



**SIERRA CLUB AND CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW
INITIAL SUBMISSION OF VIEWS ON WORK STREAM I OF THE TRANSITIONAL
COMMITTEE REGARDING ENVIRONMENTAL AND SOCIAL SAFEGUARDS**

The Sierra Club and Center for International Environmental Law appreciate the opportunity to share our views on the following question posed by the Co-Chairs of Work Stream I for consideration by members of the Transitional Committee:

Country-led and results-based approaches:

10. What is needed to ensuring the country led principle alongside the application of environmental and social safeguards as well as internationally accepted fiduciary standards and sound financial management?

Country ownership and adherence to widely-accepted environmental, social and fiduciary standards are both well-settled and familiar principles of multilateral development assistance, and are firmly embedded in the UNFCCC and the Cancun Agreements. Properly implemented, these principles are not in tension--there is ample scope for countries to define their climate-related priorities, and the policies and actions they will implement to pursue them, within a policy framework that sets out procedural and substantive expectations for accessing the limited resources of the Green Climate Fund.

The principle of country ownership has been broadly accepted by the international community in the Paris Declaration and the Accra Agenda, and is the animating principle of international funding entities such as the Global Fund for AIDS, Tuberculosis and Malaria. Equally, adherence to internationally-agreed or commonly accepted norms, principles, and best practice standards regarding key dimensions of sustainable development has become a widely accepted component of the “social compact” between the international community and recipients of international support. Fidelity to norms of transparency, accountability and public participation; environmental and social responsibility; and protections for the most vulnerable populations are now essential prerequisites for receiving support from the vast majority of multilateral and many private funding agencies.

The UNFCCC and the Cancun Agreements incorporate both principles. With regard to country ownership, the Cancun Agreements make clear that developing countries are responsible for charting their own low-carbon development pathways, and identifying their own adaption

priorities. Accordingly, developing countries are asked to take mitigation actions that are “nationally appropriate” and reflect their own development priorities (Para. 48), and to craft adaptation actions in accordance with a country driven approach (Para. 12).

At the same time, the Convention instructs all Parties to “promote sustainable development” (Article 3.4) and to take action to minimize adverse economic, health and environmental effects of climate-related actions. (Article 4(1)(f)). It also requires Parties to facilitate “public participation in addressing climate change and its effects, and developing adequate responses.” (Article 6(a)(iii)). Similarly, the Cancun Agreements recognize the need to ensure the meaningful participation of a broad range of stakeholders to ensure that climate-related actions are effective (Para. 7, Appendix I). They make clear that principles of sustainable development should guide mitigation actions (Paras. 48, 65, Appendix I); and that adaptation actions should be based on inclusive and transparent planning processes, and should address the needs of vulnerable groups, communities and ecosystems. (Para. 12).

To give full effect to the principal of country ownership and ensure that appropriate standards for advancing sustainable development are met in all Green Climate Fund supported initiatives, the Transitional Committee should develop a policy framework that:

1. Incorporates internationally accepted environmental and social standards;
2. Ensures transparency and meaningful participation in decision-making;
3. Incorporates protections for the most vulnerable;
4. Establishes clear requirements and limited exceptions;
5. Adopts a comprehensive environmental management system.

1. Incorporates internationally accepted environmental and social standards.

The Transitional Committee should seek to align the GCF’s environmental and social policies with those internationally-agreed conventions, codes, action plans, soft law instruments, and sectoral “best practice” standards that give substantive content to the Parties’ commitments to promote sustainable development and environmental protection in their climate-related actions. It should defer to the work of other international institutions—such as the UN Development Group, human rights system, and work undertaken pursuant to the Convention on Biological Diversity--that have already undertaken some standard setting in their areas of expertise. The policies and procedures of multilateral development banks provide an additional resource for developing standards, but should not necessarily be the primary benchmark for harmonization.

By tethering its policies to international hard and soft-law standards, the GCF would (1) leave global standard-setting to the relevant experts; (2) pay due regard to its own technical and institutional limitations vis-à-vis other international bodies; and (3) facilitate consistency across international institutions.

2. Ensures transparency and meaningful participation in decision-making.

Transparency and inclusive decision-making are critical elements of both country ownership and sustainable development. People and communities affected by a project or policy initiative have a basic right to be informed in a timely way about decisions that affect their lives, and to have an opportunity to participate in decision-making by making their views known to decision-makers prior to any decision being made.¹ A number of international instruments broadly applicable to most UNFCCC Parties affirm participatory rights (including access to information, decision-making, and consent).² Moreover, there is now a broad recognition that public development initiatives are more likely to be sustainable and effective if they are based upon affected people's own analyses of the problems they face and their proposed solutions. Thus, the Rio Declaration on Environment and Development—the sister declaration to the UNFCCC—recognized the importance of transparency, participation, and access to mechanisms of redress in effective environmental decision-making. These conclusions have been confirmed by the World Bank, which has consistently found a high correlation between the extent and quality of public participation and overall project quality.³

Public access to critical project information is essential for affected people to have a meaningful voice in how projects will be designed and implemented, how project costs and risks will be distributed among affected people, and how negative impacts will be mitigated and managed. As a practical matter, placing such information in the public domain may substantially improve its quality and rigor. Allowing affected individuals the opportunity to independently scrutinize the assumptions and methodologies of the project sponsor, and to test its conclusions against their own understanding of the local conditions, would help ensure that the Green Climate Fund makes decisions based on the highest quality data available.

