The Ethical Responsibility of the Loss and Damage Mechanism: a consideration of Non-Economic Loss and Human Rights

Chapter 16

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Abstract

During the course of the United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) annual talks, nations have come together to negotiate over two main points: mitigation and adaptation. In recent years, the body adopted a work stream to understand better the consequences beyond these two goals or, minimally, when adaptation is not enough. The work stream of Loss and Damage came about to investigate both economic and non-economic losses beyond adaptation. The consideration of non-economic loss is a new topic, as much of the talks tend to center around the economic consequences of changes to development policy. However, Loss and Damage has a great potential to consider and institute recommendations (and subsequent agreements) which deal with the ethical responsibilities the world has to those who have and will lose the most due to anthropogenic climate processes. In many cases, non-economic loss will cut deep in to basic human rights, especially for those who will lose their entire nation to the rising seas. This chapter will provide an overview of the conception and development

of the Loss and Damage work stream, identify three rights that will be jeopardy due to climatic changes, and evaluate the work streams' ethical responsibility and prospective capability to handle such losses.

Introduction

In the past 20 years, the United Nations Framework Convention on Climate Change (UNFCCC) has focused on two main goals, mitigation and adaptation. In essence, mitigating the atmospheric damage that has already been done due to greenhouse gas emissions and considering adaptive measures which can be taken to deal with the changes that have already occurred. However, in recent years, representatives from multiple nations have come to the conclusion that the progress toward these objectives has been insufficient and thus, their nations would suffer irreversible destruction regardless of the goals in place. A new work plan was devised to investigate what losses these countries and their peoples would face, called "loss and damage". Loss and Damage will consider both economic and non-economic loss beyond what can be accomplished in treaties for both mitigation and adaptation. This work stream has been an important development in that it has the potential to set international policy that addresses long term irreparable damage to ecosystems, human habitats, and human rights- many of which are of a non-economic nature. Human rights for all have yet to be fully integrated into any UNFCCC climate agreement but did get a mention in the Conference of the Parties (COP) 16 outcome document and are currently in the first negotiating document for consideration coming into the Paris talks of 2015. Multiple rights will be in jeopardy in places in which long term slow onset processes are occurring- especially those susceptible to sea level rise where even national territorial integrity is threatened. Three of these are rights are: the right to nationality, right not to be expelled or denied entrance into ones territory of nationality, and the right to self-determination.

While Loss and Damage is still in its infancy, it possesses great potential to address the concerns of many of the most vulnerable to climate processes. As a prospective part of an internationally binding treaty through the UNFCCC, any measure to address such loss could be globally binding instead of ad hoc in nature. To date, its main function is that of an advisory body and can initiate a comprehensive international dialogue about historical responsibility and ethical responsibility in a context beyond mitigation where similar discussions tend to stall. It is also a space to consider rehabilitation, relocation, and to address the kind of damage that cannot easily be fixed by traditional aid. In short, the initiation of this governance mechanism has created a specific negotiating space to address many topics and concerns which have no other viable place.

Origin of Loss and Damage

Loss and damage has been a priority of the Alliance of Small Island Developing States (AOSIS) since 1991. In that year, they conceived of an international mechanism for which they could access funds immediately after a disaster. An initial insurance transfer, by 2008, the proposal developed into a multi-pronged mechanism with provisions of disaster risk management and compensation and rehabilitation for unavoidable and irreversible damage. Concurrently, the Small Island Developing States (SIDS) had been pushing for recognition for the ultimate "loss", their forced displacement from their homes. With the help of other advocates, paragraph 14 (f) was negotiated into the Cancun draft decision in 2010 at the COP 16 which invites Parties to take specific action nationally to enact: 'Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels'. Additionally, the Cancun Adaptation Framework noted that approaches to address loss and damage should consider impacts that include sea level rise, increasing temperatures, and ocean acidification. This decision launched the "Work

Programme on Loss and Damage" to consider, through workshops and expert meetings, approaches to address this issue. Though a work program was initiated, Loss and Damage was considered an informational addition and was not a proper instrument as of yet.

