Climate Funds Update

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LOSS AND DAMAGE FUND

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The decision at COP28 in Dubai, United Arab Emirates, adopting a governing instrument for a new Loss and Damage Fund (LDF),[1] was the latest and most significant milestone after decades of advocacy efforts by developing countries to push for financial support to help them respond to and address increasingly catastrophic loss and damage resulting from the adverse effects of climate change. The new Fund will function under the guidance of and be accountable to Parties under the UNFCCC and the Paris Agreement as an operating entity of the financial mechanism, but is to be set-up as a financial intermediary fund (FIF) under the World Bank, which will host its new, dedicated independent secretariat and provide trustee services for at least an interim period. Since January 2024 an Interim Secretariat with UNFCCC, GCF and UNDP staff has been active, providing support for the 26 new LDF Board members with equitable and regionally balanced representation of developed and developing countries. With the first Board meeting scheduled for end of April 2024, already several months behind schedule, the new Board faces a tough first-year workplan in order to comply with a number of deadlines by COP29, chief among them the conclusion of the hosting agreement with the World Bank. A failure to finalise this agreement would trigger the process for the LDF to become a standalone fund. Other key priorities include securing the Fund's and Board's respective legal personality as prerequisite for the LDF's full functioning and setting core operational policies for the Fund, including simplified and unbureaucratic access modalities and allocation parameters to deliver funds with urgency to vulnerable countries and marginalised communities by building on key lessons learned from other climate funds. While COP28 delivered some USD 661 million in initial pledges to the Fund, the Dubai decision did not include any agreement on how adequate and sustained funding for the LDF will be secured, indicating instead that all contributions will be voluntary. Without a substantial initial capitalisation and long-term resource mobilisation strategy, there is the danger that the LDF could have well articulated operational policies, but could remain a largely empty shell.

Introduction

The Intergovernmental Panel on Climate Change (IPCC) as part of its Sixth Assessment Report (AR6) in its 2022 report on impacts, adaptation and vulnerability (IPCC, 2022) highlights scientific consensus that the negative effects of human-caused climate change that occur despite mitigation and adaptation effort with often irreversible impacts cause both economic and non-economic losses and damages, including loss of lives, livelihoods, culture or biodiversity.

The costs of already occurring economic and non-economic losses and damages are staggering. By some estimates they could reach USD 447-894 billion per year by 2030 for developing countries alone (Richards et al., 2023). 2022 and 2023 saw global heat records broken and extreme weather incidents escalating, including large-scale events such as the 2022 flood in Pakistan impacting 33 million people and displacing eight million, devastating droughts and famine on the Horn of Africa, wildfires and ever more powerful cyclones and storms. Escalating climate losses and damages are exacerbating already high sovereign debt levels in developing countries, especially in Small Island Developing States (SIDS) and Least Developed Countries (LDCs), where the impact of climate disasters and the cost of reconstruction can overwhelm economies, setting back development prospects.

Developed countries have long resisted significant progress on negotiations for financing to address loss and damage caused by the adverse impacts of climate change (Richards et al., 2023). The UN Framework Convention on Climate Change (UNFCCC) was established without including loss and damage explicitly. Incremental progress over the years saw key milestones, such as the agreement at COP19 to establish the Warsaw International Mechanism (WIM) and an Executive Committee (ExCom). The WIM's function is to promote comprehensive and integrated approaches to assist developing countries with knowledge enhancement on comprehensive risk management approaches to address loss and damage, strengthen dialogue and coordination among relevant stakeholders and enhance action and support, including finance, technology and capacity bulding, with the ExCom, with the support of thematic expert groups, guiding the implementation of those function through five-year workplans.[2] In 2015, loss and damage was recognised in the Paris Agreement with its own Article 8, but with developed countries excluding financing for loss and damage from their obligations around the provision of climate finance contained under the Paris Agreement's Article 9 (UNFCCC, 2015). Subsequent reviews of the WIM acknowledged the urgency of enhancing financial support and established the Santiago Network on Loss and Damage (SNLD) to catalyse technical assistance for developing countries that are particularly vulnerable to the adverse effects of climate change to avert, minimise and address loss and damage at national, subnational and local levels, but did not make process on creating a financial arm under the WIM to implement or identify any sources of finance or financial instruments with a mandate to address loss and damage in response to the growing needs of developing countries and affected communities.

The decision from COP27 in Sharm El-Sheikh, Egypt, to establish broader funding arrangement and a fund for responding to loss and damage under both the COP and CMA, coming after many years of advocacy, addresses finance provision and delivery as a core missing element of the loss and damage architecture under the UNFCCC and is thus a critical step in helping to redress inequities in the global climate regime and ensuring the full implementation of the Paris Agreement (UNFCCC, 2022a and 2022b). This note[3] describes some of the main mandates of the LDF Governing Instrument and their implications, as well as the process and challenges going forward to operationalise and capitalise the LDF as quickly as possible.

The LDF Design Process and COP28 Decision

At the end of 2022, COP27 and CMA4 agreed to establish a Loss and Damage Fund (LDF) as part of wider funding arrangements to respond to loss and damage. Decisions 2/CP.27 and 4/CMA4 called for a 24-member Transitional Committee (TC) with ten developed and 14 developing country members to elaborate recommendations for establishing institutional arrangements, modalities, structure, governance and terms of reference for the fund, as well as define elements of new funding arrangements, identify and expand sources of funding, and ensure coordination and complementarity with existing funding mechanisms (UNFCCC, 2022a and 2022b). After a year-long TC process, with five meetings, two workshops, a dialogue and two high-level or ministerial meetings, COP28 and CMA5 considered and adopted the TC recommendations agreeing to operationalise the LDF surprisingly at the first day of the Dubai meeting. Decisions 1/CP.28 and 5/CMA.5 (UNFCCC, 2023) contained the cover decision text and two annexes, one with a governing instrument for the new Fund (Annex I of the decision, Governing Instrument (GI)), highlighting key elements of its governance and operating modalities, and a second annex on funding arrangements (Annex II of the decision, Funding Arrangements (FA)).

While the adoption of decisions 1/CP.28 and 5/CMA.5 was widely celebrated as key building block for a successful COP28 outcome, in the eyes of many observers the agreed LDF is far from perfect. They question whether the Fund is 'fit-for-purpose' to deliver climate justice to impacted local communities and often marginalised people in developing countries already suffering from catastrophic and compounding losses and damages. Core concerns centre on the institutional placement of the LDF as a World Bank-hosted Financial Intermediary Fund (FIF) with World Bank support for a new dedicated independent Secretariat, at a minimum for an interim period of four years pending fulfillment of a set of conditions. This was highly contested in the TC process. Developing countries feared that the involvement of the World Bank would weaken the Fund's relationship to the climate regime, its accountability to Parties and compliance with UNFCCC mandates and obligations, including on finance provision. In contrast, developed countries argued that with the support of the World Bank the Fund could be operationalised faster and would attract more finance support. However, the TC process failed to secure a commitment by developed countries to lead in capitalising the new Fund beyond initial contributions, which like all financial support for the Fund is seen as purely voluntary. This carries not only the risk that the LDF remains an empty shell, but has also serious repercussions for ongoing climate finance negotiations under the Paris Agreement, including for a new collective quantified goal on climate finance (NCQG) to be agreed by COP29 for the post-2025 period. Further shortfalls include a lack of guidance in its GI to ensure the Fund will operate in compliance with human rights, a lack of indicative scale of finance to be provided, and no acknowledgement of the cost of loss and damage developing countries are already experiencing, which they currently address primarily with domestic efforts, including by aggravating indebtedness.

The LDF Governing Instrument and its Operationalisation

The GI covers the governance and institutional arrangements of the new Fund, detailing its legal status, the composition and functions of its Board and its initial rules of procedure, the Secretariat and its role and functions, and the trustee (GI, section III). The GI mandates streamlined operational modalities (GI, section IV), and broad guidance on eligibility, country ownership and access (GI, section V), financial inputs and instruments (GI, sections VII and VIII), allocation of funding (GI, section IX), monitoring and evaluation (GI, sections X and XI), fiduciary standards and environmental and social safeguards (GI, sections XII and XIII) and on accountability mechanisms (GI, section XIV) as well as on complementarity and coherence (GI, section VI). However, the GI only provides the core structure, the skeleton, of the Fund. The full body of operational policies, frameworks and procedures necessary for its functioning are yet to be set by its new 26-member Board as it starts convening end of April 2024. Given the urgency of addressing loss and damage experienced around the world, and to ensure that the LDF establishes itself quickly as a competent institution, the first year – and the ambition of the workplan that the new Board will set for itself, will be closely watched.

