Human Rights: an alternative approach for addressing climate-induced loss and damage

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SOA- 3902: Dissertation

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Declaration of authenticity

The work I have submitted is my own effort. I certify that all the material in the Dissertation, which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed:

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22 May 2015

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dear matafele peinam

men say that one day
that lagoon will devour you

they say it will gnaw at the shoreline
chew at the roots of your breadfruit trees
gulp down rows of your seawalls
and crunch your island's shattered bones

they say you, your daughter
and your granddaughter, too
will wander rootless
with only a passport to call home

dear matafele peinam,
don't cry
mommy promises you
no one
will come and devour you

no greedy whale of a company sharking through political seas
no backwater bullying of businesses with broken morals
no blindfolded bureaucracies gonna push
this mother ocean over
the edge

no one's drowning, baby
no one's moving
no one's losing
their homeland
no one's gonna become
a climate change refugee

or should i say
no one else

Abridged poem by, Marshallese activist Kathy Jetnil-Kijiner, 2014

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Abstract

Loss and damage occurs when adaptation fails, resulting in extreme and often dire consequences including loss of life, livelihood and land. Developing countries are particularly vulnerable but have done little to contribute to global green-house gas emissions. Human rights should be considered in this context because of both the extreme nature of impacts and the inequity of impact. Loss and damage is now an integral part of the UNFCCC process through the establishment of the Warsaw International Mechanism in 2013, however it remains in a formative stage. How the global community conceptualises, understands and approaches the challenge of loss and damage will be defined in the next two years.

The aim of this thesis is to examine the UNFCCC negotiations on loss and damage and identify a role for human rights. Through discourse analysis of formal submissions and decision texts, and interviews with key negotiators and advisors two distinct discursive narratives were identified: the dominant *economic narrative* and the alternative *human-centered narrative*. It further elucidates the absence of a human rights discourse. The *human-centered* narrative highlights the human impacts that are happening now, invoking fundamental ethical issues such as the unequal burden born by Small Island States and Least Developed Countries. However, these "justice" claims are not addressed in the "range of relevant approaches" considered in the UNFCCC negotiations. The dominant discursive practice is "comprehensive risk management" which correlates well with the goals and values of the economics-driven narrative. This shows there is a gap between policy approaches and the issues raised by developing countries. The final part of this thesis considers the opportunities for human rights-based approaches to address this deficiency in the areas of knowledge generation, risk assessment and participation, concluding with key policy recommendations for practitioners.

Key words: Human rights, climate change, loss and damage, UNFCCC, critical discourse analysis, comprehensive risk assessment, human security, disaster risk reduction and climate change adaptation.

Word count: 16,837

Glossary of acronyms

AOSIS	Alliance of Small Island States
CCA	Climate Change Adaptation
CDA	Critical Discourse Analysis
CDM	Clean Development Mechanism
COP	Conference of the Parties
DRR	Disaster Risk Reduction
G77	Developing countries coalition within the UNFCCC
IPCC	Intergovernmental Panel on Climate Change
LDC	Least Developed Countries
LMDC	Like Minded Developing Countries
NSA	Non-State Actors
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner on Human Rights
REDD+	Reducing Emissions from Deforestation and Forest Degradation
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SIDS	Small Island Developing States
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNISDR	United Nations Office for Disaster Risk Reduction

Contents

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1. Introduction

The poor mitigation efforts and inaction by States in the past 20 years of the United Nations Framework Convention on Climate Change (UNFCCC) means that the world's climatic systems are changing. The release of the Fifth Assessment Report by the Intergovernmental Panel on Climate Change (IPCC) in 2014 has increased scientific certainty that: a) the climate is changing and b) there is a strong link between human actions and the accelerated nature of the changes underway (IPCC, 2014a: 2-5). Crucially, this report also recognises that there are limits to human adaptation, and that there is a level of change within the natural system that is "locked in", which means that there are now inevitable and irreversible losses and damages that affect human systems, exacerbating pre-existing socio-economic vulnerability (IPCC, 2014b:29, Burkett, 2014a:121, Warner et al., 2013:19-26). The weight of scientific evidence, combined with the real human experience of extreme weather events, has seen a general acceptance at the international level that a mechanism should be developed under the UNFCCC to deal with loss and damage due to the impacts of climate change.

The Alliance of Small Island States (AOSIS) introduced the concept of *loss and damage* in 1991, calling for an insurance pool for victims of sea level rise, a mechanism for compensation or reparations for "victims" of climate change (Siegele, 2012). In the international context of climate negotiations, discussions of compensation or historical responsibility are highly political (Huq et al., 2013). Because of this sensitivity, the topic only began to gain real traction at the Conference of the Parties (COP) in Copenhagen in 2009. It was formalized in a Work Programme in 2010, which culminated in a decision being adopted in 2013 to establish the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (the Warsaw International Mechanism hereafter). This research focuses on activities since the establishment of the work program in 2010.

Definitions and terminology remain problematic and formal textual references in the UNFCCC remain a point of ongoing negotiation. The growing consensus is that "damage" refers to negative impacts for which restoration is possible, whereas "loss" refers to unavoidable impacts that are irreversible regardless of future measures taken (Schäfer and Kreft, 2014:4-6, Burkett,

2014a:120-122). Loss and damage is understood to include economic (such as housing or crop failure) and non-economic losses (such as cultural heritage) in the context of extreme events (such as cyclones) and slow onset events (such as glacier melt or sea level rise). Research firmly acknowledges that the distributional nature of these impacts places the greatest burden on poor and vulnerable groups that have lower resilience for recovery (Warner et al., 2012:1064, IPCC, 2014a:70pf).

Impacts associated with loss and damage include: loss of life; migration and resettlement; loss of territory; and loss or limitation of social, cultural and economic activities (Warner and Van Der Geest, 2013, Warner, 2012, Burkett, 2014a). These issues fit the language of human rights as they threaten a vast array of rights, including the right to life, health, shelter and water, and the collective right to self-determination (Schapper and Lederer, 2014:667pf, Knox, 2014). However, in current negotiations this connection between fundamental human rights and loss and damage is rarely explicit, and there are almost no discussions about whether human rights have a role to play in addressing the issue. While reparations and redress are pursued, particularly by smaller states, these discussions remain focused on the development of new compensatory mechanisms (Burkett, 2014b). There are currently no remedial measures within climate frameworks or protocols for individuals or communities in light of a particular environmental harm (McInerney-Lankford et al., 2011: 4).

Current discussion on loss and damage emphasises a lack of knowledge and understanding about how to address such a complex, unprecedented issue. The establishment of the Warsaw International Mechanism and its accompanying three-year mandate means that loss and damage is now an integral part of the UNFCCC. However, it remains in an early and formative stage. How the global community conceptualises, understands and approaches the challenge of loss and damage will be defined through this process. Which questions are asked, what knowledge is generated and how different actors engage with the process will determine policy approaches and possible actions.

1.1 Examining argumentation - how discourse directs action

Examining discourse provides a means through which the power dynamics and politics of the negotiations can be better understood. The post-structuralist premise is that knowledge is the

product of social processes and as such, there is a strong link between language, knowledge and power (Hajer, 1995, Jørgensen and Phillips, 2002). From this theoretical foundation it is understood that discourse can be used to limit and influence possible courses of action (Foucault as quoted in Oppermann, 2011:72pf). The way in which problems are identified and represented can frame how actors respond to the problem. "Who" has the power to define these boundaries and set the dominant discourse, becomes a crucial question, as it inevitably excludes counter–discourses. This research uses the specific theory of Political Argumentation Analysis (See Fairclough, 2012). A sub-set of Critical Discourse Analysis, it examines the way in which a particular form of action is reasoned and justified through argumentation, assuming that this is informed by the overarching discursive framing. This theory also considers the way alternative actions are ruled out, or are co-opted in order to reinforce the hegemonic view.

This action-oriented theory and methodological approach highlights the policy implications of the politics and power that delimit negotiations within a particular dominant discourse. It can also highlight the gaps between the problem or issue and the action proposed to address it. Loss and damage presents an unprecedented global challenge and, as the IPCC argues, interdisciplinary collaboration can provide innovative and new approaches (IPCC, 2014a:33). The UNFCCC process is in a particularly formative stage for establishing how loss and damage can be addressed and managed. This research thus has immediate and significant policy implications.

1.2 Positioning of the research

Loss and damage is an emerging field within climate negotiations. Literature specifically related to it is growing, but remains limited. The majority of the scholarship relates to disaster risk reduction or climate adaptation and resilience building (Fekete and Sakdapolrak, 2014, Schäfer and Kreft, 2014, Warner et al., 2009, Mitchell et al., 2010). Case studies provide important empirical evidence (See Warner and Van Der Geest, 2013), highlighting the adverse impacts on vulnerable groups, including women, indigenous people and ethnic minorities (James et al., 2014). However, none of these studies are framed in human rights language. Human rights discussions are limited to possible legal strategies and potential for compensation claims (Richards and Boom, 2014, Pinninti, 2013, Burkett, 2009, Reinke, 2013, Hyvarinen, 2012). There has been some research that grapples with the challenges of non-economic losses (Fankhauser et al., 2014, Morrissey and Oliver-Smith, 2013) and slow onset events (Kehinde, 2014, Siegele,

2012) but very little that examines the institutional processes of the UNFCCC or whether this may predetermine a particular type of action, to the exclusion of alternate approaches (See only Calliari, 2014).

There has been no research to date that examines the fundamental framing and discourse that shapes loss and damage negotiations. This is important for practitioners, as the way in which debates are framed significantly influences the breadth of policy approaches considered. More particularly the power to set the boundaries of a negotiation can result in the exclusion of alternative courses of action (Fairclough, 2012:36pf, Putnam, 2010:147pf, Milliken, 1999: 240-248). This research seeks to address this gap by charting the current discursive trends within negotiations and showing how discourse is operationalized through the work plan of activities. This in turn will highlight the gaps and deficiencies of current discourses in addressing the problem.

The issue of loss and damage represents some core moral and ethical challenges in global climate governance (Aminzadeh, 2006, Bell and Caney, 2011). It raises questions of responsibility and obligation, reparation, compensation, and the inevitable consequences of what the global community may face. It is for these reasons that foundational concepts of equity, justice and fairness should be considered in response measures to climate change impacts (Reder, 2012, Grasso, 2007, Caney, 2010). Following the scholarship of climate justice (Derman, 2014, Kilnsky et al., 2012, Grasso, 2010, Barrett, 2013, Mary Robinson Foundation, 2011, Lyster, 2013), human rights-based approaches have the potential to provide a moral and ethical guide for decision makers, ensuring any actions taken are considered with regard to the individual welfare and rights of those affected (Rajamani, 2010). These "guidelines" can act as a safeguard to prevent climate responses violating human rights (See Hassan and Khan, 2013, Schade and Obergassel, 2014), and ensure fair outcomes for vulnerable groups, including potential models for reparations (Burkett 2009). Given the extreme nature of adverse impacts considered under loss and damage (such as loss of life), further examination of the rights perspective is readily justified.

To date achieving meaningful integration of human rights in the UNFCCC negotiations has been limited (Cameron, 2009). Wallbott has researched the use of a human rights discourse in climate negotiations, particularly relating to Small Island Developing States (SIDS), demonstrating that it is widely considered legally limiting and more likely to stall negotiations than facilitate outcomes

(Wallbott, 2014, Wallbott and Schapper, 2014). This thesis seeks to further examine why human rights language is not used by actors in the negotiations on loss and damage, with the intent of identifying key issues that may be better addressed through a human rights-based approach. Negotiators have indicated that there is a gap in advice relating to human rights in the context of loss and damage and there is interest from certain coalitions about the way human rights argumentation can be used to support equitable outcomes, particularly for vulnerable countries (Pers. Comm. Huq, Fuller, Orville 2015).

1.3 Research aim and questions

The aim of this thesis is to investigate how human rights are being used in the UNFCCC negotiations addressing loss and damage due to the adverse effects of climate change and identify whether there are viable opportunities for greater integration of a human rights discourse.

1.3.1 Questions

1. Which discourses are represented in the UNFCCC negotiations on loss and damage?
2. What is the dominant discourse, or hierarchy of discourses, and how is this reproduced and reinforced through knowledge generation and policy approaches adopted?
3. What are the opportunities for integration of human rights discourses into the negotiations on loss and damage within the UNFCCC?

1.3.2 Scope and delimitations

The thesis will only consider human rights discourse as an alternative to the dominant discourse. Analysis will be limited to the formal UNFCCC processes, considering only the arguments presented within the decisions and work programs.

Although loss and damage discussions were initiated in 1991, it was not formally incorporated as an element of the UNFCCC negotiations until a work program was established at COP16 in Cancun in 2010 (1/CP16). Since Cancun there has been significant text generated within this thematic area. This time period (COP16-present) will be the core research focus. This research does not seek to provide a legal strategy for compensation, but rather examines how the ethical principles of human rights can be embedded into existing decision-making processes to support better outcomes for individual welfare and the protection of human rights (Caney and Sugden, 2011).

