

A stylized world map composed of a grid of grey dots, with several dots highlighted in red to represent specific geographical locations.

# A Human Rights-based Approach to Climate Finance

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- In the context of climate finance, a human rights-based approach ensures that rights considerations are taken into account in the development, implementation, and monitoring of relevant processes and institutions, including the UNFCCC's newly established Green Climate Fund.
- To advance rights protections in the global climate finance architecture, it is essential that climate finance mechanisms establish institutional safeguard systems that effectively prevent social and environmental harm, promote sustainable development, and maximise participation, transparency, accountability, equity, and rights protections. Some existing mechanisms, such as the Global Environment Facility and UN-REDD Programme, are integrating social and environmental considerations into their governance and distribution processes, but they do not fully apply a rights-based approach.
- Key elements of an institutional safeguard system include: social and environmental safeguard policies; monitoring systems to ensure that safeguards are being respected; grievance mechanisms to ensure that affected peoples and communities can raise their concerns and have them addressed in a timely manner; and opportunities for meaningful and effective participation in all stages of relevant decision-making processes.



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## List of Abbreviations

CDM	Clean Development Mechanism
COP	Conference of the Parties (UNFCCC)
EB	Executive Board (CDM)
FCPF	Forest Carbon Partnership Facility
FPIC	Free, prior, and informed consent
GCF	Green Climate Fund
GEF	Global Environment Facility
LDCF	Least Developed Country Fund
OHCHR	Office of the United Nations High Commissioner for Human Rights
REDD+	Reducing Emissions from Deforestation and forest Degradation, and enhancing forest carbon stocks in developing countries
SCCF	Special Climate Change Fund
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNFCCC	UN Framework Convention on Climate Change

## 1. Introduction

As the UN Framework Convention on Climate Change (UNFCCC), the UN Human Rights Council, and others have recognised, climate change is not only an environmental issue – climate change is a human rights issue for the millions of people and communities around the world experiencing rising sea levels, increasingly severe floods and storms, melting glaciers, groundwater contamination, health impacts, forced relocation and displacement, and other adverse impacts.<sup>1</sup> In connection with these impacts, these UN bodies have also recognised that the responses taken to address climate change have direct and indirect implications for the full and effective enjoyment of human rights.<sup>2</sup>

As the international community becomes more serious about addressing climate change, there has been increased attention put on the financial resources needed to help developing countries mitigate and adapt to climate change (climate finance). The governance and distribution of climate finance have implications for the full range of human rights, including the rights to life, health, food, water, housing, and culture, among others. For example, the construction of large-scale hydroelectric dams has raised serious human rights concerns with respect to the forced displacement and relocation of local communities, and the loss of land and other means of subsistence (Jodoïn 2010: 5). Despite this understanding, climate finance for dams – most notably under the Clean Development Mechanism (CDM) – has failed to safeguard the rights of affected people and communities.

A human rights-based approach to climate finance will help to ensure that countries avoid or minimise the human rights impacts of mitigation and adaptation measures, and to promote sustainable and equitable low-carbon development. In the 2010 Cancun Agreements, the UNFCCC took an initial step towards applying a rights-based approach, emphasising that countries should fully respect human rights in all climate change-related actions (UNFCCC 2011a: para. 8). As such, human

rights considerations should be taken into account in the development, implementation, and monitoring of its processes and mechanisms, including the newly established Green Climate Fund (GCF).

This paper describes a human rights-based approach to climate finance as well as the guiding principles to be applied in the development and implementation of climate finance policies and activities. It then considers select climate finance mechanisms – specifically the Global Environment Facility (GEF), Clean Development Mechanism, and multilateral REDD+ (Reducing Emissions from Deforestation and Forest Degradation) initiatives – and the extent to which each has applied a human rights framework. Drawing on the experiences and lessons learnt from these institutions, this paper concludes by proposing specific recommendations to be considered as the UNFCCC moves forward in the design of the Green Climate Fund and other climate funds.

## 2. A Human Rights-based Approach to Climate Finance

As described by the Office of the United Nations High Commissioner for Human Rights (OHCHR), a human rights-based approach is a »conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights« (OHCHR 2006: 15). Within the climate context, this approach seeks to analyse obligations, inequalities, and vulnerabilities, and redress discriminatory practices and unjust distributions of power that impede progress towards sustainable and low-carbon development (OHCHR 2006: 15).

The international climate finance architecture – both its governance and distribution of funds in support of climate change mitigation and adaptation measures – has significant implications for the enjoyment of human rights. However, to date, decision-making on climate finance has been primarily driven by an economic rationale. Consequently, inadequate attention has been given to the positive and negative impacts of climate-financed activities on individuals and communities around the world.

A human rights-based approach provides for the consideration of these human impacts in the institutions, poli-

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1. See OHCHR (2009); UNFCCC (2011a) (noting Human Rights Council Resolution 10/4 and its findings on the human rights implications of climate change and vulnerability).

2. See OHCHR (2009: 6-7, 19-20).

cies, and measures that enable climate finance. Further, it helps to ensure that climate-financed activities comply with existing human rights obligations and principles, and thus promote the full enjoyment of human rights. By relying on an internationally agreed set of standards, this approach has the potential to strengthen the effectiveness, long-term success, and sustainability of climate finance policies and measures at both the national and international levels.

### Values of a Human Rights-based Approach to Climate Finance

A human rights-based approach will help to ensure that activities enabled by climate finance promote positive rather than negative impacts on human rights. It will also provide the following benefits:

- **Legal value.** The human rights-based approach has a strong legal basis, as it builds on legal obligations owed by States to their citizens and to the international community. Every State is bound by human rights obligations through treaties, agreements, and customary law and often also through domestic law.
- **Moral value.** The human rights-based approach builds on universal values (including human dignity, equality, and justice) that are shared among nations and civilizations.
- **Analytical value.** The human rights-based approach helps to create a complete picture of the potential consequences of a climate-financed project. In particular, it draws attention to the potential impacts on the most vulnerable and/or special groups, such as women, children, disabled persons, and indigenous peoples. There are distinct tools (such as human rights impact-assessment) that can help identify these impacts.
- **Practical value.** Taking human rights into account in all stages of relevant processes reduces the risk of actual human rights violations. A human rights-based approach is likely to enhance the environmental, human health, and social quality of projects. It also addresses inequitable distributions of power.

In the climate context, core elements of the right to development – specifically respect for human rights, equity, and international cooperation – are fundamental to a human rights-based approach. The Declaration on the Right to Development calls for development processes that respect and contribute to the realisation of rights for all, which means that mitigation and adaptation measures cannot justify human rights violations (Orellana 2011: 2). Further, the right to development requires consideration of equity and justice, acknowledging that the countries and regions that have contributed least to historic greenhouse gas emissions are generally least equipped to adapt to the severe impacts of climate change (Orellana 2011: 2).<sup>3</sup> The right to development also underscores the need for international cooperation to address the global nature of climate change.

In applying a human rights-based approach, climate finance mechanisms and policies should be guided by human rights obligations and principles (some of which are described in detail below) to prevent human and environmental harm, and promote sustainable development. Countries must ensure that climate finance mechanisms have the authority and mandate to consider, evaluate, and address the consequences of their actions, which in turn will help to ensure that any consequences do not result in disproportionate impacts to those sectors of the population that are most vulnerable and marginalised.

