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Loss and Damage at COP26:

A Central American Perspective

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Introduction

Loss and damage has been at the center of the political fight for climate justice of the Global South since the creation of the United Nations Framework Convention on Climate Change (UNFCCC). Vulnerable countries have championed loss and damage to be reflected in the structure of the climate regime, formal decisions, finance mechanisms, negotiating agendas and, in general, as part of the formal systemic response to address climate change. An international response is needed based on justice, responsibility, and the fact that mitigation and adaptation cannot avoid the current and future losses and damages generated by climate impacts.

However, after three decades of advocacy and despite climate impacts ravaging communities across the world, loss and damage from a technical climate governance perspective remains a vague and loosely-constructed term that refers to impacts that go beyond current actions taken to address the climate crisis.¹ This lack of precision is in itself a reflection of the obstacles faced to achieve a proper systemic response from the climate regime to one of the major threats to human well-being.

¹La Ruta del Clima, “Response to Call for Inputs: Climate Change and Human Rights: a Safe Climate Submission on Loss and Damage and Human Rights” (2019), accessed at <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/SafeClimate/NonState/Climate4Change.docx>; Lisa Vanhala and Cecilie Hestbaek, “Framing Climate Change Loss and Damage in UNFCCC Negotiations,” *Global Environmental Politics* 16, no. 4 (2016): 112, accessed at https://doi.org/10.1162/glep_a_00379.

What is Loss and Damage?

In the context of the UNFCCC, the concept of loss and damage dates back to a 1991 submission by Vanuatu on behalf of the Alliance of Small Island States calling for an insurance pool funded by developed countries to help cover the financial burden and to compensate/rehabilitate the loss and damage suffered by the most vulnerable small island and low-lying developing countries.²

The UNFCCC's Subsidiary Body for Implementation (SBI) has attempted to put forward a definition of losses as "negative impacts in relation to which reparation or restoration is impossible," while damages are considered "negative impacts in relation to which reparation or restoration is possible."³ The literature defines damages and losses as the impacts that people cannot cope with or adapt to, that cause irreparable damage or irreversible loss.⁴ It addresses both economic and non-economic elements, such as cultures, traditions, languages, and even being forced to leave your home to safeguard your life.⁵

Loss and damage goes beyond the limits of climate adaptation, and it is the footprint of Global North irresponsibility. Adaptation is a "process of adjustment to the real or projected climate and its effects" that seeks to reduce possible damage and/or take advantage of opportunities that may arise.⁶

However, adaptation's hard or soft limits generate an intolerable residual risk that puts lives in danger and destroys livelihoods through increasing, unjust, and intolerable loss and damage.⁷

As nations continue to fall short of pledges required to meet the goals of the Paris Agreement and limit global warming to 1.5 °C above pre-industrial levels, the topic of loss and damage will become increasingly important. Given the dire scenarios projected in the latest Intergovernmental Panel on Climate Change (IPCC) report, the impacts of climate change are becoming increasingly unavoidable and go well beyond the limitations of mitigation and adaptation. While the issue of loss and damage originated in the Global South, it is a topic that has been increasingly affecting richer nations as well.

Third Pillar of Paris

Mitigation, the reduction of greenhouse gas emissions, and adaptation have historically been considered to be the two major pillars of climate action in the context of the UNFCCC. Article 8 of the Paris Agreement raised loss and damage as the third pillar of climate action, a formal but powerful response to the relentless push for justice of Global South NGOs and parties.

²AOSIS, Submission on Behalf of AOSIS: Draft Annex Relating to Article 23 (Insurance) for Inclusion in the Revised Single Text on Elements Relating to Mechanisms. In Intergovernmental Negotiating Committee for a Framework Convention on Climate Change: Working Group II, Vanuatu, (A/AC.237/WG.II/Misc.13), Submitted by the Co-Chairmen of Working Group II, 4th session, Agenda Item 2(b), (1991) UN Doc A/AC.237/WG.II/CRP.8.

³UNFCCC, "A Literature Review on the Topics in the Context of Thematic Area 2 of the Work Programme on Loss and Damage: a Range of Approaches to Address Loss and Damage Associated with the Adverse Effects of Climate Change" (2012) UN Doc FCCC/SBI/2012/INF.14, accessed at <https://unfccc.int/resource/docs/2012/sbi/eng/inf14.pdf>.

⁴Koko Warner et al., "Evidence from the Frontlines of Climate Change: Loss and Damage to Communities Despite Coping and Adaptation, Report No. 9." (United Nations University, November 2012): 20, accessed at <http://ciesin.columbia.edu/binaries/web/global/news/2013/cdkn-report.pdf>.

⁵Adrian Martinez, "Daños y Pérdidas: Una Pequeña Introducción Al Párrafo 51 y La Compensación," La Ruta del Clima (2021); Olivia Serdeczny, "Non-Economic Loss and Damage and the Warsaw International Mechanism," Loss and Damage from Climate Change (2018): 206, accessed at https://doi.org/10.1007/978-3-319-72026-5_8.