Objectives, purpose and scope

Throughout the TC process, developed and developing countries articulated very different visions regarding the scope, objectives and purpose of the new Fund. Developed countries had argued consistently that the Fund should focus on addressing a limited number of priority actions, such as non-economic loss and damage or climate-induced human mobility and for a limited number of developing countries deemed particularly vulnerable, which they saw as important gaps currently not adequately covered by a broader landscape of institutions and processes in responding to loss and damage. This view reflected the understanding that under the existing 'mosaic' of institutions and actors already a lot was happening to respond to loss and damage (Transitional Committee, 2023a). Developing countries on the other hand asked for comprehensive coverage from rapid response after climate-related emergencies, and after immediate humanitarian support ended, to addressing rehabilitation, recovery and reconstruction in the medium- to long-term and preparing for and dealing with slow onset events. In this understanding, the current landscape of funding arrangements falls significantly short of addressing loss and damage.

On objective and purpose, the Dubai decision reproduces the language of paragraph 1 in Sharm El-Sheikh decisions 2/CP.27 and 2/CMA.4 (UNFCCC, 2022a and 2022b). The core elements include that the LDF has a broad remit to provide a new channel for multilateral finance "[g]iven the urgent and immediate need for new, additional, predictable and adequate financial resources to assist developing countries that are particularly vulnerable to the adverse effects of climate change in responding to economic and non-economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, especially in the context of ongoing and ex post (including rehabilitation, recovery and reconstruction) action" (GI, paras.2 and 3).

Compromise language in the GI provides an indicative, but not exclusive list of challenges that the LDF might provide funding for, such as climate-related emergencies, sea level rise, displacement, relocation, migration, insufficient climate information and data, and the need for climate-resilient reconstruction and recovery (GI, para.6), while subsequent paragraphs try to prescribe financial provision with reference to a "focus on priority gaps with the current landscape of institutions", clarifying that such support will be "complimentary and additional" (GI, para.7), for example "complementary to humanitarian actions taken immediately after an extreme event" (GI, para.8). Support from the Fund "may include developing national response plans; addressing insufficient climate information and data; and promoting equitable, safe and dignified human mobility in the form of displacement, relocation and migration in cases of temporary and permanent loss and damage" (GI, para.9).

Throughout the TC negotiations, scope and potential structure of the new Fund had been linked by TC members, and differing visions among developed and developing country members proved contentious. The GI adopted in Dubai only partially resolves some of the differences and delegates further decisions in particularly on Fund structure to the Board, which has the right and function to "[e]stablish additional thematic substructures to address specific activities, as appropriate" (GI, para.22(k)). This reflects the disagreement in the TC between a set of articulated thematic funding windows all drawing from the same joint funding pot that developing countries wanted and the more structured approach of differentiated sub-funds each with its separate eligibility, access and programming features that developed countries suggested and which would have made it possible for contributors to earmark financial inputs to a specific sub-fund. With the language in the GI vague, the Board retains the flexibility to set up targeted windows and funding programmes as needed, including to focus on community access, but should not establish sub-funds that could lead to imbalanced and biased funding allocation reflecting contributor preferences over recipient countries' and communities' priorities and needs.

Human rights and gender responsiveness

The COP28/CMA5 decision to operationalise the new Fund lacks a clear commitment to human rights in the GI beyond a reference to gender-responsiveness in its section on objectives and purpose (GI, para.5). This is not compensated by inclusion of the existing Paris Agreement preambular language reminding parties, when taking climate actions, to respect, promote and consider their respective obligations on human rights in the Dubai decision's own preambular language, which also added a reference to the recently universally recognised "right to a clean, healthy and sustainable development" (UNFCCC, 2023). The framing of the Fund's purpose and goal of providing funding to developing countries and affected local communities, including vulnerable population groups, thus lacks a clear human rights-based approach. Explicit references to human rights can still be incorporated into modalities, frameworks and policies as they are developed. This will depend on targeted advocacy efforts and sustained and meaningful engagement of rightsholder groups such as women, children and youth, Indigenous Peoples, persons living with disabilities, migrants, other marginalised groups and local communities in LDF Board proceedings in 2024 and beyond to anchor human rights obligations for all LDF operations and funded actions.

The GI includes several explicit references on gender, including taking into account gender balance in the LDF Board (GI, para.19) and among the staff of its dedicated and independent Secretariat (GI, para.32). Women, youth, and Indigenous Peoples are also referred to explicitly as core stakeholder groups to be involved in Board proceedings, including as active observers (GI, para.20), in Fund-wide stakeholder participation mechanisms (GI, paras.28 and 29), and as relevant for determining country-led programming approaches (GI, para.43). However, it does not foresee the development of an LDF specific gender policy or Indigenous Peoples policy, such as for example in the Adaptation Fund (AF) or Green Climate Fund (GCF). Such fund-level policies would apply to all Fund activities, not just its funding operations, in efforts to also shape participation, outreach, communication and engagement in broader fund operations with the goal to respect, protect and promote human rights and advance substantive equality through the application of an intersectional lens. Instead, as outlined in the GI, the concerns of distinct population groups such as women and diverse gender groups, Indigenous Peoples, children and youth, climate migrants or people living with disabilities are primarily considered through a 'do not harm' lens via environmental and social safeguards (ESS) in the implementation of funded activities.

Financial inputs and scale

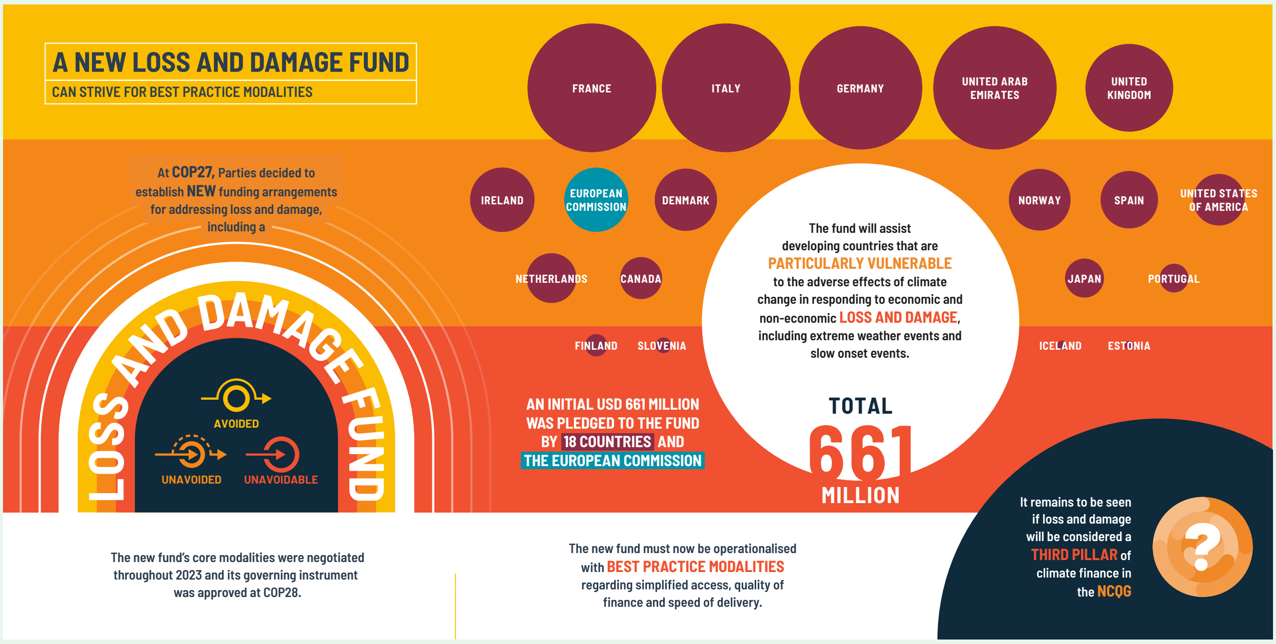
The GI notes the "urgent and immediate need for new, additional, predictable and adequate financial resources" for economic and non-economic loss and damage from extreme weather events and slow onset events, and goes on to identify that the purpose of the Fund includes mobilising external finance and providing a new channel for multilateral finance (GI, para.3), but indicates no intended or minimum scale for the new Fund. An effort by developing countries to insert language during the TC process in the GI requesting that the Fund should be able to programme at least USD 100 billion a year as an initial commitment, to be increased over time, had failed due to developed countries' resistance. They had argued that the scale of the new Fund was not part of the TC's mandate and thus not under the scope of the negotiations under the TC.

Instead, paragraph 56 of the GI now tasks the LDF Board to prepare a long-term "fund raising and resource mobilisation strategy" to mobilise "new, additional, predictable and adequate financial resources from all sources of funding" including public, private and innovative sources (GI, paras.22(p), 54 and 56). The GI notes that the Fund will have periodic replenishment every four years but will also have the flexibility to receive financial inputs on an ongoing basis (GI, para.56).

During COP28, some 18 countries and the European Commission made commitments worth USD 661 million to the Fund (which top contributions by Italy, France, Germany as well as the United Arab Emirates), which the Dubai decision welcomed. While these pledges need to be speedily paid in, they were made in the spirit of "kicking off" the operationalisation of the Fund, including the USD 200 million in grants necessary as the minimum contribution for establishing a World Bank-hosted FIF (World Bank, 2022a). Additional funds are urgently needed to enable programming at the scale required. As some research has suggested, loss and damage needs of developing countries are already in the order of USD 400 billion a year (Richards et al., 2023).

