FINANCING LOSS AND DAMAGE: THE REALIZATION OF DISTRIBUTIVE JUSTICE IN THE PARIS AGREEMENT

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DECLARATION

I, LEONA ASIEMA ONGOCHE, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: ....

Date: ....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:..

Professor Francisco Borja Lopez-Jurado

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LIST OF ABBREVIATIONS

AOSIS	Alliance of Small Island States
ARC	African Risk Capacity
AU	African Union
CDM	Clean Development Mechanism
COP	Conference of the Parties
EU	European Union
EUSF	European Union Solidarity Fund
FTT	Financial Transaction Tax
GCF	Green Climate Fund
GEF	Global Environment Facility
GHG	Greenhouse Gases
IATAL	International Air Travel Adaptation Levy
LDCF	Least Developed Countries Fund
SCCF	Special Climate Change Fund
SCF	Standing Committee on Finance
Suva Dialogue	Suva Expert Dialogue
UNFCCC	United Nations Framework Convention on Climate Change
WIM	Warsaw International Mechanism for Loss and Damage
WIM ExCom	Executive Committee of the Warsaw International Mechanism for Loss and Damage

LIST OF LEGAL INSTRUMENTS

1. United Nations Framework Convention on Climate Change
2. Paris Agreement

ABSTRACT

The acquisition of climate finance for loss and damage under the Paris Agreement is based on the principles of distributive justice, that being cooperation and facilitation as opposed to the traditional notion of liability and compensation. The main problem faced with this is the lack of certainty in finance acquisition to support loss and damage. Consequently, the Warsaw Mechanism for Loss and Damage (WIM) is unable to adequately administer funds to those adversely affected by climate change. Therefore, societies that suffer from the unfavorable effects of climate change are left with no resources to restore their communities.

This research paper consequently seeks to assess the viability of the sources of finance for loss and damage against the realm of distributive justice propounded in Article 8 of the Paris Agreement. Additionally, it will look at methods to strengthen the current institutional framework to effectively mobilization funds from the WIM to regional and national bodies in charge of loss and damage.

Key words: Climate change, loss and damage, slow onset events, financial tools, WIM

CHAPTER 1

INTRODUCTION TO THE STUDY

1.1 Background of the Problem

In international climate negotiations, there are three pillars of climate policy under the United Nations Framework Convention on Climate Change (UNFCCC).[1] These include; mitigation, adaptation and loss and damage. Mitigation is defined as the actions taken to reduce the emissions of greenhouse gases (GHG) into the atmosphere or enhance the removal of GHG from the atmosphere by 'sinks. A 'sink' is a natural reservoir that absorbs more carbon dioxide than it produces.[2] On the other hand, adaptation mechanisms are actions that states will need to put in place to counter the impacts of climate change that are already happening as well as prepare for future impacts. It is the implementation processes that can reduce our vulnerability to climate change impacts, such as sea level rise or deforestation.[3] The UN climate regime has not established an official definition of loss and damage. Thus, a concept has been coined by several institutions and is understood from the literal interpretation of the terms.[4] It refers to the adverse effects of climate change that occur despite putting in place mitigation and adaptation mechanisms.[5]

Loss and damage occur where the mitigation and adaptation mechanisms fail or are inadequate in preventing the unfavorable effects of climate change.[6] There is growing global recognition that mitigation and adaptation efforts are inadequate to alleviate all effects of climate change. For example, in the Pacific Islands, the Republic of Vanuatu has faced significant damage from the failure of mitigation and adaptation strategies. The country has struggled with calamities

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[1] Mechler R, Bouwer L, Schinko T, Surminski S and Linnerooth-Bayer J, *Loss and Damage from Climate Change: Concepts, Methods and Policy Options,* Springer Open, US, 2018, 84.
[2] United Nations Framework Convention on Climate Change, *Fact sheet: The need for mitigation*, 2009, 1.
[3] https://unfccc.int/resource/bigpicture/index.html#content-adaptation on 28 August 2019.
[4] Mechler R, Bouwer L et al., *Loss and Damage from Climate Change: Concepts, Methods and Policy Options,* Springer Open, 11.
[5] Puig D, Calliari E, Hossain M.F, Bakhtiari F and Huq S, 'Loss and Damage in the Paris Agreement's Transparency Framework', *Technical University of Denmark, University College London and Independent University Bangladesh,* Copenhagen, London and Dhaka, 2019, 2.
[6] Richards J.A and Schalatek L, 'Financing Loss and Damage: A look at Governance and Implementation Options' Heinrich Boll Stiftung, 2017, 5 https://www.boell.de/sites/default/files/loss_and_damage_finance_paper_update_16_may_2017.pdf on 19 August 2019.

such as cyclones that destroyed approximately 80 –90 % of infrastructure and resulted in the direct loss of US$350 million throughout the Pacific islands.[7]

In Africa, it has been predicted that the continent is likely to suffer the severest effects of human-induced climate change as compared to other regions of the world.[8] This is due to lack of sufficient resources to put in place adaptive and mitigation strategies.[9] One state central to the discussion of loss and damage in Africa is Kenya. Kenya underwent one of the worst periods of drought between the year 2008 and 2011. This alone led to a total loss of USD12.1 billion in the agricultural, water, health and education sector just to mention a few.[10] These figures merely focus on one element of climate change notwithstanding that other aspects of climate change such as rising sea levels have consequential effects to the economy.

As a result of such calamities faced by small-island states, low-lying coastal states, and African states, the pillar of loss and damage was officially incorporated into the Paris Agreement as an independent mechanism to address the aftereffects of climate change. Introducing this instrument was crucial for two main reasons: First, it officially introduces the issue of loss and damage within the scope of International Climate Negotiations. Secondly, it established a free-standing, Article (8) which states that:

'Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.'

This provision creates a strict separation between loss and damage and adaptation and mitigation that are provided for under Article 7 of the Paris Agreement.

The inclusion of this provision and came with a few limitations that were pushed forward by developed countries. During the Conference of the Parties (COP) twenty-first session, one of the requirements to give force to the Paris Agreement was that Article 8 would not provide a

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[7] Harmeling S, Rai C, Singh H, 'Loss and Damage: Climate reality in the 21st Century', 6 https://careclimatechange.org/wp-content/uploads/2015/11/Loss-and-damage-climate-reality-in-the-21st-century.pdf on 25 August 2019.

[8] United Nations Economic Commission for Africa and Climate Analytics, *Loss and damage in Africa*, May 2014, 7.

[9] The World Bank, *Turn Down the Heat: Why a 4C Warmer World Must be Avoided*, 2012, 62.

[10] Richards J and Schalatek L, 'Financing Loss and Damage: A look at Governance and Implementation Options' Heinrich Boll Stiftung, 2017, 8 https://www.boell.de/sites/default/files/loss_and_damage_finance_paper_update_16_may_2017.pdf on 25 August 2019.

basis for any 'liability or compensation'.[11] Instead, state parties to the treaty agreed that Article 8 would solely be based on 'cooperation and facilitation' or what could otherwise be referred to as distributive justice.[12]

This limitation changed the interpretation of the climate finance dynamic provided in Article 9. Article 9 imposes financial responsibility to developed countries to provide financial resources that will aid developing country with respect to addressing both mitigation and adaptation.[13] In addition to this, the Paris Agreement also ensures that these resources should aim to achieve a balance between the distribution of adaptation and mitigation resources.[14] This is all to the exclusion of loss and damage.

The Paris Agreement does not impose any financial responsibility to state parties, both developed and developing, in respect to loss and damage. In doing this, the treaty completely undermines and disregards the progressive nature of legal jurisprudence and hinders the effective realization of loss and damage in addressing the impacts of climate change.

Further, the institutional framework surrounding the organization of loss and damage was granted to the Warsaw International Mechanism for loss and damage (WIM). Its duty is to liaise with existing independent bodies and expert groups to bring Article 8 to life.[15] However, this body has faced several challenges that have hindered effective administration of funds. Consequently, the centrality of finance mobilization, finance administration and governance and finance disbursement in the independent pillar of loss and damage has been compromised which is what this paper seeks to address.

This paper seeks to assess whether the proposed means of funding loss and damage are sustainable to increasing the inflow of money that is allocated to loss and damage. This will be done by analyzing them in view of a six-step criteria of sustainability. Additionally, this paper will assess the proposed means of funding in the realm of distributive justiceand whether they pose a "cooperative and facilitative" means of fundraising for state parties.

1.2 Statement of the Problem

The Paris Agreement has created a solid foundation for loss and damage in International Climate Negotiations. The treaty went as far as establishing the WIM, a body that has the

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[11] FCCC *Decision 1/CP.21*, *Adoption of the Paris Agreement*, 30 November to 13 December 2015, 8.
[12] Article 8, *Paris Agreement*, 12 December 2015, U.N. Doc. FCCC/CP/2011/9/Add.1.
[13] Article 9(1), *Paris Agreement*.
[14]Article 9(4), *Paris Agreement*.
[15] Article 8(5), *Paris Agreement*.

prerogative to deal with all matters regarding loss and damage. In doing so, one of its main objectives is to enhance action and support in finance, technology and capacity building, to address loss and damage associated with the adverse effects of climate change.[16]

However, despite this legal advancement, there are insufficient funds generated from state parties that can adequately address loss and damage according to Article 8 of the Paris Agreement. Further, the lack of effective regulation of these funds by the Warsaw International Mechanism for loss and damage is inhibiting the effective utilization of the funds generated.