⁶IPCC, "Annex I Glossary" (2018), accessed at https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_Annexes.pdf.

⁷Petra Tschakert et al., "Climate Change and Loss, as If People Mattered: Values, Places, and Experiences," WIREs Climate Change 8, no. 5 (2017): 2, accessed at <https://doi.org/10.1002/wcc.476>.

The Paris Agreement provided a landmark moment for loss and damage, becoming the first international climate treaty to devote an entire article to the topic.⁸ However, the mention of loss and damage in Article 8 of the Paris Agreement did not address all the underlying concerns of the parties.⁹ To the contrary, progress around liability and compensation surrounding loss and damage was stymied by Paragraph 51 of the COP Decision accompanying the Paris Agreement, which explicitly states:

“Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.”

This paragraph was especially developed to block the historical political demand of the Global South regarding rehabilitation/compensation and for a response based on obligations of developed countries on loss and damage.¹¹

There are different estimations of loss and damage and, to have an accurate number, there must be a due process analysis that depends on each specific context. However, economic damage for developing countries due to loss and damage has

been estimated to be as high as \$428 billion per year by 2030 and up to \$1.67 trillion per year by 2050 at 3°C of warming.¹² Currently, “no concrete decisions have been made under the UNFCCC that provide clear guidance on the financing of averting, minimising and addressing loss and damage.”¹³ This is in spite of the continuous demand from vulnerable countries and NGOs for a financial mechanism with its own dedicated funding. A step forward is the recent mandate of the Executive Committee of the Warsaw International Mechanism for Loss and Damage to engage current UNFCCC financial mechanisms to access existing funding.¹⁴

Under the Enhanced Transparency Framework (ETF) of the Paris Agreement, parties have to submit information on how they are addressing loss and damage according to the modalities, procedures, and guidelines (MPGs) agreed at COP24.¹⁵ Submissions regarding loss and damage to the ETF should inform on: (a) Observed and potential climate change impacts, including those related to extreme weather events and slow onset events, drawing upon the best available science; (b) Activities related to averting, minimizing, and addressing loss and damage associated

⁸Julia Kreienkamp and Dr. Lisa Vanhala, “Climate Change Loss and Damage,” Global Governance Institute (2017): 1, accessed at <https://www.ucl.ac.uk/global-governance/sites/global-governance/files/policy-brief-loss-and-damage.pdf>.

⁹M.J. Mace and Roda Verheyen, “Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement,” Review of European, Comparative & International Environmental Law 25, no. 2 (2016): 197, accessed at <https://doi.org/10.1111/reel.12172>.

¹⁰UNFCCC, C., “Decision 1/CP. 21, Adoption of the Paris Agreement. In Report of the Conference of the Parties on Its Twenty-First Session, Held in Paris from 30 November to 13 December 2015 Addendum Part Two: Action Taken by the Conference of the Parties at Its Twenty-First Session, (2015) UN Doc FCCC/CP/2015/10/Add.1, accessed at: <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>.

¹¹Martinez Blanco, Daños y Pérdidas: Introducción al Párrafo 51 y La Compensación.

¹²Julie-Anne Richards and Liane Schalatek, “Financing Loss and Damage: A Look at Governance and Implementation Options,” Heinrich Böll Stiftung (2017): 19, accessed at https://www.boell.de/sites/default/files/loss_and_damage_finance_paper_update_16_May_2017.pdf; Climate Action Network, “Submission to the Executive Committee of the Warsaw International Mechanism on Loss and Damage” (2016): 3, accessed at https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/can_submission_to_the_excom_of_the_wim_on_loss_and_damage_finance.pdf; Laura Schäfer and Vera Künzel, “Steps Towards Closing the Loss&Damage Finance Gap” (Germanwatch, November 2019): 4, accessed at https://www.germanwatch.org/sites/default/files/Policy%20Briefing_Steps%20towards%20closing%20the%20Loss%26Damage%20finance%20gap_0.pdf.

¹³Raju Pandit Chhetri, Laura Schäfer, and Charlene Watson, “Exploring Loss and Damage Finance and Its Place in the Global Stocktake. Part of the ‘Financing Climate Action: iGST Discussion Series,’” (ODI, March 20, 2021): 20, accessed at <https://odi.org/en/publications/exploring-loss-and-damage-finance-and-its-place-in-the-global-stocktake>.