Throughout the TC process, developing countries had argued that commitments to the LDF should be guided by the principles of the Convention - including the principle of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC) and polluter pays and with it the obligation of developed countries under the Convention and broader international law to provide finance to address the impacts of the climate pollution they are responsible for. Developed countries disputed a funding obligation for addressing loss and damage, and succeeded in reflecting this reading in the COP/CMA decision which urges developed countries to provide support and invites them to take the lead in providing financial resources, and also encourages other countries to do so, however clarifying that contributions are understood as 'voluntary' (GI, paras.12 and 13). They also anchored a

Figure 1: Initial Pledges received for the LDF during COP28



Source: 10 Things to know about climate finance in 2024; available at: https://climatefundsupdate.org/wp-content/uploads/2024/04/hbs-10things2024-22mar_final.pdf passage in the preambular section of the adopted decision reiterating the understanding from Sharm El-Sheikh that "funding arrangements, including a fund, for responding to loss and damage are based on cooperation and facilitation and do not involve liability or compensation".

GI language in the respective section on financial inputs (GI, paras.54-56) only confirms in paragraph 54 that "[t]he Fund is able to receive contributions from a wide variety of sources of funding, including grants and concessional loans from public, private and innovative sources, as appropriate", with a corresponding footnote requested by developing countries that this paragraph does not prejudice ongoing or future negotiations, understandings and interpretations under the Convention and the Paris Agreement (for example with respect to the NCQG). The COP/CMA decision and GI also draw a link to the determination of the World Bank as interim trustee as part of the FIF-hosting agreement. The stipulations "that the Fund can receive contributions from a wide variety of sources, in line with due diligence considerations" (Decision, para.20(i)), such as from philanthropic foundations and other non-public and alternative sources (GI, para.39), which then the World Bank is permitted to invest "on the capital markets to preserve capital and general investment income, in line with due diligence considerations" (Decision, para.20(h)) referencing the World Bank's trustee role are part of the 11 conditions laid out for the World Bank to meet under a FIF-hosting agreement.

The overall language on financial inputs in the LDF is a clear retreat from a much more obligatory language that was agreed for the GCF Governing Instrument in 2011 pre-Paris Agreement (GCF, 2011), which clearly articulated in its paragraph 29 that the GCF "will receive financial inputs from developed country Parties to the Convention" as the primary financial input while allowing that it "may also receive financial inputs from a variety of other sources, public and private, including alternative sources" in addition.

Institutional arrangements

One of the most contested issues in the TC process was whether the LDF would be operationalised as an independent, standalone institution (such as the GCF) or whether its Secretariat would be hosted by an existing organisation, drawing on its institutional capacity for example for secretariat services. Despite grave reservations from many developing countries, compromise language adopted at COP28 (Decision, para.17) invites the World Bank to operate as the host for the FIF and the new dedicated and independent Secretariat of the LDF and serve as its trustee (Decision, para.15) for an interim period of four years, and potentially as a permanent solution (Decision, para.17), provided it meets a set of 11 conditions (Decision, para.20(a)-(k)). They are designed to ensure that the LDF remains in compliance with the principles and requirements under the UNFCCC and Paris Agreement, is accountable to the COP and CMA and will receive annual guidance from Parties.

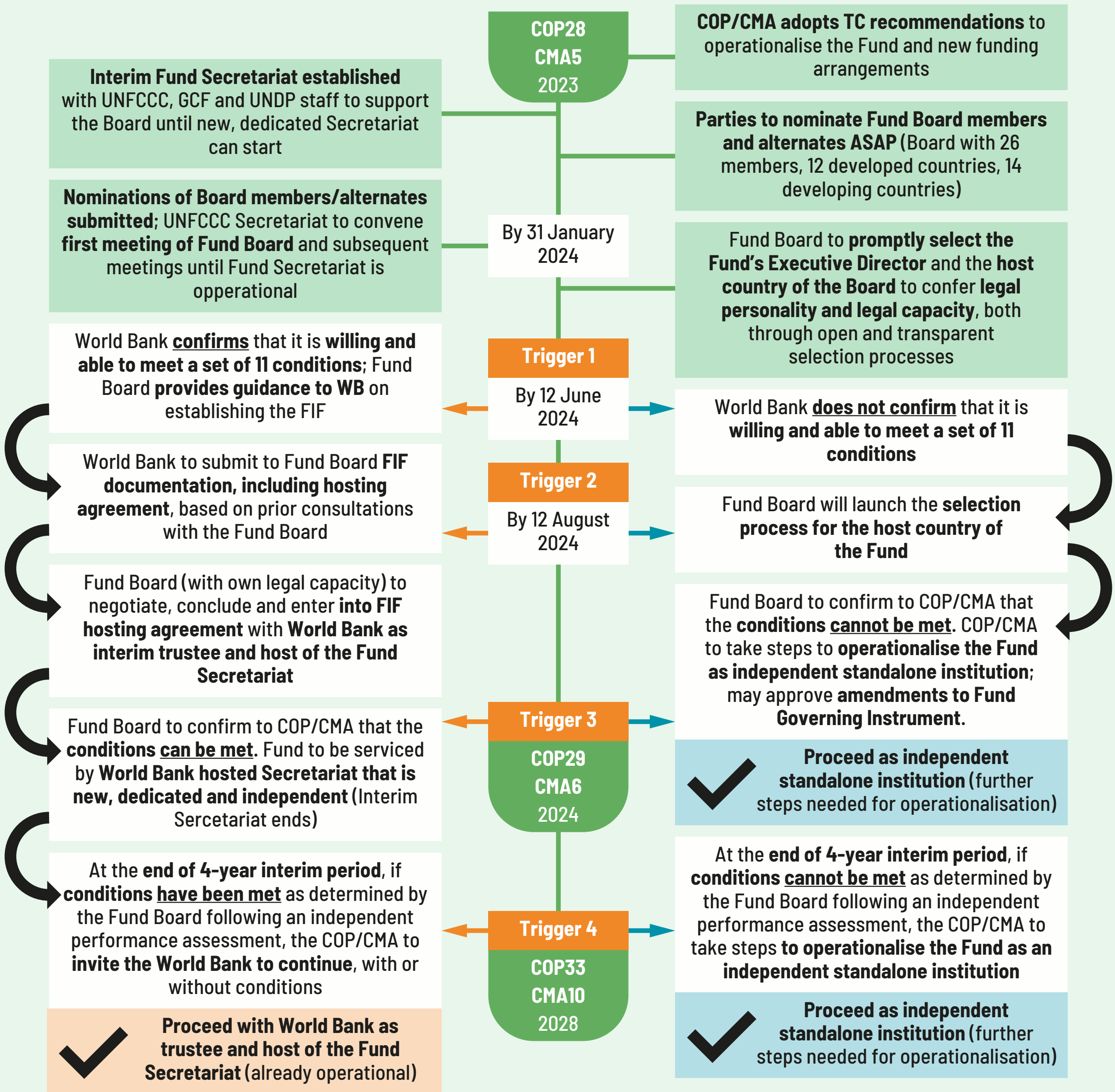
Reservations stem from the fact that these principles and requirements under the UNFCCC and Paris Agreement are different from, and in some cases directly in contrast to the World Bank FIF policy directive and procedure and the FIF framework (World Bank, 2019, 2022a and 2022b), and thus the usual engagement practice of the World Bank in agreeing to host a FIF, such as the requirement to allow for direct access of recipient country entities to the Fund.

The World Bank must confirm that it is willing and able to meet these conditions by 12 June 2024, and thus within six months after COP28 (Decision, para.21). The Board is to provide guidance to the World Bank as it takes the steps needed to establish a FIF (Decision, para.25). If the World Bank is unwilling to meet the conditions, then the LDF Board will begin the process of selecting a host country for the Fund as a requirement for an independent, standalone fund following confirmation by COP29/CMA6. If the World Bank does accept the conditions, it has to submit the relevant documentation for the FIF-hosting agreement to the LDF Board by 12 August 2024, and thus within eight months after COP28 (Decision, para.19). If the LDF Board determines that the World Bank with its documentation submitted will not meet the conditions laid out, it will report this to COP29/CMA6, which then will undertake steps to operationalise the Fund as an independent, standalone institution, such as approving amendments to the LDF's GI (Decision, paras.21 and 22). If the LDF Board confirms to COP29/CMA6 that its FIF hosting agreement with the World Bank can meet all conditions, then the four-year interim hosting period begins post COP29. Finally, if following an independent performance assessment after four years in 2028 the Fund's Board determines that the World Bank in fact has met all of the conditions in paragraph 20, COP33/CMA10 in 2028 would "invite the World Bank to continue operationalising the Fund as a FIF, with or without conditions, as appropriate" (Decision, para.24), and thus make the hosting of the LDF by the World Bank permanent. The timeline and required "if-then" considerations, triggers and actions for a World Bank-hosted LDF are mapped out in Figure 2.

