson & others, 'An Emerging Governmentality of Climate Change Loss and Damage', *Progress in Environmental Geography*, volume 2:2, 2023, pp. 33-35.

<sup>7</sup> Edward A Page & Clare Heyward, 'Compensating for Climate Change Loss and Damage', *Political Studies*, volume 65:2, 2017, pp. 356-357.

<sup>8</sup> Aparajita Suresh Rao, 'The Overdue Climate Justice of Loss and Damage', *Journal of International Affairs* volume 75:1, 2022, pp. 389, 393.

Climate justice concerns the moral responsibility of historically high-emitting countries to assist climate-vulnerable states, which are disproportionately affected by climate change (particularly global south states). It calls for equitable solutions that address both the historical and ongoing inequities of climate change impacts.<sup>9</sup> Within this context, the operationalization of loss and damage mechanisms is a prerequisite. Climate justice is also closely connected with the concept of ‘sustainable development’, as sustainable development is one of the core factors for climate justice. Implementing loss and damage policies will promote long-term structural change, sustainable development, and climate justice. Paris Agreement has also connected loss and damage to sustainable development.<sup>10</sup> Now, every state wants to achieve sustainable development goals and to achieve sustainable development, climate justice needs to be ensured.

Previous literature addressed the issue of climate change and climate justice, adaptation and mitigation measures but lacked in-depth analysis of the notion of loss and damage from different national perspectives. This article will analyze different national approaches and responses regarding loss and damage, funding for and management of loss and damage fund and how climate justice can be ensured by proper utilization of the fund. Through this analysis, the article aims to contribute to the ongoing dialogue on how loss and damage can be addressed as a cornerstone of global efforts to combat climate change and ensure justice for the most affected communities.

## II. Notion of Loss and Damage

Despite no official definition of loss and damage, the UNFCCC provides a working definition stating, loss and damage (being) the actual and/or potential manifestation of impacts associated with climate change in developing countries that negatively affect human and natural systems.<sup>11</sup> Loss and damage can be categorized into three types. Firstly, foreseeable loss and damage can be adapted using financial and adaptation strategies. Secondly, some foreseeable loss and damage can be avoided through a mitigation process. Lastly, some loss and damage cannot be tackled through adaptation policies or mitigation measures.<sup>12</sup> Adaptation measures need financial and technical support; inadequacy of that support leads to unavoidable impacts, which can be considered loss and damage. This kind of loss and damage cannot be avoided by any means, and for this reason, a compensation mechanism is needed for the victims of residual damage arising out of climate change. In short, loss and damage are the kind of impact of climate change that occurs even after adaptation and mitigation measures are taken.

The issue of loss and damage was first addressed at the policy level in 1991 when the Alliance of Small Island States (AOSIS) proposed the Multi Window Mechanism to mitigate the adverse effects of climate change, and it was officially incorporated into the UNFCCC in 2007.<sup>13</sup> Subsequently, the

<sup>9</sup> Charles A Ogunbode & others, ‘Climate Justice Beliefs Related to Climate Action and Policy Support around the World’, *Nature Climate Change*, volume 14:11, 2024, pp. 1144-1145.

<sup>10</sup> V Pekkarinen, P Toussaint & H Van Asselt, ‘Loss and Damage after Paris: Moving Beyond Rhetoric’, *Carbon & Climate Law Review*, volume 13:1, 2019, pp. 31, 33-35.

<sup>11</sup> UNFCCC, ‘A Literature Review on the Topics in the Context of Thematic Area 2 of the Work Programme on Loss and Damage: A Range of Approaches to Address Loss and Damage Associated with the Adverse Effects of Climate Change’, *United Nations*, p. 3, 2012, available at <https://unfccc.int/resource/docs/2012/sbi/eng/inf14.pdf>, accessed on 16 July 2024.

<sup>12</sup> Dr Roda Verheyen & Peter Roderick, ‘Beyond Adaptation: The Legal Duty to Pay Compensation for Climate Change Damage’, *WWF-UK*, 2008, p. 11, available at [https://wwfint.awsassets.panda.org/downloads/beyond\\_adaptation\\_lowres.pdf](https://wwfint.awsassets.panda.org/downloads/beyond_adaptation_lowres.pdf), accessed on 10 August 2024.

<sup>13</sup> Swenja Surminski & Ana Lopez, ‘Concept of Loss and Damage of Climate Change – a New Challenge for Climate Decision-Making? A Climate Science Perspective’, *Climate and Development* p. 267, volume 7:3, 2015, pp. 267-268.

Warsaw International Mechanism, formed in 2013, addressed loss and damage inside the UN climate framework.<sup>14</sup> Recently, the Conference of the Parties (COP) of the UNFCCC addressed the residual effects of climate change, post-mitigation and adaptation, as loss and damage.<sup>15</sup> In summary, loss and damage can be articulated as follows:

‘In legal terms, loss and damage are not separate concepts. Rather, loss is a specific term to describe a particular type of damage such as loss of earnings or loss of office. Damage is a legal concept equated with ‘tort’ or ‘liability’, which often leads to a claim for damages, with monetary or in-kind compensation as a remedy, but is also the generic term for harm afflicted to a legal entity or person or other systems (e.g. a particular ecosystem) which may give rise to a legal claim.’<sup>16</sup>

Loss and damage may be recoverable and irrecoverable, economic (i.e. loss of income, damage to property) and non-economic (i.e. loss of cultural resources, loss of traditional knowledge, loss of livelihoods, loss of history, identity, cultural and social connections to the land and one another) and can be originated from extreme whether events and slow onset events. Loss and damage also include both reversible (i.e. loss of private property, public infrastructure) and irreversible (i.e. loss of lives, ecosystem, natural cycle) losses.<sup>17</sup>

Addressing loss and damage has political, economic, and scientific involvement.<sup>18</sup> The idea of loss and damage encompasses that developed countries, which are mostly liable for climate change, must assist developing countries with financial and infrastructural support. To address loss and damage arising out of climate change, the concept of compensation has emerged, and the fund is transferred to those who suffer economic or non-economic loss due to adverse impacts of climate change.<sup>19</sup> The objective of giving compensation is to restore the position of those who suffered losses. Moreover, loss and damage is victim-centered, a method of neutralizing environmental injustice (by establishing corrective justice)<sup>20</sup> that involves responsibility and liability.