¹⁴UNFCCC, “Decisión 2/CMA.2 Mecanismo Internacional de Varsovia para las Pérdidas y los Daños relacionados con las Repercusiones del Cambio Climático y Examen de 2019 del Mecanismo,” (2019) UN Doc FCCC/PA/CMA/2019/6/Add.1, accessed at https://unfccc.int/sites/default/files/resource/cma2019_06a01E.pdf

¹⁵IIED. “Meeting the Enhanced Transparency Framework: What Next for the LDCs?” (2019), accessed at <https://pubs.iied.org/sites/default/files/pdfs/migrate/17730IIED.pdf>

Climate Impacts in Central America

with the adverse effects of climate change; (c) Institutional arrangements to facilitate the implementation of the activities referred to in point (b).¹⁶ Furthermore, the Global Stocktake (GS) will consider information related to the efforts to understand, act, and support to avert, minimize, and address loss and damage.¹⁷ Therefore, there is a significant opportunity to call for the adequate assessment, gathering of data, and reporting on loss and damage by parties. Moreover, the process of the GS, starting in 2023, can help flesh out the existing gaps in knowledge and make evident the perilous situation that communities live in due to loss and damage. This can be an important tool to pressure the climate regime to provide an adequate and just systemic response to address loss and damage.

The issue of loss and damage is particularly relevant to Central America, one of the world's regions most exposed to the climate crisis.¹⁸ Furthermore, in the region, social vulnerability due to poverty, insecurity, violence, and inequity is high, and the inadequate management of soil and environmental degradation makes this territory particularly vulnerable to climate impacts.¹⁹

Germanwatch's Long-Term Global Climate Risk Index from 2000 to 2019 ranked Guatemala (16th), Nicaragua (25th), El Salvador (28th), Honduras (44th), and Costa Rica (89th) among the 100 most vulnerable countries from weather-related loss events.²⁰

The region has been historically vulnerable to drought, heavy rains, and the El Niño-Southern Oscillation (ENSO).²¹ Central America is becoming increasingly susceptible to hurricanes, although risk factors vary considerably throughout the region.²² Decreasing precipitation trends, rising temperatures, and temperature extremes have been identified as the principal stressors driving the climate crisis in the region.²³

¹⁶UNFCCC, "Decision 18/CMA.1 Modalities, Procedures and Guidelines for the Transparency Framework for Action and Support Referred to in Article 13 of the Paris Agreement," (2018) UNDoc FCCC/PA/CMA/2018/3/Add.2.

¹⁷"Decision 19/CMA.1 Matters relating to Article 14 of the Paris Agreement and Paragraphs 99-101 of Decision 1/CP.21," (2018) UNDoc FCCC/PA/CMA/2018/3/Add.2.

¹⁸Economic Commission for Latin America and the Caribbean. "Climate Change in Central America: Potential Impacts and Public Policy Options" (August 2018): 154, accessed at https://repositorio.cepal.org/bitstream/handle/11362/39150/7/S1800827_en.pdf; F. Giorgi "Climate Change Hot-Spots," *Geophysical Research Letters*, 33(8) (2006) 1-4, accessed at <https://doi.org/10.1029/2006GL025734>.

¹⁹Adrián Martínez and Helen Gutiérrez, *Movilidad Humana: Derechos Humanos y Justicia Climática* (San Salvador: Heinrich Böll Stiftung (2020): 61, accessed at <https://sv.boell.org/sites/default/files/2021-04/MOVILIDAD%20HUMANA.pdf>.

²⁰David Eckstein, Vera Künzel, and Laura Schäfer, "Global Climate Risk Index 2021: Who Suffers Most from Extreme Weather Events? Weather-Related Loss Events in 2019 and 2000 to 2019" (Germanwatch, January 2021), accessed at <https://germanwatch.org/en/19777>.

²¹Economic Commission for Latin America and the Caribbean, *Climate Change in Central America: Potential Impacts and Public Policy Options* (August 2018): 15, accessed at https://repositorio.cepal.org/bitstream/handle/11362/39150/7/S1800827_en.pdf.

²²Roger A. Pielke et al., "Hurricane Vulnerability in Latin America and the Caribbean: Normalized Damage and Loss Potentials," *Natural Hazards Review* 4, no. 3 (2003): 102, accessed at [https://doi.org/10.1061/\(asce\)1527-6988\(2003\)4:3\(101\)](https://doi.org/10.1061/(asce)1527-6988(2003)4:3(101)).

²³Kees van der Geest and Koko Warner, "What the IPCC 5th Assessment Report Has to Say about Loss and Damage" (United Nations University Institute for Environmental and Human Society Working Paper, October 2015): 18, accessed at http://collections.unu.edu/eserv/UNU%3A3172/What_IPCC_WG2_AR5_WP21.pdf.

Much of Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama are located along the Central American Dry Corridor, a tropical dry forest region characterized by irregular rainfall patterns.²⁴ The region is vulnerable to severe drought and floods that are made worse by the climate crisis.

The latest IPCC Working Group I contribution to the Sixth Assessment Report concludes that mean temperatures have “very likely increased” in the region and projects that regional mean temperature increases will be similar to global mean change.²⁵ 2020 clocked in as one of the three hottest years for Mexico/Central America and the Caribbean region.²⁶

The report also projects that tropical cyclones (with higher precipitation), severe storms, and dust storms are expected to become more extreme in Central America in the coming years.

