

Proposed Governing Instrument: Loss and Damage Fund

Joint submission by: Climate Action Network (CAN), Global Campaign to Demand Climate Justice (DCJ), and Women and Gender Constituency (WGC)



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¹ CAN International; Christian Aid; Heinrich Böll Stiftung (Washington, DC); Practical Action; Stamp Out Poverty. May 2022. *Discussion Paper: The Loss and Damage Finance Facility, Why and How.*

<https://climatenetwork.org/wp-content/uploads/2022/05/The-Loss-and-Damage-Finance-Facility-web-compressed-1.pdf>

² Heinrich Böll Stiftung Washington, D.C. and supporting organizations. *Submission on views regarding paragraph 5 of 2/CP.27 and 2/CMA.4 to inform the discussions at the 2nd meeting of the Transitional Committee (TC2) in response to the invitation in TC1/2023/3/Rev.3.*

https://unfccc.int/sites/default/files/resource/hbsDC%20and%20others%20_submission%20to%20inform%20the%20work%20of%20the%20Transitional%20Committee_for%20TC2_FINAL.pdf

The Loss & Damage Fund (hereinafter the “Fund”) is hereby established and will operate in accordance with the following provisions:

I. Objectives and guiding principles

Recognizing that countries and communities are already incurring significant costs associated with climate change induced loss and damage they cannot avoid or adapt to, the purpose of this Fund is to make a significant and ambitious contribution to provide new, additional, predictable and adequate financial support to assist developing countries and communities that are particularly vulnerable to the adverse effects of climate change in comprehensively addressing and providing remedy for economic and non-economic loss and damage.

The Fund will operate under international law and be guided by the principles and provisions of the Convention and the Paris Agreement and of international cooperation and solidarity. This includes a commitment to ensuring:

- (a) Common but differentiated responsibilities and respective capabilities (CBDR-RC).
- (b) A commitment to country ownership and subsidiarity—striving for decision-making and implementation on the most local level possible to meet the needs of the most vulnerable.
- (c) That loss and damage finance provided under the Fund be new and additional, going beyond Official Development Assistance, humanitarian assistance, and to other types of climate finance, such as mitigation and adaptation funding.
- (d) That the Fund is flexible and scalable and that financial inputs are adequate, predictable, and precautionary (e.g. anticipating various levels of loss and damage at and above the 1.5°C and 2°C thresholds).
- (e) That the Fund provides funding exclusively in form of grants and non-debt creating financial instruments.
- (f) That loss and damage finance is balanced and comprehensive. This means that in addition to providing support for rapid-onset events in the aftermath of climate disasters, finance should also be available for continued recovery, rehabilitation, reconstruction, other forms of remedy, and alternative livelihoods for communities facing slow-onset events and cover both economic and non-economic losses and damages.
- (g) Prioritize programmatic approaches to address loss and damage until prolonged negative consequences are fully addressed.
- (h) That actions supported by the Fund will respect, promote and consider human rights; the right to health; the right to a clean, healthy and sustainable environment; the right to development; the rights of Indigenous Peoples, local communities, migrants, women and girls, children, youth, persons with disabilities, LGBTQIA+ communities, and people in vulnerable situations as well as gender equality and intergenerational equity.
- (i) Meaningful and effective public participation of affected communities, including Indigenous Peoples, and civil society organizations in the design, implementation, and monitoring and evaluation of the Fund’s policies and activities, in addition to guaranteed access to information, transparency, and accountability.

II. Governance and institutional arrangements

A. RELATIONSHIP TO THE CONFERENCE OF THE PARTIES

The Fund will be designated as an operating entity of the financial mechanism under Article 11 of the Convention and Article 9 of the Paris Agreement. It will be accountable to and function under the guidance of the Conference of the Parties (COP) and the Conference of Parties serving as the meeting of the Parties to the Paris Agreement (CMA).

The Fund will be governed and supervised by a Board that will have full responsibility for funding decisions.