### III. Loss and Damage and Relevant Theories of Climate Justice

#### A. Polluter Pays Principle Subject to Rule of Common but Differentiated Responsibility

There is an established principle that the polluter or the beneficiary of environmental amenities should be responsible for compensating for and contributing to loss and damage funds.<sup>21</sup>

<sup>14</sup> Pekkarinen, Toussaint and Van Asselt (n 11), p. 31.

<sup>15</sup> Karen E McNamara & Guy Jackson, ‘Loss and Damage: A Review of the Literature and Directions for Future Research’, *WIREs Climate Change* p. 1, volume 10: 2, 2019, pp. 9-10.

<sup>16</sup> Dr Roda Verheyen, ‘Tackling Loss and Damage-A New Role for the Climate Regime?’, *CDKN*, 2012, p. 5, available at <https://www.lossanddamagecollaboration.org/publication/tackling-loss-damage-a-new-role-for-the-climate-regime>, accessed on 20 August 2024.

<sup>17</sup> Meinhard Doelle & Sara L. Seck, ‘Introducing Loss and Damage’, in Meinhard Doelle & Sara L. Seck (eds), *Research Handbook on Climate Change Law and Loss & Damage*, Edward Elgar, Cheltenham, 2021, p. 1; W Neil Adger, ‘Loss and Damage from Climate Change: Legacies from Glasgow and Sharm El-Sheikh’, *Scottish Geographical Journal* p. 142, volume 139:1, 2023, pp. 145-146, available at <https://doi.org/10.1080/14702541.2023.2194285>, accessed on 10 February 2025; Vulturius and Davis (n 2), p. 4.

<sup>18</sup> Jackson and others (n 7), pp. 37-38.

<sup>19</sup> Surminski and Lopez (n 14), pp. 268-269.

<sup>20</sup> Page and Heyward (n 8), p. 358.

<sup>21</sup> Patrick Toussaint, ‘Loss and Damage, Climate Victims, and International Climate Law: Looking Back, Looking Forward’,

Countries which emitted more carbon dioxide or emitted in the past must compensate for that emission. However, while imposing compensation on the states, the principle of equity must be considered, as climate justice should be based on equity. The Common but Differentiated responsibility principle recognizes the equitable responsibility of emitting states. The Paris Agreement on climate change is also based on common but differentiated responsibility.<sup>22</sup> Developed and developing countries should contribute to a common fund based on common but differentiated responsibility, and that fund will compensate developing countries affected by climate change's adverse impacts. Polluters should pay for the negative impacts of climate change in proportion to their contribution. Though historical polluters defend excusable ignorance, they cannot escape all the moral responsibility<sup>23</sup> as the developed countries (historical polluters) are morally obligated to compensate the rest of the world due to their emission gain.

## B. Restoration Priority Principle

The parties responsible should prioritize the rehabilitation of the damaged environment. Financial compensation will be provided to substitute for direct restoration if the harm is irreparable. Although the Law of Compensation for ecological and environmental damage, uses the name 'Compensation', its principal objective is to rehabilitate the impaired environment, sustain and elevate environmental quality, and safeguard and augment ecosystem functions.<sup>24</sup> The purpose of compensation is to restore victims to their original state, enabling them to not only endure the loss and damage they have experienced but also to achieve a standard of living equivalent to what it would have been had the loss not occurred.<sup>25</sup> The principle of compensation for loss and damage aims to restore climate change victims to their pre-disruption state, representing a form of corrective justice that endeavors to re-establish their condition.

## C. No Harm Principle or Transboundary Damage

State liability for loss and damage arising from climate change can be imposed based on the principle of transboundary harm.<sup>26</sup> International Court of Justice (ICJ) has explicitly recognized that emitting greenhouse gases by a country causes transboundary harm and reiterates that the no-harm rule can be a guiding principle to create state liability for loss and damage.<sup>27</sup> UNFCCC preamble also reflects the parties' acceptance of the no-harm rule, stating that "states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction". As this principle is a customary international law, this rule applies to all states regardless of members of any specific convention. If any state fails to comply with this rule, that state is bound to

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*Transnational Environmental Law* p. 134, volume 13:1, 2024, p. 145, available at doi:10.1017/S2047102523000237, accessed on 21 May 2024.

<sup>22</sup> McNamara and Jackson (n 16), p. 8.

<sup>23</sup> SWIP-Analytic España & Luis Manuel Valdés-Villanueva, 'Moral Responsibility for Climate Change Loss and Damage', *Revista Internacional de Filosofía* p. 7, volume 39:1, 2020, p. 14.

<sup>24</sup> Weiyu Wu, 'The Reform of The Compensation System for Ecological and Environmental Damage In China', *Natural Resources Journal* p. 63, volume 60: 1, 2020, p. 64, available at <https://www.jstor.org/stable/10.2307/26912772>, accessed on 2 May 2024.

<sup>25</sup> Page and Heyward (n 8), p. 359.

<sup>26</sup> A Marke, S Ramanand & K Daniel Akdag, 'The Development of a Quasi-Loss and Damage Compensatory System for Developing Countries through Climate Litigation', *Carbon & Climate Law Review* p.56, volume 14:1, 2020, pp. 60-62.

<sup>27</sup> Pekkarinen, Toussaint and Van Asselt (n 11), p. 41.

compensate the wronged state.<sup>28</sup> To ensure climate justice, the anthropogenic greenhouse gas emission as a cause of adverse climate impact must be acknowledged, and the state must accept liability based on the principle of prevention of harm.

#### IV. Responses towards Loss and Damage

Responses to loss and damage can be classified into three specific domains: institutional mechanisms, financial obligations, and policy frameworks. Institutional mechanisms can be established through international responses, regional collaboration, and domestic institutions. International response avenues exist, albeit insufficient. Within the UNFCCC, the Santiago Network provides technical help for managing loss and damage, whilst the Warsaw International Mechanism for Loss and Damage (WIM) promotes improved dialogue around loss and damage. Additionally, countries collaborate with regional alliances to address shared vulnerabilities. The Pacific Islands Forum fosters regional resilience and capacity-sharing initiatives, whereas African nations, through the African Union, have established the African Climate Resilience Framework to enhance coordinated responses to loss and damage. Some countries have implemented national strategies under their domestic institutions, which I will address later in the article.