The report also shows problematic trends that aridity and agricultural drought are increasing, while fire weather is projected to increase. Smallholder and subsistence farmers in Central America are particularly vulnerable to the effects of climate change in the region.²⁷ Climate stressors, such as rising temperatures, reduced precipitation, intense and prolonged drought, and extreme events, are causing major crop losses, an increase in crop pests and diseases, and other associated

risks.²⁸ The El Niño–Southern Oscillation, which has become intensified by climate change, has caused significant losses in crops and decreased water flows.²⁹

Concerns over climate-driven human mobility patterns go back as early as 1990 when the IPCC identified migration and resettlement as the “most threatening short-term effects of climate change on human settlements.”³⁰ Increasingly unstable and hostile conditions in Central America have been key in driving mass human mobility across international borders and within Central American countries, particularly from the Northern Triangle region, which includes Honduras, Guatemala, and El Salvador.

The IPCC has also identified a strong connection between changes and climatic patterns and adversarial impacts on human health in Central America, noting the “emergence of diseases in previously non-endemic regions.”³¹ With very high confidence, the IPCC connects climate drivers with respiratory and cardiovascular diseases, vector- and water-borne diseases, hantaviruses and rotaviruses, chronic kidney diseases, and psychological trauma in Central and South America.

²⁴Alejandra Gallardo, “When Home Won’t Let You Stay: How Climate Change is Driving Migration in Central America,” Celebrating Scholarship and Creativity Day, 102 (April 23, 2020), accessed at https://digitalcommons.csbsju.edu/ur_cscday/10.

²⁵IPCC, “Regional Fact Sheet – North and Central America,” (2021).

²⁶WMO, “State of the Climate in Latin America and the Caribbean” (2021): 2, accessed at <https://public.wmo.int/en/our-mandate/climate/wmo-statement-state-of-global-climate/LAC>.

²⁷Carlos Gregorio Hernández Díaz-Ambrón, Rubén Gigena Pazos, and Carlos Onan Mendoza Tova, “Global Climate Change and Food Security for Small Farmers in Honduras,” 4th International Crop Science Congress 26 (September 2004), <https://doi.org/10.13140/RG.2.2.35722.52163>.

²⁸“Climate Change Risk in Honduras: Country Risk Profile” (United States Agency for International Development, March 2017), accessed at https://www.climatechange.org/sites/default/files/asset/document/2017_USAID%20ATLAS_Climate%20Change%20Risk%20Profile_Honduras.pdf.

²⁹Government of Honduras, “Plan Nacional de Adaptación al Cambio Climático: Version Resumen” (2018): 12, accessed at <http://www.miambiente.gob.hn/media/adjuntos/pdf/DNCC/2018-05-10/16%3A35%3A53.282976%2B00%3A00/PNA.pdf>.

³⁰IPCC, “Climate Change The IPCC Impacts Assessment,” vol 148 (1990): 5-9.

³¹IPCC, “Climate Change 2014: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. Part B Regional Aspects” (Cambridge: Cambridge University Press, 2014): 1535, accessed at <https://www.ipcc.ch/report/ar5/wg2/>.

Registered Loss and Damage in Central America

Honduras

Over a 20-year period from 1995 to 2014, Honduras suffered more than any other country in the world from the impacts of weather-related loss events.³² Hurricane Mitch devastated the nation in 1998, claiming more than 14,000 lives and causing \$3.8 billion in damages, the equivalent of 70% of the nation's GDP.³³ Last year, tropical storms Eta and Iota pounded the country, killing nearly 100 and causing over \$2.1 billion in damages.³⁴

Climate variability is already significantly affecting the agricultural sector, where 40% of Hondurans are employed.³⁵ Years of consecutive drought in the last decade have caused severe crop losses and massive food security, helping drive massive internal displacement and migration.³⁶

El Salvador

El Salvador's low-lying coastal areas, susceptibility to tropical cyclones, and history of strong meteorological droughts have made the country ill-suited to deal with the effects of climate change.³⁷ With over 300 people per km², El Salvador is one

of the most densely populated countries in the hemisphere, further complicating its vulnerability to climate change.³⁸

El Salvador's first Nationally Determined Contribution (NDC), submitted in November 2015, notes that damages and losses from climate change are already in the hundreds of millions of dollars.³⁹ Climate extreme events have taken a hefty toll on the Salvadoran economy, with weather-related events and other hazards accounting for annual losses of about 2.5% of the country's GDP.⁴⁰ Between November 2009 and October 2011 alone, climatological phenomena caused the loss of \$1.3 billion, or 6% of the country's GDP.⁴¹

Guatemala

According to Germanwatch's Global Climate Risk Index, which measures weather-related losses, Guatemala was the most vulnerable country in the region between 2000 and 2019.⁴² Guatemala is the region's country most exposed to natural hazards⁴³ and is frequently listed as one of the world's ten nations most vulnerable to climate change.⁴⁴

³²Sönke Kreft et al., "Global Climate Risk Index 2016: Who Suffers Most from Extreme Weather Events? Weather-Related Loss Events in 2014 and 1995 to 2014" (Germanwatch, November 2015): 6, accessed at <https://germanwatch.org/sites/default/files/publication/13503.pdf>.

