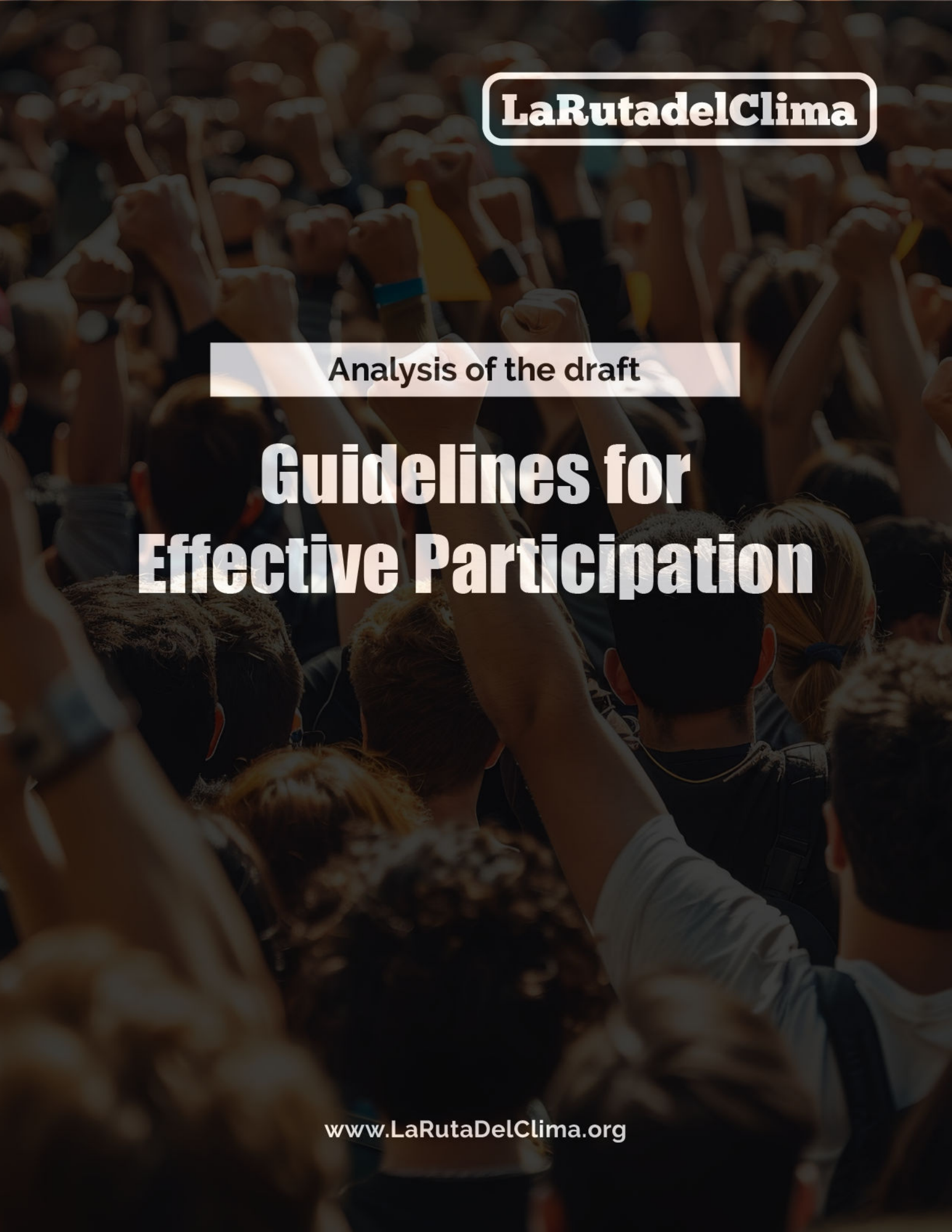




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Analysis of the draft

Guidelines for Effective Participation

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The Board's mandate:

At the end of 2023, the "Governing Instrument of the Fund" was issued by the UNFCCC to detail the way in which the LDF is expected to operate. It mentions three forms of participation open to interested parties such as non-governmental or civil society organizations, which are detailed in this document. The Board in charge of the LDF has the mandate to develop the rules of procedure that complement the provisions of the Governing Instrument. (UNFCCC, 2023)

For the second meeting of the Board of the Loss and Damage Fund, a document called "Background paper on the participation of active observers in Board meetings and related proceedings" has been generated, which addresses certain aspects related to the active participation of observers. This draft document does not yet define issues such as conflict of interest, confidentiality, and relocation support. The draft proposes that these guidelines be reviewed every five years.

