

# LOSS AND DAMAGE:

## A PERSPECTIVE FROM PAKISTAN



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## Executive Summary

Human-induced climate change has led to the increased frequency of extreme weather events, particularly in countries in the Global South. This has led to considerable loss and damage in climate-vulnerable developing countries, the recent flooding in Pakistan being a critical example. In the lead up to COP 27, developing States and global climate activists demanded progress in negotiations on loss and damage finance and technical assistance as the Paris Agreement does not adequately address these issues.

States that suffer the most from loss and damage associated with climate change impacts are not the ones who have contributed the most to global greenhouse gas emissions and are usually less technically and financially able to address loss and damage. Confusion around loss and damage concepts, differing views on the size and source of funding, and fear among developed States that they may be held financially liable for historical emissions all impede meaningful progress on loss and damage negotiations.

The global community must cooperate to establish a loss and damage financial and technical assistance facility that allows developing States to access necessary financial and technical resources to (1) build infrastructure to prevent significant loss and damage; (2) develop rehabilitation programmes for those who have lost their livelihoods following a natural disaster; and (3) fund reconstruction efforts.

## Introduction

Devastating flooding in Pakistan has prompted discourse about how the international community must respond to climate-induced disasters, particularly in those countries in the Global South which are especially vulnerable to the adverse effects of climate change. Pakistan has been declared one of the ten most vulnerable countries to climate change.<sup>1</sup> The prolonged and unprecedented monsoon rainfall that caused devastating flooding in July and August 2022 is a testament to the effects of rising global temperatures for vulnerable States. However, Pakistan only contributes 1.02% of global carbon emissions,<sup>2</sup> a share of emissions that seems disproportionate to the loss and damage the country suffered this summer. The impacts of the floods have sparked a global conversation on whether States that have historically emitted greater amounts of greenhouse gases (GHGs) should be responsible for the damage in vulnerable regions with significantly lower GHG emissions.

### Loss and damage from floods in Pakistan

|                 |            |                  |                  |                                                           |
|-----------------|------------|------------------|------------------|-----------------------------------------------------------|
| 33 million      | 1600       | 2 million        | 13,000 km        | 18,200 km <sup>2</sup>                                    |
| people affected | lives lost | houses destroyed | of roads damaged | of cropland with crop losses estimated at US\$2.3 billion |

## What is Loss and Damage?

Although there is no internationally agreed definition of ‘loss and damage’,<sup>3</sup> the concept refers to effects to life and property that persist despite emissions mitigation and adaptation efforts. ‘Loss’ refers to irreparable damage, such as loss of human and animal life, whereas ‘damage’ refers to harm that may be repaired, such as damaged infrastructure. Loss and damage can be both economic and non-economic. Economic loss and damage refers to those losses that can be monetarily valued, including property, infrastructure, and belongings. Non-economic loss and damage (NELD) covers those losses which cannot be measured, including loss of life, health, cultural heritage, and biodiversity. It is in the best interests of developing States to build sufficient capacity and infrastructure to prevent loss and damage in the event of a climate-induced natural disaster.

<sup>1</sup> Eckstein D, Kunzel V and Schafer L, ‘Global Climate Risk Index 2021’ (2021) Germanwatch  
[https://www.germanwatch.org/sites/default/files/Global%20Climate%20Risk%20Index%202021\\_2.pdf](https://www.germanwatch.org/sites/default/files/Global%20Climate%20Risk%20Index%202021_2.pdf)

<sup>2</sup> ‘UNEP Climate Action Note | Data You Need to Know’ <<https://www.unep.org/explore-topics/climate-action/what-we-do/climate-action-note/state-of-the-climate.html>> accessed 8 November 2022

<sup>3</sup> ‘What Is Loss and Damage?’ | Chatham House – International Affairs Think Tank  
 <<https://www.chathamhouse.org/2022/08/what-loss-and-damage>> accessed 17 November 2022