Furthermore, individuals affected by loss and damage from climate change necessitate compensation, requiring financial commitment. Funding can be sourced from diverse avenues, including international funding mechanisms, national funding (taxes, levies, charges, insurance mechanisms), and partnerships between governmental and corporate sector.<sup>29</sup> By 2030, the financial requirements for loss and damage in developing countries would amount to \$200–580 billion annually.<sup>30</sup> Consequently, developing countries have advocated for specific support for loss and damage. The COP 27 resolution to create a ‘Loss and Damage Fund’ represents a significant advancement in financial equity, while its implementation remains under negotiation.<sup>31</sup> Subsequently, at COP 28, officials from 198 countries negotiated an agreement to establish a fund to assist disadvantaged countries impacted by the detrimental effects of climate change. Following COP 28, the World Bank (WB) has been endeavoring to implement the loss and damage fund as a WB-hosted financial intermediary fund (FIF) for a provisional duration of four years.<sup>32</sup> On June 10, 2024, the World Bank's Board of Executive Directors sanctioned the institution's role as an interim secretariat host and trustee of a fund created to address loss and damage resulting from climate change, marking a significant advancement in the operationalisation of the fund.<sup>33</sup> Any qualifying country may get financial assistance from the fund through grants and concessional financing. The WB is responsible for coordinating the funds,

<sup>28</sup> Abdullah Al Faroque, *Environmental Law: Global and Bangladesh Context*, New Warsi Book Corporation, Dhaka, 1<sup>st</sup> edition, 2017, p. 54.

<sup>29</sup> Toussaint (n 22), p. 145.

<sup>30</sup> Anil Markandya & Mikel González-Eguino, ‘Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage: A Critical Review’ in Reinhard Mechler & others (eds), *Loss and Damage from Climate Change: Concepts, Methods and Policy Options*, Springer International Publishing, 2019, pp. 343-362, available at <http://link.springer.com/10.1007/978-3-319-72026-5>, accessed on 8 June 2024.

<sup>31</sup> Richards and others (n 1), p. 5.

<sup>32</sup> ‘Board Approves World Bank’s Role as Host and Trustee for the Fund for Responding to Loss and Damage’, *World Bank Group*, 2024, Washington, available at <https://www.worldbank.org/en/news/press-release/2024/06/10/board-approves-world-bank-s-role-as-host-and-trustee-for-the-fund-for-responding-to-loss-and-damage>, accessed on 2 August 2024.

<sup>33</sup> Ibid.



efficiently allocating resources, and assisting impacted nations in the aftermath of natural disasters.<sup>34</sup>

Additionally, the Conference of the Parties (COP) and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA), via decisions 2/CP.27 and 2/CMA.4, instituted new funding mechanisms to aid developing countries particularly susceptible to the detrimental impacts of climate change in addressing loss and damage. In this context, the COP and the CMA resolved to create a fund to address economic and non-economic loss and damage, encompassing extreme weather and slow onset events. The COP and CMA, at their twenty-eighth and fifth sessions, established the loss and damage fund as an entity responsible for managing the financial mechanism of the convention, which will also support the Paris Agreement. Moreover, on 9 July 2024, during the second meeting of the Fund's Board, the Board decided to choose the Philippines as the host country for the Board.<sup>35</sup>

However, financial factors alone are inadequate to encompass all dimensions of loss and damage. They should be supplemented by additional perspectives, including legal frameworks to establish norms and facilitate dispute resolution, humanitarian considerations for prompt emergency relief and crisis management, development strategies for long-term resilience enhancement, and acknowledgement of non-economic values related to loss and damage.<sup>36</sup> Sustainable development represents an alternative method to tackle loss and damage. Sindico proposes that sustainable development may mitigate loss and damage through its proactive emphasis, including disaster risk reduction, and asserts, "Human settlements must become more 'resilient' to effectively manage loss and damage resulting from climate change".<sup>37</sup> Many countries consider loss and damage in their adaptation programs, ensuring recovery initiatives are consistent with overarching development objectives. Some countries have enacted legislation to tackle inevitable loss and damage, which I shall elaborate on later in this article.

## V. Management of Loss and Damage Fund

In addition to establishing a loss and damage fund, it is equally imperative to determine the contributors, the beneficiaries, and the criteria for distribution. In conjunction with the state, private entities should contribute to the fund, and a designated UN agency (the WB) may be tasked with overseeing the fund and distributing resources according to necessity. In addition to overseeing the fund, the authorities should maintain all data about loss and damage. Effective management of loss and damage funds necessitates the engagement of researchers and community-based organizations, maintenance of documentation about essential data and funding sources, and efficient fund administration.<sup>38</sup> Loss and damage funds must be run by an accountable governing authority composed of majority representatives from developing countries and affected communities.<sup>39</sup>

<sup>34</sup> 'Loss and Damage Fund for Developing Countries', *UNDP*, Belarus, 26 January 2024, available at <https://www.undp.org/belarus/stories/loss-and-damage-fund-developing-countries>, accessed on 2 August 2024.

<sup>35</sup> 'Fund for Responding to Loss and Damage', *COP29*, Baku Azerbaijan, 12 November 2024, available at <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat>, accessed on 2 August 2024.

<sup>36</sup> Cyril Joseph Effiong & others, 'Exploring Loss and Damage from Climate Change and Global Perspectives That Influence Response Mechanism in Vulnerable Communities', *Sustainable Environment*, p. 1, volume 10:1, 2024, pp. 4-5.

<sup>37</sup> Francesco Sindico, 'Paris, Climate Change, and Sustainable Development', *Climate Law*, p. 130, volume 6:1, 2016, pp. 130-141.

<sup>38</sup> Laura Kuhl and others, 'Climate Loss-and-Damage Funding: How to Get Money to Where It's Needed Fast', *Nature*, p. 693, volume 623, 2023, pp. 693-695.