Effective participation

The Fund's Governing Instrument in its section D "Regulations of the Board" cites point number 27 in which it is established that: *"The Fund shall make provisions to enable the **Effective participation** of observers at its meetings, including the development and implementation of an observer accreditation process"*. (UNFCCC, 2023)

The first meeting of the Fund Board was held from April 30 to May 02, 2024. This meeting focused on establishing different processes and subcommittees to carry out specific work such as selection of host country for the Board and approvals of agreements with the WB. One of these subcommittees was established with the intention of defining the procedure for consultation with the Board and its alternates by UNFCCC-accredited observers. At the beginning of this meeting, the decision was made regarding the participation of observers to transmit the session via web, as well as to invite an observer from each of the constituents¹. In addition, it was decided that two representatives of civil society could comment on each topic discussed at these meetings.

The "Background paper on the participation of active observers in Board meetings and related proceedings" proposes draft Guidelines for the active participation of observers in Board meetings and related procedures. These

¹ Business and Industry (BINGO), Environmental (ENGO), Indigenous Peoples' Organisations (IPO), Farmers and Peasants, Local Governments and Municipal Authorities (LGMA), Research-Oriented and Independent Organisations (RINGO), Trade Unions (TUNGO), Women and Gender (WGC) and Children and Youth (YOUNGO). (UNFCCC, 2024)

guidelines define and explain the role of the active participation of observers. This promotion of the active participation of observers seeks to improve the involvement of actors in the processes and meetings of the Board.

The draft states that processes will be developed to increase interaction with board members prior to meetings, to promote the inclusiveness and effectiveness of decisions. In addition, it will seek to promote diverse contributions so that the actions of the Board reflects the needs and priorities of the affected communities. The Fund's secretariat would be responsible for providing support to facilitate the effective participation and engagement of civil society in the Board's discussions.

An active observer is the representative of an observer group. The board will improve the engagement with actors through invitations to participate to active observers, in the current draft guidelines in its article 4 observers will be invited to participate

- Indigenous peoples
- Women
- Youths
- Environmental NGOs.

This is in line with Article 20 of the LDF Governing Instrument.

However, in Article 8 of the guidelines, it is mentioned that until the Board creates a specific accreditation process, active observers will be chosen from among the organizations accredited to the UNFCCC and will have the following representation:

- Representative of the Indigenous Peoples group
- Representative of the Women's Group
- Representative of the Youth Group
- Representative of the Environmental Organizations group
- Representative of the Affected Communities group
- Trade Union Group Representative

The above list is not consistent with the provisions of Article 20 of the Governing Instrument or with the list of organizations that are going to be part of the consultative forums created by Article 28 of the same instrument.

According to the draft active participation guidelines, the Fund will take steps to allow for the effective participation of observers in its meetings, including creating its own observer accreditation process. It is important to note that there is a difference between groups with which the board is said to seek to improve

linkage with the process and those that are listed as groups with representatives who serve as active observers: it is an apparent inconsistency or an addition to the groups that will be able to participate.

Currently, there are 3 categories of participants in UNFCCC meetings: representatives of Parties and observer States, members of the press and media, and representatives of organizations. The latter category is classified as: United Nations and its specialized agencies, intergovernmental organizations and non-governmental organizations (NGOs).

The NGOs are distributed in different constituencies representing various interests and areas of work: Business and Industry (BINGO), Environmental (ENGO), Indigenous Peoples' Organizations (IPO), Farmers and Peasants, Local Administrations and Municipal Authorities (LGMA), Research-Oriented and Independent Organizations (RINGO), Trade Unions (TUNGO), Women and Gender (WGC) and Children and Youth (YOUNGO). These constituencies can nominate people from civil society to participate as observers. (UNFCCC, 2024)

It is important to note the inclusion of a new group or category in the draft guidelines for effective participation, which is that of affected communities. Affected communities have no formal representation within the UNFCCC. The Board has set itself the challenge of creating the conditions for participation so that a new group of organizations, vulnerable communities, is integrated, so to guarantee their effective participation the accreditation process will have to be innovative.

