COP27: CONSIDERATIONS FOR A LOSS & DAMAGE FINANCE FACILITY

C2ES CENTER FOR CLIMATE AND ENERGY SOLUTIONS

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SUMMARY

This paper explores options for loss and damage (L&D) finance under the current and proposed mechanisms of the United Nations Framework Convention on Climate Change (UNFCCC) and is complemented by a prior paper on The Institutional Ecosystem for L&D.[1] There are a number of drawbacks and benefits to the process of establishing a dedicated L&D finance facility. Challenges include:

Limited time: While not all questions, including the ones posed in this paper, will need to be answered before a new funding structure and/or mechanisms for L&D are agreed, Parties will need to spend considerable time addressing many of them in-depth in order to ensure an effective and viable outcome in both the short and long-term. Compared to using and enhancing existing funds, establishing a new finance facility will require Parties to: agree on a governing instrument and mandate; choose board members; appoint an executive director; choose a potential secretariat; decide on the operational principles and guidelines; mobilize resources for the fund; establish the disbursement structure and accredit entities and decide on projects for funding. This is a process that took five years for the Green Climate Fund (GCF).[2]

Cost-effectiveness: Establishing and operating a new fund could be more costly than using and enhancing existing facilities, and these expenses could potentially reduce funds available for L&D.

Duplication of efforts: Given that the GCF and other UNFCCC funds do provide some L&D support, establishing a new fund could potentially duplicate efforts or inhibit the GCF from enhancing future efforts to fund L&D measures.

Continued political sensitivities: Even if Parties agree to establish a dedicated finance facility, operationalizing it may raise or highlight political considerations that could slow progress in agreeing funding arrangements.

On the other hand, the proposal raises a number of benefits:

Strong political support for L&D: A L&D finance facility could send the global community a strong signal that the UNFCCC is committed to averting, minimizing, and addressing L&D if adopted with wide support.

Fills gaps, avoids finance restraints: Parties can consider whether the limitations of current funding structures can be changed or adjusted, and structured to better meet the needs of developing countries by adjusting and enhancing existing processes.

Dedicated L&D finance could lead to better understanding and more consistent funding: A L&D finance facility could create more regular, in-depth, up-to-date, and Party-driven engagement on L&D. However, this would need to overcome current political sensitivities, take into account current GCF funding streams, and the challenges facing facilities like the Adaptation Fund.

This paper lists some of the drawbacks and benefits of establishing a dedicated L&D finance facility, weighs the two main options for addressing L&D finance, and outlines key considerations for establishing a L&D finance facility.

Key considerations

- What are the options for Parties to ensure a successful COP27 outcome on L&D finance?
- Would establishing a L&D finance facility adequately address the concerns of developing countries?
- Have Parties sufficiently considered the issues and options in order to adopt a L&D finance facility at COP27?

OVERVIEW

COP26 established the Glasgow Dialogue (GD) as an open, inclusive and non-prescriptive forum to discuss the arrangements for the funding of activities to avert, minimize and address L&D associated with the adverse impacts of climate change.[3] One of the main drivers behind the GD was the call by developing country Parties for the establishment of a L&D finance facility for the funding of L&D action under the UNFCCC and the Paris Agreement.

Concerns that the Conference of the Parties (COP) and Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) would lack political oversight, and that the GD did not have a mandated deliverable, led some Parties to call for an agenda item on matters related to the GD on L&D. The proposal was to include 'matters related to funding arrangements for addressing loss and damage' under the agenda item 'matters related to finance' in order to establish and operationalize a finance facility for funding L&D.[4] This sub-item has been included in the provisional agendas for CMA4 and COP27 in Sharm el-Sheikh in November.[5]

In the request, developing country Parties noted a L&D finance facility could resolve or address the following:

- The immediate need for L&D finance in a way that is additional to what currently exists, sustained, and quick to access
- The lack of financing for slow onset events, non-economic losses, or the aftermath of disasters
- Available finance is ad hoc, difficult to access, and/or expensive and may place undue burdens on developing countries