³³Government of Honduras, "Contribución Prevista y Determinada a Nivel Nacional" (September 2015): 6, accessed at https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Honduras%20First/Honduras%20INDC_esp.pdf.

³⁴Government of Honduras, "Actualización de la Contribución Nacional Determinada de Honduras" (May 2021), accessed at https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Honduras%20First/NDC%20de%20Honduras_%20Primera%20Actualizaci%C3%B3n.pdf.

³⁵United States Agency for International Development, "Climate Change Risk Profile Honduras" (March 2017), accessed at https://www.climatelinks.org/sites/default/files/asset/document/2017_USAID%20ATLAS_Climate%20Change%20Risk%20Profile_Honduras.pdf.

³⁶Nicholas Depsky and Diego Pons, "Meteorological Droughts Are Projected to Worsen in Central America's Dry Corridor throughout the 21st Century," *Environmental Research Letters* 16, no. 1, 014001 (2020): 1, accessed at <https://doi.org/10.1088/1748-9326/abc5e2>.

³⁷Government of El Salvador, "Tercera Comunicación Nacional de Cambio Climático," (2018): 11, accessed at <https://unfccc.int/sites/default/files/resource/El%20Salvador-NC3-1-TCN%202018%20Rejecutivo%20ingles%20espanol%20WEB.pdf>.

³⁸Government of El Salvador, "Tercera Comunicación Nacional de Cambio Climático," 7.

³⁹Government of El Salvador, "Contribución Prevista y Determinada a Nivel Nacional De El Salvador," (November 2015): 3, accessed at <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/El%20Salvador%20First/EL%20SALVADOR-INTENDED%20NATIONALLY%20DETERMINED%20CONTRIBUTION.pdf>.

⁴⁰World Bank, "World Bank Climate Change Knowledge Portal," accessed September 15, 2021, <https://climateknowledgeportal.worldbank.org/country/el-salvador>.

⁴¹Government of El Salvador, "Contribución Prevista y Determinada a Nivel Nacional de El Salvador," 3.

⁴²Eckstein, Künzel, and Schäfer, "Global Climate Risk Index 2021," 38.

⁴³Guatemala: World Food Programme," UN World Food Programme, accessed September 15, 2021, <https://www.wfp.org/countries/guatemala>.

⁴⁴Gena Steffens, "Changing Climate Forces Desperate Guatemalans to Migrate," *Environment* (National Geographic, May 3, 2021), accessed at <https://www.nationalgeographic.com/environment/article/drought-climate-change-force-guatemalans-migrate-to-us>.

Issues of poverty and food insecurity compound the issue of climate change in Guatemala.⁴⁵ Two-thirds of the population live on less than \$2 a day and nearly half of Guatemala's 16.3 million people cannot afford the cost of a canasta basica (basic food basket).⁴⁶ Between 1998 and 2010, Guatemala attributed economic losses in the agricultural sector from climate variability to a total of \$1.85 billion.⁴⁷

Nicaragua

Nicaragua's vulnerability to climate change is heightened by the fact that it is the poorest country in the region.⁴⁸ Drought, floods, landslides, and crop destruction from climate change pose a major threat to the nation.⁴⁹ Both average annual temperature and total precipitation have increased in recent years.

Hurricanes in Nicaragua have recently become a major concern. The World Bank estimates that between 1994 and 2013, hydrometeorological disasters in Nicaragua caused 160 deaths per year.⁵⁰ These disasters also caused an average annual loss of \$301.75 million per year, totalling 1.71% of the country's GDP. Last year, the country had a historically devastating year as it was

pummeled by category 4 and 5 hurricanes Eta and Iota, affecting more than 3 million people and causing losses and damages totalling more than \$738 million or 6.2% of the country's GDP.⁵¹

Costa Rica

Costa Rica's location south of the traditional hurricane path has helped put it in a better position than some of its neighbors. Costa Rica's per capita GDP is also higher than its neighbors, although its poverty rate has increased to nearly 26.2% during the COVID-19 pandemic.⁵²

Increases in floods, storms and drought put Costa Rica's roads, bridges, sewers, electrical transmission, and communications systems at risk. The Comptroller General of the Republic has estimated that by 2025, damage from hydrometeorological and climate extreme events could total between 0.68% and 1.05% of the country's GDP in a conservative scenario and between 1.64% and 2.5% in a more high-risk scenario.⁵³ The government claims losses from hydrological events between 2005 and 2017 from climate change were estimated to be at \$2.2 billion in terms of loss and damage to infrastructure, services, and production.⁵⁴

⁴⁵Andrea Milan and Sergio Ruano, "Rainfall Variability, Food Insecurity and Migration in Cabricán, Guatemala," *Climate and Development* 6, no. 1 (February 2014): 64, accessed at <https://doi.org/10.1080/17565529.2013.857589>.

