

Cross-Constituency Input on the Procedures for Active Observer Participation in Board Meetings and Related Proceedings of the Loss and Damage Fund (LDF)¹

Thank you for the opportunity to provide comments and insights to the interim Secretariat on the participation of active observers in Board meetings and related proceedings for consideration by the Board of the Loss and Damage Fund (LDF) at its second meeting, pursuant to paragraph 27 of the Governing Instrument, and in line with LDF decision B.1/D.9.

The following submission will focus on participation of active observers for Board meetings and related proceedings only, although there are some natural interlinkages with issues related to wider observer participation to be addressed subsequently, including presumably through the planned **elaboration of more detailed observer participation guidelines**. It would be important to clarify when these guidelines are to be developed and ensure that they are drafted by the (interim) Secretariat following a broad and inclusive consultation on their development with outreach to all relevant rightsholders and stakeholders.

Our focused comments here are in addition to separate comments and recommendations on additional rules of procedure for LDF Board meetings and related procedures relevant for observer participation in line with paragraph 1 (c) of the terms of reference of the ad hoc subcommittee on additional Rules of Procedures in LDF decision B.1/D.4., which will be shared with the Interim Secretariat and the co-chairs of the ad hoc subcommittee separately.

The following reflects initial recommendations from a UNFCCC-cross constituency consultation and select input received from members of the Women and Gender Constituency (WGC), Indigenous Peoples (IPO), Environmental NGOs (ENGOS – Climate Action Network International and Demand Climate Justice), Children and Youth Constituency (YOUNGO) as well as the cross-constituency Human Rights & Climate Change Working Group. Further details might be shared in the lead-up to the second Board meeting of the LDF. Thank you for your consideration.

Comments and Recommendations on Active Observer Participation

To fulfill its mandate, the LDF must have meaningful representation of frontline communities and affected groups, Indigenous Peoples, and civil society organizations. The Governing Instrument mandates the Board in paragraph 20 to “enhance the engagement of stakeholders by inviting active observers, including youth, women, Indigenous Peoples and environmental nongovernmental organizations, to participate in its meetings and related proceedings.”

¹ For follow up or questions related to this coordinated input, please contact Liane Schalatek, Heinrich Böll Foundation Washington, liane.schalatek@us.boell.org.

To ensure meaningful participation in the crucial development of and decision-making on fundamental operational policies for the Fund that will happen during the first meetings of the Board in 2024, comprehensive modalities for the effective participation of Active Observers in Board meetings and related procedures must be agreed, following input from and engagement through consultation with observers ideally no later than the Board's second meeting, with maximum engagement and participation allowed for self-selected interim active observers, including at the upcoming second meeting, until the self-selection process of active observers is completed.

These modalities, as was stressed repeatedly by members during the Transitional Committee process, must go well beyond established observer engagement modalities of other climate funds, including the active observer model of the Green Climate Fund (GCF), to apply critical lessons learned and set new best practice standards.²

- **Self-selection procedures for Active Observers:** Procedures for the participation of LDF Active Observers should recognize the rights of mentioned constituencies and others to self-select their representation and self-manage their selection process. This is established practice in the GCF and the Climate Investment Funds (CIFs). For example, the GCF observer network of Civil Society, Indigenous Peoples and Local Communities (the GCF observer network)³, through which most civil society outreach and engagement with groups interested and engaged in the GCF is channeled, self-organizes the Active Observer selection every two years. The GCF allows for one Active Observer from developing countries and one from developed countries. Thus, the election is held based on specific terms of reference and criteria, with separate criteria and outreach for the developing and developed country representative to reflect different priorities and experiences.⁴ The Board should abstain from mandating or organizing selection criteria and processes to respect the independence of the observers.

² For a more detailed elaboration, see for example Ace Observatory, Columbia Climate School, Heinrich Böll Foundation Washington, Center for International Environmental Law, Loss And Damage Collaboration (2024). [Loss and Damage Fund: A Participation Blueprint](#). Also CAN International and Women and Gender Constituency (2024). Expectations towards the Loss & Damage Fund Board: [Key issues the LDF Board needs to deliver in 2024](#).

³ The principles of engagement elaborated by the GCF observer network are available in long-form here: https://www.gcfwatch.org/wp-content/uploads/2021/08/GCF_Observer_Network_Principles.pdf

⁴ See here for the criteria and terms of reference for candidates and procedures for the self-selection of the GCF developed country CSO Active Observers, as used for the selection of the current active observer for the 2024-2025 term. Criteria and Terms of Reference: Northern CSO Active Observer to the Board: <https://drive.google.com/file/d/1JCnsOmIB3AlweSakHP7A0rRPmAE-Gg-R/view?usp=sharing>; Developed Country CSO Active Observer Selection Process (2024-2025): <https://drive.google.com/file/d/1nv-rtY9jXC5AvjZZYFEyWl0fBCFLNg2V/view?usp=sharing>.

