

# **Loss and Damage Fund: A lifeline for Developing Countries?**

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**Kariuki Muigua**

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**Abstract**

*This paper examines potential challenges and gaps in financing for loss and damage, with an emphasis on resolving loss and damage. It argues that the success of the Loss and Damage Fund will depend on the political goodwill of continued contribution by the developed nations into the fund as well as the design of models and frameworks that ensure effective distribution and utilisation of this fund by the most vulnerable nations and communities. It makes recommendations on how best to implement the Loss and Damage Fund in order to benefit the most vulnerable communities in the developing nations.*

**1. Introduction**

The Global South has been pushing for action on loss and damage for decades, especially the small islands. In contrast, the Global North nations have traditionally rejected both culpability and compensation to address the issue, as well as a legal separation between climate adaptation and loss and damage.<sup>1</sup>

Notably, throughout the more than thirty years that have passed between 1991 and 2022, activists from the Global South and members of civil society have advocated more and more forcefully that the Global North should bear the financial burden of compensating for losses and suffering brought on by climate change.<sup>2</sup> These nations bear a disproportionate amount of the liability and have a greater capacity to mitigate the effects. Opposition to loss and damage funding is "the ultimate manifestation of climate injustice" since it is essential to vulnerable nations' ability to manage climate consequences

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**\*PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. In Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; Advocate of the High Court of Kenya; Prof. at the University of Nairobi, Faculty of Law [April, 2024].**

<sup>1</sup> Falzon, D., Shaia, F., Roberts, J.T., Hossain, M.F., Robinson, S.A., Khan, M.R. and Ciptet, D., 2023. Tactical opposition: Obstructing loss and damage finance in the United Nations climate negotiations. *Global Environmental Politics*, 23(3), pp.95-119, p. 96.

<sup>2</sup> Falzon, D., Shaia, F., Roberts, J.T., Hossain, M.F., Robinson, S.A., Khan, M.R. and Ciptet, D., 2023. Tactical opposition: Obstructing loss and damage finance in the United Nations climate negotiations. *Global Environmental Politics*, 23(3), pp.95-119, p. 96.

## *Loss and Damage Fund: A lifeline for Developing Countries?*

independently.<sup>3</sup> Only in 2022, at the twenty-seventh Conference of the Parties to the UNFCCC (COP27), did the parties decide to formalize a financial system by creating a fund for loss and damage.<sup>4</sup>

The term "loss and damage" often refers to the adverse effects of climate change that persist in spite of attempts at adaptation and mitigation.<sup>5</sup> Loss and Damage also refers to the discussions about loss and damage within the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.<sup>6</sup> The term "loss and damage" may also be used to describe the after-effects of climate change, for which mitigation and adaptation strategies might not be sufficient to avert negative consequences.<sup>7</sup>

In its Sixth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) Working Group II notes that "Losses and damages are unequally distributed across systems, regions, and sectors and are not comprehensively addressed by current financial, governance, and institutional arrangements, particularly in vulnerable developing countries."<sup>8</sup>

It is also explicitly acknowledged in the decision made at the 27<sup>th</sup> Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) in Sharm el-Sheikh, Egypt, that the current arrangements for funding loss and damage are insufficient to address the existing funding gaps related to providing action and support in responding to loss and damage associated with the adverse effects of climate change. These gaps exist both now and in the future.<sup>9</sup>

World leaders committed to create the Loss and Damage Fund in 2022 at COP27, and they struck a historic agreement to operationalize it at COP28. The fund had received pledges from numerous

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<sup>3</sup> Ibid., p. 96.

<sup>4</sup> Ibid., p. 96.

<sup>5</sup> FAO (2023) *Loss and damage and agrifood systems: Addressing gaps and challenges*. Rome, Italy: FAO. Available at: <https://doi.org/10.4060/cc8810en>.

<sup>6</sup> FAO (2023) *Loss and damage and agrifood systems: Addressing gaps and challenges*. Rome, Italy: FAO, p. ix. Available at: <https://doi.org/10.4060/cc8810en>.

<sup>7</sup> Effiong, C.J., Musa Wakawa Zanna, J., Hannah, D. and Sugden, F., 2024. Exploring loss and damage from climate change and global perspectives that influence response mechanism in vulnerable communities. *Sustainable Environment*, 10(1), p.2299549.

<sup>8</sup> McDonnell, S. (2023) 'The COP27 decision and future directions for loss and damage finance: Addressing vulnerability and non-economic loss and damage', *Review of European, Comparative & International Environmental Law*, 32(3), pp. 416–427. Available at: <https://doi.org/10.1111/reel.12521>.

<sup>9</sup> McDonnell, S. (2023) 'The COP27 decision and future directions for loss and damage finance: Addressing vulnerability and non-economic loss and damage', *Review of European, Comparative & International Environmental Law*, 32(3), pp. 416–427. Available at: <https://doi.org/10.1111/reel.12521>.

## *Loss and Damage Fund: A lifeline for Developing Countries?*

nations totaling around \$300 million as of December 2022.<sup>10</sup> It remains to be seen if the funding will keep flowing.

