Understanding Finance for Loss & Damage Under the UNFCCC

Technical Paper

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Summary

"Loss and damage" (L&D) is not formally defined under the United Nations Framework Convention on Climate Change (UNFCCC) or Paris Agreement and generally refers to the economic and non-economic damage associated with slow onset events and extreme weather events caused by climate change. From the start of international climate negotiations, vulnerable nations have called for the provision of financial assistance and technical support to help them address L&D.

This paper provides some short background and key considerations for understanding finance for L&D under the UNFCCC and Paris Agreement with a focus on addressing and responding to L&D. It raises the difficulty of defining L&D and types of loss, outlines recent efforts to address L&D finance by UNFCCC Parties, and identifies the financial institutions within the UNFCCC system relevant to the question of finance for L&D. It acknowledges the significant gap between the needs and finance available to address L&D and further identifies existing and potential tools and sources for supporting countries facing L&D. The paper further lists other key considerations Parties should take into account as they explore solutions and options.

Key Takeaways:

- Sudden and slow onset events exacerbated by climate change cause L&D.
- Vulnerable nations have been vocal about the provision of financial assistance and technical support to help them address L&D.
- The lack of a formal definition for L&D makes it difficult to draw a line between adaptation, resilience, and L&D; to quantify its impacts; to distinguish between financing to address adaptation and financing to address L&D; and for Parties to access L&D-specific finance.
- "Averting and minimizing" focuses largely on preventive and precautionary measures taken *before* climate impacts occur, such as adaptation and mitigation.
- "Addressing" L&D can be understood as the measures taken *after* the climate change event(s) has happened.
- "Responding" to L&D focuses on both ongoing and ex post action.
- Funding for L&D exists within and outside the UNFCCC, but there is a significant gap between country needs and the finance available to address L&D.
    - Common or more traditional financial solutions include national and international public and private grants and voluntary contributions.
    - Development and humanitarian sources of funding are also relevant sources of finance.
    - One or more of these tools—such as risk insurance facilities, climate risk pooling, contingency funds, and social protection schemes—could be used in tandem.
- The COP27 decision establishes new funding arrangements for L&D that include a fund for responding to—with a focus on addressing—L&D.
    - The agreement includes a political process to identify and expand sources of funding.
    - The funding arrangements and fund could address gaps in finance for slow onset events and potentially non-economic losses for the first time.
- Parties have called for new, additional, adequate, and predictable sources of funding for addressing and responding to L&D and efforts to identify and secure these sources will need to be balanced amongst a number of important considerations.

Defining L&D and types of loss

Sudden- or slow-onset events can cause L&D. Examples of sudden-onset events or extreme weather events include forest fires, heat waves, floods, heavy rainfall, flooding, cyclones, typhons, and hurricanes. On the other hand, slow-onset events include sea level rise, ocean acidification, glacial retreat, temperature rise, desertification, biodiversity loss, land degradation, and salinization.

Parties to the UNFCCC differentiate between averting, minimizing, and addressing L&D. "Averting and minimizing" focuses largely on preventive and precautionary measures taken *before* climate impacts occur, such as adaptation and mitigation. "Addressing" L&D can be understood as the measures taken *after* the climate change event(s) has happened (i.e., ex post).[i] "Responding" to L&D focuses on both ongoing and ex post action. However, action to address L&D will happen in the context of ongoing climate change.

Parties have taken to using these approaches given that there is no agreed formal definition for L&D. Defining L&D is inherently challenging. It means accurately attributing human-induced climate change impacts to ongoing disaster impacts and socio-economic or political changes, measured against what would "otherwise" have taken place, in light of the complex and interrelated factors causing these impacts. Using this terminology ("averting," "minimizing," "addressing," and "responding") can provide some measure of clarity, but they are not clear cut and do not draw a clear line between adaptation, resilience, and L&D.

Since it is difficult to draw a line between adaptation and resilience and L&D, it is also difficult to identify the L&D caused by climate change events—and therefore quantify that L&D. Economic losses caused by sudden- or slow-onset events can be quantifiable losses of property, assets, infrastructure, agricultural production/revenue, goods, and services. But not all L&D caused by these events are easily quantifiable, further complicating the picture. 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. Ultimately, the limitations of these approaches mean that it becomes more challenging for countries to quantify losses and damages due to climate change events and to request L&D-specific support and finance.