This changed at the COP 18 meeting in Doha, Qatar in 2012. The decision emerging from this round of climate talks represented a significant advance in the loss and damage discussion. It heightened the work stream's importance by calling for an advanced understanding of non-economic loss and damage, patterns of migration and displacement, and identification of the development of approaches to rehabilitation following climate related loss and damage. Finally, the Doha Gateway agreement mandated the formation of an institutional mechanism for the next COP. This did, in a practical sense, recognize the particular threat posed by sea-level rise. This is an important point because a group of small nations were able to bring to the forefront of the negotiations their most crucial issue. Sea-level rise, as a slow onset process, had been ignored in the origination of the UNFCCC, as well as in its sister agreements the *UN Convention on Biological Diversity*, and the *Convention to Combat Desertification* developed in that same year (1992). Desertification also creates long term loss- much of which cannot be directly rehabilitated as well. But sea-level rise has the potential to decimate entire nations while areas threatened by desertification are within larger national boundaries.

At the COP 19 in Warsaw, parties convened to establish a concrete institution. What came of this was the Warsaw International Mechanism (WIM) to address loss and damage. The agreement included both slow onset and extreme events. The parties created an executive committee which would report annually to the COP through its subsidiary bodies. The WIM was established under the Cancun Adaptation framework and not as a third distinct pillar; this made it a point of controversy. The meeting got so heated that the developing country G-77 bloc walked out of the

negotiation during the second week of the meetings. Bilateral discussions did resuscitate the talks and a compromise that resulted in the establishment of the mechanism. The decision legitimized the exploration of responses beyond mitigation and adaptation, but does not promise compensation. Additionally, the committee is not empowered to decide any outside claim.

As the work plan stands from the September 2014 Adaptation Committee meeting, it consists of eight items and their subsequent activities. Its main action items include (1) enhancing the understanding of how loss and damage affects vulnerable developing countries, (2) enhance understanding of and promote comprehensive risk management, (3) enhance data and knowledge on the risks of slow onset events and their impacts, (4) enhance data and knowledge on non-economic losses, (5) enhance understanding of capacity and coordination need to prepare for and respond to loss, (6) enhance understanding and expertise on hoe climate change affects patterns of migration and displacement, (7) encourage comprehensive risk management through financial instruments, and (8) compliment the work of the existing bodies and expert groups under the Convention. The COP20 in Lima, Peru in December of 2014, confirmed this work plan from the Executive Committee and outlined its reporting and operational procedures.

Economic Loss

Economic loss has been a fixture in the negotiations for many years. As previously mentioned, Loss and Damage originated as an insurance /risk transfer mechanism. For many years, insurance firms have been collecting data on economic loss associated with catastrophic events such as cyclones, hurricanes, and droughts. In this context, economic loss would consist the kinds of damage to economic systems and personal belongings which can be quantified. This can also be direct or indirect. The destruction of infrastructure due to sea level rise is a direct economic loss; its value can be calculated. The collapse of a fishery due to changes in the ocean's pH can create

indirect economic losses. If the fishery is irreparably damaged, meaning it can no longer support any fishing, its loss will not be just one seasons' catch, but the larger economic impact on the area, region, and nation in lost revenue and its impact of other sectors. In 2002, the World Bank presented a report calculating that these losses have grown over time, from $71.1 billion USD per event in the 1960's to $608.5 billion in the 1990's[1]. More recently, the World Meteorological Organization provided a statement at a UNFCCC in 2012, highlighting that 50% of economic losses in Africa between the years of 1980 and 2007 were caused be weather extremes and hazards. It is because of these ever increasing costs that AOSIS and others sought out a solution. The Munich Re Insurance Initiative has been integral in this process, submitting to the Loss and Damage work plan their ideas to address economic loss. When it comes to an insurance solution, the focus is prevention in terms of risk management and disaster risk reduction (DRR). DRR is often employed in order to reduce exposure to risk thus making insurance more viable. However, Munich Re does acknowledge that there is no possible insurance programs for certain long term climate effects such as desertification, sea level rise, ocean acidification, or glacial retreat. In effect, long term economic loss will necessitate some sort of compensation, but international discussion of this issue has been avoided until recently. The Loss and Damage work plan documents mention do not the word or concept, but a financial component will be on the table for the COP21 in Paris.

