

# AN ISSUES BRIEF

The Energy and Resources Institute



## Loss and Damage: The Gradual Progression and the Road Ahead

### Climate Negotiations on Loss and Damage: Quick Summary

Various definitions of loss and damage associated with the impacts of climate change (L&D) have arisen over time, such as negative effects of climate change and people who have been unable to adapt<sup>1</sup>, the manifestation of impacts that negatively affect the environment,<sup>2</sup> and “residual impacts”.<sup>3</sup> However, there is no agreed official definition amongst the Parties to the United Nations Framework Convention on Climate Change (UNFCCC).

The various definitions and outlooks on L&D come about from the differences in understanding different perspectives on justice and liability. The ethical considerations that highlight the convergence and divergence of views are enumerated as follows:

- The **climate justice perspective/corrective justice** approach focusses on compensation and climate justice. However, this approach faces challenges in collecting scientific data for attributing climate change impacts to anthropogenic drivers, and also in directing the responsibility of climate change. According to this view, developed country parties are liable to developing country parties. This viewpoint, hence, believes that the poorer and vulnerable countries should be compensated (liability and compensation frame).
- The **distributive justice perspective/risk and insurance perspective**, however, highlights the need for external action and finance to address L&D, without stressing on liability. Several mechanisms under this idea already exist, such as the Adaptation Fund and the Green Climate Fund.

Though this perspective views L&D as a commitment to the vulnerable countries and population, its standpoint on compensation differs, and

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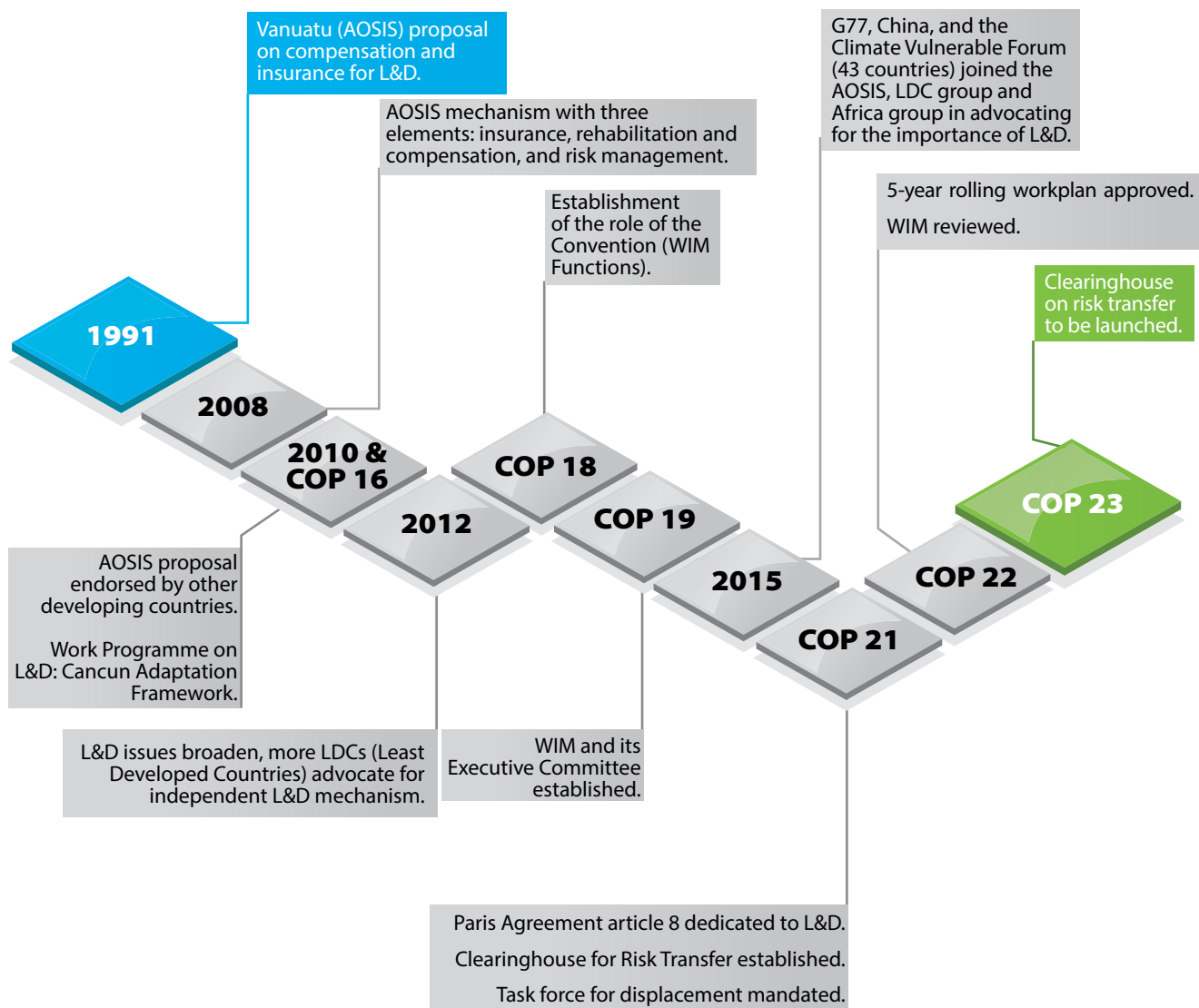
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1 Warner, Koko, van der Geest, Kees, Kreft, Sönke, Huq, Saleemul, Harmeling, Sven, Koen Kusters and Alex de Sherbinin. 2012. Evidence from the frontlines of climate change: Loss and damage to communities despite coping and adaptation. Loss and Damage in Vulnerable Countries Initiative. Policy Report. Report No. 9. Bonn: United Nations University Institute for Environment and Human Security (UNU-EHS).