The rationale behind the length of the transition period is that after four years all operational policies and procedures of the LDF and their interaction and compatibility with World Bank policies and procedures required under the FIF-hosting arrangement would be tested. These include core stipulations and guarantees for developing countries such as allowing "all developing countries to directly access resources from the Fund, including through subnational, national and regional entities and through small grants funding for communities" (Decision, para.20(e)); the full consistency of FIF-hosting requirements with the LDF GI (Decision, para.20(a)), in particular the ability of Fund to use its own eligibility criteria (Decision, para.20(c)) and allow non-World Bank members such as Cuba access to funding without interference by the World Bank's Board of Directors (Decision, para.20(g)); and assurance that the GI supersedes World Bank policies in instances where they differ (Decision, para.20(d)).

Concerns have been raised about the significant costs charged by the World Bank for hosting the Secretariat of the new Fund. In addition to staff costs (as all LDF Secretariat staff would be technically World Bank employees), the World Bank would charge at minimum 17% of the operational costs

Figure 2: Mapping the timeline and required action for a World Bank hosted LDF Secretariat



Source: Heidi White and Liane Schalatek; available at: https://us.boell.org/en/media/image/mapping-timeline-and-required-action-world-bank-hosted-ldf.

of the hosted LDF Secretariat (TC, 2023b), and could charge as much as 24% in administrative fees, based on its policy of 'full cost recovery' and the experience shared by existing World Bank-hosted FIFs such as the Global Partnership of Education (GPE). The GPE experience also saw the independence of its own Secretariat weakened by World Bank policies as well as a loss of identity as an independent institution, instead being perceived as a World Bank fund (Archer, 2023). While the Dubai decision tries to minimise excessive administrative fees by requiring that in hosting the LDF Secretariat the World Bank "[e]nsures a cost recovery methodology that is reasonable and appropriate" (Decision, para.20(k)), the LDF Board will have to guarantee that the independence of its Secretariat is safe-guarded in day-to-day operations and that the LDF builds a strong identity with a public seeing is as a fund operating under the UNFCCC and serving the Paris Agreement, not as a World Bank entity.

Legal status

The COP/CMA decision indicates an expectation that as FIF of the World Bank, "the Fund will operate through the legal personality and legal capacity of the World Bank, and the privileges and immunities of the World Bank will apply to the officials, property, assets, archives, income, operations and transactions of the Fund" (Decision, para.18). Including this stipulation in the FIF-hosting agreement will be very important to ensure that there is clarity regarding who assumes the liability for the Fund's actions, assets and operations. During the TC process, the assurance that this liability is taken on by the World Bank through the FIF-hosting arrangements was relevant to persuading reluctant TC members to agree to this set-up. However, the hosting does not provide legal personality to the LDF Board, nor to the Fund as a separate international entity. Both are issues that developing countries were very concerned about in TC negotiations and that some provisions of the Dubai decision seek to address.

The GI confers that the Fund will have international legal personality and appropriate legal capacity "as is necessary for the exercise of its functions, the fulfillment of its objectives and the protection of its interests, in particular the capacity to enter into contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings in defense of its interests." The Fund itself, and its officials in the Fund Secretariat "will enjoy such privileges and immunities as are necessary" for the fulfillment of the Fund's purpose as well as for the independent exercise of the official duties of the Secretariat staff (GI, para.10).

In order to operationalise this requirement, two separate but interwoven arrangements are necessary, namely the set-up of a World Bank-hosted FIF (Decision, paras.18 and 20(j)) and a host country for the Board (Decision, paras.15-16).

The decision text in paragraph 15 stipulates "that the Board of the Fund will be conferred with legal personality and capacity as necessary for the discharge of its roles and functions". This is necessary for the Board in order to have "the legal capacity to negotiate, conclude and enter into a hosting agreement with the World Bank as interim trustee and host of the Fund secretariat". The LDF Board is to receive such legal personality and legal capacity through a host country to be selected by the Board "through an open, transparent and competitive process" (Decision, para.16). This would go further than prior practice of the Adaptation Fund Board, which only received its legal capacity, but not international legal personality through an act by the German parliament (Adaptation Fund, 2011).

Having a separate legal personality for the Board is also required to assure the LDF Board's ability to operate independently under the guidance of parties under the UNFCCC (COP) and the Paris Agreement and its signatory parties (CMA) in accordance with the Fund as an operating entity of the financial mechanism of the UNFCCC and Paris Agreement.

The timeframe for securing legal personality is a very tight, leaving only essentially just ten months post COP28 (until November 2024 when COP29/CMA6 is to take place), for the LDF Board to constitute itself and convene in likely several meetings needed (with a first LDB Board meeting scheduled at the end of April 2024) to formally start the process for a host country for the Board, select it and have the host country confer legal personality and legal capacity to the Board as the prerequisite for the LDF Board to be able to enter into legal contracting with the World Bank for the hosting agreement (after the World Bank submits a hosting agreement to the Board by 12 August 2024). And should the World Bank fail to confirm its willingness and ability to met the conditions for hosting the LDF by 12 June 2024 as required (Decision, para.21), then the LDF Board would have to launch the selection process for a host country for the Fund to ensure that the Fund has international legal personality and appropriate legal capacity to fulfill its functions and objectives (GI, para.10).

Relationship to the UNFCCC and Paris Agreement

Developing countries throughout the TC process had argued for the LDF to become an operating entity of the UNFCCC Financial Mechanism under Article 11 of the Convention text, and serving in the same function under the Paris Agreement. They saw it as an important confirmation for the status of the new fund and a signal for the importance of funding to address loss and damage, as well as providing some safeguards that it would operate in line with the principles and provisions of the Convention, chief among them the common but differentiated responsibilities and respective capabilities (CBDR-RC) and equity, particularly if its secretariat is hosted by the World Bank. Developed countries had opposed this, calling such a designation unnecessary for the new Fund and its relationship with governing bodies under the climate regime. Several of them sought to limit the relationship of the LDF to the Paris Agreement and its signatory parties (CMA) only.

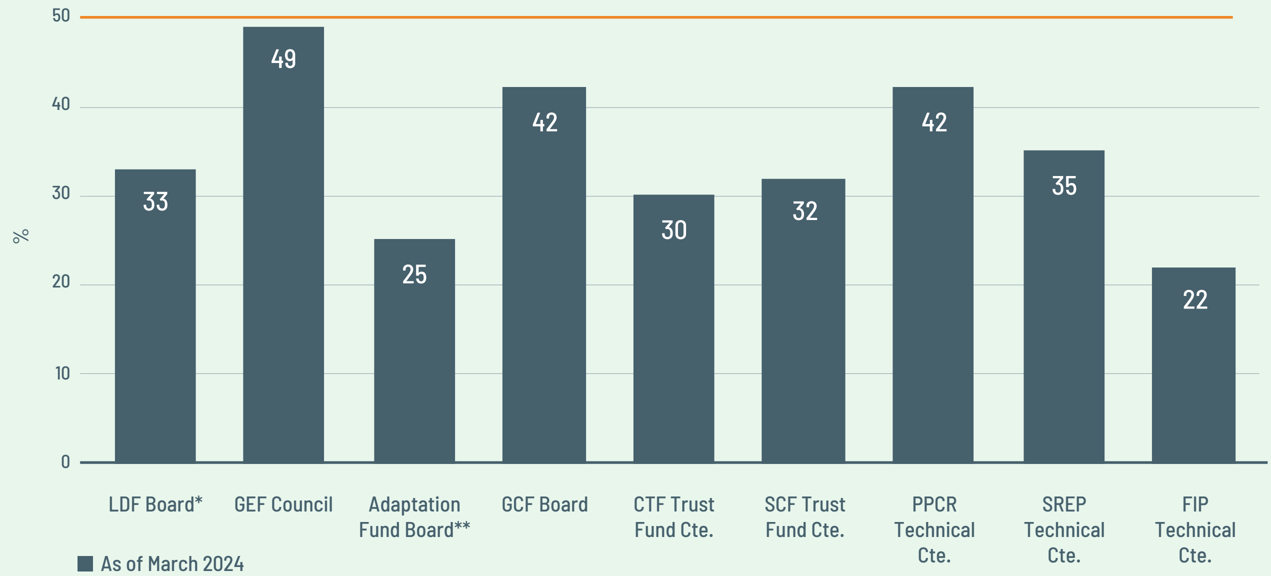
The designation of the Fund in both the decision text (Decision, para.5) and the GI (GI, para.11) "as an entity entrusted with the operation of the financial mechanism of the Convention, that also serves the Paris Agreement", which replicated the terminology used in Article 11 of the Convention, is a significant win for developing countries. Theoretically, this establishes the LDF's submission under, and the COP/CMA role in assuring its operation in compliance with, UNFCCC principles, mandates and obligations. The LDF thus joins the GCF and the Global Environment Facility (GEF) as the third operating entity of the financial mechanism of the Convention and the Paris Agreement, accountable to and under the guidance of the COP and the CMA, with the arrangements for ensuring that the Fund is accountable to and functions under the guidance of the COP and the CMA, to be concluded between the COP, the CMA and the Board of the Fund for consideration and approval at COP 29 and CMA 6 (GI, para.12). Additionally, paragraph 7 of the COP28 decision requests the Standing Committee on Finance (SCF) to develop such arrangements for approval by COP29 and CMA6 (Decision, para.7). A part of the relationship, and thus as a mandatory item to be delivered to COP29 and CMA6 already this year, will be the submission of the LDF's first annual report for COP and CMA consideration, so that the LDF can receive guidance from both bodies. As is the case with the other operating entities, the guidance to the LDF will be drafted initially by the SCF, and then negotiated and adopted by COP29 and CMA6 in Baku. The LDF Board will have to respond to the first guidance received from Parties in its 2025 workplan.