Arrangements will be concluded between the COP, the CMA, and the Fund, to ensure that the Fund is accountable to and functions under the guidance of the COP and the CMA. In order to ensure accountability to the COP and CMA, the Board will, inter-alia:

- (a) Receive guidance from the COP and CMA, including on matters related to policies, programme priorities and eligibility criteria, and matters related thereto;
- (b) Take appropriate action in response to the guidance received; and
- (c) Submit annual reports to the COP and CMA for their consideration.

B. LEGAL STATUS

In order to operate effectively internationally, the Fund will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests.

The Fund will enjoy such privileges and immunities as are necessary for the fulfillment of its purposes. The officials of the Fund will similarly enjoy such privileges and immunities as are necessary for the independent exercise of their official functions in connection with the Fund.

C. RULES OF PROCEDURE OF THE BOARD

1. COMPOSITION

The Board will have 25 members from governments, with a majority of members from developing country Parties. The Board will include representatives from relevant United Nations regional groupings and representatives from Small Island Development States (SIDS) and Least Developed Countries (LDCs). The overall Board composition will be equitable and also ensure gender balance and regional balance.

The Board's seats will be distributed as follows:

- (a) Three members from each of the five United Nations regional groups;
- (b) Two members from Small Island Developing States;
- (c) Two members from Least Developed Country Parties;
- (d) Three other members from Parties included in Annex I to the Convention (Annex I Parties); and
- (e) Three other members from Parties not included in Annex I to the Convention (non-Annex I Parties).

Each Board member will have an alternate member, with alternate members entitled to participate in the meetings of the Board only through the principal member, without the right to vote, unless they are serving as the member. During the absence of the member from all or part of a meeting of the Board, his or her alternate will serve as the member.

In addition, the Board shall develop further mechanisms, including the consideration of designated Board seats, to ensure and enable the meaningful participation of communities adversely impacted by climate change and who have been made vulnerable through historic marginalization such as women, Indigenous Peoples, persons with disabilities, and youth. Furthermore, these communities' perspectives shall be actively considered and factored into the Board's final decision-making process, thereby recognizing their integral role and the relevance of their insights to ensuring that their rights and interests are adequately represented and protected.

Funding will be provided to support the participation of non-government community representatives.

2. SELECTION OF BOARD MEMBERS

The members of the Board and their alternates will be selected by their respective constituency or regional group within a constituency based on their experience on the issues of loss and damage and climate finance and striving for gender balance.

3. TERM OF MEMBERSHIP

Members and alternate members will serve for a term of three years and be eligible to serve additional terms as determined by their constituency.

4. CHAIRPERSONSHIP

Two co-chairs of the Board will be elected by the Board members from within their membership to serve for a period of one year, with one being a member from a developed country Party and the other being a member from a developing country Party.

5. DECISION-MAKING

Decisions of the Board will be taken by consensus of the Board members. The Board will develop majority voting procedures for adopting decisions in the event that all efforts at reaching consensus have been exhausted.

6. QUORUM

A two-thirds majority of Board members must be present at a meeting to constitute a quorum.

7. OBSERVERS

The Board will make arrangements, including developing and operating accreditation processes, to allow for effective participation by accredited observers in its meetings. Due consideration will be given to remote participation of observers.

The Board will invite to participate as active observers two representatives, one each from developing and developed countries, from each of the UNFCCC constituency groups as selected by the constituency group. Funding will be provided to support the participation of developing country representatives.

Active observers will be able to:

- Intervene in meetings on each agenda items on a regular basis;
- Request the addition of agenda items; and
- Recommend external experts to speak on specific items.

Active observers will also be invited to address the Board in matters of strategic discussion or direct concern. Active observers are identified through self-selection processes of respective constituency groups and serve for two years, renewable once.

To enhance transparency and participation, public proceedings of the Fund Board will be webcast.

8. ADDITIONAL RULES OF PROCEDURE

Additional rules of procedure will be developed by the Board.

