

Issues and Options for Equity Considerations for Loss and Damage Finance

Discussion Paper

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Center for Climate and Energy Solutions

A.	Summary	1
B.	Context	2
C.	Key Issues for Equity and L&D Finance	2
D.	Options to Guide Consideration of Equity in L&D Finance	3
E.	References	5

A. Summary

1. The 27th Conference of the Parties (**COP27**) to the United Nations Framework Convention on Climate Change (**UNFCCC**) established a fund to respond to loss and damage (**L&D**), with the goal of supporting particularly vulnerable developing countries. Parties agreed that the Fund for Responding to L&D (**FRLD**) would be housed within the World Bank for at least four years, upon the approval of its governing instrument. Additionally, the COP28 decision created a Board (the **Board**) and an independent secretariat for the FRLD. At COP29, the World Bank signed a hosted agreement to fully operationalize the FRLD.
2. The Paris Agreement addresses L&D in Article 8, outlining various areas for cooperation and facilitation that, among others, include: early warning systems (**EWS**); emergency preparedness; slow-onset events (e.g., sea level rise); non-economic losses; and resilience of livelihoods. However, L&D is not explicitly defined—nor is there a universally accepted definition of equity—within international law or the UNFCCC.
3. The FRLD will begin dispersing funds for addressing L&D in 2025. The Board and Parties will need to consider equity in calling for donors and distributing L&D finance to recipients. This paper explores how the Board and Parties can ensure equitable L&D finance distribution. Options could include: a proposed equity framework; support mechanisms or a constituted body for Least Developed Countries (**LDCs**) and/or Small Island Developing States (**SIDS**); an informal process under the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (**CMA**), such as a workshop; or an expert group under the Warsaw International Mechanism (**WIM**).

Questions for Consideration

- How can Parties be guided in assessing equity as it relates to both stating needs and determining the level of support for L&D?
- Should Parties support the development of additional guidance regarding donors and recipients for L&D finance to facilitate Board decisions?
- Would an equity framework benefit the FRLD?

B. Context

4. Since the Paris Agreement was adopted, Parties have made progress on enhancing financial support for L&D. At COP27 (November 2022), Parties established funding arrangements for L&D, including the FRLD, which was established to provide financial support to developing countries particularly vulnerable to the adverse impacts of climate change in addressing L&D. Parties acknowledged the urgent and immediate need for new, additional, predictable, and adequate financial resources to assist developing-country Parties that are particularly vulnerable to climate change.¹ Parties further agreed to identify and expand the sources of funding for L&D.²
5. In December 2023, COP28 operationalized the FRLD and funding arrangements for addressing and responding to L&D. The COP28 decision also established the Board,³ which has a broad mandate to develop and operate a resource allocation system.⁴ Additional guidance is needed before the FRLD can begin disbursement.⁵
6. At COP29 (November 2024), Parties fully operationalized the FRLD.⁶ The World Bank signed the agreement to host the FRLD, enabling it to accept contributions and disburse funding. The Philippines also signed the agreement to host the Board. Parties outlined the Board's 2024–25 Work Plan, which includes rapid approval of funding, the development of a long-term fundraising strategy in 2025, and enhanced coordination with other climate finance sources.⁷

C. Key Issues for Equity and L&D Finance

7. Addressing equity in L&D finance is complicated by the lack of definitions for L&D, equity, or the “particularly vulnerable.”