### 3. Guiding Principles in Applying a Rights-based Approach to Climate Finance

The following principles should guide the development and implementation of climate finance policies and activities to effectively prevent harm to communities and ecosystems, and promote sustainable development:

#### *a. Consistency with International Human Rights Obligations*

Established principles of international human rights law provide that all people are entitled to fundamental rights and freedoms, yet climate change impacts and measures to mitigate or adapt to these impacts (including climate-

3. See also UN Framework Convention on Climate Change, 21 Mar. 1994, 1771 U.N.T.S. 107, at preambular paragraph 21: »[R]esponses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter.«

financed activities) threaten to violate these rights on a massive scale. According to the UN Charter, the Universal Declaration of Human Rights, and other international human rights instruments, states have a duty to cooperate to protect human rights, including the duty to take effective action in the fight against climate change. Further, states must take adequate measures to respect and protect human rights when working to mitigate climate change or adapt to its impacts. Annex I provides a table of selected human rights obligations that are relevant to climate change.

In 2010, the UNFCCC took a significant step towards advancing rights protections in the international climate regime by including several references to human rights in the Cancun Agreements.<sup>4</sup> In particular, the core decision explicitly recognises the existing human rights obligations of Parties to the UNFCCC, stating that countries should fully respect human rights in all climate change-related actions. This language has not yet been fully operationalised in the existing UNFCCC climate funds but should be a guiding principle in the design and implementation of the Green Climate Fund and its associated safeguards and grievance mechanism.

#### *b. »Do No Harm« Approach*

The »do no harm« approach is a central tenet of international environmental law, and serves as a guiding principle for several international treaties and declarations.<sup>5</sup> In the international finance context, this approach represents the basic concept that international development interventions or activities should not cause unacceptable harm to communities or ecosystems. In other words, efforts to address one problem (such as poverty) should not result in new problems and harms. Based on this approach, policies and procedures must be established to create parameters for acceptable activities and to safeguard the rights of affected individuals and communities.

The »do no harm« approach is of particular importance in the context of climate change, which has far-reaching and transboundary impacts. By its very

definition, public climate finance – which accounts for 40 per cent of total climate finance – involves financial flows from one or more countries (either directly or indirectly through funds) to developing countries in support of mitigation and adaptation activities. As such, donor countries, as well as the financial institutions and implementing agencies that govern and distribute these financial resources, must ensure that climate-financed activities do not cause harm to people and the environment.

#### *c. Transparency and Accountability*

Transparency and accountability are inextricably linked to the procedural rights to information, participation in decision-making (discussed below), and access to justice and redress, all of which are well-established under both human rights and international environmental law. These rights are particularly relevant in how climate-financed activities are implemented at the national and local levels. These principles require that individuals and communities are informed of the potential impacts of such activities, that they are informed of and have meaningful and effective opportunities to participate in decisions on how these activities will be carried out, and that they have a means of recourse if the activities cause harm or environmental harm.

The UNFCCC recognises the importance of these principles in Article 11, which requires a transparent system of governance over financial mechanisms through reporting and information disclosure requirements. Despite these provisions, the existing funds established under the UNFCCC do not effectively monitor and evaluate the human rights impacts of climate-financed activities. In addition, the UNFCCC does not yet provide for a grievance process or mechanism, which is essential to a rights-based approach to climate finance.

#### *d. Public Participation in Decision-making*

Broad public participation in the development, implementation, and monitoring of climate-financed activities is consistent with international law generally and climate law in particular. The right to public participation in decision-making is specifically recognised in the context of

4. See CIEL (2010).

5. See, e.g., UN Convention on the Law of the Sea, 10 Dec. 1982, 1833 U.N.T.S. 3, art. 194(2); Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 22 Mar. 1989, 1673 U.N.T.S. 57, art. 4(2).

environmental issues, including climate change.<sup>6</sup> For example, the Rio Declaration, Agenda 21, and the Aarhus Convention affirm that the best environmental decisions are made when civil society participates.

The UNFCCC provides that Parties must promote and facilitate »public participation in addressing climate change and its effects and developing adequate responses«.<sup>7</sup> It further states that Parties must encourage the widest participation in the negotiation process, and that access and participation of observers in the process promotes transparency in this increasingly complex, universal problem.<sup>8</sup> While the UNFCCC clearly recognises the need for public participation in decision-making, many of those who stand to be directly affected by climate-financed activities, including indigenous peoples, claim that their input has been ignored or has not taken into account the design of the climate funds.

Meaningful and effective public participation in relevant negotiating processes helps to promote wide public support and ensure the legitimacy of financial institutions and their policies. However, it is important to note that civil society not only plays a fundamental role in shaping climate finance institutions and policies, but also in ensuring that climate-financed activities are effectively implemented.

#### *e. Equity and Non-discrimination*

Considering that the groups and sectors of the population that have contributed the least to climate change are often the most vulnerable to its impacts, equity and

non-discrimination play an important role in climate finance. Certain vulnerable groups, particularly women and children, often experience disproportionate impacts of climate change and measures taken to mitigate and adapt to those impacts. A human rights-based approach helps to ensure that climate finance institutions and policies and associated decision-making processes take into account – and seek to address rather than further exacerbate – existing inequities and discriminatory practices.

The UNFCCC has recently started to consider issues of equity and non-discrimination, particularly in the context of gender. In the Cancun Agreements, the Parties identified gender as a reason for vulnerability, yet there is no provision for adequate protections. The recent UNFCCC decision establishing the GCF's governance structure recognises the need for equity and encourages the participation of vulnerable groups and gender aspects when considering operational modalities (UNFCCC 2011b: Annex at paragraphs 3 and 31). To follow through on these commitments, the GCF must ensure that funding disbursements take women and other vulnerable groups into account, and do not compound the problems these groups already face.

#### *f. Conclusion*

In applying a human rights-based approach, these principles should guide the development, implementation, and monitoring of climate finance mechanisms and policies. They may also be used to determine whether existing mechanisms and policies are effectively preventing harm and promoting sustainable development, as discussed in the next section.

## 4. Evaluating Climate Finance Mechanisms and Policies from a Rights-based Perspective

Climate finance – the financial resources needed to help developing countries mitigate and adapt to the impacts of climate change – poses a severe challenge to the international community. While estimates for the scale of overall climate finance vary widely, in 2007, the UNFCCC predicted that annual flows of 200-210 billion US dollars would be needed in 2030 to help stabilise global greenhouse gas emissions (UNFCCC 2008: 7). A year later, the UNFCCC updated its forecast and determined

6. See, e.g., Agenda 21, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151.26 (1992); Rio Declaration on Environment and Development, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (1992), princ. 10; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 25 June 1998, arts. 6-8; OHCHR (2009: 22).