From the UNFCCC, you could refer to the process that is taking place within the Platform of Local Communities and Indigenous Peoples where local communities are a new actor in consolidation. However, the Board will have the challenge of generating criteria to define when a community is "affected" and can hold such representation in the process. (UNFCCC, 2024)

Consultative forums.

The second form of open participation mentioned in the LDF Governing Instrument is the consultative forums. Point number 28 of the Governing Instrument indicates that consultative forums will be established to interact and communicate with stakeholders, open to civil society organizations, NGOs, women, climate migrants, community organizations, research organizations, the private sector, among others. In addition, point number 29 refers to *"the development of mechanisms to promote the input and participation of stakeholders, including private sector actors, civil society organizations and the groups most vulnerable to the adverse effects of climate change, including women,*

youth and Indigenous Peoples, in the conception, development and execution of the activities financed by the fund".

In the draft guidelines, the theme of the Consultative Forums is developed. These will be open to various types of actors that include representatives of organizations:

- Civil society
- Trade unions
- Indigenous Peoples
- Youths
- Women
- Climate migrants
- Bilateral or Multilateral Development Cooperation Agencies
- Technical or Research Agencies
- Private sector
- Governments

In accordance with the draft guidelines, the Fund will have to promote the participation and input of stakeholders in the design, development and implementation of the Fund's activities. The key actors for this participation and contributions are the following organizations.

- Private sector
- Civil society
- Groups of those most vulnerable to the adverse effects of climate change, including:
 - Women
 - Young people
 - Indigenous Peoples

From the above, a lack of clarity is elucidated about the category of groups with which the fund is going to work and that it wishes to consolidate as a participating audience. It is not clear from the last list whether the Board proposes the participation of more vulnerable groups or if the Board is creating a categorization of who they are. If it were the second option, then it would raise doubts about what role the affected communities would play. In this sense, we are facing a case of lack of coherence in the structure of the draft guidelines.

In addition, this document includes industries and the private sector as actors within the consultative forum and as an actor whose participation will be motivated and will ask for contributions. This is interesting given that, explicitly, for-profit organizations are excluded from the observer admissions process in the UNFCCC. Although it is not unusual for this exclusion in the participation of

for-profit organizations to be reversed within the financing mechanisms, it should be noted that such equalization should not imply equal rights. (Fund for responding to loss and damage, 2024, pág. 3) (UNFCCC, 2024)

Organizations representing communities and individuals have rights of access and these are human rights, while companies are not rights holders of this nature. On the other hand, the important role that the Junta is giving to the industrial and private sector is evident.

Financial Arrangements

The third and last space for participation mentioned in the Governing Instrument of the LDF are the financing arrangements, mentioning that high-level dialogues will be developed to coordinate and dialogue with representatives who are part of these arrangements. The purpose of these dialogues is to: (UNFCCC, 2023)

- Facilitate an exchange of knowledge and information between entities that are part of the Financing Arrangements.
- Strengthen capacity and synergies to improve the integration of measures to respond to loss and damage, with respect to sources, funds, processes and initiatives within or outside the UNFCCC.
- Promote exchanges of experiences between countries and communities that are taking action to respond to damage and loss.
- Identify priority gaps and new opportunities for cooperation, coordination and complementarity.
- Develop recommendations on upscaling, improving, or creating new financial arrangements to respond to damage and loss.

This dialogue will be organized by the Fund and the Secretary-General of the United Nations, who may appoint a high-level representative to convene the entities that are part of the financial arrangements.

The dialogue will be composed of 30 high-level representatives of entities responding to loss and damage, who are members of the new financial arrangements, including representatives of:

- The Loss and Damage Fund
- The World Bank and Regional Development Banks.
- International Monetary Fund
- Relevant United Nations agencies, other intergovernmental organizations and regional, international, bilateral or multilateral organizations that are relevant.
- International Organization for Migration

- Warsaw Mechanism (WIM)
- Civil Society, Indigenous Peoples, the philanthropic sector, and individual experts considering their *expertise*, perspectives and regional balance.

