



# Climate Change Liability

Can climate-induced losses and damages be compensated in an unequal world?

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# Scale of Losses and Adaptation Costs

- UNFCCC: Annual global costs of climate change adaption to be US\$40-170 billion (cost of about three Olympic Games a year)
- World Bank: \$400 billion annually by 2020 for only developing countries



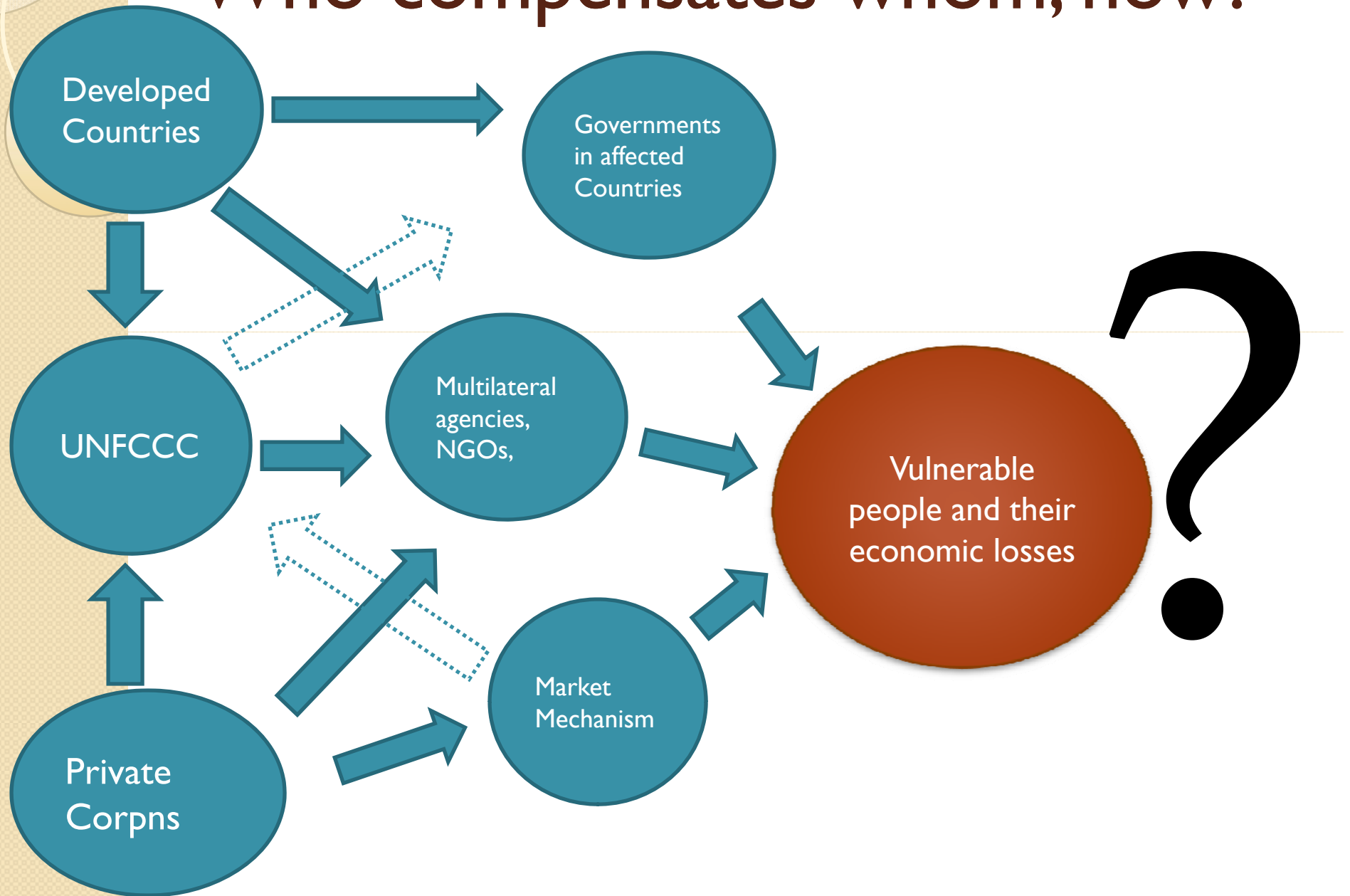
- Adaptation and mitigation costs will be the highest in the poorest regions of Sub-Saharan Africa and South Asia, for both climate targets and practically all emission allocation regimes (Hof, Elzen, Vuuren, 2010)
- “Previous estimates of adaptation costs have substantially misjudged the scale of funds needed,” *Professor Martin Parry, Climate Change at Imperial College London*
- By 2020, between 75 and 250 million people in Africa are projected to be exposed to acute water stress due to climate change



# Damages to losses

- **Short Range:** Extreme weather events leading to displacement, loss of livelihood and property, immediate health costs, damages to the infrastructure
- **Long Range:** Changing climate patterns affecting agriculture, fisheries, industrial processes, availability of potable water, health conditions

# Who compensates whom, how?





# Definitional challenges

- How damages can be linked to climate change impacts and suitably apportioned?
- How can such damages be linked to ‘losses’ that countries, governments, people suffer?
- How can such losses be quantified and responsibility of emitters be linked to those losses?



# Legal Challenges

- Fixing responsibilities: Globally or Locally under domestic or international laws
  - How can countries and civil societies seek compensation and litigate for enforcing it to cover damages
- Defining refugees, for example, under UNHCR, to deal with climate related displacements
  - Current definition does not take into consideration climate related displacements. However, efforts are underway to find a solution



# “Loss and Damage” in Cancun

- The term was introduced in the Cancun Agreements but it did not elaborate on how it could be operationalised. It is now merely a 2-year work programme comprising expert consultations and seminars to “*consider approaches to address loss and damage associated with climate change impacts in developing countries.*”

# Domestic Legal Processes

- Litigations across various courts are currently underway and will show if there is a possibility of a climate change affected group (such as the Alaskan Inuit) being able to sue either the government or a company (such as power generation or oil companies) after losing their livelihood, or risking future livelihood, through long-term changes in the climate or in the aftermath of natural disasters.

Outside the US, most domestic litigations have taken indirect routes. In Canada NGOs tried to force the government to honour its Kyoto commitment through litigation and the domestic laws that had been written to implement the Kyoto treaty but were struck down by the court's ruling that it was a political and not a legal matter. Shi-Ling Hsu 2008 - A realistic evaluation of climate change litigation through the lens of a hypothetical lawsuit.

*University of Colorado Law Review*



# International Legal Processes

Does it matter really to have any international legal process when it is unlikely that any state would accept and conform to an international verdict?

Campaigners feel it would at least increase media and public pressure on a polluting state. A verdict could also justify trade sanctions against a country.

**Instruments/courts outside UNFCCC that could be used to seek compensation**

No Harm Principle  
Law of the Sea (UNCLOS)  
International Court of Justice (ICJ),  
The European Court of Human Rights,  
UNESCO

Countries are liable for their actions and how these actions affect other parts of the world. According to legal experts, when a country's GHG emission harms other countries, it can be considered to be breaching international law.



## What options people have today?

- Victims of climate change — people fleeing from low-lying areas in Bangladesh for example — cannot wait for a solution to emerge from the stalemate that climate negotiations are stuck in.

**What is the way forward?**