2 The actual and/or potential manifestation of impacts associated with climate change in developing countries that negatively affect human and natural systems.

3 “Residual damages” are those impacts that cannot or will not be completely avoided by mitigation, and whose harm cannot or will not be completely avoided by adaptation.



**Figure 1:** Evolution of Loss and Damage

focuses on reducing the risk<sup>4</sup> faced by these vulnerable populations, and concentrates on identifying the losses and damages which should be included under the L&D pillar.

These perspectives are guided by the questions of which of the three principles of climate justice to consider, such as the Polluter-Pays Principle (PPP) (*in line with corrective justice*), the Beneficiary-Pays Principle (BPP), and the Ability-to-Pay Principle (APP) (*in line with distributive justice*).

<sup>4</sup> IPCC Synthesis Report 2014, Annex II states: “the potential for consequences where something of value is at stake and where the outcome is uncertain, recognizing the diversity of values. Risk is often represented as probability of occurrence of hazardous events or trends multiplied by the impacts if these events or trends occur. Risk results from the interaction of vulnerability, exposure, and hazard”

The Warsaw International Mechanism on Loss and Damage (WIM) started as a plea by the Alliance of Small Island States (AOSIS) for L&D associated with climate change, to be taken into account internationally, and for global action to address and minimize its adverse effects. A request was formalized and represented by Vanuatu on behalf of AOSIS back in 1991. Sixteen years later, it was officially recognized at COP 13 (Bali), a framework developed at COP 16 (CAF), and finally, though most of the developing country claims did not make it to the final negotiations, an independent mechanism (not under mitigation or adaptation) under UNFCCC was officially established at COP 19, more than two decades after the plea. However, finance and support for L&D is vague due

to the oppositional stance of developed country parties towards L&D.

Prior to the five-year rolling workplan, the WIM was set to expire in two years after the initial two-year workplan and the review of WIM in 2016. However, the approval of the five-year rolling workplan and the Paris Agreement made WIM permanent.

In order to initiate the implementation of the WIM, decision 3/CP.18 called for several functions to be established as the role of the Convention, namely: enhancing **knowledge and understanding of comprehensive risk management** approaches, strengthening **dialogue, coordination, coherence, and synergies** among relevant stakeholders, and **enhancing action and support** (finance, technology and capacity-building). At COP 19, these functions were assigned to the WIM to be performed on behalf of the Convention.

## Various Framings of L&D

The difference in views of Parties and definitions can be understood through the various framings of L&D, considering the policy implications. The framings can be further categorized into diagnostic (arguing what the policy problem is) and prognostic (finding the best way to address it), as enumerated in Box 1.

