White Paper

Loss and damage - the missing piece: International tax cooperation for new climate finance

The Global Initiative for Economic, Social and Cultural Rights

Tax Justice Network

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Ministry for Foreign Affairs of Finland

The Global Initiative for Economic, Social and Cultural Rights

TAX JUSTICE NETWORK

CONTENTS

1. Introduction. Loss and damage - the unmet challenge

In early November 2013, super typhoon Haiyan, one of the deadliest and most catastrophic cyclones in recorded history, made landfall in the Philippines. The storm killed 6,300 people, destroyed more than a million homes, and caused damages and losses valued at USD 12.9 billion.[1] Days later, Nadarev Saño, Commissioner of the Philippines' Climate Change Commission, stressed that climate change had exacerbated Haiyan's destructiveness. "What my country is going through as a result of this extreme climate event is madness. The climate crisis is madness. We can stop this madness right here in Warsaw."[2]

Saño's won an audience as international media covered the disaster. 'Loss and damage' is the term given to impacts of climate change that are not avoided by mitigation, adaptation, or other measures.[3] Haiyan led to the formation of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM). Its mandate focuses particularly on vulnerable developing countries.[4] In 2015, the issue of loss and damage was recognised in Article 8 of the Paris Agreement, which stated that "Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change". Later paragraphs affirmed a continued role for the Warsaw Mechanism, to develop recommendations and risk management strategies on loss and damage.[5]

The effects of loss and damage can be economic or non-economic. Non-economic losses are often the most damaging. In Haiyan, for example, thousands of Filipinos lost their lives. Other examples might include the loss of community burial grounds in Micronesia due to coastal erosion, or displacement of people in the Caribbean during the particularly destructive 2017 hurricane season.[6] However, the economic costs of loss and damage due to climate change are huge. Typhoon Haiyan slowed Philippine national economic activity by nearly a full percentage point in 2013 and a further 0.3% in 2013.[7] A study commissioned by Oxfam found that the economic cost of loss and damage for developing countries alone will amount to between USD 290 and USD 580 billion by 2030.[8]

Although States have international human rights obligations with respect to both climate change and loss and damage, the current financial architecture and governance regime for loss and damage remains inadequate and unfit for purpose.

First, developed countries have been wary of making definite financial commitments to compensate for loss and damage that result from climate change. Only Scotland, Denmark and a score of philanthropic funds have committed funds (USD 19,5m) for this purpose,[9] although vulnerable developing countries will face the brunt of climate hazards. Studies have estimated that by 2050 the economic cost of loss and damage to such countries will exceed USD $1 trillion.[10] This figure does not even include non-economic damages such as loss of life and displacement. The funds currently set aside for loss and damage grossly underestimate the magnitude of the problem.

Second, the institutional arrangements for managing loss and damage are not up to the task. The existing Warsaw Mechanism and related bodies do not have the resources required for such a role. In 2021, the UN Climate Change Conference in Glasgow (COP26) debated, but ultimately rejected, a proposal to form a new financial facility to address loss and damage due to climate change. Because States have been reluctant to accept responsibility for environmental degradation, past UN Climate Conferences have never dedicated funding to this important issue. There is currently still no formal international mechanism for addressing the harm caused by climate change to the world's most disadvantaged populations.

Those who oppose the creation of an international facility to address loss and damage have shown a lack of imagination and political will, since they have not considered the possibility of reforming the international financial and tax system to provide new resources to cover its costs. Action to impose higher minimum corporate tax rates or close tax loopholes would enlarge the fiscal space available to address loss and damage. In the absence of comprehensive international tax cooperation, efforts to achieve climate justice or finance loss and damage will be insufficient.

In this white paper we aim to discuss and explore the following research questions:

- How can international tax cooperation bridge the finance gap for loss and damage caused by climate change?
- What financial architecture and governance regimes would be appropriate?
- What guidance do international human rights standards provide?

2. Generating revenue through international tax cooperation

Financing loss and damage is far from impossible, and the path of global collaboration paved by the climate movement provides guidance. The urgency of the climate emergency requires international cooperation to address the full range of social, economic, and financial issues associated with climate justice.

Tax cooperation is an essential element of that agenda.