Evolution of L&D finance under the UNFCCC and Paris Agreement

From the start of international climate negotiations, vulnerable nations have called for the provision of financial assistance and technical support to help them address L&D. At COP13, the term "loss and damage" was used in UNFCCC text for the first time, when the Bali Action Plan called for enhanced action on adaptation including disaster risk reduction and means to address L&D in developing countries.[ii]

COP16 (2010) established a three-year work program that began to develop technical work on L&D. This work led to the establishment of a formal mechanism for L&D, the Warsaw International Mechanism (WIM) and its executive committee at COP19 (2013). The mechanism works to develop approaches to help vulnerable countries cope with unavoidable impacts, including extreme weather events and slow-onset events such as sea-level rise.

In a victory for small island countries and other countries highly vulnerable to climate impacts, the Paris Agreement adopted at COP21 (2015) includes a free-standing provision extending the

WIM, which, at the insistence of developed countries, makes it explicitly clear that "Article 8 of the Agreement does not involve or provide a basis for any liability or compensation."[iii]

In 2016, the WIM Executive Committee invited the Forum of the Standing Committee on Finance (SCF), in its role for information exchange on climate change finance, to take stock of financial instruments available to address the risk of L&D.[iv] The instruments outlined by SCF included: risk transfer schemes and risk pooling (including insurance products and tools); catastrophe and resilience bonds; social protection schemes; and contingency finance. The review addressed their respective benefits, challenges, limitations, and gaps.

In 2018, the UNFCCC Secretariat organized the Suva Expert Dialogue on how to mobilize and enhance support for averting, minimizing, and addressing L&D.[v] A key finding from this work is that limited evidence exists on sources of finance and financial instruments that explicitly address L&D. The Suva Expert Dialogue highlighted areas in need for further consideration, such as post-reconstruction, territory, human mobility, and cultural identity.[vi]

The Santiago Network—established at COP25 (2019) under the WIM and operationalized at COP26 (2022)—will catalyze technical assistance, knowledge, and resources developing countries need to address L&D. Driven by a developing country call for the establishment of a L&D finance facility to support L&D action under the UNFCCC and the Paris Agreement, the COP26 decision also launched the Glasgow Dialogue. The intent of this dialogue is to provide an open, inclusive, and non-prescriptive forum to discuss funding arrangements for activities to avert, minimize, and address L&D associated with the adverse impacts of climate change.[vii]

However, ahead of COP27 (2023), concerns that the Glasgow Dialogue lacked political oversight and did not have a mandated deliverable resulted in Parties agreeing to a new sub-agenda item on 'matters relating to funding arrangements responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage.' The work under this item focused on the establishment of a L&D fund and the enhancement and coordination of existing funding arrangements for L&D.[viii] By the end of the conference, in a historic first, Parties agreed to adopt new funding arrangements for assisting developing countries that are particularly vulnerable to the adverse effects of climate change in responding to L&D, including establishing a fund.[ix] Parties also agreed on institutional arrangements for the Santiago Network, establishing a secretariat, advisory board, and a network of member organizations, bodies, networks, and experts.

Finance and L&D under the UNFCCC/Paris Agreement

Key financial institutions relevant for L&D within the UNFCCC system include:[x]

The Global Environmental Facility (GEF) is a multilateral fund that serves as the "financial mechanism" to five conventions, including the UNFCCC and Paris Agreement. It is dedicated to addressing climate change, pollution, integrated cross-cutting programs, adaptation, biodiversity loss, and strains on land and ocean health for developing countries. It accomplishes this work through grants, policy support, and blended finance. It also manages two special funds established by UNFCCC Parties:

- **The Special Climate Change Fund (SCCF)** addresses the specific needs of developing countries.[xi] It was originally grant-focused but has evolved to include innovative financial instruments, such as concessional loans and equity, and can also provide weather risk insurance and reinsurance products. It supports a broader continuum of measures, including climate information and early warning systems, ecosystem-based solutions, and climate resilience in key sectors.

- **The Least Developed Countries Fund (LDCF)** supports Least Developed Countries (LDCs) with grants to support adaptation. Financial support for L&D includes funding projects for climate information services networks, the L&D elements of National Adaptation Plans, early-warning systems, as well as risk transfer, risk insurance and comprehensive risk management. Non-economic losses, such as human mobility and the loss of territory, social, and cultural identities, seem to fall outside the scope of its mandate.

Established under the Kyoto Protocol, but also serving the Paris Agreement, the **Adaptation Fund** provides grants for both adaptation and L&D activities. L&D activities include preemptively strengthening resilience through risk assessments, risk prevention, climate monitoring, and early warning systems. Non-economic losses, such as loss of biodiversity, loss of territory, or loss of societal and cultural identities, may fall outside of the Adaptation Fund's mandate.