D. ROLE AND FUNCTIONS OF THE BOARD

The Board of the Fund will, inter alia:

- (a) Oversee the operation of all relevant components of the Fund in line with the Fund's objectives and guiding principles;
- (b) Approve all operational modalities, guidelines and procedures, access modalities, funding, and funding cycles and structures;
- (c) Establish, add, or modify funding windows or substructures, including committees and panels, as needed;
- (d) Quickly approve funding in line with the Fund's mandate and its criteria, modalities, policies and programmes;
- (e) Develop environmental and social safeguards and fiduciary principles and standards in line with international best practices;
- (f) Review and approve the administrative budget of the Fund, and arrange for performance reviews and audits;
- (g) Appoint the Executive Director of the Fund Secretariat;
- (h) Oversee the overall finance for addressing loss and damage within and outside of the UNFCCC. This includes developing working relationships and coordination with funding arrangements including relevant bodies within and outside the Convention and the Paris Agreement in order to ensure coherence in approaches to address loss and damage and to catalyze and coordinate financial and other support to developing countries to address loss and damage. This will require coordination and work with:
 - (i) The Santiago Network for Loss and Damage;
 - (ii) The Executive Committee of the Warsaw International Mechanism for Loss

- and Damage;
- (iii) Other climate funds within and outside of the Convention; and;
 - (iv) Other institutions and funding arrangements outside of the UNFCCC that are funding or otherwise engaging in supporting countries to address loss and damage.
- (i) Steer the fund's operations as it evolves in scale and maturity and exercise flexibility to allow the fund to evolve over time;
 - (j) Conduct or instruct an institution to conduct a loss and damage finance gap analysis;
 - (k) Develop criteria that will be used to determine a "loss and damage event," which will automatically trigger release of funding to address the short and long term impacts, including economic and non-economic effects;
 - (l) Develop criteria to offer collaboration arrangements, including and beyond accreditation to relevant institutions and organisations, in particular regional, national, and subnational entities;
 - (m) Receive guidance from and take action in response to any guidance from the COP/CMA and prepare annual reports to them on Fund activities;
 - (n) Provide oversight of and establish a monitoring and accountability framework for funding support provided to address loss and damage by the Fund, for additional funding from within existing funds under the UNFCCC and Paris Agreement, as well as for funding mobilized and disbursed outside of the UNFCCC framework, including with respect to determining its additionality to financing provided for mitigation and adaptation or as a humanitarian response; and
 - (o) Exercise such other functions as may be appropriate to fulfill the objectives of the Fund.

E. SECRETARIAT

1. ESTABLISHMENT OF THE SECRETARIAT

The Fund will establish and be served by a secretariat composed of a dedicated team of officials. The secretariat will serve and be accountable to the Board. It will have effective management capabilities to execute the day-to-day operations of the Fund, including providing administrative, financial, and technical expertise.

The secretariat will be headed by an Executive Director with the necessary experiences and skills, who will be appointed by and be accountable to the Board. The Board will approve the job description and qualifications for the Executive Director. The Executive Director will be selected through a merit-based, open and transparent process.

The secretariat will be committed to best practice work culture and adequately staffed with professional staff with relevant experience and expertise from diverse backgrounds (including financial, technical, social and gender, human rights, developmental, environmental and economic) and with an understanding of the lived experiences of affected communities in developing countries. The staff selection will be managed by the Executive Director and will be open, transparent and based on merit, aiming for geographical and gender balance.

The selection of the host country of the Fund will be an open and transparent process. The selection of the host country will be endorsed by the COP and CMA.

2. FUNCTIONS

The secretariat will be responsible for the day-to-day operations of the Fund, providing inter alia administrative, technical, legal and financial expertise. In particular, the secretariat will:

- (a) Organize and execute all administrative duties;
- (b) Report information on the Fund's activities;
- (c) Liaise with members of the Board, implementing partners, recipient countries, and with any cooperating bilateral and multilateral institutions and agencies;
- (d) Develop the work programme and annual administrative budget of the secretariat and trustee and submit them for approval by the Board;
- (e) Operationalize the project and programme cycle processes;
- (f) Carry out monitoring and evaluation functions;
- (g) Establish and run effective knowledge management practices in support of the core coordination and leadership function as the flagship multilateral fund for addressing loss and damage and to inform other actors in the evolving loss and damage finance architecture.
- (h) At the direction of the Board, provide tracking, accountability and oversight over additional funding for addressing loss and damage from within existing funds under the UNFCCC and Paris Agreement as well as for funding mobilized and disbursed outside of the UNFCCC framework, including with respect to determining its additionality to financing provided for mitigation and adaptation or humanitarian response.
- (i) Perform any other functions assigned by the Board.