Current international financial regulations are not designed for today's global challenges. Countries lose US 483 billion in tax each year as a result of global tax abuse committed by multinational corporations and wealthy individuals.[11] Further, it is estimated that between USD 21 trillion and USD 32 trillion is hidden from tax authorities in offshore dependencies.[12] In the last 30 years, this has fed global tax competition, igniting a global race to the bottom: corporate tax rates have fallen from 49% in 1985 to just 23% in 2019.[13]

Markandya and González-Eguino have estimated the economic costs of loss and damage in both a low and high emissions scenario. Their calculations highlight the extent of the costs in several world regions (see Figure 1). In parallel, the State of Tax Justice has estimated the revenue that is lost annually as a result of abusive international tax practices by both multinational corporations and wealthy individuals (Figure 1). Its figures suggest that over the last 5 years the funding shortfall of UN humanitarian appeals related to extreme weather events could be financed by less than a sixth of the tax revenue foregone as a result of tax abuse.[14] The costs of tax abuse and losses and damage caused by climate change fall disproportionately on low- and middle-income countries, even though they are less responsible for both problems than high-income economies, corporations and enablers.

Figure 1. Loss and damage and tax costs for Africa, Asia, and Latin America & Caribbean (billion USD)

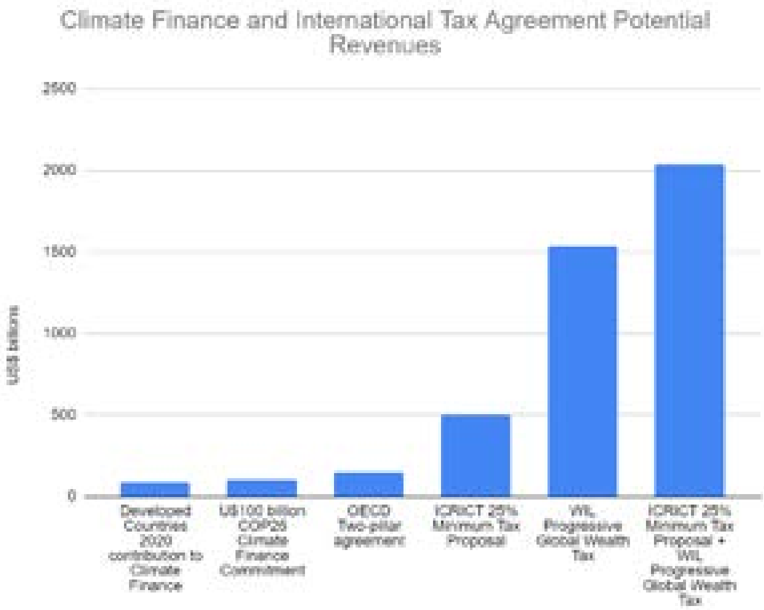
Loss and damage and tax costs for three regions[1]	Africa	Asia	Latin America & Caribbean
Total L&D costs to 2030	67–242	138-494	86 -308
Total L&D costs to 2050	242-363	495-742	308-462
Annual losses to corporate tax abuse	23.2	46	40
Annual losses to offshoring by wealthy individuals	2.5	27	3

Authors' calculations based on Markandya, A., González-Eguino, M. (2019), 'Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage: A Critical Review', in Mechler, R., et al (eds), 'Loss and Damage from Climate Change: Climate Risk Management, Policy and Governance', Springer, Cham., https://doi.org/10.1007/978-3-319-72026-5_14.

Addressing international tax abuse requires collaborative international agreements, like those that have been achieved in the UNFCCC framework. The two-pillar OECD international tax agreement reached by over 130 countries in 2021 has set higher standards for international tax coordination. It is expected to raise global tax receipts by about USD 150 billion by devising new procedures for taxing multinational corporations (pillar 1) and establishing a 15% global minimum corporate tax (pillar 2).[15] Although the agreement sets a historic bar for what an ambitious international tax agreement could accomplish, in the end it only prioritises revenues for advanced economies and it lacks the ambition needed to stop the global tax 'race to the bottom'.

According to the Independent Commission for the Reform of International Corporate Taxation (ICRICT), raising the minimum tax rate to 25% would increase global tax income by more than USD 500 billion.[16] Furthermore, the World Inequality Report has argued that effective international cooperation could establish a progressive global wealth tax that could raise more than USD 1.5 trillion annually.[17] Tax experts from the EU Tax Observatory have estimated that a 25% tax rate combined with more equitable distribution could increase Brazil's annual tax revenues by USD 18.1 billion, India's by USD 21.9 billion, and South Africa's by USD 6.05 billion.[18] Given that developed countries currently provide approximately USD 83 billion in climate finance, these are promising numbers.[19]

Figure 2. Potential revenues from climate finance and international tax agreements.