Consequently, this has led to inefficiencies in fund mobilization and disbursement to address the needs of local communities that are largely affected by the unpleasant effects of climate change. Globally, there is a rise in the death toll from; dehydration, hunger and water-borne diseases etc. as well as effects on the environment such as forest fires, rising sea levels etc.[17] If this issue is not immediately addressed, the hope of rehabilitation will be no more, and the consequences of climate change will drastically worsen the condition of certain communities.

1.3 Purpose of the Study

The purpose of this research paper to strengthen the third objective of WIM that is to 'enhancing action and support, including finance, technology and capacity building, to address loss and damage associated with the adverse effects of climate change.'[18] This shall be done by focusing on attaining a sustainable inflow of finance for loss and damage. It will also look at establishing an accountable institutional framework to ensure the effective decentralization of funds from WIM to regional bodies and further into the national institutions.

1.4 Hypothesis

The lack of financial responsibility to state parties in the Paris Agreement is reducing the effective management, disbursement and mobilization of funds under pillar of loss and damage.

and

[16] Wallimann-Helmer I, Meyer L, Mintz-Woo K, Schinko T,Serdeczny O, 'The Ethical Challenges in the Context of Climate Loss and Damage' In Mechler R., Bouwer L., Schinko T., Surminski S., Linnerooth-Bayer J. (ed), Loss and Damage from Climate Change, Springer Nature, Cham, 2019, 45.
[17] Mechler R, Bouwer L et al., *Loss and Damage from Climate Change: Concepts, Methods and Policy Options,* Springer Open, 248.
[18] FCCC *Decision 2/CP.19,Warsaw international mechanism for loss and damage associated with climate change impacts*, 31 January 2014,5.

A sustainable and transparent source of funding for loss and damage will help address the adverse effects of climate change faced by communities.

1.5 Statement of objectives

This paper seeks:

1. To understand the legal framework of Article 8 of the Paris agreement.
2. To analyze the current source of finance for loss and damage.
3. To analyze whether the proposed sources of finance for loss and damage are in accordance with Article 8(4) of the Paris Agreement.
4. To determine the limitations faced by The Warsaw International Mechanism for Loss and Damage in the execution of their mandate.
5. To discover ways the process of fund allocation can be more accountable and transparent

1.6 Research questions

1. What is the history of loss and damage in International Climate Agreements?
2. What is the current framework on loss and damage?
3. Do the proposed means of funding facilitate distributive justice?
4. What is the role of WIM in addressing loss and damage?
5. How can WIM ensure that fund allocation for loss and damage is transparent and accountable?

1.7 Literature review

The history of climate finance has been pegged on the notion of compensatory justice drawing from commonly used principles such as the polluter pays principle. According to **Taub J et al**, when specifically looking into loss and damage, this aspect of climate finance is usually considered a 'euphemisms' for liability and compensation.[19] Developed countries fear being held responsible for their actions as the major contributor to climate change. Due to this, developing countries explicitly advocated against the idea of associating loss and damage to compensation and liability in the Paris Agreement. Consequently, **Taub J et al** points out that there is a financial gap in Article 9 of the Paris Agreement. This provision deals with financing

[19] Taub J et. Al, 'From Paris to Marrakech: Global Politics around Loss and Damage' *India Quarterly,* 2016, 318.

climate actions and it includes consulting adaptation and mitigation strategies, but it does not explicitly mention loss and damage.[20]

The crisis created due to this gap in the law was analyses by **Müller B. Müller.** He made a substantial comparison of the Paris Agreement to the Cancun Agreement to illustrate the financial fallback that the Paris Agreement has established in this area.[21] He essentially compares the three underlying financial concepts that are central to environmental conventions. These finance central points are *institutional arrangements*, *public sector finance*, and what has become known as '*collective quantified goals*.'[22] Müller notes that the outcome of the Paris Agreement had no intention to establish a new fund to manage monetary income and the institutional arrangement is incomparable to the Cancun Agreement. The most important observation he made was that the absence of any figure for public sector funding in the Paris outcome is a genuine step backwards in climate finance.[23]

The importance of climate finance especially when dealing with loss and damage according to **Sharma** is that this field can be classified as both a precautionary and post-cautionary measure. The former is established as an instance for insurance while the latter includes compensatory mechanisms for retrospective losses.[24] **Sharma** argues that a post-cautionary approach calls to prepare the world to deal with the impacts of climate change and this is done through provisions within the Paris Agreement that address mitigation, adaptation and loss and damage finance. These are all key features in creating resilience to vulnerable countries, communities and individuals in dealing with climate change.[25]

Currently**,** there are concerns by developing countries that dipping into the already limited finance pool available for adaptation and mitigation would shrink funding even further.[26] This prompts many scholars to ask how will loss and damage be financed and who will finance it?[27]

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[20] Taub J et. Al, 'From Paris to Marrakech: Global Politics around Loss and Damage' *India Quarterly*, 2016, 318.
[21] Müller B, 'Finance in Paris, Non à la Nouvelle Haute Couture Impériale!' *Oxford Climate Policy Blog*, 2016, 1-http://oxfordclimatepolicy.com/blog/finance-in-paris/ on 15 September 2019.
[22] Müller B, 'Finance in Paris, Non à la Nouvelle Haute Couture Impériale!' *Oxford Climate Policy Blog*, 2016, 1-http://oxfordclimatepolicy.com/blog/finance-in-paris/ on 15 September 2019.
[23] Müller B, 'Finance in Paris, Non à la Nouvelle Haute Couture Impériale!' *Oxford Climate Policy Blog*, 2016, 1-http://oxfordclimatepolicy.com/blog/finance-in-paris/ on 15 September 2019.
[24] Sharma A, 'Precaution and post-caution in the Paris Agreement: adaptation, loss and damage and finance' 17 *Oxford climate policy* 1, 2017, 9.
[25] Sharma A, 'Precaution and post-caution in the Paris Agreement: adaptation, loss and damage and finance,' 9.
[26] Sharma A, 'Precaution and post-caution in the Paris Agreement: adaptation, loss and damage and finance', 9.
[27] Roberts J, 'How Will We Pay for Loss and Damage?' 20 *Ethics, Policy & Environment* 2, 2017, 209.

There are several authors who have written on sources of finance for loss and damage such as **Page E** and **Heyward C.** In their paper, the foundation of their argument of financial inflows is based on **Robert Goodin's** interpretation of compensatory justice in International Law.

Goodin claims that loss and damage in International Law should seek to compensate victims of climate change, particularly those residing in developing states for the unjustified and unexpected disruptions in their way of life.[28] Similarly, base their findings on compensatory justice. The difference between this study is the centrality of the means through which the desired end is achieved.

On the other hand, **Marco Grasso** takes a different approach. **Grasso** laid out an ethical criterion, of the fairness and equity of different sources and allocation of funding for climate impacts. He argues that doing so can inform the efforts to actually raise these funds in that people are likely to be willing to pay taxes if they understand the fairness principles by which one's burden of payment is derived.[29] This is essentially the angle that this paper will take. However, the fundamental difference is within the contextual application of distributive justice. **Grasso's** paper looked at adaptation finance while this paper is assessing loss and damage.

Finally, the institutional avenue for fund management is controlled by WIM. According to **Page E and Heywardit C**, the major contributor to the challenge of understanding the nature of loss and damage in the Paris Agreement is the failure of the Warsaw International Mechanism for loss and damage (WIM) to address who should finance loss and damage, how much financing is required and how these funds shall be distributed to those affected by climate change.[30] Another fundamental issues with WIM is that it is an organ that was placed under the Cancun Adaptation Framework. According to **Robertsa J**, this is a move that undermines developing countries' efforts to clarify that loss and damage is an independent pillar of climate change.[31]

1.8 Conceptual framework

The interlinked concepts in this chapter shall be derived from an economic ideology based off the writings of Ronald Coase in *The Problem of Social Cost* and the legal dimension of distributive justice propounded by John Rawls in *the theory of Justice*. This shall be done while looking at the interplay between law and economics and determine how this will contribute to

[28] Page E, Heyward C, 'Compensating for Climate Change Loss and Damage' 65 *Political Studies* 2, 2017, 358.
[29] Grasso M, 'An ethical approach to climate adaptation finance' *Global Environmental Change*,2009, 2.
[30] Page E, Heyward C, 'Compensating for Climate Change Loss and Damage,' 358.
[31] Roberts J, 'How Will We Pay for Loss and Damage?' 209.

sustainable development in reducing the risk of loss and damage. The principle of sustainable development is expressly mentioned in Article 8 of the Paris Agreement[32] which will be a guide towards the restoration process after a disaster occurs. The Coase theorem will provide that it is pointless to ask who really caused harm. Instead, the question should focus on which activity should be carried out to avoiding the overall costs associated with unfortunate encounters.[33] Rawls thesis on distributive justice will support this proposal through illustrating the importance of reciprocity of responsibility by all parties. The interrelation of these concepts will be an opportunity to ensure that disaster risk management is effectively carried out through collaborative partnerships.[34]

1.9 Scope and Limitation of the study

This paper discusses loss and damage in the Paris Agreement. However, for the effective implementation of International Law, it must be decentralized into regional instruments and even further to national instruments. The aspect of national implementation is not comprehensively discussed. This paper merely sets a foundation on addressing loss and damage in the international realm through climate treaties which is a limitation to this study.

1.10 Assumptions

1. This paper works on the assumption that climate change is a reality.
2. A sustainable source of finance for loss and damage will have a positive effect in restoring the community to the position they were in before destruction of their environment.
3. This paper shall look at the legal aspect of climate change. Therefore, the scientific and economic facts of loss and damage shall be assumed to be factual.