1.4 Outline

Chapter 2 of the thesis presents the theoretical framing for this work. Chapter 3 provides an overview of the methodology followed to conduct this research, including discourse analysis, interviews and participant observation. Chapter 4 presents findings from the discourse analysis, and a broader analysis of social practice and how it influences discourse and policy-making. Chapter 5 discusses the absence of a human rights discourse from the current negotiations and possible opportunities for integration. Chapter 6 provides some concluding remarks, further areas for research and policy recommendations and relating to the work-plan for the Warsaw International Mechanism.

2. Theoretical Framing

Discourse analysis provides a theoretical and methodological framework for investigating language in use and language in social contexts. This methodology elucidates the underlying framing and assumptions, and importantly, the power dynamics that influence international negotiations and the range of potential policy approaches. This chapter outlines what form of discourse analysis has been chosen for the purpose of this research and also the social practice theories that are used to support the main discourse analysis.

2.1 Critical Discourse Analysis

Discourse analysis is not a cohesive field and there is significant critique of it as a research method due to the lack of testable theories or empirical analysis (Milliken, 1999:228). However what discourse analysis offers is a more "reflexive" approach that sees the role of human subjectivity and the embedded nature of institutions within existing social practices (ibid). Discourse analysis should not be seen as a method in isolation but rather a qualitative method that can support and inform other methods, elucidating otherwise unnoticed assumptions and influences, and provide valuable insight for policy makers.

Discourse analysis sits within social constructivism, and considers "reality" a subjective representation of social processes that influences how the world is understood by a particular individual. Following the post-structuralist tradition, language and communicative events are an expression of a broader social process (Hajer, 1995:43, Wetherell et al., 2001:13). Knowledge is created through social interaction, through which common 'truths' are agreed and established (Jørgensen and Phillips, 2002:16, Wallbott, 2014:741). The application of the agreed knowledge within a discursive event will generate particular actions, and importantly, rule out other potential actions (Milliken, 1999: 233). Power and knowledge are closely connected as different regimes of knowledge determine the foundation of a discourse - what is true or false in a discursive reality (Foucault, 1980). Therefore the power to control and influence knowledge generation has a fundamental impact over the "reality" experienced by an individual.

Discourse analysis focuses on the signs and markers within language that shape the meanings of goals, identities and relationships (Jørgensen and Phillips, 2002:25, Putnam, 2010:146). It also assumes that discourse is productive (or reproductive), meaning that beyond the language itself, it produces actions (Milliken, 1999:229). This research focuses on this active nature of discourse and assumes that policy approaches and practice are a result of a particular discursive framing. This discursive framing defines knowledge practices, including the generation of "new" knowledge, and delimits who is authorized to speak and act within decision-making processes (ibid).

The word "discourse" is often used within social science but rarely well-defined. However what constitutes discourse, and what distinguishes one discourse from another is an important concept to establish. Following Critical Discourse Analysis theory (CDA), discourse is defined as language that forms part of the social practice that plays a part in producing a representation of reality (Jørgensen and Phillips, 2002:66). A text (the data) is produced and consumed in a discursive reality that both constitutes the social world and is constituted by other social practices (Fairclough, 1992). This research is focused on understanding the varying overarching narrative discourses present in the negotiations. A narrative discourse, as understood by CDA, is the way of speaking that gives a subject meaning, from a particular world-view (Jørgensen and Phillips, 2012:66). The narrative discourse is built up by a series of sub-discourses that functionally translate the value-driven basis of the narrative into practice. For example, a narrative focused on issues of morals and ethics may pursue a sub-discourse or practice of international law, to functionally realize its underlying goals.

Political Argumentation Analysis, a subset theory of CDA, lends itself to identifying these narratives. It considers argumentation to be a form of political discourse focusing on how practical action expresses the underlying values and goals of a particular actor (Fairclough, 2012:35). The relationship between discourse and practice is debated within the literature. Some theorists choose to separate practice and knowledge from discourse (Sending and Neumann, 2011:243), but this research sees that practice, including knowledge generation, is the functional representation of the core values of the narrative discourse (Adler and Pouliot, 2011:6). By applying this method to the formal UNFCCC texts, it is possible to use the texts to understand the

goals and motivations of actors, revealing the underlying power dynamics that influence negotiations outcomes.

Using Foucault's conception of power, it is inherent everywhere within the system, however it is something that needs to be activated, employed and exercised (1980:98). Power can be viewed in a two dimensional manner: "power to" and "power over". The "power to" recognises the agency of individuals and their potential to influence a discourse. Activation usually occurs through a network such as coalition building, connecting with common interests to amplify influence. The "power over" is more overt, and can be conceived in two ways: the power over a decision-making process; or the power to limit the discourse or deliberative event (Fairclough 2012:60-63).

Significant power lies with the institutions and actors that can constitute the knowledge and subjectivities, reproducing a particular hegemonic discourse (Jørgensen and Phillips 2002:13). Analysing how certain discourses are legitimised over counter-discourses is central to understanding where the power dynamics lie (Milliken, 1999:236). There is also always an underlying discursive struggle that can influence and change the dominant discourse. Sub-dominant discourses can adapt their preference formation to "fit" with the hegemonic view, seeking a path of least resistance (Lukes, 2004:134-136). This apparent alignment can be a subversive strategy to ultimately pursue sub-dominant goals by embedding them gradually within the accepted dominant discourse.

CDA is distinct from other discourse analysis as it sees discourse as the communicative event. That means it encompasses the text itself and the processes of production and consumption of the text. From this premise, discourse is influenced (and also influences) other social processes (Fairclough, 2003). This means that other theories of social practice should be used to inform analysis of the discursive event. This research draws on the broad school of international organization theory to understand the role of institutions, coalition building, identity management and goal setting by the different actors. These theories assist in explaining the empirical findings of the discourse analysis.

2.2 Institutions, Regimes and Coalitions

Discourse is rarely discussed without reference to institutions (Hajer, 1995:3). A traditional view of institutions in international relations is that they are a 'persistent and connected sets of rules and practices that prescribe behavioral roles, constrain activity and shape expectations' (Keohane, 1989:3). Institutions are considered to include international regimes, networks and organizations that consist of norms, principles, rules and procedures that lead to converging expectations of actors in a given field (Schapper and Lederer, 2014:666, Finnemore and Sikkink, 1998:891). In the context of the UNFCCC, there is a formal set of procedures that frame, limit and define the discursive event. The way in which certain practices are introduced and "inherited" through the process is crucial in understanding the way a single, more dominant discourse is reproduced.

Within the UNFCCC, strategic groups form around arguments to create coalitions but that does not necessarily mean that values always align (Deitelhoff and Wallbott, 2012). The inherent complexity of multilateral negotiations means that coalitions become an important means to facilitate outcomes by enabling parties to amplify their influence and power (Dupont, 1996:49). Coalitions can be formed on the basis of interests or values. As coalitions form they agree on a minimum common demand and unified value, though individual members of a coalition may hold different values they are prepared to compromise in order to benefit from being a member of a coalition (Dupont 1996: 50). For example, AOSIS a 44 state alliance, is built around the common interests of the small island nations but the experience of climate change varies widely as do the underpinning values (Wallbott, 2014:743).

Identity and coalition building link directly back to knowledge construction and the overarching discursive framing. The way in which groups negotiate a common identity is closely linked to a common understanding of "reality". Groups and identities are formed around particular knowledge reservoirs, and when new 'truths' are introduced, groups will deliberate on whether to accept this new 'truth' and incorporate it into their normative view and overarching discursive narrative (Wallbott, 2014:739). Linked by their shared status as "vulnerable countries" in loss and damage, there are some key coalitions including AOSIS and Least Developed Countries (LDC) that have been particularly active in negotiations. The G77 and China have also played a significant role, presenting the draft text for decision on an International Mechanism in Warsaw.

UNFCCC meetings are key platforms for knowledge sharing and interaction between otherwise geographically disparate groups (Suarez et al., 2013, Böhmelt, 2013). In this way, COPs become flashpoints where networks and alliances are formed, broken or changed (Downie, 2014). These key events for inter-discursive interaction also present opportunities for counter-discourses to become more normalized and understood within negotiations.

3. Methodology

The discourse analysis literature presents a number of ways of applying the theoretical assumptions to the data in order to identify the different discourses. The aim of this section is to demonstrate how this research identified and deconstructed the varying discourses around loss and damage.

3.1 Data Acquisition

In addressing the research aim, it was necessary to establish what texts were accessible and could be considered "representations" of the negotiations process. The UNFCCC is a formal international process that adheres to a set of procedural rules regarding transparency. Consequently, submissions by States party to the Convention and Non-State Actors (NSA) are collated and published online with all formal outcomes of the negotiations. This research assumes that the formal adopted decision text is the product of a discursive interaction and therefore reflects the social practices and power interactions inherent in the negotiations. In total this analysis considered 29 texts generated through the Work Programme on Loss and Damage under the Cancun Adaptation Framework, further informed by nine in-depth interviews.

3.1.1 Documents texts

The data selected for discourse analysis is the documentation submitted under the Work Programme for Loss and Damage established at COP16 from 2011[1] onwards (See References for full list). This includes:

- Submissions from States and relevant observer organizations (2011-2014)
- Technical Papers commissioned under the Work Programme
- Reports and briefing notes summarizing regional consultations
- COP Decisions from Cancun (2010) to Lima (2014)
- Work-plan of the Executive Committee on Loss and Damage.

All documents are available to the public through the UNFCCC website[2]. State Party submissions are collated and published as received by the UNFCCC. Given the international standing and

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[1] The COP16 was held in November of 2010, however, no work documents were produced until the following year.
[2] All documents sourced from <http://unfccc.int/adaptation/workstreams/loss_and_damage/items/7585.php>

near-universal participation in the UNFCCC, it can be reasonably assumed that these sources are reliable and reflect the actual submissions of States party to the Convention.

The UNFCCC process introduces a hierarchy of interrelated texts that form a "road map" to understand how discourses have been introduced, influence and build on each other (See Figure 1). Social practice theory reiterates how important these institutional processes are in embedding practice, the functionalization of discourse, so that it is accepted and often unquestioned, and inherited in subsequent stages of a process (Sending and Neumann, 2011). These texts represent the outcomes of deliberative and argumentative processes. Submissions provide representations of the core argumentation of particular actors. What appears in the final negotiated text reveals a lot about the discursive interaction and the underlying power dynamics. Using negotiation texts alone has limitations in understanding the discursive event, therefore it was important to use established literature, participant observation and interviews in order to build a more complete picture of how the broader social practice influenced negotiators.
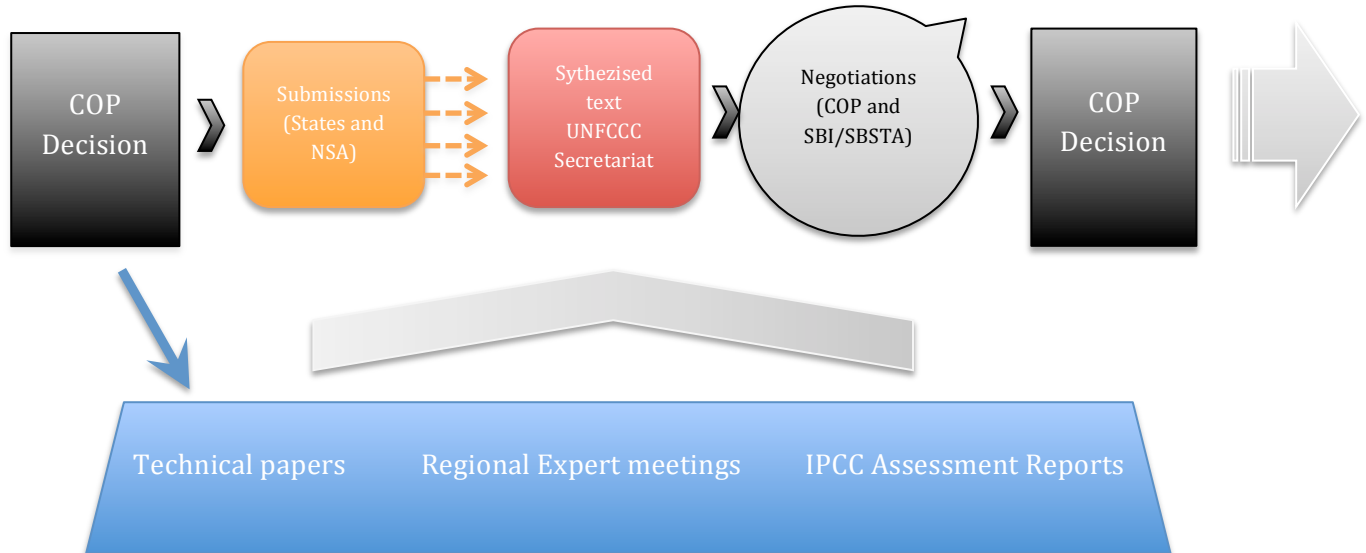

Figure 1: Textual relationship of the UNFCCC Process.