In addition to analysing the decision reached at COP27 to create funding arrangements for reacting to loss and damage associated with the negative consequences of climate change, this paper also examines potential challenges and gaps in financing for loss and damage, with an emphasis on resolving loss and damage. It makes recommendations on how best to implement the Loss and Damage Fund in order to benefit the most vulnerable communities in the developing nations.

### **2. Understanding the Loss and Damage Agreement: The Background**

The first item on the COP28 summit's agenda was the Loss and Damage Fund. The fund was initially established during the COP27 and was intended to help very vulnerable developing, impoverished, and small island nations adapt to and lessen the effects of human climate change.<sup>11</sup> The Loss and Damage Fund was established on the first day's opening session of COP28.<sup>12</sup> A total of USD 792 million was committed by 19 different nations to the fund.<sup>13</sup>

Through decisions 2/CP.27 and 2/CMA.4, the Conference of the Parties (COP) and the Conference of the Parties acting as the Meeting of the Parties to the Paris Agreement (CMA) established new funding arrangements to support developing nations that are especially vulnerable to the negative effects of climate change in their efforts to respond to loss and damage.<sup>14</sup>

In this regard, it was also decided by the COP and the CMA to create a fund for loss and damage response, with a mandate that includes addressing loss and damage to support developing nations that are especially susceptible to the negative effects of climate change in dealing with non-economic and economic loss and damage related to these effects, such as slow-onset events and extreme weather.<sup>15</sup>

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<sup>10</sup> *FAO report: Agrifood sector faces growing threat from climate change-induced loss and damage* (no date) *Newsroom*. Available at: <https://www.fao.org/newsroom/detail/fao-report-agrifood-sector-faces-growing-threat-from-climate-change-induced-loss-and-damage/en> (Accessed: 13 April 2024).

<sup>11</sup> Arora, P. (2024) 'COP28: ambitions, realities, and future', *Environmental Sustainability*, 7(1), pp. 107–113. Available at: <https://doi.org/10.1007/s42398-024-00304-0>.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Fund for responding to loss and damage | UNFCCC* (no date). Available at: <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat> (Accessed: 13 April 2024).

<sup>15</sup> *Fund for responding to loss and damage | UNFCCC* (no date). Available at: <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat> (Accessed: 13 April 2024).

## *Loss and Damage Fund: A lifeline for Developing Countries?*

The UNFCCC released Decision -/CP.27-/CMA.4 (UNFCCC 2022a) on November 20, 2022. A Transitional Committee comprising "10 members from developed country Parties and 14 members from developing country Parties" was established by the agreement to address the financial issue. Its job was to recommend ways to operationalize loss and damage funding in the lead-up to COP28 (UNFCCC 2022a).<sup>16</sup>

During its 28<sup>th</sup> and 5<sup>th</sup> sessions, the COP and CMA established the Loss and Damage Fund as an organisation responsible for managing the Convention's Financial Mechanism, which also supports the Paris Agreement. The COP and the CMA will be the Fund's supervisors and providers of oversight.<sup>17</sup>

The Parties to the Paris Agreement, the Conference of the Parties, and the Conference of the Parties serving as the meeting of the Parties, acknowledged the urgent and immediate need for new, additional, predictable, and adequate financial resources to support developing countries that are particularly vulnerable to the adverse effects of climate change in responding to economic and non-economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, especially in the context of ongoing and ex post (including rehabilitation, recovery, and reconstitution).<sup>18</sup> They made the decision to create new funding arrangements in order to support developing nations that are especially vulnerable to the negative effects of climate change in responding to loss and damage, with an emphasis on addressing loss and damage through the provision of and assistance in the mobilisation of new and additional resources. These new arrangements complement and comprise sources, funds, processes, and initiatives both inside and outside of the Paris Agreement and the Convention.<sup>19</sup>

Additionally, they reaffirmed paragraph 64 of decision 1/CMA.3, which calls on developed country Parties, the Financial Mechanism's operating entities, United Nations entities, intergovernmental

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<sup>16</sup> Naylor, A.W. and Ford, J. (2023) 'Vulnerability and loss and damage following the COP27 of the UN Framework Convention on Climate Change', *Regional Environmental Change*, 23(1), p. 38. Available at: <https://doi.org/10.1007/s10113-023-02033-2>; Serdeczny, O. and Lissner, T. (2023) 'Research agenda for the loss and damage fund', *Nature Climate Change*, 13(5), pp. 412–412. Available at: <https://doi.org/10.1038/s41558-023-01648-x>.

<sup>17</sup> *Fund for responding to loss and damage | UNFCCC* (no date). Available at: <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat> (Accessed: 13 April 2024).

<sup>18</sup> *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* (no date). Available at: [https://unfccc.int/sites/default/files/resource/cma4\\_auv\\_8f.pdf](https://unfccc.int/sites/default/files/resource/cma4_auv_8f.pdf) (Accessed: 13 April 2024), para. 1.

<sup>19</sup> *Ibid.*, para. 2.