⁴⁶"Guatemala: World Food Programme."

⁴⁷Republic of Guatemala, "Contribución Prevista y Determinada a Nivel Nacional" (2015), accessed at <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Guatemala%20First/Gobierno%20de%20Guatemala%20INDC-UNFCCC%20Sept%202015.pdf>.

⁴⁸World Bank, "GDP per capita (current US\$). Data." (n.d.) accessed September 15, 2021, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

⁴⁹Government of Nicaragua, "Contribución Nacionalmente Determinada de Nicaragua: Actualización 2020 (2020): 26, accessed at https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Nicaragua%20First/Contribuciones_Nacionales_Determinadas_Nicaragua.pdf.

⁵⁰Government of Nicaragua and The World Bank, "Hydro Meteorological and Climate Services Modernisation Plan for Nicaragua" (2019), accessed at <https://documents1.worldbank.org/curated/en/205251562831448667/text/Hydrometeorological-and-Climate-Services-Modernization-Plan-for-Nicaragua.txt>.

⁵¹Government of Nicaragua, "Contribución Nacionalmente Determinada de Nicaragua: Actualización 2020" (2020): 8, accessed at https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Nicaragua%20First/Contribuciones_Nacionales_Determinadas_Nicaragua.pdf.

⁵²Instituto Nacional de Estadística y Censos, "Principales resultados de la Encuesta Nacional de Hogares 2020 Pobreza por Ingresos Alcanzó un 26,2%," accessed September 15, 2021, <https://www.inec.cr/noticia/pobreza-por-ingresos-alcanzo-un-262>.

⁵³Contraloría General de la República, "Presión Sobre La Hacienda Pública En Un Contexto De Variabilidad y Cambio Climático: Desafíos Para Mejorar Las Condiciones Presentes y Reducir Los Impactos Futuros" (2017): 11, accessed at https://cgrfiles.cgr.go.cr/publico/docs_cgr/2017/SIGYD_D_2017015617.pdf.

⁵⁴Government of Costa Rica, "Política Nacional de Adaptación al Cambio Climático de Costa Rica 2018-2030" (2018): 9, accessed at <http://bit.ly/2kzimAm>.

Human Rights Implications

By driving waves of migration, affecting the livelihoods of small farmers and others, and causing thousands of deaths, loss and damage and human rights are inextricably linked. Loss and damage has the potential to affect civil and political rights, including life, liberty, and property.⁵⁵ It also affects economic, social, and cultural rights, such as the right to work, access to education, and the continuous improvement of living conditions.

As a 2014 IPCC report states, “people who are socially, economically, culturally, politically, or institutionally marginalized are especially vulnerable to climate change.”⁵⁶ Furthermore, climate change disproportionately affects people under vulnerable conditions who have the least responsibility for causing climate change, such as indigenous peoples, women, children, and people with disabilities.⁵⁷ The enjoyment of human rights by millions of people has been affected by climate impacts, including the rights to food, to water and sanitation, to health, and to adequate housing.⁵⁸

The connection between human rights and climate change is well-documented in the UNFCCC process and the result of a long history of advocacy by human rights proponents.⁵⁹ The preamble of the

Paris Agreement encourages nations to “consider their respective obligations on human rights” when addressing climate.⁶⁰ Adopting a human-rights based approach through an intersectional lens is key to addressing the climate crisis.

As Martinez and Toussaint note, a human rights-based approach “presents a unique opportunity to bring into the climate change process the voices of those most affected by loss and damage that have gone hitherto largely unheard.”⁶¹ Integrating human rights considerations in a systematic way will help better address issues of loss and damage.

“Under human rights law, those who suffer human rights harms because of climate change are entitled to protection and effective remedy,” wrote U.N. High Commissioner for Human Rights Michele Bachelet in an open letter to member states. “An equitable loss and damage regime will ensure that the 2030 Agenda to leave no one behind.”⁶²

⁵⁵Magdalena Albar Diaz et al., *Cambio Climático y Los Derechos De Mujeres, Pueblos Indígenas y Comunidades Rurales En Las Américas*, (Bogotá: Heinrich Böll Stiftung, 2020): 31, accessed at: <https://mx.boell.org/es/2020/05/12/cambio-climatico-y-los-derechos-de-mujeres-pueblos-indigenas-y-comunidades-rurales-en>.

⁵⁶Christopher B. Field et al., “Summary for Policymakers. In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*” (Intergovernmental Panel on Climate Change, 2014): 6, accessed at https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgII_spm_en.pdf.

