

Developing Country Transitional Committee Constituency¹

Key Considerations for TC-2

Issues For Consideration at TC-2

TC-2 Consideration 1: The Convention and its Paris Agreement provide the legal base for elaborating the new funding arrangements including the new fund. The TC should draw on experiences, past practice and lessons learned from the application of Article 11 of the Convention for designating operating entities of the Financial Mechanism, establishing specialized funds, and technical advisory and support bodies, as well arrangements for ensuring accountability to the COP/CMA.

TC-2 Consideration 2: The TC should agree on the type of support that the new funding arrangements and ultimately the new Fund would be purposed to deliver. It must consider the scale and increasing severity of loss and damage impacts in the near-term scenario of temperature increase to 1.5 degrees or above. The primary focus of loss and damage funds, as per the Sharm El-Sheik decision, should be for addressing loss and damage resulting from extreme weather events and slow onset events, especially in the context of ongoing and ex post (including rehabilitation, recovery and reconstruction) action.

TC-2 Consideration 3: The modality of the Fund should provide predictable grant disbursement and be quick / timely, urgent pay-outs of funding to Governments in response to actual loss and damage. The process for access should not be lengthy, politicized, or subject to burdensome restrictions on use. Given the complicated and urgent situations resulting from loss and damage, governments must have the flexibility to choose what they consider most necessary at the time. Different procedures/modalities may be necessary for appropriate approach to each type of loss and damage category, for example recognizing that addressing loss and damage from slow onset events will require different modalities than for extreme events

TC-2 Consideration 4: The new Fund and the new funding arrangements will provide new, additional, predictable, adequate resources, in the form of grants. The TC's work on sources and financial inputs should be based on the principle of common but differentiated responsibilities and respective capabilities in light of national circumstances (CBDR-RC), and historical responsibility. The provision and delivery of urgent and immediate need for new, additional, predictable and adequate financial resources to assist developing countries in meeting their costs of addressing loss and damage in the ex-post response and ongoing/continuing contexts arising from the adverse effects of climate change, including recovery, rehabilitation and reconstruction. The focus on funding should be informed by categories of losses and damages and actions to address them, including as per the relevant decisions under the Convention and Article 8.4 of the Paris Agreement and the best available science in the IPCC AR6, but the TC should not be overly prescriptive beyond the key areas already identified in the COP/CMA decision.

TC-2 Consideration 5: The TC shall ensure that the new funding arrangements maintain the principle of common but differentiated responsibilities and respective capabilities in light of different national circumstances (CBDR-RC), historical responsibility, equity, gender-responsiveness, protection of the most vulnerable, promoting the right to a healthy environment, climate justice, the right to sustainable development, the fundamental priority of safeguarding food security and ending hunger and other

¹ This submission is presented by the representatives of developing country transitional committee representing Africa, Asia-Pacific, Latin America and Caribbean, Least Developed Countries, and the Small Islands Developing States.

fundamental freedoms, and ensuring dignity for all. It shall also ensure that the operational modalities for these arrangements will ensure country ownership and debt sustainability.

TC-2 Consideration 6: The TC shall take into account the urgent and immediate need for funding arrangements to have new, additional, predictable and adequate resources including as a matter of priority grant-based resources, that are distinct and separate from adaptation, development and humanitarian assistance resources; and to take into account the different national experiences of loss and damage. The focus on funding should be informed by categories of loss and damage from extreme weather and slow-onset events, economic and non-economic loss and damage, but the TC should not be overly prescriptive around the key areas already identified in the COP/CMA decision.

TC-2 Consideration 7: The TC should focus on multiple support options and not just focus on specific instruments. The primary source of financing for loss and damage must be grant or grant-like and must not increase the indebtedness of countries, according to countries' specific needs. There are a suite of options that may be explored for their appropriateness in the response to loss and damage such as prearranged financing, instruments that create fiscal space, among others. The TC should provide further guidance and background information on various options for financial instruments including those funding by public and private sources. The TC should also consider innovative financing options, both as instruments of a new fund and funding arrangements and sources of capitalization. Discussions on innovative sources must ensure no negative incidence to developing countries and recognise the principle of sovereignty.

TC-2 Consideration 8: On the new funding arrangements, the Convention provides for the COP to *"entrust the operation of the financial mechanism to one or more existing international entities (Article 11.1)."* The Convention further provides (Article 11.3) *"that the COP and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements."* It will be important for the TC to understand the legal nature of such funding arrangements with entities outside of the COP, and how these arrangements can be established strong relationships between the UNFCCC and the new entity.

TC-2 Consideration 9: The TC outcomes need to include an explicit reference to the need for the Fund and the funding arrangements to support capacity building in developing countries and readiness for the country to engage with the fund. This will need to have clear linkages with the discussions and activities taking place under the WIM Executive Committee, including through its expert group on action and support and the SNLD institutional arrangement.