Although global leaders and the climate movement have recognised that strong international cooperation is necessary to face the climate emergency, States have failed to establish multilateral tax agreements that would eradicate tax abuse and raise enough public funds for climate finance. However, a pathway to future climate justice requires more than simply making fresh resources accessible. States must also develop a new governance regime for loss and damage.

3. A new governance regime for loss and damage

International programmes and facilities must be established to address the harmful impacts of loss and damage in many of the world's most vulnerable communities. In their current form, the Warsaw International Mechanism and related bodies, such as the Santiago Network, cannot comprehensively address loss and damage. They can identify losses and damages caused by climate change, but lack the mandate or institutional resources to implement programmes to remedy them.[20]

A financial facility to address the impacts of loss and damage could take several forms. One option is to create a new Loss and Damage Fund, separate from existing funding streams for climate adaptation and development. Such a fund would be clearly separate from other climate finance measures and would focus directly on loss and damage impacts. Moreover, by defining precisely which 'loss and damage events' qualify for funding, it could provide swift and more focused compensation to vulnerable communities.[21] Such a fund might support the costs of relocation made necessary by rising sea levels, reconstruction after natural disasters, alternative livelihood programmes required due to resource loss, and insurance premiums to offset the risk of sudden onset climate events.

The Santiago Network on Loss and Damage was created within the Warsaw Mechanism at the 2020 UN Conference on Climate Change. Its objective is to catalyse technical assistance to implement "relevant approaches for averting, minimizing, and addressing loss and damage".[22] Regrettably, the Network is not yet operational. Climate critics have denounced it as "just another website", without a funding arm to implement recommended measures.[23] To operationalise the Santiago Network, regional actors in the Global North need to commit proper funding and collaborate to establish an adequate framework.

Finally, a new regime for loss and damage must take into account the long-term challenges to establishing an effective international tax cooperation regime. It has been well-documented that tax discussions and agreements in the OECD (currently the main forum for setting international tax rules) have not meaningfully considered the interests of countries in the Global South. As ICRICT's latest release regarding the OECD 2021 Agreement states, "Developing countries would be little benefited—many could be worse off—because the allocation principles favour the rich ones."[24] With this in mind, civil society and increasingly States are calling for a UN tax convention.[25] They want decision making on international taxation to be moved from the OECD (where rich countries set the agenda) to the United Nations, where all countries can negotiate on an equal footing (at least procedurally).

4. Human rights: legal obligation for loss and damage

Both the Intergovernmental Panel on Climate Change (IPCC)[26] and the World Health Organization (WHO)[27] have noted that extreme climate events (including storms, floods, heatwaves, droughts, and hurricanes) already affect a range of civil, political, economic, social and cultural rights. A report by the Office of the High Commissioner for Human Rights (OHCHR) listed some, including the right to life, the right to development, the right to water and sanitation, and the right to health.[28] The scientific community considers that human activity, particularly the CO2 emissions attributed mainly to industrialised nations, is the primary cause of climate change and associated violations.[29] The UN Committee on Economic, Social and Cultural Rights has recognised that "The [IPCC] report further demonstrates that climate change constitutes a massive threat to the enjoyment of economic, social and cultural rights".[30]

It should also be noted that the most vulnerable are often particularly exposed to the physical and mental health threats created by climate change. A 2020 study found that women frequently suffer disproportionate harm from environmental hazards, due to social and gender inequality.[31] Financial dependence and food hierarchies can make it more difficult for women to migrate when environmental events cause displacement.[32]

Under the Paris Agreement, States undertook to hold temperature levels at less than 2°C above pre-industrial levels and proposed ambitious climate actions to limit the temperature increase to 1.5°C.[33] In this context, States must take into account their international obligation to protect the human rights of individuals and communities when these may be harmed by current or future effects of the climate crisis, and their duty, to this end, to mobilise the maximum available resources through international assistance and cooperation.[34] Crucially, this duty has an extraterritorial dimension. States have an obligation to respect, protect and fulfil the human rights of all those who live under their jurisdiction, but also (under articles 55 and 56 of the Charter of the United Nations) an obligation to act in a manner that protects and fulfills the rights of people who live outside their territories as well.[35]