1.11 Definition of terms

WIM- The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts.

[32] Article 8(1), *Paris Agreement.*

[33] Schlag P, 'An appreciative comment on Coase's the problem of social cost: a view from the left' *Wisconsin Law Review* 5, 1986, 925.

[34]Drolet J, Dominelli L, Alston M, Ersing R, Mathbor G and Wu H, 'Women rebuilding lives post-disaster: innovative community practices for building resilience and promoting sustainable development '23 *Gender and Development* 3, 2015, 437.

Contingency finance - This is emergency capital that pays out finance quickly in times of crisis. It enables countries to react quickly in the aftermath of a disaster and improves their responses to unforeseen shocks.[35]

Climate themed bonds - Climate bonds are financial instruments that are used to finance loss and damage projects such as forest restoration or the production of clean energy. Bonds are typically sold to raise funds and not necessarily for profit.[36]

Catastrophe bond- These are high-yield debt instruments that protect the bond issuer from catastrophic results by passing the risk on to investors in the capital markets rather than to reinsurers.[37]

1.12 Outline of the dissertation and its flow of arguments

Chapter 2- The following chapter will create a solid foundation on the justification of the legal question. This will be done through a conceptual framework proposed by the work of John Rawls in *the theory of distributive justice* and *the Coase theorem* by Ronald Coase. These concepts shall work together towards facilitating sustainable development of the communities that are affected by loss and damage.

Chapter 3- Chapter three will introduce the origin and concept of loss and damage. It will then look at the current fiscal tools that are used to support loss and damage. This will assess how they generate finance and whether these tools are still efficient under the analysis of Article 8 of the Paris Agreement.

Chapter 4-Shall analyses whether the proposed sources of funding abide by Article 8 of the Paris Agreement. This will also include analyzing them against specific criteria to assess whether they are a sustainable source of finance and facilitate distributive justice.

Chapter 5- This section will look at the mandate WIM has towards addressing loss and damage and look at any ways to increase efficient fund administration and management.

[35] < https://www.acclimatise.uk.com/2017/06/26/three-financial-tools-that-could-change-the-climate-finance-world/ > on 1 September 2019.
[36] Durand A, Hoffmeister V, Weikmans R, Gewirtzman J, Natson S, Huq S and Roberts J, 'Financing Options for Loss and Damage: A Review and Roadmap' German Development Institute, 2016, 6.
[37] United Nations International Strategy for Disaster Reduction Secretariat (UNISDR), *Adaptation to Climate Change: Linking Disaster Risk Reduction and Insurance*, 12.

Chapter 6- This paper will conclude by reviewing the recommendations on how to enhance accountability of the raised funds to ensure that they are distributed equitably according to need.

1.13 Summary of overall results and conclusions

The overall research results found that the current sources of funding are not sustainable and do not abide by the principles stipulated in Article 8 of the Paris Agreement. Additionally, it seeks to find that WIM mechanism has failed to secure funds for loss and damage. However, through the proposed sources of finance, there will be an overall increase in monetary flow that finances loss and damage.

CHAPTER 2

CONCEPTUAL FRAMEWORK

2.1 Introduction

According to John Rawls, societies that choose to collaborate to further the principles of a just society, ought to allocate rights and duties to determine the most efficient division of social benefit and means to regulate claims against one another.[38] Rawls mentions that these principles regulate all agreements and define the kind of social interactions that can be entered into by parties.[39] Therefore, it acts to reconcile environmental concerns with economic development and serves the purpose to connect political ambitions to sustainable development.[40] As a result, the facets of distributive justice are guided by equity and fairness to guarantee that no party unduly benefits or is disadvantaged by the outcome of natural justice.[41] In doing so, Rawls stipulates that '*The principles of justice are chosen behind a veil of ignorance*'. In this idea of justice, both developed and developing countries should work together irrespective of any surrounding factors to contribute to funding loss and damage.

As a great profounder of distributive justice, Rawls conceptualization of justice coincides with Ronald Coase in his theory on the *Problem of Social Cost*. The intersection between distributive justice, law and economics is clearly brought out through the Coase Theorem to analyse the means and the end towards achieving a sustainable financial market for climate finance. This will lead up to the aim of loss and damage in the Paris Agreement, that is, to restore and minimize the adverse effects of climate change. In doing so, one must analyses the role of sustainable development as a post-disaster principle.

2.2 Pigouvian school of thought

In the traditional neo-classical economic school of thought, the economics of social welfare was led by the Pigouvian school of thought. Their ideology believed that that the role of law in regulating social welfare is to internalize undesirable externalities into the sanctions imposed for the violation of a legal right. Legal rules were constructed to make the offending activities bear the full costs of their offenses.[42] The Pigouvian school of thought had the same underpinning persuasion as the common law system. In the current legal system, branches of

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[38] Rawls J, *Theory of Justice*, revised edition, Harvard University Press, Cambridge, 1971, 10.
[39] Rawls, *Theory of Justice*, 10.
[40] Cowell R, 'Stretching the limits: environmental compensation, habitat creation and sustainable development' 22 *Transactions of the institute of British geographers* 3, 2004, 1.
[41] Rawls, *Theory of Justice*, 11.
[42] Coase R, 'The problem of social cost' 3 *The Journal of Law and Economics* 1, 1960, 31.

law such as the Law of Contract and Tort advances the idea that when harm occurs, the party responsible for ensuing harm must bear the costs.[43] This concept translated largely into various bodies of Law and influenced certain indispensable principles such as the polluter pays principle in International Environmental Law. The ideology behind previous climate agreements followed the Pigouvian school of thought, however, this notion is slowly shifting towards distributive justice whenever harm occurs in the environment. This can be deduced from the principles behind the Paris Agreement and the new economic movement that was proposed by Ronald Coase.

The introduction of the '*Problem of Social Cost'* the traditional concept of liability and compensation was deconstructed when aligning the social conception of welfare to legal commitments. This was done by focusing on the reciprocal nature of conflicting resource use.[44] In doing this, Coase presents, that it is immaterial to ask who really caused harm. Instead, the question should focus on which undertaking should be carried out to avoiding the costs associated with unfortunate encounters.[45] This angle brings a considerably different view for moral and economic consequences in redistributing legal rights and maintains the economic perspective of maintaining natural capital, a goal of sustainable development.[46]

In hindsight, the principles of distributive justice acknowledge that each person has the right to protect his interests and his ability to advance his ideology of what is good. No one has the responsibility to personally endure loss in order to bring about a greater net balance of satisfaction within society.[47] Therefore, we cannot fault developed countries for opting to disregard the inclusion of liability and compensation in the Paris Agreement. However, the principles of distributive justice acknowledges that it would not be just that some have less while others disproportionally have more. [48] Accordingly, the two-way participation of state parties in the Paris Agreement ought to contribute to sustainable development.[49]

Coase states that we should focus the overriding objective of the negotiations and in doing so, the contentment of an agreement is to accept its moral principles is achieved.[50] Therefore, state

[43] Hart H, *Causation in the Law*, 2nd ed, Oxford Scholarship, Oxford,1985, 62-68.
[44] Schlag P, 'An appreciative comment on Coase's the problem of social cost: a view from the left,' 923- 924.
[45] Coase R, 'The problem of social cost,' 2.
[46] Cowell R, 'Stretching the limits: environmental compensation, habitat creation and sustainable development,' 292.
[47] Rawls, *Theory of Justice*, 207.
[48] Rawls, *Theory of Justice*, 210.
[49] Article 8, *Paris Agreement.*
[50] Rawls, *Theory of Justice*, 211.

parties should dwell on the overriding aim of distributive justice in the Paris agreement which is to essentially minimize and address the impacts of climate change to achieve sustainable development. This can be achieved through the reciprocity of monetary responsibility towards generating a sustainable inflow of finance that is directed towards loss and damage. The frequency of loss and damage due to sudden disasters illustrates the need to link societal rehabilitation to sustainable development. Human settlements need to be more "resilient" if they are to better cope with loss and damage arising from climate change[51] and this would be in support of the Sustainable Development Goal (SDG).

2.3 The due process towards achieving distributive justice

Across the field of economics, the term transaction costs do not have a uniform definition. Transaction costs are considered to be either bargaining costs, information costs or damage or valuation costs.[52] Transaction costs are associated with negotiation and damage costs[53] but more specifically, in climate finance, it is considered to be the costs for policy agreements. Where transaction costs are significantly high, any attempt to reduce the undesirable externalities of one activity will likely increase the production of undesirable externalities by the other.[54] In other terms, when there are high transaction costs, agents will stop bargaining if these costs exceed efficiency gains.[55] If the solution towards loss and damage places an undue burden on developing countries, the negotiation of financial contribution to loss and damage is likely to cease. This links the important relationship between the *means* used to achieve a given end. To prevent a 'moral hazard' between societies, it is important to define your means. It provides a framework of rights and opportunities and the means of satisfaction within which these ends may be equitably pursued.[56]

Undoubtedly, in a world with no transaction costs, negotiations could be never ending.[57] However, costs accrue in every aspect of loss and damage negotiations.

