This paper comes in three parts. In the first, it provides a very brief reminder of the approach the 2019 Civil Society Equity Review (which focused on L&D) took to provide an initial analysis of national fair shares of global L&D costs, and it highlights the central issues raised by the shortcomings of that report.

In the second, these issues are elaborated and possible directions for answers are identified.

In the third, it raises some key questions. These must be debated if we are to achieve a compelling and strategic L&D framework that is consistent with the overall fair share approach and CAN's general equity and justice perspective.

1) Introduction

The 2019 Civil Society Equity Review (CSER 2019) focused on the L&D challenge and, specifically, on how to fairly share the L&D effort (or L&D costs) among countries. Though a significant report, it was also preliminary – it was based on an initial, oversimplified method, it had set some ethically and politically important questions aside, it had inherited some questionable assumptions and limitations from the existing literature it drew upon, and would thus need to be revisited.

Any fair shares approach must, at a minimum, address three questions: 1) What is to be shared?, 2) Among whom?, 3) According to what principles? The simplified approach of the CSER 2019 answered these questions as follows: 1) The financial costs of developing countries' L&D should be shared, 2) these costs should be shared among all countries, and 3) these costs should be shared according to the same principles on which the Civil Society Equity Review had already chosen as the basis of its assessments of national fair shares of the global mitigation effort.

Today, after the L&D breakthrough at COP27 and with the politics sharpening, CAN needs to consider these same questions through both principled normative and politically strategic lenses. The next section of this memo lays out these questions in more detail, while also noting the concrete considerations necessary to answer them specifically in relation to a global L&D fund:

1) **What is to be shared?** In other words, how is L&D to be understood, and what does it mean to “compensate” people, communities, and countries when they suffer L&D? How should L&D that is not monetizable be treated? Should the L&D suffered by poorer people and communities be treated differently from the L&D of richer people and communities? What about L&D in richer countries, and in particular in poorer communities within those countries?

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2) Among whom? In other words, which countries should pay for L&D compensation? This is the first half of the “Who pays?” question, e.g. which countries should pay into the L&D fund?

3) According to which principles? In other words, how much should each payer pay? Among the countries expected to contribute to the L&D fund, which should contribute how much?

2) Open Equity Issues

2.1) What is to be shared? – Which L&D costs should be globally shared?

2.1.1) What should count as Loss & Damage?

Existing estimates of climate-related L&D are generally based on unfairly and indefensibly narrow views of what should be included. They are systematically and consistently low. This, arguably, was even true of the CSER 2019 report, which settled of a call for L&D support “at least USD$50 billion by 2022, ratcheting up to USD$150 billion by 2025, USD$300 billion by 2030,” and “$1.2 trillion per year by 2050,” based on existing literature.2, 3, 4

In proceeding this way, the report inherited the assumptions and limitations of these underlying studies, each of which caveated their estimates of L&D costs, acknowledging significant sources of cost underestimates. Briefly, some of the key limitations are:

- Considering only the impacts associated with temperature changes of 2°C or less, even though there is a very significant possibility that we will overshoot 2°C.
- Assuming that more adaptation occurs than is currently probable, given the state of the world and the lack of sufficient adaptation support.
- Limiting damage estimates to particular economic sectors, rather than taking a holistic view of natural and societal harms.

Costs that arise from extreme events are typically the main focus of attention in discussions of L&D costs, but this leaves a great deal off the table. In principle, compensation for L&D should include diffuse or indirect losses that are often missed in accounts that focus on the immediate and dramatic impacts of storms and other highly visible extreme events, as well as slow onset costs that become manifest only through time, such as, loss of agriculture croplands due to saltwater intrusion, or loss of habitation due to sea level rise. Critically, total L&D costs must be defined by actual needs – not arbitrary make-believe numbers like $100 billion.

2.1.2) Which L&D costs should be shared, and relative to what standard of living should costs be measured? - The Problem of Inequality

The question here is whether all climate induced L&D should be subject to a global fair share framework. Given the extreme nature of today’s global inequality, the answer is: perhaps not. Losses envisioned for poor (or even “middle class”) communities are very different ethically from those associated with high-consumption lifestyles. Consider, for example, three household shelters

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destroyed by a climate-induced extreme weather event: From an equity perspective, should the losses associated with a mansion that topples over an eroding coastline be treated differently than those associated with the loss of a modest home (one that represents a basic but decent standard of living), or differently than those associated with the loss of a dangerously inadequate shack in an informal settlement?