### *Loss and Damage Fund: A lifeline for Developing Countries?*

organisations, and other bilateral and multilateral institutions, including non-governmental organisations and private sources, to increase and augment their support for initiatives aimed at mitigating loss and damage brought on by climate change.<sup>20</sup>

The COP28 meeting focused on global financing and financial resources for resilient systems and climate catastrophes.<sup>21</sup> Participating nations made significant financial pledges towards a range of global goals. The commitment of funds, although not yet sufficient to meet the costs of creating a sustainable and resilient world, heralds a new era of worldwide financial mobilisation.<sup>22</sup> The establishment of the Loss and Damage Fund would aid vulnerable developing countries in their battle against damages resulting from climate disasters.<sup>23</sup> But the fund's success will largely depend on how it is implemented. Across Asia and Africa, impoverished and developing countries continue to underinvest in essential services like universal healthcare and education.<sup>24</sup>

### **3. Loss and Damage Agreement: A lifeline for Developing Countries?**

The consequences of climate change are becoming more noticeable, and with it, a new era of risk with greater weather-related losses and catastrophes.<sup>25</sup> Notably, Global North nations for long blocked prospects for climate justice in the UNFCCC by employing both hard and soft bargaining techniques to hinder loss and damage financing. For decades, these nations rejected the establishment of financial channels to remedy the loss and harm they were responsible for inflicting upon the Global South.<sup>26</sup> Critics contend that industrialized nations should not be diverted from their efforts to prevent losses and damages by decarbonisation and adaptation, but rather should concentrate on preventing them already.<sup>27</sup> Some contend that because developed nations have not done enough to lessen the unjust

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<sup>20</sup> Ibid, para. 13.

<sup>21</sup> Arora, P. (2024) 'COP28: ambitions, realities, and future', *Environmental Sustainability*, 7(1), pp. 107–113. Available at: <https://doi.org/10.1007/s42398-024-00304-0>.

<sup>22</sup> Arora, P. (2024) 'COP28: ambitions, realities, and future', *Environmental Sustainability*, 7(1), pp. 107–113. Available at: <https://doi.org/10.1007/s42398-024-00304-0>.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Lyubchich, V., Newlands, N.K., Ghahari, A., Mahdi, T. and Gel, Y.R., 2019. Insurance risk assessment in the face of climate change: Integrating data science and statistics. *Wiley Interdisciplinary Reviews: Computational Statistics*, 11(4), p.e1462.

<sup>26</sup> Falzon, D., Shaia, F., Roberts, J.T., Hossain, M.F., Robinson, S.A., Khan, M.R. and Ciplet, D., 2023. Tactical opposition: Obstructing loss and damage finance in the United Nations climate negotiations. *Global Environmental Politics*, 23(3), pp.95-119, pp. 111-112.

<sup>27</sup> *A funding mosaic for loss and damage* | *Science* (no date). Available at: <https://www.science.org/doi/full/10.1126/science.adg5740> (Accessed: 13 April 2024).

## *Loss and Damage Fund: A lifeline for Developing Countries?*

burden that has been placed on developing nations, developed nations alone should bear the financial responsibility of compensating for losses and damages.<sup>28</sup> It is important to note that developed nations frequently prioritize adaptation and mitigation strategies, whereas vulnerable populations call for immediate action and paradigm shifts.<sup>29</sup>

A resolution on new loss and damage finance arrangements, including a new fund, was made at the 27<sup>th</sup> Conference of the Parties (COP27), the international climate discussions, in November 2022, breaking the deadlock.<sup>30</sup> In spite of the fact that the decision to turn Loss and Damage from a theoretical idea to a real financing mechanism was widely hailed as a victory in the international climate change negotiations, others contend that it is the inevitable result of repeated under-investments in preventative and predictive action combined with a collective effort that failed to mitigate catastrophic levels of global warming.<sup>31</sup> Additionally, it has been noted that households with the greatest risk in the economies most vulnerable to climate change are currently bearing the financial burden of climate change rather than the nations with the highest carbon intensity. Additionally, it is dependent on a global assistance network that continues to supply food help in the wake of natural catastrophes caused by climate change, despite not having been built or funded to serve as the primary global response system for loss and damage caused by the phenomenon.<sup>32</sup>

It has been correctly noted that while new financing sources are appearing in the field of loss and damage finance, determining and measuring the losses and damages from extreme weather events linked to climate change continues to be a challenging issue.<sup>33</sup> For example, it has been suggested that although policy and research agendas have mostly focused on adaptation to climate change, it is equally important to address the question of why some communities and peoples are disproportionately

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<sup>28</sup> *A funding mosaic for loss and damage* | *Science* (no date). Available at: <https://www.science.org/doi/full/10.1126/science.adg5740> (Accessed: 13 April 2024).

<sup>29</sup> Effiong, C.J. *et al.* (2024) 'Exploring loss and damage from climate change and global perspectives that influence response mechanism in vulnerable communities', *Sustainable Environment* [Preprint]. Available at: <https://www.tandfonline.com/doi/abs/10.1080/27658511.2023.2299549> (Accessed: 13 April 2024).

<sup>30</sup> *A funding mosaic for loss and damage* | *Science* (no date). Available at: <https://www.science.org/doi/full/10.1126/science.adg5740> (Accessed: 13 April 2024).

<sup>31</sup> Laganda, G. (2023) 'Responding to loss and damage in food systems', *Nature Food*, 4(2), pp. 133–134. Available at: <https://doi.org/10.1038/s43016-023-00702-3>.