3.1.2 Interviews and participant observation

Negotiation documents are a political product; the views and positions expressed within these documents are heavily mediated by the political processes and the strategic interests of a particular party. Additional "texts" were sourced to explore the question of human rights as an alternative discourse, and better understand the sub-dominant goals and values.

Nine in-depth semi structured interviews were conducted with key individuals involved in the process on loss and damage (See Attachment B). Sampling involved strategic targeting of individuals with particular roles within the negotiations. These interviews provided insight and evidence into alternative discourses that, for political reasons, cannot be overtly stated within the formal texts. This informs the analysis and understanding of the underlying goals of groups, and why a particular strategy or choice of argumentation has been followed. This research is particularly focused on integration of human rights as an alternative discourse and as a result the interview process was biased towards particular individuals who were supportive of justice mechanisms such as representatives of AOSIS and LDCs. Interviews were selective and not an indicative cross-section of the negotiations.

In addition to the interviews, I attended the UNFCCC negotiations in Lima as an observer in December 2014. Although access was limited, I attended 20 side events that focused on a range of issues from human security and climate ethics, to development and human rights. These observations were used to provide first-hand insight into negotiations and supported the development of the research questions and the concluding recommendations.

During the COP in Lima I established a number of contacts creating an initial relationship that enabled me to subsequently request interviews. Interviewees were each given a verbal explanation of the research, what the data would be used for and their rights in relation to the data (See Attachment C). The interviews were recorded with verbal permission. Most interviews were conducted via Skype, although where possible they were conducted in person. Each interview was transcribed and treated as "text" subject to the analysis described in the following section. These findings are used to support and inform the discourse analysis, while the formal UNFCCC documents remain the primary data for this research.

3.2 Research ethics

The focus on the analysis of public documents means that the ethical issues within this research were limited. By engaging interviewees in their professional roles, they were willing and competent in engaging on the sensitive and contentious topic of loss and damage. Anonymity was offered but for all interviewees they were happy to be identified, although some requested permission to review direct quotes before publication. This strengthened the results as being able to identify the interviewees increased the authority of the information.

As a researcher I was also mindful of my bias towards a human rights agenda. I addressed this by overtly presenting the interest in human rights. This brought the conversation to focus around the human rights potential, excluding the consideration of other alternative discourses in line with the delimited scope of this research. This research followed the Swedish Research council guidelines for fieldwork, including secure storage of sensitive data.

In consideration of the data set, it is important to note what is absent. This particularly applies to the State Party submissions - only those States or organisations that chose to formally engage with the UNFCCC process on loss and damage will be considered (See References for lists of contributing actors). This automatically excludes some States, but also places a necessary limitation on the scope of the research.

3.3 Methods of Analysis

Fairclough's Political Argumentation Analysis can be used to analyse the argumentation or negotiation of a coalition or actor (2012). Arguments are constructed on a common and agreed goal(s) of a group, a choice that is informed and defined by the broader knowledge premise and discourse. The way in which a problem/claim is defined (or redefined) is particularly important as it will create the impetus for action and set the expectation for what sort of actions are appropriate (Fairclough 2012: 50). By analysing submission texts, specifically taking note of representation, problem definitions and goals within the text, it is possible to understand the foundational values, and thus understand the narrative discourse and the way this influences the actor's negotiation strategy (See Figure 2).
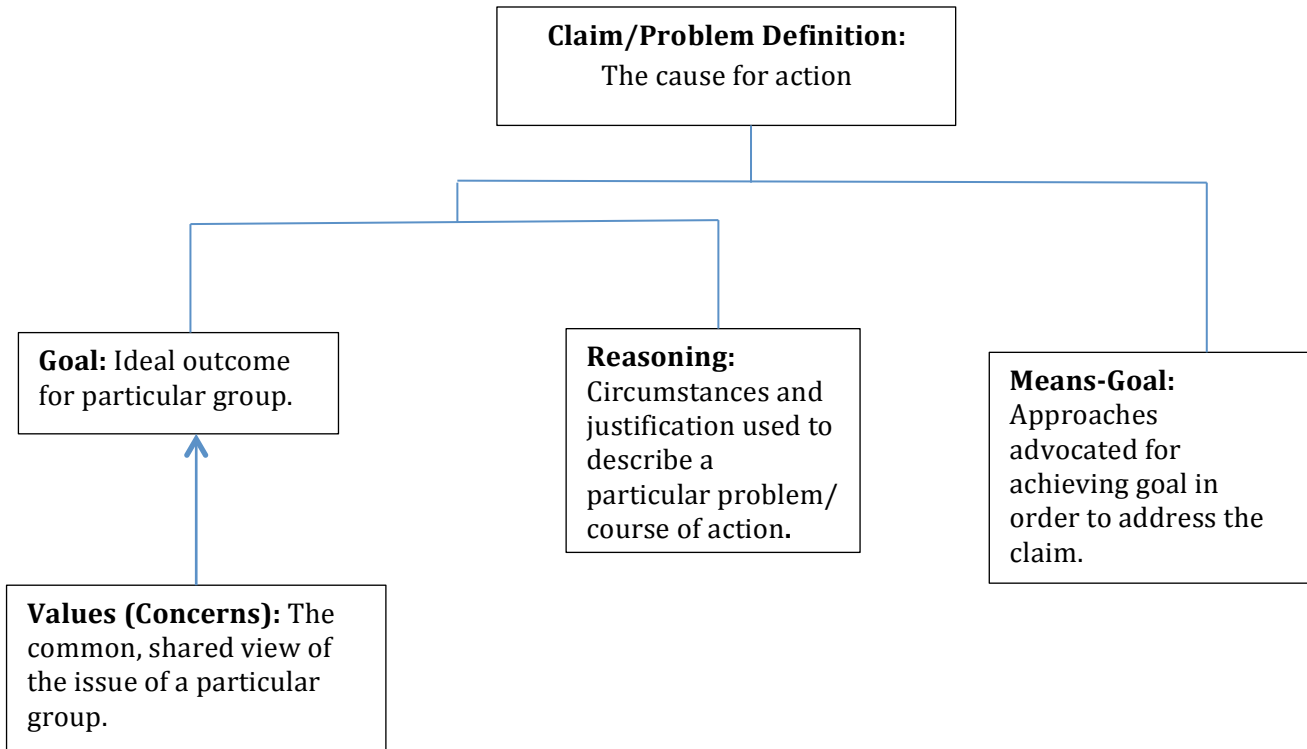
Figure 2: Markers of Political Argumentation (Adjusted from Fairclough 2012:48)

The five markers are designed to identify the overarching discursive narrative of actors. They also examine the sub-discourses or practices that are used to operationalize the narrative discourse in policy responses.

1. *Claim/problem definition*

   The claim or problem definition captures how the actor represents the problem, and how it fits within their world-view. This definition sets the boundaries for the discussion, automatically excluding certain discourses.

2. *Reasoning*

   This refers to the practical reasoning invoked within a particular submission or argumentation. This includes considering factors such as: a) why an approach should be followed; b) how it contributes to the achievement of other mutual goals; c) "what if"- consequences of inaction. The way people affected are represented and identified within the text is can also change the way in which action should be taken.

3. *Means-goals*

Means-goals are those that are overtly stated by actors. They sometimes seem incongruous with core goals of a group, but may actually work towards achieving the underlying goal. For example, through alliance building in negotiations, one party may support another goal in order to "retain a seat" at the negotiating table to further pursue their own interests. The means-goal is often where the dominant discourse can be easily identified, as counter-discourses will often align their means-goal with the dominant discourse, seeking to retain a position of influence (Lukes, 2004:364-366).

4. *Goals*

Goals are supported by values and are negotiated within a group. Most actors have a hierarchy of goals, and can be willing to compromise on lower level goals if seeking coalition to reach the main priority (Dupont, 1994).

5. *Values*

Values are inherently linked to defining the underlying premise of the discourse. Values can be represented by particular terminology, such as "risk" or "rights". It can also be demonstrated by the emphasis placed on certain issues such as equity or economics.

These markers will be analysed through focusing on the semiotic characteristics of modality and transitivity, genre and inter-textuality. *Modality* refers to the level of commitment or certainty in a statement. The way in which 'truths' or 'facts' are represented points to the knowledge premise of that narrative discourse and an actor's commitment to the statement as "fact" (Jørgensen and Phillips, 2002, Fairclough, 2003). Modality provides insight into the affinity between text and author, thus highlighting the core values and goals - what is important and what can be negotiated (Jørgensen and Phillips, 2002:83pf).

Transitivity examines how events and processes are connected with subjects or objects (Jørgensen and Phillips, 2002:84). How subjects are represented in relation to the "claim" of "loss and damage" demonstrates the actor's association with the issue, particularly relating to attribution and responsibility. Understanding transitivity is important to the way in which a debate is framed and can influence "who" should take action.

Genre is the particular use of language that contributes to and constitutes a particular social practice (Fairclough 2003: 65pf). Genre could also be understood as a professional discipline. In the case of loss and damage, this could be the genre of 'disaster management'. This part of the analysis assists in identifying sub-discourses.

Examining the documents for *inter-textuality*, the reproduction of a particular phrase, will elucidate discursive strategies such as the way an alternative argument that mirrors the dominant discourse may be adopted in the process of pursuing different goals (Jørgensen and Phillips, 2002). It also demonstrates the role of coalitions and alliances, where particular argumentation is re-produced across a range of submissions.

Ultimately by using the five markers outlined above the analysis should identify distinct discourses. It should establish who is pursuing a particular discourse through the negotiations and the why a particular discourse is dominant. By treating the interviews to the same method, the analysis of sub-dominant discourses will be strengthened, identifying the underlying goals and values that may not appear overtly in the texts.

4. The Narratives of Negotiation

This chapter presents the findings of the Political Argumentation Analysis, identifying two core narrative discourses used by different actors in negotiations on loss and damage. The findings demonstrate that the development of the Warsaw International Mechanism and the subsequent work-plan are the result of a particular discursive framing that is influenced by the broader institutional context of the UNFCCC. How an issue develops within negotiations sets the parameters for the subsequent negotiations therefore it is important to understand the history of the UNFCCC (Putnam, 2010).

4.1 Loss and Damage at the UNFCCC

The preamble of the UN Framework Convention on Climate Change places the convention firmly in the context of international environmental governance[3]. Environmental governance operates through multilateral agreements, developed primarily to deal with trans-boundary issues[4]. Article 2 of the Convention outlines the "ultimate objective": 1) *mitigation*, stabilization of green-house gas emissions; and 2) *adaptation,* ensuring food production and economic development are not adversely affected by a changing climate. Article 4 of the UNFCCC acknowledges States "common but differentiated responsibility and respective capability"[5], recognizing the development advantage that industrialized nations have had through unlimited access to fossil fuels. Historical emissions by industrialized nations were previously used as justification for low mitigation by developing countries but the "right to emissions" has shifted to a "right to energy" with an emphasis on technology transfer[6]. The Article also establishes the obligations of Annex I

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[3] The convention recalls the Stockholm Declaration (1972) this contextualises the UNFCCC within other Multilateral Environmental Agreements, and the overarching sustainable development and human security goals established within the Stockholm Declaration.

[4] As one of the "Rio Conventions", it also references the Principles established in the Rio Declaration (1992)

[5] This principle is represented in a rage of multilateral agreements, growing from the notion of a 'common heritage of mankind' and manifesting the general principles of equity in international law (CISDL 2002. The Principle of Common But Differentiated Responsibilities: Origins and Scope. 3.)

[6] The 2014 China-US bilateral demonstrates this shift through emphasizing the need for technology transfer, in order to peak emissions earlier and at a lower point while still achieving development goals. (See ECHEVERRÍA, D. & GASS, P. 2014. The United States and China's New Climate Change Commitments: Elements, implications and reactions.)

and II countries[7] placing greater responsibility on developed nations (Article 4: para 4 and 5). Article 4 also recognises the inequity of climate change impacts and the particular vulnerability of some States.

How loss and damage is formally considered under the convention remains contested (Burkett, 2014b). However, there have been several decisions taken by the COP that recognise the importance of this issue. The issue was first incorporated in the Bali Action Plan at COP13 in 2007. At Cancun, in 2010 parties established a specific Work Programme on Loss and Damage (See 1/CP.16). This process included the generation of Technical Papers and a range of regional expert meetings (See 7/CP.17). Over the following two years, parties considered and agreed to the establishment of the Warsaw International Mechanism in 2013 (See 2/CP.19). An interim Executive Committee[8] was established and developed a two-year work-plan, agreed to with minimal changes at COP20 in Lima. (See Appendix A for further detail). At COP21 in Paris the international community is expected to reach a major agreement that will form the basis for global climate governance post-2020.

