

FEASIBILITY REPORT ON THE STRENGTHENING OF CITIZEN-BASED COMPLAINT REVIEW AND REFERRAL MECHANISMS UNDER THE GREEN CLIMATE FUND

A BRIEFING PAPER.¹

1. SUMMARY

The Green Climate Fund (hereafter referred to as “the GCF” or “the Fund”) was established as a financing mechanism under the UN Framework Convention on Climate Change (UNFCCC) by the 17th Conference of the Parties (COP) in 2011. The GCF’s purpose is “to make a significant and ambitious contribution to the global efforts towards attaining the goals set by the international community to combat climate change.”² It is aimed to be the main multilateral conduit of public finance to enable climate change mitigation and adaptation actions to avoid serious climatic impacts.³

It is crucial to ensure the GCF meets its objectives in enabling the effective use of public resources to achieve urgently needed results and in assuring that fiduciary responsibilities are respected and that social and environmental safeguards are protected. Such efficiency and assurances entail that climate finance is spent transparently and accountably through participatory decision-making, implementation and monitoring processes. Such an approach ensures fairness and avoids public financial waste and misuse. While the GCF’s Board is now in the process of building mechanisms to ensure its accountability at different levels, most of these are not explicit or do not figure in the engagement with civil society as a key stakeholder concerned with social, environmental and fiduciary transparency, accountability and integrity of the Fund’s goals, results and impacts. Experience from other multilateral financing initiatives shows that civil society engagement is fundamental to ensuring accountability.

Transparency International commissioned Both ENDS, Natural Justice and a legal expert to conduct a feasibility study into options for a civil society led initiative to support and strengthen the functions of the grievance and integrity mechanisms of the GCF. The study focused on the interests, needs and capacities of civil society actors to support in the referral of grievances and relevant information regarding primarily project or programme implementation. Based on an initial discussion paper, civil society groups with relevant expertise, GCF Board Members, GCF Secretariat and representatives of academia and various agencies partnering with Fund were approached for feedback and input. Building on this feedback a draft Briefing Paper was presented during a side event at the Bonn SB 42 UNFCCC meeting in early June with comments and suggestions incorporated in this final abbreviated version.⁴

This Briefing Paper thus explores options for civil society organisations (CSOs)⁵ to help ensure robust, well-functioning and responsive accountability mechanisms of the Fund. It explains why the GCF has much to gain from a close collaboration with CSOs to ensure effectiveness, efficiency and accountability. In summary, it concludes and recommends that CSOs can play an important role to ensure: (i) Access to the GCF's grievance mechanisms by any person or groups who witness or are potentially or already negatively affected by corrupt behaviour or actions, and/or non-compliance; and (ii) The effective handling of grievances related to corruption and/or violations of social-environmental safeguards.⁶ Thereto, concrete steps for advancing these components are proposed.

2. RATIONAL

Considering the expected magnitude of funds to be entrusted to the GCF, robust accountability and fiduciary systems need to be in place. One needs to anticipate growing pressures to be brought upon the GCF to spend funds quickly in recipient countries. In some countries where large climate investments are urgently needed, implementing partners may lack a record of sufficient good governance to fully guarantee that there will be no misappropriation of funds, particularly in downstream financing schemes. Moreover, there is widespread concern that a number of other international financial institutions and implementing agencies already involved in the allocation of international public climate funds fail to meet agreed standards of transparency, accountability and social-environmental safeguards.

In many instances, misuse of public funds through bilateral, multilateral and private sector channels due to corruption is not isolated from concerns about human rights abuses and environmental harms. Many, if not most, climate mitigation and adaptation measures involve land and water related resource management with direct and indirect effects on local populations. In some instances, climate financing arrangements have already led to serious complaints about social-environmental violations, sometimes in connection with fraud and corruption.⁷

The concept of climate finance is based on achieving some form of additionality. Concerns have been raised about scarce new public international financial resources being spent on investments that do not result in real net reductions in greenhouse gas (GHG), or that would be built anyway, or even worse, that may subsidize investments which can actually perpetuate increased GHG emissions. As various case studies indicate, showing real climate protection additionally for adaptation may be even more problematic – and even more subject to manipulation and fraud – than for mitigation.⁸ Important *lessons learned* from such studies include:

- (i) How independent monitoring is a valuable yet largely untapped means of mitigating risks of corruption and fraud.
- (ii) The crucial need for more outreach and awareness-raising. Executives of existing climate funds have noted that their complaints mechanisms are not receiving many grievances. This suggests a lack of knowledge and awareness amongst local stakeholders of climate financed projects on the availability of channels to report wrongdoing where they see it occurring. In many cases this may be because of physical access difficulties due to the remoteness of areas where climate financed projects are being implemented. There is also a failure on the part of implementing bodies to effectively communicate the options available. Often, information may not be made available in the local language or sufficiently tailored to the local context to make complaints mechanisms known and truly accessible to people on the ground.⁹
- (iii) Climate finance institutions tend not to provide details over what investigative, redress or remedial actions should be taken and within what time frame complaints should be addressed. Different sets of rules amongst different multilateral, national and local institutions create parallel accountability structures that make following up on reported or suspected corruption cumbersome.¹⁰

Bearing these and other shortcomings and bottlenecks of operational climate funds in mind, the next paragraphs suggest steps to harness GCF's accountability systems and how CSOs can play a role in this.

3. OVERVIEW OF THE GCF'S ACCOUNTABILITY FRAMEWORK

The GCF's objectives and guiding principles are laid down in the Governing Instrument.¹¹ It is part of the role of the GCF Board to develop an information disclosure policy,¹² as well as environmental and social safeguards and fiduciary principles and standards that are internationally accepted.¹³ Notably, the GCF is founded on a commitment to "maximize the impact of its funding for adaptation and mitigation, and seek a balance between the two, while promoting environmental, social, economic and development co-benefits and taking a gender-sensitive approach."¹⁴ So far, the GCF Board provisionally adopted the Environmental and Social Performance Standards and Guidance Notes of the International Finance Corporation (IFC)¹⁵ Further, at its 7th meeting in May 2014, the Board adopted an initial set of fiduciary principles and standards.

Such principles and standards are to apply in the GCF's financial management practices and financing agreements.¹⁶ They are also to be upheld by the Fund's accredited implementing entities, which can be national, regional or international public or private organisations. Once accredited, such actors can receive GCF grants and loans.¹⁷ The accreditation process is based on specific criteria that reflect the fiduciary principles and standards and environmental and social safeguards set by the Board of the GCF.¹⁸

To assure compliance to such standards and the overall integrity and accountability of GCF operations, the GCF's governance structure provides for the establishment of an Independent Integrity Unit (IIU) to investigate and take remedial action when cases of corruption occur,¹⁹ an Independent Redress Mechanism (IRM)²⁰ and an operationally Independent Evaluation Unit (IEU). The latter body supports the GCF's obligation to establish a framework for the monitoring and evaluation of performance and the financial accountability of activities supported by the GCF including necessary external audits.²¹ To date, the terms of reference of the IIU, IRM and the IEU have been approved by the Board.²²

However, an initial review of such policies and mechanisms highlights some basic challenges. For example, a close reading of the GCF's own Terms of Reference (TORs) of the Independent Evaluation Unit (IEU), the Independent Integrity Unit (IIU) and the Independent Redress Mechanism (IRM) reveals that there is no explicit guarantee that these units are being developed and become operational in synergy with each other. It is unclear how a grievance involving both a violation of an environmental or social safeguard and corruption will be handled. Further, the cooperation of accredited implementing entities with the IIU, the IRM and the IEU of the GCF is to be defined in contractual agreements which still need to be worked out. As such, the extent to which the GCF will delegate responsibilities for dealing with grievances remains unknown. As such, the situation presents a number of challenges: This makes the selection of implementing entities a sensitive matter.

Moreover, the space and opportunity for civil society actors to engage in the development of these core policies and practices could be improved significantly. In principle, the Board is expected to draw on appropriate expert and technical advice²³ as well as input and participation of stakeholders in advancing its policies.²⁴ While a participatory role for CSOs should have been established before the accreditation of implementing entities was initiated, no such role has yet been formulated. At the recipient country level, however, following the Board's recently adopted Initial Investment Framework,²⁵ inclusive, well-implemented consultation procedures in the upstream decision making process of

the GCF may very well help prevent many problems which would otherwise have to be later addressed by its grievance mechanisms.

In light of the above, and considering the challenges of downstream accountability outlined in the previous section, this Briefing Paper explores whether an ancillary, independent, citizen-based complaint review and referral system could complement and enhance the work of the GCF official anti-corruption, redress, and evaluation mechanisms.