Governance and administration

Board and rules of procedure

The LDF will be governed and supervised by a Board as its decision-making body. The GI lays out that the new LDF has an equitable and balanced Board with 26 members of 14 developing country and 12 developed country parties, with two seats each for members from SIDS and LDCs (GI, paras.16-17) to be nominated by the relevant regional groups and constituencies, "with due consideration given to gender balance" (GI, para.18). The Dubai decision clarifies further that the parties should nominate their preferred Board members as soon as possible so that the first LDF Board

Figure 3: Percentage of female Board or Governing Council members in dedicated climate funds



* as of 20 March 2024, the nomination for the 26th Board seat of the LDF (1 member) is outstanding; even taking this vacancy into account, the percentage of female LDF Board members nominated will stay at 35%.

** As of 16 March 2024, the Adaptation Fund Board had 7 vacant seats (3 members and 4 alternate members); taking those vacancies into account, the percentage of female Adaptation Fund Board members nominated rises to 32%.

Source: https://us.boell.org/en/2024/03/18/loss-and-damage-fund-board-getting-it-right-start

meeting could be convened "no later than 31 January 2024" (Decision, para.10), although final nominations by developed countries were only received in early March 2024.

Regrettably, the nominations received for the new Board reveal a gender imbalance with a third of nominated Board members women (only 7 of 25 nominated members, and 10 of 25 nominated alternate members). The LDF needs a Board that is not only equitably representing developed and developing countries, but also gender diversity, and these nominations suggest the new LDF Board will be lagging behind the practice in some other climate funds, particularly GEF and GCF as the other operating entities of the UNFCCC and Paris Agreement financial mechanism, which fare better on gender diversity.

The GI outlines some core Board rules of procedure (GI, paras.23 - 31), however there are a number of additional rules of procedure which the Board must agree, or instances where further clarification or development of basic procedural rules is required.

While consensus is the default decision-making procedure, the GI already includes voting for cases when the LDF's Board decision-making by consensus as default modus fails. This is applying lessons learned from the experience of the GCF, which had to lengthily and controversially develop voting rules for its board. If no consensus can be reached, then decisions can be taken by a four-fifths majority of members present and voting, meaning 21 votes in a full Board (GI, para,26). It is unclear, if this will apply only to funding decisions (as in the GCF) or would also be applied to policy setting. The Board is tasked with "determining when all efforts at reaching consensus have been exhausted" and therefore a decision is put to a vote with a four-fifths majority of Board members present and voting (GI, para.26). It is also asked to adopt procedures for taking decisions between meetings (GI, para.26), which for example might become relevant for funding approvals between meetings, given the unique mandate of the LDF to expeditiously disburse funding (GI, paras.22(i) and 22(r) and 49(e)).

The LDF Board is a "non-sitting Board", convening likely not more than 3-4 times per year. Therefore to manage its workload it will have to work intersessionally including through Board committees, such as for example an ad-hoc one to work on the selection of the independent Secretariat's Executive Director. The Co-Chairs could also ask a small group of Board members as an informal working group to consult in-between Board meetings on draft policies, allowing for the inclusion and input by observers. Additional rules of procedure could elaborate on composition and working procedures of such ad-hoc groups and formally established Board committees. As a non-sitting Board (unlike in the World Bank), it will also have to decide how much decision-making throughout the funding cycle it will be willing and comfortable to delegate to the Executive Director, including for approvals of funding requests (GI, para.22(i)), and in particular in response to extreme weather events, which will require extremely fast turnaround in a matter of days.

Lastly, while the GI determines the rules of the election of two Board Co-Chairs and their term (GI, para.23), it does not elaborate the duties of the Co-Chairs and the procedures guiding their conduct of the Board's business, such as: their role in preparing the agenda for and running Board meetings; or their role in representing the LDF Board formally in external meetings and high-level convenings; and, in particular, for their engagement with the World Bank on negotiating the FIF-hosting agreement. The Co-Chairs, as the first order of business of the first LDF Board meeting, will be elected from within their respective developed and developing country constituency and serve for one year, renewable once (GI, para.23).

Executive Director

The LDF Secretariat will be headed by an Executive Director (ED), who will manage and select Secretariat staff and run the day-to-day operation of the LDF. The Board is tasked to promptly select and appoint an ED of the Fund through a merit-based, open and transparent process (Decision, para.11; GI, para.33). The COP28/CMA5 decision includes a condition to be fulfilled by the World Bank for hosting the FIF and the LDF Secretariat that is meant to ensure that the Board has full autonomy to select the ED, including at a level of seniority to ensure that a high-level candidate with professional standing and stature can be found, and accordingly compensated, who is able to represent the LDF as an independent institution, and without interference by the World Bank (Decision, para.20(b)).

The appointment of the LDF's first ED is important for several reasons. Firstly, she/he/they can shape the LDF's institutional development path through the open and transparent selection of the Secretariat's staff based on merit and taking into account geographical and gender balance, cultural and linguistic diversity and a variety of backgrounds and expertise (GI, para.32). Secondly, the selection of the ED will also have a large signaling function as to the priorities, expertise and professional and cultural background the new LDF Board prices most for the head of the Fund's Secretariat in guiding the crucial first three years of the LDF's full operationalisation. Lastly, the full trust of the LDF Board in the new ED will be necessary to move ahead with plans for the Board, which is a non-sitting one and will only meet a few times per year, to develop an accountability framework to delegate possible funding decisions to the ED as a way to speed of funding approvals, particularly for rapid response measures (GI, para.20(i)). Such devolved decision-making might prove fundamental for the LDF's ability to react with urgency and to approve funding speedily in times of climate emergencies or for direct small grant support for communities, within parameters defined by the Board. In the GCF, for example, funding decisions on readiness grants within a policy framework and financial limits set by the Board are made by the head of its secretariat, who then reports regularly to the Board.

Interim Secretariat and new, dedicated and independent Secretariat

The GI lays out the functions of the Secretariat in running the day-to-day operations of the LDF, including the planning and execution of all relevant operational and administrative duties following Board decision such as operationalising the programming cycle (GI, para.35). The COP28 decision specified that the LDF would be set up as a FIF under the World Bank, which will host a new, dedicated and independent Secretariat as long as a set of elaborated conditions are fulfilled (Decision, para.17). If not, a standalone fund would establish its own independent secretariat (as the GCF has).

The staff selection for the new, dedicated independent LDF Secretariat will be made by the ED based on experience "relevant to responding to loss and damage and to financial institutions" and "taking into account geographical and gender balance and cultural and linguistic diversity" (GI, para.32). If for example experts from multilateral development banks (MDBs) including the World Bank were to dominate among initial staff members, they could bring operational biases and expectations that might hinder the LDF to conduct is operations differently from existing institutions and thus 'fit-for-purpose' for addressing loss and damage. The Secretariat is supposed to set up regional desks for all UN regions, as well as allow for multilingual engagement (GI, para.34). This is supposed to provide the independent Secretariat with the ability to take "a regionally informed approach in responding to context-specific operational needs, capabilities and priorities of recipient countries" (GI, para.35(o)). This guidance applies lessons learned from other funds, including the GCF, in overcoming time-zone differences and cultural and language barriers in engaging with recipient country partners, but will likely take time to implement. Assisting recipient countries to engage with the LDF processes and procedures is one of the core functions of the new dedicated Secretariat (GI, para,35(m)), which is also tasked to coordinate with the Santiago Network on Loss and Damage (SNLD) to provide technical assistance to access the Fund's resources (GI, para.34(n)). It will be important that an initial administrative budget for the independent Secretariat also include a work and staffing plan, making clear the intended initial staff size (and its growth trajectory) and which positions need to be filled right away. Ultimately, the geographical location of the independent Secretariat will have to be decided.

Until the new dedicated and independent LDF Secretariat hosted by the World Bank is set up, an interim LDF Secretariat with staff from the UNFCCC, the GCF and UNDP will provide administrative support to the Board, including for the preparation and running of its first Board meetings, and presumably also for the development of LDF draft operational policies in conjunction with World Bank staff efforts to finalise the FIF documentation (Decision, para.26). It is crucial that this interim Secretariat is not under-staffed and under-funded, as the first LDF Board meetings in 2024 will see the bulk of initial operational policy and framework development before the independent Secretariat will ramp up its operations late in 2024 at the earliest.

