

**Second meeting of the Transitional Committee
on the operationalization of the new funding
arrangements for responding to loss and damage and
the fund**

**Bonn,
Germany
25–27 May
2023**

**Scenario note by the Co-Chairs of the Transitional
Committee**

HERE: Cross-constituency CSO coordinated response on guiding questions by the Co-Chairs of the Transitional Committee on matters related to paragraph 5 a of decision 2/CP.27 and 2/CMA.4

The following comments represent the coordinated and joint input and response by CSO representatives from several UNFCCC constituencies (ENGO – CAN international and DCJ, Women and Gender, TUNGO and Indigenous Peoples) to the guiding questions under agenda item 6 (a) on matters related to paragraph 5(a) of decisions 2/CP.27 and 2/CMA.4. on establishing institutional arrangements, modalities, structure, governance and terms of reference for the new loss and damage fund (LDF).

We are looking forward to further opportunities to share our views, including through interventions during the TC proceedings with the TC Co-Chairs, Members and the TC Secretariat.

a. Establishing institutional arrangements, modalities, structure, governance and terms of reference for the fund referred to in paragraph 3 of 2/CP.27 and 2/CMA.4

1. What is the purpose and scope of the new funding arrangements for responding to loss and damage and the fund?

The existing funding arrangements (drawing on existing funding structures and actors, and partially meaning an expansion or improvement of some funding approaches, including those listed under the TC Synthesis Report) are focusing largely on minimizing loss and damage (=adaptation related) as well as humanitarian relief, with very little actual funding committed to addressing loss and damage.

As such they are qualitatively different from the purpose and the scope of the new fund, whose exclusive focus should be to provide new and additional, predictable, adequate, precautionary and equitable financing to address loss and damage in such a way that it meets the needs of the most affected people and population groups and protects their rights, and is also directly

accessible to them, and to do so comprehensively (including non-economic loss and damage, slow onset events and responding to extreme events in the short and medium term, as this is the clear funding gap in the loss and damage finance landscape).

2. Which governing body will the fund be accountable to?

The LDF should be a stand-alone fund at a scale commensurate and growing with the scale of the challenge and the needs and able to stand the test of time through adjustment and learning. It should be established as an operating entity of the financial mechanism for the UNFCCC and serving in the same function for the Paris Agreement; as such, the fund should be accountable to and receive guidance from the COP and CMA, including on matters relating to policies, programme priorities and eligibility.

The LDF should take appropriate action in response to the guidance received. It should account for those actions taken through the submission of annual reports to the COP/CMA and then receive further guidance.

The COP/CMA should also be able to mandate a regular evaluation of the performance of the LDF.

3. How will the arrangements that define the relationship between the Fund and the body be set? What will the associated process and the content be?

The arrangements defining the relationship will be set by both a COP and a CMA decision at COP28/CMA5 and following established process for designating an operating entity of the financial mechanism for the UNFCCC and servicing in the same function for the Paris Agreement.

4. Will the Fund be periodically reviewed? What will be the scope and process of the review?

The LDF should be regularly reviewed independently. This could be accomplished in several ways, some of them should include, but not limited to:

- Through an independent evaluation unit as part of the setup of the LDF, which would provide review of policies, functions and effectiveness, including broader performance review
- Mandated by the COP/CMA, – review of review??? – for example in the context of the review of the financial mechanism for which the LDF should serve as an operating entity.
- The scope of the review should focus on timeliness, adequacy, effectiveness in reaching affected communities and population groups, equity in access, as well as compliance with guiding principles and core objectives, including supporting human-rights and gender-responsiveness to be elaborated as part of the LDF draft governing instrument/charter.
- Consideration of the LDF's contribution to progress and raising ambition in the implementation of the Paris Agreement should be part of the regular Global Stocktake review (in the context of a broader assessment on the means of implementation).

5. What are the legal implications of establishing new funding arrangements and a fund for responding to loss and damage?

The LDF should have an international legal personality and legal capacity and enjoy privileges and immunities.

6. What are the arrangements for the fund's governance in terms of composition, tenure, chairpersonship, decision-making, roles, and functions?

Composition of fund governance: board with equitable representation (majority of developing country representatives, regionally balanced and gender-balanced with dedicated seat(s) for LDCs and SIDS AND representation with voice and vote for non-party stakeholders representing affected developing country communities and population groups

Tenure: three-year term once renewable, with rotating/partial changes every one to two years to ensure knowledge is retained and passed on

Chairpersonship: co-chairpersonship of developed and developing countries, selected by their respective constituencies

Decision-making: priority of decision-making as consensus, but with options for potential voting as a last resort. Depending on the frequency of Board meeting (an on whether this would be a sitting Board or an intermittently convening Board (for a yet to be specified number of meetings per year), with infrequent meetings, procedures for decision-making in between meetings would have to be established (either as active or passive = absence of objection procedure)

Roles and Functions of the LDF Board:

- The LDF board will govern and provide supervision over the LDF and be responsible for all its funding decisions in line with the fund's criteria, principles, policies and programs. T
- It should approve all operational policies, guidelines and procedures, access modalities and funding cycle and structures, including for programming, the fund's administration and its financial management. I
- The LDF Board should be able to establish, add or modify funding windows or substructures, including committees and panels, as needed. T
- It will appoint the head of the LDF Secretariat. I
- It will also develop working and coordination arrangements with other relevant bodies under the Convention (including the WIM and the other operating entities of the financial mechanism) and other relevant international institutions outside of the UNFCCC as part of the LDF's role in catalyzing and coordinating financial support to developing countries to address loss and damage throughout the evolving loss and damage finance landscape. I

7. What are the thematic windows of the fund?

The LDF should start out initially with three distinct funding windows, each with differentiated **'fit-for-purpose' programming modalities** and application procedures to be developed in order to be responsive to the needs of recipient countries and affected communities, the time-frame of needed responses, and to specifically address shortcomings and apply lessons learned from existing funding mechanisms. These are

- 1) a **rapid or disaster response window** to provide quick release funding in the aftermath of climate disasters;
- 2) a **medium to long term window** to cover slow-onset events and medium to longer term funding following climate disasters, to provide funding for longer-term loss and damage planning and policy framework and support transformative programming (such as permanent relocation or a just transition to alternative livelihoods);
- 3) a **micro/small-grant window** to allow for direct access for subnational and local actors, in particular affected communities and civil society organizations working directly with them for both fast-response and slow-onset activities.

The LDF decision-making body could add, modify or remove additional windows or substructures as needed.

8. What will the arrangements for the secretariat be? Independent or administrated by an existing international entity? Which institution will serve as the Trustee?

Secretariat: An independent secretariat, headed by a manager/director appointed by and accountable to the Board, should be set up to run the day-to-day operations of the LDF with sufficient professional staff with relevant technical, administrative and financial expertise and aiming for gender-balance. Drawing on lessons learned, the diversity of staff backgrounds and experiences is crucial, particularly for understanding the lived experience of affected communities in developing countries.

- The LDF secretariat will liaise with the members of the Board, implementing partners and recipient countries, as well as with cooperating national, bilateral and multilateral institutions and agencies; it will operationalize programming and funding cycle processes and carry out monitoring and evaluation.
- **Of particular importance to ensure that the LDF is a learning institution that grows and improves would be the establishment of 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.**

Trustee: in line with the trustee service provided to other operating entities under the financial mechanism as well as other UNFCCC funds, the World Bank Trust Fund Unit could serve as the initial trustee for the LDF (this is a purely technical, not political function), pending a review and/or competitive search process for a permanent trustee after several years of functioning). .

9. Who is eligible to access the fund and what are the access and delivery modalities?

Eligibility: All developing country Parties to the Convention and the Paris Agreement should be eligible to receive resources from the LDF to cover documented economic and non-economic losses and damages, irrespective of whether any developing country voluntarily contributes to resource mobilization efforts of the LDF and at what scale. Eligibility should not be determined or differentiated by income classifications used outside of the UNFCCC.

Access and delivery modalities:

- Recipient countries' engagement with the LDF should be through a designated national agency or body. This could be either existing designated authorities or focal points already registered with other climate funds, WIM loss and damage contact points or ideally broader country coordinating mechanisms that would bring together different stakeholders both governmental and non-governmental, and including representation from civil society and local communities. These designated national bodies would be responsible for approaching the fund with all funding requests under the disaster response and slow onset windows.
- The LDF should **provide simplified access to funding**, allowing for both international access (through international entities such as UN agencies or internationally operating development, disaster relief or humanitarian assistance organizations) and direct access (through subnational and local, national and regional entities) as needed and requested by recipient countries and communities. To the extent possible, direct access, including through the consideration of the LDF Board of additional modalities that further accelerate and enhance direct access, should be prioritized. Access features could be differentiated for different windows.
- **For the disaster/fast response window**, access would not require countries to work through accredited entities. Instead, a country's request for funding could be triggered by the requesting country's declaration that a "loss and damage event" has occurred in line with agreed criteria determined by the LDF and verified, within an agreed time window, in each specific case by a set of independent technical experts in a panel appointed by the LDF Board. Such agreed criteria (which would have to be regularly reviewed and updated, as knowledge and a shared understanding of loss and damage events grows) could include parametric triggers. In line with the principle of country ownership, the recipient country government would receive the funding released **as direct budget support** to aid in immediate relief, recovery and rehabilitation efforts. In developing countries that have already set up relevant structures, such as national climate change trust funds or disaster relief funds, the transfer could be channeled to those existing national structures at the recipient country's request.
- **For access to the LDF's slow-onset window**, funding requests should be for programmatic funding approaches to the extent possible to prevent isolated projects based on a country programme or investment plan. Countries would actively select their implementation partner from existing international and direct access entities already accredited and in good accreditation standing with the GCF, GEF and AE (and in accordance with the risk, scale and fiduciary implementing capacities of those entities as verified through prior accreditation with either or several of these funds). Recipient countries might also nominate for accreditation with the LDF other entities (both international and direct access ones), which would then go through an LDF accreditation process based on specific criteria, including fiduciary standards and environmental and social safeguards, with prioritization for national entities. Direct budget support under the slow-onset window could be explored, for example channeled through

national climate change trust funds with which the LDF would have special cooperation agreements or memoranda of understanding. To simplify and speed up funding approval procedures, funding support could be standardized or pre-approved for specific activities and measures, such comprehensive loss and damage needs assessments. The LDF Board could also devolve funding decisions up to a specific amount and for specific activities to the Secretariat or Board committees to accelerate funding release.