## Key Issues regarding L&D for Implementation of WIM

### Limits to Adaptation

While there are several similarities in strategies between Adaptation and L&D, there are several aspects which the former either does not or is unable to include for reasons such as financing, policy questions, etc. These excluded aspects comprise non-economic losses

### Box 1: Diagnostic and Prognostic framings

Diagnostic	Prognostic
<p><b>L&amp;D Framing from a CRM Perspective</b> Emphasizes on the impacts and losses, and categorizes them as:</p> <ul style="list-style-type: none"> <li>▪ <b>Avoided L&amp;D</b> signifies climate change impacts that were avoided by mitigation and adaptation efforts.</li> <li>▪ <b>Unavoided L&amp;Ds</b> are those that could have been avoided but were not because of inadequate measures of mitigation and adaptation.</li> <li>▪ <b>Unavoidable L&amp;Ds:</b> are those that can simply not be avoided despite efforts.</li> </ul> <p><b>Similarities with other framings:</b> Like the longstanding developed country parties' perspective, it highlights that some L&amp;D can be avoided by mitigation and adaptation strategies, and like the Liability &amp; Compensation Frame, some of it is beyond the limits of mitigation and adaptation.</p> <p><b>Differences with other framings:</b> It categorizes L&amp;D on the scale of avoidance. Falls under both the distributive justice and climate justice perspectives. It also highlights "unavoidable L&amp;D" that can simply not be avoided.</p>	<p><b>Liability &amp; Compensation Frame</b> Emphasizes on identifying the perpetrators and victims of climate change. Developing country Parties and NGOs are in support of this type of framing</p> <p><b>Similarities with other framings:</b> This framing is in line with the climate justice perspective and Polluter Pays Principle. It also considers risk and risk management as a significant part.</p> <p><b>Differences with other framings:</b> It differs from the distributive justice perspective and with the Risk and Insurance perspective, which neglects the liability and compensation aspect of L&amp;D.</p>
<p><b>Risk &amp; Insurance Frame</b> When L&amp;D is seen as a problem of "risks" (diagnostic), the solution is insurance (prognostic). Developed country parties that consider L&amp;D support this framing.</p> <p><b>Similarities with other framings:</b> This framing is in line with the distributive justice perspective and in parts, the Ability-to-Pay Principle.</p> <p><b>Differences with other framings:</b> It differs from the climate justice perspective, and completely neglects the liability and compensation aspect of L&amp;D.</p>	

and damages (NELD), slow onset events<sup>5</sup> (SOE), migration and displacement, and comprehensive risk management (CRM). Risk and risk management also form a significant part of L&D.

### Financing L&D

Due to lack of consensus on the framing and definition of L&D and the question on who bears the burden of finance, arriving at specifics on the financing part of the WIM has been a sluggish process. The Paris Agreement and the mechanism itself have not clarified the financing on L&D for such reasons. For instance, in Article 8 of the Paris Agreement, which is dedicated to L&D, the closest indications of finance are in Articles 8.3 and 8.4, which mention “support” on a “cooperative and facilitative” basis. There is no question of liability and compensation, which is plainly excluded by decision 1/CP.21 (para 49, 50). At the same time, Article 9 addresses finance but only talks about how it should be balanced between mitigation and adaptation, with no mention of loss and damage. However, the matter of finance was urged to be addressed at COP 21 by the WIM’s executive committee (ExCom).

### Lack of Continued Interest from Parties

L&D has failed to garner much traction from all Parties to the Convention, which is evident from the responses to the **call for submissions**<sup>6</sup>; a low number of submissions from Parties<sup>7</sup>, an even lower number of submissions from developed country parties, and the limited nature of some of the submissions. The United States, which accounts for a major percentage

5 Slow onset events include: sea level rise, temperature increase, ocean acidification, glacial retreat, salinization, land and forest degradation, loss of biodiversity, desertification.

6 The Convention called for submissions from Parties and organizations for views and relevant inputs on L&D’s work programme thematic areas (2011), information on financial instruments (2016) and possible activities under the action areas and strategic workstreams of the initial 2-year workplan (2014) and the five-year rolling workplan (2017). The initial inputs submitted helped develop the initial framework, and shape the 9 Action Areas of the initial two-year workplan. The inputs for strategic workstreams were to be focused on workstreams (e), (f) and (g).

7 • Thematic areas of the work program on loss and damage: there were 9 country submissions, with one consortium of countries (the LDC Group); 4 were developed country parties and the rest were developing country parties.