7. UN Framework Convention on Climate Change, Mar. 21, 1994, 1771 U.N.T.S. 107, art. 6(a)(iii).

8. The UNFCCC recently »affirmed the value of the engagement of observer organizations (...) and acknowledged the important role of civil society representation in the intergovernmental process« (UNFCCC 2010a: 3); the Secretariat to the UNFCCC has also provided that vibrant public participation »allows vital experience, expertise, information and perspectives from civil society to be brought into the process to generate new insights and approaches. Furthermore, the access and participation of observers to the process promotes transparency in this increasingly complex universal problem. Such participation flourishes in an atmosphere of mutual trust which acknowledges respect for others and their opinions, and takes into account the nature of intergovernmental sessions« (UNFCCC 2003: 3).

that the additional investment needed to mitigate climate change in 2030 is about 170 per cent higher than previously estimated (UNFCCC 2008: 54). With respect to adaptation finance, the UNFCCC estimated that tens of billions, possibly hundreds of billions, of US dollars will be needed on an annual basis to adapt to a changing climate (UNFCCC 2008: 4).

In December 2010, the Conference of the Parties (COP) to the UNFCCC addressed the need for »new and additional, predictable and adequate« sources of climate finance in a set of decisions known as the Cancun Agreements. The COP affirmed the political pledges set forth in the Copenhagen Accords, in which developed countries agreed to transfer 30 billion US dollars in fast-start finance to developing countries between 2010 and 2012 and scale up funding to 100 billion US dollars annually from public, private, and innovative sources by 2020 (UNFCCC 2011a: 16-17). As a means to manage and guide these massive financial flows, the COP established the Green Climate Fund.

While the GCF is intended to be the financial mechanism through which a large portion of scaled-up climate funding will be delivered, there are many other initiatives that make up the global architecture of climate finance. Within the international climate regime, the UNFCCC utilises a financial mechanism pursuant to Article 11 of the Convention and maintains two trust funds, all of which are administered by the Global Environment Facility (UNFCCC 2007: 162). The Kyoto Protocol established the Adaptation Fund as well as three market-based mechanisms – the Clean Development Mechanism, Joint Implementation, and International Emissions Trading – which developed countries can use to help meet their emission limitation commitments under the Protocol (UNFCCC 2007: 138, 162).

In addition to the funds and mechanisms established under the UNFCCC and Kyoto Protocol, a number of international organisations (e.g., UN Development Programme, UN Environment Programme), the World Bank, and other multilateral development banks are actively engaged in administering and/or operating multilateral climate funds. Several developed countries have also established bilateral climate funds to assist with climate change mitigation and adaptation in the developing world. In addition to public funds, private sector resources contribute to mitigating climate change in developing countries.

Although they may follow different models, the institutions channelling climate finance in both the public and private sectors generally maintain certain policies and procedures governing the distribution of funds and scope of funded activities. For example, many institutions maintain safeguard policies intended to avoid unacceptable social and environmental harms; monitoring and reporting procedures to track the effectiveness of implementation, transparency, and public participation standards; and grievance mechanisms to resolve complaints by those concerned with the potential or actual impacts of a given activity.

The following case studies provide an assessment of existing climate finance mechanisms and policies from a rights-based perspective.

#### A. Global Environment Facility

The Global Environment Facility is the longest serving operating entity of the UNFCCC financial mechanism on an ongoing basis, subject to review every four years (UNFCCC 2007: 162). In addition, the GEF manages two special trust funds established by the Parties: the Special Climate Change Fund (SCCF) and the Least Developed Country Fund (LDCF). The UNFCCC Conference of the Parties provides regular guidance to the GEF on policies, programme priorities, and eligibility criteria for funding, and the GEF reports annually to the COP on all GEF-financed activities implemented under the Convention, including activities carried out by the GEF implementing agencies, the GEF Secretariat, or by executing agencies implementing GEF-financed projects (UNFCCC 2011c: 1).

Since its inception in 1991, the GEF has allocated 3.84 billion US dollars in support of a comprehensive set of efforts on climate change mitigation and adaptation (UNFCCC 2011c: 1). With respect to mitigation, the GEF has financed 755 projects on mitigation and enabling activities, with 3.39 billion US dollars in funding to 156 developing countries and economies in transition, mostly in support of renewable energy and energy-efficiency projects (UNFCCC 2011c: 1). With respect to adaptation, the GEF – through the GEF Trust Fund, the SCCF, and the LDCF – has financed 160 projects with 376.1 million US dollars to adaptation projects in 116 developing countries, including 57 projects supporting enabling activities and research and monitoring (UNFCCC 2011c: 1).



Despite the significant financial flows that are channelled through the GEF, one of the main criticisms is the complex and cumbersome project cycle, which involves several stages of review and approval by the implementing agencies and other GEF bodies and can take up to 22 months for approval (Ballesteros et al. 2010: 32). Over the past several years, the GEF has recognised the need for improved risk assessment and management as well as social and environmental protections, which has led to new and reformed policies to address these concerns.

*Safeguards:* In November 2011, the GEF Council adopted a set of environmental and social safeguard policies, largely derived from the World Bank's Operational Policy 4.00 (GEF Council 2011a: iii). Previously, the GEF did not have clear policies to prevent or mitigate unintended human and environmental harms, and therefore the adoption of these policies, known as the GEF Policy on Environmental and Social Safeguards (GEF Safeguards Policy), is a significant step towards protecting the rights of project-affected peoples and communities (GEF Council 2011b).

In addition to its Safeguards Policy, the GEF Council recently adopted a Policy on Gender Mainstreaming that commits the GEF and its implementing agencies to ensuring the equal treatment of men and women in its operations (GEF Council 2011a: Annex II). The GEF Policy on Gender Mainstreaming requires GEF agencies to establish policies that ensure that projects are designed and implemented in such a way that both women and men receive culturally compatible social and economic benefits and do not suffer adverse effects during the development process. Such policies must also foster full respect for their dignity and human rights (GEF Council 2011a: Annex II at 22).

Similar to the approach taken by the Forest Carbon Partnership Facility in its Common Approach (discussed in detail below), the GEF requires that its implementing agencies – 10 existing GEF agencies and new GEF project agencies to be accredited – meet the minimum standards set forth in its safeguard policies.

*Monitoring and Reporting:* In the GEF Safeguards Policy, the GEF Council included a minimum standard that explicitly addresses accountability and grievance systems (this standard is particularly welcome, as it was

not included in earlier draft versions of the GEF Safeguards Policy). Each implementing agency must have accountability systems or measures that are designed to ensure enforcement of its environmental and social safeguard policies, including a means to determine whether agencies are complying with their own policies (GEF Council 2011b: Appendix A at 29). The GEF Safeguards Policy further provides that these systems must be: designed to address potential violations of an implementing agency's policies and procedures; independent, transparent, and effective; accessible to project-affected people; and required to keep complainants aware of the status of cases (GEF Council 2011b: Appendix A at 29).

With respect to reporting, the GEF implementing agencies are required to maintain records and report annually on cases that have been reported to their respective accountability and grievance systems and how they have been addressed (GEF Council 2011b: 6 7, Appendix A at 29).

*Grievance Processes:* The GEF Safeguards Policy also requires implementing agencies to have systems for receiving and responding to complaints from project-affected peoples and communities (GEF Council 2011b: Appendix A at 29). The specific requirements on grievance systems state that GEF implementing agencies must designate an individual or office that is able to receive and respond to complaints and make this contact information publicly available on the agency's website and, if established, on the project's website (GEF Council 2011b: Appendix A at 29). The agency must also inform project stakeholders of the mechanism's existence and explain how to access the mechanism (GEF Council 2011b: Appendix A at 29).