If all these losses are treated the same, in the sense that the owners of the destroyed dwelling are “made whole” in each case, the costs would be overwhelmingly dominated by the mansion-dwellers. In fact, the costs associated with the material losses of wealthier communities and countries could amount to a very considerable share of the total global L&D cost,\(^5\) and this despite the fact that wealthier people and communities have greater abilities to rebuild after losses, and better access to mechanisms (such as insurance) that buffer their impacts, while poorer people and communities are generally more vulnerable to, and face greater challenges recovering from L&D events.

Ultimately, if a regime was to “make whole” those who have suffered losses, and did so relative to their previous level of material well-being, then it would strongly reinforce the status quo distribution of wealth and property, and perpetuate and reinforce existing inequities. This would clearly be a problem in the case of the mansion – it’s blatantly obvious that a fair share L&D regime should not finance the rebuilding of a billionaire’s mansion – but the implications of this intuition are not obvious, though they are crucial.

First, it would be far more reasonable to compensate the mansion’s owners at most to the extent needed to ensure a decent standard of housing (if at all), a standard sufficient to build only a modest home.

Second, the same is true at the low end of the income scale – if a L&D fund would finance the rebuilding of a modest home, this in recognition of the right to a basic standard of decent living, then what of the rights of the shack dwellers? Shouldn’t they also be ensured the same basic standard of housing, instead of, say, merely compensating them for the materials needed to rebuild their inadequate shacks?

Third, what about the profound but unavoidable question of the rights of people who are subsisting at a lower level of welfare, but who are not eligible for compensation because they have not been identified as “victims of climate impacts”? Imagine, for example, an informal settlement, some of whose residents have been flooded in a climate-induced storm, while some have not, though they are vulnerable in myriad other ways.

All of which is to say that the challenges here are great, and that the question of how to understand the very different costs of L&D suffered by people with very different levels of material wealth is a critical one. It is also an extremely difficult one, for it is further complicated by the fact that there are significant numbers of wealthy people in poor and developing countries, and large poor communities within wealthy ones.

All told, we live in a world of tremendous inequality, a world in which poor communities regularly suffer all kinds of L&D. In this context, the practice of attributing a certain amount of suffering to climate change, and a certain amount to “business as usual” (damage as usual?) is ethically fraught, to say the least. Needs, after all, look very different when assessed relative to an existing

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\(^5\) For example, preliminary estimates of the property damage wrought by Hurricane Ian in the U.S. in October 2022 range from $42 billion to $258 billion. This is one single storm. Of course damages in poorer parts of the world are also large, and often larger, but these must also be included when considering the global total.
level of poverty than when assessed relative to a “decent” life and livelihood. This raises the question of how to equitably define needs, and against what level of welfare one’s needs should be assessed. And this in turn raises the question we have to face here – which needs do we collectively have an ethical obligation to meet?

For better or for worse, it is all but impossible to answer these questions without pointing toward a “positive global social welfare regime” that seeks not a return to previous levels of welfare, nor but rather a global social welfare minimum that supports the basic economic rights and security of all people.

So the question – is this where a coherent L&D regime will have to eventually go? If, in particular, it is to leave behind the patent cynicism of arbitrary figures like $100 billion, the strained narrowness with which categories of L&D costs are usually defined, and the incessant push to define legitimate L&D in ways that accept and maintain extraordinary levels of “vulnerability,” as if the routine daily vulnerability of the poor was not enough to justify a kind of repair that goes well beyond “compensation”?

2.1.3) The problem of non-monetizable L&D

Further, and critically, a proper needs assessment, even one that includes diffuse slow-onset impacts, cannot be restricted to monetizable L&D. This point must be stressed, because it raises extremely fundamental issues. The L&D discussion, after all, generally proceeds as if financial compensation alone would suffice, if only it was adequate compensation. But the issues raised by climate-linked L&D are far too profound for this to be the case. Indeed, financial costs faced by poor households and communities with relatively limited monetizable assets may very well not be the most important losses they suffer.

Examples include but are not limited to:

- Human sickness and death, which are overwhelmingly the greatest human cost, but are captured simplistically, or not at all, in financial assessments.
- Slow onset damages that become manifest only through time, but which cause hardship, undermine livelihoods, and displace cultures, such as desertification, changes in rainfall patterns, and savannization.
- Increased food insecurity and undermining of the right to food, due to rising or more volatile food prices, which may be global in extent due to globalized food trade and thus affect food insecure communities around the world.
- Livelihood loss and cultural displacement due to extinction or, more generally, the collapse or destruction of an ecosystem (e.g., coastal fisheries, tropical forests).
- Climate migration, which is largely a problem of internal displacement, but nonetheless a key source of toxic nationalism. Also, very importantly, climate migration is a critical effort sharing problem in its own right.  