Defining L&D

8. Measures to address and respond to L&D aim to deal with the aftermath of climate impacts from both slow- and sudden-onset events. While L&D is not explicitly defined under the Paris Agreement, Article 8 sets out areas of cooperation and facilitation which include: EWS, emergency preparedness, slow-onset events, non-economic losses, and resilience of livelihoods.⁸

Defining Equity

9. Similarly, there is no agreed or formal definition of equity under the UNFCCC, the Paris Agreement, or under international law generally. Equity is commonly understood as applying legal rules in a fair and just manner, considering particular circumstances, to achieve an unbiased process or result.⁹ The obligations of Parties are variously differentiated under the Paris Agreement, providing an important context for equity considerations. The Paris Agreement emphasizes the principle of common but

differentiated responsibilities and respective capabilities (**CBDR-RC**) in light of different national circumstances, reflecting the need for equitable approaches based on each country's context.^{10,11}

10. The Paris Agreement's preamble references "the principle of equity" and recognizes that Parties should respect, promote, and consider "gender equality, empowerment of women and intergenerational equity."¹² The Paris Agreement further states that "this Agreement will be implemented to reflect equity and the principle of CBDR-RC, in the light of different national circumstances."¹³ Equity is also embedded in, or closely connected with, other important principles such as distribution, equality, and the right to promote sustainable development.¹⁴
11. The UNFCCC has embedded equity as one of its guiding principles. Article 3.1 of the UNFCCC states that "Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."¹⁵ This principle—summarized through CBDR-RC—aims to ensure differentiation in common responsibilities based, amongst others, on capabilities and national circumstances. Article 3 of the UNFCCC further states that: "Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof."

Donor Obligations for L&D and the "Particularly Vulnerable"

12. In the Paris Agreement, in recognizing the importance of averting, minimizing, and addressing L&D, Parties should enhance action and support "on a cooperative and facilitative basis."¹⁶ Moreover, Parties have "agreed that Article 8 on L&D does not involve or provide a basis for any liability or compensation."¹⁷ As such, financial support for L&D is voluntary.^{18,19} An advisory opinion by the International Court of Justice (**ICJ**) on States' obligations under international law regarding climate change, including L&D, could support or be at odds with the Paris position.^{20,21} The decision is expected to be issued in 2025.²²
13. In terms of recipients of L&D finance, Parties have agreed across recent decisions on the Santiago Network, L&D funding arrangements, and the FRLD that assistance and financial resources are for "developing countries that are particularly vulnerable to the adverse effects of climate change."²³ However, countries considered "particularly vulnerable" are not defined. UNFCCC equity principles include a reference to being guided by "the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change."²⁴
14. But the Paris Agreement's Article 8 does not specify the beneficiaries of the action and support for activities related to L&D. It could be helpful to look at whether trends in support for adaptation might be used to understand who could qualify for L&D funding. However, the Paris Agreement and the UNFCCC have embedded the notion of the special circumstances of SIDS and LDCs.²⁵

D. Options to Guide Consideration of Equity in L&D Finance

15. Options for how the Board and Parties might ensure equitable L&D finance distribution are set out below, such as: establishing a proposed equity framework; establishing support mechanisms or a constituted body for LDCs and/or SIDS; requesting an informal CMA process (e.g., a workshop); or creating an expert group under the WIM.

Option 1: Equity Considerations for Recipients and Donors

16. As the Board begins consideration on the distribution of funds, how can it be guided to ensure distributions are fair and equitable? Further defining equity for L&D under the UNFCCC or Paris

Agreement seems unlikely.²⁶ Parties could request an informal process under the CMA, such as a workshop, to assist Parties in unpacking the many elements of equity for the FRLD.

