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Author: Adrián Martínez Blnaco

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Abstract:

As the era of global boiling is announced by UN Secretary General, countries are called to respond, "and protect their people from the searing heat, fatal floods, storms, droughts, and raging fires that result."¹ As the boiling increases, so does loss and damage, these adverse effects are unequally and "strongly concentrated among the poorest vulnerable populations".² The recently created Loss and Damage Fund (LDF) opens the possibility to provide resources to address the needs of those most affected and to consider their role in this new financial mechanism. The article contemplates the implications of public participation in the current crisis and the existing international obligations of UNFCCC and Access Agreement parties. Describes the current debate on the need for an adequate structure for the Loss and Damage Fund that considers public participation, including that of vulnerable groups. It explores the existing structures for participation of UNFCCC financial mechanisms and the necessary features that a LDF must have, as it needs people to address critical environmental decisions.

Key policy insights:

- The inclusion of existing proven practices of UNFCCC financial mechanism into the governing structure of the Loss and Damage Fund enables a human rights approach.
- Existing financial mechanisms can serve as a starting point for good practices to enable meaningful and effective public participation.
- Clear criteria and procedures to access information can be implemented to ensure informed and effective participation.
- The Loss and Damage Fund is of key importance for vulnerable groups and there are tangible measures that can enable these groups' rights.

¹ 'Secretary-General's Press Conference - on Climate | United Nations Secretary-General' <[² Katherine Calvin and others, 'IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change \[Core Writing Team, H. Lee and J. Romero \(Eds.\)\]. IPCC, Geneva, Switzerland.' \(First, Intergovernmental Panel on Climate Change \(IPCC\) 2023\) 99 <<https://www.ipcc.ch/report/ar6/syr/>> accessed 23 August 2023.](https://www.un.org/sg/en/content/sg/press-encounter/2023-07-27/secretary-generals-press-conference-climate?_gl=1*z4fhy5*_ga*NjM1OTE5Njl0LjE2ODE5OTMyMDE.*_ga_TK9BQL5X7Z*MTY5Mz11NzAxNi4yNy4xLjE2OTMyNTcwNzMuMC4wLjA.> accessed 28 August 2023.</p></div><div data-bbox=)

1. Participation that matters

In the climate regime it is an obligation of parties to promote public participation in addressing climate change and its effects.³ UNFCCC parties are obliged to enhance public participation and have recognized the fundamental role that public participation has in "meeting the ultimate objective of the Convention and in promoting climate-resilient sustainable development".⁴

Furthermore, the latest IPCC report has stated that a broad and meaningful participation of all relevant actors in decision making at all scales is important, as it enables deeper societal ambitions for climate action.⁵ In this time of climate crisis, decision-making processes should strive to fulfill Principle 10 of the Rio Declaration and open the doors to people, as environmental issues are best handled by the public participation at all relevant levels.⁶

2. Anchoring Participation

Participation echoes in time of crisis, as people demand solutions to their current dire situations and for their rights to be guaranteed. Yet, public participation in climate governance is often perceived only as an efficiency or legitimacy tool.⁷ However, effective, informed, and meaningful participation can become a tool of equity and empowerment "concerned with identifying differential structures of oppression that inhibit genuine emancipation, equality and therefore development."⁸

Public participation can be understood as an "umbrella term that describes the activities by which people's concerns, needs, interests, and values are incorporated into decisions and actions on public matters and issues".⁹ A participation infrastructure

³ United Nations, 'United Nations Framework Convention on Climate Change' (n 2) Art. 6.

⁴ UNFCCC, 'Paris Agreement' (UNFCCC 2015) Art. 12; UNFCCC, 'Decision 19/CP.20 The Lima Ministerial Declaration on Education and Awareness-Raising' (UNFCCC 2014).

⁵ Calvin and others (n 3) 101.

⁶ UNGA, 'Rio Declaration on Environment and Development UN Doc A/CONF.151/26' (1992) para 10 <<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>> accessed 19 August 2023.

⁷ Kathrin Dombrowski, 'Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance' [2010] *International Environmental Agreements: Politics, Law and Economics*.

⁸ Kate Ervine, 'Participation Denied: The Global Environment Facility, Its Universal Blueprint, and the Mexico–Mesoamerican Biological Corridor in Chiapas' (2010) 31 *Third World Quarterly* 773.

⁹ Tina Nabatchi and Matt Leighninger, 'Citizenship, Outside the Public Square', *Public Participation for 21st Century Democracy* (John Wiley & Sons 2015) 6 <<https://ebookcentral-proquest-com.ezproxy.uef.fi:2443/lib/uef-ebooks/detail.action?docID=189554>>.

is needed for participation activities to have impact and benefits; therefore laws, processes and institutions are key for participation to be effective.¹⁰

A participatory process tends to share common elements such as: a) highly structured process with defined phases. b) structured duration. c) participant interactions are focused on small groups. d) complete, balanced, and accessible information is available to participants. e) facilitator design and implement the process.¹¹ However, determining the effectiveness of public participation is a challenge. Theoretical models such as the ladder of citizen participation have addressed this issue by focusing redistribution of power of decision-making to citizens.¹² Other dimensions of participation can also be considered, for example, intensity of involvement, weight of influence, justice, legitimacy, and others.¹³ Therefore, the design and assessment of participation can be framed within a set of values and objectives.

A human rights approach to public participation provides a framework of values, standards and of existing state obligations to assess the effectiveness of public participation.¹⁴ The inclusion of public participation in international instruments of the climate regime, provides an opportunity to problematize the existing participation infrastructure based on a rights approach. As the complexity and the urgency of the climate crisis increases, the public's interest to be involved in the international climate decision-making processes has risen.¹⁵ If public participation in environmental matters is a right, then it has never been as relevant as in the current decade.

2.1 A Human Rights Approach

Public Participation in political matters is a right anchored in various binding and non-binding international instruments.¹⁶ The International Covenant on Civil and Political

¹⁰ *ibid.*

¹¹ Luigi Bobbio, 'Designing Effective Public Participation' (2019) 38 *Policy and Society* 41, 44.

¹² Sherry R Arnstein, 'A LADDER OF CITIZEN PARTICIPATION'.

¹³ Bobbio (n 12) 46.

¹⁴ OHCHR, 'APPLYING A HUMAN RIGHTS-BASED APPROACH TO CLIMATE CHANGE NEGOTIATIONS, POLICIES AND MEASURES' (OHCHR 2010) <<http://www2.ohchr.org/english/issues/climatechange/index.htm>> accessed 27 February 2023.

¹⁵ Robert McSweeney, 'Analysis: How Delegations at COP Climate Summits Have Changed over Time' (*Carbon Brief*, 27 October 2021) <<https://www.carbonbrief.org/analysis-how-delegations-at-cop-climate-summits-have-changed-over-time/>> accessed 29 August 2023; Benito Müller and others, 'Quo Vadis COP? Future Arrangements for Intergovernmental Meetings under the UNFCCC – Settled and Fit for Purpose Benito' (European Capacity Building Initiative Policy Report 2021).