Non-economic loss

Non-economic loss, though not a major point of contention in the COP negotiations as of yet, is a very open and gray area. Economic loss is easy to understand; when an extreme event hits and

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[1] Calculated in constant 1999 dollars.

homes and possessions are lost, it is an economic solution that can restore what is now gone. Non-economic loss relates to items that are not economic in nature or those which are not traded in markets. The UNFCCC provides a technical paper that defines non-economic loss in this manner and explains that they occur in three basic categories: individual, society, and the environment. For individuals, a non-economic loss may be a loss of life or health; for society it could be the territory or cultural heritage; and environmental non-economic loss could be biodiversity or ecosystem services. Thus a non- economic loss can be ones homeland, the ability to continue ones' own cultural practices, not being able to recreate a livelihood. In this sense, it is connected to identity- a right to something intrinsically important. This touches on what we, as humans, value and how we do so. There are three specific rights which intersect with eventual displacement due to sea-level rise; the right to nationality, the right never to be expelled or deprived entrance to ones' own territory of nationality, and the right to self-determination. As it states above, in the Loss and Damage work plan, migration/displacement and non- economic loss are treated as two different categories of research (sections 4 and 6), however, they are ultimately intertwined when we consider the types of rights-based losses that those affected by sea-level rise will be deprived of. Forced displacement creates non-economic losses and yet being forced to leave ones homeland is (in and of itself) a non-economic loss.

Loss of Non-Economic (Human) Rights

Considering the difficulties faced by those who are most vulnerable to climate impacts, it is important to consider their long term losses on all levels. There are many inhabitants of small islands who are already coping *in situ* with the eminent destruction of their homes not long off the horizon. In places like the Carterets in Papua New Guinea, the damage is such that internal movement is already occurring. But there are places which are losing habitable land will force

individuals and families to have to leave entire countries. This is the case with other Pacific Island nations like the Marshall Islands, Tuvalu, Kiribati, or the Maldives in the Indian Ocean. Where the need for external movement is necessary, several non-economic human rights have to potential to come under threat. The loss of an entire country to anthropogenic climate change stretches our current conception of human rights. In the past, displacement was more often due to war and thus the ancient custom of hospitality applied. This meant treating any foreigner as one of ones' own providing food, shelter and any other assistance for reasons such as fleeing violence, or disaster. Hospitality was the first form of international protection- or a universal right; it had no special regulations, bureaucratic processes, or formalities. It was simply an informal civil pact of profound importance in that it continues to serve as one of the oldest international norms going back to Ancient Greece. The difficulty for those displaced from small islands is that they will lose their homeland entirely and may become permanently stateless. The rights of the stateless are unclear and often unenforced; it is not that they are not equal before the law, but that no law exists for them. In a world where the modern state secures ones rights through citizenship, those who lose theirs, even by no fault of their own, may have serious difficulties. The right to a homeland recurrently emerged as pivotal to human rights issues in the twentieth century. The sovereign state is central to the final authority in human rights as reiterated by the United Nations. Even today's legal scholars have yet to come to a consensus about whether a state which loses its land can still be understood as having the other properties which makes it sovereign. If some human rights are tangentially attached to a sovereign territory and thus can be jeopardized when national land is lost, the WIM is a mechanism to evaluate how else to ensure the non-economic human rights outlined below. These rights were chosen because they exemplify rights that have been seen as intrinsically important as human rights law has developed. These are intangible rights to concepts

which are often taken for granted but come into question for many because of the long term effects of climate change. The loss of ones' nation in terms of its habitability presupposes several difficult legal challenges that lay beyond economic losses or comparable rehabilitation. How can one's nationality be replaced? This is not so much a question of getting a new nationality or having ones nationality while in another place, but fully exercising ones' own nationality in one's nation. How can one *not* to be expelled when the larger global forces are against them? If at a certain point, it is too dangerous to stay and, one may not be able to enter his/her previous territory or if it is below the waves, one also cannot be in ones' own territory. How can ones' self-determination be exercised when ones first preference is to stay in a place that cannot support human habitation anymore? These are all things that are not easily reconciled or replaced. Many other rights are also at stake including ones' security of person, right to subsistence, and the right to not be arbitrarily deprived of ones property to name a few. However, the ones chosen here represent some of the most challenging to restore.

