

# LOSS AND DAMAGE

Bonn, June 2013

*Parties agreed in Doha to establish institutional arrangements to address loss and damage associated with the impacts of climate change in developing countries that are particularly vulnerable to the adverse effects of climate change. This must be a central outcome of ongoing UN climate talks.*

## What is loss and damage?

Permanent losses and damages result when responsible Parties fail to take sufficient mitigation action that reduces the impacts of climate change, and when adaptation actions are insufficient because of either a lack of adequate finance or when impacts cannot be prevented because there are limits to adaptation.

## How should loss and damage be addressed?

In the Doha decision on loss and damage, decision 3/CP.18, Parties decided to establish in Warsaw institutional arrangements, such as an international mechanism, to address loss and damage. The international mechanism on loss and damage should carry out three vital functions:

### 1. Enhance countries' abilities to prevent and avoid loss and damage.

Of course, the most important action needed to prevent and avoid loss and damage is for developed countries to dramatically decrease emissions.

In the absence of this action, a mechanism would provide support for comprehensive risk management: assessing risks, identifying options, and implementation of risk management approaches. It would also support increased research and systematic observation capacity to enable better understanding of slow onset events, such as sea-level rise, ocean acidification or glacial retreat,<sup>1</sup> and the collection of baseline data for insurance and compensation purposes.

The mechanism should also enable means to assess and address non-economic losses, such as loss of territory and cultural practices, and lost sustainable development opportunities, as well as specific impacts on vulnerable communities and populations.

### 2. Provide finance for assessing and addressing loss and damage

A range of financial measures are needed and will be important to address the costs of loss and damage in developing countries. Insurance is a first tier of such financial measures: a mechanism will enable development and coordination of insurance facilities.

However, there are significant limitations to using insurance to address loss and damage:

- » Insurance is inappropriate for those types of events that are predictable and increase in magnitude over time – in particular slow onset events.
- » Insurance is also an inappropriate means to compensate for non-economic losses – such as the loss of territory, livelihoods, and lives – and impacts on sustainable development.
- » The cost of insurance means it is beyond the reach of the most vulnerable people and communities.

Thus, there is a need for the mechanism to explore and establish additional financial measures – such as compensation funds, debt relief, and increasing coverage of social protection schemes – that can provide financial reparation in the event of loss and damage.

### 3. Ensure global coordination and collaboration to enhance coherence and synergies with other regional and international organizations, institutions, and frameworks

Global coordination is needed with other organizations which are addressing elements of the loss and damage agenda, such as:

- » carrying out research and systematic observation, particularly related to slow onset events and tipping points;
- » addressing issues related to migration, forced displacement, and planned relocation; and
- » developing and managing insurance instruments.

## Legal responsibility to address loss and damage

UNFCCC Parties have a legal responsibility to address loss and damage, ultimately deriving from the objective of the Convention.

Two principles of international law – the no-harm rule and state responsibility – also establish legal obligations for historically responsible parties to take action now to address loss and damage.

- **Under the no-harm rule** of customary international law, countries have a duty to “ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control.”<sup>2</sup>
- **Once the no-harm rule is breached, the law of state responsibility** obliges the state to “cease the act and make ‘full reparation’ for injury caused, including for ‘any damage, whether material or moral.’ Full reparation ‘shall take the form of restitution, compensation and satisfaction, either singly or in combination.’”<sup>3</sup>

Loss and damage is one approach to address the reparation necessary for the harms caused by the historical emission of climate pollution in developed countries.

1. Slow onset events are defined in decision 1/CP.16 as including sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification.  
2. 1996 ICJ Advisory Opinion in the Legality of the Threat or Use of Nuclear Weapons.  
3. R. Verheyen and P. Roderick. 2008. Beyond adaptation. WWF-UK. Citing the International Law Commission.