



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

The Sierra Club and Center for International Environmental Law appreciate the opportunity to share our views on environmental and social safeguards for the Green Climate Fund (GCF). We fully support the submission from the Climate Action Network, and seek to supplement that submission with further detail on safeguards, stakeholder engagement, and accountability. These comments also complement our previous submission to the Transitional Committee regarding Work Stream I.

Adherence to widely-accepted environmental, social and fiduciary standards is a well-settled and familiar principle of multilateral development assistance, in addition to being firmly embedded in the UNFCCC and the Cancun Agreements. This is reflected in the Scoping Paper for Workstream IV, which recognizes the need for mechanisms “to ensure the application of environmental and social safeguards as well as internationally accepted fiduciary standards...”¹ In addition, 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).

In order to fully implement these provisions and fulfill its own mandate, the Transitional Committee must focus on the following three areas, each of which is addressed in further detail below:

1. Designing effective safeguards,
2. Guaranteeing stakeholder engagement, and
3. Ensuring accountability through monitoring and recourse mechanisms.

¹ Transitional Committee, “Workstream IV: Monitoring and Evaluation Scoping Paper,” 29 June 2011, TC-2/WSIV/1, paragraph 2(b), available at http://unfccc.int/files/cancun_agreements/green_climate_fund/application/pdf/tc2_ws4_1_290611.pdf.

1. Designing effective safeguards

A. *The scope of effective safeguards: what safeguards must cover*

The *Civil Society Recommendations for the Design of the Green Climate Fund* provides an excellent description of the scope of effective safeguards:

“Paragraph 1 (h) of the Terms of Reference for the TC specifically calls for the development of a mechanism ‘to ensure the application of social and environmental safeguards.’ This mechanism must include clear policies and procedures to prevent social and environmental harm and maximize public benefit, participation, transparency, accountability, equity, and the protection of rights. Safeguards are critical to ensuring that intended outcomes are achieved and scarce resources put to optimal use. Safeguards will have to be consistent with existing international obligations and help further the UNFCCC objective of allowing economic development to proceed in a sustainable manner.

In this context, the following internationally-recognized safeguards are indispensable to sustainable development and must be included in the design and operations of the GCF:

- Anticipate, analyze and mitigate social and environmental impacts through environmental and social impact analyses, including gender analysis, conducted sufficiently in advance of decision-making to respond to community concerns and public input;
- Respect the rights of Indigenous Peoples, women, and local communities and involve them in decision-making. Specifically, require the full and effective participation of communities and ensure consistency with the UN Declaration on the Rights of Indigenous Peoples, including requirements of free, prior and informed consent (FPIC) as well as with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- Avoid funding activities involving involuntary displacement from lands, territories, and resources, or that have significant adverse impacts on traditional livelihoods. In cases where avoidance is impossible and all alternatives have been exhausted, international law must be followed and affected populations must be allowed to participate in the planning, implementation and monitoring of resettlement programs, and adequately compensated. Affected populations should also be given access to an independent complaint or recourse mechanism to bring to the attention of the GCF Board instances where safeguards were not applied properly;
- Avoid the destruction of species or ecosystems, especially in areas that are legally protected, officially proposed for protection or recognized as protected by customary practices or indigenous or local communities.
- Comply with and support existing international obligations, including on human and gender rights, labor standards, cultural protection and multilateral environmental agreements. Moreover, international best practice standards must be incorporated where such standards exist.

The safeguards under the GCF should be developed with input from stakeholders across the globe. The GCF safeguard framework must: (1) include provisions on information

disclosure that are based on internationally recognized norms related to access to information; (2) maintain clear policies and processes that help countries implement them in national laws and systems that support low-carbon sustainable development, have good governance structures, and are consistent with international obligations; (3) support appropriate national-level grievance mechanisms as well as an international mechanism for cases that cannot be resolved at the national level; and (4) establish standardized and regular reporting requirements (including participatory monitoring) regarding how safeguards are addressed and respected throughout the design and implementation of activities.

B. A framework for effective safeguards: which issues safeguards must address

To ensure that appropriate standards for advancing sustainable development are met in all GCF-supported initiatives, the Transitional Committee should develop a framework for safeguards that:

- i. Incorporates internationally accepted environmental and social standards;
- ii. Incorporates protections for the most vulnerable;
- iii. Establishes clear requirements and limited exceptions; and
- iv. Adopts a comprehensive environmental management system.

i. Incorporates internationally accepted environmental and social standards.

The Transitional Committee should seek to align the GCF’s environmental and social safeguards 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 safeguards 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.

ii. 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 GCF-supported initiatives are equitably shared, safeguards must be in place to enable

the poor, indigenous peoples, and other vulnerable groups to meaningfully participate and fully exercise their rights in decision-making processes.

iii. Establishes clear requirements and limited exceptions.

As a minimum requirement, a credible environmental and social safeguards framework must be explicit with regard to what the GCF 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.

iv. Adopts a comprehensive environmental management system.

Just as important as adopting an appropriate set of safeguards 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 environmental and social management system should include:

- A precautionary and polluter pays approach to environmental risks and impacts;
- 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 **at the national and international level** 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.

2. **Guaranteeing stakeholder engagement**

Community consultation and input regarding the design, implementation, and monitoring of GCF safeguards is critical to their success and transparency and inclusive decision-making are critical elements of safeguard design.

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.² A number of international instruments broadly applicable to most UNFCCC Parties affirm participatory rights (including access to information, decision-making, and consent).³ 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 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.⁴

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 GCF 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.

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

² 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).

³ 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).

⁴ 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).

have a significant impact on the reduction of infections, illness and death from the three diseases.”⁵ 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 should be adopted by the GCF.

The Transitional Committee must systematically ensure and guarantee stakeholder and input, participation, advice and feedback in all operations of the GCF, at each level and step-- ex ante, on-going and ex post.

3. Ensuring accountability through grievance mechanisms and monitoring processes

Having safeguards in place is necessary, but not sufficient for a successful operation of the GCF. Effective monitoring processes and accountability mechanisms must also be in place. The monitoring process must include reporting of information relating to the implementation of safeguards and a mechanism to ensure the accuracy of that information and to provide constructive feedback in order to enhance ongoing implementation of safeguards.

The submission by Anju Sharma of the Oxford Institute for Energy Studies to Work Stream II, Sub-Work Stream 2 contains a succinct description of an effective accountability mechanism:

An independent process to enforce mutual accountability (between the GCF, national governments and non-government actors) should be in place from the start. If needed (depending on the disbursement rules of the GCF), such a redress mechanism should be available at the national as well as global level. Previous experience indicates that at least three minimum criteria to ensure the credibility and independence of a redress or appeals mechanism: independence (members should be chosen from outside the institution, and their budget should be independent and adequate); public accountability (the public should have access to every stage of the redress process) and effectiveness (the mechanism must have the authority to ensure that their recommendations are acted upon).

It is also important to engage non-government actors in the monitoring process, as Anju Sharma also emphasizes: “In recent decades, non-government actors have proved their ability to implement projects and activities effectively, promote innovative solutions, and achieve results at lower costs. They sometimes have better access to target audiences, are able to promote better synergies and contribute towards more effective monitoring. They can also lend greater legitimacy to global institutions/bodies such as the GCF, by improving the level of local-level input in decision-making.”

⁵ The Global Fund, 2005. *Revised Guidelines on the Purpose, Structure, Composition and Funding of Country Coordinating Mechanisms and Requirements for Grant Eligibility*, para. 3.