Climate-vulnerable States, such as Small Island Developing States (SIDS), are most at risk to the consequences of climate change, such as rising sea levels and more intense monsoons, which threaten the longevity and existence of these States. Generally, these States also have 'lower technical, technological and financial capacities to address loss and damage.'<sup>4</sup> Climate-vulnerable developing countries have, therefore, sought financial redress under international environmental law mechanisms, such as the UNFCCC, to cope with future loss and damage threats. Estimates indicate that by 2050, the projected cost of global loss and damage will be \$1 trillion.<sup>5</sup> However, under the current international climate change regime, there is no mechanism to leverage funding specifically for loss and damage. This may be because developed States that historically contributed the most to GHG emissions have sought to evade responsibility for loss and damage compensation. In *Decision 1/CP.21* in 2015, the COP agreed that loss and damage obligations under the Paris Agreement would not give rise to claims for 'liability or compensation.'<sup>6</sup>

Nevertheless, amidst the recent wake of severe natural disasters around the world, the global community has called on the Global North, which has historically contributed the most to GHG emissions, to pay 'climate reparations' to States in the Global South which suffer the most from climate change. Thus, calls for 'loss and damage finance' are often conflated with calls for climate reparations. However, one must distinguish between the two: loss and damage finance includes funding specifically for projects that directly address 'unavoidable climate catastrophes'.<sup>7</sup> These can

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> UNFCCC 'Adoption of the Paris Agreement' (2015), Decision 1/CP.21, FCCC/CP/2015/10/Add.1, para 51

<sup>7</sup> 'Loss and Damage and Climate Financing - What It Means' (*Climate Council*)

<<https://www.climatecouncil.org.au/resources/loss-and-damage-and-climate-financing/>> accessed 17 November 2022

include disaster risk management systems, early warning systems, social protection funds and rehabilitation funds. Climate reparations, on the other hand, is compensation based on historical responsibility and liability, which would not necessarily be targeted towards current or future environmental threats to a State. Thus, States in the Global South should prioritise seeking loss and damage finance as this will allow finance flows directly into infrastructure and resources to ameliorate future environmental threats.

It is pertinent to see how loss and damage fits into the framework of international environmental law, specifically as it pertains to climate change, to understand the complexities in addressing loss and damage on a global scale.

## The Paris Agreement

The Paris Agreement is hailed as a landmark agreement in climate change law that binds all nations to various obligations. Most significantly, States agree to take all measures to hold 'the increase in the global average temperature to well below 2°C above pre-industrial levels and [pursue] efforts to limit the temperature increase to 1.5°C above pre-industrial levels'.<sup>8</sup> The crux of the Paris Agreement is the voluntary cooperation mechanism enforced through the submission and implementation of Nationally Determined Contributions (NDCs) to the UNFCCC Secretariat.<sup>9</sup> NDCs outline each State's commitments to reduce GHG emissions and how they intend on achieving these emission reduction targets. The measures employed by States to achieve these targets include mitigation, adaptation, loss and damage, climate finance and capacity building. Mitigation measures aim to reduce a State's overall emissions, such as by reducing subsidies for fossil fuel structures and reforesting carbon sinks. Adaptation measures aim to restructure a State's economy around low-emissions energy production and industries while also adapting consumer habits to be more environmentally friendly. Loss and damage obligations require inter-State cooperation to reduce the impact of extreme weather events (such as more frequent tropical storms) and slow onset events (such as sea level rise). Climate finance obligations require developed country State Parties to mobilise financial support to developing country State Parties to facilitate their mitigation and adaptation efforts. This can be complemented by capacity building and technology transfer that allow developing countries to meet their emission reduction targets, such as the transfer of intellectual property and low-emission public transportation vehicles.

The climate crisis thus poses a major challenge to our traditional understanding of liability-based compensation, which is where the struggle for loss and damage finance lies. Under tort law, a party responsible for damage must compensate the aggrieved party for the reasonably foreseeable damage they cause.<sup>10</sup> However, such a liability model does not fit well within international environmental law. Indeed, modern climate science cannot prove whether a particular State's emissions are the reason for a natural disaster in another State elsewhere. Neither can climate science be used to establish causation to satisfy the legal test to trigger such liability. This makes calls for climate reparations difficult: while a correlation may exist between disproportionate emissions and increased extreme weather events,<sup>11</sup> it cannot be determined whether a particular State's emissions are more responsible for the increased likelihood of extreme weather events in another State. Therefore, loss and damage needs to be addressed through mutual cooperation based on a mutual understanding of the urgency of the matter.