¹⁶ OAS, 'American Convention on Human Rights' (OAS 1969) <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm>; UNGA, 'International Covenant on Civil and Political Rights A/RES/21/2200' (UNGA 1976); UNGA, 'Declaration on the Right to Development Adopted by General Assembly Resolution 41/128 of 4 December 1986' (UNGA 1986); UNGA, 'Universal Declaration of Human Rights A/RES/3/217A' (1948); UNGA, 'Declaration on Human Rights Defenders' (United Nations General Assembly 1999);

Rights establishes the right of every citizen to participate directly in public affairs.¹⁷ According to the Declaration on Human Rights Defenders, individuals or their associations have the right to submit to governmental bodies and agencies and organizations criticism or proposals on any aspect of their work.¹⁸ Many UNFCCC parties have an obligation to their citizens, as signatory to access rights agreements, to guarantee their right of public participation in environmental matters.¹⁹ These parties have also the obligation to promote access rights principles or knowledge in international forums; and to allow or ensure public participation at international level.²⁰

Ensuring the right of public participation implies more than following a set of procedures, it involves decision-makers listening and considering the public's inputs. Effectiveness can be measured by the correlation between the public's inputs and the content of the decision. There must be a possibility in the process for the public to influence the decision.²¹ According to UNECE, effective participation allows all persons, including those marginalized, to participate in the decision-making processes that impacts their lives.²² The effectiveness of public participation is limited by access rights parties' willingness to implement provisions fully and in a progressive manner.²³

Effective participation of the public can be achieved in many ways in international forums, meetings or bodies. The Almaty Guidelines suggest that while considering international forum rules, the public should be able to participate in meetings, have access to all documents relevant for the decision-making process, circulate statements, speak at the meetings.²⁴ Participation procedures should have included reasonable time frames for the different stages, to inform the public, and to allow effective participation. Participation must take place when influencing the decision-making process is still feasible. The timing of the process should be compatible with the possibility of the public accessing relevant information.²⁵

Adrian Alberto Martinez Blanco, 'From Stakeholders to Rightsholders: Assessing Public Participation in the International Climate Regime' (2021) 15 Carbon & climate law review 24.

¹⁷ UNGA, 'International Covenant on Civil and Political Rights A/RES/21/2200' (n 17) Art. 25.

¹⁸ UNGA, 'Declaration on Human Rights Defenders' (n 17) Art. 8(2).

¹⁹ CEPAL, Acuerdo de Escazú 2018 2018 Art. 7; UNECE, 'Aarhus Convention' (UNECE 1998) Art. 6 & 7.

²⁰ Escazú Agreement 2018 40 Art. 1, 4 (10) and 7(1) - (12); UNECE (n 20) Art. 3(7) and 8; UNECE, 'Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums ECE/MP.PP/2005/2/Add.5' ECE/MP.PP/2005/2/Add.5, para 29.

²¹ United Nations, 'The Aarhus Convention: An Implementation Guide' (UNECES 2014) 119.

²² 'Effective Public Participation — Why It Matters | UNECE' <<https://unece.org/environment/news/effective-public-participation-why-it-matters>> accessed 23 August 2023.

²³ United Nations, 'The Aarhus Convention: An Implementation Guide' (n 22) 15.

²⁴ UNECE (n 21) para 34.

²⁵ *ibid* 35.

Public participation and stakeholder or observer engagement are concepts that are used sometimes interchangeably. Public participation can be understood “essentially about the rights to participate in another party’s decisions, usually those of powerful organizations”.²⁶ Engagement can be thought of as a long-term process, two-way or multi-way process, a relationship of the sort that requires to capture a public’s attention and interest.²⁷

The United Nations Framework Convention on Climate Change (UNFCCC) does not include in its text the concept of engagement but does address participation in several articles, including a direct mention of public participation. The Paris Agreement directly mentions public participation in several of its articles.²⁸ However, the Paris Agreement has a shift in terminology in its prologue, by recognizing importance of engagements at all levels of government to address climate change.²⁹ Furthermore, Decision 1/CP.21, introduces the concept of engagement with non-party stakeholders in several paragraphs.³⁰

The climate regime has very limited and inconsistent procedures and regulations regarding public participation.³¹ In order to become more consistent with the Rio Declaration and existing access rights agreements, the UNFCCC has the challenge to write and adopt new rules that address the challenges of public participation at its conferences, bodies and procedures and that becomes coherent with a human rights approach. As Wilson mentions, a change in UNFCCC regulations is necessary as the “universal problem of climate change impacts every person on the globe and climate negotiations must provide legal protection for public participation to ensure an inclusive and effective solution.”³²

Access to environmental information is an essential feature to enable informed and effective participation. Access to environmental information implies, according to access rights agreements, access to information in possession, control or custody of states and the right to request it, to be informed of which authority has the information requested, and to challenge access being denied. Access to information is fundamental for the public to participate effectively in decision-making processes

²⁶ Helen Ross, Claudia Baldwin and RW (Bill) Carter, ‘Subtle Implications: Public Participation versus Community Engagement in Environmental Decision-Making’ (2016) 23 *Australasian Journal of Environmental Management* 123, 124.

²⁷ *ibid* 125.

²⁸ UNFCCC, ‘Paris Agreement’ (n 7) Art.12; 6(8)b; 16(8) and prologue.

²⁹ *ibid*.

³⁰ UNFCCC, ‘Decision 1/CP.21 Adoption of the Paris Agreement’, vol 21 (UNFCCC 2015) para 109 (a); 120 (d); 121 (b).

³¹ Martinez Blanco (n 17).

³² Winfried J Wilson, ‘LEGAL FOUNDATIONS FOR NGO PARTICIPATION IN CLIMATE TREATY NEGOTIATIONS’ (2010) 10 *Sustainable Development Law & Policy* 54.

based on full, accurate and up-to-date information.³³ The interdependence between access to information and participation, leads the public to have the right to request information from authorities, as well as to be informed by authorities, since signatory parties have the obligation to collect and disseminate information without a specific request.³⁴

The climate regime has acknowledged in Decision 1/CP.21, that climate actions undertaken by parties should respect, promote and consider human rights obligations and the right of the rights of indigenous peoples, local communities, women, migrants, children, persons with disabilities and people in vulnerable situations.³⁵ Furthermore, Decision 1/CP.16 states that "gender equality and the effective participation of women and indigenous peoples are important for effective action on all aspects of climate change."³⁶ Moreover, parties have agreed to take on count vulnerable people when formulating assessments of climate change impacts and vulnerability.³⁷ On Decision 2/CMA.4 parties, noted the urgency to enhance efforts to address loss and damage considering its significant impacts on vulnerable populations and the ecosystems on which they depend.³⁸ Public participation, access to information and the need for climate justice by those affected are intertwined.

3. Background on the UNFCCC discussion on Loss and Damage and the creation of a Fund.

Loss and Damage (LD) under the UNFCCC does not have an agreed definition, which is one of the key challenges for its governance. The term loss and damage is understood as the political demand of vulnerable countries for the climate regime to address the adverse impacts of climate change that will not be or cannot be averted or minimized.³⁹ Loss and damage can generate economic and non-economic adverse effect on people life's.⁴⁰

³³ United Nations, 'The Aarhus Convention: An Implementation Guide' (n 22) 19.

³⁴ *ibid.*

³⁵ UNFCCC, 'Decision 1/CP.21 Adoption of the Paris Agreement' (n 31).

³⁶ UNFCCC, '1/CP.16 The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention' (UNFCCC 2010) para 7.

³⁷ UNFCCC, 'Paris Agreement' (n 7) Art. 7(9)c.

³⁸ UNFCCC, 'Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage Decision 2/CMA.4

UNFCCC/PA/CMA/2022/10/Add.1' <<https://unfccc.int/sites/default/files/resource/decision%202%20CMA%204.pdf>>.

³⁹ MJ Mace and Roda Verheyen, 'Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement' (2016) 25 *Review of European, Comparative and International Environmental Law* 197.