<sup>32</sup> *Ibid.*

<sup>33</sup> Fabian, F. (2024) *Quantifying and attributing pay-out and premia increases of parametric insurance to climate change – A framework for scalable, objective, transparent and pragmatic integration into a loss and damage finance architecture*. EGU24-19327. Copernicus Meetings. Available at: <https://doi.org/10.5194/egusphere-egu24-19327>.

exposed to and impacted by climatic hazards.<sup>34</sup> A dynamic social approach to vulnerability is most likely to enhance planning efforts for mitigation and adaptation since vulnerability is a multifaceted process rather than an immutable condition.<sup>35</sup> Although no one is immune to the effects of climate change, certain social groups are more severely affected than others in terms of resource loss, livelihood disruption, and cultural identity erosion.<sup>36</sup> Social rather than physical variables are the main cause of this unequal vulnerability to equivalent amounts of physical change.<sup>37</sup>

There was little analysis of the social drivers of climate change vulnerability or the unequal distribution of risk in the 1990 Intergovernmental Panel on Climate Change First Assessment Report, which framed the issue primarily in terms of exposure to physical impacts on specific sectors, regions, and countries.<sup>38</sup> Since then, a great deal of social science research has produced methodological guidelines, empirical data, and theoretical revelations that have revolutionized our understanding of climate change vulnerability.<sup>39</sup> The dominant responses to climate change remain scientific and technological, despite these noteworthy advancements, so largely ignoring the underlying social determinants of vulnerability.<sup>40</sup>

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<sup>34</sup> Thomas, K. *et al.* (2019) 'Explaining differential vulnerability to climate change: A social science review', *WIREs Climate Change*, 10(2), p. e565. Available at: <https://doi.org/10.1002/wcc.565>; Green, F. and Healy, N., 2022. How inequality fuels climate change: The climate case for a Green New Deal. *One Earth*, 5(6), pp.635-649.

<sup>35</sup> Ibid.

<sup>36</sup> Jorgenson, A.K. *et al.* (2019) 'Social science perspectives on drivers of and responses to global climate change', *WIREs Climate Change*, 10(1), p. e554. Available at: <https://doi.org/10.1002/wcc.554>.

<sup>37</sup> Thomas, K. *et al.* (2019) 'Explaining differential vulnerability to climate change: A social science review', *WIREs Climate Change*, 10(2), p. e565. Available at: <https://doi.org/10.1002/wcc.565>; Lomborg, B., 2020. Welfare in the 21st century: Increasing development, reducing inequality, the impact of climate change, and the cost of climate policies. *Technological Forecasting and Social Change*, 156, p.119981.

<sup>38</sup> Thomas, K. *et al.* (2019) 'Explaining differential vulnerability to climate change: A social science review', *WIREs Climate Change*, 10(2), p. e565. Available at: <https://doi.org/10.1002/wcc.565>; Houghton, J.T. ed., 1995. *Climate change 1994: radiative forcing of climate change and an evaluation of the IPCC 1992 IS92 emission scenarios*. Cambridge University Press.

<sup>39</sup> Thomas, K. *et al.* (2019) 'Explaining differential vulnerability to climate change: A social science review', *WIREs Climate Change*, 10(2), p. e565. Available at: <https://doi.org/10.1002/wcc.565>.

<sup>40</sup> Thomas, K. *et al.* (2019) 'Explaining differential vulnerability to climate change: A social science review', *WIREs Climate Change*, 10(2), p. e565. Available at: <https://doi.org/10.1002/wcc.565>.

#### 4. Tackling Climate Change: Making the Loss and Damage Fund Work for Third World Countries and Vulnerable Communities

Many have suggested that long-term impacts of climate change on the real economy are expected, including lower employment, less social cohesion, lower productivity, and loss of cultural heritage. Public and corporate budgets, as well as society, are the focus of these.<sup>41</sup> Planned or unexpected migration or displacement may be part of climate-related emergencies, and rehabilitation and recovery efforts may need to be climate resilient.<sup>42</sup> The movement of populations may be a factor in slow-onset events. Data on the economy, society, and climate will need to be analyzed for this. In order to improve people's circumstances, these requirements should be met rather than keeping them in danger of dying.<sup>43</sup>

Stakeholders are also urged to support creative solutions incorporating risk transfers that take into account the increasing risk exposures due to the exponential increase in the effect of natural catastrophes on economies in recent decades, particularly in vulnerable areas.<sup>44</sup> Given the ever-increasing effects of climate change, financial solutions intended to assist impacted nations and people need to be in line with the practical need for disaster risk finance that is predictable and responsive.<sup>45</sup> Although it is not a cure-all, some writers contend that insurance has historically been seen as a significant participant in the field of loss and damage financing.<sup>46</sup> However, in many places, insurance premiums become unaffordable, and some risks progressively become uninsurable.<sup>47</sup> Reducing the cost and increasing the use of insurance, for example through subsidies, might lessen the effects and

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<sup>41</sup> *A funding mosaic for loss and damage* | *Science* (no date). Available at: <https://www.science.org/doi/full/10.1126/science.adg5740> (Accessed: 13 April 2024).

<sup>42</sup> Ibid.

<sup>43</sup> *A funding mosaic for loss and damage* | *Science* (no date). Available at: <https://www.science.org/doi/full/10.1126/science.adg5740> (Accessed: 13 April 2024).