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<sup>8</sup> U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015) ('Paris Agreement'), Article 2(a)(i)

<sup>9</sup> Paris Agreement, Article 4(2)

<sup>10</sup> A principle of tort law explored in *Donoghue v Stevenson* [1932] UKHL 100

<sup>11</sup> IPCC 'Summary for Policymakers' (2018), 11

## Who has contributed most to global CO<sub>2</sub> emissions?

Our World  
in Data

Cumulative carbon dioxide (CO<sub>2</sub>) emissions over the period from 1751 to 2017. Figures are based on production-based emissions which measure CO<sub>2</sub> produced domestically from fossil fuel combustion and cement, and do not correct for emissions embedded in trade (i.e. consumption-based). Emissions from international travel are not included.

### North America

457 billion tonnes CO<sub>2</sub>  
29% global cumulative emissions

**USA**  
399 billion tonnes CO<sub>2</sub>  
25% global cumulative emissions

**Canada**  
32 billion t  
2%

**Mexico**  
19 billion t  
1.2%

### Asia

457 billion tonnes CO<sub>2</sub>  
29% global cumulative emissions

**China**  
200 billion tonnes CO<sub>2</sub>  
12.7% global cumulative emissions

**Japan**  
62 billion t  
4%

### EU-28

353 billion tonnes CO<sub>2</sub>  
22% global cumulative emissions

### Russia

101 billion tonnes  
6% global emissions

### India

48 billion t  
3%

### South Korea

16 billion t  
1%

### Taiwan

8 billion t  
0.5%

### Thailand

4 billion t  
0.2%

### Uzbekistan

3 billion t  
0.2%

### Iran

17 billion t  
1%

### Kazakhstan

12 billion t  
0.8%

### Europe

514 billion tonnes CO<sub>2</sub>  
33% global cumulative emissions

### Ukraine

19 billion t  
1.2%

### Turkey

9.6 billion t  
0.6%

### South Africa

19.5 billion t  
1.3%

### Algeria

4.1 billion t  
0.3%

### Brazil

14.2 billion t  
0.9%

### Venezuela

7.8 billion t  
0.5%

### Australia

17.4 billion t  
1.1%

### Africa

43 billion tonnes CO<sub>2</sub>  
3% global emissions

### South America

40 billion tonnes CO<sub>2</sub>  
3% global emissions

### Oceania

20 billion tonnes CO<sub>2</sub>  
1.2% global emissions

Figures for the 28 countries in the European Union have been grouped as the 'EU-28' since international targets and negotiations are typically set as a collaborative target between EU countries. Values may not sum to 100% due to rounding.

Data source: Calculated by Our World in Data based on data from the Global Carbon Project (GCP) and Carbon Dioxide Analysis Center (CDIAC). This is a visualization from OurWorldinData.org, where you find data and research on how the world is changing.

Licensed under CC-BY by the author Hannah Ritchie.

Source: Hannah Ritchie, Max Roser and Pablo Rosado (2020) - "CO<sub>2</sub> and Greenhouse Gas Emissions".

<https://ourworldindata.org/co2-and-other-greenhouse-gas-emissions>

## Loss and Damage in the Paris Agreement

The concept of loss and damage was introduced in Article 8 of the Paris Agreement, where States agreed to '[a]vert, minimise and address] loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events', while focusing on sustainable development to prevent further loss and damage.<sup>12</sup> The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts ('Warsaw Mechanism') established at COP19 in 2013 provided an institutional framework for loss and damage. It was adopted under the UNFCCC, and its continued operation was affirmed in the Paris Agreement.

<sup>12</sup> Paris Agreement, Article 8(1)

The WIM is mandated to fulfil three functions (Decision 2/CP.19, para 5):



Adapted from Loss and Damage Online Guide, UNFCCC, 2020

Loss and damage has largely been operationalised by the Conference of Parties ('COP'). The COP agreed that the Warsaw Mechanism would be charged with implementing the responsibilities of State Parties under loss and damage by assigning it various roles and competencies in *CP.2013/10*. These include '[E]nhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts'<sup>13</sup> and '[E]nhancing action and support, including finance, technology and capacity- building, to address loss and damage associated with the adverse effects of climate change'.<sup>14</sup>

Further developments in the Warsaw Mechanism include the establishment of a Fiji Clearing House for Risk Transfer, serving as an information repository for risk management strategy development,<sup>15</sup> as well as establishing a task force to 'complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organisations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.'<sup>16</sup> Thus, the COP established two further operational responsibilities under the Warsaw Mechanism after the UNFCCC was effectively replaced by the Paris Agreement.