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7 See, for example, Sujatha Byravan, Sudhir C. Rajan, 2022. “Cross-border migration on a warming planet: A policy framework”, Wires Climate Change, 13(2). March/April 2022. https://doi.org/10.1002/wcc.763. The political significance of effort sharing is manifest in, for example, the Greek coastguard’s violent repelling of migrant rafts. Apologists for this odious policy rationalize it by noting that African migrants are not being accepted to other European countries in anything like a fair manner.
Thus, alongside its strategies and demands on the L&D finance side, it's important for CAN to develop an approach to the non-financial dimensions of the L&D problem.

The larger challenge here is one of transitional justice, in which financial compensation is understood as only one critical aspect of the larger challenge of restitution (or, if you will, reparation), which cannot be fully monetized. Specifically, L&D needs cannot be met solely by means of financial compensation, though such compensation is indeed necessary. Major institutional reform and restructuring will also be necessary, at both global and domestic levels.

2.1.4) Within which countries’ should L&D costs count as costs to be shared?

We have outlined ethical arguments relating to which costs should in general be shared under a global fair share L&D approach. There is also a distinct but related question – which countries’ L&D should be covered?

In the UNFCCC context this question is not explicitly answered, but phases like “developing countries particularly vulnerable to loss and damage,” suggest that a) eligibility is limited to developing countries (however defined), and b) that it should moreover be limited to those that are “particularly vulnerable.” The ambiguity in both of these phrases remains unresolved and contentious, especially in the context of the UNFCCC. The Annex 2 countries in particular have generally sought to radically limit the set of countries that might be considered to be “developing” or eligible for L&D compensation, focusing on the narrowest possible definition of “particularly vulnerable countries.” Meanwhile, the G77+China has generally sought to equate itself with the whole of non-Annex 1, a move that is justified by the need to maintain unity in the face of relentless pressure. Keenly aware of the egregious scarcity of international support, some “developing countries” have sought to align themselves with sub-groupings, such as the LDCs or SIDS, that are typically associated with the “most vulnerable” label.

These political positionings are important, but it is useful for CAN to cut through the underlying ambiguities when considering which countries’ L&D should be compensated in a fair share approach, and in what ways. By so doing, CAN can define both its long-term strategies and its immediate-term political demands in manners that are consistent with a coherent fair share framing. Indeed, CAN can help pioneer a path forward by developing its positions on these issues, rather than relying on expedients that, while useful in the past, may be not useful today.

The CSER 2019 report considered L&D costs in developing countries as the term was defined in the various underlying studies. This choice was discussed, but not extensively, with the understanding that it was preliminary and that more discussion and analysis would be needed in the future.

Though activists and observers should continue to fight the developed country tactic of radically limiting the included set of countries, should they continue to include all non-Annex 1 countries in their definition of “developing countries”? Should this category include wealthy oil producers?

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8 There is some excellent recent work that draws out the relevance of lessons from transitional justice to dealing with various types of L&D through recognition, rehabilitation, guarantees of non-repetition, etc. The experience with transitional justice, such as Truth and Reconciliation Commissions, highlights that the way that non-monetizable costs are dealt with is an extremely important dimension of peoples’ sense of whether justice has been done. See for example Sonja Klinsky and Jasmina Brankovic, The Global Climate Regime and Transitional Justice, Routledge, 2018.

9 See the 2022 Civil Society Equity Review, which explores the issue of institutional transformation with a focus on mitigation and fair fossil phase out.
Should it include Singapore, and South Korea, and Israel, countries that are wealthier and have higher historic emissions than some of the members of Annex 1? And, however the “developing country” category is defined, should its members all be treated the same? Should all of their L&D costs count as costs to be internationally shared? And what of L&D costs borne by countries that just miss being classed as developing? They certainly suffer real and crippling losses and damages, which are often concentrated in their poorest and most disadvantaged communities, which are generally afflicted by other environmental injustices as well.

Crucially, this is generally true even in the wealthiest countries. For the moment, suffice to merely mention the vulnerable and marginalized African-American communities who were ravaged by Hurricane Katrina in Louisiana, communities that haven’t fully recovered to this day. More than anything, this speaks to a profound failure by the governments of these countries to dedicate a just fraction of their considerable wealth and institutional capacities to meeting the fundamental needs of their own vulnerable and marginalized populations.

As long as international support remains egregiously scarce, there will be a temptation to focus on “most vulnerable” counties, but doing so risks neglecting extremely vulnerable communities in other developing countries. It also risks setting expectations too low – or far too low – with respect to the magnitude of the international L&D support that is needed, support that, ultimately, must be provided by the rich.

