



SUBMISSION ON PROPOSED ADAPTATION FUND ENVIRONMENTAL AND SOCIAL POLICY

Pursuant to the Adaptation Fund Board's call for submissions on its proposed Environmental and Social Policy, the Center for International Environmental Law respectfully makes the following submission.

Measures that reduce vulnerability and increase adaptive capacity to respond to the impacts of climate change affect the lives, livelihoods and cultures of peoples and communities, and thus have implications for the full and effective enjoyment of human rights.¹ Adaptation measures, such as construction of sea walls, relocation of populations from flood-prone areas, improved water management, and early warning systems, could have both positive and negative effects on the rights to life, health, food, water, and housing, among others.

For this reason, we welcome the Adaptation Fund Board's proposed Environmental and Social Policy, and support the Board's commitment to ensure that all Adaptation Fund projects/programmes respect and protect human rights. The overall policy is consistent with the Cancun Agreements, which provides that "Parties should, in all climate change-related actions, fully respect human rights," including the rights of affected peoples and communities to participate in decision-making processes and to seek recourse when decisions negatively affect them. In recognition of Parties' existing human rights obligations and their decision to avoid or minimize human harm resulting from adaptation measures, the Board explicitly recognizes that human rights considerations must guide the implementation and monitoring of the Adaptation Fund's policies and programmes.

As set forth in its proposed Environmental and Social Policy, the Board aims to establish policies and processes that, if effectively implemented, will help: prevent environmental, social and human harm; promote sustainable development; maximize participation, transparency, and accountability; and ensure consistency across projects. Once finalized, the Environmental and Social Policy should be incorporated into the Adaptation Fund's Operational Policies and Procedures, and thus should apply to all of the Fund's activities irrespective of the entity(ies) involved. CIEL provides the following recommendations for how the proposed policy should be strengthened as well as the means by which it should be operationalized:

Environmental, Social and Human Rights Impact Assessment

With respect to environmental and social assessments, we agree with the Board's proposal that "all environmental and social risks shall be adequately identified and assessed in an open and transparent manner with appropriate consultation[.]" and that the scope of the assessment "shall be commensurate with the scope and severity of potential risks." However, we are concerned by the general presumption that "many projects/programmes supported by the Fund will entail few,

¹ Center for International Environmental Law, *Climate Change & Human Rights: A Primer* (May 2013), available at http://www.ciel.org/Publications/CC_HRE_23May11.pdf.

if any, environmental and social risks, and thus no environmental and social assessment may be required.”

If there are even minimal risks associated with a project/programme, such risks must be assessed using the environmental and social principles set forth in the proposed policy. If there is a determination that there are no impacts, then the Fund and/or its implementing agencies should notify all stakeholders of this finding, and provide an opportunity for stakeholders to comment and raise concerns regarding potential impacts and request reassessment or adjustments to the project/programme plan.

The Board should also specify under what conditions a project/programme would not proceed. For example, the Board should make clear that it will not provide support to a project/programme that does not meet the minimum requirements set forth in its Environmental and Social Policy. Further, if the assessment determines that the project will violate human rights, then it should not proceed as designed. Finally, the Board should develop an exclusion list, which defines the types of activities the Fund will not finance, either directly or indirectly. Projects/programmes that involve activities identified on this exclusion list would not qualify for the Fund’s support.

In addition, and as discussed previously, we welcome the Board’s recognition of its obligations and commitment to include human rights protections in its proposed Environmental and Social Policy. To fully operationalize these obligations, however, we urge the Board to require the Fund and its implementing agencies to undertake systematic human rights due diligence for all projects and programmes.² This approach would assist countries in fulfilling their human rights obligations, while helping to ensure that the Fund does not contribute to or exacerbate human rights violations through its projects and programmes.

Specifically, the Fund should require a human rights impact assessment (HRIA) as part of the integrated environmental and social impact assessment/screening. Standard impact assessments often fail to capture the full range of issues that may exacerbate or trigger human rights violations. The HRIA allows one to identify and assess the full range of human rights impacts of the Fund’s activities, and then to mitigate or avoid adverse impacts and maximize positive impacts.

While a HRIA could be part of the environmental and social assessment, its added value stems from the fact that it is a distinct assessment.³ Unlike other impact assessments, it is explicitly

² The Board should take into account current best practice for human rights due diligence, as reflected in the UN Framework and Guiding Principles on Business and Human rights, a widely-accepted framework to help elaborate the responsibilities of businesses and the duties of states with regard to corporate impacts on human rights. In particular, the Framework provides that robust human rights due diligence includes: (1) a human rights policy; (2) a human rights impact assessment; (3) tracking and reporting on implementation; and (4) access to effective remedies.