<sup>39</sup> Richards and others (n 1), p. 48.

Furthermore, courts may serve as the appropriate venue for claiming damages.<sup>40</sup> Countries and communities, such as small island states like Vanuatu, impacted by loss and damage should be able to seek recourse through domestic or international courts. Environmental courts in developing countries must be empowered to address complaints related to climate-induced loss and damage. A particular procedure should exist for individuals to file complaints with the environmental court against the state or any corporate body for losses and damages resulting from anthropogenic climate impacts. For instance, in Bangladesh, the Environmental Court Act exists; however, it lacks provisions for seeking judicial remedies for loss and harm.

The governance framework of the loss and damage fund must be inclusive, ensuring equitable participation from developed and developing countries. Transparent decision-making processes that engage impacted communities can guarantee the fund's effective and equitable implementation. This collaborative method enhances global solidarity and confidence in climate justice frameworks.

## VI. Loss and Damage and Outcome of Recent COP

At COP 27, member states concurred to establish a fund to aid disadvantaged countries impacted by the detrimental effects of climate change. Regrettably, that fund was not implemented. COP 27 assigned a transitional committee to present at COP 28 a framework for operationalizing the loss and damage fund.<sup>41</sup> A Transitional Committee consisting of 24 governments, encompassing both developed and developing countries, was established.<sup>42</sup> At COP 28, state and non-state actors made numerous commitments to redress loss and damage, including a financial pledge of USD 85 billion for climate action.<sup>43</sup> On the inaugural day of COP 28, the agreement was finalized to activate the fund.<sup>44</sup> The fund is established to assist climate-vulnerable countries in addressing climate-induced loss and damage, encompassing both irreversible and non-economic impacts while acknowledging the constraints of adaptation. Countries also agreed for establishing the Coalition for High-Ambition Multilevel Partnerships (CHAMP) for climate action, signed by 71 nations, and the UAE leaders issued a declaration on a Global Climate Finance Framework, approved by 13 nations.<sup>45</sup> COP28 marked notable advancements in global climate policy, yet the agreements were deficient in explicit commitments to eliminate fossil fuels and lacked comprehensive financial strategies to support developing nations in their transition to alternative energy sources.

In November 2024, COP 29 set a new finance goal to assist countries in safeguarding their populations and economies against climate catastrophes while participating in the substantial advantages of the clean energy surge. COP 29 emphasized climate finance, aiming to increase funding to developing

<sup>40</sup> Pekkarinen, Toussaint and Van Asselt (n 11), p. 38.

<sup>41</sup> Sharm el-Sheikh, 'Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage', UNFCCC, 2022, available at <https://unfccc.int/documents/624440>, accessed 9 February 2025.

<sup>42</sup> Loss and Damage Fund for Developing Countries (n 35).

<sup>43</sup> 'COP 28: What Was Achieved and What Happens Next?', UNFCCC, available at <https://unfccc.int/cop28/5-key-takeaways>, accessed 9 February 2025.

<sup>44</sup> Richards and others (n 1), p. 9.

<sup>45</sup> Sharm El-Sheikh, 'Brief on COP27 Outcomes and Roadmap to COP28', UNDP, 2023, available at [https://www.undp.org/sites/g/files/zskgke326/files/2023-09/brief\\_cop27\\_outcomes\\_and\\_cop28\\_eng.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2023-09/brief_cop27_outcomes_and_cop28_eng.pdf), accessed on 9 February 2025.



countries from the previous target of USD 100 billion annually to USD 300 billion annually by 2035.<sup>46</sup> Although \$300 billion is three times the prior target, it is below the achievable target and cannot fulfil the comprehensive requirements of developing countries.<sup>47</sup> Scaling up financing for developing countries requires contributions from public and private sectors of USD 1.3 trillion annually by 2035. The new financial goal at COP29 is predicated on substantial advancements in global climate initiatives achieved at COP27, which established a historic loss and damage fund, and COP28, which produced a global agreement to transition from all fossil fuels expeditiously and equitably in energy systems, triple renewable energy, and enhance climate resilience.<sup>48</sup>

However, COP 29 concluded without a robust climate financing objective, without definitive strategies to restrict global temperature increase to 1.5 degrees Celsius, and without the extensive assistance urgently required for adaptation and loss and damage. In addition to securing increased financing, COP 29 might emphasize equitable funding allocation to guarantee financial resources reach the poorest and most vulnerable countries. The agreement notably refrained from addressing certain explicit demands, such as establishing financial targets depending on areas, income levels, or expenditure categories (for instance, for adaptation). Although the review of the Warsaw International Mechanism (WIM) for loss and damage occurs every five years, at COP29, countries were unable to reach consensus on critical aspects of the WIM's review, including voluntary guidelines for integrating loss and damage into Nationally Determined Contributions (NDCs) and particulars regarding a proposed "state of loss and damage" report.<sup>49</sup> The agreement provides a limited foundation for supporting developing countries in transitioning to a low-carbon future and protecting populations from climate impacts. Efforts will continue from COP 29 to COP 30 and beyond to enhance public climate finance and align broader financial activities with the Paris Agreement, guiding developing countries on expected investment streams for future NDCs.

## VII. Analyzing different legal approaches regarding Loss and Damage

### A. Vanuatu

After so many years of discussion, Vanuatu, a vulnerable small island state, representing the Alliance of Small Island States (AOSIS), was the pioneer state to bring the notion of loss and damage to the world's attention in 1991. It facilitated the Pacific initiatives for financing loss and damage, targeting the main cause of climate change—fossil fuel usage. In 2022, it adopted a revised 'Loss & Damage-focused Nationally Determined Contribution (NDC)'.<sup>50</sup> The Parliament of Vanuatu subsequently enacted a Declaration of a Climate Emergency, requesting the International Court of Justice to elucidate the obligations of states under international law

<sup>46</sup> 'COP29 UN Climate Conference Agrees to Triple Finance to Developing Countries, Protecting Lives and Livelihoods', *United Nations Climate Change*, 2024, available at <https://unfccc.int/news/cop29-un-climate-conference-agrees-to-triple-finance-to-developing-countries-protecting-lives-and>, accessed on 9 February 2025.