"Loss and damage" has particular connotations: commonly used within the insurance industry it biases negotiation to an economic language of value, assets and compensation. The term was originally used to engage States on the question of compensation for "victims" of sea level rise (AOSIS 2014) and has remained a part of negotiations ever since.

Loss and damage as a "claim" has no formal definition within the convention texts. However, in 2013 the COP agreed to:

> …address loss and damage associated with impacts of climate change, *including extreme events and slow onset events*, in developing countries that are particularly vulnerable to the adverse effects of climate change (2/CP.19 emphasis added).

The highlighted section indicates the introduction of new terms since the claim was agreed in 2010 (See 1/CP.16). These reflect the expansion of the "claim" as new knowledge and

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[7] Annex I Parties include the industrialized countries that were members of the OECD in 1992, plus countries with economies in transition, Annex II Parties consist of the OECD members of Annex I, but not the EIT Parties. They are required to provide financial resources to enable developing countries to undertake emissions reduction activities under the Convention and to help them adapt to adverse effects of climate change. (See UNFCCC, 2015 "Parties and Observers" at: http://unfccc.int/parties_and_observers/items/2704.php)

[8] The formal Executive Committee was negotiated and agreed at COP20. Nominated members are awaiting confirmation. See 2/CP20 pages 2-3.

understanding has been introduced during the period of the work program. This definition emphasises "developing countries", acknowledging the particular vulnerability of some States. It also emphasises a causal relationship between loss and damage and climate change, limiting consideration to impacts attributable to climate change.

In response to this "claim" two overarching discursive narratives have been identified: a) the *economic narrative* and b) the *human-centered narrative*. The original argumentation of different actors was most clearly evident in the submissions written by countries, coalitions and non-state actors. The following section outlines how these two discursive narratives have been identified against the five markers within Political Argumentation Analysis (See Figure 2 above).

4.2 The Economic Narrative

This extract from the USA's submission in 2012, typifies the common markers of the economic narrative discourse.

> The United States is committed to working with developing countries to understand how climate change may affect key *economic sectors*, *vulnerable communities* and identify solutions to increase the resilience of those *sectors* and communities to climate change and variability. We define "loss and damage" broadly as the *adverse consequences of climate change*. We believe the loss and damage work program has made progress in helping developing countries better understand how to assess climate risk and adapt to climate change by using *risk management approaches appropriately and cost effectively*. (UNFCCC 2012:33 emphasis added)

The text demonstrates a disconnect between the subject, "developing countries", and the issue, "loss and damage". The language reiterates the discursive framing of comprehensive risk management, and emphasises the value of economic considerations. The economic narrative focuses on non-human elements (economics, institutional features), which dehumanizes the problem and characterises it as a future issue, delaying action. These characteristics are also found in the submissions including; Australia, Canada and the European Union. These are all Annex II countries under the UNFCCC, with financial obligations.

The following analysis demonstrates how the values of the overarching economic narrative are functionalised through a series of sub-discourses, and ultimately shape and delimit the range of policy approaches considered under the Loss and Damage Work Programme.

Claim

The claim or call to action, is substantially adopted from the decision text. However subtle inclusions or exclusions point to the positioning of a particular actor (See 4.1). Most submissions reference the COP decision (See Australia:5, China:22, AOSIS:27 in UNFCCC 2011a), which serves to reinforce the general consensus of the claim. However, in early submissions, the USA omitted the reference to developing countries (UNFCCC 2011a:66), framing the problem in the abstract, not associated with place or subject.

Reasoning

Reasoning justifies actions, therefore how the people affected (subjects) are represented in the text is key to how responses are formed. Within the economic narrative, they are almost exclusively referred to as collective groups. They most commonly appear as "vulnerable countries" or often as "sectors" (as in the example above). The most specific terminology used is "stakeholders". The following example is from the EU in 2012 and is representative of developed country submissions:

> The work programme to date has confirmed the fact that *no one size fits* all with regards to the range of approaches taken. …the EU acknowledges the need to use a combination of approaches along the entire risk management continuum and *tailored to specific country needs and circumstances*, given that several factors contribute to the exposure to climate related risks, including levels of poverty, settlement patterns and governance. It also highlighted the benefits of *stakeholder* involvement and of exchanges at the regional level... (UNFCCC 2012:22 emphasis added)

This passage dehumanizes those that are impacted by loss and damage, by using technical terms such as "stakeholder" and "settlement patterns", removing the subject from any social or geographical reference. This abstraction is emphasised through the use of institutional language. The same EU submission later refers to "institutional, regulatory and human capacities" in the context of technical issues such as "inadequate and insufficient data" (UNFCCC 2012:14). This is indicative of a range of proposals that separate the subject from a circumstance or real-world scenario, placing the issue within a technical, practice driven reasoning (See Australia, Norway Switzerland, USA, UNISDR, World Bank in UNFCCC 2011a, Norway, EU, USA in UNFCCC 2012).

This link between the way people are represented and the related policy approaches is visible in the USA's 2012 submission that refers to people as "intended beneficiaries" (UNFCCC 2012:29).

This is then linked to the specific practice examples of "micro- and macro- insurance schemes". Earlier in the submission the phrase "exposed people, property, services, livelihoods and the environment" is used (ibid:28*),* placing people in relationship with other assets of "value". All these examples reinforce a dehumanized economic narrative where impacts are quantified as assets of economic value. This framing makes risk management approaches appear "logical" to address the issue.

Economic and scientific modeling is prominent in this narrative, providing the circumstances for a particular action to seem more appropriate and excluding other approaches.

> A mix of tools and policy instruments will be required, with the best approach depending on the nature of the *activity or asset at risk* and the existing social, economic and policy environment, the interests and goals of those affected, the nature and magnitude of the climate change expected, and *the degree of certainty with which future* climate change can be anticipated. (Australia in UNFCCC 2011a:6)

This use of language to include "assets," "interests" and "goals" articulates an economic reasoning that pushes risk approaches and the language of insurance. The last sentence in this excerpt serves to reiterate the importance of strong scientific knowledge, but also to highlight the uncertainty of impacts, placing the issue of "loss and damage" in the future. This justifies knowledge generation activities and delay in substantive action. The representation of the "subject" in this paragraph is almost completely absent, referring only to "those affected". The earlier reference to an "activity or asset at risk" makes no mention of the people involved.

Submissions like the one above are indicative of the circumstantial reasoning given by Annex I and II countries. It also serves to reinforce the legitimacy of certain knowledge types including the IPCC reports and economic modeling undertaken by bodies such as the World Bank, (see the USA in UNFCCC 2012:26-29).

More progressive developed countries such as Norway articulate arguments with the same economic narrative although rely more on scientific reasoning.

> *According to the IPCC AR4* there are limits to adaptation both related to natural and managed human systems. Further for some gradual changes such as ocean acidification, mitigation remains the only viable option to reduce the risk of loss and damage. As a result losses and damages to natural and human systems *may* occur. (Norway in UNFCCC 2012: 13 emphasis added)

There is a greater recognition of the human impact, but the experience is still distanced. It discusses "human systems" or the scientific process, such "ocean acidification", rather than specific places, people or events. This narrative reinforces an "us" and "them" positioning between Annex I and II countries and developing countries.

Means-goal
In the economic narrative, many of the means-goals are associated with the generation of new knowledge expressed in terms of "enhance understanding" or "consider relevant approaches". The party submissions from 2012 on "possible elements" to be included in an international mechanism provide a range of clear examples. Most of the recommended elements are not action oriented as shown in the use of verbs such as "enhance", "support", "strengthen", and "encourage" (See for example Norway UNFCCC 2012:14 or EU 2012 UNFCCC Ad.1:26). These means-goals emphasise that current knowledge is insufficient for effective decision-making, thus limiting any substantial action that would require significant funding.

Within the range of advocated activities, all developed countries push the discursive practice of "comprehensive risk management" which is includes "risk reduction, risk retention, risk transfer and post disaster assistance" (UNFCCC 2012:29). The USA submission in 2012 recommends "using risk management approaches appropriately and cost effectively" linking the practice to the underlying economic narrative (ibid). Risk management is seen as the tool for managing the financial implications of loss and damage, through insurance and resource management.

Within "comprehensive risk management" there are three practice approaches used by actors in their submissions: Disaster Risk Reduction; Climate Change Adaptation; and, Human Security (including social protection). In the context of the overarching narrative, they form distinct sub-discourses framed by a particular professional language. This language creates certain boundaries and expectations about what are considered to be appropriate policy responses.

Disaster Risk Reduction (DRR) has originated from extreme weather event responses and is heavily represented across all empirical material analysed. As a practice it is risk focused, with an emphasis on scientific data collection, regional cooperation and risk assessments. The language of disaster risk reduction is used in almost all submissions, reflecting its dominance as a sub-discourse. The use of as the *Hyogo Framework for Action* as well as the *IPCC Special Report on*

Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation (Field et al., 2011) in Technical Papers show DRR is an accepted and legitimate discourse.

There are two other sub-discourses: *Climate Change Adaptation* (CCA) and *Human Security.* CCA is a process of adjustment to climate change effects to moderate or avoid harm and or exploit beneficial opportunities (Inderberg et al., 2014:3). Human Security was primarily introduced in the context of human mobility (UNFCCC, 2011c:83). In the work-plan for the Warsaw International Mechanism, "comprehensive risk management approaches" are specified to include "social protection instruments", language within the human security discursive practice (See UNFCCC Secretariat 2014). Typical activities include local and nationally-led planning, capacity building, and knowledge sharing through activities such as "best practice" examples.

The rise in the use of these two practices in addition to DRR has occurred in response to issues raised with the DRR framework, relating to issues of vulnerable populations and intangible and secondary impacts (political, social and cultural)(da Costa, 2014). Neither Human Security nor CCA address the question of irreversible losses, or the "residual risk". What happens at the limit to adaptation (Warner et al., 2013)? The concept of "vulnerability" is often used without definition, and in the loss and damage context has a crucial influence over how disaster planning and long term rehabilitation works are undertaken (See O'Brien et al., 2007).

Goal
The underlying goal of this economic narrative is to prioritize actions that complement existing work within the adaptation work program limiting actions that will require any additional resources, particularly financing. There is also an interest in promoting action at a national or regional level. This limits the responsibility placed on the international community.

Values
The reasoning used in the economic narrative, returns to an underlying value of addressing loss and damage in a way that is financially beneficial for Annex I and II countries. It is not within their own national interest to support financially burdensome activities like a global insurance scheme. Therefore recommendations reiterate market-based solutions, at a regional or national level. This is expressed also through the emphasis on the "private sector" as a relevant stakeholder, named explicitly in submissions. This supports the view that "loss and damage" can be counted and quantified, and therefore managed within economic systems. The subjects are

almost completely absent within this value system. People are part of other calculations that can be addressed through collective risk management approaches.

4.3 The Human-Centered Narrative

In contrast to the economic narrative, this human-centered narrative focuses on placing a human face on the issue.

> Loss and damage from the adverse effects of climate change is the unfortunate result *of insufficient ambition* in addressing the historical accumulation of greenhouse gases in the atmosphere and in achieving the objective of the convention. *A country suffering 6% loss of its GDP* due to a single extreme weather event, seeing millions of its *people* displaced, witnessing how their main economic sectors become unviable, or how *lifestyles* and *survival* are jeopardized is at the core of loss and damage (Ghana in UNFCCC 2012 Add. 1:29 emphasis added).

In the statement above, Ghana represents those impacted by loss and damage as "people", reiterating their humanity through using terms like "lifestyles" and "survival". The themes of equity and historical justice, are forefront in this submission, invoking the principles in Article 4 of the Convention. This narrative approach still uses economic arguments, as a way of translating the experience into something other States can apply to their own circumstance. This depicts real-time impacts, generating urgency for action within the text. The human-centered narrative is based on a foundational moral and ethical argument that reiterate the distributional inequity of climate change impacts and is now common to most developing country submissions.

Claim
Developing country submissions mostly refer to the claim established in decisions. This demonstrates the role of the decision text in defining the problem. In later submissions, there is an increase in the emotive language adopted by some coalitions. AOSIS in their 2014 submission, state that loss and damage is "a matter of survival and utmost importance" and then state the claim as "…loss and damage associated with the *irreversible* impacts of climate change" (AOSIS 2014:1). This develops the sense of an imperative need for action, appealing to moral and ethical values by highlighting dire consequences of inaction.

Reasoning
There is a pattern in developing country submissions of using emotive language and placing emphasis on specific experience. For example, Bosnia and Herzegovina made a very short submission of three paragraphs that drew attention to:

massive floods throughout Bosnia and Herzegovina… [resulting in] consequences on human health, private properties, agriculture, etc. (UNFCCC 2011a:14).