Meanwhile, within the wealthier countries, it will almost certainly be impossible to build broad-based political support for large sums of funding for L&D in other countries if it is felt that affected communities at home are being neglected. Ensuring they are protected may not be the remit of the global climate regime, but it should absolutely remain a civil society priority.

2.2) Among whom? – Which countries should pay for L&D compensation?

While the CSER 2019 report considered the L&D costs of only developing countries, it assumed that all countries contribute to pay those costs. When it came to allocating fair shares to individual countries, the method was taken directly from that used by the CSER coalition for mitigation fair shares and NDC assessment.

This fair shares method begins with the fundamental equity principles of the UNFCCC, and then derives its approach to differentiation from those principles. Such an approach is necessary to any coherent global climate mobilization strategy, and this is true even though it might be too explosive for implementation within the UNFCCC negotiations as we know them today.

This approach first defines the mitigation effort that must be shared – this is relatively straightforward, since this effort can be expressed as a set number of gigatonnes of reductions, depending on the temperature target and pathway. This effort is then divided among all countries in accordance with their Responsibility and Capacity, which are in turn based on simple indicators such as historical emissions and income distributions that are straightforwardly connected to the underlying equity principles of the Convention and the Rio Declaration.

This approach avoids reliance on static lists of countries (like “Annex 1” or “Annex 2”) and provides for a principle-based continuum rather than a binary expedient in which all countries are classed as being either developed or developing. Viewing differentiation as a continuum is helpful because there is some amount of responsibility and capacity in all countries, rich and poor, though of course the amounts vary radically. One key point here is that wealthy and high-emitting countries have fair shares that are larger than their domestic mitigation potential, and thus must support
mitigation in other countries if they are to do their entire fair share. In the mitigation context, this provides a de facto basis for inferring which countries are “providers” of support and “recipients” of support.

It is important to ask if this same continuum approach can be used for L&D, specially since a large part of the political contention around L&D revolves around the question of who pays for what, and how wide the “circle of contributors” will be when that payment comes due, and we can’t afford to let this issue deadlock progress on L&D finance. A continuum approach does helpfully highlight the countries that are responsible for paying most of the L&D costs, and thereby helps identify the key targets of campaigning activities and political demands around L&D finance, even if the exact boundaries remain ambiguous.

The continuum approach also opens directly into the vexed “expanded circle of contributors” question. In the mitigation context, it singles out those non-Annex 1 countries that are sufficiently high-emitting and wealthy that their fair share exceeds their domestic mitigation, and hence deems them providers of support. In the L&D case, however, such an approach, in which domestic and international efforts are fungible with each other, is problematic, especially in light of the discussion above (in 2.1.2) comparing the costs of the relatively wealthy to those of the relatively poor.

The “circle of contributors” debate cannot be put off, but neither will it suffice to say that the binary categories (e.g. developing vs developed) that define UNFCCC politics-as-usual must be immediately discarded. They cannot be immediately discarded, for they name a fatal global divide – the North-South divide – that is just as fundamental, and just as decisive, as the divide between the rich and the poor. We have no choice but to find a combination of pragmatic solutions (innovative finance, debt relief, institutional reform, etc.) that allows us to move forward in a manner that, while imperfect, is still very widely seen as being, if not fair, at least fair enough, and consistent with our long-term vision. And above all, helpful. The bottom line in all this is that the wealthy countries have to offer the world a good faith down payment on a new world, and it has to be one that includes a meaningful L&D regime.

In any event, civil society groups can, and should, take steps that negotiators cannot themselves risk. This means bringing normative clarity to their own long-term vision, and to their sequencing strategies, clarity in which near-term demands are explicitly constructed as waymarks on the path towards an equitable climate stabilization regime.

2.3) According to what principles? – How much should each payer pay?

In the lead up to Paris, the Civil Society Equity Review coalition debated the range of equity assumptions that could plausibly be considered fair when quantitatively interpreting national Responsibility and Capacity, from which national fair shares of the mitigation effort were directly calculated.\(^\text{10}\) We will not review this discussion here but, briefly, the main questions relate to (1) the time period over which a country should bear responsibility for its historical emissions, and (2) the progressivity of the allocation – the extent to which the mitigation obligation was allocated to wealthy and high-emitting people relative to that of poorer, lower-emitting people.

In subsequent discussion, other groups, most of them affiliated with CAN, have converged on assumptions that were broadly similar, and in some cases identical to those chosen by CSER, though in other cases they differed significantly, particularly in their treatment of progressivity. For an extended review of these cases, see the CAN discussion paper, Fair Shares – Lessons from

\(^{10}\) See the 2015 Civil Society Equity Review report for details. https://www.equityreview.org/report2015
“every day in which the wealthy countries avoid doing their fair share is a day in which loss and destruction are inscribed more deeply into our common futures.”