F. TRUSTEE

The Fund will have a trustee with administrative competence to manage the financial assets of the Fund. The trustee will maintain appropriate financial records and will prepare financial statements and other reports required by the Board, in accordance with internationally accepted fiduciary standards.

The trustee will administer the assets of the Fund only for the purpose of, and in accordance with, the relevant decisions of the Board. The trustee will hold the assets of the Fund separate and apart from the assets of the trustee, but may commingle them for administrative and investment purposes with other assets maintained by the trustee. The trustee will establish and maintain separate records and accounts in order to identify the assets of the Fund.

The World Bank will serve as interim trustee for the Fund, subject to a review three years after the operationalization of the Fund.

The trustee will be accountable to the Board for the performance of its responsibilities as trustee for the Fund.

III. Administrative costs

The Fund will finance the operating costs of the Board, secretariat and trustee.

IV. Financial inputs

The Fund will receive its main financial inputs from developed country Parties to the Convention and the Paris Agreement. Financial inputs by developed country Parties will be exclusively in form of grants and non-debt creating financial instruments.

The Fund will also be capable of receiving and administering financial inputs on an ongoing basis from a variety of other public as well as private, philanthropic, and innovative/alternative sources.

V. Operational modalities

The Fund will provide simplified, expeditious, and improved access to funding, allowing for direct access (through regional, national, and subnational entities) and international access (through international entities such as United Nations agencies).

Following the principle of subsidiarity, to the extent possible, the Fund will prioritize direct access, including by affected communities and vulnerable groups, including women, youth, Indigenous Peoples and people living with disabilities.

In line with a country-driven approach, the Fund will provide finance to support existing and new national and local level coordination mechanisms to promote and strengthen engagement of all relevant institutions and stakeholders to comprehensively address loss and damage.

The Board will steer the Fund's operations so that they evolve with the Fund's scale and maturity, and will exercise flexibility to support the Fund in its leadership and coordination role as the main fund for addressing loss and damage.

A. COMPLEMENTARITY AND COHERENCE

The Fund will coordinate between itself and other existing funds and funding arrangements under the Convention, and between itself and other funds, funding arrangements, entities, and channels of loss and damage financing outside the Fund, to, inter alia:

- (a) Ensure coherence in overall approaches to address loss and damage;
- (b) Catalyze and coordinate financial support to developing countries to address loss and damage;
- (c) Initiate and lead discussions on coherence in loss and damage finance delivery; and
- (d) Promote coherence in programming at the national level through appropriate mechanisms.

This will require initiating and leading ongoing discussions with entities including:

- (i) The Santiago Network for Loss and Damage;
- (ii) The Executive Committee of the Warsaw International Mechanism for Loss and Damage;
- (iii) Other climate funds within and outside of the Convention; and

- (iv) Other institutions and funding arrangements outside of the UNFCCC that are funding, have expertise in, or are otherwise engaged in supporting countries to address loss and damage.

The Fund will be a significant source of funding for addressing loss and damage.

B. ELIGIBILITY

All developing country Parties to the Convention and the Paris Agreement are eligible to receive financial support from the Fund to address economic and non-economic loss and damage. Eligibility will not be determined or differentiated by income classifications used outside of the UNFCCC.

C. FUNDING WINDOWS AND FUND STRUCTURE

The Fund will have thematic funding windows. Initially, the Fund will have four windows, all of which will support funding for economic and non-economic losses and damages. An integrated approach to funding will be possible to allow for programmatic approaches across multiple funding windows:

1. A rapid-onset window to provide quick release funding in the aftermath of climate disasters;
2. A window focused in the medium-term on rebuilding lives, livelihoods, wellbeing and infrastructure through rehabilitation and reconstruction measures;
3. A slow-onset window to provide funding for longer-term loss and damage, including support for planning and policy frameworks and transformative programming such as permanent relocation or a just transition to alternative livelihoods; and
4. A community direct access window for subnational and local actors, in particular affected communities, women, youth, Indigenous Peoples, people living with disability, and civil society organizations working directly with them for both rapid-response and addressing slow-onset impacts.

