Expectations of civil society constituencies towards the
Loss & Damage Fund Board
Key issues the LDF Board needs to deliver in 2024

Joint document by Climate Action Network (CAN) and Women and Gender Constituency (WGC)

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1. Intro and background

We are in the era of loss and damage. As the global community has not yet been able to sufficiently reduce emissions at the scale and timeframe required, and as the consequences of climate change now often extend beyond what people can adapt to, there is an urgent need to support developing countries and communities to comprehensively address loss and damage. The urgent and full operationalization of the Loss and Damage Fund (LDF) is therefore not only a matter of climate justice and human rights but also a matter of life or death for millions of people around the world. Due to the delay of the first LDF Board meeting, members need to act swiftly now. A set of core decisions needs to be taken in 2024, so that the Fund can fulfill its mandate and purpose. Given a number of relevant COP29 deadlines, time is of the essence.

This document summarizes expectations by Climate Action Network (CAN), Indigenous Peoples Organization (IPO) Constituency, Women and Gender Constituency (WGC) towards the LDF board. This includes expectations for the first LDF board meeting in April 2024 as well as a list of key issues
the LDF board needs to deliver in 2024. The civil society constituencies and Indigenous Peoples will continue to engage critically and constructively in the process of making the LDF fully operational and actively participate in the LDF Board meetings - in order to ensure that the LDF fulfills its mandate to support those on the frontline of climate change and delivers climate justice. In order to be able to play this role, meaningful and effective participation modalities that go well beyond established practices will be critical.

2. Summary of expectations

In 2024, we expect the LDF Board to:

1. Take a human rights-based approach in the further operationalization of the LDF and for all policies the LDF Board will develop and projects or programs it will approve.
2. Put in place strong modalities for an enhanced Active Observer model at the level of the LDF Board, as well as policies, procedures, and governance structures that create an enabling environment that guarantees representation as well as active, full and meaningful participation for frontline communities, youth, women, Indigenous Peoples and environmental non-governmental organizations.
3. Agree on provisions related to the information disclosure of its proceedings, including a commitment to webcasting all of its meetings and allowing all rightsholders, including Indigenous Peoples, and stakeholders the opportunity for remote participation as well as the timely and complete release of Board documents on the LDF webpage prior to the meetings and making all Board decisions and outputs publicly available and accessible
4. Establish strong transparency and reporting mechanisms including a pro-active information disclosure approach to all Board proceedings.
5. Develop and establish a centralized, effective, accessible and independent LDF accountability and grievance redress mechanism to ensure effectiveness, consistency in the consideration and investigation of complaints, the implementation of redress measures and actual remedy.
6. Develop a dedicated set of LDF-specific social, environmental, and human rights safeguards, to ensure that the Fund’s activities focus on doing good through the promotion of human rights and doing no harm by causing or contributing to human rights violations.
7. Develop and establish modalities to ensure access to small grants to communities, Indigenous Peoples from all seven socio-cultural regions and vulnerable groups (Governing Instrument §49(d)), ensuring that groups can directly receive funding via a small grants window.
8. Prepare both an initial capitalization effort as well as a long-term fundraising and resource mobilization strategy for new, additional, predictable and adequate financial resources from all sources of funding, with a priority on public grant finance support.
9. Put in place contribution policies that allow for inputs from innovative sources of finance that meet the principles of the Convention and the polluter pays principle.
10. For the consultation and negotiations of the World Bank FIF-hosting agreement put in place a negotiation and assessment process that allows for full and effective participation of civil society observers. This will be the first test of the willingness of the LDF Board to conduct its
work transparently and absolutely necessary to allow for an independent legal assessment of whether a proposed FIF hosting agreement is in compliance with the COP28/CMA5 mandated conditions.

3. Key issues for the LDF Board in 2024

3.1 A human rights based approach

The LDF Board must take a human rights-based approach in the further operationalization of the LDF, and for all policies it will develop and projects or programs it will approve. Decisions 1/CP28 and 1/CMA5 remind Parties about their commitment to respect, protect and consider human rights obligations in the context of climate action, and connect this commitment explicitly to the LDF. Access to information, participation in decision-making, and access to justice are core principles of international environmental and human rights law and standards, and should be central to the design, planning, and implementation of operational policies and modalities for the LDF. Additionally, a human rights-compliant LDF will take an active approach towards ensuring non-discrimination and advancing substantive equality. This will make the LDF better capable of reaching those most in need, and respecting, protecting and promoting their human rights.