The submission leverages this experience to emphasise their position as an "economy in transition" and the need for an externally funded risk insurance facility. This transitive relationship between an event and a call for particular action is a common strategy in the human-centered narrative.

The 2012 submission by LDCs stressed that loss and damage is already occurring. In the section titled "Impacts Today", it gave specific examples from Bhutan, Gambia, Micronesia and Bangladesh (UNFCCC 2012:17pf). Like most other LDC and AOSIS submissions, it uses a combination of specific examples and IPCC modeling to support their approaches and strengthen their argument for action. The use of terms such as "Impacts Today" followed by "Impacts Tomorrow" puts timeframes in very personal terms, again reiterating the urgency of the issue (UNFCCC 2012 Add.1:18-20). Like the statement from Ghana this submission also invokes Article 4 of the Convention stating that "industrialized countries have not [done] enough to forestall the effects of climate change" (LDC's UNFCCC 2012 Add. 1:20). This argument draws a causal link between historical emissions and the current impacts of loss and damage, placing responsibility on the "big polluters".

The combination of real experience and emotive language activates a perceived moral authority held by highly affected States. Interviews have suggested this idea of moral authority is now widely acknowledged within the COP and rarely challenged (Pers. Comm. Fry, Sura 2015). The scientific modeling and the attributable links between extreme weather events and climate change have legitimised these moral arguments (IPCC, 2014b). It is part of this growing power that has leveraged the ability of developing countries to bring loss and damage to the negotiating table in recent years.

Means-goal
Given that overarching decision documents frame the response in terms of "comprehensive risk management", it is not surprising that the means-goals identified by these States adhere to the discursive practice of risk management, echoing the means-goal of the economic narrative. From early in the negotiations AOSIS, followed by African States and LDCs, have been pushing for an international mechanism that mobilizes finances. This argument places the responsibility on the

international community and highlights the fact that "vulnerable countries" do not have the capacity to finance the response measures. This is demonstrated by the way financial actions are often prioritized within submissions (for example Bolivia in UNFCCC 2012:4).

There is an emphasis on capacity building and technical improvement that echoes the means-goal of the economic narrative, but specific activities are more action oriented and focus on the reality of implementation. In the submissions by the USA, Canada and Australia, risk management approaches appear as an ideal without much critique. In contrast, in the LDC submission the "gaps in addressing loss and damage" are extensively analysed, including the consequences of "unplanned losses", the challenge of affordable insurance, and the issues already noted surrounding non-economic losses and slow onset events (UNFCCC 2012 Add.1:22-24).

The means-goal is distinguished in this context because the scale for action is distinctly different. The submissions are urging immeadiate action at the international level, while noting that there needs to be a level of ownership for vulnerable countries, therefore reiterating state-driven and regionally responsive mechanisms.

Goal

Interviews and literature demonstrate that the core goal of AOSIS, backed by LDC's, African States and Least Minded Developing Countries (LMDC) is to seek compensation for the unequal burden of impact (Pers. Comm. Huq 2015, Burkett 2014). The word "compensation" does not appear within the formal decision texts, despite appearing in party submissions. It is a politically sensitive topic as developed countries are concerned about future liabilities if a precedent were to be established (Pers. Comm. Huq 2015). For LDCs and SIDS compensation remains a long-term goal both to assist with rehabilitation and also for permanent losses for which rehabilitation is not possible (Pers. Comm. Fry 2015, Burkett 2014). However, these states recognise the limitations within the current institutional and political context and therefore are willing to align with general consensus for now and work towards greater changes over a longer period of time (Pers. Comm. Huq; Orville; Fuller 2015). Developing countries seek to ensure that the option for any future compensation mechanism is not closed off. This is why there is an emphasis on ensuring that loss and damage is substantively included in the text to be agreed at the COP in Paris in 2015.

Values

The underlying values of the human-centered narrative are grounded in equity, ethics and morality. Arguments are built around real human experience, reflecting the underlying principle of human dignity. This replicates arguments used in the Climate Justice narrative and correlates with a human rights discourse (Skillington, 2012, Caney, 2006). However, there is a gap between this underlying narrative and the practice approaches proposed. There are no direct means-goals that address the justice values outlined in the reasoning. This demonstrates two things: firstly, that the dominant discourse, the economic narrative, is directing the policy approaches and actions; secondly, that there are gaps in this approach limiting the ability of the UNFCCC to address loss and damage issues comprehensively.

4.4 Discursive Interactions

At COP19 in Warsaw, it was decided to establish an international mechanism with the following core functions:

a) Enhancing knowledge and understanding of *comprehensive risk management* approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts;

b) Strengthening dialogue, coordination, coherence and synergies among relevant *stakeholders*;

c) Enhancing action and support, including finance, technology and capacity-building, to address loss and damage associated with the adverse effects of climate change, so as to enable countries to undertake actions pursuant to decision 3/CP.18, paragraph 6. (2/CP19: 6pf emphasis added)

These functions are crucial as they form the mandate for the Executive Committee. It was the result of a two-year work program including 72 submissions from countries and non-state actors. In this negotiated and agreed text, there is a dominance of "risk management". Reference to "whom" the activities of this mechanism apply is absent, although there is reference to "relevant stakeholders". Despite the differing discursive argumentation seen in the submissions, the *economic narrative* and the associated risk management sub-discourses dominate the negotiations. However, the fact that there was an institutional mechanism developed that includes a potential financial function demonstrates some evidence of the influence of the counter-narrative.

Annex I and II countries generally use the economic narrative, advocating for "comprehensive risk management approaches". G77 and LDC submissions all present the characteristics of the human-centered narrative discourse, drawing on human experience and invoking arguments of equity. However, the two discursive narratives are interrelated, and the interaction between the two can serve to reinforce the hegemonic discourse or alternatively, create legitimacy or "space" for counter-discourses within negotiations (Fairclough 2012:57-65). In fact, the narratives are often co-opted by alternate parties in order to try and influence the negotiations in a particular way.

The submission by the USA in 2012 presented positive case studies of national risk management where initiatives are "helping poor farmers in Ethiopia and Senegal to implement a comprehensive risk management approach" (UNFCCC, 2012 Add. 1:32pf). This uses real-world experience characteristic of the human-centered narrative. Later in the submission this appeared:

> First, an international mechanism with an international insurance pool and a compensation/rehabilitation pillar **would inhibit a country-driven approach to adaptation** … Such a mechanism undermines the ability of individual countries to develop their own priorities based upon their specific circumstances and needs. We believe vulnerable countries should be able to decide to reduce risks and avert loss and damage. An international mechanism with insurance and compensation pillars could severely undermine countries' abilities to make those decisions at the national level (USA in UNFCCC 2012 Add 1:33 emphasis as in original text)

This is a strong position and it is the only time that the USA addresses the issue of compensation within a submission. Both these examples are common argumentative strategies to undermine other actors, co-opting alternate arguments to reinforce their own position or question the legitimacy of other proposed means-goals in order to dismiss them. At this time, the USA was strongly against an international mechanism and since the Warsaw International Mechanism was agreed the USA has not made a submission.

Developing country submissions often choose to integrate the more dominant economic narrative into their submissions, using economic examples in conjunction with the use of personal experience. This translates their emotive arguments into the terms of the dominant discourse, aligning with the main argument in order to seek greater power and influence and retain legitimacy within the negotiations (See Lukes 2004).

The AOSIS submission in 2012 breaks with the pattern of previous submissions and has no reference to specific events or human impacts. It instead refers exclusively to IPCC reports and findings from the Technical Papers produced within the work program. It does note within its submission that the primary focus on risk management is "ignoring the need for the international community… to address and redress loss and damage" (UNFCCC 2012:5). The emphasis of this submission is to push both an insurance and "rehabilitation/compensatory" component (ibid). The emphasis on justice remains strong, and there is a highly emotive and urgent modality used in the language of the submission. In this case it is clear that AOSIS is aligning itself closely with "legitimate knowledge" of the dominant discourse to advocate for its alternate goals of compensation and insurance.

4.5 Institutions, Knowledge and Capacity

Institutions create the norms and expectations that influence the behavior of actors and set boundaries for activities, often serving to reproduce a dominant discourse (Keohane 1989:3). Understanding the way in which the documents analysed express the broader institutional process of the UNFCCC illustrates how the dominant discourse can become entrenched within the negotiations.

Comprehensive risk management has been associated with Loss and Damage from the Bali Road Map in 2007, and was reiterated in the Cancun decision. A discursive practice can become "anchored" in process, therefore structuring related discourses and activities (Sending and Neumann, 2011:326pf). As a result this discursive practice is "inherited" from one text to the next, rarely being challenged. Embedded practice can facilitate negotiations as it provides practically important tools and resources that actors need to move forward (ibid:327) however, it excludes alternative practices. It also impacts on legitimate knowledge and what is referenced in decision-making.

4.5.1 Knowledge generation

Knowledge generation has been a key activity of the work-plan, one of the three core functions of the Warsaw International Mechanism. The phrase "range of *relevant* approaches" appears throughout the work program documents, emphasising the ambiguous limiting term of "relevant". This is clarified in text as "comprehensive risk management approaches" including "assessment,

reduction, transfer and retention" (See for example UNFCCC Secretariat 2014:8). By limiting what is considered "relevant" the data collection and knowledge generation activities are restricted within the dominant narrative. Certain activities become legitimate, excluding others that seem "inappropriate" in relation to the body of knowledge. This is the power of what Foucault calls a "regime of knowledge", the ability to determine what is true or false in discursive reality and therefore what actions are appropriate or not (Foucault 1980).

Power is also exerted through the use of "expert knowledge". As a perceived independent voice, "experts" can legitimise one approach above another. Some argue that a third party of "experts" is essential to generate a consensus around issues that enable negotiations to move forward (Sending and Neumann 2011:232). In the texts examined the phrase "relevant experts" reoccurs throughout the documents, notably in the decision texts (See 2/CP19:Para 7(c)). There is consensus in the submission texts that "relevant" includes experts within the field of comprehensive risk management. "Experts" cited include the IPCC and the World Bank, two institutions that support the values of the economic narrative.

The IPCC is widely acknowledged as the scientific authority on climate change. The assessment reports form the basis for decision-making processes within the UNFCCC and are almost exclusively cited by state parties in their submissions. Their extensive academic rigor and review supports a scientific legitimacy that surpasses alternative scientific modeling. As a result, the way in which the IPCC presents issues heavily influences the debate. The dominance of some issues, and the absence of others also works to reproduce the dominant discourse. For example, cultural impacts are significantly under-represented in technical papers and IPCC reports. Following the definition of the IPCC, "culture is a contested and highly fluid term" (Adger 2014:762) therefore is hard to quantify within the dominant risk management practice. While acknowledged, it is often seen as a peripheral or contributing factor to lifestyle and behavior, a factor of vulnerability. As a result there is no particular inclusion of cultural issues in the Warsaw International Mechanism work-plan, and only limited consideration of the cultural implications of climate responses. This influence of the IPCC is also seen in the "Human Security" chapter of the fifth assessment report that dismisses human rights, stating that the legal nature of the discourse is limiting and that a security framework is "inclusive of political, sociocultural, and

economic rights " (Adger et al., 2014:759). This statement actively dismisses human rights as a legitimate discourse and preferencing parties to a human security discourse.

The first Technical Report requested by the COP was on *Current Knowledge and Relevant Methodologies*. In the introduction the paper specifies that the approaches reviewed are from two "major schools of thought": Climate Change Adaptation and Disaster Risk Reduction (UNFCCC Secretariat 2012a:3). It reasons that it is following the IPCC's work on combining the two discursive practices, providing a range of tools that can spread from "purely quantitative calculations of economic loss…[to] more holistic approaches…capturing intangible impacts" (ibid). The reasons for this limitation may have been pragmatic but it reinforces the propensity of "legitimate" knowledge to exclude alterative discourses such as human rights. For example knowledge generation activities such as data collection that focus on meteorological information and scientific processes, have no clear mechanisms to capture traditional or local knowledge, a potentially powerful tool in translating meteorological data into a locally relevant format (Pers. Comm. Crawhall 2015).

This limiting term "relevant" is also applied to stakeholders. Since Cancun, the work program reiterated the same phrase "engagement of relevant stakeholders" or "stakeholders with relevant expertise". Despite ambiguity in the decision text, party submissions interpret "relevant stakeholders" to include: the private sector, particularly in relation to insurance matters; NGOs; and academics. There is some acknowledgement of the role for indigenous people and their knowledge, but this only appears in the non-state actor submissions (UNEP, Tebtebba in UNFCCC 2011). There is no reference to consultation or participation of the people that are most affected by loss and damage.