4. STRENGTHENING THE ACCOUNTABILITY FRAMEWORK OF THE GCF

As these environmental, social and fiduciary principles and standards are setting the stage for mutual obligations of the GCF and its implementing entities, CSOs may wish to call for a stronger and explicit requirement for implementing entities to refer all grievances related to GCF-funded activities to the grievance mechanisms of the Fund. The ultimate authority in handling such grievances should always be entrusted to the GCF, due to a number of reasons. In some cases, implementing entities may not have adequate safeguard policies and associated grievance mechanisms in place. In other cases, implementing entities may attempt to defer all responsibility to project proponents.²⁶

Accordingly, CSOs may wish to call on the GCF Board to not outsource its grievance procedures to implementing entities, in order to avoid generating an inconsistent and fragmented record in this field. This should prevent a repetition of the lack of accountability that is often observed with financial intermediaries contracted by other multilateral financial institutions. Strong principles and fiduciary standards – including standards for grievance procedures – will prove essential for the GCF to withstand pressures to compromise on accountability for the sake of meeting funding release targets or accommodating certain political sensitivities.

5. POTENTIAL ROLE OF A CIVIL SOCIETY-BASED FUNCTION FOR COMPLAINT REVIEW, INFORMATION AND REFERRAL

The effective functioning of the IIU and the IRM - and by extension, also the IEU – will be heavily dependent on outside information (complaints, tip-offs, etc.) provided by individuals or groups who are affected by, witness or otherwise discover wrong-doing. This includes local communities, company employees, individual academics, journalists and CSO representatives. As the GCF is just one of numerous multilateral financial institutions, there is a significant risk that its role in funding new project investments and its accountability mechanisms will not be well known or understood on the ground among local communities and other concerned parties. A wider and more structural engagement of CSOs within the evolving GCF is arguably needed. Donors to the Fund should consider facilitating initiatives to enhance CSO input and participation to this end.²⁷

A citizen-based complaint and referral system could therefore be an important addition to the existing governance structure of the GCF, for example in the form of an *Independent Ancillary GCF Civil Society Information Facility*. It is not to suggest an extra layer of bureaucracy, but instead a CSO-driven counterpart arrangement to complement and strengthen the existing grievance mechanisms of the GCF.

An important role for a CSO-led function would be to further galvanise CSO involvement and participation in the operational phase of the GCF that is scheduled to start later this year, thus contributing to the GCF obtaining the necessary trust from its very beginning in promoting equity in delivering on international climate policies.²⁸ It should also

build on the experience of and seek cooperation with the networks of CSOs involved in monitoring and improving existing grievance mechanisms of other international financial institutions or private sector institutions, including some implementing entities. In essence, the CSO-led function would serve as a clearing house and concentrate on opening communication channels between the operational structure of the GCF and the public at large. It would be an open forum with a clear core of people working specifically on the GCF.

The CSO-led function should support communities and other concerned parties to bring their concerns and aspirations across to the GCF and its implementing entities. It would enable access to information and the building of trust between the GCF and the communities that stand to benefit from its operations, allowing the GCF to become an institution genuinely learning from mistakes as well as observed best practices. It could actively assist the GCF to reach out to communities and other parties to strengthen the effectiveness of the Fund by expanding opportunities for effective participation of civil society.

The CSO-led function should not only engage with the Secretariat and the Board of the GCF, but also aim to engage with the growing network of accredited implementing entities managing the projects and programmes supported by the Fund. Further discussion is needed to work out and ensure the basis of its legitimacy, to secure adequate independent funding and to elaborate and articulate its role and function in the long run.

Recommendations for strengthened governance arrangements involving civil society actors²⁹

A stronger and better articulated role of CSOs in relation to the GCF and its complaint mechanisms is recommended based on the following considerations:

- The participatory and advisory role of CSOs in decision-making processes of the GCF Board should be better defined. This should include a consultative role for CSOs in the accreditation process for implementing entities and in the development of a robust methodology to ensure additionality of climate finance;
- While the GCF Board is aiming for a modest and efficient operational structure with many tasks to be outsourced to implementing entities, the Board should ensure the highest standards of accountability and clear responsibilities within and among the potentially complex funding supply chains it will initiate;
- In line with its commitment to becoming a learning institution, the GCF Board should assume a hands-on approach in developing its grievance mechanisms, safeguards and national GCF strategies, including an active outreach policy in cooperation with CSOs to ensure that its potential is being understood by all parties affected by activities supported by the Fund;
- CSOs should be involved in regular review and evaluations of the GCF as well as its grievance and integrity mechanisms, their design, operations and performance;
- An *Independent Ancillary GCF Civil Society Information Facility* should be established as a supportive arrangement to ensure more effective implementation of grievance policies and procedures developed to date by the GCF, including by bringing forward the aspirations and concerns of local communities and indigenous peoples to the GCF and its implementing entities.