The Green Climate Fund (GCF), part of the financial mechanism for the UNFCCC and Paris Agreement, is a global platform that invests in low-emission and climate-resilient development projects. It offers a range of instruments, including grants, loans, guarantees, equity, and results-based payments. In terms of L&D-related financing, it can provide grants, concessional loans, guarantees, and equity investments.[xii] A synthesis report published by the UNFCCC Secretariat in March 2023 expands on the above, identifying existing funding arrangements for addressing and responding to L&D within and outside of the UNFCCC.[xiii]

The finance gap for L&D

There is funding for L&D both within and outside the UNFCCC; however, there is a significant gap between the needs and finance available to address L&D. As noted earlier, 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 magnitude of L&D. These uncertainties not only make it difficult to close the gap, but also widen that gap as action is delayed: estimates of L&D finance needed range between \$20–580 billion in 2030 to \$1.1–1.7

trillion in 2050.[xiv] Current levels of L&D funding from within and outside of the UNFCCC fall far below these estimates. Parties generally agree that these estimated needs are insufficient.

Measures and tools to address L&D

In assessing the current landscape of financing for L&D, there are many ways that funds *to address and respond* to L&D can be secured. Common or more traditional financial solutions include national and international public and private grants and voluntary contributions. Development and humanitarian sources of funding are also relevant sources of finance. One or more of these tools, such as risk insurance facilities, climate risk pooling, contingency funds, and social protection schemes, could be used in tandem. .

The tools to address L&D can be utilized by a variety of funds, processes, and initiatives under and outside of the UNFCCC and the Paris Agreement.[xv] Relevant or potential financial tools can be broken into four categories that can be considered measures *addressing and responding* to L&D:

- **Recovery, rehabilitation, and reconstruction**. Examples include: 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.
- **Planned relocation/assisted migration**. Examples include: relocation or resettlement because of climate change; support systems for forced migration and climate-induced displaced persons.
- **Transformational development and alternative livelihoods**. Examples include support for rebuilding and/or alternative livelihoods ex post climate change related events/post migration/displacement, assistance with diversification of income in already affected areas.
- **Non-economic measures**. Examples include: active remembrance, societal protection, counselling, official apologies, enabling access/safe visits to abandoned sites, recognition and repair of loss, or other ways to reduce the impacts from climate change on affected individuals or communities.

Key considerations for ongoing work to improve these measures and tools include:
- The suitability of different measures and tools, including whether existing tools can be expanded to include slow-onset events and to *address* L&D
- The quality of funding provided, including reducing the debt burden for the most vulnerable and least developed countries.
- The availability of new and innovative sources of finance, such as taxes, levies, subsidies, and market mechanisms, including the voluntary carbon market, potential solidarity/equity units, and crowdsourcing donations[xvi]

- Where measures and tools can be quickly utilized by existing L&D mechanisms, such as the Santiago Network or the WIM, to be effective.

Relevant considerations under the UNFCCC/Paris Agreement

Parties agreed that Article 8 of the Paris Agreement on L&D would not provide a basis for liability or compensation.[xvii] Beyond the Paris Agreement, Parties disagree on whether the provision of L&D financing is an obligation under international law more generally, or whether it is based on notions of solidarity, cooperation, and voluntary support.

At COP27, Parties seemed to avoid the question of duty and instead moved forward on enhancing financial support for L&D. The COP27 decision on L&D establishes new funding arrangements for L&D that includes a fund for responding to—with a focus on addressing—L&D for assisting developing countries that are particularly vulnerable to the adverse effects of climate change in responding to L&D.

The agreement includes a political process to identify and expand sources of funding through a Transitional Committee. Parties also decided that the second Glasgow Dialogue (June 2023) will focus on the operationalization of the new funding arrangements including the new fund, as well as on maximizing support from existing funding arrangements relevant for, among other things, responding to economic and non-economic losses, slow onset events and extreme weather events. The second Glasgow Dialogue will also inform the work of the Transitional Committee.

The funding arrangements and fund could address gaps in finance for slow-onset events and potentially non-economic losses for the first time.[xviii] These arrangements represent a hard-fought compromise between developed and developing countries, but important questions remain regarding how the L&D funding arrangements and fund will be resourced and operationalized.