The Right to Nationality

The right to a nationality (and not be arbitrarily deprived of it) is discussed in the *United Nations Universal Declaration of Human Rights (1948)* and *The American Convention on Human Rights* (1969). The right to a nationality relates to one's the right to be a citizen and cannot be arbitrarily deprived of this; each person has the exclusive right to it and the right to change or reject it. For those currently living on an island which will no on longer exist in the near future, the right to such a nationality may also cease to be real. As previously mentioned, legal scholars have not yet decided if a nation cannot be without its land. Peoples without a land, or have been deprived of it, are all over the globe with questionable nationalities. This has been the fate of many indigenous peoples under the territorial rule of a state which is not their own, but has usurped their land. These

people have already been deprived of this right as their status under the conventional state in which they live is not that of full citizenship. Will this also be the fate of those losing their lands due to climate change? The "state" and its definition is what is being called into question. The term is used in many ways and the problem is not the absence of academic writing but lack of legal definitions. Modern international law on the topic comes from several places. The Peace of Westphalia (1648) indicates that statehood is conditioned on territory. The 1933 Montevideo Convention provides that the state is qualified by having a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. However, Wong argues that this requirement has been loosely applied. No size has ever been designated to support this condition, or that the territory needs to be continuous, or what constitutes a territory. He even cites that nations such as Albania, Burundi, Estonia, Israel, Kuwait, Latvia, Rwanda and Zaire were all admitted to the UN or the League of Nations despite having ill-defined borders. But this discussion is about states that are already defined and recognized by the UN system. Do these losses of land equal loss of statehood and thus nationality? Our current understanding of international law and human rights couple ones nationality with a literal landmass. Arguments have been made that mass migration will result in abandonment of the state and thus, it extinction. If the above mentioned conditions are strictly applied and population is tied to territory, it will sever this link. In this case, the loss of national territory means losing ones' state and in turn ones' nationality and this is a direct violation of the human rights of those being displaced by climate change. However, the nations who are losing their territories are already considered sovereign and accepted in the international community without prejudice. Considering that these states are not willingly seeking to renounce their sovereignty, would they be kicked out? This may ultimately be a question left to the UN proper, but as a subsidiary function the UNFCCC, the WIM can

recommend how this should be handled in such a situation. If failed states are currently not removed from the UN, it would seem to follow that those without territory would not, but if the lost states' citizens are scattered in other lands, how can a nationality- as a function of a traditional state government be continued? One last concern in this scenario is that individuals in this situation will ultimately become stateless, that without territory and population or a functioning government, it ceases to be a state and thus cannot operationalize the rights that would be attached to being a citizen. McAdam and Saul argue that islanders will not be considered stateless because the definition of stateless is premised on the denial of nationality through the operation of law of a state not the loss of a state. It won't be that the state is purposely keeping their citizens from being able to access their nationality or exercise it, but that there will not be a functioning government of a state to do so.

The Right Not to Be Expelled or Deprived of the Entrance of Ones' Territory of Nationality