Roadmap

The following actions are recommended as a way forward to pursue the aims set forth above.

The **GCF Board** should adopt and implement policies which:

- Create more space for civil society participation and procedures for *CSO consultations in Board decision-making* processes regarding transparency, accountability and integrity policies and concerning project and programme design, in line with the GCF's basic principles;³⁰
- Ensure the application of highest *transparency and information disclosure standards*, including for activities outsourced to accredited implementing entities, other parties and consultants;
- Ensure a *participatory accreditation* process for implementing agencies which enables civil society actors to provide input and for that input to be taken into consideration;
- Ensure that all grievances related to GCF funded activities be *referred to grievance mechanisms of the GCF*;
- Enable civil society input to the GCF's monitoring and accountability framework, which outlines the responsibilities of the GCF versus Implementing Entities or intermediaries, *before* the final draft is approved.

Bilateral and other donors should create *enhanced space and funding for CSOs and local stakeholders* to engage in monitoring and due diligence review processes; setting and resourcing a flexible trust fund is one option to consider.

All UNFCCC State Parties overseeing the GCF should ensure a *participatory review processes* of the GCF complaints mechanisms and the environmental and social safeguards applied by the GCF and the degree to which they are complied.³¹

Civil society actors, the GCF Board and the GCF Secretariat should explore options to develop an *Independent Ancillary GCF Civil Society Information Facility* which acts as an open forum, but with a clear core of people working specifically on the GCF. It would be one concerted civil society effort with a clear responsibility and visibility, with a commitment to the GCF. It would fulfil the following functions:

- A *readiness program for Southern CSOs*, facilitated by both GCF and CSOs that are/become directly engaged in the GCF, in service of outreach to local actors and communities through various means at the various relevant levels;
- Collaborate with GCF IIU and IRM to ensure a *pro-active spread of information*, to equip potentially affected communities, local CSOs/IMOs and other stakeholders about the GCF, its organizational and procedural requirements, policies, and the function of the GCF IIU and IRM;
- Facilitate *information exchange* between CSOs, CSO-networks and experts working on grievances mechanisms, with a focus on synchronisation of efforts and know-how regarding the GCF, other international funding agencies and the GCF's Implementing Entities.

CSOs and other stakeholders should explore further *CSO inter-collaboration* with local and national CSOs and community based organisations as well as other CSO fora working on international financial institutions.

¹ Transparency International (TI) commissioned Both ENDS to explore how an independent, citizen-based complaint review and referral system could work in conjunction with and in support of the official functions of the Independent Integrity Unit (IIU) and Green Climate Fund implementing agencies as well as downstream financial and project executors. Both ENDS implemented this task in collaboration with Natural Justice and an independent legal expert.

² Governing Instrument for the Green Climate Fund, 2011, para 1;

http://gcfund.net/fileadmin/00_customer/documents/Key_documents/GCF_Governing_Instrument_web.pdf.

³ It aims to promote a paradigm shift towards low-emission (mitigation) and climate-resilient development pathways (adaptation) by providing support to developing countries, particularly those most vulnerable to the adverse effects of climate change.

⁴ A non-exhaustive list of respondents can be found in the first draft of the Briefing paper published on Both ENDS website;

http://www.bothends.org/uploaded_files/inlineitem/120150528_Feasibility_report_TI.pdf.

⁵ The term CSO as used in this paper is generic and does not assume a homogeneous group of civil society organisations. For the purpose of this paper also organisations of indigenous peoples are included in this category. In the context of this briefing paper CSOs are thought to meet commonly accepted standards of accountability.

⁶ This paper builds on the experience of CSOs with various grievance mechanisms at the project, company, sector, national, regional or other multilateral levels. Input has been sought from a wide range of experts and resource persons who responded to an earlier discussion paper on this subject. A first draft was presented during the side event “Environmental and social accountability for results based finance – lessons learnt and way forward”, as part of the UNFCCC Climate Change Conference 2015 in Bonn.