<sup>47</sup> David Waskow et al., 'Key Outcomes from COP29: Unpacking the New Global Climate Finance Goal and Beyond', *World Resources Institute*, 2024, available at <https://www.wri.org/insights/cop29-outcomes-next-steps>, accessed on 31 December 2024.

<sup>48</sup> United Nations Climate Change (n 47).

<sup>49</sup> 'Key Outcomes from COP29: Unpacking the New Global Climate Finance Goal and Beyond' (n 51).

<sup>50</sup> Dr Christopher Bartlett, 'Vanuatu and Beyond | Loss & Damage Costs Are Exploding and the Politics Are Too: Vanuatu's Island Solutions at the UNFCCC and beyond', *International Centre for Climate Change and Development*, 2023, available at <https://iccad.net/dhaka-tribune-articles/vanuatu-and-beyond-loss-damage-costs-are-exploding-and-the-politics-are-too-vanuatus-island-solutions-at-the-unfccc-and-beyond/>, accessed on 8 August 2024.

to safeguard the climate from greenhouse gas emissions for both current and future generations while concurrently delineating the legal ramifications for states that have inflicted substantial harm on vulnerable nations such as Vanuatu. It also requested the International Criminal Court (ICC) to recognize "Ecocide" as a fifth international crime under the Rome Statute as a preventive measure against future offences and enduring harm to the climate and environment.<sup>51</sup>

Furthermore, Vanuatu pledged to negotiate for a new Fossil Fuel Non-Proliferation Treaty, which will complement the efforts of the Paris Agreement<sup>52</sup> and called for compensation for loss and damage via the multilateral climate change regime. To execute the action and address the losses, it has evaluated the potential and actual loss and damage nationwide and established a robust court structure to facilitate climate action against carbon majors.<sup>53</sup> Vanuatu's Minister Regenvanu pursued two forms of legal recourse to tackle loss and damage: litigation against countries under international law and litigation against fossil fuel corporations under domestic law. Vanuatu has established a loss and damage implementation framework encompassing compensation strategies, insurance, and risk-sharing mechanisms.<sup>54</sup> It has promulgated development guidelines, established a climate-resilient construction code, and mandated environmental impact assessments for development projects and public infrastructure to mitigate loss and damage from severe climatic effects.<sup>55</sup>

## B. The Maldives

The Maldives comprises 1,192 islands, of which 80% might be drowned with a sea level rise of just 1 meter, jeopardizing 80% of its landmass. It is the first country demanding compensation for loss and damage within the UNFCCC framework and establishing a roadmap in response to the 'United Nations Secretary General on Early Warnings for All'.<sup>56</sup> This roadmap aims to guarantee the safety of every individual from perilous climatic catastrophes via lifesaving early warning systems by the end of 2027.

Furthermore, the Maldives has implemented the Climate Change Policy Framework for 2015-2025, a national strategic plan aimed at enhancing resilience, mitigating vulnerabilities, and addressing loss and damage related to climate change.<sup>57</sup> The primary objectives of the Framework are to develop and direct a national action plan to tackle the immediate, intermediate, and long-term consequences of climate change, thereby safeguarding the quality of life for Maldivians and attaining sustainable development; to delineate strategic priorities for enhancing governmental commitments to mitigate the detrimental effects of climate change; and to fortify

<sup>51</sup> Daniel Bertram, 'Towards an International Crime of Ecocide', *Torkel Opsahl Academic E Publisher (TOAEP)*, 2024, available at <https://www.toaep.org/pbs-pdf/157-bertram/> accessed on 10 February 2024.

<sup>52</sup> Bartlett (n 51).

<sup>53</sup> Margaretha Wewerinke-Singh & Diana Hinge Salili, 'Between Negotiations and Litigation: Vanuatu's Perspective on Loss and Damage from Climate Change', *Climate Policy*, p. 681, volume 20:6, 2020, pp. 683-684.

<sup>54</sup> Government of the Republic of Vanuatu, 'Vanuatu Climate Change and Disaster Risk Reduction Policy 2016-2030', *SPC's Suva Regional Office, Fiji*, 2015, available at [https://www.preventionweb.net/files/46449\\_vanuatuccdrpolicy2015.pdf](https://www.preventionweb.net/files/46449_vanuatuccdrpolicy2015.pdf), accessed on 11 August 2024.

<sup>55</sup> Ibid.

<sup>56</sup> United Nations, 'UN Expert: Maldives Stuck Between Rock and Hard Place on Climate Change Issue', *United Nations Maldives*, 25 April 2024, available at <https://maldives.un.org/en/267078-un-expert-maldives-stuck-between-rock-and-hard-place-climate-change-issue>, accessed on 13 August 2024.

<sup>57</sup> *Climate Change Policy Framework*, 2015, Maldives, available at <https://faolex.fao.org/docs/pdf/mdv172920.pdf>, accessed on 13 August 2024.

and integrate existing policies, plans, and institutional frameworks into the development and implementation strategies of all sectors to address climate change challenges.<sup>58</sup>

Recently, the Maldives implemented the Climate Emergency Act 2021, designed to establish a framework for safeguarding human rights against adverse climatic impacts. It has also pledged to reduce greenhouse gas emissions by 26% by 2030, revising its Nationally Determined Contribution under the Paris Agreement and, accordingly, established the objective of achieving carbon neutrality (or net zero carbon) by 2030.<sup>59</sup> The Maldives' Nationally Determined Contributions (NDC) function as a strategic framework for tackling climate change and advancing sustainable development.