## The Global Stocktake

The global stocktake of the Paris Agreement<sup>17</sup> will serve as an important source of information regarding the implementation of obligations under the Paris Agreement by each Member State. The first global stocktake is set to be completed in 2023 at COP 28. In the first meeting of the technical dialogue of the first global stocktake,<sup>18</sup> an increased likelihood of exacerbated climate events was highlighted as the basis for a pressing need to address and minimise loss and damage

<sup>13</sup> UNFCCC 'Warsaw international mechanism for loss and damage associated with climate change impacts' (2013), Decision 2/CP.19, FCCC/CP/2013/10/Add.1, para 5(a)

<sup>14</sup> Ibid, para 5(c)

<sup>15</sup> Ibid (n 5), para 48

<sup>16</sup> Ibid, para 49

<sup>17</sup> Paris Agreement, Article 14

<sup>18</sup> UNFCCC Global Stocktake 'Summary report on the first meeting of the technical dialogue of the first global stocktake under the Paris Agreement' (2022), GST.TD.2022.SummaryReport.1

which may be economic or non-economic in nature. Coordinated multi-level approaches by national, regional, and local governments to loss and damage were also emphasised. Finally, the importance of leveraging climate finance, such as green budgeting; SDRs; debt for climate swaps; taxes; and market mechanisms<sup>19</sup> were suggested specifically for minimising loss and damage.

Before the culmination of the first global stocktake at COP 28, it is also crucial to determine how information on the implementation of loss and damage under Article 8 is to be reported.<sup>20</sup> For example, the literature on what constitutes 'loss' and what constitutes 'damage' is inconclusive.<sup>21</sup> Furthermore, it is unclear whether the global stocktake should serve to build a common understanding of loss and damage practices or suggest recommended loss and damage practices.<sup>22</sup> It is necessary to determine how the global stocktake frames and shapes the discourse around loss and damage, as it will constitute how the COP and the international community at large will tackle loss and damage.

## Goal on Climate Finance

The UNFCCC established a New Collective Quantified Goal on Climate Finance. According to the technical paper prepared by the Secretariat,<sup>23</sup> some submissions provided 'estimates for loss and damage to range from USD 290 billion to USD 580 billion in 2030 and USD 1 trillion to USD 1.8 trillion in 2050.'<sup>24</sup> Particular emphasis was laid upon a 'separate funding window for addressing loss and damage under the new goal.'<sup>25</sup> One considerable development within this technical paper is the need to limit debt-generating instruments and establish a floor for grant-based finance.<sup>26</sup>

Under this New Goal, it is clear that leveraging climate finance is an essential element of international cooperation in climate action.

Nevertheless, despite all of these considerably recent developments, the loss and damage regime under the Paris Agreement is not sufficient to tackle the increasingly frequent natural disasters that the world is witnessing, particularly in developing States. According to one report:

Across 2019-2020, the average annual global financing for climate action came to \$632 billion. Of this total, about 90.3% went to mitigation and 7.2% went to adaptation; the remaining 2.4% went to activities that covered both. While some of this likely addressed loss and damage, there is no clear estimate for how much it was, nor is there a clear or comprehensive understanding of mechanisms to directly address loss and damage once a climate catastrophe hits.<sup>27</sup>

Thus, there is a clear need for the international community to invest in the effective operationalisation of the loss and damage regime, in order to provide the necessary help required by vulnerable states suffering from extreme climate and weather events.

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<sup>19</sup> Ibid, para 322

<sup>20</sup> Puig D 'Loss and damage in the global stocktake' (2022) 22:2 Climate Policy 175, 177

<sup>21</sup> Ibid, 178

<sup>22</sup> Ibid, 179

<sup>23</sup> FCCC/TP/2022/2

<sup>24</sup> Ibid, para 22

<sup>25</sup> Ibid, para 34

<sup>26</sup> Para 49.