⁵⁷IPCC, *Climate Change 2014: Synthesis Report* (Geneva, Switzerland: IPCC, 2015); Magdalena Albar Diaz et al., “*Cambio Climático y Los Derechos De Mujeres, Pueblos Indígenas y Comunidades Rurales En Las Américas*” (Heinrich Böll Stiftung, 2020), accessed at https://mx.boell.org/sites/default/files/2020-05/hbs_Cambio_climatico%20en%20las%20Americas_web_0.pdf; Human Rights Council, “Summary of the Panel Discussion on Human Rights, Climate Change, Nigrants and Persons Displaced Across International Borders” (2017) UN Doc A/HRC/37/35, accessed at https://undocs.org/en/A/HRC/37/35_11.

⁵⁸Human Rights Council, “Summary of the Panel Discussion on Human Rights, Climate Change, Nigrants and Persons Displaced Across International Borders,” 2.

⁵⁹Patrick Toussaint and Adrian Martínez Blanco, “A Human Rights-Based Approach to Loss and Damage under the Climate Change Regime,” *The Third Pillar of International Climate Change Policy* (June 2019): 3, accessed at <https://doi.org/10.1080/14693062.2019.1630354>.

⁶⁰United Nations, “Paris Agreement,” United Nations Treaty Series Online registration no. I-54113 (December 12, 2015), accessed at https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁶¹Toussaint and Blanco, “A Human Rights-Based Approach to Loss and Damage,” 2.

⁶²Michele Bachelet, “Open-Letter from the United Nations High Commissioner for Human Rights to Member States on Priorities for Human Rights to Member States on Priorities for Human Rights-Based Climate Action at the 25th Conference of the Parties to the United Nations Framework Convention on Climate Change” (United Nations Office of the High Commissioner, 2019), accessed at https://www.ohchr.org/Documents/Issues/ClimateChange/UNFCCCOP25_OpenletterfromHCMemberStates_Nov2019.pdf.

Relevant Discussions for COP26

Warsaw International Mechanism

With limited resources, Central American nations will have to tap into multilateral efforts to deal with loss and damage.

Loss and damage has been a formal item in the U.N negotiating process since 2010⁶³ and continues to be one of the most polarizing topics. While the WIM remains largely an abstract concept, it remains the principal mechanism to address the topic of loss and damage at the international level and will likely serve as the foundation for future developments on the subject. This became clear at COP25, where the Santiago Network on Loss and Damage (SNLD) was created as part of the WIM.

Santiago Network

The SNLD was created with the vision of bringing together various actors to catalyze the technical assistance for the “implementation of relevant approaches for averting, minimizing, and addressing loss and damage at the local, national, and regional level.”⁶⁴ Exchanging knowledge and resources with other nations and experts around the globe would be greatly beneficial to Central American nations.

Debt for Climate Swaps

Debt swaps can be a useful tool for poor countries to address environmental challenges.⁶⁵ Central American nations are strapped with crippling debts that have ballooned during the pandemic.

Costa Rica’s government, for example, estimated the national debt to be 69.7% of the nation’s GDP in December 2020.⁶⁶

This debt has created an additional burden for nations to address the climate crisis, particularly in the areas of loss and damage and adaptation. Thomas Hirsch points out that debt relief could be an effective way to open funds to tackle the climate crisis and lead to distributive justice.⁶⁷

Human Mobility as a Right

Climate-driven human mobility in Central America requires a robust response at the national, regional, and international levels to adequately respond to the mass migration that is already well underway.

Martinez and Gutierrez assert that human mobility in the context of climate change is a human right and the international community must take steps to guarantee this right. Multilateral mechanisms must be put into place to protect those fleeing drought, hydrometeorological events, and sea level rise.⁶⁸

Compensation and Liability

The inclusion of Paragraph 51 in the Paris Decision CP21 presents an extraordinary challenge surrounding the issues of compensation and liability. Despite this handicap, the fight for receiving compensation and holding polluters to account is far from over at the multilateral level.

⁶³Kreienkamp and Vanhala, “Climate Change Loss and Damage,” 1.

⁶⁴UNFCCC, “Operationalising the Santiago Network - Input Paper” (2021), accessed at [https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202104231718---Santiago%20Network%20%20input%20paper%20April%202021%20\(003\).pdf](https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202104231718---Santiago%20Network%20%20input%20paper%20April%202021%20(003).pdf).

⁶⁵OECD, “Lessons Learnt from Experience with Debt-for-Environment Swaps in Economies in Transition” OECD Papers, vol. 7/5 (2007): 7, https://doi.org/10.1787/oeed_papers-v7-art15-en.

⁶⁶Government of Costa Rica, “Déficit Cierra En 8,34% Del PIB, Menor a la Cifra Proyectada del 9,2%,” Presidencia de la República de Costa Rica, January 18, 2021, accessed October 3, 2021, <https://www.presidencia.go.cr/comunicados/2021/01/deficit-cierra-en-834-del-pib-menor-a-la-cifra-proyectada-del-92/>.