In addition to the grievance processes required under the newly adopted Safeguards Policy, the GEF has a conflict resolution function to address disputes that cannot be handled at the agency level. In 2007, the GEF established a Conflict Resolution Commissioner to respond to complaints brought to the GEF Secretariat (GEF Council 2011b: 6). Working in partnership with the complainant, GEF implementing agencies, and the GEF host country, the Commissioner has the authority to receive and address complaints, resolve disputes, and address other issues of importance to GEF operations (GEF Council 2011b: 6). However, it is important to note that not

much information is available regarding this function and whether it has proven to be an effective means of resolving disputes.

*Public Participation:* The need for public engagement is explicitly recognised in the Instrument for the Establishment of the Restructured Global Environment Facility (GEF Instrument) (GEF 2008). As stated in the GEF Instrument's basic provisions, all GEF-financed projects must »provide for full disclosure of non-confidential information, and consultation with, and participation as appropriate of, major groups and local communities throughout the project cycle« (GEF 2008: 12). The GEF Safeguards Policy has additional protections for affected indigenous and tribal peoples entitled to protections under ILO Convention 169.

#### ■ Local Consultation

The GEF Safeguards Policy clearly states that the GEF adopts a standard of free, prior, and informed consent (FPIC) for GEF-financed projects in countries that have ratified ILO Convention 169 (GEF Council 2011b: Annex II at 17). The GEF also recognises that FPIC will apply in other circumstances, specifically where it is required by domestic legislation or other applicable international obligations (GEF Council 2011b: 6). For such projects, GEF implementing agencies must ensure that project developers document the mutually accepted consultation process and evidence of agreement among the parties (GEF Council 2011b: Annex II at 17). The Policy explicitly states that there is no universally accepted definition of FPIC and claims that FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree (GEF Council 2011b: 6).

For projects in countries that have not ratified ILO Convention 169, GEF implementing agencies must rely on their own consultation processes and ensure that consultations result in broad community support for projects affecting indigenous peoples. Implementing agencies must also ensure the full and effective participation of affected indigenous peoples in designing, implementing, and monitoring measures to: ensure a positive engagement in the project; avoid adverse impacts, or when avoidance is not feasible, minimise, mitigate, or compensate for such effects; and tailor benefits in a culturally appropriate way (GEF Council 2011b: Appendix at 25).

## B. Reducing Emissions from Deforestation and Forest Degradation

Reducing Emissions from Deforestation and forest Degradation, and enhancing forest carbon stocks in developing countries (REDD+) is an international initiative that aims to create a financial value for the carbon stored in forests. By offering incentives for developing countries to reduce their carbon emissions by slowing deforestation, REDD+ is intended to assist developing countries in pursuing a development path based on the environmentally and socially sustainable use and conservation of forest resources (Heinrich Böll Stiftung 2010b: 1).

REDD+ accounts for 13 per cent of total climate finance, with 446 million US dollars approved and 252 million US dollars disbursed for REDD+ initiatives between 2008 and 2011 (Heinrich Böll Stiftung 2010b: 1). At present, these funds are limited to readiness activities so countries have the time and resources to prepare and build capacity for the implementation of REDD+ (Heinrich Böll Stiftung 2010b: 2). The readiness phase – the first phase of this three-phased approach – allows countries to develop a funding portfolio that combines public and private sources of funding, while working to adopt strategies based on their national circumstances and opportunities.<sup>9</sup>

In the absence of a dedicated REDD+ fund or funding window at the UNFCCC, a number of major bilateral and multilateral funding initiatives have been created to support REDD+ activities. Two of the largest multilateral initiatives are the Forest Carbon Partnership Facility (FCPF)<sup>10</sup> and UN-REDD Programme (UN-REDD)<sup>11</sup>, both of which are discussed in detail below. These initiatives are distinct in that the FCPF applies a »do no harm« approach, while UN-REDD generally follows a rights-based approach.

9. The phased approach foresees a preparatory or readiness phase with a focus on capacity-building and stakeholder engagement as part of a learning process. During the first phase, a country will build a national strategy that tackles drivers of deforestation that are specific to the situation of the country. During the second phase, national policy frameworks for the implementation of REDD+ will be built and linked to other sectors such as agriculture, energy and development. The third phase is for the full implementation of REDD activities with payments that are based on performance.

10. The FCPF is a World Bank programme launched at the Bali COP in 2007 that has the dual objectives of building capacity for REDD+ in developing countries and testing a programme of performance-based incentive payments in a small number of pilot countries.

11. The UN-REDD Programme is a multi-donor trust fund that aims to help reduce global emissions from deforestation and forest degradation in developing countries. It was established in 2008 by UNEP, UNDP, and FAO.

*Safeguards:* In December 2010, the Cancun Agreements officially launched the REDD+ mechanism under the UNFCCC, providing initial guidance for the activities to be incentivised by the mechanism. Such activities include those that reduce emissions from deforestation and forest degradation, promote sustainable forest management, and the enhancement and conservation of existing forest carbon stocks.

Notably, the Cancun Agreements established a set of safeguards to be applied when financing and undertaking REDD+ activities.<sup>12</sup> These safeguards require REDD+ activities to be consistent with existing international conventions and agreements, which include human rights obligations. Despite their generality, these safeguards are understood to provide the general framework for safeguarding and enhancing the multiple benefits of REDD+ activities, including those that are being implemented outside the UNFCCC.

Both the FCPF and UN-REDD have allowed for initial steps to be taken to operationalise the UNFCCC safeguards. With respect to the FCPF, its governing document sets forth operating principles, stating that the FCPF must comply with the World Bank's policies and procedures and must respect the rights of indigenous peoples and forest dwellers under national and international law (International Bank for Reconstruction and Development 2011: 12). In June 2011, the FCPF later adopted the Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners (Common Approach), which sets forth a uniform set of safeguards for FCPF readiness grants, regardless of the implementing agency or »delivery partner« (including regional development banks and UN agencies) (FCPF Readiness Fund 2011).

Under the Common Approach, FCPF delivery partners are required to achieve substantial equivalence with relevant World Bank safeguard policies and procedures. In effect, the delivery partner taking lead in a particular host country will apply its own sustainability policies and procedures – if its policies are not as protective as those of the World Bank, then the Common Approach provides a mechanism for selective »gap filling« in ac-

cordance with Bank policies. However, this does not guarantee a rights-based approach, considering that World Bank policies and procedures do not fully reflect existing human rights obligations. For example, the Bank's indigenous peoples policy has not been updated since the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and thus is not consistent with UNDRIP's provisions on FPIC and the management and use of lands, territories, and resources.

With respect to UN-REDD, this initiative is currently developing Social and Environmental Principles and Criteria (Draft SEPC) with guidance from its policy board and through a public consultation process.<sup>13</sup> The Draft SEPC is part of UN-REDD's developing framework for ensuring that its activities »contribute effectively to promoting social and environmental benefits and reduce any potential risk from REDD+ implementation«. <sup>14</sup> Drawing on the guidance provided by the UNFCCC safeguards, the Draft SEPC consist of broad, overarching principles as well as more detailed criteria that must be satisfied in the development and implementation of UN-REDD-funded activities.