<sup>27</sup> Bhandari P, Warszawski N and Thangata C, 'The Current State of Play on Financing Loss and Damage |

PreventionWeb' <<https://www.preventionweb.net/news/current-state-play-financing-loss-and-damage>> accessed

17 November 2022

## The Santiago Network

The Santiago Network for Loss and Damage ('SNLD') facilitates technical assistance under the ambit of loss and damage. The SNLD was established at COP 25 under *Decision 2/CM.4.2* under the Warsaw Mechanism. It functions to 'catalyse the technical assistance of relevant organisations, bodies, networks and experts, for the implementation of relevant approaches' at multiple levels to particularly vulnerable developing countries.<sup>28</sup> The SNLD aims to facilitate coordination between different national contact points in an effort to determine the best practices associated with loss and damage. It also serves to facilitate access to climate finance and technical assistance to the states that would require it; thus, it is envisioned as the 'technical arm' of the Warsaw Mechanism.<sup>29</sup>

In June 2022, the UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) deliberated upon the structure of the SNLD moving forward. However, the SNLD does not yet have an established institutional framework, such as a dedicated secretariat consisting of loss and damage specialists.<sup>30</sup> Thus, with its current structure, it is difficult for the SNLD to implement the Warsaw Mechanism's mandate beyond serving as a meeting platform for national contact points. Indeed, the SNLD has served as an important mechanism to compile research and information on best practices for loss and damage; however, the focus of the SNLD must move towards facilitating these recommendations. This will involve measures such as the deployment of climate finance and technical assistance mechanisms that must be operationalised at the next COP.

Nevertheless, the efforts invested in the establishment of the SNLD are significant. The SNLD's knowledge bank and its usefulness as a platform are necessary for operationalising international financial distribution. As highlighted by Schalatek and Roberts,

What is critical for developing countries is that the technical assistance provided through the SNLD is additional to already existing efforts, not a way to systematize or map existing actions.<sup>31</sup>

Given the SBSTA and SBI's draft conclusions on operationalising loss and damage, options for turning the SNLD's mandate into operational financial distribution and technical assistance will be explored below.

## A Loss and Damage Fund

A conversation around loss and damage is necessary to facilitate the Paris Agreement's promise of international cooperation to help particularly vulnerable States ameliorate risks from severe climate events. Currently, the loss and damage setup revolves around inter-party communication of relevant expertise and strategy surrounding disaster risk management. The conversation around loss and damage needs to shift towards leveraging the requisite finances, technology and human

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<sup>28</sup> UNFCCC 'Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its 2019 review' (2019) Decision 2/CM.4.2, FCCC/PA/CM.4/2019/6/Add.1, para 43

<sup>29</sup> Khan H and others, 'Operationalization of the Santiago Network on Loss and Damage: Road to COP 27' 4, <[https://www.iccad.net/wp-content/uploads/2022/06/SNLD\\_policy\\_Brief\\_final\\_compressed.pdf](https://www.iccad.net/wp-content/uploads/2022/06/SNLD_policy_Brief_final_compressed.pdf)> accessed 17 November 2022

<sup>30</sup> *ibid*

<sup>31</sup> Schalatek L and Roberts E, 'Deferred Not Defeated: The Outcome on Loss and Damage Finance at COP26 and next Steps | Heinrich Böll Stiftung | Washington, DC Office - USA, Canada, Global Dialogue' <<https://us.boell.org/en/2021/12/16/deferred-not-defeated-outcome-loss-and-damage-finance-cop26-and-next-steps>> accessed 17 November 2022

resources to States that require them. This can be operationalised through the establishment of a designated loss and damage fund.

The GCF has funded 27 projects that mention ‘loss and damage’ or a derivative of the term in their proposals.<sup>32</sup> The IPCC found that the majority of the language pertaining to loss and damage is referred to in relation to adaptation, i.e., building some sort of resilience to climate change-exacerbated weather events.<sup>33</sup> These projects primarily requested monetary assistance in the form of grants or loans. Although intrinsically linked with adaptation and mitigation efforts, future proposals must focus on specific loss and damage requirements, such as implementing disaster risk management systems.