⁴⁰ Olivia Serdeczny, 'Non-Economic Loss and Damage and the Warsaw International Mechanism', *Loss and Damage from Climate Change*. (Springer 2018).

The Warsaw Mechanism was created after decades of pressure from developing countries with the mandate to address loss and damage.⁴¹ However, the Warsaw Mechanism lacks the financial capacity to provide funding to address LD.⁴²

The inclusion of LD in article 8 of the Paris Agreement, increased pressure on the climate regime to provide tangible solutions to the adverse effects of climate change.⁴³ As a result, UNFCCC COP attempted to provide solutions such as the Santiago Network that is focused on technical assistance or the Glasgow Dialogues, but none of these provide financial solutions to address LD.⁴⁴

At COP27, Decision 2/CP.27 created the Loss and Damage Fund (LDF) whose mandate includes a focus on addressing loss and damage.⁴⁵ The creation of the Loss and Damage fund was the result of an intense political dialogue and advocacy at the UNFCCC. A Transitional Committee (TC) on the operationalization of the LDF was created with the mandate to agree on recommend on the institutional arrangements, modalities, structure, governance and terms of reference for the fund.⁴⁶ The TC is meant to be informed on the most effective ways in which to address gaps for the most vulnerable populations can address gaps.⁴⁷

Submission presented to the TC from parties and stakeholders have reiterated the importance of effective public participation, access to information and due consideration to vulnerable groups.⁴⁸ Several submissions call for the LDF operates ensuring meaningful and effective public participation, including vulnerable groups.⁴⁹

⁴¹ United Nations, 'Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts 2/CP.19' (2014) para 1.

⁴² Jonathan Gewirtzman and others, 'Financing Loss and Damage: Reviewing Options under the Warsaw International Mechanism' (2018) 18 Climate Policy 1076.

⁴³ UNFCCC, 'Paris Agreement' (n 7) Art. 8.

⁴⁴ UNFCCC, 'Glasgow Climate Pact 1/CMA.3' para 73

<https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf>; UNFCCC, 'Decision 2/CMA.2 Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts and Its 2019 Review' para 43 <<https://unfccc.int/documents/209506>>.

⁴⁵ UNFCCC, 'Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage Decision 2/CP.27' para 3

<https://unfccc.int/sites/default/files/resource/cp2022_10a01_E.pdf>.

⁴⁶ *ibid* 5.

⁴⁷ *ibid* 6 (d).

⁴⁸ 'Submissions to the Transitional Committee | UNFCCC' <<https://unfccc.int/process-and-meetings/bodies/constituted-bodies/transitional-committee/submissions-to-the-transitional-committee>> accessed 30 August 2023.

⁴⁹ Oxfam Australia, 'Embedding Equality in the New Loss and Damage Fund Part 2. Securing Equal Access to the Fund Lessons from the Pacific and Asia' 28 <https://unfccc.int/sites/default/files/resource/Oxfam-Australia_Loss-and-Damage-Report-2_July-2023.pdf>; Group of human mobility organizations engaged in climate change policy discussions on Loss & Damage, 'Implementing the Task Force on Displacement Recommendations through Loss and Damage Policy and Practice A Contribution to Loss and Damage Discussions from a Human Mobility Perspective' 2

<<https://unfccc.int/sites/default/files/resource/Addressing%20Displacement%20in%20Loss%20and%20Damage%20-%20Submission%20->

In the latest submission by the United States (US), it was suggested that the governance instrument of the LDF allows for “effective participation by accredited observers in its meetings”.⁵⁰ France’s submission proposes for the inclusion within the LDF Board of “active observers representing civil society and marginalized/vulnerable groups”.⁵¹ Access to information is also a concerned stated in the party and stakeholder submissions.⁵² There are suggestions for the LDF to adopt in its governance instrument a proactive information disclosure policy or to be subject to the World Bank’s policy on access to information.⁵³ Addressing gender is a key priority reflected on the submissions that include the establishment of gender balance as a principle or a mandate for the composition of the LDF Board or Secretariat.⁵⁴ The discussion on the governance, modalities and structure of the LDF is ongoing. The TC recommendation will have to be addressed by the SBI and then voted on by the Conference of Parties of the Paris Agreement (CMA). Therefore, there is ample opportunity to discuss and analyze how the LDF is constructed considering public participation.

4. Participating in existing climate financial mechanisms

The financial mechanism of the climate regime and other related climate funds can help illustrate a variety of participation conditions and mechanisms that could be implemented by the Loss and Damage Fund. The financial mechanism was created by article 11.4 of the UNFCCC and its operationalization was entrusted to Global Environment Facility (GEF) and the Green Climate Fund (GCF).⁵⁵ Moreover, the

%20Aug%202023.pdf?_gl=1*k8e38x*_ga*OTg4Mjl3My4xNjkyODA2MjMy*_ga_7ZZWT14N79*MTY5MzlyNzEyOS4xMC4xLjE2OTMyMjcxNjYuMC4wLjA.>; Amali Tower and Ryan Plano, “CLIMATE CHANGE IS CONTROLLING EVERYTHING, LET THEM COMPENSATE US” STORIES OF LOSS & DAMAGE IN KENYA’ 103; CAN, DCJ and WGC, ‘Proposed Governing Instrument: Loss and Damage Fund’ 3 <<https://unfccc.int/process-and-meetings/bodies/constituted-bodies/transitional-committee/submissions-to-the-transitional-committee>>.

⁵⁰ United States of America, ‘U.S. Submission for a Bridging Proposal’ <https://unfccc.int/sites/default/files/resource/United_States_2023-08-27%20U.S.%20Submission_LD%20bridging%20proposal_0.pdf>.

⁵¹ France, ‘Submission from France to the Transisitonnal Committee on a New Architecture to Respond to Loss and Damage Consequences’ 3.

⁵² Children’s Environmental Rights Initiative, ‘Climate Justice: Loss and Damage Finance for Children’ <<https://unfccc.int/sites/default/files/resource/Child%20Rights-LD%20briefing-11Aug2023.pdf>>; United States of America (n 51) para 63; CAN, DCJ and WGC (n 50) 13; Group of human mobility organizations engaged in climate change policy discussions on Loss & Damage (n 50) 11.

⁵³ United States of America (n 51); CAN, DCJ and WGC (n 50).

⁵⁴ United States of America (n 51) 9; Transitional Committee members representing Africa, Asia-Pacific, Latin America and Caribbean, Least Developed Countries, and Small Islands Developing States, ‘OUTCOMES OF THE WORK OF THE TRANSITIONAL COMMITTEE: PROPOSAL FROM DEVELOPING COUNTRIES ON THE LAUNCH OF THE LOSS AND DAMAGE FUND AND FUNDING ARRANGEMENTS’ 8 <https://unfccc.int/sites/default/files/resource/23_08_23_Final_Submission_TC_3.pdf>; CAN, DCJ and WGC (n 50) 4; Oxfam Australia (n 50) 20.

⁵⁵ United Nations, ‘United Nations Framework Convention on Climate Change’ (n 2) 1 Art. 11(4); UNFCCC, ‘Decision 1/CP.16 The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative

UNFCCC also created the Adaptation Fund (AF) which has as interim trustee the World Bank.⁵⁶ The policies and procedural regulations of this financial mechanism were studied to identify key structures that could be included in the Loss and Damage fund.

These climate funds have created a diversity of structures to enhance and facilitate effective public participation. Some key features identified are related to a) conditions for effective participation b), access to information, and c) vulnerable population considerations.

