

Joint Submission of a Group of CSOs Active in the GCF with Comments on the Draft Policy on Protection from Sexual Exploitation, Abuse and Harassment (SEAH)

Introduction

Civil society organizations (CSOs) active in the Green Climate Fund (GCF) appreciate the opportunity, even under a very tight timeframe and therefore on our side with a less than ideal internal CSO coordination process, to provide some comments on the suggested draft SEAH policy proposed by the IIU. This submission follows a conference call exchange of some CSO colleagues with the IIU on January 23, 2019, which clarified some of our questions on a prior version of the draft policy, but not all. Several CSOs active in the GCF are now jointly following up with further comments and recommendations¹ based on an updated version of the draft SEAH policy shared with us by the IIU after the call.²

Overarching Comments

We appreciate the IIU's effort to close a crucial policy gap with respect to signaling to the GCF personnel, all GCF officers including its Board and accountability units and all its delivery and implementation partners as well as their executing partners, that in all GCF operations and funded activities sexual exploitation, abuse and harassment (SEAH) is unacceptable. While we note great further improvements of the current draft SEAH policy versus an earlier version we had commented on during a conference call with the IIU, there remain gaps in the draft policy as currently presented with respect to several aspects, namely in understanding how the covered individuals and their organizations will be enabled to prevent SEAH (beyond being informed that this policy exists and will be fully implemented); how SEAH procedures will be screened at the level of funding proposals; the procedures through which reporting at an organizational (non-whistleblower) level should be done; and how both SEAH and the effectiveness of this policy will be monitored and evaluated over time. We look forward to future guidance to this effect and offer our interest in continuing to provide constructive feedback on the implementation of these pieces that will ultimately make the difference between having a policy on paper and having a policy that protects and affords justice to the victims of SEAH in GCF operations and funded activities.

In the following, we provide comments on the various sections, and respective paragraphs in the draft presented to us for comments.

Section by Section Comments with Reference to Paragraphs in Question

Section I, Introduction (page 1):

The introduction in **para. 2** should ensure that in sentences, where there is only a reference to “sexual harassment” the full reference to “sexual exploitation, abuse and harassment” is made. Singling out sexual

¹ CSOs active in the GCF that have contributed to this submission are (in alphabetical order): Asian Pacific Movement on Debt and Development (APMDD)/Philippines; Asian-Pacific Resource and Research Centre for Women (ARROW)/Malaysia; Bank Information Center/USA; Center for International Environmental Law (CIEL)/USA; GenderCC South Africa/South Africa; Heinrich Böll Stiftung North America/USA; Indigenous Peoples' Centre for Policy Research and Education (Tebtebba Foundation)/Philippines; and Women's Environment Development Organization (WEDO)/USA.

² The SEAH draft to which these comments refer (including in reference to the numbering of paragraphs) is the one shared with us on January 23, 2019; available at: <https://drive.google.com/file/d/1OKY8tye02-4qGAbVcSnpl1m2UUIZ2PAD/view?usp=sharing>.

harassment is inadequate in this broad statement that indicates there is no place for such conduct in the GCF.

Para. 3 should at the end make mention of the possibility that the IIU can refer misconduct to appropriate national authorities for criminal prosecution. It would be important to spell this out both in the introduction to the Policy (in Annex II) as well as in the policy itself. This would also make it clear that this is not just a matter of violating international standards and GCF rules and procedures, but that any such misconduct often constitutes a crime under national jurisdictions.

Annex II:

Section I: Introduction

In **para. 6** the policy could be strengthened by a more explicit reference to the underlying existing human rights obligations against exploitation, abuse and harassment on which this specific SEAH policy builds, for example by including the following sentence (as a minimum in a footnote) after the first sentence: “The GCF subscribes to the right to be free from exploitation, abuse and harassment which is enshrined in international human rights law (International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, and Convention on the Rights of Persons with Disabilities).”

In the same **para. 6** the wording should ensure that in sentences, where there is only a reference to “sexual harassment” the full reference to “sexual exploitation, abuse and harassment” is made. Singling out sexual harassment is inadequate in this broad statement referring to underlying cultures of discrimination and privilege, and articulating that there is no place for such conduct in the GCF.

