Roll out the Drums, or Not: Hits and Misses at COP 27

By:

Adebayo Majekolagbe
Nona Tamale
Iseoluwa Akintunde

November 24, 2022

Loss and damage support was one of the key demands of African states and other developing countries at the 27th meeting of the conference of parties to the United Nations Framework Convention on Climate Change (COP 27). On November 20, 2022, two days after the conference was scheduled to end, a deal on L&D funding was announced. The development has been described as a “breakthrough”, “historical”, and “landmark” agreement. The elation in the wake of the announcement is not surprising. After all, the notion of loss and damage has a checkered history of North – South antagonism; and there would not have been a provision on loss and damage in the Paris Agreement (Article 8), but for the ‘proviso’ in the Paris Decision that Article 8 “does not involve or provide a basis for any liability or compensation” (para. 57, Decision 1/CP. 21).

This win is not a mean feat. It all began with a real clang. Was the funding of loss and damage to be on the agenda or not? The fight was long and hard.

Finally, developing countries got what was to become their first win of COP 27 – the funding of loss and damage was added to the agenda. But there is a catch. There are two footnoted caveats in the agenda, and both pertained to loss and damage. First was that the agenda item and annotations thereto do not prejudge outcomes on matters related to the governance of the Warsaw International Mechanism (WIM) for loss and damage (L&D), and second, outcomes on L&D funding are without prejudice to the consideration of similar issues in the future. Simply put, the outcomes reached on L&D funding at COP 27 would not be conclusive.

So, have developed countries vacated their position under para. 51 of the Paris Decision given the L&D funding agreement? Well, no! Care was taken not to connect the new funding arrangements to any relevant provision of the Paris Agreement and Decision. As the US special envoy on climate change, John Kerry, noted this is not 'reparation' based on responsibility; rather, there is "imperative for the developed world to help the developing world to deal with the impacts of climate". It could be argued that the Somalian farmer suffering from drought or the Nigerian who just lost her property and family to flood does not care if the intervention of developed countries simply based on goodwill rather than duty. Perhaps more pressing is the question of whether or not the loss and damage fund will turn out to be yet another empty triumph. After all, the creation and proliferation of support 'frameworks', 'mechanisms', and 'funds' are one of the 'strengths' of the UNFCCC led international climate regime. Yet, 'support' is the one thing developing countries do not have. The proliferation and fragmentation of climate finance is arguably counterproductive, particularly, given the bureaucratic burden imposed by various climate funds on recipients. Another fund with different access procedures, fiduciary frameworks, and readiness standards is the last thing developing countries need.

The L&D fund's financing mechanism and operational framework will remain unknown until at least COP 28. That task falls on a transitional committee made up of 24 members (14 developing country Parties and 10 developed countries). As a possible indicator of the committee's ultimate outcome, the agreement may have refrained from including any language that would confer greater responsibility on developed countries for providing L&D funds. The financial resources for the fund are expected to be "new" and "additional", but the definitions of these words have remained up for debate since the 1990s. Presumably, the fund is likely not part of the unfulfilled 2009 pledge to raise USD 100 billion per year by 2020. What is clear is that the L&D fund is yet another reminder that the world has moved away from the pre-Paris Agreement world of state-centric climate finance. Indeed, this post-Paris reality is more than evident with the loose wording around the funding source and the explicit reference to Bretton Woods Institutions in the agreement. If the L&D fund is to be more than a clanging cymbal, developing countries must be awake to this reality. The beyond-UNFCCC approach of Prime Minister Mottley's Bridgetown Initiative seems to be the way to go.

While the L&D fund agreement stole the thunder, there were various arguably more tangible developments at COP 27. For example, the structure of the Santiago Network for averting, minimizing, and addressing L&D under the WIM was decided. The Santiago Network includes organizations, bodies, networks, and experts with diverse technical experience and knowledge to provide technical assistance in developing countries with L&D needs. As noted in the Afronomics Law recent Brief on climate finance and debt in Africa, the in-kind support potentially available through platforms like the Santiago Network is an important piece of the L&D support puzzle. The issue of just transition also enjoyed increased attention in the final agreement with countries agreeing to a work programme and annual high level ministerial meeting. Further, various initiatives including 25 new collaborative actions to fasten decarbonisation under the Breakthrough Agenda, Global Shield against Climate Risks, and Early Warnings for All initiative were announced.

However, the devil is in the details. To what extent do these new initiatives worsen the indebtedness of developing countries, constrain their fiscal space, and generally make it more difficult for such countries to thrive? For example, while the proactive frame of the Global Shield initiative in ensuring that finance is available pre-L&D event, the financial assistance to governments will be channelled through instruments such as contingent credit, risk transfer products, and financial market instruments like bonds. As some have argued, the Global Shield's heavy insurance-content risks further burdening developing countries through costly insurance premiums while market based instruments could escalate existing debt problems. Again, whether or not an initiative will become burdensome is a question of design; and design is considerably a question of who is designing and what the underlying principles are. The V20 is involved in, at least, the operationalization of the Global Shield. The extent of ownership and influence of V20 countries is, however, unknown.

Relatedly, the increased attention to the debt implications of climate finance is, again, one of the whispering-wins of COP 27. More than any COP decision, the Sharm el-Sheikh Implementation Plan recognizes the nexus between climate change and the indebtedness. Country parties expressed deep concern about loss and damage costs resulting in growing debt burden and impairing the realization of the Sustainable Development Goals; and the growing gap between climate finance needs and indebtedness, and the finance support received. In what looks like an endorsement of the Bridgetown Initiative, the Implementation Plan admonishes multilateral development banks and international financial institutions to reform practices and priorities, and deploy a full suite of instruments including grants, guarantees and non-debt instruments, “taking into account debt burdens”, to substantially increase climate finance.

While Russia’s invasion of Ukraine, the pressure on global fossil fuel supply, and the consequent greater influence of fossil fuel suppliers constitute a relevant sub-plot, the greatest miss at COP 27 is on the mitigation front. Inexplicably, the 2030 emission reduction target was reduced from 45% by 2030 relative to 2010 to 43% by 2030 relative to the 2019 level. Further, no substantial new mitigation commitment was made under the Implementation Plan. Instead, the plan subtly provided a space for the increased exploration and use of natural gas as ‘transition fuel’ by referencing “low emission … energy”. When the connection between mitigation, adaptation, and loss and damage is appreciated, the seeming exchange of advancement on the L&D front for regression in mitigation ambition makes little to no sense. Less mitigation will ultimately result in more devastating climate impacts in the future and in turn, immense economic and non-economic loss and damage.

Like every other COP, COP 27 was a mixed bag. There were big wins, and there were significant losses. The most significant victory, however, may be the more concrete progress being made on mitigation, adaptation, and loss and damage among coalitions 'outside' the UNFCCC process. This trend has been in the upward trajectory since the 2015 Paris Agreement. Polycentric climate engagement must, however, not be uncritically embraced. As global climate governance moves further into the territory of polycentricity, attention must be paid to a tendency of such polycentric system to be ahistorical and justice blind.

Adebayo Majekolagbe Fellow, Marine and Environmental Law Institute, Dalhousie University, and the African Sovereign Debt Justice Network (Afronomics Law). Nona

Tamale Legal and Policy Advisor, African Sovereign Debt Justice network (Afronomics Law).

Iseoluwa Akintunde Doctoral Researcher, Faculty of Law, McGill University.

With thanks to James Gathii, Wing Tat Lee Chair of International Law and Professor of Law, Loyola University of Chicago School of Law, and the editorial team of Afronomics Law for their support.

This article was first published on Afronomics Law Blog.