UN human rights treaty bodies and special procedures have explicitly linked climate change, and the issue of loss and damage, to human rights. In 2019, five human rights treaty bodies called on States to comply with their human rights obligations to provide international assistance and to "co-operate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries, paying particular attention to safeguarding the rights of those who are at particular risk of climate harm and addressing the devastating impact".[36]

A report by the UN Special Rapporteur on human rights and climate change highlighted the connection between loss and damage and human rights violations, and suggested how to address loss and damage from a human rights perspective.[37] Drawing on the principle of "common but differentiated responsibilities", the Special Rapporteur recognised that rich nations have most responsibility to act to control the climate crisis because they contributed most to causing it.[38]

In short, States have a legal duty, under human rights law, to increase the maximum available resources to promote and protect economic, social and cultural rights, not least through international tax cooperation; and have a responsibility to establish clear finance mechanisms to manage those resources and make them available to address the challenges generated by loss and damage due to climate change. Importantly, one recommendation of the UN Special Rapporteur on human rights and climate change was that States should increase cooperation and "explore legal options to close down tax havens as a means of freeing up taxation revenue for loss and damage". [39]

5. Conclusion and recommendations

UN human rights mechanisms have clarified the State's obligation to mobilise the maximum of available resources through international assistance and cooperation, and the application of extraterritorial obligations, in the context of climate change. In accordance with these principles, States have a duty to consider specific pathways towards international tax cooperation and establish adequate finance and governance mechanisms for loss and damage.

First, reforms to the international tax regime and efforts to eradicate tax havens should be supported by larger public funding commitments to combat the climate crisis. States from the Global North have the main responsibility to act, but States of the Global South also have a duty to support and implement proposals to raise the minimum global corporate tax rate and establish progressive global wealth levies. To stimulate global tax cooperation effectively, a tax convention needs to be defined and agreed within the United Nations that can achieve equitable outcomes and end the erosion of tax bases as well as profit shifting.

Second, States must acknowledge that loss and damage caused by climate change creates an international obligation, rooted in human rights principles, to support nations and communities that are harmed by climate events. Presently, public and private climate funders have stated that they prefer to see their grants spent on mitigation and adaptation rather than loss and damage, essentially because they are reluctant to accept responsibility or liability for climate harms. The creation of a new loss and damage finance facility, of transparent governance and based on human rights principles, is vital to address the resulting gap.

The international regime for loss and damage is still a long way from being equitable or adequate. To maintain and uphold human rights, States must establish new mechanisms of tax cooperation that expand available resources, and create a dedicated loss and damage finance facility.

NOTES

1. Saño, N., 'Typhoon Haiyan: We cannot afford to procrastinate on climate action', *The Guardian*, 11.11.2013, https://www.theguardian.com/world/2013/nov/11/typhoon-haiyan-philippines-climate-change.

2. Ibid

3. Heinrich-Böll-Stiftung (2021). 'Unpacking Finance for Loss and Damage', https://us.boell.org/en/unpacking -finance-loss-and-damage.

4. UNFCCC (2014), 'Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013', Addendum to Part Two: Action taken by the Conference of the Parties at its nineteenth session.

5. Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

6. Bhandari, P. et al (2022), 'What Is "Loss and Damage" from Climate Change? 6 Key Questions Answered', World Resources Institute, What to Know About 'Loss and Damage' from Climate Change | World Resources Institute (wri.org).

7. Global Facility for Disaster Reduction and Recovery (GFDRR) (2017), 'Breaking the Link between Extreme Weather and Extreme Poverty', World Bank.

8. Markandya, A., González-Eguino, M. (2019), 'Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage: A Critical Review', in Mechler, R., Bouwer, L., Schinko, T., Surminski, S., Linnerooth-Bayer, J. (eds), 'Loss and Damage from Climate Change: Climate Risk Management, Policy and Governance', Springer, Cham., https://doi.org/10.1007/978-3-319-72026-5_14.

9. Grist (2022), https://grist.org/international/cop27-scotland-climate-reparations-loss-and-damage/.

10. Baarsch, F. et al. (2015), 'Impacts of low aggregate INDCs ambition', Berlin: Climate Analytics.

11. Tax Justice Network, Global Alliance for Tax Justice, Public Service International (2021), 'The State of Tax Justice', https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH. pdf.

12. James, S. H. (2012), 'The Price of Offshore Revisited: New Estimates for Missing Global Private Wealth, Income, Inequality and Lost Taxes', Tax Justice Network, www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_26072012.pdf.