Therefore, in assessing these transaction costs, Coase notes that we must look at the effect that the change in legal regime will have on the rate of production of both activities.[58] We cannot

[51] Sindico F, 'Paris, Climate Change and Sustainable Development' 6 *Climate Law* 1-2, 2016, 136.
[52] Aivazian V and Callen J, 'The coase theorem and the empty core' 24 *The journal of law & economics* 1, 175.
[53] Coase R, 'The problem of social cost,' 15.
[54] Coase R, 'The problem of social cost,' 15.
[55] Illing G, 'Private Information as Transaction Costs: The Coase Theorem Revisited' 148 *Journal of Institutional and Theoretical Economic (JITE)* 4, 1992, 559.
[56] Rawls, *Theory of Justice*, 28.
[57] Aivazian V and Callen J, 'The coase theorem and the empty core,' 180.
[58] Coase R, 'The problem of social cost,' 8.

blindly assume that the change in legal regime will affect only the rate of production of the externality. Therefore, we cannot assume that by including an obligation for state parties to finance loss and damage, this will automatically contribute to restoration of damage that has occurred. There are other factors such as institutional arrangements, public sector finance, amongst other 'collective quantified goals' that must be considered.[59] The factors in between are what facilitates the finance generation process and will consequently lead to rehabilitation and restoration of the community.

Further, Coase points out that in order to assess the how 'to avoid the more serious harm' we need to weigh the marginal benefits of an activity with its associated marginal cost.[60] Through a series of values assessments, one must ask whether the value of the detriment caused due to climate change is justified as opposed to the cost of contributing to prevent the occurrence of loss and damage? This would not be the ideal situation. The marginal benefit is the restoration of the community. This is a discussion that ought to be made by the relevant stakeholders. In any case, if there is no agreement on an efficient solution, all agents have an incentive to continue bargaining. However, the principles of distributive justice provide that it is not just that some should have less in order for others may prosper.[61] Therefore, considering that developing countries are more vulnerable to suffer from loss and damage, it would not be just to let the community deteriorate. This marginal benefit is greater than the cost that would incur from the loss of lives.

Every person's well-being in society is dependent upon a scheme of cooperation without which no one could have a satisfactory life. The advantages of a satisfactory community should draw forth the willing cooperation of everyone taking part in it.[62]

According to Rawls, social agreements based on cooperation seem to favor those in a better social position neither of which can be said to have been deserve. This could be due to historical reasons but states would be willing to cooperation with others if a workable scheme is established to secure the well-fair of all.[63] When considering sources of climate finance, if successful negotiation is achieved, developed countries would be willing to contribute to loss and damage necessitating the need to agree on distributive justice.

[59] Müller B, 'Finance in Paris, Non à la Nouvelle Haute Couture Impériale!' *Oxford Climate Policy Blog*, 2016, 1-http://oxfordclimatepolicy.com/blog/finance-in-paris/ on 15 September 2019.
[60] Coase R, 'The problem of social cost,' 2.
[61] Rawls, *Theory of Justice*, 23.
[62] Rawls, *Theory of Justice*, 210.
[63] Rawls, *Theory of Justice*, 210.

2.4 The essence of justice within an institutional framework

According to the Theory of Justice, society is rightly ordered and just when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it.[64] The well-being of society is to be constructed from the fulfillment of the systems of desires of the many individuals who belong to it. In social institutions, the conception of justice is to regulate all subsequent criticism and reform institutions to serve the people as their needs require.

The aim of global governance is to link different competencies and sources of knowledge to deal with interlinked problems that society faces.[65] The role of these institutions is to ensure that governance combines the ambitions of the private and civil society sector with the financial muscle and interest of multi-national businesses. Together with enforcement and the rule-making bodies of states and international organizations, an accountable, sustainable and transparent source of funding is possible.

2.5 Conclusion

In designing legal rules, Coase suggests that there should be structures to approximate the sort of welfare enhancing agreements that would be achieved by defining initial entitlements of responsibilities to reduce transaction costs.[66] Therefore, this would require efficient input into re-defining the responsibilities of both developed developing countries in regard to loss and damage.

[64] Rawls, *Theory of Justice*, 20.
[65] Dedeurwaerdere T, The contribution of network governance to sustainable development, 2005,2.
[66] Coase R, ‘The problem of social cost,’ 41.

CHAPTER 3

A REVIEW OF THE CURRENT CLIMATE FINANCE

3.1 Framing of Loss and Damage under the UNFCCC

The first official recognition of loss and damage was in 1991 during the 4th session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change. The republic of Vanuatu submitted a proposal on behalf of the Alliance of Small Island States (AOSIS) in which it proposed the establishment of an international fund to support measures to address the impacts of climate change as well as an insurance pool to provide insurance payouts against sea level rise.[67] This was to assist the most vulnerable groups of people susceptible to slow-onset events which include people living in least developed countries, small island and African countries.[68]

The first official recognition of loss and damage occurred during the 13th Conference of Parties (COP) to the UNFCCC held in Bali.[69] It provided in Article 1(c) of decision 1/CP 13, the need for enhanced action on adaptation which also included:

> *"Disaster risk reduction strategies and means to address loss and damage associated with climate change impacts in developing countries that are particularly averse to the impacts of climate change."*[70]

The growth initiatives to address loss and damage continued throughout the COP sessions. A highlight in this thematic area was the Cancun Decision during the 16th COP session. It developed a concrete framework for loss and damage and identified the need to strengthen international cooperation and expertise to understand and reduce the effects of loss and damage associated with climate change which included impacts related to extreme weather events and slow onset events.[71]

The UNFCCC further developed a working framework that informed the provisions of loss and damage in the Paris Agreement. It was situated around five main thematic areas that included:

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[67] Roberts E and Huq S, 'Coming full circle: the history of loss and damage under the UNFCCC' 8 *International Journal of Global Warming* 2, 2015, 149.

[68] Khan M, 'Legal and policy responses to loss and damage associated with climate change' in Ruppel O (ed), *Climate change: international law and global governance: volume II: policy, diplomacy and governance in a changing environment*, 1ed, Nomos Verlagsgesellschaft, Germany, 2013 844.

[69] FCCC *Decision 1/CP. 13,Bali action plan,* 14 March 2008, 4.

[70] FCCC *Decision 1/CP. 13,* 4.

[71] FCCC *Decision 1/CP. 16, The Cancun Agreements: outcome of the work of the ad hoc working group on long-term cooperative action under the convention,* 15 March 2011, 4.

slow onset activities, non-economic losses, risk management approaches, human mobility and action and support.[72] Consequently, these areas have been explored further through Article 8 and through the Institutional framework, that being the WIM.

3.2 Understanding Article 8 of the Paris Agreement

Article 8 has three core ideas that represent the foundation of loss and damage. Firstly, the ethos of Article 8 is portrayed through the need to facilitate a cooperative environment when addressing loss and damage.[73] This is the foundation of the principles of distributive justice that is essential in every aspect of loss and damage.

Secondly, the subject matter of loss and damage has been highlighted.[74] The areas of cooperation to understand loss and damage has been narrowed into two categories; purely loss and damage activities on one hand and adaptation activities. Despite being laid down in a single list, questions around the independence of loss and damage have arisen because various aspects listed under Article 8 are generally considered under the sphere of adaptation. These would be elements such as early warning systems, emergency preparedness, comprehensive risk assessment and management and lastly resilience of communities and livelihood.[75] However, there are other aspects of the subject matter that can easily be associated with loss and damage. These are permanent loss, non-economic loss and slow onset events.[76] Slow onset events include rising sea level, increasing temperatures, ocean acidification and forest degradation among others that occur over a period of time. On the other hand, non-economic loss includes degradation of health, human displacement and destruction of cultural heritage. Many argue that this essentially leads to economic loss which would be more significant in developing countries.[77]

Lastly, Article 8 (1) stipulates that intentions to minimize and address loss and damage must facilitate sustainable development.[78] To do this a, six-step criteria of sustainability will be used. That being: *adequate, dependable, predictable and sustainable,* it must be *technical feasibility,*

[72] Van der Geest K and Warner K, 'What the IPCC 5th Assessment Report has to say about loss and damage' United Nations University, Bonn, 2015.
[73] Article 8(3), *Paris Agreement*.
[74] Article 8(4), *Paris Agreement*.
[75] Article 8(4), *Paris Agreement*.
[76] Article 8(4), *Paris Agreement*.
[77] Richards J and Schalatek L, 'Financing loss and damage: A look at governance and implementation options' Heinrich Böll Stiftung, 2018, 5.
[78] Article 8(1*), Paris Agreement*.

facilitate *fairness*, assess the *indirect effects* of each mechanism and lastly the financing instrument must have a *clear link to loss and damage*.[79]

The importance of these there three limbs will be used to assess whether the current sources of climate finance for loss and damage are in accordance with Article 8 of the Paris Agreement.

3.3 Discovery Phase: What financial tools are aligned to the essence of the Paris Agreement?

Under the directive of the WIM ExCom, a special dialog was created with the aim of exploring the third objective of WIM. This was to explore information on ways to facilitate mobilization of expertise, enhancement of support which included finance, technology and capacity-building for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change.[80] Considering that the COP has full authority over the WIM under Article 8(2),[81] the COP agreed to name the dialogue around the loss and damage narrative the Suva Expert Dialogue (Suva Dialogue).[82]

The WIM ExCom developed a two-year workplan that conducted research on a range of financial tools that were suitable to address loss and damage which was specifically provided for in Action Area 7. The list of financial tools provided included: "comprehensive risk management capacity with risk pooling and transfer; catastrophe risk insurance; contingency finance; climate-themed bonds and catastrophe bonds."[83] This section will briefly review the nature of these instruments according to their application in loss and damage under the Paris Agreement.