⁷ See for example Carbon Market Watch investigations into alleged human rights abuses in Clean Development Mechanism projects, the Santa Rita hydro power project in Guatemala <http://carbonmarketwatch.org/category/santa-rita-large-hydro-power-project-guatemala/> and the Barro Blanco hydro power project in Panama <http://carbonmarketwatch.org/category/barro-blanco-large-hydro-project-panama/>.

⁸ See for example the briefing memo “Climate finance integrity talks. Project monitoring” based on a series of discussions organised by Transparency International to stimulate public and policy debate about the risks fraud and corruption pose to the effective and efficient use of climate funds;

http://www.transparency.org/files/content/event/2013_CFIPIntegrityTalks_ProjectMonitor_Outcomes.pdf.

⁹ Cited from Climate Finance Integrity Talks, 2013, p.1.;

http://www.transparency.org/files/content/event/2013_CFIPIntegrityTalks_ComplaintsMechanisms_Outcomes.pdf.

¹⁰ Cited from Climate Finance Integrity Talks, 2013, p.3.

¹¹ The GCF is meant to provide financial resources on a grant or concessional basis, including for the transfer of technology, as per the UN Framework Convention on Climate Change, Article 11-1.

¹² Id., para 67.

¹³ Governing Instrument for the Green Climate Fund, 2011, para 18e.

¹⁴ Id., pag. 1.3.

¹⁵ GCF/B.07/11, Decisions of the GCF Board, 19 June 2014, p. 16, 17.

¹⁶ Id., para 56.

¹⁷ At this moment there are seven Implementing Entities accredited by the board of the GCF: CSE, Senegal; FPANP, Peru; SPREP, Samoa; ACUMEN, USA/international; UNDP, USA/international; KfW, Germany; ADB, Philippines.

¹⁸ Governing Instrument for the Green Climate Fund, 2011, para 49.

¹⁹ Id., para 68.

²⁰ Id., para 69.

²¹ Id., para 18i. In this regard, the GCF defines itself to be a continuously learning institution guided by processes for monitoring and evaluation. Governing Instrument for the Green Climate Fund, 2011, para 2, 3.

²² GCF/B.06/18, Decisions of the Board, 17 April 2014.

²³ Id., para 70.

²⁴ Id., para 71.

²⁵ GCF/B.09/23, Decisions of the GCF Board, 16 April 2015, p. 4, 5: The Decision (Annex III) defines the (sub)criteria to determine the type of projects and programmes that will be eligible for GCF funding.

²⁶ Other reasons include: Implementing entities may face conflicts of interest for being directly implicated in triggering grievances; Implementing entities may not have the authority to implement lessons learned from grievance procedures; and: Implementing entities may lack training and expertise to deliver redress.

²⁷ Cf. Governing Instrument for the Green Climate Fund, para. 71,

http://www.gcfund.org/fileadmin/00_customer/documents/pdf/GCF-governing_instrument-120521-block-LY.pdf.

²⁸ See <http://af-network.org/>. An effective CSO-led function might benefit from experiences with comparable initiatives, such as the Adaptation Fund NGO Network.

²⁹ Based on the feedback received when drafting this Briefing Paper it transpired that by and large all CSOs responding underlined the essence of closer scrutiny and engagement with the GCF's IIU and IRM - with some different opinions concerning; (i) whether to have a GCF-specific platform or ensure that CSOs monitoring international financial institutions (IFIs) in general are

able to add CSO work on GCF accountability/complaints mechanisms in their tool box; (ii) when considering CSOs to engage and support GCF through an ancillary information brokering facility, the notion that CSOs need avoid doing GCF's work; (iii) resourcing of CSO-work: whether or not to suggest GCF itself makes funds available. On the one hand there is the need to ascertain the independent of CSOs with on the other hand the reality that GCF while disbursing public funds needs itself ensure civil society is resourced to play its important role (GCF is now outsourcing work to consultants which oftentimes lack the expertise and rapport with local stakeholders which CSOs can offer).

³⁰ CSOs can assist GCF and its EIs to reach out and involve the very people who are supposed to be benefitting or who may become impacted by GCF funded interventions – either through mitigation or adaptation measures.

³¹ This includes the GCF's complaints units and functions and the GCF's relationships with EIs.