• Five-year rolling workplan: 13 parties submitted inputs; out of which 10 parties belonged to developing countries and further, 5 were developing country consortiums, and 1 was a developed country consortium.

of historic and present-day global emissions, did not submit inputs for the two workplans of the WIM.

Additionally, while there is consensus amongst most of the Parties to focus on the dire needs of the most vulnerable countries, clear differences can be seen in other areas, such as support and financing mechanism. For example, developed country parties do recognize the issue of residual damages and the importance of L&D. However, while developing countries have, in their submissions, often asked for support on finance, technology transfer, and implementation of strategized activities, developed countries have not recognized these requests, and in their submissions have only laid out suggestions of activities for the Convention and its bodies.

Moreover, additional emphasis was laid on risk and risk management strategies by developed countries while developing countries explored more options to address loss and damage and also laid emphasis on the liability and compensation aspect. For example, countries such as the United States focussed more on risk and risk management as a way to combat loss and damage<sup>8</sup>.

### Way Forward

The ExCom holds biannual meetings in order to strategize implementation of the mechanism. At its sixth meeting (ExCom 6) held from 11–13 October 2017, the five-year rolling workplan (succeeded by the initial two-year workplan) was approved with recommendations, and progress was acknowledged on the focus areas of the mechanism, such as on the clearinghouse for risk transfer<sup>9</sup>, the work of the task force for displacement<sup>10</sup>, and communication strategy. The clearinghouse for risk transfer is to be launched at COP 23 at the event, ‘Towards a Resilient Future—Frontiers of Risk Sharing’

8 Submission for the three thematic areas of loss and damage

9 A clearing house for risk transfer to serve as a repository for information on insurance and risk transfer (hereinafter referred to as the clearing house for risk transfer), in order to facilitate the efforts of Parties to develop and implement comprehensive risk management strategies

10 The task force to complement is to draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention, including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention (hereinafter referred to as the task force on displacement), to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change

on November 14, and advancement of the work on the ExCom's communication strategy to be discussed at ExCom 7.

### **Key Areas of Discussion at COP 23**

At the 72nd Session of the United Nations General Assembly on September 21, in New York, the Prime Minister of Fiji, J V Bainimarama, addressed several issues and stated a general idea of the agenda for COP 23. A few key areas of climate discussions and their incorporation in the implementation of L&D that emerged from the session are stated as follows:

**Facilitative Dialogue:** Facilitative dialogue amongst the various Parties to the UNFCCC is pertinent in addressing L&D, especially between developing and developed country Parties. In order to present the issue of L&D effectively as well, the developing country parties need to have a coordinated approach at the COP. The participation of all countries, especially developed country parties, is strongly called for.

**Implementation Guidelines:** To make the Paris Agreement fully operational, a draft form on implementation showcasing decisions and guidelines are to be presented in 2018. In order to do so, it is important to address L&D comprehensively, as L&D is also one of the pertinent articles of the Agreement. Implementation guidelines for L&D and WIM, as well as its sustainability, are key issues to be addressed at and beyond the COP.

This would include the undeterred launch of the clearinghouse for risk transfer under WIM, and guidelines to address L&D in the future Subsidiary Body sessions. It would also include replenishing the Adaptation Fund and providing the roadmap on how the Fund should serve the Paris Agreement.

### **Gender and Local Communities and Indigenous People's (LCIP) Platform:**

COP 22 extended the action on gender by agreeing to enhance and extend the Lima Work Program on gender. The Gender Action Plan and LCIP platform are pertinent to this cause, and also play a major role in L&D, since in essence it is ensuring the well being of the marginalized. Gender and gender equality in L&D is also important in order to employ the untapped potential of human resource. It is to be noted that data collection on gender aggregation

has been called for to incorporate in CRM, in order to comprehensively address the issue.

**Oceans Pathway:** Strengthening the linkage between ocean health and climate action is relevant to L&D, especially in the context of AOSIS nations. The more this link is strengthened, the more attention, and hence action, will be garnered by L&D.

Climate change discussions at the 23rd Conference of Parties will hopefully highlight the issue of loss and damage in an unbiased and fair manner, to form policies that aid vulnerable countries as well as protect the interests of developed countries, and will consider the focus areas, issues, and solutions stated in this brief in order to pave the way forward for the L&D mechanism, especially for the tools of finance.

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