<sup>44</sup> Radu, N. and Alexandru, F., 2022. Parametric insurance—a possible and necessary solution to insure the earthquake risk of Romania. *Risks*, 10(3), p.59.

<sup>45</sup> Fabian, F. (2024) *Quantifying and attributing pay-out and premia increases of parametric insurance to climate change &ndash; A framework for scalable, objective, transparent and pragmatic integration into a loss and damage finance architecture*. EGU24-19327. Copernicus Meetings. Available at: <https://doi.org/10.5194/egusphere-egu24-19327>.

<sup>46</sup> Fabian, F. (2024) *Quantifying and attributing pay-out and premia increases of parametric insurance to climate change &ndash; A framework for scalable, objective, transparent and pragmatic integration into a loss and damage finance architecture*. EGU24-19327. Copernicus Meetings. Available at: <https://doi.org/10.5194/egusphere-egu24-19327>.

<sup>47</sup> Ibid.

## *Loss and Damage Fund: A lifeline for Developing Countries?*

provide impacted areas with steady cash flows.<sup>48</sup> It is suggested here that parametric insurance is a typically good option that has benefits above conventional indemnity insurance.<sup>49</sup> It offers clear and prompt financial reactions in the wake of major weather disasters and is less vulnerable to adverse selection and moral hazard.<sup>50</sup> In response to the increasing difficulties associated with the vulnerability of human populations and their assets to natural catastrophes, parametric insurance has the potential to serve as a vehicle for innovation in the insurance sector.<sup>51</sup> Parametric insurance, often known as index-based insurance, is one modern approach to addressing the need to make vulnerable populations more resilient to natural catastrophes.<sup>52</sup> A variety of economic sectors, including agriculture, renewable energy (solar and wind), building and construction, and pandemics, can be impacted by occurrences connected to natural catastrophes, unfavourable weather, cyberattacks, and pandemics hence the need for this type of insurance.<sup>53</sup>

These proposed solutions are designed to optimize and expedite the indemnification process, which can ultimately be beneficial for both policyholders and insurers alike.<sup>54</sup> By utilising tools like parametric insurance, a loss and damage finance architecture can both take advantage of the benefits that come

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<sup>48</sup> Ibid.

<sup>49</sup> Lyubchich, V. *et al.* (2019) 'Insurance risk assessment in the face of climate change: Integrating data science and statistics', *WTREs Computational Statistics*, 11(4), p. e1462. Available at: <https://doi.org/10.1002/wics.1462>; Radu, N. and Alexandru, F. (2022) 'Parametric Insurance—A Possible and Necessary Solution to Insure the Earthquake Risk of Romania', *Risks*, 10, p. 59. Available at: <https://doi.org/10.3390/risks10030059>; Lopez, O. and Thomas, M. (2023) *Parametric insurance for extreme risks: the challenge of properly covering severe claims*; Lawrence, W., Tarr, J.A., Brook, N., Chaperon, M. and Sorel, A., 2024. Parametric Insurance. In *The Global Insurance Market and Change* (pp. 127-156). Informa Law from Routledge; Lawrence, W., Tarr, J.A., Brook, N., Chaperon, M. and Sorel, A., 2024. Parametric Insurance. In *The Global Insurance Market and Change* (pp. 127-156). Informa Law from Routledge; *From niche to mainstream – Closing the protection gap through parametric insurance* | PwC Switzerland (no date). Available at: <https://www.pwc.ch/en/insights/fs/closing-the-gap-with-parametrics-insurance.html> (Accessed: 13 April 2024).

<sup>50</sup> Fabian, F. (2024) *Quantifying and attributing pay-out and premia increases of parametric insurance to climate change &ndash; A framework for scalable, objective, transparent and pragmatic integration into a loss and damage finance architecture*. EGU24-19327. Copernicus Meetings. Available at: <https://doi.org/10.5194/egusphere-egu24-19327>.

<sup>51</sup> Radu, N. and Alexandru, F., 2022. Parametric insurance—a possible and necessary solution to insure the earthquake risk of Romania. *Risks*, 10(3), p.59.

<sup>52</sup> Ibid., p.59.

<sup>53</sup> Ibid, p.59; Lopez, O. and Thomas, M., 2023. Parametric insurance for extreme risks: the challenge of properly covering severe claims. *arXiv preprint arXiv:2301.07776*.

<sup>54</sup> Radu, N. and Alexandru, F., 2022. Parametric insurance—a possible and necessary solution to insure the earthquake risk of Romania. *Risks*, 10(3), p.59.