Stakeholder and observer input and participation

The TC process - and its observed shortcomings with respect to participation and inclusion in its meetings (CAN et al., 2023) - inspired much discussion of the need to better integrate observers and stakeholders, and in particular impacted communities, their needs and priorities in the policy design and decision-making processes of the LDF once operationalised. While several TC members supported representation of those most impacted by climate change with voting positions on the Board, ultimately the adopted GI only promises that "The Board will enhance the engagement of stakeholders by inviting active observers, including youth, women, Indigenous Peoples and environmental non-governmental organisations, to participate in its meetings and related proceedings" (GI, para.20). This falls short of full-fledged, even non-voting seats at the Board. Whether this reflects a minimum of four active observers for the identified groups, and how the Board will define 'active' remains to be seen, but this will require substantial improvement over current active observer practice in GCF in order to be meaningful and impactful and not just window-dressing. Needed improvements include for example the opportunity for active observers to participate equally in Board discussions and sessions, including in Board committees and in-between official Board meetings, receive equal access to full documentation, as well as propose agenda items and request expert inputs.

In addition the initial, but rudimentary rules of procedure of the Board suggest that further arrangements will be made "to allow for the effective participation of observers in its meetings" (GI, para.27). This could include consultative forums for the LDF to engage with representatives from many groups, including Indigenous Peoples, youth and women, climate-induced migrants and community-based organisations (GI, paragraphs 28-29). Such forums or groups could be quite impactful to assist the new Fund with policy advice and formulation, as the experience of the GCF with a now-defunct Private Sector Advisory Group (quite influential in shaping the GCF's private sector approach) or their newer Indigenous Peoples Advisory Group shows. The promise that the "Fund will develop mechanisms to promote the input and participation of stakeholders [...] in the design, development and implementation of activities financed by the Fund" (GI, para.29) is welcome, but vague. Developing such mechanisms must be an early priority for the LDF Board so as not to repeat the failure of the GCF, where a similar mandate in its governing charter has failed to establish such structured engagement procedures more than a decade into its operations.

As there will be no fully defined procedures for the participation of observers and stakeholders, including their representation as active observers, for the LDF Board's first meeting, it is crucially important that temporary arrangements set a positive precedent, and in particular facilitate the participation of observers of the Global South and the engagement from affected communities in LDF Board meetings (such as offering travel support). Otherwise stakeholders, most especially affected communities, will be deprived of the opportunity to influence the setting of fundamental operational policies during the first few meetings of the LDF Board.

Permanent arrangements for both active observer and broader participation of observers and stakeholders should be adopted as soon as possible, including by dedicating financial support for the participation of observers from developing countries and affected communities and respecting the right of constituencies and groups to determine their own representation. To ensure stakeholders' input, suggestions and priorities are considered from the beginning, the LDF Board at its first meeting should commit to instructing the interim Secretariat to conduct outreach consultations with stakeholders and consider input provided through submissions in between LDF Board meetings in the development of draft modalities and frameworks for the Board to consider and approve. This is particularly important due to the likely sequencing of policy development. The establishment of consultative forums as well as the development of stakeholder engagement mechanisms might otherwise only happen after a number of core programming and access modalities and frameworks have been discussed and adopted.

Operational modalities

The GI notes as the primary objective of the LDF to serve all eligible countries with rapid and simplified access to funding to address loss and damage that meet the needs of communities and countries on the frontline of climate impacts and avoids disproportionate bureaucratic obstacles. The Board is tasked to develop and approve operational policies, access modalities, policies and programmes (GI, para.22(b)). The adequacy of the operational modalities that the Board is tasked to develop and approve can be measured by a yardstick provided in paragraph 41 of the GI. It stipulated that the LDF will "have a streamlined and rapid approval process with simplified criteria and procedures, while also maintaining high fiduciary standards, environmental and social safeguards, financial transparency standards and accountability mechanisms" and that the Fund will "avoid disproportionate bureaucratic obstacles to the access of resources (GI, para.41).

Eligibility

One of the core fights in the TC process was around which developing countries would be eligible to access the LDF, with developed countries seeking to restrict eligibility largely to specific country groups that they deemed more vulnerable than others to climate change impacts, namely first and foremost SIDS and LDCs. In contrast, developing countries throughout the negotiations had maintained that all developing countries that are parties to the UNFCCC and Paris Agreement should have access to LDF support and that vulnerable people and communities can be found in all developing countries irrespective of population size or income status, as the experience of the massive flood in Pakistan in 2022 illustrated. On eligibility, the Dubai decision recalls the Sharm El-Sheikh decision language (UNFCCC, 2022a and 2022b), which mandates the LDF "to assist developing countries that are particularly vulnerable to the adverse effects of climate change". The GI mirrors this exact language by stating "[d]eveloping countries that are particularly vulnerable to the adverse effects of climate change are eligible to receive resources from the Fund" (GI, para.42).

Country ownership and programming cycle

The GI gives the Board the mandate to develop the operational policies and guidelines for the programme and project cycle. These mandates, while encompassing and speaking to the heart of the Fund's work, are also quite vague – reflecting that there was little agreement to flesh this out further in the TC process. This gives the new Board a lot of flexibility, and the pressure and responsibility, to get it right from the start to deliver for communities and people.

Instead of spelling out a funding cycle, the GI provides a set of guiding principles to direct policies and guidelines for framing it (GI, section V.B.). The GI roots the start of the programming cycle firmly in country ownership, here defined as being responsive to country priorities and circumstances (GI, para.44) through country-led approaches defined through effective stakeholder engagement - it explicitly names women, vulnerable communities and Indigenous Peoples as groups to be involved (GI, para.43) – and prioritises direct engagement at the national and including subnational and local levels (GI, para.45). LDF funding is supposed to utilise to the extent possible existing national and regional systems and financial mechanisms (GI, para.44). The GI mandates that recipient countries are involved in all stages of the Fund's programme and project cycle with respect to their projects (GI, para.46). In all likelihood, recipient countries will liaise with the Fund through a national authority or national focal point (GI, para.48) similar to the current practice at the GEF, AF or GCF.

The Board must fill in the blanks from how an initial funding request would become a formal funding proposal, and determine the granularity and supporting documents required. Additionally the Board must decide the speed with which to release funding, including delegation of funding approval to facilitate fast access (GI, para.22(e)) and it must decide on accountability for approved funding and the appropriate reporting and monitoring regime (GI, para.22(l)). The Board is tasked to develop relevant indicators and triggers to clarify access to different sources of support provided through the LDF (GI, para.22(l)), likely provided through funding windows, programmes or other Fund sub-structures, to comprehensively cover the range of funding support for "responding to economic and non-economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events" (GI, para.2).

Access modalities

The possibility of a diverse set of modalities to facilitate access to the LDF's resources for all eligible recipient countries is outlined in the GI (GI, paras.49 and 50) and at the heart of the operationalisation of the Fund. Thus, the elaboration and quick operationalisation of distinct and multiple avenues for countries to request funding will be the key to the Fund's ability to fulfill its purpose with effectiveness and equity and the urgency required. The challenge and goal is to ensure that developing countries and affected communities are able to access the Fund quickly and without excessive bureaucracy but with robust environmental and social safeguards and fiduciary standards (GI, para.41). A particular focus will be on setting rapid disbursement modalities (GI, para.49(e)), which LDCs pushed for during the TC process, with the Board to decide whether these will be entirely new approaches or how other access modalities can be streamlined and fast-tracked.

Throughout the TC process, developing countries had highlighted direct access to LDF resources as a priority and the major reason for their push for a standalone fund, as the World Bank's FIF procedure and directive usually limit access to World Bank-hosted FIFs to international implementing entities, UN agencies and MDBs and the IMF (World Bank, 2022a and 2022b). Thus, the decision operationalising the LDF adopted by COP28/CMA5 specifically set a number of conditions for a hosting agreement between the World Bank and the LDF to ensure that all developing countries can directly access resources from the Fund, including through subnational, national and regional entities and through small grant funding for communities in line with access modalities to be established by the Board (Decision, para.20(e)); implementing entities beyond MDBs, the IMF and UN agencies can be used (Decision, para.20(f)); and countries that are parties to the Convention and Paris Agreement, but not member countries to the World Bank, such as Cuba, are able to access the Fund without requiring decisions or waivers from the World Bank Board of Directors on individual funding requests (Decision, para.20 (g)).

The term 'direct access' in the GI is applied to two distinctly different access modalities. Firstly, as direct budget support through national governments or entities, whose safeguards and standards are deemed 'functionally equivalent' to those of MDBs in providing assurances and securing outcomes (GI, para.49(a)). Secondly, using developing countries' national, subnational and regional entities (such as government agencies on the national, provincial or municipal level, as well as non-governmental actors) or direct access entities that are already accredited with funds such as the AF, GEF or GCF (GI, para.49(b)). In acting on the latter mandate, the Board could decide that all direct access entities in good standing with funds under the Convention and Paris Agreement could automatically serve as LDF implementation partners for recipient countries.