Likewise, the reference to the creation of “hostile workplaces” might be too narrow a word to illuminate Fund-related activities (for example in outreach or capacity building measures which would go beyond “workplaces”). A better reference might be to “social and professional interactions”.

Section III: Definitions

Why is the definition for “**External Parties**”, which was found in a previous draft SEAH policy version, no longer included? Extending the policy explicitly to “External Parties” made it very clear that it seeks to apply to a broad range of actors actively or passively connected to Fund-related activities, which goes beyond those in a direct (or intermediated) contractual relationship with the Fund. It should be reinstated.

Para. 9(g) should include then a reference to “External Parties” as well so that it says: “... External Members, External Parties, and GCF Personnel;”

In **para. 9(n)** on “**Sexual Harassment**” the definition should be expanded to include references to new ways of interaction, namely online/web-based interactions. We would therefore suggest to include after “leering” in parentheses the addition of the following references: “including in virtual workspaces, virtual meetings, and on social media platforms”.

Paras 9(j) and (o) could be merged.

Why is the definition of “**Trafficking in Persons**”, listed in an earlier version of the draft SEAH policy no longer included?

Section V: Guiding Principles

Para. 12 is missing a reference to “report”. It should read: “Condoning SEAH or negligently failing to protect from, prevent, *report* [emphasis added], investigate, or remedy SEAH in Fund-related Activities....”

Para. 13 should at the end make mention of the possibility that the IIU can refer misconduct to appropriate national authorities for criminal prosecution. It would be important to spell this out in the policy itself. This would also make it clear that this is not just a matter of violating international standards and GCF rules and procedures, but that any such misconduct potentially constitutes a crime under national jurisdictions.

Section VI: Obligations of Covered Individuals and Counterparties

Section VI.1: Obligations of Covered Individuals

Para. 17 is missing the reference to harassment (“harass”) along with exploitation and abuse. It is important to include “harass” (i.e. sexual harassment) as it involves emotional and psychological abuse, which is very damaging to the victim’s mental health. It should read: “Covered Individuals shall not use their position to sexually abuse, exploit or harass any person implementing, engaged in, or benefiting from Fund-related Activities.”

We very much welcome **para. 18** on child protection, as well as the deletion of any ambiguity as to when maturity is attained under national laws. We however would suggest to add a new item, with the following suggested language: “Covered Individuals shall not use their position to sexually abuse or engage in any exploitative activities with children or vulnerable adults, including those that are trafficked or child labour.”

In **para. 19** the wording “as soon as possible” should be changed to “without delay,” as used in **para. 20**, on when covered individuals should report suspected SEAH.

Paras 19 and 20 should also further clarify what “Subject to protections available” means. Is this referring to protections under the Whistleblower Protection Policy? If yes, it might be good to spell it out here.

Also, and importantly, **para. 19** misses an opportunity to clarify the applicable lines of reporting. Reporting to whom?

Section VI.2: Obligations of Counterparties

Para. 21 is missing a reference requiring Accredited Entities and Delivery Partners to also “report” SEAH. The passage should read: “Accredited Entities and Delivery Partners are required to have in place effective policies and procedures to prevent, detect, *report* [emphasis added], investigate, and remedy SEAH in a Fund-related Activity. Such policies shall provide assurance that victims and witnesses of SEAH are protected against retaliation.”

Also, according to the definitional section, counterparties go beyond Accredited Entities and Delivery Partners. Clarification is needed as to whether the obligations to have effective policies and procedures

should not also include other counterparties such as Executing Entities, other contractors or financial intermediaries for example.

Para. 22 is missing a reference to “sexual harassment” and a reference to SEAH “found”, as well as a reference requiring counterparties to promptly inform the specified contact at the GCF of SEAH. Additionally, clarity is needed about who at the GCF the conduct should be reported to ... is it the IIU? Is it the accreditation unit? Is it a particular unit in the GCF Secretariat or a particular staff person?

The passage should thus read: “Counterparties are required to promptly inform [who within the GCF????] of Sexual Exploitation, Sexual Abuse or Sexual Harassment, suspected, *found* [emphasis added], or alleged in connection with a Fund-related Activity.”