The draft guidelines for active participation of observers do not specifically mention the High-Level Dialogue. However, the draft document "Arrangements for establishing and operationalizing the first annual high-level dialogue" was issued also, which establishes more details about this dialogue. It should be noted that this document does not provide further details on how participation will be or details the procedures to be followed. The document reiterates what was mentioned in the Governing Instrument. (Fund for responding to loss and damage, 2024)

The document "Arrangements for establishing and operationalizing the first annual high-level dialogue" does mention that participants in this dialogue will be invited to answer questions related to:

- Funding arrangements to respond to loss and damage, including but not limited to support and areas for expanded support.
- To whom and where is the support currently directed.
- Existing associations, gaps, and barriers;
- New or improved opportunities for collaboration and/or coordination.
- And more information on specific support to address loss and damage through post-impact support, including both economic and non-economic loss and damage from both sudden and slow events.

Active Observers

Active observers are a participatory technology that has been implemented by UNFCCC funding mechanisms. This mechanism is a filter that reduces participation to a single representative of the observer organizations, this representative is the one who will have direct contact with the process and the Board, while the other organizations, which are organized in groups, will have indirect participation. (Martinez Blanco, 2023)

Article 8 of the draft guidelines for the active participation of observers cites Article 20 of the Governing Instrument in establishing the organizations that will have an active observer. However, the reference is not in accordance with what has been cited and generates inconsistency in the document.

Article 8 of the Guidelines	Article 20 of the Governing Instrument
Indigenous Peoples	Indigenous Peoples
Women's Groups	Women

Youth Groups	Young people
Environmental NGOs	Environmental NGOs
Trade Union Group	
Affected Communities	

The draft guidelines set out the following rules for active observers:

- If an active observer is unable to attend a Board meeting or fails to meet the requirements of the guidelines, the Co-Chairs may invite the active observer to nominate an alternate from their respective group.
- Prior to a board meeting, observers should:
 - Receive information from the Board at the same time as the members of the board, with the exception of confidential documents.
 - Ensure the linkage and consultation with its constituents on the meetings, activities and processes of the fund.
 - Participate in consultative forums, meetings, technical sessions and dialogues organized by the secretariat prior to meetings of the Board.
 - Coordinate the preparation and submit technical inputs for board meetings with constituents with sufficient time for them to be shared by the secretariat.
- During Board meetings, active observers:
 - They will meet with the Co-Chairs to receive information about their plans and the official agenda. Active observers will inform the Board who will make interventions on each agenda item.
 - They will be able to interact with the Board on agenda items based on the invitation of the Co-Chairs during the formal proceedings.
 - They may make interventions during the formal proceedings of the meeting upon invitation from the Co-Chairs. These interventions and actions in the plenary session should be based on regular and constant interaction with its constituents.
 - They will have access to draft board decisions at the discretion of the Co-Chairs.
- After the meetings, active observers will have access to the reports of the Board meetings and the compendium of decisions, with the exception of sensitive or confidential information.

The draft active participation guidelines suggest that until there is a specific accreditation process, active observers will be chosen by the 9 constituencies of the UNFCCC. The Fund will then have its own approved constituencies that will be selected by active observers. The selection criteria set out in the draft are that the active observer has an adequate and enhanced representation of developing

countries, geographical diversity and regional rotation. Active observers will have a term of 2 years.

Conclusion

According to what has been analyzed, there is still no clarity on the participation mechanisms that will be implemented in relation to the LDF, which makes it necessary to follow up on the decisions taken at the second meeting of the fund's board to ensure that the participation rights of civil society and the most affected communities are not forgotten.

It is worrying to see how once again for-profit organizations are included as part of the stakeholders in the negotiation processes, but still do not present suitable conditions for those who are suffering the most from the adverse effects of climate change to defend their needs and rights, these populations need to be prioritized in the discussions.

In addition, it is of utmost importance to ensure that the participation mechanisms do not remain only in a draft but that they become real options for participation, which not only convene representatives of the different vulnerable populations but also ensure their participation, providing the technical tools and economic support so that they can exercise true effective participation.

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