3.3.1 Catastrophe risk insurance

According to the Suva dialogue, the WIM stated that insurance remains the focus in advancing financial resources under loss and damage.[84] Insurance is defined as a contractual transaction that guarantees financial protection against potentially large losses in return for a premium. If the insured experiences loss, then the insurer pays out a previously agreed amount towards

[79] Timmons R, Durand A, Hoffmeister V, Weikmans R, Gewirtzman J, Natson S and Huq S, 'Financing options for loss and damage: A review and roadmap' German Development Institute, Discussion Paper 21/2016, 13 https://www.die-gdi.de/uploads/media/DP_21.2016.pdf on 16 November 2019.
[80] FCCC *Decision 2/CP.19*, 6.
[81] Article 8(2) *Paris Agreement*.
[82] FCCC *Decision 5/CP. 23, Warsaw international mechanism for loss and damage associated with climate change impacts*, 8 February 2018, 21.
[83] < https://unfccc.int/process/bodies/constituted-bodies/executive-committee-of-the-warsaw-international-mechanism-for-loss-and-damage-wim-excom/workplan#eq-9 > on 18 November 2019.
[84] Warsaw International Mechanism for loss and damage, *Report on the Suva expert dialogue*, August 2018, 12.

restoring the party to their previous position.[85] In climate insurance, the payout premium occurs when certain conditions are satisfied. The disaster must illustrate elements such as a specific amount of rainfall, a pre-determined wind speed etc. When natural events fall outside the pre-defined parameters, the necessary conditions are met to entitle the insured to an insurance payout.[86]

In disaster management, insurance tools are used to cover increasingly frequent and intense events. Traditional insurance is not an appropriate tool for high-frequency or slower-onset events like sea-level rise and desertification.[87] According to Article 8, the areas of cooperation and facilitation to enhance action should be established in slow onset events. Therefore, traditional insurance solutions fall short in covering the appropriate subject matter under loss and damage in this aspect.

Another challenge faced by using insurance to cover loss and damage is the affordability of insurance premiums. High premium costs are a constrain to insurance penetration because when disaster strikes, the insurance company must be able to meet all their pay outs at the same time. Therefore, they are likely to have high premium costs to meet all their payouts.[88] Due to high transaction costs and lack of government support, the availability of private risk financing instruments such insurance is not easily affordable to communities, especially in vulnerable countries.[89] Consequently, only income-concentrated societies, that being developed countries can afford the cost of insurance. This goes against the material aspect of distributive justice in the Paris Agreement.

Further, if insurance premiums were subsidized, there is a risk that this may undermining pricing signals for adaptation and risk-reduction mechanisms.[90] Owing to the direct correlation

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[85]Warner K, Ranger N, Surminski S, Arnold M, Linnerooth-Bayer J, Michel-Kerjan E, Kovacs P, Herweijer C, 'Adaptation to climate change: linking disaster risk reduction and insurance' Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, Bonn, 6 June 2009, 3.
[86]Richards J and Schalatek L, 'Not a silver bullet: Why the focus on insurance to address loss and damage is a distraction from real solutions' Heinrich Böll Stiftung, 2018, 5.
[87]Warner K, Kreft S, Zissener M, Höppe P, Bals C, Loster T, Linnerooth-Bayer J, Tschudi S, Gurenko E, Haas A, Young S, Kovacs P, Dlugolecki A and Oxley A, 'Insurance solutions in the context of climate-change-related loss and damage: needs gaps and roles of the UNFCCC in addressing loss and damage' in change' in Ruppel O (ed), *Climate change: international law and global governance: volume II: policy, diplomacy and governance in a changing environment*, 1ed, Nomos Verlagsgesellschaft, Germany, 2013, 887.
[88] Warner K, Kreft S et al., 'Insurance solutions in the context of climate-change-related loss and damage: needs gaps and roles of the UNFCCC in addressing loss and damage,' 892.
[89] Warner K, Kreft S et al., 'Insurance solutions in the context of climate-change-related loss and damage: needs gaps and roles of the UNFCCC in addressing loss and damage,' 892.
[90] Warsaw International Mechanism for loss and damage, *Report on the Suva expert dialogue*, August 2018, 13.

between loss and damage, the expected payout for loss and damage would increase and this is not favorable to the already declining financial scheme for loss and damage.

According to the Suva dialogue, insurance isn't the answer towards generating finance for loss and damage. This being because the payouts are in-sufficient to facilitate the resilience of communities and livelihood. An example of this was seen through the operation of the African Union's (AU) insurance company known as Africa Risk Capacity (ARC). In 2015 to 2016, Malawi had severe droughts that caused loss and damage of US$366 million. Insurance paid out just US$8.1 million.[91] Insurance has failed to understand the nature of non-economic loss and would thus require shifting from asset-based to non-asset-based insurance solutions, that focus on restoring their livelihood. This will help insurance premiums to adapt to address the subject matter provided the Paris Agreement.

3.3.2 Climate-themed bonds

Climate bonds are fixed-income debt securities used to finance projects that are environmentally friendly or directly related towards addressing climate change.[92] In most cases, bonds are issued by government entities, corporations and international banks such as the World Bank or the African Development Bank. They engage in these projects to raise funds for projects that facilitate sustainable development.[93] Doing this would allow the bond issuer to pay interest and repay the principal.

Loss and damage-related projects are less likely to be profitable because they are used to restore society to the place they were before destruction and facilitate sustainable development after devastating loss. Examples of such projects are low-carbon transportation, energy efficient buildings and hydropower facilities. These have arguably been categorized as mitigation and adaptation projects strategies.[94] On the face of it, these projects would not form part of the subject matter under loss and damage because they are categorized as adaptive projects. However, these green projects do demonstrate aspects of enhancing resilience of communities and livelihood, emergency preparedness and comprehensive risk assessment and management which are all under the umbrella of Article 8. Therefore, the question of whether climate bonds

[91]Fuentes A and Martin V, 'The goal is an enhanced transparency framework' ECO NGO Newsletter, 6 September 2018, 2.
[92]OECD, *Green bonds: mobilizing the debt capital markets for low carbon transition*, December 2015, 10.
[93]Park S, 'Investors as regulators: green bonds and the governance challenges of the sustainable finance revolution' 54 *Stanford Journal of International Law* 1, 2018, 8.
[94] Park S, 'Investors as regulators: green bonds and the governance challenges of the sustainable finance revolution,'12.

address loss and damage is dependent on the strict separation of adaptation features under Article 8 of the Paris Agreement.

Climate bonds are well known for their efficiency in raising finance for risk reduction and adaptation projects that produce revenue streams. According to the wall street journal, the bond market is increasingly growing and reached $150 billion in 2017.[95] Despite this direct indication of a predictable and sustainable source of finance, its application might be limited in addressing slow-onset activities. Further, high interest rates have been known to be a barrier for vulnerable countries to access the finance.[96]

Importantly, Climate bonds are *pari passu* to any other regular bonds. That is, investors have direct recourse to the issuer if the issuer is unable to make interest payments or repay the principal on the bond.[97] This illustrates reciprocity and cooperation of both parties which is an indispensable aspect of the Paris Agreement. There is great uncertainty on how climate bonds could realistically be used to finance loss and damage projects because it does not have a clear link to loss and damage.

3.3.3 Catastrophe bonds

Catastrophe bonds are high-yield debt instruments that transfer specified risks from the bond issuer to an investor in order to provide the bond issuer with funds if a catastrophe such as a hurricane strikes.[98] There is a special condition that states that if the bond issuer suffers from a certain pre-defined disaster, the issuer's obligation to pay interest or to repay the principal to investors is either deferred or completely scrapped.[99] This feature illustrates facilitative means of risk sharing and illustrates the principles of distributive justice.

The financial nature of catastrophe bonds is that they are not closely linked to the stock market or economic conditions therefore they may be attractive to investors, as they allow diversification of risk.[100] On the other hand, it is argued that given the levels of uncertainty in climate, the risks are higher for insurers which would reflect higher premiums for clients.[101]

[95] Cowan G, 'Investors warm to 'green bonds'' The Wall Street Journal, 9 April 2017, 1 https://www.wsj.com/amp/articles/investors-warm-to-green-bonds-1491790201 on 15 November 2019.
[96] Asian Development Bank, *Ways to pay for climate-related loss and damage*, February 2018, 6.
[97] Park S, 'Investors as regulators: green bonds and the governance challenges of the sustainable finance revolution,'14.
[98] Timmons R et al., 'Financing options for loss and damage: A review and roadmap', 10.
[99] Timmons R et al., 'Financing options for loss and damage: A review and roadmap', 10.
[100] Cummins J and Weiss A, 'Convergence of insurance and financial markets: hybrid and securitized risk-transfer solutions'76 *The Journal of Risk and Insurance* 3, 2009, 494.
[101] Warner K, Ranger N et al., 'Adaptation to climate change: linking disaster risk reduction and insurance,' 12.

These challenges are further highlighted in that catastrophic bonds come with stricter terms and conditions than traditional insurance does and have a higher fixed cost than traditional insurance, irrespective of how much is insured. Doubt is casted on the adequacy, dependability and sustainability of this source of climate finance.

Catastrophic bonds are generally categorized as an adaptive mean of finance and is best put in place before a disaster strike.[102] Consequently, they cover only sudden catastrophes, not slow onset events. This is the very heart of Article 8 in the Paris Agreement and therefore, unless adapted, the lack of direct link to loss and damage will be a barrier towards its contribution to loss and damage. From the analysis of the nature of catastrophic bonds, this doesn't seem to be a sustainable source of finance for loss and damage.