17. Applying equity principles for vulnerable groups, communities, and ecosystems means ensuring that LDCs' and SIDS' capacity constraints are considered.²⁷ One way to do so would be to establish a constituted body for LDCs or SIDS to assist these Parties with responding to L&D. Alternatively, this work could be undertaken by the LDCs expert group (**LEG**) which is mandated to provide technical guidance and support to LDCs.^{28,29}
18. Parties could also consider whether an expert group under the WIM Executive Committee could be mandated to enhance support for LDCs and SIDS in order to ensure equitable implementation of L&D support and action.
19. COP29 negotiations on the new collective quantified goal (**NCQG**) on climate finance included submissions and calls for a minimum allocation floor for financing dedicated to SIDS and LDCs. While the final outcome did not reflect minimum allocation floors, the NCQG decision text acknowledges the "need for public and grant-based resources and highly concessional finance, particularly for adaptation and responding to L&D in developing country Parties especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints," like LDCs and SIDS.³⁰ On that basis, Parties could pursue efforts to set a minimum allocation floor for L&D finance either within the FRLD or L&D funding arrangements.
20. At the most recent Board meeting which took place in April 2025 in Barbados, the Board approved the "Barbados Implementation Modalities" which decided that 50 percent of the FRLD capital available would be dispersed to SIDS and LDCs.³¹
21. Additionally, the NCQG includes provisions for donors to "at least triple annual outflows [...] from 2022 levels by 2030" from the operating entities of the UNFCCC Financial Mechanism, which includes the FRLD.³² This would presume that donor Parties might be incentivized to increase any climate finance contributions to these funds.

Option 2: Exploring an Equity Framework

22. In addition to the mandate given to the Board to develop and operate a resource allocation system, the Board or Parties could develop an equity framework for both donors and recipients of the FRLD.^{33,34} Below are questions the Board and Parties could consider in whether to establish an equity framework, these include:
 - How to ensure that the most vulnerable countries, SIDS and LDCs, are not left behind?
 - Can "countries that are particularly vulnerable" be defined?
 - How can the finance and development gap between LDCs and other developing countries be prevented from widening further, and instead, accelerate the sustainable development of LDCs?
 - How to ensure accessible and fairly distributed L&D finance and that future climate risks are accounted for in accessing funding?
 - How to ensure the quality of funding for L&D and to reduce the risk of unsustainable debt?
 - What is the potential risk of establishing perverse incentives that can lead to reduced levels of adaptation efforts?³⁵
 - How to apply the principle of CBDR-RC, in the light of different national circumstances, to donor countries?