4.1 Conditions for effective participation

Ensuring effective engagement and ownership of national and sub-national stakeholders, including civil society, academia, local communities, indigenous peoples, women's organizations through project cycle, is a key governance principle of the GCF.⁵⁷ This implies that the Accredited Entities and National Designated Authorities of the GCF when proposing a project idea must engage as early as possible and with sufficient time with affected communities and potential beneficiaries.⁵⁸ Consultative processes should be ongoing during design, implementation, monitoring and evaluation and exit stages of the project or program cycle, inclusive and seek to engage all relevant actors.⁵⁹

Meaningful consultation as an engagement process is a strategic priority of the GCF, that is embedded in the environmental and social safeguards.⁶⁰ Consultation is understood as a process that seeks input from various interest groups who are traditionally marginalized to understand their perspectives on an activity. While the meaningful engagement that the GCF mandates is "in-depth, nuanced and time-intensive process that gives stakeholders a larger role in framing questions and

Action under the Convention FCCC/CP/2010/7/Add.1' (UNFCCC 2010) para 102

<<https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=17>>; UNFCCC, 'Decision 3/CP.4 Review of the Financial Mechanism FCCC/CP/1998/16/Add.1' (UNFCCC 1998) para 2

<https://unfccc.int/files/cooperation_and_support/financial_mechanism/application/pdf/3_cp.4.pdf>.

⁵⁶ UNFCCC, 'Decision 10/CP.7 Funding under the Kyoto Protocol FCCC/CP/2001/13/Add.1' para 1

<<https://unfccc.int/resource/docs/cop7/13a01.pdf#page=52>>; 'Decision 1/CMP.3 Adaptation Fund FCCC/KP/CMP/2007/9/Add.1' <https://www.adaptation-fund.org/wp-content/uploads/2015/01/Decision_1-CMP.3.pdf>.

⁵⁷ 'Guidelines for Enhanced Country Ownership and Country Drivenness - Annex XX to Decision B.17/21, Paragraph (a)' 2 <<https://www.greenclimate.fund/document/guidelines-enhanced-country-ownership-and-country-drivenness#:~:text=Guidelines%20for%20enhanced%20country%20ownership%20and%20country%20drivenness,ownership%20in%20the%20Fund%27s%20operating%20modalities%2C%20and%20evaluation.>>>.

⁵⁸ *ibid* 12.

⁵⁹ *ibid* 13.

⁶⁰ Green Climate Fund, 'Sustainability Guidance Note: Designing and Ensuring Meaningful Stakeholder Engagement on GCF-Financed Projects' 1 <<https://www.greenclimate.fund/sites/default/files/document/sustainability-guidance-stakeholder-engagement-may2022.pdf>>.

participating actively in discussions about the activity".⁶¹ The GCF requires Accredited Entities to develop stakeholder engagement plans that have as principles transparency, accountability, inclusiveness, non-discrimination, and "do no harm".⁶² All directly financed project or even those through intermediaries of the GCF should have: • "detailed process for effective engagement with communities and individuals – including vulnerable and marginalized groups and individuals – who are affected or potentially affected by proposed GCF-funded activities • A description of how information will be disclosed; the process by which meaningful consultation and informed participation will occur in a culturally appropriate and gender responsive manner; and, under certain circumstances, the steps that will be taken to obtain the free, prior and informed consent of indigenous peoples; and • A process for receiving and managing concerns and grievances at the project level that has been designed in consultation with stakeholders in a gender-responsive manner, and complements the AE's grievance redress mechanism and GCF's Independent Redress Mechanism."⁶³

The GCF has developed a Guidelines relating to the observer participation, accreditation of observer organizations and participation of active observers.⁶⁴ This guideline seeks to "promote the input and participation of stakeholders throughout this process with a view to strengthening the role that they will play" and increase the interaction with the GCF Board.⁶⁵

The GCF Board is mandated to allow effective participation by accredited observers in its meetings.⁶⁶ Accredited observer organizations are entitled to be formally notified with 30 days of anticipation of the agenda, the time and date of GCF Board meetings⁶⁷. However, GCF segments observers' participation into "active observers" and non-active observer organizations.⁶⁸ GCF criteria for representation contrast that of the UNFCCC allocating 2 active observer quota for the accredited private sector organizations and the remaining to accredited civil society organizations (CSO).⁶⁹ In

⁶¹ *ibid* 3.

⁶² *ibid* 2.

⁶³ *ibid*.

⁶⁴ 'Guidelines Relating to the Observer Participation, Accreditation of Observer Organizations and Participation of Active Observers B.01-13/03' <<https://www.greenclimate.fund/document/guidelines-relating-observer-participation-accreditation-observer-organizations-and>>.

⁶⁵ *ibid* 1.

⁶⁶ GEF, 'Governing Instrument for the Green Climate Fund' para 16 <<https://www.greenclimate.fund/document/governing-instrument>>.

⁶⁷ 'Guidelines Relating to the Observer Participation, Accreditation of Observer Organizations and Participation of Active Observers GCF/B.01-13/12' para 4.

⁶⁸ 'Guidelines Relating to the Observer Participation, Accreditation of Observer Organizations and Participation of Active Observers GCF/B.01-13/12' (n 68).

⁶⁹ GEF, 'Governing Instrument for the Green Climate Fund' (n 67) para 16.

contrast, the UNFCCC accreditation standards explicitly exclude "For-profit entities and individuals".⁷⁰

The GCF 4 active observers' mechanism must ensure equity, diversity, balanced representation from develop and developing countries, gender representation, and "balanced representation between international and local or national organizations".⁷¹ Ensuring global representation under such limited scheme is significantly challenging. This representation scheme might be useful for governance purposes, but it can also be questioned to enter into conflict with the commitment of encouraging the widest participation under UNFCCC processes.⁷²

The GCF Board measures to ensure effective participation of active observers are limited to 1. Intervening upon invitation of Co-chairs in open segments. 2. Observers may attend meetings of the board committee or working groups in special circumstances if authorized. Specifically active observer effective participation is constituted and limited to " (a) Consistently attend meetings; (b) Consult with other civil society and private sector stakeholders in compliance with agreed consultation guidelines; (c) Solicit, collect and communicate information from CSOs and PSOs to the Board on matters that the Board is considering and represent the views of their constituency; (d) Collect and disseminate information from the Board and related bodies and processes to members of the CSOs and PSOs groupings; and (e) Not disclose, both during and after their term of office, information obtained from the Fund and/or project participants that is marked as proprietary and/or confidential, without the written consent of the Fund and/or the provider of the information, except as otherwise required by the law."⁷³ In the case of non-active observers organizations their participation is limited to witnessing the governance process.

The GCF Board is also mandated to developed mechanisms that promote the input and participation of other stakeholders, such as private-sector actors, civil society organizations, vulnerable groups, women and indigenous peoples. Stakeholders' inputs can be considered in the design, development and implementation of strategies, and activities finances by the fund.⁷⁴ This mandate opens the possibility to alternatives means for participation for those non-accredited and broaden the segmentation in-place by the active-observer scheme at the discretion of the GCF.

The Adaptation Fund Rules of Procedure adopted by the UNFCCC allow the participation of UNFCCC Accredited Observers to meetings, but those can also be

⁷⁰ UNFCCC, 'Standard Admission Process for Non-Governmental Organizations (NGOs)' 7.

⁷¹ 'Guidelines Relating to the Observer Participation, Accreditation of Observer Organizations and Participation of Active Observers B.01-13/03' (n 65) 2.

⁷² United Nations, 'United Nations Framework Convention on Climate Change' (n 2) Art. 4(i).