### C. Nepal

The Government of Nepal has started to make policies to assess climate-induced loss and damage. Nepal's National Climate Change Policy 2019 and Environment Protection Regulations 2020 underscore the necessity of researching the loss and damage linked to climate change effects and executing strategies to mitigate climate change-related vulnerabilities.<sup>60</sup> In accordance with the Paris Agreement of 2015, the government of Nepal presented its second Nationally Determined Contribution (NDC) for the period 2021-2030. To this end, it has implemented a strategy to achieve net-zero greenhouse gas emissions by 2050. Nepal has also initiated an agricultural insurance plan, encompassing crops and livestock products, to transfer risk and compensate for total or partial loss or damage.<sup>61</sup>

Nepal has enacted the Disaster Risk Reduction and Management Act of 2017 (DRRMA Act 2017) and accompanying Regulations (DRRMA Regulations) of 2019 to mitigate disaster risk and implement climate change adaptation measures.<sup>62</sup> The government established a database system called the Disaster Risk Reduction (DRR) portal under DRRMA, which primarily contains information on disaster-related losses and damages. Nepal has implemented an integrated disaster risk finance and assistance strategy and has initiated the relocation of high-risk settlements to safer areas. The National Disaster Risk Reduction and Management Authority (NDRRMA) has relocated approximately 300 dwellings to a more secure site. The government is providing financial grants to acquire land in secure areas to facilitate the establishment of an integrated town.<sup>63</sup>

Additionally, Nepal's National Adaptation Plan (NAP) of 2021-2050 seeks to mitigate the nation's risks and vulnerabilities to climate change while promoting climate change adaptation into policies, programs, and activities across all sectors and levels.<sup>64</sup> The government has recently finalized the Vulnerability and Risk Assessment (VRA) as part of NAP. The VRA has produced

<sup>58</sup> Ibid.

<sup>59</sup> UN Expert: Maldives Stuck Between Rock and Hard Place on Climate Change Issue (n 57).

<sup>60</sup> National Framework on Climate Change Induced Loss and Damage (L&D), 2021, Ministry of Forests and Environment, Government of Nepal, p. 59, available at [https://mofe.gov.np/old/downloadfile/National%20framework%20on%20Loss%20and%20Damage%20-%20Approved%20Document-%202021\\_1653988842.pdf](https://mofe.gov.np/old/downloadfile/National%20framework%20on%20Loss%20and%20Damage%20-%20Approved%20Document-%202021_1653988842.pdf), accessed on 1 December 2024.

<sup>61</sup> Ibid, p. 70.

<sup>62</sup> Ibid, p. 79.

<sup>63</sup> Ibid, p. 77.

<sup>64</sup> National Adaptation Plan 2021-2050, Ministry of Forests and Environment, Government of Nepal, available at [https://unfccc.int/sites/default/files/resource/NAP\\_Nepal\\_2021.pdf](https://unfccc.int/sites/default/files/resource/NAP_Nepal_2021.pdf), accessed on 25 December 2024.

information indicating that the effects, and loss and damage from climate-induced catastrophes in Nepal are substantial and will escalate in the future.<sup>65</sup>

#### D. India

Over the last three decades since the Rio Convention, India has endured damages amounting to \$3,555 billion due to climate change. In 2022, climate impacts on infrastructure equaled 7.9% of the nation's gross domestic product (GDP), underscoring the significant economic burden of extreme weather occurrences.<sup>66</sup> While there is no distinct legislation solely focused on loss and damage, India has implemented certain policy measures to address the detrimental effects of climate change. India's Nationally Determined Contribution (NDC) under the Paris Agreement was revised in 2022 to achieve net zero emissions by 2070.

The country adopted proactive measures by introducing initiatives and regulations, including the National Action Plan on Climate Change (NAPCC), the State Action Plan for Climate Change (SAPCC), and India's long-term low-carbon development strategy (LT LEDS), demonstrating a robust commitment to climate action.<sup>67</sup> In addition, the Compensatory Afforestation Fund Act of 2016 establishes the Compensatory Afforestation Fund Management and Planning Authority (CAMPA), which allocates funding for afforestation and forest conservation to mitigate environmental and climate-related damages. The CAMPA functions as an apparatus for administering and utilizing funds derived from compensatory afforestation, which seeks to mitigate the environmental consequences of deforestation caused by industrial and developmental operations. Furthermore, the National Adaptation Fund on Climate Change (NAFCC) offers financial assistance for programs focused on climate adaptation in sectors susceptible to climatic effects, including agriculture and water resources.<sup>68</sup> The principal aims of NAFCC are to enhance resilience in vulnerable communities, foster sustainable development, and mitigate the detrimental effects of climate change.

Additionally, India is exploring insurance frameworks for climate-related losses, especially for vulnerable groups, including agricultural insurance programs such as the Pradhan Mantri Fasal Bima Yojana (PMFBY).<sup>69</sup> Furthermore, Indian courts have actively addressed climate-related loss and damage, as evidenced by various judgments issued by the Supreme Court of India and the National Green Tribunal (NGT), established under the National Green Tribunal Act, 2010, which underscores environmental protection and holds industries accountable for climate-related consequences.<sup>70</sup> Landmark cases recognized the relationship between the

<sup>65</sup> National Framework on Climate Change Induced Loss and Damage (L&D) (n 61), pp. 72-73.

<sup>66</sup> Namrata Kabra & Ambika Vishwanath, 'India's Path to Climate Resilience Goes beyond NDCs: Here's Why We Need a Legal Framework for Adaptation' *Down To Earth*, India, 2024, available at <https://www.downtoearth.org.in/climate-change/indias-path-to-climate-resilience-goes-beyond-ndcs-heres-why-we-need-a-legal-framework-for-adaptation>, accessed on 29 December 2024.

<sup>67</sup> Birsha Ohdedar, 'Environmental Disasters and Climate Change.' in Philippe Cullet, Lovleen Bhullar & Sujith Koonan (eds), *The Oxford Handbook of Environmental and Natural Resources Law in India*, Oxford University Press, 1st edition, 2024, available at <https://academic.oup.com/edited-volume/57937>, accessed on 29 December 2024.

<sup>68</sup> 'National Adaptation Fund for Climate Change (NAFCC) by Government of India', available at <https://www.adaptation-fund.org/wp-content/uploads/2016/08/National-Adaptation-Fund-for-Climate-Change-India.pdf>, accessed on 10 November 2024.

<sup>69</sup> Jean Chateau & others, 'A Framework for Climate Change Mitigation in India', *Working Paper No. 2023/218*, International Monetary Fund, 2023, available at A Framework for Climate Change Mitigation in India International Monetary Fund <https://www.imf.org/Publications/Issues/2023/10/20>, accessed on 25 December 2024.

<sup>70</sup> Ohdedar (n 68).