- **Board invitation to Active Observers:** As a start, the LDF Board should invite two Active Observers per explicitly mentioned constituency (youth, women, Indigenous Peoples and environmental non-governmental organizations) to participate as Active Observers in Board meetings and related proceedings. At a minimum one of the representatives per constituency must be from the Global South.

Each Active Observer should be allowed to designate at least one alternate, ideally two for support and backup to allow for consideration of regional and gender balance and a balanced representation between international and national and local organizations as well as to ensure someone is able to act as Active Observer in the event that the Active Observer is unable to attend a meeting. In the GCF, the established practice is for the two CSO Active Observers to operate with two designated alternates each. In line with Board member rules, an alternate only joins in the Boardroom when the Active Observer is not in the room.

The addition of further observer representation through Active Observers, beyond those representing the groups explicitly mentioned in paragraph 20 of the Governing Instrument could be considered, for example, to have Active Observers for climate migrants. Paragraph 20 does not limit representation to only those rightsholders listed given that it says “including”. Thus, approved procedures for Active Observers should leave the opportunity for such an expansion or adjustment. Further consideration for additional Active Observers should be given to the representation of climate migrants and local communities, as suggested by members during the Transitional Committee process, or of people with disabilities from the Global South.

- **Representation term:** The representation term for Active Observers should be for two years, renewable once in accordance with the Active Observers self-selection procedures.
- **Intervening during Board meetings:** Active Observers should be allowed to ask for the floor on all agenda items they consider relevant for their constituency and, upon invitation of the Co-Chairs, intervene in meetings of the Board on equal footing with Board members, i.e. in the course of the discussion, and not just after all interventions by Board members have been exhausted. This should include the ability to come in repeatedly, as necessary, as well as be allowed to speak as draft decisions are discussed. Active Observers should also be allowed to speak prior to Board decisions being taken.
- **Proposal capacity:** Active Observers should be given the mandate and opportunity to propose additional items to a provisional agenda and recommend to the Co-Chairs or a Committee that external experts speak on a specific agenda item during Board

meetings or related proceedings. The experience of the observer participation arrangements of the CIFs can serve as a good practice model.⁵

- **Participation in closed or executive sessions of the Board:** The Active Observers, upon signing of a conflict of interest and confidentiality statement for each Board meeting, should be allowed to participate in closed or executive sessions of the Board.
- **Participation in related proceedings other than formal Board meetings:** Active Observers should be invited to participate in discussion in informal Board meetings preceding the formal Board meetings (as is the practice in the GCF). They should also be allowed to attend and participate as observers in meetings of a Board committee or working group. This is especially important to ensure that Active Observers are kept informed and engaged, with the opportunity to channel inputs after consultations with their respective constituency members, in intersessional work.
- **Access to documents for Board meetings and related procedures:** Active Observers should have access to all Board documents at the same time as Board members, including access to all relevant information for Board proceedings in between meetings. Board documents should be fully disclosed, including all relevant annexes, following a pro-active information disclosure assumption, with classification of Board documents as confidential kept to an absolute minimum. Active Observers, upon signing of conflict of interest and confidentiality statements, should be allowed access to restricted/confidential Board documents. The Board should set transparent criteria for the classification of Board meeting documents as confidential. Active Observers should receive updated documents during the meeting at the same time as Board members to enable their participation. If the sharing of documents is done through a specific web platform, Active Observers should have access to that platform in the same manner as the Board Members.
- **Engagement in decision-in-between meetings:** The procedures to be adopted by the Board for taking decisions between meetings should include transmittal of a proposed Board decision-in-between-meetings to the Active Observers as well as to Board members and alternate members. Active Observers should receive the proposed decision text at the same time and through the same communication channel (i.e., email) as Board members and alternate members to allow the Active Observers to share some comments and recommendations from their constituency for the Board to consider during the prescribed time-frame of its no-objection procedure (ideally no less than 21 days to allow the Active Observers to consult with their constituencies for input). At the end of the prescribed time frame, Active Observers should be notified

⁵ See https://www.cif.org/sites/cif_enc/files/meeting-documents/roles_and_responsibilities_of_co-chairs_trust_fund_committee_and_sub-committee_members_and_observers_april_28_2016.pdf

of the action taken at the same time as all the Board members and alternate members.

- **Travel and other financial support:** In line with the travel policy (to be developed), the participation of Active Observers and their alternates in Board meetings and related proceedings should be supported through travel support, at bare minimum for Active Observers and their alternates from developing countries. Travel support for observer participation is already an established good practice in the Adaptation Fund, the Global Environment Facility (GEF), and the CIFs. Additionally, a budget for the Active Observers to support capacity and outreach activities to locally affected communities and climate migrants to enable their engagement in the Board process should be considered.

We also take this opportunity to reiterate that having Active Observers on the Board of the LDF is only one important step on the path to comprehensive participation in the LDF. Going forward, the Board must develop **an enhanced participation framework** in close consultation with rightsholders, ensuring meaningful participation and community engagement from assessing needs to implementing and monitoring activities.