FUND SPECIFIC RECOMMENDATIONS

TC-2 Consideration 10: One of the main priorities of the TC should be to recommend the legal requirements for the Fund's Governing Instrument in sufficient detail for the COP/CMA to operationalize the Fund, recognizing that there may be elements that the Fund's governing body- the Board- can study and examine with more detail and finalize, including the Fund's activities, operational procedures and instruments. It will be important for the TC to have a good understanding of which matters should be defined/proposed at this stage and also which mandates should be given to the Board.

TC-2 Consideration 11: The LD Fund requires a different approach to designating operating entities. Core common elements can be built on the existing Funds. However addressing Loss and Damage will require an entirely different governance architecture and operational support to developing countries due to the unique nature of LD funding requirements that developing countries face, e.g: delivering

funding to address loss and damage in the ex-post response and ongoing/continuing contexts arising from the adverse effects of climate change would require operational modalities and scales of funding that reflect the urgent immediate as well as longer-term direct on-the-ground and budgetary financial support needs that all developing countries will have when address loss and damage as compared to undertaking mitigation or adaptation actions. The TC should build from the lessons learned from the GCF/AF, such as:

- Not leaving open the matter of privileges and immunities;
- Clarifying the institutional linkage with the UN system;
- Avoiding establishing an accreditation process that ultimately creates a bottleneck on access;
- Rethinking access modalities (i.e. project-based approach) against the scope of the Fund; and
- Avoid having a resource base using commitment authority of a defined replenishment period thus limiting the resources available annually to support developing countries.

TC-2 Consideration 12: While the Fund and the funding arrangements will be guided by the principles of the Convention/PA, the TC recommendation should also include core approaches on, inter alia, country ownership, informed by the best available science (both IPCC and indigenous and local knowledge), avoiding increasing indebtedness of developing countries, and respecting sovereignty, scale and flexibility, additionally of resources (particularly from adaptation, development and humanitarian assistance), and a learning by doing approach.

TC-2 Consideration 13: As the fund will be responding to the reality of the increasing scale and magnitude of climate induced losses and damages in developing countries, such response is initiated and shall happen under the UNFCCC, in this regard identifying the objectives and guiding principles of the fund are crucial and should be part of the outcomes in COP28.

TC-2 Consideration 14: Without foreclosing other options, the Fund will provide a range of disbursements to range from direct budget support to State Parties as well as direct funding to beneficiaries , and will then keep track of the accounting of the use of those funds. Where countries opt for other vehicles, the Fund may designate international, regional, national or community entities to undertake the agreed programme activities on behalf of the countries if the latter give their agreement. The governing body should develop a simplified modality and procedures for ensuring that funds flow to subnational level, local and community organisations.

TC-2 Consideration 15: For the new Fund, its decision-making body must be based on equitable and balanced geographic distribution of all Parties within a transparent system of governance. The decision making will be on the basis of consensus, and the Board will be mandated to procedure to take decisions in the absence of consensus.

FUND AND FUNDING ARRANGEMENTS RECOMMENDATIONS

TC-2 Consideration 16: It is important to progress the discussion on the financing access modalities, including for grants deployed to address and respond to slow onset events as well for accessing rapid pay-outs following extreme weather events. The development of triggers and financing criteria related to accessing LD finance requires robust technical considerations. TC-2 should mandate the TSU to provide an analysis of principle-based approaches to ensure access at TC-3. This should draw upon lessons learned in building access modalities noting the need to ensure that the Fund must offer the flexibility and sensitivity needed to address loss and damage in a diverse range of contexts in order to fill existing funding gaps. TC2 should also request TSU to prepare a policy paper with initial and broad recommendations on trigger procedures that have been used for extreme weather events and slow

onset event, how those triggers can be improved and expanded, and the creation of new triggers to address existing funding gaps

TC-2 Consideration 17: The architecture of the COP28 outcome should be similar to that of the GCF decision 3/CP.17:

- Cover decision dealing with outstanding or additional matters;
- Designation of entities entrusted with the operations of the financial mechanism (new funding arrangements);
- ToR for the new fund and urgent governance arrangements for a prompt start in 2024;
- Agreement to adopt further guidance on policies, programme priorities and eligibility criteria and matters related thereto for the operation of the Fund/Funding arrangements at COP29; and
- Invitation to Parties to submit views on specific policies, programme priorities and eligibility criteria for consideration at COP29.

TC-2 Consideration 18: The new funding arrangements should have a coordination mechanism/function that engages the full range of partners and initiatives to ensure response at scale and speed, and complementarity of funding arrangements with the UNFCCC, the PA and the new fund.