*Monitoring and Reporting:* The UNFCCC not only established the safeguards to be applied when undertaking REDD+ activities but also identified the systems and information necessary to support such efforts. In particular, countries agreed to develop a system for providing information on how the UNFCCC safeguards are being addressed and respected in the implementation of REDD-related activities (UNFCCC 2011a: para. 71(d)). While this information-sharing system provides an opportunity to operationalise the safeguards, there is no clarity as to how countries will demonstrate at the international level that they are not violating international obligations or other particular provisions of the UNFCCC's REDD+ safeguards.

The FCPF and UN-REDD also address the need for monitoring and reporting processes. In accordance with the FCPF's Common Approach, each delivery partner under the Readiness Fund must have »accountability measures (...) that are designed at a minimum to address breaches of the DP's policies and procedures and are not intended to substitute for the country-level accounta-

12. Appendix I of the Cancun Agreements provides that the following safeguards, among others, should be »promoted and supported« by developing country Parties: »(c) Respect for the knowledge and rights of indigenous peoples and members of local communities (...); (d) The full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities« in REDD+ activities.

13. See UN-REDD Programme (2011).

14. See UN-REDD Programme, Draft Social and Environmental Principles and Criteria; available at: [http://www.un-redd.org/Multiple\\_Benefits\\_SEPC/tabid/54130/Default.aspx](http://www.un-redd.org/Multiple_Benefits_SEPC/tabid/54130/Default.aspx).

bility, dispute resolution and redress mechanisms« (FCPF Readiness Fund 2011: 10). Although the Common Approach does not provide additional detail, such measures taken by delivery partners should include monitoring and reporting on the implementation of safeguards.

In the Draft SEPC, UN-REDD indicates that it is currently developing guidance on reporting with respect to the use and application of its safeguard policies.

*Grievance Processes:* At present, the UNFCCC decisions specific to REDD+ do not provide for a grievance mechanism. However, the newly established GCF must create a redress mechanism that will receive complaints related to the operation of the Fund (UNFCCC 2011b: Annex at paragraph 69). Considering that the GCF may provide significant financial flows for REDD+, its redress mechanism could offer an appropriate forum for affected peoples and communities to submit REDD-related complaints within the UNFCCC.

The FCPF and UN-REDD Programme, on the other hand, explicitly address the need for such a mechanism. The FCPF Common Approach provides that delivery partners must have an »accountability mechanism that is independent, transparent, effective, accessible to affected people, and available to respond to/address claims related to the Common Approach (...) or its implementation« (FCPF Readiness Fund 2011: 11). If a delivery partner does not have an accountability mechanism currently in place, as is the case with the UN Development Programme, then it must take necessary measures to satisfy this requirement.<sup>15</sup>

UN-REDD Programme has policies indicating the establishment of an interim ombudsman process to receive complaints, including those alleging rights violations, while formal procedures for a grievance mechanism are being developed. Although it is not yet possible to determine whether this mechanism will adequately address the full scope of issues that may arise, it has significant potential to address some of the principal concerns, considering that UN-REDD must take actions consistent with UNDRIP and thus free, prior, and informed consent (CIEL and Rainforest Foundation Norway 2011: 14).

15. Pursuant to its transfer agreement with the FCPF, UNDP is obligated to establish an accountability mechanism for FCPF Readiness Preparation grant agreements in accordance with the Common Approach as well as an interim process to address complaints while the accountability mechanism is being developed.

*Public Participation:* In the UNFCCC negotiations leading up to the REDD+ decisions adopted in Cancun, the international community acknowledged that the participation of indigenous peoples and local communities is critical to the success of the REDD+ regime. The Cancun Agreements memorialised these discussions in the UNFCCC safeguards, which explicitly recognise the right to the full and effective participation of relevant stakeholders in the development and implementation of REDD+ activities. However, as mentioned previously, these safeguards have not yet been further elaborated and generally function as guiding principles.

In an effort to harmonise guidance and procedures, and thus assist developing countries in their preparation of REDD+ activities, the FCPF and UN-REDD Programme have collaborated to develop draft Guidelines on Stakeholder Engagement in REDD+ Readiness (draft Guidelines).<sup>16</sup> The draft Guidelines set forth guiding principles for effective participation and consultation and concrete guidance on planning and implementing consultations. As outlined in the guiding principles, consultations should be premised on transparency, facilitate timely access to information, and should include a broad range of relevant stakeholders at the national and local levels.

The draft Guidelines repeatedly emphasise the need to ensure that the rights of indigenous peoples and other forest-dependent communities are respected throughout the REDD+ programme cycle; yet there is a fundamental flaw with respect to the application of FPIC, a key component of effective public participation. More specifically, the draft Guidelines provide that countries that have adopted UNDRIP are expected to adhere to FPIC in the context of the UN-REDD Programme only. However, if countries must ensure that REDD+ activities respect rights and comply with relevant international obligations, then FPIC should apply not only to UN-REDD activities but also to FCPF activities.

The UN-REDD Programme has gone one step further by developing a normative, policy, and operational framework for UN-REDD Programme countries to apply FPIC

16. The current draft of the FCPF/UN-REDD Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities dated May 2011 is available at: [http://www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=5421&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=5421&Itemid=53). A final version of the joint guidelines will be released in early 2012.

in its Guidelines for Free, Prior and Informed Consent.<sup>17</sup> This guidance will assist countries when undertaking broad consultations and seeking consent at the local level and, when appropriate, in consultation with relevant rights-holders.

### C. Clean Development Mechanism

Established under the Kyoto Protocol to the UNFCCC, the Clean Development Mechanism is the most prominent market-based mechanism that involves emissions trading between developed and developing countries. The CDM allows developed countries – specifically those included in Annex B to the Kyoto Protocol – to reduce their overall emissions more cost-effectively in developing countries than at home. For example, once a hydropower project is approved under the CDM, then the CDM's governing body – the Executive Board – issues certified emission reductions, which a developed country can purchase and apply towards its emissions target (Orellana 2010: 17).

The dual objectives of the CDM are to reduce greenhouse gas emissions and to promote sustainable development in developing countries, presumably by encouraging investments that achieve emission reductions additional to what would otherwise have occurred. Between 2001 and 2012, the CDM is expected to produce approximately 1.5 billion tonnes of carbon dioxide equivalent (CO<sub>2e</sub>) in emission reductions (Heinrich Böll Stiftung 2010: 2). These reductions will be achieved through, among other things, »renewable energy, energy efficiency, and fuel switching activities, and could raise around \$ 18 billion (depending on the carbon price) in direct carbon revenues for developing countries« (Heinrich Böll Stiftung 2010: 2). This represents the largest source of mitigation finance to developing countries to date.

Current CDM rules and procedures contain some tools that help promote a rights-based approach, such as various channels for public participation. However, the CDM has yet to fully adopt a rights-based approach to ensure that its operations contribute to sustainable development, including respect for human rights.

*Safeguards:* Under the CDM, there are no international »do no harm« standards or safeguard policies but rather sustainable development criteria that are developed and implemented by host countries at the national level. Analysis by the Wuppertal Institute shows that most host countries have developed sustainable development criteria that consist of a general list of non-binding guidelines rather than clearly defined standards, and that these criteria often lack transparency and clarity (Sterk et al. 2009: 18). As a result, project design documents and validation reports tend to be general and vague, thereby avoiding concrete and verifiable statements.