⁷³ 'Guidelines Relating to the Observer Participation, Accreditation of Observer Organizations and Participation of Active Observers B.01-13/03' (n 65) 2.

⁷⁴ GEF, 'Governing Instrument for the Green Climate Fund' (n 67) para 71.

closed by the Board.⁷⁵ The infrastructure for participation of the Adaptation Fund requires the secretariat to notify observers of the dates and venues of meetings with an invitation to the meeting and the provisional agenda six weeks prior to the meeting.⁷⁶ Observers can be granted the opportunity to participate in the proceedings and make presentations.⁷⁷

The AF Board is involved in a process of enhancing civil society participation and engagement in its work.⁷⁸ There are different options being discussed for the creation of an Adaptation Fund Vision and Guidelines for Enhanced Civil Society Engagement.⁷⁹ The vision for civil society engagement that these guidelines establish for the AF, recognizes the role of “civil society and other non-state actors play in supporting and enhancing adaptation efforts, particularly in marginalized and vulnerable communities”.⁸⁰

The AF aspires for the engagement of civil society in its work through inclusive, transparent and efficient processes.⁸¹ The principles set in the guidelines draft state that civil society are partner for the AF “all levels of the Fund’s decision-making and operations”.⁸² This degree of inclusion implies participation CSO as observers in board meetings, contributions in the development of policies, strategies, resource mobilization and the inclusive participation of CSO in consultations “project lifecycle from planning and implementation to evaluation and learning”.⁸³

Under the AF, the concept of civil society is understood to exclude the private sector, and if a CSO becomes an implementing entity and/or is involved in the execution of projects and programs as executing entity, is then not considered to represent a CSO during the engagement on those roles.⁸⁴ The definition of CSO by the draft guidelines includes local, national, regional or international “non-governmental organizations (NGOs), community-based organizations (CBOs), research and academic

⁷⁵ UNFCCC, ‘Decision 1/CMP.4 ANNEX I Rules of Procedure of the Adaptation Fund Board’ <<https://unfccc.int/resource/docs/2008/cmp4/eng/11a02.pdf>>; UNFCCC, ‘Rules of Procedure of the Adaptation Fund Board’ <<https://www.adaptation-fund.org/wp-content/uploads/2018/04/Rules-of-procedure-of-the-Adaptation-Fund-Board.pdf>> VIII Observers para (31).

⁷⁶ UNFCCC, ‘Rules of Procedure of the Adaptation Fund Board’ (n 76) VI Meetings para (22).

⁷⁷ *ibid* VIII. Observer para (31).

⁷⁸ Adaptation Fund, ‘REPORT OF THE THIRTY-SEVENTH MEETING OF THE ADAPTATION FUND BOARD AFB/B.37/13’ <<https://www.adaptation-fund.org/wp-content/uploads/2022/01/AFB.B.37-report-approved-1-1.pdf>>; Adaptation Fund, ‘REPORT OF THE FORTIETH MEETING OF THE ADAPTATION FUND BOARD AFB/B.40/14’ <<https://www.adaptation-fund.org/document/report-of-the-fortieth-meeting-of-the-adaptation-fund-board/>>.

⁷⁹ Adaptation Fund, ‘OPTIONS FOR GUIDELINES TO FURTHER ENHANCE CIVIL SOCIETY PARTICIPATION AND ENGAGEMENT IN THE WORK OF THE FUND AFB/B.40/7’ <https://www.adaptation-fund.org/wp-content/uploads/2023/03/AFB.B.40.7-Enhancing-civil-society-engagement_clean-1.pdf>.

⁸⁰ *ibid* Annex para 4.

⁸¹ *ibid* Annex para 4.

⁸² *ibid* Annex 1 para 5.

⁸³ *ibid* Annex 1 para 5.

⁸⁴ *ibid* Annex 1 para 8-9.

organizations, women's groups, indigenous peoples' organizations, and other non-state actors".⁸⁵

The AF draft guidelines also create the dialogue with CSO as a standing agenda item of every Board meeting and allow CSO to submit comment of submitted project proposals, AF projects and programs.⁸⁶ Furthermore, CSO will be able to submit formal complaints against projects and programs through the Fund's Ad Hoc Complaint Handling Mechanism (ACHM).⁸⁷

The Rules of Procedure of the Global Environmental Facility (GEF) Assembly allows accredited NGOs and representatives of major groups to be invited to the Assembly Meetings.⁸⁸ The Rules of Procedure for the GEF Council allow the possibility for the CEO, in consultation with the Council, to invite representatives of NGOs to attend or observe the Council meetings.⁸⁹ The GEF defines attending as the possibility for a representative to be in the council meeting room and, if invited address the council. In contrast, to observer is understood to mean that a representative can observe the proceeding from a viewing room and if invited the representative may address the council.⁹⁰

The GEF has also a Policy on Stakeholder Engagement that seeks to promote meaningful and inclusive participation of Stakeholders in "GEF's governance and operations in support of the GEF's mandate to protect the global environment".⁹¹ Stakeholder engagement is understood to as process of "stakeholder identification and analysis, planning of Stakeholder Engagement, disclosure of information, consultation and participation, monitoring, evaluation and learning throughout the project cycle, addressing grievances, and on-going reporting to stakeholders".⁹² This implies that GEF agencies must have consulted with stakeholders in the development stage of the project "concept" and include information on how stakeholders will be engaged in the project/program cycle.⁹³

⁸⁵ *ibid* Annez 1 para 7.

⁸⁶ *ibid* Annex 1 para 12 & 29.

⁸⁷ *ibid* Annez 1 para 34-35.

⁸⁸ GEF, 'Rules of Procedure for the GEF Assembly' 202 Art. 5; UN, 'About Major Groups and Other Stakeholders' (*Sustainable Development Knowledge Platform*) <<https://sustainabledevelopment.un.org/aboutmajorgroups.html>> accessed 7 August 2023.

⁸⁹ GEF, 'Rules of Procedure for the GEF Council 34738 Rev.' para 22 <<https://documents1.worldbank.org/curated/en/245581468329462161/pdf/347380rev10ENG1ef1RulesProc1ENGLISH.pdf>>.

⁹⁰ *ibid* 2.

⁹¹ GEF, 'Policy on Stakeholder Engagement SD/PL/01' para 5 <https://www.thegef.org/sites/default/files/documents/Stakeholder_Engagement_Policy_0.pdf>.

⁹² GEF, 'Policy on Stakeholder Engagement SD/PL/01' (n 92).

⁹³ GEF, 'Guidelines on the Implementation of the Policy on Stakeholder Engagement SD/GN/01' 20–34 <https://www.thegef.org/sites/default/files/council-meeting-documents/EN_GEF.C.55_Inf.08_Guidelines_Stakeholder_Engagement.pdf>.

The GEF differentiates between civil society meaning “non-stake actors, including not-for-profit non-governmental organizations (NGOs), farmers, women, the scientific and technological community, youth and children, Indigenous Peoples and their communities, business and industry, workers and trade unions” and stakeholder that are “individual or group that has an interest in the outcome of a GEF financed activity or is likely to be affected by it”.⁹⁴ The Policy on Stakeholder Engagement core principles considers: a) a constructive, responsive, accountable and transparent Stakeholder Engagement (b) fair, balanced, and inclusive stakeholder participation in GEF governance and operations. (c) a stakeholder Engagement applied to all GEF-Financed Activities, irrespective of the level of potential social and environmental risks and impacts. (d) a requirement for effective and meaningful stakeholder Engagement a sustained commitment and action, including the appropriate allocation of resources. (e) effective stakeholder engagement in GEF governance and operations is supported by appropriate documentation and easy and timely access to relevant information.⁹⁵ The Policy on Stakeholder Engagement is mandatory to all projects, programs, activities lead by the Secretariat and Agency policies, procedures, and capabilities.⁹⁶

4.2 Access to Information

Access to information is a key precondition to enable informed and effective participation. This subsection details how access to participation is addressed in the financial mechanisms of the UNFCCC.