The Board will have the authority to add, modify or remove additional windows or Fund substructures or facilities as needed.

D. READINESS AND PREPARATORY SUPPORT

The Fund will provide resources for readiness and preparatory activities and technical assistance, such as the preparation of comprehensive, inclusive, and participatory loss and damage needs assessments, and for in-country institutional strengthening, including the strengthening of capacities for country coordination and to meet fiduciary principles and standards and environmental and social safeguards, in order to enable countries to directly access the Fund. It will coordinate and collaborate with the Santiago Network on Loss and Damage, through which it might channel readiness support funding, and with the Executive Committee of the Warsaw International Mechanism to better mobilize the full range of technical and readiness support knowledge and capacities, as well as other relevant institutions as appropriate.

E. ACCESS MODALITIES AND ACCREDITATION

Access to Fund resources will be primarily through a designated national agency or body, including existing designated authorities or focal points already registered with other climate funds or country coordinating mechanisms. These entities must support the meaningful involvement of relevant stakeholders both governmental and non-governmental, including representation from local communities, Indigenous Peoples, and vulnerable groups in a gender-responsive manner. The Fund will support programmatic funding approaches, rather than project funding, to the extent possible through all funding windows.

For the medium-term and the slow-onset windows, countries will select their implementation partners from existing international and direct access entities already accredited and in good accreditation standing with the existing climate funds and in accordance with the risk, scale and fiduciary implementing capacities of those entities as verified through prior accreditation processes. If a country opts not to use an existing accredited agency, that entity will go through an accreditation process managed and overseen by the Fund Board based on specific criteria, including fiduciary standards and environmental and social safeguards, with prioritization for national entities.

For the rapid-onset window, access will not require countries to work through accredited entities. Instead, funding may be transferred through a variety of means, including a designated national entity or as direct budget support. A country's request for funding will be triggered by the requesting country's declaration that a "loss and damage event" has occurred in line with agreed criteria determined by the Board and verified in each specific case by a set of independent technical experts or institutions in a panel appointed by the Board. Such a funding request will not require a detailed implementation plan or elaborated proposal other than some indicative areas of support and description of adequate safeguards in place.

For the community direct access window, the Fund will set aside a specific allocation of available funding annually for enhanced direct access for economic and non-economic loss and damage for communities and directly affected people, ensuring inclusivity and equity for particularly marginalized population groups, including women, youth, Indigenous Peoples and people living with disability.

The Board will develop specific access modalities for the community direct access window.

F. DIRECT ACCESS

Where possible, the Fund will encourage and prioritize direct access through competent subnational, national and regional entities designated by recipient countries for all its funded activities. Additionally, the Fund will offer enhanced direct access modalities that devolve individual financing decisions for specific activities to the sub-national and local levels, aided by national-level coordinating entities or distribution mechanisms (for example utilizing existing structures and national-level programmes or funding mechanism).

G. ALLOCATION

The Board will balance the allocation of resources between the Fund's rapid response, medium-term and slow onset windows and ensure appropriate allocation of resources for other activities. As part of its allocation framework, the Board will set aside an agreed percentage of funding to be channeled through the community direct access window with the aim of growing its share over time.

In allocating resources, the Board will take into account the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, including by considering minimum allocation floors for some country groups as appropriate.

H. PROGRAMMING AND APPROVAL PROCESSES

The Fund will have a streamlined programming and approval process to enable timely disbursement. This includes both a trigger mechanism to release funding through the rapid-onset window and simplified processes for the approval of funding based on a template approach to expedite funding through the medium-term and slow-onset windows as described above.

VI. Financial instruments

The Fund will provide financing exclusively in the form of grants and non-debt creating financial instruments.

VII. Monitoring

The programmes and projects, as well as other activities, funded by the Fund will be regularly monitored for impact, equity, and effectiveness in line with rules, safeguards, and procedures established by the Board. Given the prioritization of programmatic approaches, simplified direct access and devolved financing, the use of participatory monitoring involving local communities and particularly vulnerable and marginalized groups, and other stakeholders will be critical.