In the absence of clearly defined international standards, the CDM project approval process (particularly the determination as to whether the project developer has satisfied the sustainable development criteria) is highly subjective and leaves much room for interpretation for both project developers and evaluators. As a result, many CDM projects have been criticised as not only failing to deliver sustainability benefits but also negatively affect local communities and the environment.

*Monitoring and Reporting:* During the project approval stage, the host country's Designated National Authority must determine whether the project developer has satisfied the applicable sustainable development criteria. However, as described above, these criteria are often general guidelines that may not require rigorous analysis and/or preventive actions (i. e., this approval process has at times been referred to as a »rubber stamp« that the project developer has complied with the sustainable development criteria). Once the sustainable development criteria have been approved by the Designated National Authority at this preliminary stage, there is no requirement for oversight by the project auditor, nor further monitoring of the project's sustainability benefits and/or compliance with the applicable criteria throughout project implementation.

*Grievance Processes:* At present, there is no redress or recourse mechanism for individuals and communities that are adversely affected by CDM projects. However, an appeals procedure is currently under negotiation. In December 2009, the Parties to the Kyoto Protocol requested the CDM Executive Board (EB) to establish, in consultation with stakeholders, procedures for »considering appeals that are brought by stakeholders directly involved, defined in a conservative manner, in the de-

17. The current draft UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC) dated December 2011 is available at: [http://www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=6369&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6369&Itemid=53).

sign, approval or implementation of clean development mechanism project activities or proposed clean development mechanism project activities» (UNFCCC 2010b: 8).

The inclusion of an appeals procedure presents a critical opportunity for the EB to promote public trust in and acceptance of the CDM as an effective means for reaching its goals of emission reductions and sustainable development under the Kyoto Protocol. It also provides an opportunity to introduce coherence and quality control into the EB decision-making process.

*Public Participation:* The EB has recently acknowledged the critical role of public participation and transparency in CDM processes by identifying the following objective, among others, for direct communication with stakeholders: »Ensure transparency by providing relevant information to stakeholders and opportunities for them to provide supplementary information/explanation in a timely manner...« (CDM Executive Board 2011: 2). Despite the EB's commitment to participation and transparency, this objective has yet to be fully operationalised.

#### ■ Local Consultation

During the project approval process, project developers must conduct a local consultation process in which »comments by local stakeholders have been invited, a summary of the comments received has been provided, and a report to the designated operational entity on how due account was taken of any comments has been received« (UNFCCC 2006: Annex at 14). The Executive Board has provided basic guidance on how project developers should document the notice given, comments received, and ways in which comments were addressed (CDM Executive Board 2008: 20). However, these requirements do not specify how local stakeholder consultations are to be undertaken (e.g., how stakeholders will learn about and raise concerns regarding a proposed CDM project and its potential social and environmental impacts). As a result, stakeholder consultations are often rudimentary, unregulated, and poorly documented (Sterk et al. 2009: 16).

Further, the rules on local stakeholder consultation do not provide any standards by which designated operational entities can assess the validity of a local stakeholder consultation. Although designated operational en-

tities are required to review whether the project has met all requirements, the level of scrutiny as to whether local stakeholders had a meaningful opportunity to participate in the consultation process remains unclear.

#### ■ Global Consultation

During the validation process and other stages of the CDM project cycle, Parties, stakeholders, and UNFCCC accredited observers are invited to submit comments and other information to project participants and relevant decision-makers (UNFCCC 2006: Annex at 15). However, the current global stakeholder process is inadequate to provide meaningful consultation – for example, this information is only provided on a website and provides for comments to be submitted in English only. As such, this process should be revised to allow for greater access to information and participation during the public notice and comment period.

## D. Conclusion

Generally speaking, both the GEF and REDD+ initiatives allow for active steps to be taken to integrate social and environmental considerations into their governance and distribution processes, while the CDM has largely been resistant regarding the inclusion of rights protections in its decision-making. These case studies illustrate what more is needed to protect the rights of individuals and communities who are experiencing the firsthand impacts of climate-financed activities, and thus inform the design of an institutional safeguards system (the elements of which are discussed in detail below).

## 5. Recommendations for the UNFCCC in Its Design of the Green Climate Fund

As mentioned previously, the Cancun Agreements provide that »Parties should, in all climate change-related actions, fully respect human rights« (UNFCCC 2011a: para. 8). Notably, these include the rights of affected peoples and communities to participate in decision-making processes (full and effective participation), to be informed (access to information), and to seek recourse when decisions negatively affect them (access to justice and access to remedy). As the UNFCCC moves forward in the

design of the GCF, it must take these and other human rights obligations into account to ensure that climate-financed activities do not contribute to human harm.

An important means of advancing rights considerations is through an institutional safeguards system that effectively prevents social and environmental harm and promotes sustainable development. Over the past two years, the UNFCCC has begun developing such a system for the newly established GCF. In 2010, the Cancun Agreements mandated that the GCF include mechanisms to ensure financial accountability and evaluate the performance of its financed activities, and to ensure the application of environmental and social safeguards (UNFCCC 2011a: Annex III at paragraph 1(h)). In the GCF's governing instrument, the UNFCCC reaffirmed its commitment to transparency and accountability, calling for »environmental and social safeguards and fiduciary principles and standards that are internationally accepted« (UNFCCC 2011b: Annex at paragraph 18(e)).

The following is a set of recommendations to be considered as the GCF designs and implements its safeguards system. These proposals also apply to the development of other climate finance mechanisms:

- **Ensure the application of social and environmental safeguards, i. e., clear policies and procedures that prevent social and environmental harm and maximise participation, transparency, accountability, equity, and rights protections.**

Safeguard policies established at the international level are essential to ensure the success of climate policies and activities by: reducing risks for countries and private actors; promoting consistency across projects; preventing harm to communities and ecosystems; and ensuring participation, transparency, accountability, equity, and other rights protections.

These policies must be consistent with existing international agreements, standards, and other relevant obligations, and must help further the UNFCCC objectives of preventing dangerous anthropogenic interference with the climate system and achieving sustainable development. In addition, such criteria must take into account environmental, social, and economic considerations. The newly revised International Finance Corporation Perfor-

mance Standards – recognised as a global benchmark for environmental and social performance for project finance – are an example of such policies.<sup>18</sup>

Based on prior experiences and lessons learnt with the World Bank, GEF, UN-REDD Programme, and other international institutions, the Green Climate Fund's safeguard policies should address the following:

- *International obligations.* Climate-financed activities should comply with existing international obligations, including human rights, labour, and environmental standards.
- *Environmental and social impacts.* Projects should assess and minimise the potential or actual impacts of a proposed project, taking into account the natural environment (air, water, land and plant, and animal species); human health and safety; social impacts (involuntary resettlement, indigenous peoples, and cultural resources); and transboundary and global environmental impacts.
- *Biodiversity conservation and natural resources management.* Projects should minimise significant conversion or degradation of critical natural habitats, including those that are legally protected, officially proposed for protection, identified by authorities for their high conservation value, or recognised as protected by indigenous peoples or local communities.
- *Resource efficiency and pollution prevention.* Projects should avoid or minimise adverse impacts on human health and the environment by mitigating pollution and greenhouse gas emissions through the project's lifecycle.
- *Cultural resources.* Projects should not result in the alteration, damage, or removal of any critical cultural resources. Projects should also promote the equitable sharing of benefits from the use of cultural resources.
- *Land acquisition and involuntary resettlement.* Projects should not result in forced eviction and should avoid displacement of indigenous peoples and local communities from their lands or territories.