Other key considerations

There is a growing recognition that financial projects and policies can undermine human rights and the environment where environmental, social, and governance considerations and safeguards are not taken into account. Therefore, Parties should also consider the implications of important human rights, equity, and recent legal developments in the establishment and operationalization of the fund and funding arrangements for responding to and addressing L&D.

<u>Human rights</u>

The UN Human Rights Office of the High Commissioner (OHCHR) is the principal human rights forum of the UN and advises the UN Secretary-General. With respect to climate change, the

OHCHR has set out key messages on human rights and climate change that outline key human rights obligations, such as ensuring accountability and effective remedy for human rights harms caused by climate change, that governments should uphold.[xix]

Equity

Equity is a core principle of the UNFCCC, including in the principle of "common but differentiated responsibilities and respective capabilities."[xx] Equity in climate finance would demand that the international community—but particularly countries with greater historic responsibility for climate change and greater capacity—to provide climate finance to those countries with less responsibility and less capability. In relation to finance for L&D, Parties should consider:

- How to ensure access and fair distribution for L&D finance?
- How to define "countries that are particularly vulnerable," as set out in the COP27 decision?
- How to ensure the quality of funding for L&D, and to reduce the risk of unsustainable debt?
- How to apply the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances?
- How and whether the key principles, such as polluter pays, historic responsibility principles, and intra- and inter-generational equity, affect finance for L&D?
- Whether to distribute funds to address L&D to developing countries that (i) are major emitters of carbon emissions, (ii) have unambitious/inadequate nationally determined contributions (NDCs), and/or (iii) have not planned and implemented adequate adaptation measures, including measures to avert, minimize and address L&D?
- How to understand adaptation and L&D actions in NDCs that are contingent on international support within the broader landscape of social protection and human rights obligations?
- What is the potential to establish perverse incentives that can lead to reduced levels of adaptation efforts?

Legal and other obligations

Two recent developments have the potential to influence discussions on finance for L&D.

The UN Human Rights Committee (HRC) is a treaty body established by the International Covenant on Civil and Political Rights (ICCPR). The ICCPR commits nations to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. In a 2022 decision, the HRC found that Australia's failure to implement adequate adaptation measures, which would have protected the indigenous peoples in the small islands in Torres Strait, was in breach of articles 17 and 27 of the ICCPR.[xxi]

In September 2021, Vanuatu announced at the UN General Assembly (UNGA) that it intended to build a coalition of states to request an advisory opinion on climate change from the International Court of Justice (ICJ).[xxii] The advisory opinions of the ICJ are not legally binding but carry legal authority and moral weight. In November 2022, Vanuatu and other countries published a draft resolution seeking clarification of the legal consequences where governments, by their acts or omissions, have caused significant climate or environmental harms to countries vulnerable to climate change as well as to present and future generations.[xxiii] In March 2023, UNGA unanimously requested the ICJ to issue an advisory opinion on the legal obligations regarding climate change.

Conclusion

The decision to establish and operationalize funding arrangements, including a fund, for responding to and addressing L&D for those countries that are particularly vulnerable to the adverse effects of climate change is an important moment for the international community to assess the current limitations and gaps in finance for L&D. Existing UNFCCC financial mechanisms incorporate some aspects finance for addressing and responding to L&D. However, these and other tools and measures are primarily structured towards *minimizing and averting* L&D. As such, Parties will need to consider how and whether they can be adjusted and molded to better address the L&D needs of countries. Parties have called for new, additional, adequate, and predictable sources of funding for addressing and responding to L&D; efforts to identify and secure these sources will also need to be balanced amongst a number of other important considerations.

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[i] In other words, damages can be reduced by adaptation and mitigation measures, but not entirely eliminated, resulting in residual damages, or "residual L&D."

[ii] UN Framework Convention on Climate Change [hereinafter UNFCCC], Bali Action Plan, Decision 1/CP.13, https://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf.

[iii] UNFCCC, Adoption of the Paris Agreement, Decision 1/CP.21, ¶51, https://unfccc.int/sites/default/files/resource/docs/2015/cop21/eng/10a01.pdf.

[iv] UNFCCC, "2016 Forum of the Standing Committee on Finance", last modified September 13, 2016. https://unfccc.int/event/2016-forum-of-the-standing-committee-on-finance.

[v] UNFCCC, "The Report of the Suva Expert Dialogue", last modified August 2018, https://unfccc.int/sites/default/files/resource/010818%20REPORT%20OF%20THE%20SUVA%20EXPERT%20DIALOGUE.pdf.