13. Financial Transparency Coalition (2021), 'G7 Agrees to a global corporate minimum tax – but Developing Countries don't appear to have much to gain'.

14. Oxfam (2022), 'Footing the Bill: Fair finance for loss and damage in an era of escalating climate impacts', https://www.oxfam.org/en/research/footing-bill-fair-finance-loss-and-damage-era-escalating-climate-impacts. See also, Tax Justice Network, Global Alliance for Tax Justice, Public Service International (2021), 'The State of Tax Justice', https://taxjustice.net/reports/the-state-of-tax-justice-2021/.

15. IMF (2022), 'Fiscal Monitor', https://www.imf.org/en/Publications/FM/Issues/2022/04/12/fiscal-monitor-april-2022.

16. ICRICT, 'An Emergency Tax Plan to Confront the Inflation Crises', https://www.icrict.com/an-emergency-tax-plan-to-confront-the-inflation-crisis.

17. Authors' calculations based on the World Inequality Report, 'The Road to Redistributing Wealth', https://wir2022.wid.world/chapter-7/.

18. Financial Transparency Coalition (2021), 'G7 agrees to a global corporate minimum tax – but Developing Countries don't appear to have much to gain', https://financialtransparency.org/g7-agrees-minimum-global-corporate-tax-developing-countries-dont-appear-much-gain/.

19. OECD, 'Climate finance provided and mobilised by Developed Countries, 2016-2020', https://

www.oecd.org/environment/climate-finance-provided-and-mobilised-by-developed-countries-in-2016-2020-286dae5d-en.htm.

20. Climate Action Network (2018), 'Submission on the scope of the technical paper exploring sources of support for loss and damage and modalities for accessing support', p. 2, https://climatenetwork.org/ resource/can-submission-on-the-scope-of-the-technical-paper-exploring-sources-of-support-for-loss-and-damage-and-modalities-for-accessing-support-february-2018/.

21. Ibid, p. 6.

22. UNFCCC (2021), 'Operationalising the Santiago Network - Input Paper'.

23. Huq, S., 'Dealing with Loss and Damage in COP26', *The Daily Star*, February 9 2021.

24. Op cit. 16, p.2.

25. Etter-Phoya, R., 'African Ministers call for UN tax convention to protect against financial secrecy supplied by the richest nations', Tax Justice Network, 27 May 2022, https://taxjustice.net/2022/05/27/african-ministers-call-for-un-tax-convention-to-protect-against-financial-secrecy-supplied-by-the-richest-nations-as-africa-improves-in-the-financial-secrecy-index-2022/.

26. IPCC, 'Special Report on Global Warming of 1.5C', chapter 5, p. 479, https://www.ipcc.ch/sr15/.

27. WHO (2021), 'Climate change and health', factsheet, https://www.who.int/news-room/fact-sheets/detail/ climate-change-and-health.

28. Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (2015), 'Understanding Human Rights and Climate Change'.

29. IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3−32, doi:10.1017/9781009157896.001

30. UN Committee on Economic, Social and Cultural Rights (2018), 'Statement on Climate change and the International Covenant on Economic, Social and Cultural Rights', para. 1, E/C.12/2018/1.

31. Ayeb-Karlsson, S. (2020), 'When the disaster strikes: Gendered (im)mobility in Bangladesh', *Climate Risk Management*, 29, 100237, pp. 1-24.

32. Ibid.

33. Paris Agreement on Climate Change (2015), Article 2.1.a.

34. Statement of the Committee on Economic, Social and Cultural Rights (2018), 'Climate change and the International Covenant on Economic, Social and Cultural Rights', UN Doc E/C.12/2018/1.

35. Ibid, para. 5.

36. OHCHR (2019), 'UN Treaty Bodies issue a joint statement on human rights and climate change', para. 17,https://www.ohchr.org/en/statements/2021/12/hri20191-five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights.

37. Op. cit., 34, para. 2.

38. Ibid, para. 2.

39. Special Rapporteur on the promotion and protection of human rights in the context of climate change (2022), 'Report on the promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation', A/77/226, para. 89 (j).

ABOUT GI-ESCR

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental organisation. Together with partners around the world, GI-ESCR works to end social, economic and gender injustice using a human rights approach.

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Global Initiative for Economic, Social and Cultural Rights

ABOUT Tax Justice Network

The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. But under pressure from corporate giants and the superrich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogramme their tax and financial systems.

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