⁶⁷Thomas Hirsch, “Climate Finance for Addressing Loss and Damage: How to Mobilize Support for Developing Countries to Tackle Loss and Damage” (Brot für die Welt, November 2019): 28, https://reliefweb.int/sites/reliefweb.int/files/resources/ClimateFinance_LossDamage.pdf.

⁶⁸Martínez and Gutiérrez, *Movilidad Humana*, 31.

Climate justice will mean those most responsible for the climate crisis will assume liability and provide compensation for losses and damages generated. Eventually, this will mean the establishment of a multilateral mechanism to provide compensation. Climate finance efforts are important in reaching the people most affected by the climate crisis but have been far from sufficient. One study, which analyzed over \$500 billion of climate finance, showed only \$10 billion was allocated to smallholder farmers.⁶⁹

Wewerinke-Singh and Diana Hinge Salili believe the issue of compensation for climate loss and damage is “best addressed at the multilateral level.” The authors point to a climate damage tax (CDT) on fossil fuel companies as a “particularly promising option for mobilizing loss and damage facility.”⁷⁰

⁶⁹Daniela Chirac and Baysa Naran, Examining the Climate Finance Gap for Small-Scale Agriculture, Climate Policy Initiative (2020): 4, accessed at https://www.ifad.org/documents/38714170/42157470/climate-finance-gap_smallscale_agr.pdf/34b2e25b-7572-b31d-6d0c-d5ea5ea8f96f?t=1605021452000.

⁷⁰Margaretha Wewerinke-Singh and Diana Hinge Salili, “Open Access: Between Negotiations and Litigation: Vanuatu’s Perspective on Loss and Damage from Climate Change,” The Third Pillar of International Climate Change Policy (June 2019): 681, <https://doi.org/10.1080/14693062.2019.1623166>.

Policy Demands

The stakes at this year's negotiations are unprecedented. The findings from August's IPCC Working Group 1 Report led to a declaration of "code red for humanity," while the latest NDC Synthesis Report shows the world appears headed on a "catastrophic path" to a world of 2.7°C warming.⁷¹ Nations have failed to adequately address mitigation efforts at a global level, let alone finance efforts toward adaptation and loss and damage.

As the hope for a 1.5°C world fades, loss and damage must be given equal weight as the third pillar of climate action. Parties must adopt a human rights-based approach to loss and damage to responsibly address loss and damage. Rich nations, which have long fought against any compensation liability measures, must provide developing nations the financial support to handle the effects of loss and damage from climate change. The political demands from the Global South must be addressed. Justice and responsibility have to be the final outcome from COP26 regarding loss and damage

Add to the Permanent Agenda: Despite predating the annual UN climate conference, the topic of loss and damage has yet to become a permanent item on the negotiating agenda. Adding loss and damage will help elevate its role as a key fixture in the negotiations and amplify the voices of the most vulnerable nations.

Operationalize the SNLD: Although it was established nearly two years ago, the SNLD remains an abstract concept at the moment. Nations must move forward and operationalize the network at COP26 to prevent it from being reduced to "being just another website."⁷² An effective Santiago

Network on Loss and Damage would put a focus on gender, with women informing design of all new initiatives on loss and damage tied to the SNLD.

Establish a Finance Facility: In the decision adopted at COP25,⁷³ parties pushed for the scaling up of action and support of financial resources for developing countries to help avert, minimize, and address loss and damage, but stopped short of providing a home for these resources. Identifying and establishing a finance facility will be critical for a successful COP26. Parties must establish a finance facility under the COP at this year's negotiations.

Scale Up Individual Commitments: In addition to making commitments toward mitigation and adaptation finance, rich nations must begin to develop new individual finance commitments to loss and damage. An established finance facility must provide nations a way to commit individual pledges and have the institutional framework to scale up quickly. Since loss and damage is a standalone article in the Paris Agreement, these pledges should be in addition to rather than a substitute for the already insufficient \$100 billion climate finance goal established in 2009 at the negotiations in Copenhagen and reaffirmed in Paris.

Develop New Sources of Finance: Parties must explore innovative mechanisms to mobilize resources to finance irreversible losses and damages. Examples of new sources of international finance could include implementing a climate damages tax on carbon majors, establishing a wealth tax, shifting fossil fuel subsidies toward loss and damage, and providing opportunities for debt cancellation during climate-induced crises.

⁷¹"Noon Briefing Highlight Secretary-General," Office of the Spokesperson for the UN Secretary-General (United Nations, September 17, 2021), accessed at <https://www.un.org/sg/en/content/noon-briefing-highlight>.

⁷²Saleemul Huq, "Dealing with Loss and Damage in COP26," The Daily Star, February 9, 2021, accessed at <https://www.thedailystar.net/opinion/politics-climate-change/news/dealing-loss-and-damage-cop26-2041965>.

⁷³"Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts and the 2019 Review of the Mechanism" (UNFCCC, December 9, 2019), accessed at https://unfccc.int/sites/default/files/resource/sb2019_L8E.pdf.



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