While direct access opportunities are indicated, this still allows for the more ubiquitous international access via multilateral banks or agencies or developed countries' bilateral entities (GI, para.49(c)), with the decision opening the pathway for bringing in other international or bilateral entities beyond the MDBs, the UN agencies and the IMF in (Decision, para.20(f)). In developing its own access modalities and programming requirements, the LDF Board would be well advised to consider the experience and trajectory of access to the GCF, where despite a majority of direct access entities among GCF accredited implementing partners still only one fifth of the GCF's resources is programmed via direct access (for more detail, see the CFF11 on the GCF).

The Board has to decide whether it would need a de facto accreditation procedure (even if the term does not appear in the GI) for other direct access partners not already vetted by other funds, including to ensure their capacity and ability to implement funding while observing required safeguards and standards, and what it might look like. The GI tasks the Fund to develop simplified procedures and criteria for fast-tracked screening to determine functional equivalency of national, subnational and regional direct access entities' own safeguards and standards to manage funded programmes and projects in the recipient country with internationally recognised standards (GI, para.50).

The LDF Board needs to set new best practice approaches for simplifying and enhancing direct access so that it becomes the dominant access modality to fund resources and to avoid repeating these other experiences, such as in the GCF. Additionally the LDF should consider providing funding in order to strengthen recipient countries' institutions and frameworks. A significant win for the new Fund, and with the potential to leapfrog to enhancing access to funding for the people and communities already most severely impacted by loss and damage, is a clear commitment in the GI to develop access modalities for "small grants to support communities, Indigenous Peoples and vulnerable groups and their livelihoods, including with respect to recovery after climate-related events" (GI, para.49(d)). Operationalising this provision with significant scale and stature, such as by ensuring that a substantial and progressively growing part of LDF resources is provided through access to small grants will allow for targeted support in order to be 'fit-for-purpose' and serve climate justice. Direct access support for all developing countries through small grants funding for communities is also part of the catalogue of conditions for the World Bank-FIF hosting (Decision, para. 20(e)). However, the language leaves it open whether such access can be direct (allowing groups to directly receive funding via a small grants window) or facilitated through either direct budget support or national actors via national distribution channels to the local level to reach communities or building on or replicating existing small grants approaches intermediated by international agencies, such as the GEF/UNDP Small Grants Programme.

Allocation

One of the most contentious discussions during the TC process, and with the continued power to undermine the solidarity and unity among developing countries as funding recipients, including in the LDF Board, is the question of resource allocation. The GI mandates the Board to develop and operate a resource allocation system (GI, paras.22(j) and 60), recognising that it will have to be dynamic with periodic reviews by the Board (GI, para.61).

The approved GI language is carefully calibrated and mandates the Board to develop, operate and dynamically evolve through regular review a resource allocation system for the Fund that takes into account the needs and priorities of developing countries, and especially those of climate-vulnerable communities (GI, para. 60(a)), and considers the scale of climate impacts of particular climate events respective to national circumstances and capacities (GI, para.60(b)). An allocation system will influence the programming cycle and approaches, financial instruments to be used, and access modalities, including approaches to simplify and accelerate access. It will also be a high-wire balancing act to manage the tension between the eligibility of all developing countries to LDF resources, recognising that all have special vulnerabilities and needs and irrespective of size, development status or location their own vulnerable communities and population groups, and ensuring that countries often with additional challenges, such as SIDS or LDCs, receive a guaranteed "minimum percentage allocation floor" as stipulated in the GI (GI, para.60(f)). This specific commitment is counterbalanced by the requirement "to safeguard against the overconcentration of support provided by the Fund in any given country, group of countries or region" (GI, para.60(c)) as requested by Latin-American TC members. The GI highlights a number of considerations that will have to be taken into account when drafting and approving the LDF allocation system, such as looking at the needs and scale of impacts on countries and vulnerable communities in relation to their national circumstances and their capacities to respond (GI, para.60(a) and (b)), which are also influenced to a high degree by a recipient countries' fiscal space and level of indebtedness.

In elaborating the framework, the LDF Board must be mindful of the limitations and pitfalls of some allocation approaches in existing climate funds, including the experience in the GCF with minimum allocation targets for funding themes or for specific country groups (which currently requires a balance between mitigation and adaptation in grant equivalent terms and that 50% of all adaptation funding support LDCs, SIDS and African states), or the GEF's approach in ensuring that each eligible country gets a minimum allocation or the AF's effort to deal with always limited funds by setting a country cap for support.

While best available data and information from relevant entities including the IPCC or national and regional agencies, is supposed to support the Board in determining allocation needs and priorities, the section on allocation recognises "that such data, information or knowledge may be limited for specific countries and regions" (GI, para.60(d) and(e)). It also explicitly encourages the consideration of "pertinent knowledge from Indigenous Peoples and vulnerable communities on exposure and sensitivity to the adverse effects of climate change and on loss and damage" (GI, para.59(d)). This language is indicating applied learning from the experience of the GCF, where a demand for countries to prove the 'climate rationality' of their funding requests was especially challenging in the case of proposed adaptation measures due to data availability challenges, not the least for local adaptation contexts.

Financial instruments

The GI lists as one core Board function its mandate to approve "a policy for the provision of grants, concessional resources and other financial instruments, modalities and facilities, taking into account access to other financial resources and debt sustainability" (GI, para.22(d)). Such a policy should clarify among other things that the Board assigns priority use to grants as the main financial instrument through which to programme. It should avoid any indication that it intends to operate instrument-agnostic in describing equal relevance and value for a possibly wide range of financial tools. The GI in paragraph 58 explicitly allows for the potential deployment of "financial instruments that take into consideration debt sustainability (grants, highly concessional loans, guarantees, direct budget support and policy-based finance, equity, insurance mechanisms, risk-sharing mechanisms, pre-arranged finance, performance-based programmes and other financial products, as appropriate) to augment and complement national resources for addressing loss and damage." However, it is essential that the LDF delivers adequate finance by providing the vast majority of its funding in the form of grants and non-debt creating instruments in the context of addressing loss and damage as a matter of climate justice. Grant provision must prioritise full cost grants without differentiating between the cost of a development baseline and added 'incremental' costs brought on by climate change impacts. Incremental cost calculations might be difficult and are inadequate, given that for example rehabilitation and recovery tries to regain 'lost development' for which recipient countries have already paid at least once and often in the form of debt.

Standards and safeguards

The GI mandates the Board to develop "a mechanism that will help ensure the activities financed by the Fund are implemented based on high-integrity environmental and social safeguards (ESS) and fiduciary principles and standards" (GI, para.22(f)). This is to be achieved not by the Fund setting its own high-integrity standards, as for example the AF and the GCF do with their respective own human-rights based environmental and social policy, but by relying exclusively on the environmental and social safeguard policies of its implementing entities. Those safeguards are supposed to be 'functionally equivalent' with the World Bank's ESS as determined through modalities to be developed by the Board (GI, para.68). The Secretariat is tasked to support strengthening the capacities of direct access implementing entities to reach that functional equivalency.

Relying exclusively on equivalency with World Bank ESS is a missed opportunity for the new Fund to set its own ESS standards targeted at addressing unavoidable short and long term climate impacts on people and environment that not only focus on harm prevention ('do no harm') but pro-actively highlight the need to 'do good'. This just has not been the focus of the ESS standards of existing institutions, including in MDBs and UN agencies.

The GI details that in addition to the World Bank's ESS, its fiduciary principles and standards will also serve as the basis of the "high-integrity fiduciary principles and standards" to be "applied to its activities, and, to this end, the Secretariat will work towards ensuring that each implementing entity applies such fiduciary principles and standards when implementing activities financed by the Fund" (GI, para.67). Reaching these standards will be much easier for MDBs and UN agencies than for many national and especially subnational entities hoping to get direct access to the LDF. The Board must be careful in developing modalities to determine the 'functional equivalency' with the World Bank's fiduciary standards that they not become *de facto* barriers to access for direct access partners, while ensuring that activities financed by the Fund are implemented based on high-integrity standards (GI, para.22(f)). The Secretariat is called on to provide support for "the strengthening of the capacities of direct access implementing entities, where needed, to enable them to attain functional equivalency with the World Bank's fiduciary principles and standards" (GI, para.67; see also GI, para.35(j)).

Monitoring and results management

The monitoring, results measurement, and performance reporting on programmatic or project funding and other activities financed by the LDF and corrective management is crucial for the "continuous improvement of the Fund's impact, effectiveness and operational performance" (GI, para.63). The Board is tasked to develop and approve a results measurement framework and guidelines, and set appropriate performance indicators (GI, para.22(j)), which will determine what the Board considers as its measure of impact and success for LDF funding support. It will be crucially important to ensure that the LDF's success is defined by performing well against people-centered benefit-focused indicators and targets and success is not equated narrowly with performance indicators looking at the replacement value of restored infrastructure or systems or the scale of leveraged financing received as proof of impact. This will be even more critical in the context of addressing non-economic loss and damage.