Effective participation is essential for developing effective policy measures. For many vulnerable States, there are indigenous populations who are heavily reliant on natural capital and largely exist outside the formal economy. Equally, they share a deep connection with landscape for medicines, food and identity. Culture is core to identity and social cohesion (da Costa, 2014), and the potential loss is emotionally devastating and a deeply sensitive issue for many people (Pers. Comm. Orville 2015). What this shows is that limitations on consulted stakeholders also impacts on knowledge generation processes, limiting the effectiveness of policy approaches to comprehensively address issues relating to loss and damage.

Ultimately final texts are a collaboratively agreed and negotiated process, there is no one author. Therefore, understanding the embedded power dynamics requires a close examination of the institutional processes of the UNFCCC, identify "who" controls determinations of relevance.

4.5.2 Institutions and power

The economic narrative supports the maintenance of the institution of the UNFCCC ensuring proposed actions are maintained within existing institutional architecture. This has the effect of downplaying the importance of loss and damage. In Warsaw the G77 and China proposed that loss and damage should be considered as a third pillar alongside mitigation and adaptation. However, developed countries ensured that the Warsaw International Mechanism was incorporated underneath the Cancun Adaptation Framework, reinforcing existing institutional mechanisms (McNamara, 2014). This reduces the opportunity for compensation and redress, core functions outside the usual adaptation discourse (Pers. Comm. Huq 2015). It also has implications for resourcing of activities. LDCs argue that finances for funding loss and damage responses should be in addition to existing adaptation funds and not expected to be absorbed within the current funding arrangements (ibid). Counter to this, States such as the USA argue that since "residual risk" is fundamentally an adaptation by-product, it is more cost-efficient to address it within an adaptation context (UNFCCC 2012:32). This institutional positioning influences how actors relate to the issue and the level of importance it is given within the negotiations.

The rules and procedures of an institution also have the power to influence outcomes, and impact on discourse (See Keohane, 1989). The Warsaw International Mechanism work-plan was adopted largely as drafted at COP20 as is the norm. However, some States (including SIDS and LDCs) believe that it does not effectively represent their interests and that the drafting process was exclusionary (AOSIS 2014:1). There is significant power in the ability to develop draft documents for consideration by the COP, as the opportunity to change the text within the negotiations is limited. The interim Executive Committee, drawn from existing UNFCCC working groups, excluded geographic areas such as the Caribbean and had no representation from AOSIS (AOSIS 2014, Pers. Comm. Fuller 2015). The majority of the members on the interim committee were from countries that generally supported the economic narrative, which also now is predominately represented in the work-plan. While AOSIS was still able to make a submission,

many of its core activities were not represented in the final work-plan (AOSIS 2014). A new Executive Committee is in the process of being selected with nominated members soon to be confirmed. LDC's and SIDS both have permanent positions, which is considered to be more representative (Pers.Com. Fuller)[9].

The final procedural matter considered is the three-year mandate for the Warsaw International Mechanism with review at COP22 in Morocco in 2016. Deferring the decision until 2016 is considered by some to be a deliberate attempt to ensure that there is no substantive inclusion of the loss and damage mechanism in the anticipated 2015 Paris agreement (Pers. Comm. Sura 2014). This view was echoed in the Lima Call to Action emerging from COP20. Early drafts included substantive in-text reference to loss and damage, but after detailed textual negotiations, the reference was relegated to acknowledgement in the preamble.

These institutional rules and procedures are used by more powerful actors to reduce the prominence of loss and damage as an issue within the broader climate negotiations, and to limit the influence of affected States. One of the limitations of a discourse analysis is that it can only observe the institutional influence on the production of the text; other research methods such as a network analysis would be required to measure the varying influence of actors on this process.

4.5.3 Coalitions, resourcing and capacity

The nature of Political Argumentation Analysis is to focus on the values and goals of a discourse, focusing the research on issues and argumentation. However, in order to understand why the economic narrative has such dominance, it is important to consider the role of the institutional process of COPs themselves. An actor will adjust their negotiation strategies as a result of the structural and institutional conditions under which a party negotiates (Underdal, 2012:12-pf, 135). This relates to the resourcing and the capacity of actors to participate in the prolonged climate negotiations and the intercessional meetings throughout the year (Downie, 2014). This was exemplified by the difference in delegation size at the COP in Lima, where the US had over 90 officials and Burundi only seven representatives. Other smaller States such as Vanuatu were unable to attend, prioritizing their attendance at the Paris meeting in 2015. In the development of the work-plan the interim Executive Committee held an initial meeting in Bonn in March 2014

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[9] See UNFCCC 2015 "Membership of the Executive Committee of the Warsaw International Mechanism for Loss and Damage" available at
<http://unfccc.int/adaptation/cancun_adaptation_framework/loss_and_damage/items/8806.php>

and after deeming further work was necessary, resumed in September. While web participation was enabled, the numbers of participants dropped between the two meetings.

The influence of capacity advantages is clearly evident in the submissions. Inter-textual analysis of the synthesis reports prepared by the UNFCCC Secretariat demonstrate States with the ability to prepare longer submissions, that closely aligned with the language and structure of the call for input, had their argument more substantially replicated in the synthesized report. This demonstrates that countries with the human resources to draft and submit extensive submissions have greater representation of their position in the synthesized reports. This skews the final report to the submissions provided by developed countries such as the USA, Norway, Australia and Canada. Through this, the economic narrative is favoured and reproduced in the synthesized report.

The role of coalitions becomes particularly important in this context. AOSIS has consistently provided lengthy submissions to all calls. Much of this can be attributed to the extensive network of advisors and support received, but also that it is a priority issue for SIDS. Coalitions amplify the power of smaller States through pooling resources and ensuring consistency of representation and argumentation. Some States that are part of coalitions will still provide individual submissions but these are often based on the position and argumentation of the broader coalition (See Bolivia, Ghana in UNFCCC 2012:4,29).

All this reiterates the close relationship between knowledge, power, and discourse that is fundamental to discourse analysis. Those with greater resources and capacity can capitalize on the rules and procedures of the UNFCCC to reproduce a dominant discourse - in this case the economic narrative - which serves the interests of more dominant actors. However, the fact that an international mechanism has been agreed indicates that there is space for counter narratives to influence outcomes. For the *human-centered narrative* the moral authority it carries works to motivate action. However, the type of activity ultimately reverts to the dominant discourse.

5. Human Rights

Loss and damage issues all have potential to be addressed by human rights instruments but there has not been any substantive link made between human rights and loss and damage. However, there are developing precedents for integration of human rights into other areas of the Convention's work (Schapper and Lederer, 2014, Knox, 2014). In 2007 the Maldives reported to the Human Rights Council that their human rights were being violated by climate change (Limon, 2010). Since then, the Human Rights Council has adopted a range of resolutions that map the relevance of human rights in the context of climate change (Knox, 2009, Knox, 2014). As a result, human rights have been increasingly incorporated into climate negotiations, demonstrated by the adoption of a gender decision at COP20 in Lima (18/CP20). The draft "elements text" for the 2015 Paris agreement, also includes the phrase "respect human rights" within the preamble[10]. However, human rights remain on the periphery, generally viewed as legally limiting and adding an additional conditionality to already complex negotiations (Wallbott, 2014:758-760).

The *human-centered narrative* is formed around the common idea of humanity. It highlights the lives of people who are already being affected by climate change and face dire consequences if there is no action taken. There seems a natural linkage between this narrative and the practice of human rights, a discourse that is founded on equity, ethics and justice (Bell and Caney, 2011, Caney, 2006). However, this connection between the human-centered narrative discourse and the practice of human rights is not made. The following section provides an analysis of the barriers to integration and elucidates possible opportunities for inclusion of human rights-based approaches.

5.1 The human rights discourse: a conspicuous absence

Human rights as a discourse is a language and practice grounded in an agreed set of international human rights norms articulated in the International Human Rights Covenants[11]. This discourse is almost completely absent from the discussions in the empirical material investigated. Reference

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[10] Draft elements text is available at the UNFCCC website at the following link
<http://unfccc.int/files/meetings/lima_dec_2014/insession/application/pdf/elements_for_a_draft_negotiation_text_20141208.pdf>
[11] These are International Covenant on Civil and Political Rights (1976) and International Covenant on Economic, Social and Cultural Rights (1976) founded on the Universal Declaration for Human Rights (1948)

to human rights appears only in two of the four Technical Papers. Its consideration is most prominent in the paper on *Gaps in Institutional Arrangements within and outside the Convention,* where it is presented as a form of non-economic assessment that could support approaches to loss and damage, particularly in relation to human mobility and cultural heritage (UNFCCC, 2013:9). Contrary to this position, the earlier Technical Paper on non-economic losses advocates primarily for monetary estimates of non-economic losses consistent with the "normative foundation of welfare economics" (UNFCCC, 2012:41). Human rights are juxtaposed against this, whereby "…opponents of these foundations, for example those who place more emphasis on human rights, will see this as a disadvantage" (ibid:42).

This particular positioning reinforces the dominant discourse of "risk management". Much of the approach outlined in the sub-discourses of DRR, CCA and Human Security are based on collective population-level assessments, rather than focusing on individual circumstance. Human rights discourse is simply not considered part of the "range of approaches" for addressing loss and damage. Rather it is actively dismissed as an alternative. This confirms previous research, and is supported by views expressed in interview, that human rights are seen as almost exclusively a legal framework (Wallbott, 2014).

Reviewing party submissions, no State refers to human rights in submissions, although there are some references in the non-state actor submissions (See UNSIDR in UNFCCC 2011a:114). Human rights concerns are often implied but there is no specific use of the language of human rights. The 2011 submission by the United Nations University on human mobility states:

> More evidence-based research is needed to characterise the drivers in origin areas (e.g., *livelihood insecurity*, environmental hazards, conflict, *demographic pressures*, *gender inequality*, etc.) and the pull factors in areas of destinations (e.g., demand for labour, aging population) (UNFCC 2011:35)

Many of these factors could be described using human rights language, as those vulnerable to displacement are already living in conditions where basic human rights are threatened. The 2012 submission addressing human mobility included the Special Rapporteur for Human Rights of internally Displaced Persons amongst its authors. This submission makes no specific reference to human rights in the text, deferring to human security language (UNFCCC 2012:36). Given the human rights mandate of the Special Rapporteur, the absence of the link to human rights could suggest an active avoidance.

Human rights have traditionally been the tools and language of legal disciplines. The concept of human security emerged more recently. Human security was articulated in 1994 in the *UNDP Human Development Report* as "protection of the vital core of all human lives from critical and pervasive environmental, economic, food, health, personal and political threats" (1994:23). The distinction between human rights and human security remains debated (Benedek, 2008, Frerks, 2008) but many scholars including the IPCC acknowledge that the two are mutually dependent (Adger et al., 2014:759). Human rights provide the normative underpinnings for understanding and realizing human security in practice (Benedek, 2008). However, there is a key distinction: human rights principles are fundamentally indivisible, whereas human security discourse suggests that rights are more flexible and there may be cause for prioritization of one over the other. The growth in the human security discourse reflects a broader "securitization" of global challenges after 9/11, often invoked by governments to justify a particular intervention, at times curtailing human rights (Frerks, 2008:13-14). This prioritized approach is seen within the negotiations, where scenarios and models are discussed in terms of "trade-offs" and "win-wins".

The absence of human rights language in the loss and damage negotiations is conspicuous. Wallbott developed three categories for human rights omissions in other areas of the climate negotiations: *passive omissions*, where parties unintentionally avoid human rights language; *pragmatic omissions* where human rights are specifically not introduced as it adds complexity; and *principled omission*, where parties deliberately avoid the use of human rights language as it invokes duties and responsibilities (2014:740-742). The interviews conducted and participant observation during the COP in Lima demonstrated that these categories equally apply to discussions on loss and damage. Several interviewees prefaced statements regarding human rights with "I am not a human rights lawyer" or "it is not my area of expertise", suggesting that it was a professional discourse in which they were not comfortable to engage, leading to *passive omissions* (Pers. Comm. Huq, Orville 2015). States such as Tuvalu have considered human rights in the context of redress, but are focusing on seeking remedies within the UNFCCC framework, thus *pragmatically* deferring to the dominant discursive practice (Pers. Comm. Fry 2015.) There has also been an active push by industrialized nations not to engage on the question of compensation, therefore it is possible to surmise that they are not interested in any legal language that may trigger the discussions of duty and obligation. For this research, there were no specific

interviews with major polluters, but the avoidance of the word compensation in formal texts supports this hypothesis, suggesting *principled omission* of human rights language.

Invoking human rights language would also draw attention to the responsibility of developing States to protect the human rights of their own citizens. While the International Human Rights Covenants have almost universal ratification, many States struggle to effectively realize human rights for their own citizens. Raising the question of human rights within the context of loss and damage may draw a level of scrutiny that all States active in the negotiations are not prepared for, and as a result they choose to defer to human security discourse.