The right not to be expelled from the territory in which one is a national or to be deprived of the right to enter such territory is outlined in the *Fourth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* (1963). To be deprived of entrance in to ones' territory, in this instance, it has to be decided if submerged territory still a national territory to begin with. This question of international law has not come up before or been addressed anywhere. Jain argues that this question has to be related to the international law of the sea. The United Nations Convention on the Law of the Seas (UNCLOS) rules which territory can be considered sovereign and thus which can be claimed as a basis for international rights. The author argues that UNCLOS yields two main insights: first, that submerged territory is not territory and, second, that territory as to be capable of sustaining human life. UNCLOS uses a baseline which bases all measurements on a "low water line" which is the intersection of land with the surface of the water

at low tide; submerged territory cannot intersect with the surface of the water. It also must be naturally formed area of land, which excludes artificial and submerged territory. It can be argued that conditions they are not valid considering modern development. Reclaimed territory (which is in essence 'artificial') is going to be, and currently is, essential to adaptation efforts. This is currently a way in which the Maldives have sought to relocate its people internally, through reclamation and the development of new land. Additionally, the capability to sustain human life is already almost lost on many islands but through international trade and imports of food and bottled water, people do still live where they naturally could not. Thus without a re-interpretation of these conditions, some places may no longer be considered territory even when they *could* if viewed in an alternative fashion. Those who inhabit this land (whether it has been re-interpreted or not) have the right not to be expelled either by "an individual or of a collective measure". The effects of climate change can certainly be argued to be a collective measure. Together, all the nations of the world who have initiated the types of development which has ushered in the changes in climate we now see and every other nation who has since decided to develop in the same vein of technology has contributed to the problem greater problem, but they are also responsible for the possibility of depriving many of entrance into their own territory. If sea levels have risen as to inundate a land, then one is deprived of such an entrance; being ankle deep on a sand bar is not the same as going home. And minimally, even if most people leave and there is still a small population which does not want to move, how can those few still support themselves? Will trade continue when it is not cost effective to import food and water for a handful of people willing to live in difficult conditions? If the international community is not willing to support such an activity, individuals and communities *will* be forcibly expelled. Additionally, if this is the case, that those unwilling to leave will not be supported, will they be physically removed? National governments do sometimes

force people to move out of areas that are no longer safe, can the international community do the same?

Right to Self-Determination

The Right to Self-Determination is outlined in Article 1 of the International Covenant on Civil and Political Rights (1966). It states that "(1) All peoples have the right of self-determination… they freely determine their political status and freely pursue their economic, social and cultural development. (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit… In no case may a people be deprived of its own means of subsistence. (3) The States Parties… shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations." Cordes-Holland, in discussing the Torres Strait Islanders, explains that they enjoy a great deal of political autonomy in the management of their social and cultural matters. Islands have internal governance Councils and tend to empower islanders to determine their own affairs. The Author also argues that if displaced from their land, islanders would experience a great reduction in their political autonomy. The Australian Human Rights Commission clarifies that the Human Rights Committee has declined to consider individual complains on this right; the right to self-determination is one of "peoples" rather than individuals. Self-determination will be difficult to reconcile when those who cannot live on their island seek to self-govern and desire to organize within new territory. How much political autonomy will a host county be willing to give? This issue has been a constant struggle for minority groups seeking autonomy within others' territory. Whether it has been indigenous groups whose right to ancestral land has been taken through colonization or the Basque region of Spain, once a territory has a national government, it has been

less than willing to give its land up to another group, let alone grant those its own autonomy. There are many "unrecognized" states around the globe which are semi-autonomous but whose recognition would threaten the territorial integrity of existing states. Examples include Taiwan and Palestine. Thus the Right to Self-Determination may not be easily reconciled in a new territorial residence.

There is a human rights basis which can protect those who need to migrate due to the destruction of climate change; what is needed is an intergovernmental organization to enforce them. Individual states have had no problems ignoring such rights to continue to provide ample space and incentives to develop in ways which continues to add to climate deterioration. When individual states continue to act in a way that violates the rights of others, it is up to intergovernmental organizations to enforce the agreed upon commitments of their signatories. Recourse exists in the realm of international relations. The United Nations Office for the High Commission of Human Rights put out a document in mid-October of 2014 that reminds all state parties that they have "committed to respect and protect human rights" and that parties already agreed, "that Parties should, in all climate-change related actions, fully respect human rights" in the 2010 Cancun outcome document. Finally it urges Parties to "respect, protect, promote, and fulfil human rights for all" in the 2015 climate agreement in Lima. There is also a *Human Rights & Climate Change Working Group* consisting of NGO representatives, international environmental lawyers, and academics which meets to discuss how to lobby for rights-based language in all of the relevant outcome documents in the UNFCCC. Within the WIM work plan is an explicit directive to develop recommendations to enhance data and knowledge relating to non- economic loss and how climate change affects patterns of migration/displacement. It has created the governance space to address all three non-economic losses by endorsing solutions and clarifications to current international law.