A results measurement framework with guidelines and appropriate performance indicators will be approved by the Board. Performance against these indicators will be reviewed periodically in order to support the continuous improvement of the Fund's impact, effectiveness and operational performance.

VIII. Evaluation

There will be periodic independent evaluations of the performance of the Fund in order to provide an objective assessment of the results of the Fund, including its funded activities and its impacts, equity, effectiveness, efficiency, and compliance with internal policies and social and environmental safeguards. The purpose of these independent evaluations is to inform decision-making by the Board and to identify and disseminate lessons learned, including with respect to replicability and best practices for financing to address loss and damage in order to inform and provide signals to loss and damage finance collaboration partners and actors in the broader funding arrangements. The results of the periodic evaluations will be published.

To this end, the Board will establish an operationally independent evaluation unit as part of the core structure of the Fund. The head of the unit will be selected by, and will report to, the Board. The frequency and types of evaluation to be conducted will be specified by the unit in agreement with the Board.

Reports of the Fund's independent evaluation unit will be provided to the COP and CMA for purposes of periodic reviews of the financial mechanism of the Convention and the Paris Agreement.

The COP or CMA may commission an independent assessment of the overall performance of the Fund, including Board performance.

IX. Fiduciary standards

The Board will agree on, adopt, support capacity-building for and ensure the application of fit-for-purpose fiduciary principles and standards to the Fund's entities, the trustee's function related to the Fund, and to all operations, activities and programmes financed by the Fund, including its implementing and collaboration partners.

X. Environmental and social safeguards

The Board will adopt best practice environmental and social safeguards, and human-rights based gender and Indigenous Peoples policies, which shall be applied to all programmes and projects financed using the resources of the Fund.

The Fund will support the strengthening of capacities in recipient countries, where needed, to enable them to meet the Fund's environmental and social safeguards, gender and Indigenous Peoples policies based on modalities that shall be developed by the Board.

XI. Accountability mechanisms

The Fund's operations will be subject to a proactive information disclosure policy that will be developed by the Board with the goal to support maximum transparency, access to information, and accountability.

The Board will establish an independent integrity unit to investigate allegations of fraud and corruption in coordination with relevant counterpart authorities, working with the secretariat and reporting to the Board.

The Board will establish a gender-responsive and easily accessible independent redress mechanism that will report to the Board. The mechanism will facilitate receiving complaints by affected local communities and vulnerable groups related to the operation of the Fund and will investigate complaints and make recommendations to provide adequate redress for environmental, social or human rights harms caused by the Fund's activities.

XII. Expert and technical advice

In carrying out its functions the Board will develop mechanisms to draw on appropriate expert and technical advice, including from the relevant thematic bodies established under the Convention and the Paris Agreement, as appropriate.

The Fund will work with the Santiago Network on Loss and Damage to establish and appoint a panel of experts with the relevant expertise to quickly verify that a country's declaration of a loss and damage event is in line with the criteria established by the Board.

The Fund in collaboration with the Santiago Network on Loss and Damage may jointly develop rosters of local experts from communities and civil society to support areas including readiness and capacity building.

XIII. Stakeholder Engagement and participation

The Board will develop mechanisms to promote the equitable, effective and inclusive input and participation of stakeholders, including ones from affected communities, civil society organizations, and groups that have been made vulnerable through historic marginalization such as women, Indigenous Peoples, people living with disability, and youth in the design, development, implementation, and monitoring and evaluation of the strategies, policies, and activities to be developed and financed by the Fund. This will include development of appropriate mechanisms at the Fund and recipient country levels and adequate access to information.

XIV. Termination of the Fund

Termination of the Fund will be approved by the COP and CMA based on a recommendation of the Board.

This joint submission by Climate Action Network (CAN), Global Campaign to Demand Climate Justice (DCJ), and Women and Gender Constituency (WGC) has been developed with inputs from CAN International, Heinrich Böll Stiftung Washington, D.C., ActionAid, Third World Network and individually endorsed by the following organisations:

1. War on Want
2. Friends of the Earth International
3. Global Justice Now
4. Akina Mama wa Afrika

— ENDS —