3.3.4 Contingency finance

Contingency finance is emergency capital that pays out quickly in times of crisis. It enables countries to react quickly to the aftermath of a disaster and improve their responses to unforeseen shocks. It is common practice to include extra monetary finances on top of the strictly required administration funds in case of any unforeseen circumstances.[103]

In doing this, a contingency fund is established as a form of risk retention. Many countries generally have a contingency fund to support victims of disasters.[104] The positive aspect of contingency finance is that it improves risk planning by creating a pre-determined budget and funds are held in reserve.

Establishing contingency funds is an efficient mode to disburse funding at a faster rate in a post-disaster scenario. The African Risk Capacity (ARC) is an example of both an index-based sovereign risk insurance pool and an early-response mechanism of the African Union (AU). It combines the idea of insurance and contingency planning. Governments receive pay-outs from the ARC Insurance Company Ltd, a sovereign-level mutual insurance company, that provides weather-related insurance coverage to member states.[105] Contingency finance is mainly used in the instance of a hurricane or earthquakes which again fall under sudden events.[106] It still

[102] Hoff H, Warner W and Bouwer L, 'The role of financial services in climate adaptation in developing countries' Vierteljahrshefte zur Wirtschaftsforschung, 2005, 199.
[103] Timmons R et al., 'Financing options for loss and damage: A review and roadmap' 8.
[104] Mechler R, Bouwer L et al., *Loss and Damage from Climate Change: Concepts, Methods and Policy Options,* Springer Open, 29.
[105] E-Pact, *Independent Evaluation of African Risk Capacity (ARC),* October 2017, 3.
[106]African Union, *African risk capacity- ARC: A pan-african disaster risk pool*, May 2011, 9.

remains unknown as to whether contingency finance is capable of addressing slow-onset events and non-economic loss.

3.4 Conclusion

There is a general agreement that these sources of finance have major weaknesses in conforming to the necessary requirements of the Paris Agreement. They are traditionally constructed and thus they do not adequately address slow onset events and non-economic loss which is an explicit requirement of Article 8 in the Paris Agreement.

CHAPTER 4

A NEW FINANCING REGIME

4.1 A step towards a new financing regime

Developing countries have made their case to justify the need to access finance to counter the effects of insufficient mitigation strategies in their countries. African countries sought assistance in various areas that being: financial assistance, cooperation on enhancing capacity and lastly support approaches that included technical assistance in disaster risk reduction, development in safety and resilience efforts under the Green Climate Fund (GCF) and enhanced coordination in addressing non-economic loss.[107] In assessing financial assistance, African states called for reimbursement of unavoidable loss from slow-onset processes, start-up funds for national and regional risk reduction and rehabilitation of communities that have suffers the effects of climate change.[108] Some of these requests were successfully incorporated into the Paris Agreement.[109]

However, within the contractual bounds of the Paris negotiations, both the WIM and the Paris Agreement have not drawn a link to climate finance to support loss and damage.[110] Due to recent developments over the years, a key agenda of the 25th COP in December 2019 will be the review of WIM to ensure that the body is fully in operation. The WIM ExCom and the Standing Committee on Finance (SCF) alluded that this will be achieved through the establishment of a financial arm which will channel loss and damage finance.[111] These discussions seek to create a link between loss and damage and climate finance.

The unpredictable outcome of the negotiations leads this research paper to focus on key proposals by stakeholders in the climate finance market, i.e. international organizations. They have proposed certain potential tools that can generate climate finance. The highly proposed instruments include: Financial transaction tax (FTT), International Airline Passenger Levy, Solidarity Levy and Bunker Fuel Levy.[112] Taxation is projected to be the leading source of climate finance and shall be the focus of this chapter.

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107 United Nations Economic Commission for Africa, *Loss and damage in Africa*, May 2014, 42.
108 United Nations Economic Commission for Africa, *Loss and damage in Africa*, May 2014, 42.
109 Article 8, *Paris Agreement*.
110 Heinrich Böll Stiftung, *The global climate finance architecture*, November 2016, 1.
111 Climate Action Network, *Submission on the Scope of the technical paper exploring sources of support for loss and damage modalities for accessing support*, February 2018, 2.
112 Climate Action Network, *Submission on the Scope of the technical paper exploring sources of support for loss and damage modalities for accessing support*, February 2018, 2.

4.2 Distributive justice within the taxation regime

The question on whether the taxation regime facilitates distributive justice is a never-ending debate. It was brought up because different taxing regimes have different aims and outcomes. *A Theory of Justice* is not particularly keen on the specific design of a tax system. The outcome is what is of concern, that being social justice.[113] To achieve this, the difference principle is named to be the true test for social justice. It is stipulated in the principles of social justice that assigning rights and duties in institutions and defining the relevant distribution of benefits and detriments of social cooperation can adequately be translated into a just taxation regime.[114] The difference principle is formulated so that social and economic inequalities are arranged to the greatest benefit of those disadvantaged in society.[115] The government must access social resources to provide public goods and services in order to make the transfer payments necessary to satisfy the difference principle.[116] Taxation is a means towards achieving adequate redistribution. In doing so, Rawls proposes that the tax system is a means of achieving distributive justice, rather than a requirement of justice itself.[117]

Taxation falls within the distributive branch of justice because the burden of taxation is to be equally shared and it aims to maintain just arrangements.[118] If the taxes collected are redistributed to benefit to the disadvantaged, then this opportunity improves the conditions of the affected people in various areas of society.[119] Here, communities affected by climate change are the least advantaged in society. In climate taxation, governments internationally, tax the largest economic industries and redistribute these funds to under financed public sectors that essentially is a means towards distributive justice.

4.3 An assessment of the sustainable nature of taxes as financial tools

4.3.1 Financial Transaction Tax (FTT)

A financial transaction tax (FTT) is the application of levy on financial trades, mainly in the acquisition and sale of securities such as on stocks, bonds and derivatives.[120] FTT usually compose of a small fraction of the total amount but still generates substantial revenue. Both

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113 Rawls J, *A theory of justice*, 246.
114 Rawls J, *A theory of justice*, 4.
115 Sugin L, 'Theories of distributive justice and limitations on taxation: what Rawls demands from tax systems' 72 *Fordham Law Review* 5, 2004, 1997.
116 Rawls J, *A theory of justice*, 246.
117 Rawls J, *Political liberalism*, Columbia University Press, New York, 1993, 227-228.
118 Rawls J, *A theory of justice*, 246.
119 Sugin L, 'Theories of distributive justice and limitations on taxation: what Rawls demands from tax systems,' 1997.
120 Burman L, Gale W, Gault S, Kim B, Nunns J and Rosentha S, 'Financial transaction taxes in theory and practice' 69 *National Tax Journal* 1, 2016, 173.

developing and developed countries are implementing FTT's at a state level to acquire funds. The role of FTT's in climate finance is being accelerated through pledges made by several European states.[121] France, for example, has pledged to contribute 1.548 Billion Euros, a portion of their FTT revenue, to the Green Climate Fund.[122] This voluntary submission is a scheme used by governments to generate substantial finance at lower rates because the nominal value of financial transactions is quite large.[123]

A major aspect that deters the use of FTT is the disproportion it may create in the financial market. Some financial instruments were taxed, and others were not and this created instability in the finance market. To overcome this challenge, the EU adopted the 'Triple A' approach. This approach would require the tax to apply to all regulated markets, all instruments, this being shares, bonds etc. and to all financial sectors.[124] The motive behind this was to maintain equal treatment of all financial institutions, products, and markets in the EU which would also result in higher revenue generated.

Climate finance from FTT would be predictable and technically feasible, given that these taxes are to be implemented voluntarily by developing and developed countries. Beyond this, the primary benefit is that FTT is expected to reduce uncertainty in currency and security markets, therefore reducing market volatility.[125] It is also argued that since this source of revenue is independently collected, it is not categorized directly as loss and damage finance making it more likely to be accepted by governments in developed countries.

4.3.2 Solidarity Levy

The purpose of a solidarity levy is to impose a duty to persons within a given jurisdiction to indirectly contribute to a current global problem.[126] It is not universally applicable in that independent jurisdictions can choose to participate in a specific cause. This maintains national sovereignty through voluntary action in order to facilitate the realization of public good and redistribute wealth.[127] Both developed and developing nations are well known to participate in solidarity levies which illustrates growing cooperation in addressing a specific cause.

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[121] Burman L et al., 'Financial transaction taxes in theory and practice,' 172-173.
[122] < https://www.greenclimate.fund/news/france-doubles-its-contribution-to-the-green-climate-fund > on 23 November 2019.
[123] Burman L, 'Financial transaction taxes in theory and practice,' 172.
[124] Burman L, 'Financial transaction taxes in theory and practice,' 172.
[125] Timmons R et al., 'Financing options for loss and damage: A review and roadmap', 14.
[126] < https://www.uniglobalunion.org/es/node/24365 > on 18 November 2019.
[127] Timmons R et al., 'Financing options for loss and damage: A review and roadmap', 15.

In practice, a successful example is the operation of the European Union Solidarity Fund (EUSF), is an organ that enables the EU to respond in a rapid and efficient manner to emergency situations by showing continental support towards populations that have been struck by natural disasters. Through the authority of the European Parliament and the European Council, funds are mobilized to respond to major disasters in Europe. Between 23 and 26 February 2019, Greece faced server flooding and landslides causing loss of human lives among other disastrous consequences. The European Council agreed in accordance with the council regulation[128] to mobilize an amount of EUR 4,552,517 to assist Greece in restoring the damage that occurred.[129] The disbursement of funds collected from solidarity levies determines the direct link towards addressing loss and damage.