E. References

- ¹ UN Framework Convention on Climate Change [hereinafter UNFCCC], *Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage*, Decision 2/CMA.4, ¶ 1 (November 20, 2022), <https://unfccc.int/sites/default/files/resource/decision%202%20CMA%204.pdf>.
- ² UNFCCC, *Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage*, Decision 2/CMA.4, ¶ 5(c).
- ³ UNFCCC, *Operationalization of the new funding arrangements, including a fund for responding to loss and damage referred to in paragraphs 2-3 of decisions 2/CP.27 and 2/CMA.4*, Decision 1/CP.28/5/CMA.5, ¶ 4 (March 15, 2024), <https://unfccc.int/documents/637067>.
- ⁴ UNFCCC, *Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2-3 of decisions 2/CP.27 and 2/CMA.4*, Decision 1/CP.28, ¶¶ 60-61 (March 15, 2024), <https://unfccc.int/documents/637067>.
- ⁵ Chelsea Johnson and Cathrine Wenger, *Loss and Damage at COP28 and the Way Forward for 2024* (Arlington, VA: Center for Climate and Energy Solutions [hereinafter C2ES], April 2024), <https://www.c2es.org/document/loss-and-damage-at-cop28-and-the-way-forward-for-2024/>.
- ⁶ UNFCCC, *Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2-3 of decisions 2/CP.27 and 2/CMA.4*, Decision 1/CP.28/5/CMA.5.
- ⁷ “Fund for responding to Loss and Damage ready to accept contributions,” COP29, published on November 12, 2024, <https://cop29.az/en/media-hub/news/fund-for-responding-to-loss-and-damage-ready-to-accept-contributions>.
- ⁸ UNFCCC, *Paris Agreement*, Article 8 ¶ 4(d), December 12, 2015, T.I.A.S. No. 16-1104, https://unfccc.int/sites/default/files/english_paris_agreement.pdf. For a more in-depth discussion on the definition of loss and damage (L&D) and types of loss, please see: Cathrine Wenger, *Understanding Finance for Loss and Damage under the UNFCCC* (Arlington, VA: C2ES, November 2023), <https://www.c2es.org/document/understanding-financing-for-loss-damage-under-the-unfccc/>.
- ⁹ This is often how the term is understood in international and national court judgments. For example, in the United Kingdom, equity is a highly developed branch of law. E.g., Ben Shaw-Parker, “Equity: Legal Definition, Equitable Doctrines, Justice, Fairness and Good Conscience,” Juristopedia, accessed March 10, 2025, <https://juristopedia.com/equity-legal-definition-equitable-doctrines/>. The application of equity and its principles could lead to greater equality and environmental justice.
- ¹⁰ Discussions during a 2012 workshop highlighted three key aspects of equity: historical contributions and responsibilities, national circumstances, and capabilities for mitigation and adaptation. It was noted by some participants that equity “is about fairness and fair distribution of efforts.” Other participants noted that equity is also fundamental to adaptation, finance, and technology transfer. For more information see: UNFCCC, *Informal Summary of the Ad Hoc Working Group on Long-term Cooperative Action Workshop* (Bonn: Germany, UNFCCC, May 24, 2012), https://unfccc.int/files/bodies/awg-lca/application/pdf/20120524_equity_1650.pdf.
- ¹¹ UNFCCC, *Informal Summary of the Ad Hoc Working Group on Long-term Cooperative Action Workshop*.
- ¹² Intergenerational equity is focused on notions of fairness and justice between current and future generations.
- ¹³ UNFCCC, *Paris Agreement*, Art. 2, ¶ 2.
- ¹⁴ UNFCCC, *UNFCCC*, Art. 6, ¶ 1.
- ¹⁵ UNFCCC, *UNFCCC*, Art. 3, ¶ 1, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, <https://unfccc.int/resource/docs/convkp/conveng.pdf>.
- ¹⁶ UNFCCC, *Paris Agreement*, Art. 8 ¶¶ 1, 3.
- ¹⁷ UNFCCC, *Paris Agreement*, ¶ 52.
- ¹⁸ This has been strengthened by the subsequent decisions establishing the institutional structure for financial and technical support for responding to L&D, which include the Warsaw International Mechanism Executive Committee (WIM ExCom) and the Santiago Network.

¹⁹ Recalling the understanding of the Conference of the Parties (**COP**) and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (**CMA**) that funding arrangements, including a fund, for responding to L&D are based on cooperation and facilitation and do not involve liability or compensation. For more information, see: UNFCCC, *Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4*, Decision 1/CP.28/5/CMA.5.

²⁰ For information about the International Court of Justice (**ICJ**) work, please see: “Obligations of States in respect of Climate Change, Latest Developments,” ICJ, accessed May 8, 2025, <https://www.icj-cij.org/case/187>. Please also see: Daniel Bodansky, *An ICJ Advisory Opinion on Climate Change: Ten Questions and Answers* (Arlington, VA: C2ES, October 2022), <https://www.c2es.org/document/an-icj-advisory-opinion-on-climate-change-ten-questions-and-answers/>.

²¹ As has been stressed by several small island developing states (**SIDS**) as well as Bolivia and the Philippines in their instruments of ratification, “the door was left open for the remedy to be pursued through other legal channels.” “Obligations of States in respect of Climate Change, Latest Developments,” ICJ.

²² Jorge Banuelos and Maria Tigre, “The ICJ’s Advisory Opinion on Climate Change: Key Takeaways from the 2024 Hearing (Part 3),” *Columbia University Climate Litigation*, March 12, 2025, <https://blogs.law.columbia.edu/climatechange/2025/03/12/the-icjs-advisory-opinion-on-climate-change-key-takeaways-from-the-2024-hearing-part-3/>.

²³ UNFCCC, *Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage*, Decision 2/CMA.4, ¶¶ 1,3; UNFCCC, *Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts*, Decision 17/CP.26, (November 13, 2021), https://unfccc.int/sites/default/files/resource/cp2021_12a02E.pdf; and UNFCCC, *Guidance operationalizing the modalities, procedures and guidelines for the enhanced transparency framework referred to in Article 13 of the Paris Agreement*, 5/CMA.3 ¶ 9 b (November 13, 2021), <https://unfccc.int/documents/460951>.