While the LDF Governing Instrument (GI) refers to gender-responsiveness, it does not explicitly reference human rights and related human rights obligations, including with respect to the engagement of core rights and stakeholders identified, such as gender equality and respecting Indigenous Peoples’ right to Free, Prior and Informed Consent (FPIC). This must be remedied. For example, similar to other climate funds under the financial mechanism like the GEF and GCF, the LDF must develop its own gender policy, Indigenous Peoples policy, and policies concerning other relevant marginalized groups in the context of loss and damage such as persons with disabilities, which do not only apply to the Fund’s programming cycle but also to its own operations in the Board and Secretariat, and its engagement and communication approach. Inclusion of gender aspects, considerations for the rights of Indigenous Peoples, and the inclusion of other marginalized groups through the functional equivalency of World Bank safeguards (and thus limited to a “do no harm” understanding) are absolutely insufficient and not in line with the GI’s commitment to “best practice environmental and social safeguard policies” (§68).

3.2 Active, full and meaningful participation

Those most directly affected by climate change impacts despite contributing the least to its causes, and have endured the harsh reality of loss and damage, along with civil society and Indigenous Peoples, should have full and effective participation in shaping and executing the policies and initiatives of the LDF from the outset. It is crucial to recognize that the first LDF Board meeting can establish significant precedents, making early involvement all the more vital. This requires iterative, full and meaningful participation of civil society constituencies in all processes related to the Board, including in the context of its further development of key operational modalities of the LDF and its funding decision-making, as well as the LDF Secretariat’s engagement of rightsholders, including Indigenous Peoples, and implementing partners through the entire programming cycle,
from funding proposal and funding request to the disbursement of funding and monitoring of LDF’s activities, and including playing a role through participatory monitoring in national implementation.

We expect the Board to put in place strong interim engagement modalities already at its first Board meeting, and agrees on intersessional consultation and rightsholder engagement with the objective of approving best practice modalities for active observers at the level of the LDF Board no later than at its second Board meeting (including recognizing and allowing space for their self-selection process), as well as policies, procedures, and governance structures that create an enabling environment that guarantees representation as well as active and full and meaningful participation for frontline communities, youth and children, women, Indigenous Peoples, other marginalized groups such as persons with disabilities, and environmental non-governmental organizations. At minimum, from day 1 representatives from each youth, women and diverse gender groups, Indigenous Peoples and environmental groups, self-selected by the UNFCCC constituency, must be seated in the Boardroom and have the opportunity to intervene for all agenda items as “interim active observers” throughout the proceedings of the first meeting while also having access to all relevant documents in the lead-up to and during the meeting.

An enabling environment for active, full and meaningful participation needs to be created. This includes a. access to information in a timely and comprehensive way, including culturally appropriate presentation, language diversity, and accessibility modalities to overcome the barriers that marginalized groups face, and by ensuring access to all Board documents - at the same time as Board members - and access to all relevant information for all Board proceedings, including intersessional work; b. active observer participation in the day-to-day operations of the LDF (including modalities to ensure that the active observers can participate meaningfully prior to decisions being taken, including by being allowed to take the floor, suggest agenda items, recommend external experts to speak on specific items, and be active in all working groups, Board committees, or other forms of division of work and activities of the Board); c. funding allocation and visa support to enable the participation of non-state community representatives especially from the global south; d. remote participation; e. webcasting of Board meetings to enhance transparency and remote participation modalities.

In order to design modalities for effective observer participation, the LDF Board should strive to build on lessons learned from existing climate funds and processes, including the GCF, AF, GEF and the SNLD. It should also go beyond and establish new, innovative, and inclusive mechanisms that ensure people and communities in vulnerable situations are not only participants and recipients but also have a decisive role in shaping the fund’s priorities and strategies for more impactful and equitable climate action.

3.3 Transparency and information disclosure

The LDF Board should establish strong transparency and reporting mechanisms, and ensure that its activities and all relevant information are accessible to public consultation, including fund

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2 For the first LDF Board meeting in April, the observer participation is now limited to only 2-seats per UNFCCC constituency group. We are deeply concerned regarding limits to the participation of civil society organizations (CSOs) and Indigenous Peoples organisations in the upcoming first Board Meeting of the LDF. We believe these restrictions not only set a harmful precedent, but also run in conflict with the commitment to promote and safeguard meaningful public and stakeholder participation and access to information.
disbursements and the impact of the projects. Access to the fund’s information (i.e. knowledge, research, decisions, actions) must be made unrestricted to rightsholders and stakeholders, including affected communities, women and diverse gender groups, Indigenous Peoples, youth and children and persons with disabilities globally so that their voices, visions, concerns, and efforts can be informed and supported in the context of international processes on loss and damage. The Board should also take steps to ensure confidentiality and data protection to ensure the safety and privacy of all stakeholders and Indigenous Peoples with whom it engages, especially frontline communities, including climate activists and Indigenous Peoples facing persecution.