- **For access to the micro/small grant community window**, the LDF should set aside a specific allocation of available funding annually for enhanced direct access for communities and directly affected people, ensuring inclusivity and equity for particularly marginalized population groups, for slow-onset related activities, including specifically for non-economic loss and damage, to be channeled through the small program window of the LDF. Funding for slow-onset activities for communities, ideally following a template approach to speed up processing times, would be released through the Secretariat. Such support should build on best practice experience of existing small grant funding programs such as the Dedicated Grant Mechanism for Indigenous Peoples and local communities under the Forest Investment Program or the GEF-UNDP Small Grants Programme, where at country-level some community-led coordinating mechanisms are set up which can make funding decisions on small grants. The LDF could also explore the extent to which they would channel funding through some of these existing structures through cooperation agreements with other funds. In fast response to disasters, a minimum percentage of approved LDF funding for the recipient country following a designated loss and damage event (with the minimum to be determined by the LDF Board) should be channeled as small grant or direct cash support directly to affected communities via the LDF small program window either through established community-led country-coordinating mechanisms or through accredited small-grant funders or humanitarian organizations.

10. What instruments will the fund deploy to support the projects/programmes?

All instruments should be in accordance with the principles of the Convention and the Paris Agreement including equity, historical responsibility and polluter pays; respective capability. All funding should be new, additional, predictable, precautionary and adequate and provided in response to needs and best available science.

Therefore, The LDF should **provide funding exclusively in the form of grants, including by prioritizing full cost grants**. Requiring incremental cost approaches, as the GCF and GEF currently do, and related complex methodologies (a 'climate rationale' approach to either differentiate a funded activity from development finance or adaptation approaches) would be burden-some on recipients in light of continued data and capacity gaps and lingering definitional uncertainty around activities to address loss and damage.

Loans are not appropriate for loss and damage as they do not meet the principles of equity, they further the debt burden of vulnerable countries, and add to the debt repayments currently limiting vulnerable countries ability to undertake climate action..

Likewise private sector solutions that prioritise profit making and require vulnerable people to pay premiums, such as insurance, have no place in addressing loss and damage in an equitable way.

11. What are the sources of the fund?

It is crucial that loss and damage finance is provided in line with the principles of the Convention and the Paris Agreement including equity, historical responsibility and polluter pays; respective capability; funding should be new, additional, predictable, precautionary and adequate and provided in response to needs and best available science.

Primary input to the fund should be from developed country Parties to the Convention and the Paris Agreement as public grant resources (you need grant input to provide grant funding support); developed country financial inputs. The fund could also receive inputs from other sources, public (voluntary contributions from sub-national actors or developing countries) or private (such as philanthropic) as well alternative sources (including from taxes and levies). Non-public (for example philanthropic) contributions will not result in a representation on the Board, nor does the scale of the contribution determine representation or vote.

Secondly, in order to raise the scale of finance necessary, alternative sources of finance - that meet the principles of fairness and predictability, and are based on a polluter pays principle and applied to those that can afford it by governments - should also be implemented. Many of these sources of finance can simultaneously help tackle the climate crisis by tackling the source of climate pollution. By implementing a range of taxes and levies on industries, such as the fossil fuel industry and international shipping, and activities, such as a frequent flyer levy, or a wealth tax, a significant portion of loss and damage finance could be predictably generated for the LDF.

12. What are the mechanisms for multi-stakeholder engagement in the fund?

An LDF Charter or Governing Instrument should stipulate that effective and inclusive participation of all relevant stakeholders – specifically from affected local communities and including civil society organizations, groups that have been made vulnerable through historic marginalization such as women, Indigenous Peoples, and persons with disabilities, and youth – in the design, development and implementation of the strategies, policies and activities to be financed by the LDF should be promoted and secured, including through the development of appropriate mechanisms at the Fund and recipient country levels and adequate access to information.

At the Board level, the voting representation of these groups through self-selection should be assured.

The Secretariat, if so decided by the Board, could set-up and host special advisory groups to guide the development of relevant policies and framework for consideration by the Board, such as on gender or Indigenous Peoples. It could also develop rosters of local experts from communities and civil society to help with readiness and capacity building support.

In recipient countries, broad stakeholder participation should be ensured in country coordination efforts on loss and damage finance, especially with respect to long-term planning and the articulation of funding needs and priorities, by building on existing coordination entities or distribution mechanisms (such as the existing liaisons of designated authorities or focal points with the GEF, GCF or AF or existing

national implementing entities already accredited with those funds) and in coordination with the SNLD, and relevant bodies and institutions at the national level such as national human rights institutions, gender mechanisms etc.. The aim for the LDF should be to be able to engage with true country coordination mechanisms, such as those modeled for example by the Global Fund