18. The IFC is an international financial institution that serves as the private-sector arm of the World Bank Group. The IFC established Performance Standards for financed projects and maintains that due diligence of these Standards prior to implementation will address human rights issues within the project. See IFC, International Finance Corporation's Policy on Environment and Social Sustainability (Jan. 2012).

- *Indigenous peoples and local communities.* Projects should respect the rights of indigenous peoples and members of local communities by ensuring consistency with the UN Declaration on the Rights of Indigenous Peoples and by taking into account relevant international obligations, including informed consultation and participation, and free, prior, and informed consent. Projects should also respect and preserve the culture, knowledge, and practices of indigenous peoples.
- *Informed consultation and participation.* Projects should ensure access to information, full and effective participation, and measures necessary to provide affected stakeholders with recourse when project-specific rules and standards and other relevant obligations have not been properly met.
- *Information disclosure.* Projects should take necessary measures to disclose relevant information to relevant stakeholders based on internationally recognised norms related to access to information.
- *Financial intermediaries.* The investments made by financial intermediaries – the entities receiving money downstream of initial approvals and allocations for climate-financed activities – should be subject to monitoring and oversight.

When developing its safeguard policies, the Green Climate Fund should also create an exclusion list of investments that are so contrary to sustainable development that they should not be eligible for funding.

- **Design a monitoring system to ensure that safeguards are being addressed and respected, i.e., ensure that relevant actors (e.g., implementing agencies, national and local governments, and private companies) are properly applying relevant policies and procedures in the development and implementation of climate-financed activities.**

Monitoring implementation of safeguards and ensuring that they are respected throughout financed activities is vital to providing positive outcomes for all relevant stakeholders. An important component of monitoring is a robust reporting system that provides information on how safeguards are being addressed and respected at the national and local levels. In addition, the moni-

toring system must be able to address situations where safeguards are not being implemented appropriately, or information is lacking or inconsistent.

Key elements of an effective system include: (1) accountability mechanisms at both the national and international levels; (2) common reporting guidelines; (3) participatory as well as independent monitoring processes; and (4) grievance mechanisms (discussed in detail below). These elements must be harmonised with existing monitoring and reporting processes to reduce the burden on countries and other relevant actors.

1. *Accountability at the national and international levels:* Guidance for national monitoring processes should be developed at the international level to ensure as much comparability across systems as possible. While the bulk of monitoring and reporting needs to happen at the national and local levels, reports on the state of safeguards implementation must be provided to the international community. Relevant international forums, like the UNFCCC, should also be able to address concerns or inconsistencies found in the information on implementation.

2. *Common reporting guidelines:* Reports on the state of safeguards implementation can take many forms – this is due to the breadth of actions a country could take to address certain safeguards. However, to maintain coherence in reporting, common guidelines should serve as the basis for providing information on safeguards implementation at the international level. There could be broad non-exhaustive indicators for the kind of information countries would provide. There could also be some flexibility for countries with different national circumstances.

3. *Transparent and participatory monitoring processes:* Civil society participation is critical at all stages of the project cycle, including monitoring processes at the national and international levels. To promote good governance, transparency, and accountability, local community members must be able to provide input regarding safeguards compliance, specifically whether safeguards are being adequately applied during project design and implementation. In addition, there must be independent, third-party monitoring of safeguards compliance to provide additional oversight.



It is important to note that countries party to international human rights treaties and agreements have existing obligations to report on issues related to human rights. These requirements could overlap with reporting on safeguards that require protecting specific human rights or that require consistency with international obligations. Drawing from these processes or even harmonising relevant aspects would not only relieve the burden on countries but would also promote coherence across regimes.

- **Establish a robust grievance mechanism to ensure that those who may be negatively impacted by climate-financed activities can raise their concerns and have them addressed in a timely manner.**

Grievance mechanisms are proven tools in helping institutions minimise harm to communities and ecosystems by protecting existing rights, obligations, and standards. By facilitating transparency and stakeholder participation, grievance mechanisms also help ensure that policies and projects are legitimate and effective, and promote sustainable development.

#### Guiding Principles in the Design of a Grievance Mechanism

Any grievance mechanism established in the GCF should be guided by the following principles, which are derived from the principles for non-judicial grievance mechanisms elaborated by John Ruggie, UN Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises:

- *Effectiveness*, in providing timely and meaningful recourse;
- *Legitimacy*, which requires independence from political influence;
- *Accessibility*, particularly for complainants;
- *Predictability*, by way of clear and known procedures and monitoring of implementation;
- *Equitability*, by ensuring aggrieved parties can engage in a process on fair and equitable terms;
- *Transparency* of process and outcome;
- *Rights compatibility* to ensure consistency with internationally recognised human rights standards;
- *Participation*, at all relevant stages of the decision-making process.

In its design of the GCF, the UNFCCC must establish a grievance process or mechanism to which individuals, peoples, or communities whose rights may be impacted by the implementation of financed activities (or their representatives) can submit relevant information. The mechanism should assess the impacts of the climate-financed activities on the affected peoples or communities, including on their enjoyment of human rights, and should recommend measures for preventing or minimising harmful effects and for ensuring that the response measures do not interfere with their enjoyment of their rights. In addition, the mechanism should be available to assist policymakers in safeguarding human rights and in implementing the recommended measures.

The following offers key considerations regarding the scope, function, and operational design of a grievance mechanism in the Green Climate Fund<sup>19</sup>:

1. *Scope of issues/complaints*: Given the nature of climate change impacts, the GCF's grievance mechanism must have the capacity to consider and address complaints regarding rights impacts, such as harm to economic, social, or environmental interests. Examples of functioning grievance mechanisms in each of these areas currently exist in the Organisation for Economic Co-operation and Development system and under the Aarhus Convention.
2. *Functions of a grievance mechanism*: To be effective, the grievance mechanism must, at a minimum, have the authority to consider complaints and issue recommendations. It should be able to monitor and assess compliance with the relevant rules. To do this, it should have the capacity to engage in fact-finding. It should also have the power to award remedies such as just compensation, remediation, and/or injunctive relief. The Aarhus Compliance Committee and the World Bank Inspection Panel are best practice examples of grievance mechanisms empowered to undertake fact-finding, and to monitor and assess compliance. The mechanism could also assist with dispute resolution, similar to the IFC and OECD National Contact Point. Beyond core functions of fact-finding, compliance assessment, and awarding remedies, the grievance mechanism could also include an appellate function, and offer mediation or adjudication services.

19. See generally CIEL and Rainforest Foundation Norway (2011: 21-27).

3. *Operational design of a grievance mechanism*: An effectively designed grievance mechanism must ensure access to justice for affected people, jurisdiction over offending actors, a competent body to review complaints, and a means of enforcing that body's recommendations.

Although this recommendation calls for a grievance mechanism within the GCF itself, it is important to note that such mechanisms are needed at both the national and local levels, considering that complaints are often most effectively and efficiently addressed at the level where the harm occurs.