## *Loss and Damage Fund: A lifeline for Developing Countries?*

with it and make sure that resources are allocated in a way that is more closely in line with changes in weather patterns and the impacts that are caused by climate change.<sup>55</sup>

While the establishment of a new loss and damage fund is encouraging, more work has to be done to provide the billions of dollars required to finance the low-carbon transition.<sup>56</sup> Achieving climate targets requires a persistent political commitment supported by strong governance frameworks and accountability systems.<sup>57</sup> This may be advanced in a number of ways with the aid of climate law, which has shown to be a useful instrument for creating and establishing reliable institutions for climate governance.<sup>58</sup> Clear roles across several branches of government are mandated by law, which is crucial for implementing the COPs' agreed-upon conclusions.<sup>59</sup>

Concerns about climate change can be more effectively incorporated into other important areas of public policy, especially with the introduction of "framework" legislation.<sup>60</sup> Multisectoral in nature, framework laws set the institutions, strategies, and goals necessary to achieve the goals set forth by the national climate change agenda.<sup>61</sup> They give an extra degree of security during periods of political upheaval and incorporate political aspirations into domestic climate legislation.<sup>62</sup> They may make it more challenging for governments to reverse agreements made on policies by earlier administrations.<sup>63</sup> It is worth noting that Kenya has in place Climate Change Act 2016<sup>64</sup> which focuses on adaptation

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<sup>55</sup> Fabian, F., 2024. *Quantifying and attributing pay-out and premia increases of parametric insurance to climate change—A framework for scalable, objective, transparent and pragmatic integration into a loss and damage finance architecture* (No. EGU24-19327). Copernicus Meetings.

<sup>56</sup> Usman, Z. (no date) *As Financial Pledges Trickle in, Did COP27 Meet Its Goal of Implementation?* *Carnegie Endowment for International Peace*. Available at: <https://carnegieendowment.org/2022/11/21/as-financial-pledges-trickle-in-did-cop27-meet-its-goal-of-implementation-pub-88452> (Accessed: 14 April 2024).

<sup>57</sup> *What Role Could Legislation and Litigation Play Following COP27 in Closing Implementation Gaps On Mitigation and Loss and Damage?* (no date) *Grantham Research Institute on climate change and the environment*. Available at: <https://www.lse.ac.uk/granthaminstitute/news/what-role-could-legislation-and-litigation-play-following-cop27-in-closing-implementation-gaps-on-mitigation-and-loss-and-damage/> (Accessed: 14 April 2024).

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> *What Role Could Legislation and Litigation Play Following COP27 in Closing Implementation Gaps On Mitigation and Loss and Damage?* (no date) *Grantham Research Institute on climate change and the environment*. Available at: <https://www.lse.ac.uk/granthaminstitute/news/what-role-could-legislation-and-litigation-play-following-cop27-in-closing-implementation-gaps-on-mitigation-and-loss-and-damage/> (Accessed: 14 April 2024).

<sup>61</sup> *What Role Could Legislation and Litigation Play Following COP27 in Closing Implementation Gaps On Mitigation and Loss and Damage?* (no date) *Grantham Research Institute on climate change and the environment*. Available at: <https://www.lse.ac.uk/granthaminstitute/news/what-role-could-legislation-and-litigation-play-following-cop27-in-closing-implementation-gaps-on-mitigation-and-loss-and-damage/> (Accessed: 14 April 2024).

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Climate Change Act, No. 11 of 2016, Laws of Kenya. (Amended by the Climate change amendment Act, No 9 2023).

## *Loss and Damage Fund: A lifeline for Developing Countries?*

and has put in place important institutions through which the Government can take advantage of the Loss and Damage Fund. Notably, one of the objects of the Act is to ensure that the National and county governments mobilize and transparently manage public and other financial resources for climate change response.<sup>65</sup> The Act provides for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate development, and for connected purposes.<sup>66</sup>

Designing legislation that can effectively address the local socioeconomic, geographical, and political settings while taking climate change governance demands and national requirements into account is crucial.<sup>67</sup> As such, it is important that the Loss and Damage Fund should not be so rigid as not allow governments to identify key areas that they wish to be funded through this kitty as part of their efforts to respond to climate change loss and damage. This is so notwithstanding the report that the necessary investment gap for developing countries has grown from USD 2.5 trillion in 2015 to USD 4 trillion in 2023, according to the World Investment Report 2023.<sup>68</sup> The majority of these expenditures are necessary to provide the populations' fundamental needs. Some have suggested that this might compel the governments to apply the money they have been given to these issues instead of allocating them to adaptation, mitigation, and energy transition.<sup>69</sup> Because of this, the UN must keep an eye on the money that vulnerable and developing countries get and make sure that it is being utilised for the right objectives.<sup>70</sup> Arguably, these objectives should be allowed to take into account the special needs of each country as far as the loss and damage emanating from climate change are concerned.

As some have correctly noted, civil society organizations—especially those from the global south—have long pushed for locally led action, which would grant affected people autonomy and decision-making power over how funds are allocated, as well as direct access to climate finance for the most

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<sup>65</sup> Ibid., sec. 3(2)(i).

<sup>66</sup> Ibid., Preamble.

<sup>67</sup> *What Role Could Legislation and Litigation Play Following COP27 in Closing Implementation Gaps On Mitigation and Loss and Damage?* (no date) Grantham Research Institute on climate change and the environment. Available at: <https://www.lse.ac.uk/granthaminstitute/news/what-role-could-legislation-and-litigation-play-following-cop27-in-closing-implementation-gaps-on-mitigation-and-loss-and-damage/> (Accessed: 14 April 2024).

<sup>68</sup> Arora, P. (2024) 'COP28: ambitions, realities, and future', *Environmental Sustainability*, 7(1), pp. 107–113. Available at: <https://doi.org/10.1007/s42398-024-00304-0>.

<sup>69</sup> Arora, P. (2024) 'COP28: ambitions, realities, and future', *Environmental Sustainability*, 7(1), pp. 107–113. Available at: <https://doi.org/10.1007/s42398-024-00304-0>.

