

Carbon Majors Funding Loss and Damage Discussion Paper Series

Opt-out Process for Developing Countries

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Introduction

The Carbon Majors Funding Loss and Damage report by the Heinrich Böll Foundation and Climate Justice Programme proposes an international funding mechanism for loss and damage that would be funded by private and state actors that contribute significantly to GHG emissions. These major emitters are referred to in the report as Carbon Majors. One of the questions raised in the report is how to deal with Carbon Majors from developing countries, particularly states and state owned companies.

The following briefly explores a potential way to consider special rules for state owned companies or states who, based on the emissions from the fossil fuel extraction operations under their control, would be required to contribute to the proposed international loss and damage fund. The basic concept is to permit qualifying developing countries direct access to the loss and damage levy they or their state owned companies contribute, for a limited period of time, to support the transition of their economies away from fossil fuels and other high emissions industries. Essentially, qualifying major emitters would contribute to a domestic fund to support the transformation of their economy in place of the international loss and damage fund.

The default would still be that states and state owned companies from developing countries are included under the system and are required to contribute to the international loss & damage fund. Developing states that want to make a case that they should be permitted to have direct and exclusive access to the funds generated from state or state owned companies based on the principle of common but differentiated responsibility (CBDR) would be invited to apply for a temporary exemption from the requirement to contribute to the international loss & damage fund.

If approved, the funds collected would be used by the state directly (for a prescribed period of time) to fund efforts to diversify and transform its economy to reduce its reliance on fossil fuel based economic activity. In essence, developing countries that need the resources generated to help to transform their economies could apply to be able to keep the revenues generated by the levy (for the specific purpose of aiding with

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the transformation of their economy), rather than have the funds contributed to the international loss & damage fund.

Criteria would have to be developed to assess applications from developing countries for the temporary exemption of the requirement to contribute to the international loss & damage fund. This would allow for a standardized, fair, and transparent case by case assessment of the range of circumstances that are relevant to determining whether a particular extraction operation or company should be exempt from the liability levy based on the principle of CBDR, rather than drawing an arbitrary line that would inevitably fail to take into account the unique circumstances of a particular state or state-owned company.

The time period for which an applicant would be exempt from the requirement to contribute to the international fund would depend on the circumstances. Applicants could be invited to identify the date on which they (and/or their state owned companies) would start to contribute to the international loss and damage fund. In case of exemptions that exceed 10 years, there should be an automatic review of the circumstances after 10 years to ensure the conditions in the developing country warrant an extension of the exemption beyond 10 years. The review would consider any changes in circumstances in light of the criteria established, and would particularly assess efforts to phase out fossil fuels and to diversify the economy.

Why CBDR?

The concept of CBDR has played a significant role in guiding the evolution of the UNFCCC. CBDR is enshrined in Article 3.1 of the Convention. It has its origins in Principle 7 of the Rio Declaration of 1992 (UN 1992):

“States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressure their societies place on the global environment and of the technologies and financial resources they command.”

Article 4.7 of the United Nations Framework Convention on Climate Change (1992) requires the involvement of developing countries as follows:

“the extent to which the developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology.”

Developing countries have the right to develop. At the same time, they often do not have access to the technologies, expertise, and resources required for climate-friendly development. Because there is significant inequality in the distribution of technology, capacity and resources globally and because developed countries have used up more than their share of the carbon budget in reaching their state of development, the principle of CBDR recognizes that developed countries have a responsibility to support developing countries in achieving climate-friendly development.

There is a range of views on what constitutes a fair implementation of the principle of CBDR. Criteria that are frequently cited in the literature to determine if a Parties position is in line with the principle of CBDR include the following categories:

- willingness to participate,
- historic responsibility,
- capacity to pay.

Possible Criteria

I would propose the following criteria for consideration. The relevance of each would depend on whether the applicant is a state or a state owned company (among other relevant factors):

Key Eligibility Criteria

- Ranking of the state significantly below the average ranking of OECD countries on the HDI
- Ranking of the state significantly below the average per capita GDP of OECD countries
- Cumulative contribution of GHG emissions on a per capita basis that is significantly lower than the average per capita contribution of OECD countries
- Other evidence that the overall capacity to mitigate is significantly lower on a per capita basis than the average per capita capacity of OECD countries (such as limited access to renewable, low GHG energy sources)
- If the applicant is a state owned company, does it operate more like a private business or more like an arm of government? Does it depend on government funding? Does it compete against private companies in an open market?
- Support received by the state to diversify its economy beyond the extraction of fossil fuels and to mitigate and adapt to climate change

Other Possible Considerations

- Export of fossil fuels (to developed or developing countries)
- Domestic use of extracted fossil fuels
- Export of products produced with significant reliance on fossil fuels
- Diversity of the economy beyond extraction of fossil fuels & potential to diversify

- Evidence that revenues from the extraction of fossil fuels have been used to diversify the economy.
- Demonstrated effort to constructively and effectively participate in and support global efforts to mitigate climate change

These (and undoubtedly other) factors should be considered in recognition that a successful application to opt out of payment into the fund essentially means giving a free ride to a state in recognition of CBDR and of the vulnerability or dependence of the domestic economy on the sector in question. The ideal solution would be that this not happen at all, and that instead, the country would receive the assistance it needs to reduce its dependence on this industry. In other words, the ideal scenario is one that implements the CBDR principle through other means, and makes the major emitter internalize the cost of its GHG emissions just like anyone else by being forced to contribute to the loss and damage fund as the extraction of fossil fuels, wherever it occurs, contributes to climate change and the subsequent loss and damage. The purpose of the opt out process is to identify where the broader socio-economic conditions that would warrant requiring a major emitter in a developing country to contribute to the loss and damage fund do not exist.

Proposed Process

The process should be straight-forward and transparent. Applications should be made to an expert committee that is set up by and reports to the Executive Board of the Loss & Damage Fund. Applications should be made public, and parties and registered observer organizations should be invited to make submissions with respect to the application (to be made public). The EB should be required to give written reasons for its decisions, and be required to justify its decision in light of the agreed to criteria for an exemption (to be made public). There should be a limited appeal option to the COP similar to the appeal from decisions of the compliance committee under the Kyoto Protocol.

If you would like more information about the Carbon Majors Funding Loss and Damage project please see our website: <http://climatejustice.org.au/issue/carbon-majors/>. If you would like to become involved, or be kept updated with the concept please fill in this short form: <http://goo.gl/7Dbdfs>.