²⁴ UNFCCC, *UNFCCC*, Art. 3, ¶ 2.

²⁵ UNFCCC, *Paris Agreement*, Article 4 ¶6 and UNFCCC, *UNFCCC*, Article 3 ¶2.

²⁶ It could be politically difficult for Parties to agree even a workshop. Mitigation, differentiation and historic responsibilities was discussed in the temporary subsidiary body under the issue “Equitable Access to Sustainable Development” (**EASD**). However, it has not been taken forward since COP18. For more information on the history of EASD, please see: Mathias Friman and Mattias Hjerpe, *Agreement, significance, and understandings of historical responsibility in climate change negotiations* (Sweden, Climate Policy; July 7, 2014), <http://dx.doi.org/10.1080/14693062.2014.916598>.

²⁷ For example, the Advisory Board of the Santiago Network was tasked with developing guidance to its Secretariat for the development of guidelines and procedures for access to technical assistance that “recognize the significant capacity constraints of the least developed countries and SIDS.” UNFCCC, *Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts*, Decision 2/CP.28, ¶ 27 (March 15, 2024), https://unfccc.int/sites/default/files/resource/sb2023_L17E.pdf.

²⁸ Please note that the Least Developed Countries Expert Group (**LEG**) mandate for “addressing” L&D might need to be clarified for the LEG to undertake this work. For information on the LEG work programme for 2023–2024, see: UNFCCC, *The 43rd Meeting of the Least Developed Countries Expert Group Report by the Secretariat, Annex IV: Least Developed Countries Expert Group work programme for 2023–2024* (Bonn: Germany, UNFCCC, April 26, 2023), https://unfccc.int/sites/default/files/resource/LEG-work-programme_2023-2024.pdf.

²⁹ Article 7 of the Paris Agreement on adaptation has established equitable principles for guiding Parties’ adaptation action, which underlines the importance of “taking into consideration vulnerable groups, communities and ecosystems” as well as being guided by “traditional knowledge, knowledge of indigenous peoples and local knowledge systems.” For more information see: UNFCCC, *Paris Agreement*, Art. 7, ¶ 5. These principles have been reiterated and further developed since Paris, including in the Sharm el-Sheikh decision on the global goal on adaptation that provides direct reference to, inter alia, gender responsiveness, a human rights approach, intergenerational equity, and social justice. UNFCCC, *Glasgow–Sharm el-Sheikh work programme on the global*

goal on adaptation referred to in decision 7/CMA.3, Decision 3/CMA.4, ¶10(c) (March 17, 2023), https://unfccc.int/sites/default/files/resource/cma2022_10_a01E.pdf.

³⁰ UNFCCC, *New collective quantified goal on climate finance*, Decision 1/CMA.6, ¶ 14 (March 27, 2025), https://unfccc.int/sites/default/files/resource/cma2024_17a01_adv.pdf.

³¹ “FRLD Global Workplan and Rules named ‘BIM’”, Ministry of Foreign Affairs and Foreign Trade Barbados, published on April 11, 2025, <https://www.foreign.gov.bb/frld-global-workplan-rules-named-bim/>. UNFCCC,

³² UNFCCC, *New collective quantified goal on climate finance*, Decision 1/CMA.6, ¶16.

³³ In this way, political stalemate is more likely to be avoided.

³⁴ Parties and/or the Board for the Fund for Responding to Loss and Damage should also look at how the system of the Paris Agreement, including the global stocktake and nationally determined contributions, potentially creates a framework for implementing Article 8 on L&D with regards to equity and the principle of common but differentiated responsibilities in light of different national circumstances.

³⁵ Cathrine Wenger, *Understanding Finance for Loss and Damage under the UNFCCC*.