³ In its February 2013 study, the World Bank’s Nordic Trust Fund of the World Bank delineated the ways in which a HRIA provides added value to development. See, *Human Rights Impact Assessments: A Review of Literature, Differences with other forms of Assessments and Relevance for Development* (Feb. 2013), available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:22312165~pagePK:41367~piPK:51533~theSitePK:40941,00.html>.

anchored in a universally recognized legal framework, both for the process of conducting the impact assessment (i.e., the proposed project/programme is assessed against objective human rights standards) and understanding the substance of rights in question. Since the HRIA framework is based on the principles of equality, participation, and accountability, a HRIA should assess whether and to what extent there are: effective participatory mechanisms in place during the full project cycle; existing barriers to equality and forms of discrimination; and access to information. Perhaps most critically, because a HRIA is predicated on the understanding that all fundamental freedoms – whether economic, social, cultural, political or civil in nature – are indivisible, interdependent, and interrelated,⁴ it offers a more comprehensive appraisal of how projects and programmes could impact the full range of human rights.

Monitoring, Reporting, and Evaluation

We support monitoring, reporting and evaluation to ensure that the Adaptation Fund’s proposed Environmental and Social Policy are being respected, and thus provide positive outcomes for all relevant stakeholders. However, we urge the Board to ensure that implementing agencies are also subject to monitoring and oversight. While the proposal calls for implementing entities to report annually on the status of implementation of any environmental and social management plan and any actions taken, it does not indicate that such entities are also subject to the monitoring policies that apply to the Fund itself. This issue needs to be addressed in further detail in the final policy, including how an implementing entity’s failure to comply with the proposed policy would affect the project cycle and/or its accreditation.

Grievance Mechanism

We agree that a grievance mechanism is necessary to allow project-affected people to raise concerns regarding environmental or social harms associated with any Adaptation Fund project/programme. Grievance mechanisms can be vital tools that assist institutions in providing remedies for harm to communities and ecosystems, and protecting existing rights, obligations and standards.⁵ Such mechanisms also help ensure that policies and projects are legitimate and effective, and promote sustainable development.

The proposed policy states that “implementing entities shall identify an available grievance mechanism” and that “[t]he mechanism can be pre-existing, national, local, or project-specific.” We urge the Board to ensure that the policy provides minimum standards as to what constitutes an acceptable grievance mechanism for use by implementing entities, regardless of the entity employed. At a minimum, any grievance mechanism should meet the goals of effectiveness, legitimacy, accessibility, predictability, equitability, transparency, rights compatibility, and

⁴ The Declaration on the Right to Development, adopted by the United Nations General Assembly in 1986, provides in part that: “all human rights and fundamental freedoms are indivisible and interdependent, and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. . .”

⁵ A HRIA, discussed above, can provide critical guidance to inform the design of grievance mechanism because it would analyze the potential for, and barriers to entry against, access to remedy should rights be violated.

participation.⁶ Any mechanism should be understandable, gender responsive, culturally appropriate, and accessible to all segments of affected populations, particularly those who are most marginalized or vulnerable. In addition, those submitting complaints should be able to do so at no cost and without risk of retribution.

However, conflicts may arise that can't be resolved by grievance mechanisms used by the implementing entities. For this reason, we urge the Fund to create an independent and robust grievance mechanism that has the authority to assist with dispute resolution, monitor and assess compliance, and award remedies. In its final policy, the Board should provide further detail regarding the procedures for the Fund's grievance mechanism. If further consideration is needed, then the policy should specify which body/institution has the mandate to so.

Implementation

For the proposed policy to be effective, the Environmental and Social Policy must apply to all implementing entities, and it must provide means by which to hold such entities accountable. With respect to the accreditation of implementing entities, the proposed policy states that such agencies "may" need to show the capacity and commitment to address environmental and social risks during the accreditation or re-accreditation process. However, similar to the way in which the Fund's Operational Policies and Guidelines are applied,⁷ each implementing entity must be subject to the most recent Environmental and Social Policy during any accreditation or re-accreditation process. Existing implementing entities must demonstrate how they will comply with the proposed policy and what gap-filling measures they will use if their existing policies are insufficient.

As mentioned previously, the proposed policy does not adequately address accountability processes (monitoring, reporting and evaluation) as applied to implementing entities. In addition, the policy does not specify what review or evaluation process will take place if the Environmental and Social Policy is not properly applied by an implementing entity. For this reason, the policy should explicitly address what process/actions may be taken (e.g. suspension or cancellation of project, loss of accreditation) if an implementing entity does not comply with the policy.

⁶ We have adapted and expanded on the principles for non-judicial grievance mechanisms set forth by the UN Special Representative on Business and Human Rights, John Ruggie. For further discussion, please refer to Center for International Environmental Law et al, *Grievance Mechanisms in the UNFCCC: An Essential Component of an International Safeguard System* (Dec. 2011), available at <http://www.scribd.com/doc/142917527/Grievance-Mechanisms-in-the-UNFCCC-2-Dec-2011>.

⁷ See Adaptation Fund Board, Operational Policies and Guidelines for Parties to Access Resources from the Adaptation Fund (amended July 2013), para. 41.