Some solutions could include: a continuance of heredity-related nationality granted to those who have been displaced, or minimally, a dual citizenship in these situations. Even if this ends up being only symbolic (in the case that a displaced government does no longer exist or cannot find space to function in any way to support the implementation of previous citizenship rights), it would provide some sort of continuous documentation of who a people are. In the case of the loss of entrance into ones territory, it could suggest that the any submerged territory and legal rights to fishing or its previous territorial zone remain intact; disbarring any nation or corporation from using the uninhabited area for what would otherwise be illegal commerce. Finally, it could recommend that there be some way to ensure some level of continuous autonomous government either tied to ones relocated territory with some sort of recognition as a semi- autonomous sub group which can be integrated into either the host country's local/regional/national government. These are only a few short proposals which are not meant to be thorough or exhaustive, but to demonstrate the kind of remedies that could be discussed in this governance space and in doing so, could produce a solution with the potential to be adopted through a binding treaty.

An Ethical Responsibility of the Loss and Damage Mechanism as an Institution

Amartya Sen has contends that human rights can be seen primarily as ethical demands and their proclamations as articulations of such demands. This is the reason that the United Nations Office for the High Commission of Human Rights, the Human Rights & Climate Change Working Group, and others have continued to push for an articulation of rights in all of the UNFCCC's negotiating documents. Therefore, many groups on the outside of the process acknowledge the importance of having a formally agreed upon legal treaty which protects human rights. And while these groups cannot prevent every violation they are following on Sen's conception that if one is in a plausible position to do something to effectively prevent human right abuses, then one has an obligation to

do so. It is this "duty" that compels such groups to attempt to persuade those in the UNFCCC process, the parties to the Convention, to act on these needs. And thus the Parties, in turn, also have a duty or responsibility to do what they can to prevent rights violations. One way in which this is possible is by using the Warsaw International Mechanism established under the Loss and Damage work stream to anticipate and attempt to remedy potential violations before they occur. An ethical responsibility also lies with the shared accountability that all nations have through the continued development policies that have driven the warming seen thus far. The responsibility here is in two forms: to the damage that has already been done, and to the potential damage that will occur if a comprehensive, enforceable emissions reduction deal is not reached. All nations have contributed to global warming and even though the least responsible are the most vulnerable to loss, it is the ethical responsibility of those most responsible to mitigate any long term damages that have been caused. This is the basis of the climate justice debate between the global North and South which has been going on for decades.

From the 1990's, virtually all developing nations have refused to adopt greenhouse gas emissions reductions in the name of fairness. It has been the suggestions the poorer nations limit their industrial growth which has led to difficulties in the UNFCCC negotiations, especially the Kyoto Protocol. Powerful nations like the US have refused to curtail their own development excess unless poorer nations did the same. While Kyoto was considered a big victory as a short term objectives, longer term goals- including justice- have fallen to the wayside. This is because while Kyoto was negotiated based on grandfathering emissions incrementally from the baseline year of 1990, two alternative proposals which favored the developing nations failed to make the cut. These were based on historical responsibility and per capita consumption. Historical responsibility would suggest that those who had already been putting greenhouse gasses into the atmosphere for many