One recommendation could be that contributions to the Fund should be made a part of each State’s NDCs. The main contributors to the Fund should be States that are relatively high GHG emitters, which can be calculated based on a State’s GHG emissions as a percentage of total global emissions. The Fund can determine a total value that needs to be raised to leverage sufficient relief and humanitarian aid under its ambit. This total value can be divided according to each State’s percentage of global emissions. This may also act as an incentive for States to reduce their emissions as their required monetary contributions to the Fund will decrease as their emissions decrease. Indeed, this would require an acknowledgement from major emitting States that it is their responsibility to contribute to a loss and damage fund, as their high emissions exacerbate the threats posed to vulnerable states.

Some highlight that the current funding arrangements under the UNFCCC should be adapted and utilised for loss and damage as well.<sup>34</sup> This Fund can either be a part of the UNFCCC Green Climate Fund (GCF) or a separate fund managed by the Warsaw Mechanism’s Executive Committee. However, current funding arrangements have certain shortcomings. According to a paper by the Stockholm Environment Institute, current international financing arrangements are characterised by ‘stringent accreditation requirements, long lag times in finance mobilisation and the project-based model in general, make access to finance highly challenging for most vulnerable countries.’<sup>35</sup> This is ultimately incompatible with the urgent loss and damage funding that vulnerable States require in the aftermath of a climate disaster. Therefore, if current funding arrangements would be inadequate for loss and damage, a separate loss and damage fund that allows States to access critical funding for reconstruction, repair and rehabilitation without existing bureaucratic hurdles and lending criteria will be key to operationalising loss and damage finance.

## Technical Assistance and Finance

The language used to establish the SNLD under the Warsaw Mechanism also reflects an emphasis on ‘catalyzing’ technical assistance, a choice of semantics that indicates the Global North’s reluctance to agree to stronger obligations of developing comprehensive technical assistance under loss and damage.<sup>36</sup>

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<sup>32</sup> Kempa L., Zamarioli L., Pauw W.P. & Çevik C. ‘Financing measures to avert, minimise and address loss and damage: options for the Green Climate Fund’ (2021) Frankfurt School- UNEP Centre research paper, 19

<sup>33</sup> Ibid

<sup>34</sup> Dasgupta A and Bhandari P, ‘COP27’s Success Hinges on Loss and Damage Finance Discussions’ World Resources Institute (28 October 2022) <<https://www.wri.org/insights/cop27-loss-damage-finance>> accessed 17 November 2022

<sup>35</sup> Wang B. and Rai N. ‘The Green Climate Fund Accreditation Process: Barrier or Opportunity?’ (2015) IIED Briefing Paper. International Institute for Environment and Development, London.<<https://pubs.iied.org/17311iied>> accessed 17 November 2022

<sup>36</sup> Schalatek and Roberts

Although developing countries might demand climate reparations, or increased finance flows, it is imperative that the conversation shifts away from a discussion on ‘climate reparations’ to one demanding the leveraging of technical assistance and finance to build climate resilience. Loss and damage financial and technical assistance are distinct from climate reparations, as they do not focus on purely monetary compensation but instead combine the principles of ‘common but differentiated responsibilities and respective contributions’ under the Paris Agreement with mitigation, adaptation, climate finance and loss and damage obligations.

Loss and damage is inherently intertwined with a State’s adaptation and mitigation efforts to build infrastructure that can withstand exacerbated weather events. The 2022 IPCC report highlights that climate-resilient development can only be facilitated by international cooperation, which involves finance flows into green sectors, and technical assistance in building infrastructure and disaster risk management systems.<sup>37</sup> The urgency of the issue means that creating a mechanism that encourages and ensures international finance flows for loss and damage needs to be a priority when determining the structure of the SLND and the wider Warsaw Mechanism.

Thus, technical assistance and finance need to form a crucial part of the loss and damage mechanism. Technical assistance would involve the sharing of information, intellectual property and physical technology (such as machinery) on a voluntary basis to vulnerable States. It is imperative to provide the SNLD with an operational framework that empowers it to oversee the compliance of these obligations. Because it already operates as a platform for coordination and communication between national focal points, the SNLD can use that as a basis for leveraging the required technologies and dedicated financial resources to States that have proven, through their submissions to the Network, that they require those resources.