Existing public international financial institutions have taken steps to align their decision-making processes with these basic principles of public governance. For example, they have required public consultations to enable non-state actors to influence decision-making, adopted “access to information” policies to ensure public input is well-informed, and created formal grievance mechanisms to enable project-affected peoples to raise complaints.

¹ See, e.g., Rio Declaration on Environment and Development, Report of the UN Conference on Environment and Development, A/Conf.151/26 (Vol. I), Annex I, Principle 10 (3-14 June 1992); Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Decision-making, Doc. ECE-CEP-43 (25 June 1998).

² See, e.g. Universal Declaration on Human Rights (Art. 16), International Covenant on Civil and Political Rights (Art. 5), Convention on Biological Diversity (Art. 8j), ILO Convention 169 (Arts. 6, 7, 12, 15, 16, 17, and 33), UN Declaration on the Rights of Indigenous Peoples (Arts. 5, 10, 11, 13, 18, 19, 23, 28, and 32), Convention on the Safeguarding of Intangible Cultural Heritage (Art. 15), Convention on the Protection and Promotion of Cultural Diversity (Arts. 9 and 11), Convention on the Rights of the Child (Art. 12), and Convention on the Elimination of All Forms of Discrimination Against Women (Art. 14).

³ See, e.g., World Bank “Annual Review of Development Effectiveness.” Operations Evaluation Department (OED) (2002); World Bank, “World Bank Civil Society Progress Report 2000/2001,” (2001); World Bank, “Assessing Aid: What Works, What Doesn't and Why,” (1999); World Bank “Quality at Entry in CY99—QAG Assessment.” Quality Assessment Group (QAG) (2000); World Bank, *The World Bank Participation Source Book*. Washington DC (1996).

Indeed, many multilateral funding agencies are moving beyond ‘consultations’ towards more meaningful and inclusive forms of public participation. The Global Fund for AIDS, Tuberculosis, and Malaria, for example, has recognized that “only through a country-driven, coordinated and multi-sector approach involving all relevant partners will additional resources have a significant impact on the reduction of infections, illness and death from the three diseases.”⁴ Towards this end, the Global Fund has instituted a governance structure that is designed to ensure that non-governmental entities and affected communities are full partners in articulating national priorities and designing programs to achieve those priorities. Similarly, IUCN also includes civil society members alongside governments in its governing body. Additionally, UN-REDD involves representatives of civil society and indigenous peoples as full voting members of its governing Board. We believe this model represents best practice in inclusive decision-making and country ownership, and should be adopted by the Green Climate Fund.

3. Incorporates protections for the most vulnerable.

Too often, the benefits of internationally-supported initiatives have tended to flow to the powerful and well-connected, while the costs have been imposed upon marginalized groups that cannot defend their rights and interests in the planning process. To ensure that the costs and benefits of Green Climate Fund-supported initiatives are equitably shared, safeguards must be in place to enable the poor, indigenous peoples, and other vulnerable groups to meaningfully participate and vindicate their rights in decision-making processes.

4. Establishes clear requirements and limited exceptions.

As a minimum requirement, a credible environmental and social policy framework must be explicit with regard to what the Green Climate Fund will require to provide support. It should establish clear performance benchmarks and auditable criteria so that it is possible to determine if a project is or is not in compliance with the Parties’ expectations. Clear exclusion lists and bright-line rules for determining “no go areas” or “no go technologies” are particularly useful in this regard. If the policy is to allow derogations from these standards in certain circumstances, it should (a) include an explicit presumption that the policy will apply absent a compelling reason not to enforce it in a given circumstance; and (b) clearly define the circumstances in which it will allow such a showing to override the baseline requirements of the policy.

5. Adopts a comprehensive environmental management system.

Just as important as adopting an appropriate set of policy standards is establishing an effective management system to ensure that they are implemented properly. Towards this end, the GCF should adopt a comprehensive framework for the management of environmental issues that meets international best practice. To meet these international standards, a comprehensive E&S management system should include:

- A precautionary and polluter pays approach to environmental risks and impacts;

⁴ The Global Fund, 2005. *Revised Guidelines on the Purpose, Structure, Composition and Funding of Country Coordinating Mechanisms and Requirements for Grant Eligibility*, para. 3.

- Clear procedures for environmental and social assessment to identify and, where possible, quantify impacts and risks;
- Rigorous, comprehensive alternatives assessment to inform decision-making;
- An environmental and social policy framework that establishes an overall approach and issue- and sector-specific policies;
- Prohibitions on financing particularly risky or harmful activities;
- Clear procedures for information disclosure and public participations;
- Effective mechanisms for monitoring and oversight, enhancing implementation, and addressing problems that arise during implementation;
- Effective grievance mechanisms for the public to raise concerns and to seek redress;
- Clear procedures for evaluation, organizational learning and improvement; and
- Dedicated staffing, effective training, adequate budgetary support, clear lines of accountability, and an internal incentive structure that rewards environmental excellence.