[vi] The dialogue informed the technical paper written by the Secretariat in 2019 on the sources of and modalities for accessing financial support for addressing L&D. See UNFCCC Secretariat, *Elaboration of the sources of and modalities for accessing financial support for addressing loss and damage*, ¶ 164 (June 14, 2019), https://unfccc.int/sites/default/files/resource/01_0.pdf.

[vii] UNFCCC, Draft CMA decision proposed by the President, Decision 1/CMA.3, ¶ 73, https://unfccc.int/sites/default/files/resource/Overarching_decision_1-CMA-3_0.pdf.

[viii] For example, the informal consultations with Group Chairs and Heads of Delegation in July and September 2022, as well as the ministerial consultations. UNFCCC, "The Road to Sharm el-Sheikh: Informal consultations by the COP 26 Presidency and the COP 27 incoming Presidency", last modified October 2023, https://unfccc.int/process-and-

meetings/conferences/the-road-to-sharm-el-sheikh-informal-consultations-by-the-cop-26-presidency-and-the-cop-27-incoming#July-14---Loss-and-Damage---Multilateral-consultations-with-Group-Chairs-and-HODs-.

[ix] 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, https://unfccc.int/sites/default/files/resource/cma2022_10a01_adv.pdf.

[x] UNFCCC Secretariat*, Initial Synthesis Report on the Existing Funding Arrangements and Innovative Sources Relevant To Addressing Loss And Damage Associated With The Adverse Effects of Climate Change* (March 2023) https://unfccc.int/sites/default/files/resource/Initial_SR_25%20March%2025%201500hrs.pdf.

[xi] "Elaboration of the sources and modalities for accessing financial support for addressing L&D."

[xii] For example, financed projects for risk assessment, risk prevention or reduction, and implementation of early-warning systems to reduce loss of life. Other examples include ecosystem-based adaptation and risk reduction through flood mapping and early-warning systems, and weather index-based insurance programs. At COP25, Parties invited the GCF to continue to provide financial resources for L&D activities, consistent with its existing investments, results framework, and funding windows and structures, taking into account the five-year workplan of the ExCom. Access channels include the Project Preparation Facility and the Readiness and Preparatory Support Programme. Parties also directed the GCF and the ExCom to take steps to clarify access to funding for L&D through the GCF.

[xiii] They identified that there are currently a wide range of bilateral and multilateral funding programmes, national funding programmes, insurance schemes, financial facilities, financial instruments, dedicated taxes and levies, and the private sector.

[xiii]UNFCCC Secretariat*, Initial Synthesis Report on the Existing Funding Arrangements and Innovative Sources Relevant to Addressing Loss And Damage Associated With The Adverse Effects of Climate Change* (March 2023) https://unfccc.int/sites/default/files/resource/Initial_SR_25%20March%2025%201500hrs.pdf.

[xiv] 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.

[xv] Cathrine Wenger, Institutional Ecosystem for L&D (C2ES, October 2022), https://www.c2es.org/document/the-institutional-ecosystem-for-loss-and-damage/.

[xvi] UN Climate Change High-Level Champions '*Actions After Impacts – what actions are non-state actors taking to address climate losses and damages? How can these be accelerated? 28, table 3* (November 2022), https://climatechampions.unfccc.int/actions-after-impacts-addressing-climate-losses-and-damages/.

[xvii] UNFCCC, Adoption of the Paris Agreement, Decision 1/CP.21, ¶51, https://unfccc.int/sites/default/files/resource/docs/2015/cop21/eng/10a01.pdf.

[xviii] Prior to the COP27 decision, Parties had already agreed that the workstreams of the ExCom on L&D will be supported by financial means through the GCF. In addition, Parties had also agreed that technical assistance for L&D will be funded through the Santiago Network.

[xix] United Nations Human Rights Office of the High Commissioner, "Key Messages on Human Rights and Climate Change" (July 26, 2016), https://www.ohchr.org/en/documents/tools-and-resources/key-messages-human-rights-and-climate-change.

[xx] UNFCC, *The Explainer: The Paris Agreement,* last updated February 26, 2021, https://unfccc.int/blog/the-explainer-the-paris-agreement.

[xxi] 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.

[xxii] Daniel Bodansky, *An ICJ Advisory Opinion on Climate Change: Ten Questions and Answers* (C2ES, October 2022), https://www.c2es.org/document/an-icj-advisory-opinion-on-climate-change-ten-questions-and-answers/.

[xxiii] UN General Assembly, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change,* adopted March 29, 2023, https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/063/82/PDF/N2306382.pdf?OpenElement.