ENHANCING EXISTING UNFCCC FINANCE MECHANISMS TO ADDRESS L&D FINANCE

The GCF already provides financial resources for activities with some indicators relevant to avert, minimize and address L&D in developing country Parties in limited ways.[6] There are also overlaps between GCF's funding for adaptation and resilience with L&D measures. Because the GCF is replenished across all windows of funding, it is less vulnerable to variations in funding levels. Furthermore, the GCF could potentially support all workstreams currently under the Warsaw International Mechanism Executive Committee.

However, Parties highlighted several weaknesses of GCF funding for L&D in the GD:

- Lack of capacity and support for the application process for national Direct Access Entities (DAEs) for the direct access modality.
- Lengthy application process and approval time.
- Lack of engagement between GCF and DAEs.
- Its focus on adaptation activities and activities that avert and minimize (as opposed to address) L&D.[7]
- Policy gaps for the GCF.[8]

Given that the GCF has already initiated work in order to address some of these shortcomings, Parties should consider whether further mandates are necessary.[9] Parties should also consider what role the GCF should have in funding measures that *address* L&D, and whether other financial instruments under the UNFCCC, such as the Adaptation Fund and its Innovation Facility could be used to address non-economic L&D, such as societal identity and cultural heritage protection.[10]

Parties could direct the GCF through the COP/CMA on its strategies for L&D finance and funding, and give guidance on how it should work to enhance support for measures that avert, minimize and address L&D.

It is possible the finance facility could operate as part of the GCF, in which case Parties would need to consider whether and how it would use existing structures/systems.

CHALLENGES TO ADDRESSING L&D IN THE UNFCCC NEGOTIATIONS

Challenges include:

- Defining L&D under the UNFCCC/Paris Agreement
- Gaps and limitations for L&D action and finance

DEFINING L&D UNDER THE UNFCCC/PARIS AGREEMENT

Because there is no formal definition for L&D, there is no clear line between financing to address adaptation and L&D.[11] Parties accept that L&D is often categorized as economic or non-economic. Economic losses can be quantifiable losses of property, assets, infrastructure, agricultural production/revenue, goods and services. Non-economic losses include impacts that are not easily quantifiable in economic terms, such as impacts/loss of life, health, biodiversity, ecosystem services, indigenous knowledge, cultural heritage, and societal/cultural identity.

Parties differentiate between averting, minimizing and addressing L&D.[12] In order to determine the relevant or potential financial tool(s), the following four categories can be considered measures *addressing* L&D:

- **Recovery and rehabilitation**: e.g., restoring basic services and facilities; restoring the livelihoods, health and economic, social, cultural, environment/ecosystem and physical assets (such as infrastructure and housing); re-establishing systems and activities of a community or society affected by disaster
- **Migration**: e.g., relocation or resettlement as a consequence of climate change; support systems for forced migration and climate-induced displaced persons
- **Transformational development and alternative livelihoods**: e.g., support for alternative livelihoods post climate change related events/post migration, assistance with diversification of income in already affected areas
- **Non-economic measures**: e.g., financial compensation, active remembrance, societal protection, counselling, or other ways to reduce the impacts from climate change on the affected individual/society. It can also include measures to reduce 'similar' risk of non-economic L&D in other areas through lessons learned and shared knowledge and understanding

For one or more of these, tools such as risk insurance facilities, climate risk pooling, contingency funds and social protection schemes could be used. Non-economic measures can be supported through the Santiago Network, or through other processes under the Paris Agreement, such as the global stocktake (GST).