years should reduce their emissions the quickest and under per capita consumption, each person on the planet is give a certain right to the amount of carbon they can emit and in nations where the individual average is low, they would be able to grow while others may have to reduce. It has been argued that there are three categories of concerns that have since become increasingly important to both Southern scholars and governments. First, the principle of inter- and intra- generational equity and responsibility, second, the regime has skewed towards minimizing the burden of implementation on the polluter instead of giving priority to the most vulnerable, and third, its' focus has become management of the carbon trade instead of the stabilization of greenhouse gas concentrations.   Thus, an effort toward equitable solutions for those who face inevitable loss beyond what mitigation and adaptation can accommodate *is* the ethical responsibility of all Parties to the Climate Convention. Because equity has fallen off of the main UNFCCC agenda, the regime has ignored the vulnerable, and greenhouse gas concentrations continue to rise, the public institutional justification (PIJ) of the WIM is the demand for climate justice. It is only because the three main issue areas above have been continuously ignored that there has become the need to fill this gap. The push for the development of the Loss and Damage work program came from the voices of the vulnerable who has already determined that the status quo of the UNFCCC was not yet working for them. The PIJ of the UNFCCC is to reduce carbon emissions for the good of the whole planet. However, it has been ineffective in doing so and this is what sets the context of the WIM. The environment in which will impact the WIM is one that has not yet taken the vulnerabilities faced by the Global South in a serious fashion, thus the context integrity in which the WIM sits is not necessarily conducive to its long term survival or solving the problems which this environment has thus far ignored. This is best reflected in the response from the Global South when the WIM was placed under the Cancun Adaptation Framework instead of a separate pillar

or work. The G-77 walkout at the Warsaw talks demonstrated that those who most wanted/needed such a mechanism did not believe that keeping it within the UNFCCC's pillars, as they currently stood, was a proper idea. The responsibility to loss that cannot be stopped through emissions cuts or adaptive measures needs to be dealt with aside from emissions cuts and adaptive measures and *why* the AOSIS nations have been calling for it to be dealt with as such. Thus giving the WIM its own institutional space and removing it from its poor context within adaptation would further justify its existence as a full-fledged mechanism to tackle issues of climate justice which had been ignored. This is especially important because the WIM's work plan *does* focus on furthering understandings about vulnerable populations, how these can be mitigated, and how assist in their recovery.

However, no matter the ethical responsibility shared by all nations (especially the top emitters) to assist those with detrimental loss, politics tends to steer policy away from doing what can and should be done to ameliorate any loss of non-economic rights. Money often gets in the way. A main point of contention which held back the Mechanism's early development was the word "compensation"; with small islands asking for an economic remedy to continuous destruction due to sudden onset events. Developed nations have feared that committing to compensating loss would tie them into having to confront their (justified) historical responsibility to the developed world concerning long term emissions damage. This has created a rift between negotiators and had distracted from developing some potential recourse for non-economic rights. Currently, the Warsaw International Mechanism is still nested within the UNFCCC structure under the adaptation pillar and thus guided by its' normative morality and ethical behaviors. Thus if the Parties have been avoiding such responsibilities, no matter its' imperative, the Loss and Damage work stream can only deliver if those doing the negotiating in positions of power have a sense of ethical

responsibility toward the losses they are causing. However, as of the February 2015 session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, part of the suggested negotiating text under Loss and Damage is that the governing body shall establish a "compensation regime" for support due to the damage done by sow onset events. The Paris talks in December will demonstrate if the developed nations are finally ready to talk about economic compensation or if its addition will only reinforce the previous rift between nations and hold up forward movement toward reconciliation of non-economic rights losses.

Conclusion

There are strong ethical demands for human rights to be included in the climate negotiations, and especially the newly developed Loss and Damage work program and its formalized Warsaw International Mechanism. The basis for these demands exist due the nature of irreversible loss many that small island states will face as their countries become uninhabitable due to development policies that have yet to curb greenhouse emissions the world over. However, while the Mechanism has to potential to assist those who will lose some of their most basic non-economic rights, it is hard to ascertain if the power politics of economic loss will get in the way. In this way its prospective capacity is dependent on how other political issues interact and possibly distract. Yet, if the Executive Committee of the WIM can and does develop section 4 (considering the effects of section 6) and produce solutions that cost little but mean much intrinsically, it can still have positive effects on many. While there are no remedies for certain types of loss, if nations embrace their ethical responsibilities toward one another in this case, it will go a long way to demonstrate a practical climate justice for individuals losing everything.

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