5.2 Opportunities for human rights

One commonly expressed view of human rights is that they add legal complexity, and that introducing them into discussions would further stall already difficult negotiations. However this section demonstrates opportunities to promote human rights and support existing State obligations. In interview, Ambassador Ronald Jumeau, Seychelles Permanent Representative to the UN stated:

> Loss and damage has devolved too much into an argument about money. It is not enough about people, about justice. It is important to remember to consider the ways that loss and damage will affect not only groups of vulnerable States…but also the vulnerable groups within them. How can we consider these without looking at it as a rights issue? (2015)

This fundamental idea of justice remains absent from the decision texts and work program of the Warsaw International Mechanism.

5.2.1. Bridging the divide between human rights and environmental governance

One of the challenges is that human rights and international environmental governance are distinctly different regimes, and finding synergistic points of congruence is challenging. This sort of integration of cross-cutting issues is not unprecedented within the human rights system. In concluding observations in 2008, the Committee on the Elimination of Racial Discrimination noted that the UN Declaration on the Rights of Indigenous People "should be used as a guide to interpret the State Parties obligations under the Convention relating to indigenous peoples" (Barelli et al., 2011:27). This approach could equally be applied to the UNFCCC on a larger scale, if COP decides that human rights covenants should be used as a guide to interpret the State Parties obligations under the convention, particularly in the development of climate responses.

However, the reluctance of States to include basic human rights language in the draft of the Paris text demonstrates a lack of political will to reiterate the obligations of human rights within the climate context.

Given that most States party to the UNFCCC have wide ratification of International Human Rights Covenants, ensuring that the two issues are formally linked, is central to reiterating the role for human rights in climate governance. Special Procedures mandate-holders of the Human Rights Council called on States to "include language in the 2015 climate agreement that provides that the Parties shall, in all climate change related actions, respect, protect, promote, and fulfill human rights for all" (OHCHR, 2014) and this should be reflected in specific decisions relating to loss and damage. This would embed the legal relationship between climate change and human rights, and may support further appeals within the regional and international human rights courts.

In order for human rights discourses to be meaningfully considered they need to be included in the "range of relevant" approaches in knowledge generation activities. All interviewees indicated they were unsure of how to engage with the topic of human rights. International human rights law was drafted before anthropogenic climate change was an issue (IBA, 2014:118), as a result, some argue that it is ill-fitting when addressing climate change issues (Pers. Comm. Seigele 2015). However, there is general consensus that loss and damage has significant human rights dimensions, therefore no one is willing to dismiss human rights completely. The reliance on a human security discourse legitimises the argument that basic human rights may need to be sacrificed for the greater good. This applies particularly to social, economic and political rights.

Action Area 1 of the Warsaw International Mechanism work-plan is focused on understanding:

> the adverse effects of climate change [which] affect… segments of the population that are already vulnerable owing to geography, socioeconomic status, livelihoods, gender, age, indigenous or minority status or disability. (2014:7)

The vulnerabilities identified within this section correspond to those groups in need of special protections under the human rights covenants. For example indigenous and minority groups need particular protection of their political rights. Currently the right to self-determination is not considered extensively in the context of climate changes that may make traditional lands

inhabitable (Schapper and Lederer, 2014:666)[12]. Choosing to ignore some of these fundamental rights, disregarding cultural and economic dimensions in climate responses or reparations, can undermine social cohesion, and ultimately affect community resilience and security (da Costa, 2014).

There are also mechanisms for collecting information about specific human rights impacts of climate change. The Universal Periodic Report is an important tool for holding countries accountable for human rights implementation. The inclusions of questions pertaining to climate change impacts would gather valuable data for climate policy makers at the national level. It would also serve to normalize human rights as a tool within the international environmental governance regime.

Human rights scholarship can inform the dialogue on non-economic losses. The current DRR discursive practice argues that the grey areas of intangible losses are still "best dealt with" within economic understandings of "value" (Morrissey and Oliver-Smith, 2013). In order to be insured "assets" must be given a quantifiable value. Assigning a value to an object, which has otherwise not been any part of a market based system that would have given it a tradable value, becomes an inherently subjective matter (Fankhauser et al., 2014). A human rights-based approach could support a more effective participation of affected groups in establishing meaningful reparations for non-economic losses.

5.2.2 Incorporating the risk of human rights violations

The dominant discourse on comprehensive risk management can be efficient at translating scientific modeling by the IPCC to local community contexts. When managed well, and effectively resourced, it can provide real support for communities dealing with the impacts of climate change. However, it is acknowledged that comprehensive risk approaches are deficient in dealing with the more intangible aspects of risk management, and secondary impacts (da Costa, 2014).

At the 2015 UN World Conference on Disaster Risk Reduction this deficiency was highlighted in the review of the Hyogo Framework for Action (2005-2015). In response, the newly-agreed Sendai Framework for Disaster Risk Reduction calls for a "more people centered and

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[12] The issue of Sovereignty is often raise, although this argument is not used for minority groups or indigenous who will be affected within existing sovereign borders

preventative approach" (UNISDR, 2015:5). It calls for effective participation and engagement of relevant stakeholders, which in this case include "women, children…persons with disabilities, poor people, migrants, [and] indigenous people" (ibid:8). The new agreement also emphasises the role of traditional knowledge and the need to consider all human rights, including the right to development. Overall it provides a good model for how human rights principles can be embedded in loss and damage texts. However, more substantive integration could be achieved if "human rights violations" are considered a risk.

There are quantitative human rights tools, such as Political Terror Scale and the CIRI Human Rights Data Project, that can provide risk factors to conditions where human rights violations occur or increase (Poe et al., 2006, Cingranelli and Richards, 2010). Incorporating these principles into new risk assessment models being developed to respond to loss and damage will provide a more rights-centered approach to response measures facilitating embedded protections against human rights violations. For example, already marginalized groups, including women and children, are particularly vulnerable after extreme weather events and can often be overlooked in the humanitarian response and re-building process (Aoláin, 2011). Including factors within risk frameworks that track the particular and unique discrimination women face, can ensure that response measures do not violate but rather protect and promote women's rights.

Saleemul Huq, veteran advisor for LDCs, suggests that establishing a justiciable and ethical mechanism for compensation now will protect against the risk of unlimited liability for major polluters:

> …if they fail to agree with us on a limit to the liability, once damage has occurred and once that is attributable to the actions or inactions of certain countries then there is very little they can do about it; they will just have to accept certain blowback comes in whatever form it comes and it will come in a form that is totally unpredictable and totally uncontrollable (2015).

This argument also applies to a human rights perspective. Taking a proactive approach to ensure climate responses to loss and damage do not violate human rights is strategic, as it protects against future litigation in relation to human rights violation. The Dutch government is already facing a class action suit on the grounds of human rights violations for failure to protect its citizens from climate change (See Alfred 2015). The application of this principle to prison systems in the United Kingdom suggests that human rights violations should be considered as a

risk themselves, therefore placing the welfare of individuals at the core of policy delivery (Murphy and Whitty, 2007:4). This idea is already present in Corporate Social Responsibility literature, where human rights violations are now considered a "business risk" (Godfrey et al., 2009). The continued avoidance of human rights discussions both increases the chance of human rights violations, and leaves States and other actors liable.

5.2.3 Participation and accountability

Procedural rights and participation are fundamental principles in human rights-based approaches (Johl and Duyck, 2012). Participation is strongly linked to the idea of accountability and transparency, which foster empowerment and ownership for people who are impacted (Newborne, 2008). But who is responsible for effective participation? Does it have a role at the international level or is it a State responsibility? This research argues that comprehensive integration is necessary, to ensure that the principles of justice embodied in human rights language are incorporated into dominant discourse. Incorporating strong human rights language at an international level can prompt integration and a discursive shift at regional, national and sub-national levels (See Finnemore and Sikkink, 1998).

Further research is needed in this area, particularly examining existing models of procedural rights in environmental cases. The scale and unknown factors of climate change means that the scope of consultation is particularly hard to identify. As a result, it is often ad-hoc, reactive and exclusive, particularly of marginalized groups. National Adaptation Plans for Action should be subject to the same level of scrutiny and transparency as other major developments such as mining. For countries who are signatory to the Aarhus convention, this would trigger a range of protections that would ensure effective participation and consultation as well as access to information (Duyck, 2014). Consultation and national planning are at the behest of the government and the responsibility for ensuring inclusive participation rests with the state party. Often these are drafted in isolation of local reality, excluding and further marginalizing groups who may be substantially affected.

6. Conclusion and Recommendations

The establishment of the Warsaw International Mechanism shows that loss and damage is now a recognised and integral part of the UNFCCC process. The weight of accepted scientific evidence and experience of extreme weather events have finally reached a threshold where the issue can no longer be ignored. Despite this it remains a sensitive and political issue with which many countries are reluctant to engage.

Loss and damage is the extreme end of climate change with dire consequences such as the loss of life, land and livelihoods. If we exchanged the cause of these "losses" from climate change to that of violent conflict, observers and commentators would immediately leap to a language of human rights abuse. But in the realm of environmental problems, human rights violations become "risks" to be identified and managed. Language frames the way in which problems are understood and the "reality" is constructed. Therefore actions decided based on this "reality" are very different if the problem is understood as a human rights issue, or a human security challenge.

The aim of this thesis was to investigate how human rights are being used in the UNFCCC negotiations addressing Loss and Damage and further identify whether there are viable opportunities for greater integration of a human rights discourse. This research has used the tools of Political Argumentation Analysis on the formal working documents of the UNFCCC negotiations, to explore the discourse that is shaping and driving the current policy approaches and activities relating to Loss and Damage. It sought to establish: 1) which discourses are represented; and 2) how a single discourse has become more dominant, with particular focus on knowledge generation and institutional influences. The third and final section considered human rights discourse, analysing its current role in the negotiations in order to identify opportunities for integration in the future activities of the Loss and Damage Work Programme.

The analysis identified a dominant discursive narrative founded on economic values and goals. The *economic narrative* is used most commonly by Annex I and II countries which, under the UNFCCC, are required to provide resources to support countries particularly vulnerable to climate change. This narrative emerges in the following features: reliance on scientific data and economic reasoning (eg. cost benefit analysis); use of abstracted language that removes the

"problem" of loss and damage from the context of people and places affected; emphasis on loss and damage as a problem in the future; and prioritization of activities that are low cost and operate at regional or country scale. This narrative recognises there is a problem, but it generally serves domestic interests of developed States as it reduces the need for additional resources and financing.

The counter discourse is a *human-centered narrative*, most commonly used by AOSIS and LDCs. This narrative is characterised by the use of real events and case studies to demonstrate that loss and damage is already affecting the lives of people. It is founded on the ideas of justice and human dignity, evoked through the use of emotive words such as "survival". This human-centered narrative carries with it a moral authority that has the power to spur other parties to action; it places a human face on otherwise abstract issues. The fact that an international mechanism to address loss and damage was agreed demonstrates the power of this authority and its ability to generate action.

Discourse analysis is a powerful tool: it shows the way questions are asked, and the types of knowledge used in decision-making, have direct implications for the policy approaches that the international community will use to address the issue of loss and damage. The phrase "comprehensive risk management" has been directly associated with loss and damage in the formal decision texts since Cancun in 2010, creating boundaries of "relevance" that have directed activities. This has functioned to exclude other approaches, notably human rights. In fact both the IPCC and the UNFCCC Technical Papers, key knowledge sources that inform the negotiations, actively dismiss human rights as legally limiting. Within both narratives, the language of human rights is absent, despite regular implicit references when describing the impacts on people.

Human rights are too often viewed as a strict legal doctrine. What this research has demonstrated is that it can be conceptualised beyond legality and used as an ethical and moral framework that protects and promotes the welfare of individuals. In contrast, the current dominant discourse of risk management is focused on collective decision-making for the overall "good" at the potential sacrifice of some. This is characterised by a top down approach that largely excludes the voices of those who are directly affected.

The dominance of risk-based approaches results in gaps between the issues raised by some States and the policy approaches developed. The more intangible aspects of loss and damage are being moulded to "fit" the dominant discourse, rather than seeking out alternative approaches that may be better suited to addressing them. For example, research on non-economic losses is focused on finding a method to quantify and assign a "market value". An alternative approach would recognise the participatory rights of affected individuals, and work with them to develop meaningful reparations to adjust for these losses. Human rights-based approaches are generally grass-roots-driven, which empowers communities and builds resilience and social cohesion.

The negotiations are moving towards a more integrated approach to climate responses. Ten years ago, human rights were simply not considered within the realm of international environmental governance, but in Paris 2015 there may be textual references to human rights within the agreement. To continue to exclude human rights from the work program on loss and damage, is not strategic or pragmatic but rather defers the issue until actual violations force the international community to react, as has already happened with the Clean Development Mechanism (Schade and Obergassel, 2014). This research contributes to the growing body of literature that demonstrates that human rights need to be central to climate responses. Equally, human rights practitioners needs to consider the threat of environmental problems in basic human rights implementation.