[I2] In fact, inaction since 1990 has led to a doubling of the total cumulative historical emissions compared to their pre-1990 levels.
3) Discussion Questions

**Avoiding stupid numbers**

- How can CAN help prevent the L&D finance debate (and the climate finance debate more generally) from again being anchored around a stupidly low figure, like the Copenhagen $100 billion?

- How can CAN help keep the L&D finance discussion, specifically, from being fatally constrained? How can CAN make sure due attention is given to problems such as slow-onset events and other indirect L&D such as potential global food security impacts resulting from climate-induced impacts on the global food system?

- How can CAN help advance the discussion around non-monetizable costs?

**Just L&D finance in a radically unjust world**

- Any L&D regime that aims strictly at “compensation” for climate damages would be unjust, in that it would reinforce existing inequalities and reify an ultimately imaginary boundary between climate-related vulnerability and “business-as-usual” vulnerability. Thus our illustrative extreme case: a strict notion of compensation for “climate-related L&D” points to a world in which some people get a rebuilt shack and some get a rebuilt mansion.

- An ethical alternative is to provide compensation to a minimum acceptable level of welfare, rather than to the pre-L&D level. Victims of climate impacts who formerly subsisted at a lower level of welfare would be lifted to this basic social floor, regardless of whether or not they were deemed to be victims of climate impacts. The objective is then not compensation, but rather a “positive global social welfare regime” that seeks not a return to previous levels of welfare but rather to a *global* social welfare minimum that supports the basic economic rights and security of all.

- Thus the question – is this where a true L&D regime will have to eventually go? If so, what does it indicate, in terms of short-term demands?

**Categories (annexes) vs. a continuum of nations (fair shares)**

- What about the looming “expanding the circle of contributors” debate? Will the Annex 2 countries refuse to provide anything like sufficient finance unless, somehow, the circle is widened? The questions here are fraught, and indeed they threaten G77 unity, which was essential to the win at COP27 – but are we reaching a point where an updated compromise is nonetheless needed? CAN will presumably choose to hang back in this debate, but it should have a strategy for contributing helpfully. What will that strategy be?

- How can CAN take proper account of the difference between movement politics and those of “the UN bubble”? The latter may best be served by continued strategic ambiguity, for example about which countries are “developing” (and thus legitimate recipients of international L&D finance) and which are “developed” (and thus properly payers rather than recipients) – but this ambiguity should support the movement’s active fight against a planetary inequality crisis, global elites, and unaccountable governments.

- A fair shares approach can dynamically define categories of countries that are, properly, net providers vs. net receivers of support, and highlight those that are at the extremes and near the boundaries. This is helpful, but it does not address the decisive issue of inequality.
within countries. How do we approach the “fair shares” of southern elites (or more generally: elites in those countries that would be net receivers of support)?

**Innovative finance**

- Many proposals for innovative finance are under discussion. Leaving aside all detail, it might suffice to note that these include new kinds of Special Drawing Rights, global carbon taxes, financial transaction taxes, fossil fuel extractions levies, and reform of the Multilateral Development Banks, as well as an increasingly visible discussion of global wealth taxes.

- Which of these are consistent, or potentially consistent, with “the world we want”? Which are consistent with fair share approaches? These are broad questions, but one point should be immediately stressed – we need finance of the proper scale. The global wealth tax proposal is particularly useful here, because it is – in Oxfam’s rendering – “a wealth tax of 2% on the world’s millionaires, 3% on those with wealth above $50m, and 5% on the world’s billionaires would raise $1.7 trillion dollars annually.”

- This is a bracing point of reference, for this is the scale of (public) money we need. Given this, and given the acuteness of the global inequality crisis, and its inseparability from the climate finance challenge, the global wealth tax proposal raises a key question. Are any of the “more realistic” innovative finance proposals the elites are now discussing even potentially capable of providing finance on a similar scale?

- More generally, which of these “innovative sources,” though they may not strictly adhere to a fair share methodology, are still potentially helpful and worth supporting? For example, which are significant in scale, reasonably fair, and socially progressive? Which can help shift power and influence? Which can discourage unsustainable activities, consumption, and investment?

**What else would addressing L&D really require?**

- Finally, and to stress that the challenges here sprawl far beyond financial compensation, what other measures, institutions, reforms and restructurings are needed to address the whole range of non-monetizable L&D? What, for example, would it take to address climate displacement and migration in a visibly fair way?

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