'Polluter Pays' principle and precautionary measures in managing environmental and climate hazards. Nevertheless, policy initiatives in India must be underpinned by a legal framework, as the country lacks formal climate legislation at both federal and state levels.

## E. Bangladesh

Bangladesh, a highly climate-vulnerable state, faces both slow onset and extreme weather events. Due to all these climatic impacts, it encounters huge loss and damage, though it is one of the lowest per capita CO<sub>2</sub> emitters in the world.<sup>71</sup> The existing climate framework in Bangladesh is insufficient to tackle present and future loss and damage, as well as to quantify slow-onset processes or address non-economic losses resulting from climatic disasters.<sup>72</sup> However, the country has implemented some policies, rules, and plans to mitigate loss and damage caused by climate change, demonstrating its susceptibility to climatic effects and dedication to resilience.

One such framework is the Bangladesh Climate Change Trust Fund Act 2010, which was developed to mitigate the detrimental effects of climate change. This trust fund implements essential measures to facilitate emergency efforts and address post-disaster circumstances. This fund also pursues short-term, mid-term, and long-term objectives to execute specialized programs concerning climate change.<sup>73</sup> One-third of that amount has been designated to mitigate loss and damage; nonetheless, it is insufficient to tackle the anticipated spectrum of losses in Bangladesh.<sup>74</sup>

Apart from this, the Disaster Management Act of 2012 explicitly acknowledged climate-induced loss and damage within the scope of the disaster definition.<sup>75</sup> It seeks to implement a post-disaster rescue system, rehabilitation program, and humanitarian support for vulnerable people to mitigate the overall effects of a disaster. This policy aims to improve the ability to mitigate climate risk, expedite responses, and manage recovery across all levels.<sup>76</sup> It establishes a process for evaluating loss and damage post-disaster, restoring livelihoods, and repairing infrastructure. The National Disaster Management Council is established under this Act to devise strategies for minimizing loss and damage and to execute such strategies for disaster management. The Act established a Disaster Management Fund for humanitarian aid at the national and district levels. Moreover, in 2012, Bangladesh launched the "Loss and Damage in Vulnerable Countries Initiative" to comprehend the concept of loss and damage, bringing together climate change scholars, researchers, practitioners, and NGOs to exchange their knowledge, expertise, and resources.<sup>77</sup>

<sup>71</sup> Faroque (n 32), p. 275.

<sup>72</sup> Tahura Farbin & Saleemul Huq, 'Designing a Comprehensive Institutional Structure to Address Loss and Damage from Climate Change in Bangladesh', available at [https://www.lucsus.lu.se/sites/lucsus.lu.se/files/2021-06/Policy%20brief\\_Designing%20a%20Comprehensive%20Institutional%20Structure%20to%20Address%20Loss%20and%20Damage%20from%20Climate%20Change%20in%20Bangladesh%5B1%5D.pdf](https://www.lucsus.lu.se/sites/lucsus.lu.se/files/2021-06/Policy%20brief_Designing%20a%20Comprehensive%20Institutional%20Structure%20to%20Address%20Loss%20and%20Damage%20from%20Climate%20Change%20in%20Bangladesh%5B1%5D.pdf), accessed on 1 July 2025.

<sup>73</sup> Faroque (n 29), p. 277.

<sup>74</sup> Farbin and Huq (n 73).

<sup>75</sup> Faroque (n 29), p. 281.

<sup>76</sup> Masroora Haque et al., 'Towards Establishing a National Mechanism to Address Losses and Damages: A Case Study from Bangladesh', in Reinhard Mechler et al. (eds), *Loss and Damage from Climate Change: Concepts, Methods and Policy Options*, Springer International Publishing, 2019, available at <http://link.springer.com/10.1007/978-3-319-72026-5>, accessed on 4 August 2024.

<sup>77</sup> 'Loss and Damage in Vulnerable Countries Initiative', *The Climate Development Knowledge Network*, available at [https://website.icccad.net/wp-content/uploads/2014/05/Loss-and-Damage-in-Vulnerable-Countries-Initiative\\_Brochure.pdf](https://website.icccad.net/wp-content/uploads/2014/05/Loss-and-Damage-in-Vulnerable-Countries-Initiative_Brochure.pdf), accessed on 12 December 2024.



Furthermore, climate change factors, encompassing loss and damage, are incorporated into comprehensive national development programs like the Bangladesh Delta Plan 2100 and the 8th Five Year Plan.<sup>78</sup> These strategies prioritize resilience enhancement and sustainable development in response to climate concerns. The 8th Five Year Plan (8FYP), a comprehensive national strategy, addresses loss and damage by outlining measures that include a holistic policy for integrating Disaster Risk Reduction (DDR) and Climate Change Adaptation (CCA) to mitigate losses and damages resulting from both extreme events and slow-onset events.

In addition to these policies, the National Adaptation Plan (NAP) 2023–2050 articulates a comprehensive vision for bolstering climate resilience across all economic sectors.<sup>79</sup> It delineates priority measures to mitigate climate vulnerabilities, safeguard ecosystems, and support communities in adapting to the effects of climate change. NAP prioritizes adaptation while also integrating loss and damage, particularly reconstruction and rehabilitation, into its objectives, rather than providing specialized, targeted solutions solely for loss and damage.

## VIII. How the Loss and Damage Fund can Ensure Climate Justice

Climate justice is a concept that frames climate change as not only an environmental issue but also a matter of ethics, human rights, and social justice. It recognizes that those least responsible for causing climate change are often most affected by its impacts while those who contributed most face fewer consequences. For instance, Small Island States, i.e. the Maldives, Vanuatu, contribute minimally to global emissions but face existential threats from sea level rise and cyclones. They demand climate finance and relocation support, emphasizing justice for their disproportionate suffering. Climate justice denotes that the challenge of climate change must be approached with regard to human rights and rooted in equity. The loss and damage fund can guarantee climate justice if it aligns with the objectives of the UNFCCC, which emphasizes accountability for historical emissions and equitable responsibilities, as well as the Paris Agreement, which recognizes loss and damage as a third pillar of the climate regime. Should the Loss and Damage Fund adhere to the principles of common but differentiated responsibilities and a human rights-based framework, climate justice will be guaranteed. As Mary Robinson articulates in her book *Climate Justice*, ‘achieving climate justice requires a harmonious integration of human rights standards, sustainable development goals, and accountability for climate change.’<sup>80</sup> Thus, without prioritizing human rights, no financial mechanism for loss and damage can be truly effective or equitable.