TABLE 1: Key elements of the outcome of the workstream on the new Fund-Priority Outcome

ISSUE	KEY ELEMENTS/POSITION
TC Outcome	The outcome of the TC’s deliberation will be in the form of a report containing the instrument of establishment for the Fund, and the draft initial guidance to the Fund and its governing body. The TC will also provide a guidance annex to promote consistency with funding arrangements that seek to provide loss and damage finance (guidance can be in the form of principles, a common framework or standard operating model, as well as guidance on coherence and complementarity for funding arrangements outside of the Fund in order to align with core principles/modalities governing the Fund and that the funding arrangements must subscribe to in the context of their respective Memorandum of Understandings with the COP + CMA).
Authority and Accountability	The Fund will be designated as an operating entity as per article 11 of the UNFCCC, be accountable to and operate under the guidance of the Convention. It will also serve the Paris Agreement.
Principles	While the Fund will operate under the principles of Convention/PA, in particular CBDR-RC, the TOR should include additional approaches, including country ownership, avoiding increasing indebtedness of developing countries, informed by the best available science (both IPCC and indigenous and local knowledge), right to sustainable development and eradication of poverty, the fundamental priority of safeguarding food security and ending hunger, and respecting sovereignty, additionality of resources (particularly from adaptation, development and humanitarian assistance), scale and flexibility and a learning by doing approach.
Eligibility criteria to access the Fund and access funding from the other new funding arrangements	All developing countries that are Parties to the Convention/Paris Agreement shall be eligible to access funding from the Fund and the funding arrangements..

ISSUE	KEY ELEMENTS/POSITION
Board	The Board must be based on equitable geographic distribution among the UN regional groups, as per Article 11 of the Convention as well as representation from SIDS and LDCs. The decision making body is solely responsible for funding decisions.
Legal Status	The Fund will need to possess International juridical or legal personality, have Legal capacity; and enjoy Privileges and immunities for the purpose to fulfil its purpose and functions.
Arrangements	As per Article 11.3, the COP and the Fund will agree to arrangements to be approved by the COP
Secretariat	The Fund would have a permanent and independent Secretariat. The Board would appoint the head of the Secretariat. The LDF should guarantee regional presence.
Relationship with the UN System/UNFCCC	The Fund should have an institutional linkage with the UN/UNFCCC system and apply the agreed UN administrative policies.
Trustee	The Fund shall have a Trustee which will operate under international standards for financial regulations and rules.
Programming priorities	The Fund shall provide financial resources to assist developing countries that are particularly vulnerable to the adverse effects of climate change in meeting the costs of addressing LD. The TC may recommend initial funding windows one of them a Fast response window to support relief efforts after climate disasters, and the Board may establish additional windows related to addressing LD as appropriate.
Decision making	The decision making will be on the basis of consensus, and procedures will be included in the TC recommendations to take decisions in the absence of consensus.
Access	The Fund will provide direct budget support to State Parties, which will be responsible for the management and accounting of the use of those Funds. Where countries opt for other vehicles, the Fund may designate international, regional and national entities to undertake the agreed project/programme activities on behalf of the countries. The Board will develop a simplified procedure for ensuring funds flow to local and community organisations.
Country governance	The Fund will be country-driven and demand-driven, with developing countries being involved during the stages of identification, preparation and implementation, and response to the needs and circumstances of the developing countries. The Fund will recognize, promote and strengthen the significance of engagement at the country level, in order to give effect to the principles of a country-driven approach, and direct budget support.
Financial Inputs	The Fund will receive financial input from the developed country Parties. The Fund may also receive financial inputs from a variety of other sources public and private, including innovative source of finance in the context of CBDR&RC.
Financial instruments	The Fund shall manage a large scale of financial resources delivered through a variety of financial instruments. The Fund shall provide grant based finance
Adequacy of Commitment Authority	The Fund will establish a process to ensure that an adequate and predictable level of financing needed and available commitment authority shall be provided regularly. The outcomes of this process shall be provided for consideration by the Conference of the Parties.
Role in the Financial Architecture	The Fund will contribute to the goal of achieving coherence in the global financial architecture for the financing of loss and damage activities, under the authority and governance of the Conference of Parties. The Fund will facilitate

ISSUE	KEY ELEMENTS/POSITION
	linkages between the various funding sources and separate funds in order to promote access to the variety of available funding sources and reduce fragmentation across the funding arrangements to address LD.
Review	As an operating entity, the Fund would be reviewed as part of the periodic reviews of the financial mechanism undertaken by the COP.
Operationally Independent Units	As per the GCF, the Fund may have operational independent Units related to a) evaluation, b) redress and c) integrity.