There are some limitations of a human rights-based approach. It is well recognised that climate change threatens a vast array of human rights. However, these violations are without one identifiable perpetrator that leads to the question - who is responsible? There is significant political reluctance to even consider "human rights" and introducing the topic for active discussion could stall negotiations. Both developed and developing countries would then face sensitive questions about whether or not they are meeting their international obligations to their citizens. However, this reason alone is not enough to entirely dismiss an established international mechanism, with universal applicability. An interdisciplinary approach is needed to find innovative solutions to the unprecedented challenges embodied in climate change. Climate change practitioners need to move beyond the concept of human rights as a strict legal discourse that will limit their range of potential actions, and instead understand it as an ethical and moral

guide that can and should be embedded in all policy approaches that will have significant impact on global society.

Linking the two quite distinct regimes of environmental governance and human rights is challenging and a lot of the literature falls short of demonstrating how this discourse translates functionally into practice within climate governance. This study has highlighted some deficiencies in the dominant discourse, which present opportunities for human rights. Potential activities include: 1) embedding reference to human rights instruments within decision texts; 2) integration of human rights scholarship into knowledge generation processes; 3) including elements of human rights risk assessment models into existing models of DRR; and 4) meaningful engagement and participation of affected peoples. These policy recommendations provide some brief practical "points of entry" relating specifically to the work-plan for the Executive Committee for the Warsaw International Mechanism (See UNFCCC Secretariat 2014).

Policy Recommendation 1 – Textual Reference
Textual reference to Human Rights obligations and duties in all future decisions regarding the loss and damage and substantive reference within the rolling five-year work-plan to be considered at COP22[13].

Policy Recommendation 2- Knowledge generation
Action Area 1 (b) and Action Area 6 of the Warsaw International Mechanism Work-Plan:
States recommend specific actions in relation to human rights research, inclusive of legal scholarship and case studies from a human rights perspective. Consider further the role of the Universal Periodic Review in providing input and data into knowledge generation activities.

Policy Recommendation 3- Rights as Risk
Action Area 2 (a), (b), (d) of the Warsaw International Mechanism Work-Plan:
Following the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Planning (2003), human rights must be part of the range of tools available, particularly in relation to social protection for comprehensive risk management.

Policy Recommendation 4 – Participation and Accountability
National-level planning for loss and damage (as part of adaptation planning) should be subject to the same level of scrutiny as other major developments, ensuring transparent access to information, effective participation (following the principle of Free Prior and Informed Consent) and avenues for redress. Consultation requirements, particularly of marginalized groups, should be embedded in the rolling five-year work-plan for consideration at COP22

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13 As part of the 2014-2016 work-plan for the Warsaw International Mechanism, the Executive Committee is responsible for establishing a five-year rolling work plan for consideration at COP22 in Morocco.

This study is limited by the fact that it focuses solely on the formal texts of the negotiation. As the policy recommendation above demonstrates, there needs to be targeted research that demonstrates how human rights tools can specifically address the issues of loss and damage. This would benefit from Participatory Action Research working closely with policy makers within the negotiations to translate human rights into practice, providing tested examples that could be applied to other areas of environmental governance. Within the field of human rights there needs to be greater consideration of how human rights apply in extra-territorial contexts. Human rights are undermined in an increasingly globalized world by emphasis on the duty and obligation between States and individuals within their sovereign jurisdiction. This remains a fundamental barrier in applying human rights to environmental problems that characteristically affect a number of States.

The theory of discourse analysis is plagued by the complexity and variability of methods, and often dismissed in academia. However, as this research has shown, the fundamental analysis of language is central to understanding why certain policy approaches are being excluding, despite the appearance of synergy with the issues. Discourse analysis does have relevance within social science research, however it needs to be integrated with other methods in order to effectively translate findings into recommendations for practice.

This research clearly demonstrates that there is a role for human rights in facilitating loss and damage negotiations. It has the potential to strengthen the effectiveness and sustainability of actions delivered by grounding them in the moral principles that deliver policies that are focused on individual welfare. Further to this loss and damage is a human rights issue, and this means the global community has a responsibility to take action, to prevent and minimise the risk of violations.

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7. Sources and References

7.1 UNFCCC Documents Analysed

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7.1.2 Party Submissions and working documents

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    information on elements to be included in the work programme on loss and damage.
    Submissions from Parties and relevant organizations. UN Document Reference:
    FCCC/SBI/2011/MISC.1

Submissions included: Australia, Bolivia, Bosnia and Herzegovina, Canada, China, Ethiopia, Grenada on
behalf of the Alliance of Small Island States, Hungary and the European Commission on behalf of the
European Union and its member states, India, Indonesia, Japan, Malaysia, Mexico, New Zealand,
Norway, Saudi Arabia, Sri Lanka, Switzerland, Turkey, United States of America, Uzbekistan,
Venezuela, Food and Agriculture Organization of the United Nations, Inter-American Development
Bank, International Labour Office, Secretariat of the Global Climate Observing System, United Nations
Development Programmed, United Nations Environment Programme, United Nations International
Strategy for Disaster Reduction, United Nations University, World Bank, World Meteorological
Organization.

UNFCCC (United Nations Framework Convention on Climate Change). 2011b. Synthesis report on views and information on the elements to be included in the work programme on loss and damage. Note by the secretariat. UN Document Reference: FCCC/SBI/2011/3

UNFCCC (United Nations Framework Convention on Climate Change). 2011c. Views and information on the thematic areas in the implementation of the work programme. Submissions from Parties and relevant organizations. UN Document Reference: FCCC/SBI/2011/MISC8 and Add. 1

Submissions included: Australia, Colombia, El Salvador, Gambia on behalf of Least Developed Countries, Norway, Office of the United Nations High Commissioner for Refugees, Pakistan, Poland Sri Lanka, Switzerland, United States of America, United Nations International Strategy for Disaster Reduction, United Nations University, World Bank, World Health Organisation.

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Attachment A: Summary of COP decisions regarding Loss and Damage under the UNFCCC

Summarised from the UNFCCC Website "Chronology- Loss and Damage"[14]

	COP	Decisions and Work Programmes for Loss and Damage
2007	COP13 *Bali*	Inclusion of the Loss and Damage in the Bali Road Map
2010	COP16 *Cancun*	Establishment of the Work Programme on loss and damage under the Cancun Adaptation Framework.
2011	COP17 *Durban*	At the 35th session of the SBI, Parties considered further activities to be undertaken in the period up to COP 18, based on the submission and a synthesis report on views and information on the thematic areas to be addressed in the implementation of the work programme, and the outcomes of the workshop on risk management approaches to the adverse effects of climate change, providing useful inputs into the implementation of the work programme on loss and damage. Parties decided to recommend a draft decision for adoption by the COP at its 17th session, containing agreements to: • address issues related to thematic area 1 at the expert meeting to be held before SBI 36 (May 2012); • prepare a technical paper to feed into the expert meeting, mentioned above; • organize four expert meetings, three at the regional level and one for small island developing States before SBI 37 (December 2012), to address issues related to thematic area 2; • prepare a technical paper on slow onset events, taking into consideration the outcomes of the expert meetings, mentioned above; • conduct a literature review of existing information and case studies on the topics in the context of thematic area 2; • invite Parties and relevant organizations and other stakeholders to submit views and information on the possible elements to be included in the recommendations on loss and damage in accordance with decision 1/CP.16. Parties also invited organizations to provide financial and technical support for the implementation of the activities of the work programme. For additional details see the draft conclusions adopted by the SBI at its 35th session, and draft decision forwarded to the COP for adoption at its 17th session.
2012	COP18 *Doha*	At the 37th session of the SBI, Parties considered progress made by the work programme to date, and initiated the work on developing recommendations on loss and damage for consideration by the COP. The SBI decided to recommend the draft decision text for consideration and finalization by the COP at its 18th session. For additional details see the conclusion adopted by the SBI at its 37th session. At the 18th Conference of the Parties, Parties decided as part of the Doha Climate Gateway to: • Establish institutional arrangements to address loss and damage at COP 19; • Hold an expert meeting to consider future needs; • Prepare technical papers: One on non-economic losses, another one on gaps in existing institutional arrangements within and outside of the Convention. For additional details see the decision adopted by the COP at its 18th session.

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[14] See UNFCCC 2014 http://unfccc.int/adaptation/workstreams/loss_and_damage/items/7545.ph (accessed 11.05.2015)

2013	COP19 *Warsaw*	The COP established the <u>Warsaw International Mechanism for Loss and Damage</u>, under the <u>Cancun Adaptation Framework</u>, to address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change. The COP also established an <u>Executive Committee</u> to guide the implementation of functions of the Warsaw International Mechanism. The Executive Committee will report annually to the COP, and the COP will review the Warsaw International Mechanism at its 22nd session (2016).
2014	COP20 *Lima*	The COP approved the initial **2-year work-plan** of the <u>Executive Committee</u> of the <u>Warsaw International Mechanism for Loss and Damage</u>. The full set of activities in the work-plan is contained in <u>annex II to the report</u> of the Executive Committee to the COP. The COP also finalized the organization and the governance of the Executive Committee. Key agreements include: • The Committee shall be composed of: o 10 members from Annex I Parties o 10 members from non-Annex I Parties, comprising two members each from the African, Asia-Pacific, and the Latin American and Caribbean States, one member from SIDS, one member from LDCs, and two additional members from non-Annex I Parties • The Committee may establish expert groups, subcommittees, panels, thematic advisory groups or task-focused ad hoc working groups, in an advisory role, to help execute the work of the Executive Committee.

Attachment B: Interview Schedule

Researcher: Alison Fleming (Fridtjof Nansen Institute)

Respondent: **Date of response**:   /   /2015

This research is following the negotiations on the development of an international mechanism to address loss and damage agreed to in Warsaw 2013. The research is tracking the current negotiations and the feasibility of incorporating elements of a rights-based approach.

Personal details are not required to be published as part of this research so your responses will be kept confidential and anonymous. I will contact and confirm if I intend to use any direct quotes. Please feel free to contact me if you wish to discuss how this data will be used.

	Question
	Can you confirm your consent to participate in this research?
1	Can you describe your current position and your history of involvement in the climate change negotiations?
2	*a)* Do you consider climate change a human rights issue? *b)* If yes, in what way?
3	*a)* Do you feel that human rights arguments are a useful tool in negotiations and do they support or hinder outcomes for vulnerable states? *b)* Which negotiating groups generally choose to invoke human rights arguments?
4	What do you understand is meant by the term "loss and damage"?
5	What do you understand to be the main aim of the Warsaw International Mechanism for Loss and Damage?
6	What would be the ultimate success for SIDS in relation to Loss and Damage?
7	*a)* In your understanding what do you feel would be a feasible and realistic outcome for loss and damage in the international context?
8	*a)* Loss and damage is often referred to in terms of "value", what aspects to you consider should be measured when considering? b) Do you feel non-economic values such as cultural or social loss should be considered? c) Are they currently being discussed in any way? d) [If not] what are the consequences if these are not included in new mechanisms?
9	a) Do you have any view on effectiveness of other mechanisms for adaptation and benefit sharing such as the CDM or REDD+?

	b) Do you think there are lessons to be learnt from these mechanisms that should be considered as part of the L&D negotiations? c) Do you feel the GCF will meet the needs of financial support for L&D?
10	a) Do you feel a rights-based approach to loss and damage could provide opportunities? b) Do you have any view on what a Rights-Based Approach may look like?
11	Are there any other thoughts you would like to mention in relation to the topics of the above questions?
12	Is there anyone else that you recommend that I speak with in relation to this research?

Attachment C: Verbal Consent Guidelines

Research on Negotiations associated with a Mechanism for Loss and Damage.

I am a Masters Student from *Gothenburg University* working with the *Fridtjof Nansen Institute* in Oslo. I am a researcher investigating the impact of climate change on vulnerable states and marginalized groups, particularly focusing on Loss and Damage negotiations.

Research aims:

- Understand the experience on negotiators at COPs
- To explore the shifting debates and discourses associated with loss and damage.
- Assess whether there are existing mechanisms or examples within international governance that could inform the development of the Warsaw International Mechanism on Loss and Damage

Consent:

Before we start the interview I need you to confirm for me on tape that you:

a) Consent to being interviewed and participating in the research?
b) Consent to this information being used anonymously in publications?
c) Consent to our conversation being recorded?

You are able to terminate the interview at any point. If you feel after the interview that you do not wish the information to be used you can contact me and withdraw your consent.

Confidentiality:

Your personal details are not necessary for the purpose of this research, however your professional position may referenced.

- Do you consent to the use of information that you may enable people to identify you?
- If you prefer: I am happy to conduct the interview anonymously and ensure that no information enables you to be identified or opinions expressed to be attributed to you.

Data protection:

The data collected as part of this research will not be used in anyway that will directly affect you as an individual. Interview audio and transcripts will be stored securely and not distributed beyond myself and my supervisors.

Are you happy for me to contact you if there are any changes to the use of the data gathered as part of the interview process?