GAPS AND LIMITATIONS IN THE LANDSCAPE FOR L&D ACTION AND FINANCE

Effectively minimizing, averting, and addressing L&D requires engagement with, and coordination across, an ecosystem of regimes and actors that extend beyond the UNFCCC. The institutional frameworks that address disaster risk reduction, humanitarian assistance, migration and displacement, and development assistance address elements of L&D in piecemeal fashion, focus largely on economic and physical aspects and loss of life, and lack understanding of climate risk and potential future impacts. Climate risk management and L&D solutions such as forecast-based financing instruments, early-warning systems, and insurance and other risk-transfer solutions are rarely comprehensively promoted by UN institutions outside of the UNFCCC.[13]

It is currently not possible to accurately estimate the cost of L&D given uncertainties in methodologies, processes, time horizons, climate scenarios, and countries' socio-economic and political choices, which include adaptation policies and measures that influence the extent of L&D. Despite these uncertainties, finance needed for L&D is likely to be considerable: estimates range between USD$20-580 billion in 2030 to USD$1.1-1.7 trillion in 2050.[14] Current levels of funding for L&D under the UNFCCC fall far below these estimates and Parties seem to agree that funding for L&D is insufficient.

Funding for L&D is available within and without the UNFCCC.[15] Parties must currently consider clarifying the level and institutional structures for enhancing funding measures to avert, minimize and address L&D, whether that means the enhancing and strengthening existing funding arrangements or establishing a new finance facility for L&D in order to meet current and future needs for L&D finance.

KEY CONSIDERATIONS

Parties should consider the implications of important rights, principles, and developments.

- **Human rights**: For instance, in a recent decision by the UN Human Rights Committee, it was found that failure to implement adequate adaptation measures to protect the indigenous peoples in the small islands in Torres Strait was in breach of articles 17 and 27 of the the International Covenant on Civil and Political Rights (ICCPR).[16]
- **Equity**: The international community, and in particular those States that have contributed the most to climate change, should support least developed countries (LDCs) that have contributed the least and yet are most affected by climate change. In relation to finance for L&D, Parties should consider:
  - How to ensure access and fair distribution for L&D finance
  - How to apply the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances
  - How and whether the polluter pays principle and historic responsibility, as well as intra- and intergenerational equity affect finance for L&D
  - Distribution of funds to address L&D where developing countries are (i) emitters of carbon emissions, (ii) have unambitious/inadequate nationally determined contributions (NDCs), and/or (iii) have not planned and implemented adequate adaptation measures to climate change, including measures to avert, minimize and address L&D
  - The potential for establishing perverse incentives that can lead to a reduced levels of adaptation efforts, or that does not function in a way that ensures the support is given to those communities that are affected
  - That the value of one dollar will vary depending on the level of development attained by the recipients—i.e., if finance for L&D is needs-based, is it equitable that the LDCs will receive the least funds for L&D due to their lack of development?
- **Legal**:[17] Parties under the Paris Agreement have for a long time disagreed on whether the provision of L&D is an obligation under international law, or whether it is based on solidarity, cooperation, and voluntary support.[18] Parties should consider:
  - That the establishment of a L&D finance facility could be undertaken without agreeing on whether funding for it is voluntary or obligatory.[19] One of the potential consequences of establishing a duty to finance L&D is the difference in *quality of the funds*—whether the funds are grants or loans.
  - That attempting to establish such a duty may hinder enhancement of financial support and the establishment of a L&D finance facility. Parties could avoid the question of duty, but at the same time focus the discussions on the quality of funds provided.[20]
- **Adaptation**: In general, the greater the global emissions of carbon dioxide, the greater the need for

adaptation measures; L&D will occur if adaptation measures are inadequate, insufficient, or otherwise impossible (for example due to lack of political will, finance, capacity, technology or biophysical constraints). Some of the issues related to adaptation are also relevant for L&D. Parties can consider that:

  - The Adaptation Committee is currently working on a report on shared understandings on the global goal on adaptation, including looking at the methodological challenges inherent in evaluating adaptation, such as the difficulty of attributing results to interventions and the shifting baselines and uncertainties of climate hazards.[21]
  - Many of these methodological, empirical, and conceptual challenges either directly or indirectly influence L&D.