■ **Ensure civil society participation in the design and governance of the climate fund.**

As discussed previously, public participation is essential in all stages of the decision-making process, and therefore relevant stakeholders – including potentially affected communities, indigenous peoples, and civil society groups – must be afforded meaningful opportunities to provide input into the design and governance of climate finance mechanisms. Such participation will help to ensure that the mechanism is legitimate, and consistent with the guiding principles described above (see Section 3).

To ensure meaningful and effective public participation and the legitimacy of the Green Climate Fund, all meetings should be open to attendance by accredited UNFCCC observers and also made available via webcast. In addition, a number of observers – identified through a self-selection process facilitated by UNFCCC constituency focal points – should have an »active observer« role, which would allow them to make interventions, introduce agenda items, and actively participate in all subcommittees, technical panels, working groups, and drafting groups. In the event that meetings are closed to civil society, »active observers« should be able to participate fully.

In addition, the GCF governing body and its working groups should include indigenous and community representatives so that those who stand to be directly or indirectly impacted by GCF-financed projects are involved in and/or consulted on decisions related to the governance and distribution of these projects. Furthermore, the GCF should publish all relevant documents as soon as they become available. In addition to other forms of distribu-

tion, documents should be posted to a dedicated website for the GCF no later than the time they are made available for hard-copy distribution.

■ **Ensure civil society participation in the development and implementation of climate-financed activities.**

In addition to supporting civil society participation in the design and governance of the fund itself, countries need to promote and facilitate »public participation in addressing climate change and its effects and developing adequate responses«,<sup>20</sup> which includes consultation in the development and implementation of climate-financed activities. The right to consultation with indigenous and tribal peoples and local communities before adopting measures that may affect them is well-established under international law.<sup>21</sup> The level of consultation should be proportional to the level of impact that is likely to result from a particular activity or project.

Based on lessons learnt from previous consultation processes, the Green Climate Fund should ensure that relevant actors (e.g., implementing agencies, countries, project developers) provide all individuals, peoples, or communities that are affected – or are likely to be affected – by a proposed climate-financed activity meaningful opportunities to participate in relevant decision-making processes and give adequate, timely, and effective notice of such opportunities. To accomplish these objectives, it is essential to develop clear rules on how to conduct local consultations and establish clear guidelines to enable an independent entity to effectively assess the consultations.

The rules on consultation should address the scope, locale, and timing of public consultation meetings as well as notices and other communications required throughout the consultation process. For example, implementing agencies/project developers must use effective and appropriate means of communication at all stages. All communications with local stakeholders should be translated into the local language(s) and written in non-

20. UN Framework Convention on Climate Change, Mar. 21, 1994, 1771 U.N.T.S. 107, art. 6(a)(iii).

21. See e.g. UN Declaration on the Rights of Indigenous Peoples, G.A. Res. 295, U.N. Doc.A/RES/61/295, 13 Sept. 2007, art. 19; Convention concerning Indigenous and Tribal Peoples in Independent Countries (International Labor Organisation Convention No. 169), 27 June 1989, art. 6.

technical terms. Key project documents, including the project proposal, environmental assessment, and other supporting documents, should not be kept out of the public domain under the guise of confidentiality.

Furthermore, all communications, including notices, should be clear, detailed, and widely circulated, and distributed by appropriate and effective means to help avoid any significant logistical and communication barriers. Local stakeholders should be allowed to submit comments in the language(s) spoken in the proposed project area. If a significant part of the population is illiterate, then the information must be provided orally (e. g., through in-person meetings and radio).

It is important to note that the Green Climate Fund and other climate finance mechanisms must ensure that climate-financed activities promote the full and effective participation of indigenous and tribal peoples and local communities in decisions that directly or indirectly affect their livelihoods, traditional lands and resources, cultural integrity, or any other aspects of their lives, considering the principle of free, prior, and informed consent. More specifically, financial institutions must ensure that local stakeholders are engaged in a process by which they have given free, prior, and informed consent before projects are implemented.

## 6. Conclusion

Applying a human rights-based approach to climate finance will help to ensure the consideration of human impacts in the governance and distribution of funds in support of climate change mitigation and adaptation measures. As a result, it will prevent harm to communities and ecosystems, and promote participation, transparency, accountability, equity, and other rights protections. It will also strengthen the effectiveness, long-term success, and sustainability of climate finance at both the national and international levels.

As described by the OHCHR, a »human rights-based approach leads to better and more sustainable human development outcomes« (OHCHR 2006: 16). The UNFCCC negotiations on the design and governance of the Green Climate Fund provide an opportunity for countries to operationalise their existing rights obligations in the climate finance framework, and thus avoid or mini-

mise the human impacts resulting from climate-financed activities. This paper sets forth the guiding principles in applying a human rights-based approach; identifies the strengths and weaknesses of existing climate finance mechanisms (specifically the GEF, REDD+ initiatives, and CDM); and drawing on those experiences, proposes recommendations for the Green Climate Fund in its development of an international safeguards system.

The challenge remains for the Parties to the UNFCCC to continue to build on the initial steps taken towards applying a rights-based approach, both in the Cancun Agreements and in the GCF's governing instrument. It is evident that the GCF has the mandate to establish social and environmental safeguards and accountability processes, but it is not clear whether they will effectively protect the rights of affected individuals and communities. As countries continue to develop this fund, which is intended to channel 100 billion US dollars on an annual basis, they must recognise the potential human impacts, and ensure that rights considerations guide the development, implementation, and monitoring of climate-related processes and mechanisms.



## Annex

### Annex 1: Selected Human Rights Obligations Relevant to Climate Change

The following table identifies selected international human rights treaties and other instruments as well as some of the rights that are threatened or undermined by the impacts of and measures taken in response to climate change. It is important to note that this table does not represent an exhaustive list of human rights obligations relevant to climate change.

Treaties / Instruments	Parties	Parties also party to the UNFCCC	Rights implicated by climate change (article number)
Universal Declaration of Human Rights	48 (signed)	48 (signed)	Life (3); Liberty and security of person (3); Freedom of movement (13); Property (17); Work (23); Adequate standard of living (25); Education (26); Culture (27)
International Covenant on Economic, Social, and Cultural Rights	160	160	Self-determination (1); Duty to cooperate (2); Right to work (6); Adequate standard of living (11); Right to be free from hunger (11); Improvement of environmental and industrial hygiene (12); Education (13); Culture (15); Scientific progress (15); Utilise natural resources (25)
International Covenant on Civil and Political Rights	167	167	Self-determination (1); Life (6); Liberty and security of person (9); Movement (12)
International Convention on the Elimination of All Forms of Racial Discrimination	175	174	Property (5); Work (5); Housing (5); Health (5); Education (5); Culture (5)
Convention on Indigenous and Tribal Peoples (No. 169)	22	22	Culture (8); Property (14); Use and conservation of natural resources (15); Health (25); Education (26)
UN Declaration on the Rights of Indigenous Peoples	148	148	Self-determination (3); Life (7); Liberty and security (7); Education (14); Means of subsistence (20); Development (23); Health (24); Environmental conservation (29); Culture (31)
Convention on the Rights of the Child	193	192	Life (6); Freedom of expression (13); Health (23); Adequate standard of living (27); Education (28); Culture (30)
Convention on the Elimination of All Forms of Discrimination Against Women	187	187	Education (10); Work (11); Health (14); Adequate living conditions (14); Housing (14); Water (14)

Source: CIEL (2011)



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