The Board should prioritize further elaborating under its additional rules of procedure a pro-active information disclosure approach to all Board proceedings. While currently not foreseen in the Governing Instrument, the LDF should develop its own, proactive information disclosure policy based on core principles that apply across the spectrum of implementers, as well as ensure that the Board and Secretariat’s own access to information and disclosure procedures are best practice. This is crucial for the Fund’s legitimacy, functioning and effectiveness. At its first meeting, the Board should therefore agree provisions related to the information disclosure of its proceedings, including a commitment to webcasting all of its meetings and allowing all rightsholders, including Indigenous Peoples, and stakeholders the opportunity for remote participation as well as the timely and complete release of Board documents on the LDF webpage prior to the meetings and making all Board decisions and outputs publicly available and accessible.

3.4 Accountability and grievance mechanisms

Establishing effective, accessible and independent accountability and grievance redress mechanisms is crucial to ensure compliance as well as redress for individuals and communities who might suffer human rights harms, or other harms, from the Fund’s activities. In this regard, the Board must take steps to ensure that the Fund has effective and independent mechanisms at the local, national, and global levels for monitoring and oversight, enhancing implementation and addressing problems that arise during implementation in place. This includes having an effective and independent grievance redress mechanism at the level of the LDF for the public to raise concerns and to seek redress, in line with established practices for other climate funds such as the GCF and the AF. Such a mechanism will allow for a centralized approach to grievance redress, and ensure access to justice for those harmed by the LDF’s activities. To be effective, grievance redress mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and be a source of continuous learning. There must be capacity building and funding to allow for full access and for the development of the underlying factual and legal bases for the grievance. The timeline for filing a claim must also take into consideration the numerous barriers faced by impacted communities.

While the LDF Governing Instrument foresees an independent evaluation function, it does not indicate that the LDF will have its own independent redress mechanism or integrity unit, but instead plans to rely on such functions being delivered through its implementing partners for programming. This approach is problematic and insufficient as there will be no uniformly applied minimum standard regarding integrity and/or grievance and redress and for the independence of the bodies that are to provide the investigations, there may be barriers to accessing the implementing agencies’ mechanism, including fear of retaliation, and it is unclear what this means for implementing agencies that do not have adequate mechanisms in place, or in the context of direct access. We instead urge
the development of a centralized LDF independent grievance redress mechanism to ensure access to justice, effectiveness, consistency in the consideration and investigation of complaints, the implementation of redress measures and actual remedy, and the accountability of the mechanism as well as the Fund. The Independent Redress Mechanism (IRM) for the GCF provides a good practice example.

3.5 Safeguards
The GI commits to “ensur[ing] that best practice environmental and social safeguard policies are applied to [the LDF’s] activities” (§68) but also foresees exclusive reliance on the World Bank’s environmental and social safeguards (ESS) as the standard to apply through a ‘functional equivalency’ test to its implementing partners. Relying exclusively on equivalency with World Bank ESS is not in line with the commitment to ‘best practice’, and 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 the environment. The Board needs to develop instead a dedicated set of LDF-specific social, environmental, and human rights safeguards, to ensure that the Fund’s activities focus on doing good through the promotion of human rights and doing no harm by causing or contributing to human rights violations. These safeguards should include, but are not limited to, a. processes for proper social and environmental impact assessments; b. avoiding harms to biodiversity, ecosystems and health; c. respecting and protecting human rights and excluding all activities that violate human rights, including the rights of Indigenous Peoples as recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); d. comprehensive policies to avoid discrimination and advance substantive equality through the Fund’s activities; e. provisions for meaningful public participation, including respecting Indigenous Peoples’ right to Free, Prior and Informed Consent; and f. compliance with existing legal obligations and standards.

3.6 Accessibility
In establishing the LDF, the Board must ensure that resources reach those who have been made vulnerable and are in need. The LDF Board must set new best practice approaches for simplifying and enhancing direct access for communities so that it becomes the dominant access modality to fund resources and to avoid repeating these other experiences, such as in the GCF. In the principle of justice and equity and to avoid exacerbating the existing debt crisis, it is also imperative that resources be disbursed in the form of grants, not loans. Mechanisms for distributing the funding should be designed to prioritize accessibility, effectiveness and non-discrimination, so that assistance is swiftly available to communities on the frontlines of the climate crisis and reaches those most in need. The modalities to ensure access to small grants to communities, Indigenous Peoples from all seven socio-cultural regions and vulnerable groups (Governing Instrument §49(d)) should be swiftly developed, ensuring that groups can directly receive funding via a small grants window.
Indigenous Peoples, women’s rights organizations, youth groups and other local civil society organizations must be empowered by providing flexible, multi-year, unrestricted funding. A Board policy on access modalities must make it clear that small grants provision to affected communities must be a substantial and progressively larger share of LDF funding allocation and can be pursued simultaneously via a number of parallel access modalities. Funding must be available to avert and address non-economic losses and damages, including those to areas such as sacred sites and other sites of cultural importance. Allocation of funding must be based on the best available data, including
knowledge from Indigenous Peoples and communities. (Governing instrument para 60 (d). Funding arrangements must target people and communities in climate-vulnerable situations (including women and diverse gender groups, children, youth, Indigenous Peoples, and climate-induced migrants and refugees…). The technical assistance catalyzed under the Santiago network should be aligned with capacity building and support for programmatic approaches of the Fund and the funding arrangements.