- **Political**: Consideration of these questions and financing for L&D are likely to require high-level political dialogue in order to facilitate a productive dialogue that ensures funding for L&D is effective and efficient.
- **Transparency**: Given that Parties would want to invest in funding that demonstrably aids Parties affected by L&D, Parties should consider whether such funding should be reported under the Paris Agreement's enhanced transparency framework, with adjustments made to do so, or whether a separate monitoring, reporting, and evaluation system is needed, as well as the time and effort needed for their operationalization.

CONCLUSION

In either scenario, whether adopting a standalone L&D finance facility or enhancing existing finance facilities, the current UNFCCC financial institutions have been tailored to focus on mitigation and adaptation and it will take time and effort to shift the current strategic direction to effectively address L&D.

Similarly, either approach would need to be flexible enough to scale financing as necessary.

At the same there could also usefully be a strengthening and streamlining of funding under the UNFCCC and the existing ecosystem for L&D finance outside of the UNFCCC in order to ensure maximum efficiency and impact.

Finally, either outcome could usefully contribute to disaster risk reduction and/or humanitarian assistance until institutional financial structures can bet set up under the UN Office of Disaster Risk Reduction to do so. In fact, Parties could consider the potential for the UNFCCC to have a broad perspective on L&D such that it would be responsible for integrating climate change considerations into development, disaster risk reduction and humanitarian aid. Integrated financial approaches across global agendas under Sendai, the SDGs and the Paris Agreement will broaden the pool of resources available, funding cross-cutting measures, and make it easier to access finance for L&D.

The GD provides a forum for Parties to deepen their understanding of the L&D ecosystem to come up with workable and effective funding solutions for the short- and long-term, from a global, regional, and national perspective. The Dialogue could also benefit from deeper and more systematic discussion of how funding for L&D can be ensured, looking at the different options from a technical perspective with a view to finding practical solutions.

Other C2ES Resources:

The Institutional Ecosystem for Loss and Damage, August 2022.

Loss and Damage: Issues and Options for COP27, June 2022.

Designing a Meaningful Global Stocktake, January 2022.

Outcomes of the UN Climate Change Conference in Glasgow, November 2021.

The Global Goal on Adaptation: Issues for COP26, October 2021.

ENDNOTES

1 See C2ES, "The Institutional Ecosystem for Loss and Damage" (2022), https://www.c2es.org/document/the-institutional-ecosystem-for-loss-and-damage.

2 See https://www.greenclimate.fund/about/timeline.

3 Decision 1/CMA3, para 73. Endorsed by decision 1/CP.26, para 43.

4 The proposal for the sub-agenda item also underlined that the GD is a standalone one with no clear destination, and that the agenda sub-item seeks to address this shortfall. G77 proposal, https://unfccc.int/sites/default/files/resource/G77_%20COP27%20and%20CMA4.pdf.

5 CMA4 provisional sub-agenda item, para 8(f), https://unfccc.int/sites/default/files/resource/cma2022_01_adv.pdf; COP provisional sub-agenda item, para 8(f), https://unfccc.int/sites/default/files/resource/cp2022_01_adv.pdf.

6 See, e.g., Decision 12/CP.25, para 21, https://unfccc.int/sites/default/files/resource/cp2019_13_a02E.pdf; Decision 6/CP.26, para 10, https://unfccc.int/sites/default/files/resource/cp2021_12_add1E.pdf; the Updated Strategic Plan for the GCF: 2020-2023, page 3, https://www.greenclimate.fund/sites/default/files/document/updated-strategic-plan-green-climate-fund-2020-2023.pdf.

7 See, e.g., the proposed activity's 'paradigm shift potential' as part of the GCF investment criteria.

8 Parties have acknowledged the following general policy gaps include: updating the accreditation framework to include approving the project-specific assessment approach, updating the simplified approval process, approving the policy on programmatic approaches, completing policies related to the investment framework, and addressing matters related to the Private Sector Facility and strategy, as well as outstanding matters from the rules of procedure of the Board, cf. decision 6/CP.26, para 11.