The challenges that have been faced in the past with both international air ticket levy and solidarity levy is the negative implication on economic activity. In the aviation industry, imposing a solidarity levy does not have the intention to create undue burden to passengers. However, this minimal marginal increment in price could reduce a countries competitiveness. This occurs when the tax is too high and not well regulated. In the Netherlands, the 'eco tax' in 2008 was abolished because it significantly reduced air traffic and a decline in the country's GDP. However, the Dutch parliament has proposed a bill to reintroduce an air ticket tax that if successful will be applicable from 2021.[130] If this finance tool is fully operational, the presence of a solidarity fund, specifically for loss and damage is a sustainable means of ascertaining funds when a disaster strikes. Despite these challenges, adequate finance is created from these taxing regimes.

4.3.3 International Airline Passenger Levy

The concept of an international airline passenger levy scheme was proposed by the Maldives on behalf of least developed countries to the UNFCCC in 2008.[131] It would require a flat-rate charge fee on international air tickets that would directly be paid towards a general cause. There are two approaches for implementing an International Air Travel Adaptation Levy (IATAL):

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[128] European Council *No 2012/2002, Council Regulation establishing the European Union Solidarity Fund*, 11 November 2002, 1.

[129] European Commission, *Decision of the European parliament and of the council on the mobilization of the European union solidarity fund to provide assistance to Greece*, 18 October 2019, 2.

[130] < https://www.government.nl/latest/news/2019/05/14/dutch-government-tables-national-flight-tax-bill > on 23 November 2019.

[131] Chambwera1 M, Njewa E and Log D, 'International Air Passenger Adaptation Levy: opportunity or risk for Least Developed Countries?' International Institute for Environment and Development, 5 chrome-extension://oemmndcbldboiebfnladdacbdfmadadm/https://www.ldc-climate.org/wp-content/uploads/2018/02/LDC-paper-series-17.pdf on 25 November 2019.

voluntary or mandatory approach. A voluntary approach gives airline passengers the option to contribute or not, to climate change. The voluntary scheme enables passengers to declare the amount they wish to contribute when they buy their tickets and requires all passengers to pay automatically when they purchase their ticket. A mandatory approach requires all international air passengers to pay a tax in support of climate action.[132] This was mainly used in climate adaptation but can be used when considering loss and damage. An example is the United Kingdom's air passenger tax ranges between 13 to 150 pounds per flight.[133]

Passenger levies can be small enough to have no discernible effect on demand, but still raise substantial revenue. Consequently, they place no burden on either party and is an incentive that can be used by both developing and developed countries. They are dependent on certain industries and the global economy thus it would be accurate to determine them as a predictable, sustainable and dependable means of generating climate finance.[134]

4.4 Conclusion

Much emphasis has been put on various taxation schemes as sources of finance for loss and damage. Generally, these taxes do facilitate distributive justice in that they do not cause undue burden to one party. They also seek to be redistributed to sectors of society that need them most. These methods seek to address climate action because they are not specifically directed towards contributing to loss and damage. The indirect contribution of funds increases political will to contribute to loss and damage under Article 8 of the Paris Agreement.

Other financing tools that have been proposed such as the carbon market that would be achieved through carbon pricing for international aviation and maritime carbon and fossil fuel extraction. Carbon pricing are well known under the Pigouvian theory for internalizing the costs of damage.[135] These means are largely focused on the previous climate regime, that being liability-based forms of compensation such as the CDM in the Kyoto Protocol.[136] This assessment is crucial in determining whether a given tool is in align with the Paris Agreement thus focusing on taxation as a duty of state parties under this regime.

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[132] International Institute for environment and development, *The economic feasibility of an international air travel adaptation levy*, December 2008, 4.
[133] O'Shea R, 'The rate changing and what does this mean for British travelers?' Independent, 29 March 2018,1.
[134] The Oxford institute for energy studies, *Oxford energy and environment brief: Solidarity levies on air travel*, April 2011, 2.
[135] Barrett S, 'Towards a workable and effective climate regime', 61.
[136] The Oxford institute for energy studies, *The reformed financial mechanism of the UNFCCC: The Question of Oversight post Copenhagen synthesis report*, April 2010, 34.

The proposed means of international finance have proven to be viable for loss and damage, but this again depends on the allocation of these funds directly through the operation of an efficient institutional framework.

CHAPTER 5

INSTITUTIONAL FRAMEWORK

5.1 Introduction

The previous chapters have presented the challenges faced by financial tools for funding loss and damage. The common factor deterring the effectiveness of theses financial instruments is the lack of a direct correlation to loss and damage and above this, transparency and accountability of fund administration through a legitimate institutional framework. As mentioned in Article 8 of the Paris Agreement, the body with the mandate to facilitate loss and damage is the Warsaw International Mechanism for loss and damage.[137] This chapter shall investigate their mandate, the underlying challenges the body faces in fund administration and the possible administrative funds under previous climate regimes that can be used to enhance accessibility and storage of funds for loss and damage. Lastly, a framework for institutional accountability shall be analyzed to ensure effective decentralization of funds from WIM to regional bodies and further onto the national level of implementation.

5.2 Establishment of The Warsaw International Mechanism for Loss and Damage (WIM)

On 23rd November 2013, a promising milestone was achieved at the 19th COP. The WIM was established to address the effects of extreme climate events and slow onset events particularly in developing countries that are vulnerable to climate change.[138] This conference also highlighted significant features concerning loss and damage especially for African countries by seeking to create independent institutions to address loss and damage.[139]

The outcome of the 19th COP, describes the mandate of WIM and provides the formal recognition of loss and damage as an independent pillar in international climate finance.[140] It further goes ahead to establish the WIM executive committee (WIM ExCom) that reports directly to the COP as it executes its mandate.[141]

Through the institutionalization of loss and damage, the WIM has a duty to work with existing bodies and expert groups under the Agreement as well as relevant organizations and expert

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[137] Article 8(3), *Paris Agreement*.
[138] FCCC, *Decision 3/CP.18, Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity*, 8 December 2012, 21.
[139] United Nations Economic Commission for Africa, *Loss and damage in Africa*, May 2014, 52.
[140] FCCC, *Decision 2/CP.19*, 5.
[141] Article 8(3), *Paris Agreement*.

bodies outside the Agreement.[142] Through this collaboration, the 3 main duties of WIM were mentioned to be the guiding force. The 3rd being of utmost importance to climate finance states that WIM ought to take measures to enhance finance, to address loss and damage directly linked to the effects of climate change.[143] To achieve this objective, it has further been expounded to include:

i. Providing technical support and guidance on approaches to address loss and damage associated with climate change impacts, including extreme events and slow onset events;
ii. Provide information and recommendations for the COP when providing guidance relevant to reducing the risks of loss and damage and where necessary, include the operating entities of the financial mechanism of the Convention;
iii. Facilitate the mobilization of expertise, and enhancement of support, including finance, technology, and capacity-building to strengthen existing approaches and where necessary, facilitate the development and implementation of additional approaches to address loss and damage associated with climate change impacts, including extreme weather events and slow onset events.

Throughout climate negotiations over the years, WIM has the duty to secure climate finance that implements these objectives. However, the body has encountered various challenges while seeking to accelerate the generation of finance for loss and damage.

5.3 The underlying challenges of climate finance

Climate finance associated with addressing loss and damage is not precisely traced or disclosed to be a distinct finance category.[144] There is no conventional financial architecture that categorizes certain types of finance collected within the pool of climate finance pool as specific towards loss and damage. This is further justified through the lack of multilateral funds under the UNFCCC nor any bilateral fund that is labeled to support loss and damage.[145] The absence of a distinction between loss and damage and other pillars of climate change poses a challenge in the collection, administration, distribution of financial information and monetary contribution to communities affected by climate change.[146]

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[142] Article 8(5), *Paris Agreement.*
[143] FCCC, *Decision 3/CP. 18,* 5.
[144]UNFCCC, *Elaboration of the sources of and modalities for accessing financial support for addressing loss and damage*, 14 June 2019, 8.
[145] United Nations Economic Commission for Africa, *Loss and damage in Africa,* May 2014, 35.
[146] UNFCCC, *Elaboration of the sources of and modalities for accessing financial support for addressing loss and damage*, 14 June 2019, 8.

Within each era of climate negotiations, the COP established and entrusted specific institutions with the obligation of financial administration as required by Article 11 of the UNFCCC.[147] The Global Environment Facility (GEF) and the Green Climate Fund (GCF) were entrusted with the administration of funds required for mitigation and adaptation. Further, the adaptation fund was established under the authority of the Kyoto Protocol while two other unique funds, that being the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF) were established under the guidance of the UNFCCC. All these funds fall under the support of adaptation and mitigation measures to enhance sustainable development in affected areas.

In the latest statement by the UNFCCC Secretariat on June 2019, these funds generated a total of USD 746.7 million towards adaptation actions during the period 2015–2016.[148] This is evidence that through a well-organized institutional framework, the administration of funds is likely to be accountable and transparent in addressing the cause that they are required to.

While it seems quite possible that the UNFCCC could establish a fund specifically for loss and damage, this move is highly discouraged. Looking at the experience of the establishment of the GCF, it took five years to officially make a funding decision.[149] This illustrates that the journey from establishment to actual fund distribution is quite lengthy and complicated. Further, owing to the rapid rate of climate change, the presence of an existing fund and an administrative organ, the WIM, would accelerate the process of securing finance for loss and damage. Policy formulation would be necessary to regulate the financial arm of WIM and ensure that funds are allocated directly towards loss and damage and are further redistributed through national channels to affected communities.