3.7 Fundraising strategy

The LDF Board needs to prepare both an initial capitalization effort as well as a long-term fundraising and resource mobilization strategy for new, additional, predictable and adequate financial resources from all sources of funding, but with a priority on public grant finance support. Commitments to the LDF should be guided by the principles of the Convention and the Paris Agreement - including the principles of equity, polluter pays and common but differentiated responsibilities and respective capabilities. While we welcome initial pledges made during COP28 of USD 661 million, even if speedily converted into paid-in contributions, they are far from meeting the actual needs of countries and communities and as pointed out in the COP28/CMA5 decision meant for commencing the work of the LDF, not equivalent to an initial capitalization. Researchers estimate the total residual damages for developing countries in a range from USD 290–580 billion annually by 2030 - without taking into account non-economic L&D. A key objective of the LDF fundraising strategy needs to be mobilizing funds in the range of hundreds of billions. This also requires massive political will and exploring a range of options to put in place mechanisms based on the polluter pays principle such as aviation levies and carbon tax with their specific terms and conditions. To guide both its initial capitalization efforts and its longer-term resource mobilization strategy, the Board should put in place contribution policies that allow for inputs from innovative sources of finance that meet the principles of the Convention, are based on a polluter pays principle and whose burden falls on those who can afford to pay. The Gi explicitly points out in paragraph 54 that the LDF should be able to receive contributions from a wide variety of sources, including innovative ones.

3.8 Engagement with the World Bank

At its first meeting, the Board must agree on how it will undertake the task of providing the World Bank with guidance, and how it will assess the documentation from the World Bank against all conditions in the COP/CMA decision throughout the negotiation process and once the documentation is submitted. This involves besides the hosting agreement also the terms for the provision of trustee services by the World Bank, including the ability to receive contributions from a wide variety of sources and investing them in the capital markets. The LDF Board must set the modalities to engage with the World Bank on the required FIF documentation to ensure that the interests of the Fund, including the set of conditions and triggers adopted by the COP28/CMA5 decision can be fulfilled, in particular the requirement to ensure and enhance direct access to the Fund, including through small grant funding to communities (decision, para.20(e)). This is especially important to get confirmation as quickly as possible (and ideally before 12 June) from the World Bank that it is willing and able to host the Fund Secretariat, so that in case the World Bank is unwilling the process to advance the LDF as an independent Fund can be pursued without further delay. For a detailed overview of the deadlines and triggers of the World Bank engagement see the graphic below.
In its engagement with the World Bank to confirm the Bank’s willingness and ability to comply with a set of conditions for hosting the Secretariat of the LDF Board and the development and approval of the hosting agreement in line with the deadlines set out by the COP29/CMA6 decision, the Board must put in place a negotiation and assessment process that allows for full and effective participation of civil society observers. Such an arrangement must ensure that any work done by the Board, including intersessionally between meetings, is reported on a regular basis to the full Board and the public. All documentation provided by the World Bank and draft negotiating texts on the hosting agreement must be made publicly available and easily accessible in a timely manner. This will be the first test of the willingness of the LDF Board to conduct its work transparently and absolutely necessary to allow for an independent legal assessment of whether a proposed FIF hosting agreement is in compliance with the COP28/CMA5 mandated conditions. Closed meetings and secrecy will put not only the future operational capacities of the LDF but also its reputation from the start in peril.
3.9 Rationale of Loss and Damage Limits

The LDF is an essential initiative aimed at mitigating the negative impacts of climate change on communities in vulnerable situations. As with any fund, it is crucial to establish funding limits to ensure that the disbursement is made appropriately and transparently. This is why the board overseeing the LDF will need to dedicate time to discuss the rationale behind these limits. One of the main objectives of this discussion should be to prevent any misrepresentation of the LDF and how it functions. The LDF should also prioritize clarifying what the fund will cover and the role of relevant bodies, organizations, networks, and experts in tracking the accountability and transparency of the LD funding process.