9 For example, the GCF is planning to have a more integrated DAE support system through strategic nomination and accreditation, project development, and capacity building and institutional strengthening. See note 5, Updated Strategic Plan.

10 For more information on the AF and its Innovation Facility, please see here: https://www.adaptation-fund.org/wp-content/uploads/2020/10/Adaptation-Fund-Innovation-Facility-1.pdf.

11 The Paris Agreement fleshed out the relevant components of L&D, including a list of L&D activities.

12 Averting and minimizing L&D are more closely connected with adaptation, as they are forward-looking and anticipatory of climate risk, and includes measures such as establishing early-warning systems. Addressing L&D, on the other hand, includes measures that are responding to current or past climate change events, such as in the aftermath of disasters. As such, measures addressing L&D is more closely related to humanitarian assistance. The distinction is not clear cut.

13 For more information, see C2ES, "The Institutional Ecosystem for Loss and Damage" (2022), https://www.c2es.org/document/the-institutional-ecosystem-for-loss-and-damage.

14 Markandya, A., and González-Eguino, M., 'Integrated Assessment for Identifying Climate Finance Needs for Loss and Damage: A Critical Review' in Mechler, R. et al. (eds) Loss and Damage from Climate Change (Springer, Cham 2019), https://doi.org/10.1007/978-3-319-72026-5_14.

15 See also, note 12. The review of financing options and availability of finance for L&D in existing climate funds has been undertaken by the UNFCCC Secretariat as late as 2019. See Technical Paper by the Secretariat on 'Elaboration of the sources and modalities for accessing financial support for addressing L&D' (June 2019), https://unfccc.int/sites/default/files/resource/01_0.pdf. L&D finance has also been the subject of a report in 2021 by the Independent Global

Stocktake (iGST). Chhetri, Schafer and Watson, 'Exploring L&D finance and its place in the GST' (2021) iGST, https://www.climateworks.org/wp-content/uploads/2021/03/Loss-and-Damage-Finance-iGST.pdf.

16 Daniel Billy et al. v. Australia (also referred to as the 'Torres Strait Islanders decision') issued 22 September 2022, paras 8.12 and 8.14, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f135%2fD%2f3624%2f2019&Lang=en.

17 Many of the considerations discussed in other parts of this paper have clear legal implications or are legal in nature.

18 This was one of the main hurdles in coming to an agreement on L&D under the Paris Agreement, in which the Parties agreed that Article 8 on L&D does not provide a basis for liability or compensation.

19 Parties have already agreed that the workstreams of the ExCom on L&D will be supported by financial means through the GCF. In addition, Parties have also agreed that technical assistance for L&D will be funded through the Santiago Network. However, some Parties view the finance facility as a mechanism for purely addressing L&D, including a compensatory element, with strong support from the civil society. Please see C2ES, "The Santiago Network: Decision Options for COP27" (2022) https://www.c2es.org/document/the-santiago-network-decision-options-for-cop27/.

20 It is also worth noting that the potential request for an advisory opinion from the International Court of Justice (ICJ) is likely to either directly or indirectly touch on this issue. See C2ES, "An ICJ Advisory Opinion on Climate Change: Ten Questions and Answers" (2022) https://www.c2es.org/document/an-icj-advisory-opinion-on-climate-change-ten-questions-and-answers/.

21 The Adaptation Committee Report, page 7, https://unfccc.int/sites/default/files/resource/ac2021_tp_gga.pdf. Empirical challenges, such as the lack of data and lack of adaptation databases, and conceptual challenges in which there is lack of agreement on what constitutes adaptation, what constitutes successful or 'adequate' adaptation measures, and the 'contentious' issue of measuring using metrics and indicators.

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