The GCF has standardized procedure for accessing information including previously defined disclosure criteria and timing parameters to address an information request.⁹⁷ The GCF enables access to information with the implementation of a disclosure policy based on four key principles: 1) Maximize access to “access to any documents and information that it produces and to information in its possession (..)”⁹⁸ Access to information is only limited by the exception list and legal confidentiality obligations. Access is provided based on specific guidelines and procedures. 2) Limited exceptions based on the possibility of clearly defined potential harm to interests, entities or parties; or that it is legally obligated to non-disclosure or that a third party has marked as confidential. Exceptionally, information ordinarily excluded can be shared or information that is normally accessible can be decided not to disclose or delay dissemination of information, when it determines that the benefit would outweigh the potential harm. 3) Simple and broad access to information employing

⁹⁴ GEF, ‘Policy on Stakeholder Engagement SD/PL/01’ (n 92).

⁹⁵ *ibid* 6.

⁹⁶ *ibid* 17.

⁹⁷ ‘Information Disclosure Policy of the Green Climate Fund’ <<https://www.greenclimate.fund/about/disclosure>>.

⁹⁸ *ibid*.

all practical means to facilitate and maximize access using clear and cost-effective procedures and timelines to process requests. 4) Explanations of decisions and right to review when a request to access information is denied.⁹⁹ The GCF has established an Information Appeals Panel to address review process regarding information access denied.¹⁰⁰

The Adaptation Fund is committed to open access to information, as to promote engagement with stakeholders.¹⁰¹ The Open Information Policy seeks to facilitate public “oversight of Fund-supported operations during their preparation and implementation”.¹⁰² AF approach is to disclose all information unless there is a reason for confidentiality due to the negative impact on the Fund, implementation of its activities or legal obligation.¹⁰³ Furthermore, all AF databases are licensed under the Open Data Commons - Attribution License (ODC -BY).¹⁰⁴

The draft Adaptation Fund Vision and Guidelines for Enhanced Civil Society Engagement being developed by the AF, also determines that all policy documents and guidelines under Board discussions should be publish for public comment and these comments should be considered by the Board before adopting these documents.¹⁰⁵ Moreover, the AF secretariat makes available to observers a webcast of the “Board proceedings and archive the recorded proceedings on a web-based platform”¹⁰⁶

The GEF is mandated to provide full disclosure of all non-confidential information throughout the projects cycle.¹⁰⁷ Furthermore, the GEF has establish a “presumption in favor of disclosure in the GEF's approach to information disclosure, unless there is a compelling reason for confidentiality,”¹⁰⁸

GEF's Policy on Access to Information is applicable to its council and it is meant to contribute to effective stakeholder engagement, reduce risk, public awareness and

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

¹⁰¹ Adaptation Fund, ‘OPEN INFORMATION POLICY’ <<https://www.adaptation-fund.org/wp-content/uploads/2015/01/Open%20Information%20Policy.pdf>> para 1.

¹⁰² *ibid* para 1.

¹⁰³ *ibid* para 2.

¹⁰⁴ *ibid* para 12.

¹⁰⁵ Adaptation Fund, ‘OPTIONS FOR GUIDELINES TO FURTHER ENHANCE CIVIL SOCIETY PARTICIPATION AND ENGAGEMENT IN THE WORK OF THE FUND AFB/B.40/7’ (n 80) Annez 1 para 26.

¹⁰⁶ *ibid* Annex 1 para 16.

¹⁰⁷ GEF, ‘Instrument for the Establishment of the Restructured Global Environment Facility’ para 5 <https://www.thegef.org/sites/default/files/publications/gef_instrument_establishment_restructured_2019.pdf>.

¹⁰⁸ GEF, ‘GEF Practices on Disclosure of Information GEF/C.41/Inf.03’ para 4 <https://www.thegef.org/sites/default/files/council-meeting-documents/C.41.Inf_.03_GEF_Practices_on%20Disclosure_of_Information.pdf>.

knowledge transfer.¹⁰⁹ Council unrestricted information must be disclosed by GEF Secretariat in its website.¹¹⁰ Core principles on information access are to: a) allow access to Council information unless restricted by the exception list. b) disclose unrestricted Council information proactively. c) disclose upon request unrestricted information that is not disclosed proactively with clear time standards. d) Any restriction to information access made by the Council must be based on the exception list. The Council has 10 days to respond upon an information request and the Council decision can be appealed.¹¹¹ The exemption list allows the Council to restrict access to information and it can include personal information; information that compromise security, safety or health; information subject to attorney-client privilege; information under a separate disclosure/ access to information regime or equivalent and/or conveyed to the Council as restricted from public access in accordance with the owner's policies.¹¹²

4.3 Vulnerable Groups Safeguards

This subsection identifies how existing financial mechanisms of the UNFCCC have created structures and procedures to better address vulnerable population participation, rights and needs. Participation of vulnerable groups and their due consideration is a concern expressed in the Paris Agreement and in the submission submitted to the TC LDF recommendation process.¹¹³ Vulnerable communities around the world are being affected by the unfulfillment of the UNFCCC objective to stabilize carbon emissions in the atmosphere in a level that prevent dangerous anthropogenic interference with the climate system and allows sufficient time for ecosystems to adapt naturally to climate change.¹¹⁴

The IPCC defines vulnerability as the "propensity or predisposition to be adversely affected".¹¹⁵ A vulnerable group is understood as a "population within a country that has specific characteristics that make it at a higher risk of needing humanitarian assistance than others or being excluded from financial and social services".¹¹⁶ According to the GEF, a vulnerable or disadvantage group or individual are those who due to their "age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or

¹⁰⁹ GEF, 'Policy on Access to Information GA/PL/04' paras 1 & 5

<https://www.thegef.org/sites/default/files/documents/Access_to_Information_Policy.pdf>.

¹¹⁰ GEF, 'Policy on Access to Information GA/PL/04' (n 110).

¹¹¹ *ibid* 9 & 11.

¹¹² *ibid* 8.

¹¹³ UNFCCC, 'Paris Agreement' (n 7) Art. 7(5).

¹¹⁴ United Nations, 'United Nations Framework Convention on Climate Change' (United Nations 1992) Art. 2.

¹¹⁵ IPCC, 'Glossary', *SPECIAL REPORT Global Warming of 1.5 °C* (Cambridge University Press 2018)

<<https://www.ipcc.ch/sr15/>>.

¹¹⁶ European Commission, 'Index for Risk Management - InfoRM: Concept and Methodology, Version 2014.'