The COP should mandate Member States to outline a commitment of technology transfer and capacity-building in their NDCs, thereby obligating them to incremental increases in each NDC submission. This would also take shape in financial donations to organisations that develop such technologies within a vulnerable State itself; a donation would be more suitable than an investment as having to provide returns on investments would create more difficulty for said vulnerable State. This will allow vulnerable States to develop climate-resilient infrastructure in the aftermath of a natural disaster without having to use pre-existing funds that can be redirected towards relief and humanitarian aid.

## Developments at COP 27

Considerable developments on operationalising loss and damage have been made in Sharm el-Sheikh at COP 27.

The SBSTA and STI recommend the Executive Committee of the WIM to continue engaging national stakeholders on loss and damage strategies<sup>38</sup> and ‘to continue collaborating with the Consultative Group of Experts... to provide technical advice and support to developing country Parties.’<sup>39</sup> Essentially, the SBSTA and STI encouraged the Executive Committee to continue to serve as a platform for advice and information exchange for national focal points.

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<sup>37</sup> IPCC ‘Summary for Policymakers’ (2022), 29

<sup>38</sup> UNFCCC ‘Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts’ (2022) Draft decision FCCC/SB/2022/L.11, <[https://unfccc.int/sites/default/files/resource/sb2022\\_L11\\_adv.pdf](https://unfccc.int/sites/default/files/resource/sb2022_L11_adv.pdf)> accessed 17 November 2022 para 4(a)

<sup>39</sup> Ibid, para 5

The most substantial development is the institutionalisation of the SNLD. The SBSTA and STI have developed a draft decision on the SNLD, creating an institutional framework for the Network. This includes an Advisory Board<sup>40</sup> with 'balanced representation between developed and developing country Parties',<sup>41</sup> as well as a Secretariat that will facilitate the work of the SNLD.<sup>42</sup> The draft decision also reiterates that the SNLD 'will be provided with funds to support technical assistance' to help States avert, minimise and address loss and damage;<sup>43</sup> these funds will [tentatively] be provided by developed countries<sup>44</sup> or countries in a position to do so<sup>45</sup> as well as private and non-governmental organisations.<sup>46</sup> This is a positive step towards creating a fully operational financial and technical-assistance SNLD. However, it remains to be seen whether this draft decision will be adopted with significant changes to the text, which may impact the structure of the SNLD proposed and the funding obligations mentioned.

## Conclusion

Ultimately, it is imperative that a loss and damage fund becomes operational. The world is witnessing more frequent, intense and unavoidable extreme weather events. Because such events cannot be avoided, vulnerable states like Pakistan must be equipped with the necessary resources to prevent loss and damage to human life, property and the natural ecosystem. However, because these weather events have been exacerbated by the Global North's historically disproportionate GHG emissions, it is incumbent upon the Global North to provide the necessary financial and technical assistance to climate-vulnerable States.

Despite pushback from the Global North, the developments at COP 27 on the loss and damage front are promising. Providing an institutional framework to the SNLD is an essential step in expanding its capabilities towards actual financial and technical assistance. However, further modalities still need to be addressed, such as the amount different States need to contribute and the consequences of a failure to comply with contribution obligations.

Nevertheless, a consolidated mechanism for financial and technical assistance designed specifically for loss and damage is necessary for the future of Pakistan and the rest of the Global South.

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<sup>40</sup> UNFCCC 'Draft Text on SBSTA 57 agenda item 6 and SBI 57 agenda item 16: Matters relating to the Santiago network under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impact' (2022) Draft text of 12 November 2022,

<[https://unfccc.int/sites/default/files/resource/cma2019\\_06a01E.pdf?download](https://unfccc.int/sites/default/files/resource/cma2019_06a01E.pdf?download)> accessed 17 November 2022, para 3(b)

<sup>41</sup> Ibid, para 11

<sup>42</sup> Ibid, para 3(a)

<sup>43</sup> Ibid, para 4

<sup>44</sup> Ibid, para 5

<sup>45</sup> Ibid, para 5 alt/bis

<sup>46</sup> Ibid para 5 ter