The recommendations as to the institutionalization of loss and damage funds would be to take advantage of the existing UNFCCC climate funds, but more specifically, the GEF and the Adaptation fund. They already do have the potential to channel international financing

[147] Article 11, *United nations framework convention on climate change*.
[148] UNFCCC, *Elaboration of the sources of and modalities for accessing financial support for addressing loss and damage*, 14 June 2019, 21.
[149]Richards J and Schalate L, 'Financing Loss and Damage: A Look at Governance and Implementation Options' Deutshe klimafinanzierung, 4 July 2017, https://www.germanclimatefinance.de/2017/07/04/financing-loss-damage-look-governance-implementation-options/ on 25 November 2019.

however, similarly, do possess structural challenges because they were established in different climate regimes.[150]

Further, while addressing loss and damage, during the adoption of the Paris Agreement, the WIM ExCom was requested to establish a taskforce that complements the work of the adaptation committee and the least developed countries expert group in addressing climate change.[151] To do this, the next step would be to collaborate with the funds that mainly address adaptation. That being the LDCF and SCCF under the mandate of the GEF and the adaptation fund.

5.4 Global Environment Facility (GEF)

The Global Environment Facility (GEF), is one of the entities under the financial mechanism of the UNFCCC that has been entrusted to operate LDCF and the SCCF. It is required to create the policies and governance structures applied to these funds. They were the first multilateral funds that were specifically established for adaptation finance. The LDCF primarily deals with urgent and immediate adaptation programs while the SCCF helps developing countries increase the resilience capacity of their development sectors to prepare for any effects of climate change.[152]

5.4.1 Least Developed Countries Fund (LDCF)

The LDCF was established under the mandate of UNFCCC to provide funding to least developed country. Its main function is to support efforts of adaptation because most member states lack the technical and financial capacity for risk resilience.[153]

The areas of funding that the LDCF specifically supports are; facilitating drought-resistance farming techniques to enhance food security in affected areas. Further, the fund engages in disaster risk management and community-based adaptation that includes restoration of livelihood activities. This feature can easily be associated with non-economic loss as provided in the Paris Agreement. Additionally, it provides for the execution of climate sensitive health

[150] Richards J and Schalate L, 'Financing Loss and Damage: A Look at Governance and Implementation Options' Deutshe klimafinanzierung, 4 July 2017, https://www.germanclimatefinance.de/2017/07/04/financing-loss-damage-look-governance-implementation-options/ on 25 November 2019.
[151] UNFCCC, *Climate finance decision booklet*, 5 March 2018, 96.
[152]Schalatek Land Coo M, The least developed countries fund and the special climate change fund: Exploring the gender dimensions of climate finance mechanisms, United Nations Development Programme, November 2011, 1.
[153] Global Environment Facility, *Accessing resources under the least developed countries fund*, May 2011, 7.

programs. In doing this, the LDCF has the objective to reduce vulnerability of people and their livelihoods, and enhance technical capacity.[154]

An example of the effective application of this fund occurred in the Democratic Republic of Congo by enhancing capacity of the agricultural sector. This was done by creating adequate responses to the threat of food security posed by climate change. Doing this helped reduce the vulnerability in rural populations where the preventative actions in place were insufficient.[155] Further, the LDCF contributed to effective early-warning systems by improving technical capacity building in Gambia. The establishment of a hydro-meteorological network was rehabilitated, upgraded, and equipped and human resource capacity was enhanced through training and recruitment the locals as staff.[156]

Despite this link to adaptation, the LDCF's natural characteristics respond to the nature and characteristics of Article 8. It can evidently be seen that several African countries have benefited directly from the function of the LDCF. Considering that it is tailored to adhere directly to the socio-economic conditions of Africa, this fund would greatly administer funds if a branch was specifically established to facilitate loss and damage.

5.4.2 Special Climate Change Fund (SCCF)

The two main priorities of the SCCF is enhancing adaptation features and the use of technology to create enabling environments. Through adaptation, the SCCF has focused on enhancing adaptive features in land management, fragile ecosystems and climate disaster risk management. It focuses on capacity-building for technology in terms of accessibility to information and creating environmentally sustainable technology and promotes economic diversification for fossil fuel dependent countries.[157] The particular areas of focus under the SCCF are aligned to the proposed sources of funding for loss and damage. This fund would adequately enhance financial administration for loss and damage finance.

Additionally, the fund is supported from multilateral and bilateral sources that stream in finance. The predictable nature of financial inflows has sustained this fund in supporting adaptation projects.[158] One of the notable successes of the fund is the ability to integrate cost-

[154] UNFCCC, *Elaboration of the sources of and modalities for accessing financial support for addressing loss and damage*, 14 June 2019, 22.
[155] Global Environment Facility, *Accessing resources under the least developed countries fund*, May 2011, 7.
[156] Global Environment Facility, *Independent evaluation office program Evaluation of the Least Developed Countries Fund*, September 2016, 24-25.
[157] Global Environment Facility, *Accessing resources under the least developed countries fund*, May 2011, 7.
[158] Global Environment Facility, *Program evaluation of the special climate change fund*, January 2018, 4.

effective projects on a national level that promotes sustainable development. This has drastically reduced poverty and enhances sustainable development policies in communities affected by climate change.

5.5 Adaptation fund

The main objective of funds within the adaptation fund is to contribute towards the sustainability of concrete adaptation projects in developing country that are parties to the Kyoto Protocol and are vulnerable to the effects of climate change.[159] Most risk resilience and disaster management projects are funded under the Adaptation Fund. However, there are aspects that are not under the scope of adaptation and this is mainly non-economic losses. Damage that occurs to biodiversity, loss of community when people are displaced, loss of territory and loss of societal and cultural identities may potentially fall outside the scope of its mandate.[160]

The position of the Adaptation Fund is further contested in its application in the Paris Agreement. The challenge presented through adopting the Adaptation Fund for loss and damage is that it is financed from two per cent of the proceeds generated from certified emission under the Clean Development Mechanism (CDM) projects. The CDM was a project under the Kyoto Protocol that is based on the polluter-pays principle which does not align with the ethos of the Paris Agreement.[161]

5.6 Institutional accountability and transparency

Once there is accountability and transparency in the administration of funds, good governance determines the success of disbursement of funds to the national level. Good governance is determined through four key indicators; legal framework for development, accountability, public sector management, and transparency.[162] Therefore, accountability, transparency and participation are key values that support good governance. In climate agreements, participation will take the form of distributive governance among different stakeholders. This includes the participation of both international and national, public and private actors in establishing an informed network of stakeholders to implement policies on various levels of governance.[163]

[159] IIED, *Provisions for support to LDCs: Facilitating the implementation of the UNFCCC and the Paris Agreement Provisions for support to LDCs*, October 2017, 45.
[160] Mechler R, Bouwer L et al., *Loss and Damage from Climate Change: Concepts, Methods and Policy Options,* Springer Open, 206.
[161] IIED, *Provisions for support to LDCs: Facilitating the implementation of the UNFCCC and the Paris Agreement Provisions for support to LDCs*, October 2017, 45.
[162] World Bank, *Governance and development*, 1994, 8.
[163] Detomasi D, International institutions and the case for corporate governance: towards a distributive governance framework,8 *Global Governance* 421, 2002,423.

Seemingly, the legal framework for development was established through the participation of various stakeholders by creating a stand-alone pillar of climate finance and further implementing guidelines on how to achieve these objectives.

Implementing agencies and institutions on various levels have a duty to ensure that international policy is decentralized into a given region. On a continental level, the African Risk Capacity (ARC) centre is a special agency of the African Union that facilitates risk management and capacity building throughout the continent. Currently, the existing institutional arrangements of risk resilience have further been devolved to national levels for effective administration to affected communities. For example, risk avoidance measures through various programs such as the Livelihood Early Assessment and Protection (LEAP) program in Ethiopia and the in Early Warning System (EWS) program in Kenya are early-warning system programs which aimed at predicting food security crises by monitoring data and providing early warnings of potential impacts to the community.[164] These are a great indication that through decentralized risk management, finance will reach various communities affected by climate change.

[164] United Nations Economic Commission for Africa, *Loss and damage in Africa*, May 2014, 30.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

This research paper discovered that the current sources of funding directed towards loss and damage are insufficient. They do not align with the requirements provided in Article 8 of the Paris Agreement. However, there is positive anticipation that the proposed sources of funding will greatly help generate climate finance for loss and damage. The traditional characteristics of the current tools do not address slow-onset activities and therefore, fail to generate finance to those affected by climate change. Consequently, the current monetary tools ought to be adjusted to fit within the essence of the Paris Agreement.

Further, monetary administration for loss and damage has gone through several challenges under the authority of WIM. This is mainly based on the lack of support from the international community to set-up a fund specifically for loss and damage finance. Despite this, the current climate regimes have proven to be appropriate to establish a separate branch that administers loss and damage funds.

Through the supervision of WIM, the LDCF and SCCF would successfully facilitate the distribution of funds to affected communities to contribute to sustainable development.

6.2 Recommendations

The following recommendations seek to improve fund acquisition, management and distribution for loss and damage while also encouraging the development of a strong institutional framework for loss and damage:

1. There is a need to establishment a financial arm of WIM will address the process of financial acquisition for loss and damage.
2. This financial arm should look into specific tools that conform to the idea of distributive justice.
3. There should be a formal declaration of a specific fund that will administer funds for loss and damage which ought to be monitored by the financial arm of WIM.
4. The WIM Ex Com should establish guidelines and requirements for funds before they are released to assist communities affected by loss and damage.
5. Institutional agencies must be established on a regional and national level, that are distinct from adaptive bodies to address loss and damage.

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