

Executive Summary

An evaluation of the legal and institutional context for establishing a mechanism to address and redress loss and damage in the national context of Bangladesh

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There is now no serious scientific dispute about the cause and consequence of climate change. Although mitigation and adaptation approaches have been agreed upon under the UNFCCC process to deal with the cause and consequences of climate change, because of inadequate efforts the adverse impacts of climate change will with high likelihood cause harm to the lives and livelihoods of millions of people all over the world and inflict large economic losses. As such recently Parties to the UNFCCC agreed to address the need for enhanced understanding of what loss and damage means and how it can be addressed through the establishment of a work programme.

The climate regulatory regime, which began in 1992 with the adoption of the UNFCCC, is still struggling to set up governance mechanisms for mitigation and adaptation to climate change. Therefore, there is a long way to go before a framework is established within the UNFCCC process for addressing loss and damage. While negotiations on loss and damage are taking place at the global level, loss and damage resulting from climate change is being incurred already at the local level. Therefore, most vulnerable countries like Bangladesh, should give greater priority to developing national policies and legal norms to deal with loss and damage without waiting for agreed outcomes from UNFCCC. Such national legal and policy frameworks will help protect the lives and livelihoods of citizens, while recognizing that the polluter countries should help facilitate such national efforts with required financial and technical support.

Against this backdrop this study attempts to explore options to develop national legal and institutional frameworks in Bangladesh to deal with loss and damage associated with climate change and also examines the scope and limitations of existing regulatory frameworks. The study determined that existing legal and policy frameworks provide a limited scope to assess and address both the current and potential future risk of loss and damage associated with the adverse impacts of climate change. However, the provisions of existing policies and laws related to

addressing environmental harm, disaster risk management, microinsurance and social safety nets, climate change and adaptation finance provides the basis to establish a legal and institutional framework to deal with loss and damage in Bangladesh.

Taking into account the existing and potential loss and damage associated with climate change, this study identifies the legal and institutional mechanisms that will need to be developed in order to assess the risk of loss and damage and take steps to reduce that risk and limit residual loss and damage. A compensation mechanism and livelihood restoration and rehabilitation process will require a well-framed mechanism with coherent institutional arrangements from the local to national level. On the other hand, to reduce the potential loss and damage it will be necessary to take protection measures including planned relocation and building infrastructure within an anticipatory adaptation framework.

This study also assessed the existing financial mechanisms in Bangladesh related to adaptation to climate change and found current mechanisms inadequate to address future loss and damage. Instead a specific funding window within the financial mechanisms or the establishment of a separate financial mechanism to compensate a community affected by climate change is needed. In order to manage the required financial resources to support such a compensation fund, the study suggests how the Government of Bangladesh could access current funding mechanisms within the UNFCCC based on polluter pay principle and in the context of climate justice. As such the responsibility and compensation regime for climate change at the international level is also examined briefly in this study. Developing the regime at the national level does not necessarily mean that governments like Bangladesh are liable for compensation. Rather it pre-supposes that the government is responsible for the protection of its citizens and should thus adopt the necessary policy frameworks at the national level. However, ultimately the countries that have contributed most to climate change must assume responsibility to assist such national efforts with required financial and technical support.

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The Loss and Damage in Vulnerable Countries Initiative

Accepting the reality of unmitigated climate change, the UNFCCC negotiations have raised the profile of the issue of loss & damage to adverse climate impacts. At COP-16, Parties created a Work Programme on Loss and Damage under the Subsidiary Body on Implementation (SBI). The goal of this work programme is to increase awareness among delegates, assess the exposure of countries to loss and damage, explore a range of activities that may be appropriate to address loss and damage in vulnerable countries, and identify ways that the UNFCCC process might play in helping countries avoid and reduce loss and damage associated with climate change. COP-18, in December 2012, will mark the next milestone in furthering the international response to this issue.

The "Loss and Damage in Vulnerable Countries Initiative" supports the Government of Bangladesh and the Least Developed Countries to call for action of the international community.

The Initiative is supplied by a consortium of organisations including:

Germanwatch

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United Nations University – Institute for Human and Environment Security

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ICCCAD supports growing capacity of Bangladesh stakeholders, as well as enabling people and organisations from outside the country to benefit from training in the field, where they are exposed to the adaptation "experiments" and increasing knowledge. Through the expertise and research outputs of ICCAD and its local partners, international organizations will be able to continue to share and transmit knowledge of climate change and development challenges around the world for the benefit of other LDCs, and their governments, donors and international NGOs.

ICCCAD has begun running regular short courses for NGOs, donors, the media, government staff, private sector, etc. as well as initiating courses for local participants and Bangladeshi stakeholders, it provides tailor-made courses for organizations and departments that are seeking to enhance their capacity in regard to climate change.

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