<sup>70</sup> Arora, P. (2024) 'COP28: ambitions, realities, and future', *Environmental Sustainability*, 7(1), pp. 107–113. Available at: <https://doi.org/10.1007/s42398-024-00304-0>.

## *Loss and Damage Fund: A lifeline for Developing Countries?*

vulnerable and marginalised individuals and communities.<sup>71</sup> This autonomy is granted to some extent by the agreed decision on the new loss and damage fund, which also highlights the possibility of "small grant funding for communities."<sup>72</sup>

If the Fund is to be effective especially in developing nations, there is a need for inclusion of mechanisms for locally led grants. A good example of how the funding can be used for grants for locally led action by both relevant government parastatals and non-governmental organizations is the GEF Trust Fund (GEF-7). The GEF-7 Inclusive Conservation Initiative, is a new model for increased direct financing to Indigenous and local community organizations to deliver multiple global environmental benefits and support related cultural and economic development initiatives.<sup>73</sup> The GEF Pavilion at CBD COP 15 hosted the official launch of the GEF-7 Inclusive Conservation Initiative (ICI) on December 9, 2022. In order to promote linked cultural and economic development activities and provide several worldwide environmental advantages, the new model increases direct finance to Indigenous Peoples and Local Communities (IPs and LCs).<sup>74</sup> The goals of the community-based programmes are to reduce poverty and promote local empowerment while also bringing about beneficial changes in the environment.<sup>75</sup>

If Loss and Damage Fund is to have a direct positive effect on the most affected communities in developing countries, there is a need to consider incorporating similar approaches as those adopted in the GEF-7 projects. This will not only help in identifying the loss and damage, both economic and non-economic, in the most vulnerable communities, but will also involve these communities thus addressing the other indirect challenges such as poverty. Thus, it is suggested that funders that deal with loss and damage ought to prioritize small, locally driven grants in their portfolio as a way to

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<sup>71</sup> McKenzie, J. (2023) 'COP28 creates fund for vulnerable countries for loss and damage from climate change—but will it reach vulnerable people?', *Bulletin of the Atomic Scientists*, 6 December. Available at: <https://thebulletin.org/2023/12/cop28-creates-fund-for-vulnerable-countries-for-loss-and-damage-from-climate-change-but-will-it-reach-vulnerable-people/> (Accessed: 14 April 2024).

<sup>72</sup> Ibid.

<sup>73</sup> *GEF-7 Inclusive Conservation Initiative: translating pledges to IPLCs into action for biodiversity and climate* (no date). Available at: <https://thegef.shorthandstories.com/gef-7-inclusive-conservation-initiative/> (Accessed: 14 April 2024).

<sup>74</sup> *Highlights of the launch of the GEF-7 Inclusive Conservation Initiative (ICI) at CBD COP 15 (2022) ICI*. Available at: <https://inclusiveconservationinitiative.org/highlights-of-the-launch-of-the-gef-7-inclusive-conservation-initiative-at-cbd-cop-15/> (Accessed: 14 April 2024).

<sup>75</sup> 'GEF Small Grants Programme: UNDP Call for Proposals for Kenya - fundsforNGOs' (2023), 14 November. Available at: <https://www2.fundsforngos.org/latest-funds-for-ngos/undp-gef-small-grants-programme-call-for-proposals-in-kenya/> (Accessed: 14 April 2024).

## *Loss and Damage Fund: A lifeline for Developing Countries?*

evaluate requirements on the ground, facilitate quick action, test novel strategies, and increase the agency and capacity of vulnerable populations. Such awards must also incorporate adaptable clauses for non-monetary loss and harm as well as psychological assistance.<sup>76</sup> Even with scope and scale constraints, smaller grants that go straight to local organisations may be extremely important for providing emergency support, increasing awareness, and developing local capacity.<sup>77</sup>

There is also a need to enable participatory and collaborative approaches. It is important to use inclusive, participatory procedures that provide marginalised community members and other impacted groups the authority to prioritize loss and damage and decide how best to use resources locally.<sup>78</sup> Grant recipients may determine how the funds are allocated based on local discussions with impacted households, women, youth, the elderly, individuals with disabilities, and indigenous people.<sup>79</sup>

It may be argued that this can strongly connect the final initiatives with fairness and equality principles and advance human rights among participating populations.<sup>80</sup> Such inclusive self-determination procedures also often encourage local project ownership and sustainability even after financing is terminated.<sup>81</sup>

In order to determine what loss and damage mean to the most affected parties and how best to resolve it in accordance with their own requirements and objectives, the fund should guarantee that those individuals have the autonomy and agency to do so.<sup>82</sup> This might be accomplished by transferring decision-making authority to lower levels and including representatives of impacted communities in the fund's governance structure.<sup>83</sup>

There is also a need to move away from the strict separation of adaptation and loss and damage. It has been argued that while communities are recovering from loss and damage, it is crucial to increase

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<sup>76</sup> Shawoo, Z. and Bakhtaoui, I. (2023) 'How small and locally led grants can address loss and damage: early lessons from the Scottish government's 2021 funding commitment'. Available at: <https://doi.org/10.51414/sei2023.061>.