The LDF Secretariat is tasked to coordinate monitoring and evaluation of programmes, projects and activities financed by the Fund (GI, para.35(j)) and prepare performance reports (GI, para.35(d)), such as the annual reports aggregating portfolio level outcomes existing funds like the AF, GCF, or GEF already routinely provide. The GI points out a particular role for "participatory monitoring involving stakeholders" in ensuring the Fund's impact, efficiency and effectiveness (GI, para.62). This is an important opening to ensure the meaningful and effective participation particularly of local stakeholders, to ensure accountability for impacts on the ground, if lessons from other funds can be learned. LDF should make participatory monitoring a required component to ensure good performance at the level of funded activities, for example by providing some funding support for local groups in monitoring implementation as part of the funded activity's budget, and thus go further than for example the GCF, with a similar provision in its own governing charter, currently does.

Accountability

The evaluation of LDF performance and the accountability for the effectiveness and impact of its funding delivered to recipient countries, the integrity of its financial provision and the possibility to have grievances related to funded activities reviewed and redressed are central to ensure the legitimacy of the Fund and its continued support. Related mandates elaborated under the GI (GI, sections X, XI and XIV) will likely not see much deliberations by the Board in general, and almost none for the first crucial year of the Fund's operation. The only exception must be the discourse about access to information, which the Board must tackle for its proceedings with urgency as part of its deliberations on additional rules of procedure (see above). The GI only indicates that for all of the Fund's operations, including with respect to activities financed by it, the access to information and disclosure provisions of the World Bank will apply (GI, para.70), although it is unclear what this will mean for the routine disclosure of LDF documents, given that the World Bank information disclosure provisions are targeted to the documentation requirements and funding cycles of the World Bank, and thus not 'fit-for-purpose' for the LDF. Financed activities will also be subject to each implementing entity's policy on access to information, seeing likely widely differing standards (GI, para.70).

While periodic independent evaluations of the performance of the Fund are foreseen "to inform decision-making by the Board, identify and disseminate lessons learned, and support the accountability of the Fund" (GI, para.64), this will only apply a few years into its operations. Ultimately, the Board will have to decide, since the language of the GI is not specific on this issue, whether such periodic independent evaluations are to be commissioned on a case-by-case basis (through an independent provider outside of the Fund), or whether it prefers to institutionalise the function through an independent evaluation unit separate from the Secretariat (as for example the GCF has). The findings of independent evaluations will also be part of the required annual reporting by the Board to the COP and the CMA (GI, para.65), as part of its accountability requirements as an operating entity of the financial mechanism of the UNFCCC and the Paris Agreement. COP and CMA will also conduct a periodic review of the LDF (GI, para.66), most likely in the context of the period review of the financial mechanism.

The GI does not provide for the conduct of other independent accountability functions, such as for integrity and for redress by the Fund itself through separate independent units (as in the GCF as a standalone fund), but instead 'outsources' them to its implementing partners as part of the Fund's setup as FIF with a World Bank-hosted Secretariat. Instead of the Fund's own oversight on integrity related issues, such as corruption and fraud with the power to investigate any such allegations, "the implementing entity's independent integrity unit or functional equivalent" working with the Secretariat will investigate and report to the Board (GI, para.69). Similarly, people or communities harmed by activities financed by the Fund, will have to direct their complaints to or seek redress or compensation from the implementing entity's independent grievance redress mechanism, which will issue recommendations and report to the Board (GI, para.71).

This is problematic for a number of reasons, most importantly because there will be no uniformly applied minimum standard regarding integrity and/or grievance and redress, as the GI does not foresee a framework for the determination of 'functional equivalency' among a potentially wide variety of implementers, with varying procedures and capacities. This could mean that without secured minimum standards at Fund-level by the Board, affected communities and people might be disadvantaged in their ability to report integrity violations (and have them independently investigated and addressed) and to seek redress by the choice of implementing entity.

Complementarity and coherence with wider funding arrangements

How to secure and operationalise complementarity, coordination and coherence between the Fund and the funding arrangements was one of the key issues in the TC process. Developing country TC members saw the LDF as the key coordination actor to ensure complementarity and coherence across broader funding arrangements responding to loss and damage within and outside the UNFCCC, including by providing guidance to other actors. Developed country TC members saw the LDF just as one of many relevant entities in the mosaic or landscape of actors and institutions, but without a primary coordination role. They proposed instead that such coordination, as part of the broader funding arrangements, could be taken on through the establishment of a High Level Coordination Council situated outside of the UNFCCC.

The approved GI includes a dedicated section on complementarity and coherence (GI, paras.51-53), which underscores the key role of the Fund "in coordinating a coherent global response to loss and damage, including between the Fund and the funding arrangements" (GI, para.51). It also tasks the Fund to develop methods to enhance the complementarity between its own work and that of other relevant actors (GI, para.52). The annex on funding arrangements also identifies that one of the purposes of the LDF is to act as the platform for facilitating coordination and complementarity across other funding arrangements for responding to loss and damage including global, regional, and bilateral mechanisms, and national level programming (FA, para.8). In order to do so, the Board will need to develop new coordination and cooperation mechanisms and facilitate linkages between itself and other funding sources (GI, paras.4, 51-53). The GI gives the Fund a role in promoting coherence in programming at the national level in recipient countries with a focus on addressing priority funding gaps through its provision of "additional and complementary sources of finance" (GI, para.52). This language could be problematic if it requires a mapping or determination for funding requests that the LDF's resources are needed because no other actor is able or willing to provide the needed finance at the national level.

The COP/CMA decision tasks the LDF with establishing an annual high-level dialogue on coordination and complementarity, co-convened with the UN Secretary-General (FA, paras.8,13). In addition to convening the annual high level dialogue on coordination and complementarity, the COP/CMA decision also requests that the Board of the Fund create an approach for developing partnerships with other entities that form part of the funding arrangements (FA, para.9), and to develop standard procedures, building on the work of the WIM and others, to "identify sources, funds, processes and initiatives under and outside the Convention and the Paris Agreement to assist developing countries to respond to loss and damage from sudden or slow onset events, including economic or non-economic loss and damage (i.e. funding arrangements), for the purpose of supporting strengthened coordination and complementarity" (FA, para.10). This will require the development of a framework on complementarity and coherence for the LDF, which the Board would have to approve.

First LDF Board Meetings and the Process Ahead in 2024

When the LDF Board convenes for the first time at the end of April 2024 in Abu Dhabi, United Arab Emirates (UNFCCC, 2024), its first order of business will be agreement on an ambitious workplan for 2024 to establish core operational frameworks and policies for the new Fund for programming approval, access modalities, and resource allocation as the prerequisites for funding to be delivered as quickly as possible and to set up the Fund's new, dedicated and independent Secretariat and select its first Executive Director. This will also be a first test for the new Board Co-Chairs to be elected for a none year period during the first Board meeting. These priorities are interwoven with and sequenced around several deadlines set by the Dubai decision and to be reached by COP29 in Baku, Azerbaijan, around finalising an agreement with the World Bank to set up the LDF as a FIF, provide it with trustee services and to host its Secretariat. Sequencing is important, as operational frameworks and policies will need several consecutive Board meetings to be drafted, discussed and finalised. Given the delay in convening the first LDF Board meeting, it will be hard to find the time for the three or four meetings necessary to make the substantial progress required this year, considering also that much of the work will have to be prepared and coordinated with sufficient time intersessionally.

Key to the success of the LDF in the first year, so crucial for building confidence in and the legitimacy of the Fund, will be for the new Board to act with unity and purpose and find consensus and constructive ways forward on some of the issues that the TC process and its members last year could not agree on instead of carrying competing visions of the LDFs mission, scope and focus into the LDF Board meetings where it could complicate if not block necessary substantial progress in operational decision-making. One of the most pressing issues will be to secure adequate and predictable financial support for the Fund both near- and long-term. The initial pledges made for the LDF at COP28 need to be paid in rapidly for the Fund to be able to do its work in 2024. But they are not enough. For the Fund's successful and impactful future and to secure its place as the lead multilateral fund in the evolving loss and damage finance architecture a quick initial capitalisation within the next year in the billions is needed as well as a long-term resource mobilisation strategy with the ambition to progressively increase financial inputs into the LDF commensurate with the needs of recipient countries and affected communities.

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Endnotes

1. At the time of writing, the Fund had no formal name, with references on the UNFCCC website referring to either the 'loss and damage fund' or the 'fund for responding to loss and damage'. The consideration of a formal name of the Fund is on the agenda for the first meeting of its Board, scheduled for end of April 2024.
2. The ExCom is currently implementing its second five-year rolling workplan (adopted in 2022), while the WIM is undergoing its third review to be finalised at COP29.
3. This note draws from several publications by the Heinrich Böll Foundation Washington, DC in 2023 and 2024 on the LDF (Schalatek, 2023; Schalatek and Richards, 2024). See bibliography for further details.

The Climate Finance Fundamentals are based on Climate Funds Update data and up to 2021 also available in French and Spanish at **www.climatefundsupdate.org**

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