<<file:///C:/Users/adxw1/Downloads/lbna26528enn.pdf>> accessed 28 August 2023.

indigenous status, and/or dependence on unique natural resources, may be more likely to be adversely affected by the impacts of a project or program and/or more limited than others in their ability to take advantage of its benefits".¹¹⁷

The governing instrument of the GCF encourages the involvement of vulnerable groups and addressing gender aspect to access funding.¹¹⁸ The approach of the GCF to fulfill its objective includes adopting a gender-sensitive approach.¹¹⁹ Furthermore, the structure of the GCF Board and Secretariat considers a gender balance.¹²⁰ The GCF Gender Policy is meant to mainstream gender in the implementation and framework of projects. Also, the Gender Policy recognizes that women and vulnerable communities should be effectively engage in the discussions and decisions that affect them.¹²¹ The guiding principles applicable to the GCF regarding gender require a) addressing climate change by respecting, considering and promoting gender equality and women empowerment. b) activities proposed by countries to be supported by GCF to be informed by the Gender Policy. c) to include women and men, including from vulnerable communities with equal and equitable opportunities to fully and effectively engage in consultations and decision-making throughout the project cycle. d) transparency, non-discriminatory access and accountability in its operations.¹²²

GCF has also developed an Indigenous Policy with a series of principles that include the implementation of free, prior and informed consent; respect to indigenous peoples land right; recognize key international human rights and principles; respect voluntary isolation; recognizes tradition knowledge and livelihoods systems; facilitates access to resources and respects self-government.¹²³ The GCF has also establish an effective grievance redress mechanism at project level to address indigenous peoples concerns and including the application of article 31st of the UN Guiding Principles on Business and Human Rights.¹²⁴ A Senior Indigenous Peoples Specialist has been appointed to the Secretariat and is the indigenous peoples focal point. Furthermore, the GCF supports the work of the indigenous people's advisory group to convey its recommendations.¹²⁵ The advisory group is composed of 4

¹¹⁷ GEF, 'Policy on Environmental and Social Safeguards SD/PL/03' 5

<https://www.thegef.org/sites/default/files/documents/gef_environmental_social_safeguards_policy.pdf>.

¹¹⁸ GEF, 'Governing Instrument for the Green Climate Fund' (n 67) para 31.

¹¹⁹ *ibid* 3.

¹²⁰ *ibid* 11; 21.

¹²¹ GCF, 'Gender Policy' para 5 <<https://www.greenclimate.fund/document/gender-policy>>.

¹²² GCF (n 121).

¹²³ 'Operational Guidelines: Indigenous Peoples Policy' para 22

<[¹²⁴ 'Indigenous Peoples Policy' para 66 <<https://www.greenclimate.fund/document/indigenous-peoples-policy>>; United Nations, 'Guiding Principles on Business and Human Rights' \(2011\) para 31.](https://www.greenclimate.fund/document/operational-guidelines-indigenous-peoples-policy#:~:text=These%20guidelines%20provide%20guidance%20on%20the%20application%20of,Policy%20and%20the%20related%20environmental%20and%20social%20safeguards.>>.</p></div><div data-bbox=)

¹²⁵ 'Indigenous Peoples Policy' (n 124) paras 29, 80–82.

indigenous people's representative from developing states and is selected considering gender balance through an indigenous peoples-led, self-selection process.¹²⁶

Adaptation Fund (AF) in its Environmental and Social Policy includes as a key principle conditions to avoid imposing disproportionate adverse impacts on marginalized and vulnerable groups, including children, women and girls, the elderly, indigenous people, tribal groups, displaced people, refugees, people living with disabilities, and people living with HIV/AIDS.¹²⁷ This implies that implementing entities have to screen projects and assess the impact on marginalized and vulnerable groups.¹²⁸ The policy includes as principle respecting and promoting international human rights in projects supported by the fund.¹²⁹

The design and implementation of AF projects must provide women and men equal opportunities, receive comparable social and economic benefits and do not cause disproportionate adverse effects during the development process.¹³⁰ The AF has also implemented a Gender Policy and Action Plan that strives to "to uphold women's rights as universal human rights and to attain the goal of gender equality, the empowerment of women and girls and the equal treatment of people regardless of gender, including the equal opportunities for access to Fund resources and services, in all Fund operations through a gender mainstreaming approach."¹³¹ The AF Gender Policy states that the Fund's vision cannot be realized without gender equality.¹³² The Gender Policy also mentions that all the AF activities are designed to be implemented by: 1) engaging, empowering and benefiting the most vulnerable communities. 2) and advancing gender equality and empowerment of women and girls.¹³³

Also, in the draft Adaptation Fund Vision and Guidelines for Enhanced Civil Society Engagement, all activities of the fund are to be designed to promote locally lead action, enhanced access to finance, empowers and benefit the most vulnerable people and communities as agents of change.¹³⁴ Furthermore, the Adaptation Fund

¹²⁶ *ibid* 82.

¹²⁷ 'Revised Environmental and Social Policy' para 14.

¹²⁸ *ibid*.

¹²⁹ Adaptation Fund para 15 <<https://www.adaptation-fund.org/document/environmental-and-social-policy-approved-in-november-2013/>>.

¹³⁰ *ibid* 16.

¹³¹ Adaptation Fund, 'Gender Policy and Gender Action Plan' <https://www.adaptation-fund.org/wp-content/uploads/2016/04/OPG-Annex-4_GP-and-GAP_approved-March2021pdf-1.pdf>.

¹³² *ibid* 4.

¹³³ Adaptation Fund, 'Gender Policy and Gender Action Plan' (n 131).

¹³⁴ Adaptation Fund, 'OPTIONS FOR GUIDELINES TO FURTHER ENHANCE CIVIL SOCIETY PARTICIPATION AND ENGAGEMENT IN THE WORK OF THE FUND AFB/B.40/7' (n 80).

has also a grievance mechanism that is available for community members that are adversely affected by AF funded activities.¹³⁵

GEF's Policy on Stakeholder Engagement takes on count that any consultation made by agencies must be "responsive to the needs and interests of disadvantaged and vulnerable groups".¹³⁶ Furthermore, the GEF Policy on Environmental and Social Safeguards has established for its policies, systems and procedure a set of minimum standards.¹³⁷ These minimum standards require: a) an Environmental and Social Assessment, Management and Monitoring systems in programs and projects that identifies and considered the differentiated needs of Disadvantaged or Vulnerable Groups or Individuals that are or may be affected, systematically addresses the needs of persons with disabilities ensuring non-discrimination and equality, and identifies the impacts on women, men, girls and boys preventing gender-based discrimination.¹³⁸ b) for agencies to have an Accountability, Grievance and Conflict Resolution system. c) to ensure Biodiversity Conservation and the Sustainable Management of Living Natural Resources. d) to avoid restrictions on Land Use and Involuntary Resettlement and in cases where there is no alternative the adverse effects must be minimized, managed or compensated based on meaningful consultations affected Disadvantaged or Vulnerable Individuals or Groups.¹³⁹ Peoples subjected to economic or physical displacement have to be consulted; informed of their rights and of the existence of accountability, grievance and conflict resolution systems; provided with resettlement alternatives and assistance; titled land owners are provided resettlement options including compensation; and adequate housing and/or cash compensation, access to services and social cohesion; transitional support, assistance to improve or restore livelihoods.¹⁴⁰ e) free, Prior and Informed Consent (FPIC) of affected Indigenous Peoples must be obtained when a project impacts land or natural resources, implies the relocation of indigenous or has a significant impact on Indigenous People's Cultural Heritage.¹⁴¹ f) protection of cultural heritage by ensuring that policies, procedures and systems have assessments processes, due consultations take place on cultural heritage impact and on disclosure of information, consultation on means to minimize or mitigate adverse effects, implement benefit sharing if a commercial use of cultural heritage takes place and others.¹⁴² g) ensure resource efficiency and pollution prevention. h) demonstrate measures to ensure labor and working conditions, including the protection of

¹³⁵ Adaptation Fund, 'AD HOC COMPLAINT HANDLING MECHANISM (ACHM)' <https://www.adaptation-fund.org/wp-content/uploads/2016/12/Ad-Hoc-Complaint-Handling-Mechanism_final_March2017.pdf>.