<sup>77</sup> McKenzie, J. (2023) 'COP28 creates fund for vulnerable countries for loss and damage from climate change—but will it reach vulnerable people?', *Bulletin of the Atomic Scientists*, 6 December. Available at: <https://thebulletin.org/2023/12/cop28-creates-fund-for-vulnerable-countries-for-loss-and-damage-from-climate-change-but-will-it-reach-vulnerable-people/> (Accessed: 14 April 2024).

<sup>78</sup> McKenzie, J. (2023) 'COP28 creates fund for vulnerable countries for loss and damage from climate change—but will it reach vulnerable people?', *Bulletin of the Atomic Scientists*, 6 December. Available at: <https://thebulletin.org/2023/12/cop28-creates-fund-for-vulnerable-countries-for-loss-and-damage-from-climate-change-but-will-it-reach-vulnerable-people/> (Accessed: 14 April 2024).

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

## *Loss and Damage Fund: A lifeline for Developing Countries?*

their resilience to future effects.<sup>84</sup> Addressing loss and damage inherently overlaps with adaptation strategies implemented on the ground, and trying to establish a clear distinction between the two can be ineffective.<sup>85</sup> In order to prevent burdening the receiving nations and communities, the fund should figure out how to make sure that adaptation and response to loss and damage may be supported equally.<sup>86</sup> Rather than attaching funding to a rigid list of activities, funders should allow the impacted populations to use the money however they see fit, provided that it also serves the objective of guaranteeing the agency, dignity, and well-being of people and communities suffering from the effects of climate change.<sup>87</sup>

It is arguable that, in addition to mitigation and adaptation, the Loss and Damage Fund and loss and damage finance should be acknowledged as the third pillar of climate action.<sup>88</sup> They should be grant-based, avoid adding to the debt burden of countries that are vulnerable to climate change, and give priority to the most marginalised and vulnerable groups while enhancing their resilience.<sup>89</sup>

### **5. Conclusion**

In addition to the amount of money raised, the distribution of funds and who receives them will determine the effectiveness of loss and damage financing.<sup>90</sup> Giving much-needed help to the most disadvantaged individuals and communities is the ultimate goal of the new loss and damage fund.<sup>91</sup> The loss and damage fund's operationalization should be centred on local needs and objectives,

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<sup>84</sup> McKenzie, J. (2023) 'COP28 creates fund for vulnerable countries for loss and damage from climate change—but will it reach vulnerable people?', *Bulletin of the Atomic Scientists*, 6 December. Available at: <https://thebulletin.org/2023/12/cop28-creates-fund-for-vulnerable-countries-for-loss-and-damage-from-climate-change-but-will-it-reach-vulnerable-people/> (Accessed: 14 April 2024).

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> *Six ways we can make Loss and Damage finance work for children* | Innocenti Global Office of Research and Foresight (no date). Available at: <https://www.unicef.org/innocenti/stories/six-ways-we-can-make-loss-and-damage-finance-work-children> (Accessed: 14 April 2024).

<sup>89</sup> *Six ways we can make Loss and Damage finance work for children* | Innocenti Global Office of Research and Foresight (no date). Available at: <https://www.unicef.org/innocenti/stories/six-ways-we-can-make-loss-and-damage-finance-work-children> (Accessed: 14 April 2024).

<sup>90</sup> McKenzie, J. (2023) 'COP28 creates fund for vulnerable countries for loss and damage from climate change—but will it reach vulnerable people?', *Bulletin of the Atomic Scientists*, 6 December. Available at: <https://thebulletin.org/2023/12/cop28-creates-fund-for-vulnerable-countries-for-loss-and-damage-from-climate-change-but-will-it-reach-vulnerable-people/> (Accessed: 14 April 2024).

<sup>91</sup> Ibid.

## *Loss and Damage Fund: A lifeline for Developing Countries?*

according to COP28.<sup>92</sup> It is important that these issues of effective accessibility and the adequacy of the Loss and Damage Fund are fully addressed if developing countries, which are most affected by climate change are to not only access the Fund equitably but are also to fully benefit from the same. There must also be effective frameworks in place in these developing countries in order to ensure that the most vulnerable communities benefit from the Fund.<sup>93</sup> Thus, there is a need for adoption of alternative eligibility requirements, adoption of approaches that have proved to work for philanthropic and humanitarian support to reach the local level, adoption of participatory and representative decision-making approaches, adoption of a flexible, grants-based approach, and adoption of comprehensive, full-spectrum approaches to Loss and Damage finance.<sup>94</sup>

It is possible for this Fund to work towards addressing Loss and Damage especially in developing countries but there must be put in place effective tools and infrastructure to support the same.

The Loss and Damage Fund has the potential to be a crucial lifeline for Developing Countries, if applied efficaciously.

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<sup>92</sup> Ibid.

<sup>93</sup> *The great loss and damage fund debate* (2023) *The Express Tribune*. Available at: <https://tribune.com.pk/story/2449525/the-great-loss-and-damage-fund-debate> (Accessed: 14 April 2024).

<sup>94</sup> Schultheiß, L., Shawoo, Z., Bakhtaoui, I., Ahmed, L., Lindsay, C. and Sircar, A., 2023. Operationalising the Loss and Damage Fund.

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