The establishment of a Loss and Damage Fund represents a significant step forward in addressing the disproportionate impacts of climate change as it aims to provide financial support for countries suffering from the adverse effects of climate-induced events, ensuring equitable and just solutions for those least responsible for global warming but most affected by its consequences. A just loss and damage fund will acknowledge the unequal suffering experienced by climate-vulnerable countries for the benefit of others and rectify those historical injustices.<sup>81</sup> Affluent countries, having reaped the

<sup>78</sup> Adiba Bintey Kamal et. al, ‘Strengthening Loss and Damage Narrative: Building Cohesive Voices with Policymakers and Civil Society in Bangladesh’, *International Centre for Climate Change and Development*, 2023, available at [https://icccad.net/Publications/Policy Brief](https://icccad.net/Publications/Policy%20Brief), accessed on 15 October 2024.

<sup>79</sup> Ibid.

<sup>80</sup> Mary Robinson, *Climate Justice*, Bloomsbury Publishing, 1<sup>st</sup> edition, 2018.

<sup>81</sup> Becca Inglis, ‘How Does the Loss and Damage Fund Work for Climate Justice?’, *Global Witness*, 2024, available at <https://www.globalwitness.org/en/blog/how-does-loss-and-damage-fund-work-climate-justice/> accessed on 13 December 2024.



advantages of industrialization, possess a moral obligation to aid those confronting climate-induced devastation. The fund serves as a mechanism for holding historically high emitters accountable by reallocating financial resources, hence promoting justice within the international climate framework. The impacts of climate change are unevenly experienced by developing countries and small island states, who frequently lack the financial and technical capacity to recover from disasters.<sup>82</sup> The Loss and Damage Fund prioritizes vulnerable regions, ensuring funds are allocated to populations most affected by climate change. This focused support aids in restoring livelihoods, reconstructing infrastructure, and enhancing resilience.

An effective, sufficient, and functional loss and damage fund can address the detrimental effects of climate change and promote climate justice. Given that climate finance is intrinsically linked to climate justice, loss and damage should be allocated as grants rather than loans.<sup>83</sup> Conventional climate funding options, including mitigation and adaptation funds, often fall short in addressing the unique needs of loss and damage. The Loss and Damage Fund bridges this gap by focusing on irreversible damage that cannot be mitigated or adapted to, such as loss of cultural heritage, displacement, and loss of biodiversity. This guarantees a more equitable allocation of resources, tackling the whole range of climate effects. By prioritising loss and damage, the fund redirects climate action from solely emissions reduction to tackling the wider social and economic aspects of climate justice. It compels the global community to rethink the tenets of fairness, equity, and accountability in climate discussions, promoting a more inclusive and equitable approach to climate crisis.

While the fund addresses immediate needs, it also has the potential to reduce future vulnerabilities. Investments in resilient infrastructure, early warning systems, and sustainable recovery efforts can mitigate the long-term impacts of climate change. By including resilience-building into its structure, the fund fosters a more equitable and sustainable future. The Loss and Damage Fund reinforces the principle of global solidarity in tackling climate change. By demonstrating a commitment to assist those most impacted, it strengthens international cooperation and mutual accountability. This solidarity not only mitigates immediate losses but also fosters impetus for more ambitious collective climate initiatives.

To attain climate justice, sustainable financing must be incorporated into climate change adaptation initiatives and low-emission development strategies, while efforts should be intensified to mobilize supplementary climate finance through innovative financing mechanisms, direct project investments, and the provision of loans and guarantees to encourage private investment to meet climate goals. Moreover, insurance mechanisms for developing countries can serve as a potent instrument for achieving climate justice.<sup>84</sup> Above all, a conducive atmosphere should be cultivated so that individuals can engage in their livelihood pursuits without disruptions or threats to their security. To achieve this objective, discord among various stakeholders must be resolved. This proactive approach will not only promote economic growth but also contribute to social harmony and stability within the community.<sup>85</sup>

<sup>82</sup> Emily Boyd & others, 'Loss and Damage from Climate Change: A New Climate Justice Agenda', *One Earth* p. 1365, volume 4:10, 2021, pp. 1366-1367.

<sup>83</sup> Jan-Christoph Heilinger & Hendrik Kempt, 'Loss and Damage, and Addressing Structural Injustice in the Climate Crisis', *Ethics, Policy & Environment*, p. 1, 2024, p. 3.

<sup>84</sup> Mohammad Golam Sarwar, 'Dealing with Loss and Damage Arising out of Climate Change: From Warsaw International Mechanism to Paris Agreement', *Dhaka University Law Journal*, p. 119, volume 28:1, 2017, pp. 127-129.

<sup>85</sup> Effiong and others (n 37), p. 17.

## IX. Conclusion

'Loss and damage' are not the solution to climate change; rather, it is the last resort to deal with the adverse impacts of climate change. The ultimate objective is to attain climate justice, which considers the needs of vulnerable and developing countries; loss and damage is the means to attain that end. Adaptation, mitigation, and compensation mechanisms should complement rather than substitute to attain climate justice. Compensation from the loss and damage fund will enhance the efficacy of adaptation and mitigation programs.<sup>86</sup> Despite numerous statutes and regulations across various countries, the legislative, institutional, and policy frameworks do not clearly address climate-induced losses and damages. The upcoming year will further evaluate countries' commitment to reduce emissions and enhance climate resilience swiftly. Global emissions must be reduced by 60% from 2019 levels by 2035; nations should elevate their ambitions in their Nationally Determined Contributions (NDCs), supported by sector-specific commitments, robust and effective policies, investment incentives, and comprehensive societal initiatives to address climate change and safeguard individuals from its effects. As we head toward COP30, these measures are crucial to expediting progress toward a safer, more prosperous future for all.



<sup>86</sup> Page and Heyward (n 8), pp. 7-8.