¹³⁶ GEF, 'Guidelines on the Implementation of the Policy on Stakeholder Engagement SD/GN/01' (n 94) para 16(c).

¹³⁷ GEF, 'Policy on Environmental and Social Safeguards SD/PL/03' (n 117).

¹³⁸ *ibid* 15–18.

¹³⁹ *ibid* 21.

¹⁴⁰ *ibid* 23.

¹⁴¹ GEF, 'Policy on Environmental and Social Safeguards SD/PL/03' (n 117) Art. 10 .

¹⁴² *ibid* Art. 6.

vulnerable workers, including but not limited to women, children of working age, migrants and persons with disabilities.¹⁴³ g) implement community health, safety and security measure, that assess the needs and take into account the differentiated levels of exposure of disadvantaged or vulnerable groups or Individuals, including in particular women and children.¹⁴⁴

The GEF Gender Equality Policy (GEP) acknowledges that men and women have a differentiated use of resources and therefore are affected differently by changes to these resources. Furthermore, the GEF mentions that "gender inequality and social exclusion increase the negative effects of environmental degradation on women and girls".¹⁴⁵ GEF's Gender Equality Policy is applicable to all activities finances and the fund's bodies.¹⁴⁶ The aim of the GEP is for women and men to participate, contribute and benefit from GEF-Finance Activities.¹⁴⁷ The principles of the GEP are: 1) to mainstream Gender and promote Gender Equality and the Empowerment of Women. 2) to not exacerbate existing gender-based inequalities. 3) stakeholder engagement is conducted in an inclusive and gender responsive manner. 4) GEF-Financed Activities are conducted, designed and implemented considering women participation, including Indigenous women and local women's groups. 5) Gender-Responsive Approach is applied in all phases of GEF-Financed Activities. 6) size opportunities to address Gender Gaps and support the Empowerment of Women.¹⁴⁸

In past considerations regarding climate impacts, the Adaptation Fund, the Global Environment Facility (GEF) and the GCF have been encouraged by the COP to enhance their consideration of "of local, indigenous and traditional knowledge and practices and their integration into adaptation planning and practices, as well as procedures for monitoring, evaluation and reporting"¹⁴⁹

The GEF has also created a Principles and Guidelines for Engagement with Indigenous Peoples (PGEI) that elaborates on existing policies and establishes mechanisms to strengthen engagement with Indigenous Peoples.¹⁵⁰ The GEF has created process of engagement and an Indigenous Peoples' Task Force (IPTF).¹⁵¹ The

¹⁴³ *ibid* 28.

¹⁴⁴ *ibid* 30.

¹⁴⁵ GEF, 'Policy on Gender Equality SD/PL/02' 5

<https://www.thegef.org/sites/default/files/documents/Gender_Equality_Policy.pdf>.

¹⁴⁶ *ibid* 5.

¹⁴⁷ *ibid* 7.

¹⁴⁸ *ibid* 8.

¹⁴⁹ 'Decision 4/CP.20 Report of the Adaptation Committee FCCC/CP/2014/10/Add.2'

<<https://unfccc.int/resource/docs/2014/cop20/eng/10a02.pdf#page=6%22>> accessed 23 June 2023 Annex (5)b.

¹⁵⁰ GEF, 'Principles and Guidelines for Engagement with Indigenous Peoples GEF/C.42/Inf.03/Rev.1'

<https://www.thegef.org/sites/default/files/council-meeting-documents/C.42.Inf_.03.Rev_.1_Principles_and_Guideline_for_Engagement_with_Indigenous_Peoples.Sept_10%2C_2012.pdf>.

¹⁵¹ *ibid* 11.

main recommendation made by IPTF to the GEF was to adopt rights-based approach and contributing to the realization of the UNDRIP, the African Charter, and the International Labour Organization (ILO) Convention 169 when applicable to a signatory state.¹⁵²

The PGEI created a mechanism and developed practices for its implementation that included the creation of an Indigenous Peoples and an Indigenous Peoples Advisory Group (IPAG).¹⁵³ The IPAG key role is to provide advice to the focal point on how to operationalize the PGEI. The GEF seeks with this PGEI to ensure full and effective participation of Indigenous Peoples in “policies, processes, programs and projects that may positively or negatively impact them or infringe upon their rights and ability to sustain their way of life.”¹⁵⁴ The GEF does not finance involuntary resettlement of Indigenous Peoples, respects and recognizes the importance of traditional knowledge, innovations and practices to the long-term wellbeing of Indigenous Peoples, and has recognized the implementation of FPIC in GEF-financed activities on or that significantly impacts Indigenous Peoples traditions, lands or resources, consistent with the UN Declaration on the Rights of Indigenous Peoples.¹⁵⁵

The GEF has established an accountability and grievance systems to respond to and address complaints made by Indigenous Peoples regarding projects or institutions.¹⁵⁶ The GEF Minimum Standard requires GEF Agencies to demonstrate to have in place an accountability, grievance and conflict resolution system.¹⁵⁷

¹⁵² GEF, ‘Issue Paper on Prepared by the Indigenous Peoples Task Force to the GEF’

<https://www.thegef.org/sites/default/files/publications/GEF_IP_Part2_Issues_Paper_CRA_web.pdf>.

¹⁵³ GEF, ‘Principles and Guidelines for Engagement with Indigenous Peoples GEF/C.42/Inf.03/Rev.1’ (n 150) para 45.

¹⁵⁴ *ibid* 36.

¹⁵⁵ *ibid* 38, 39 & 40.

¹⁵⁶ GEF, ‘Principles and Guidelines for Engagement with Indigenous Peoples GEF/C.42/Inf.03/Rev.1’ (n 150).

¹⁵⁷ GEF, ‘Policy on Environmental and Social Safeguards SD/PL/03’ (n 117).

Conclusion

The existing public participation structures of UNFCCC related financial mechanism provide the opportunity for the LDF to be built considering a human rights-approach and proven practices. The inclusion of these practices could accelerate LDF implementation and increase its positive impact.

The LDF structure should layout from the start the key principles that define how effective public participation is enabled and ensured. The structure should define a standardized process for public participation, including that of vulnerable groups. This process should allow inputs from CSOs during all phases of the activities, projects, or programs of the LDF.

LDF from the start should recognize that effective and meaningful public participation is interlinked with access to information and being open to the possibility that the public's inputs are reflected in the decision-making process. A standardized process to access information should be defined in the structure of the LDF, including a mandate for full and proactive disclosure with defined limitations criteria.

Furthermore, existing financial mechanisms have proven the usefulness of establishing focal points, creating assessment procedures to do no harm, making available grievance mechanism, recognizing the application of human rights law and international instruments related to vulnerable groups, and developing internal policies to guarantee a human rights-based approach. These are proven and existing measures that either the TC recommendations should include or that the Subsidiary Body of Implementation of the UNFCCC must integrate in the governing instrument of the LDF. A human rights approach that enables public participation can strengthen the response to loss and damage.¹⁵⁸

¹⁵⁸ Patrick Toussaint and Adrian Martínez Blanco, 'A Human Rights-Based Approach to Loss and Damage under the Climate Change Regime' (2019) 0 Climate Policy 1.

Author Details

Adrian Martínez Blanco <http://orcid.org/0000-0002-6787-8366>

Affiliations:

- University of Eastern Finland
- Asociación La Ruta del Clima