It should also be made clear in this paragraph that there is a penalty for failing to promptly report SEAH. And it should clarify the procedures for informing, as well as how the information of the SEAH suspected, found, or alleged will be further processed, followed-up, resolved, and, lastly, reported beyond the initial informing.

Section VII: Prevention and Due Diligence

Section VII.1: Covered Individuals

We appreciate the inclusion of this section providing detailed information on how the SEAH policy will obligate the GCF to ensure adequate and comprehensive SEAH background checks will be conducted during its recruitment processes.

We seek some clarity in **para. 25** on who is referred to when indicating that “Reference Checks of Board Appointed Official applicants shall be done by the designated authorities.” In particular, we were wondering if “the designated authorities” refer to Selection Committees (for example for the Executive Director) or headhunters/specialized staff recruiting agencies whom the Board has entrusted with the task to conduct the search process and initial vetting of candidates, or might be referring to somebody else entirely. The wording as used might be misleading as it could be understood to be read as “national designated authorities” in which case there might be a concern that in many cases NDAs constitute lower ranking civil servants compared to Board appointed officials who might be pressured to clear such officials. Thus, a further clarification of this reference is suggested.

We welcome the inclusion of **para. 28** acknowledging that close personal relationships between Covered Individuals should be disclosed in cases where there is an unequal power relationship that could give the suggestion of SEAH as undue influence or coercion might come into play. We suggest keeping this paragraph in the draft SEAH policy.

Section VII.2: Counterparties

The mandate for the GCF to ensure that all Accredited Entities and Delivery Partners have effective policies and procedures for protection against SEAH in place in **para. 31** is most welcome. However, there is no acknowledgement of the significant capacity and expertise needs in this area as well as the resources that will be required to support this. Further guidance to be developed on how this can be accomplished should be referenced here.

We also welcome the mandate for the GCF Secretariat in **para. 32** to review and screen Project and Readiness Funding Proposals for assurances that SEAH risks have been assessed and will be mitigated. Our comments with respect to **para. 31** on the issues of capacity, expertise, and resources needed by the

Secretariat as well as further guidance to ensure that the Secretariat can apply the necessary SEAH due diligence are applicable to the mandate of **para. 32** as well.

Additionally, **para. 32** should provide further clarity on the necessary inclusion of measures taken to protect against SEAH in obligations for counterparties under the Monitoring and Accountability Framework. Counterparties should report in their Annual Performance Reports (APRs) on the measures taken to protect against SEAH. Note, however, that the APRs are currently not available to the public, which constitutes a significant information gap with respect to SEAH transparency and accountability in counterparties actions. The IIU as part of this policy should press for the public release of counterparties' APRs. In addition, it would be important to also spell out that the Secretariat's Annual Portfolio Performance Report (APPR), the yearly summary account of all APRs delivered by the Secretariat to the Board and publicly available, comprehensively reports on measures taken to protect against SEAH in Fund-related activities by Accredited Entities and Delivery Partners.

Section VII.3: Raising Awareness, Communication, and Dissemination of Information

In **para. 33(a)** the GCF should make a commitment to make the SEAH policy available on the GCF's website in multiple languages, starting at a minimum with posting the policy in English, French, and Spanish.

Section VIII: Reporting and Investigation

Para. 34: It might be better to refer to people who report on SEAH as something other than "whistleblowers." While we appreciate that using "whistleblowers" may be being done as the protections are the same for both, victims of SEAH may not consider themselves whistleblowers as whistleblower tends to have a specific meaning that is different from reporting on SEAH. It also could create confusion for Accredited Entities or other people associated with the GCF as to the differences in the two policies. As such, it would be better to refer to those that report on SEAH by using some other term, for example, defining them as "SEAH reporters" or some similar term.

In **para. 39** referring to reports being made and accompanying information and evidence provided, it should be clarified that the IIU or any other authority competent for the investigation of reports of suspected SEAH may not only be made in any language, but should also allow for submission in formats other than in writing to allow illiterate victims or victims with difficulty in formulating reports to also come forward (such as phone calls, video testimonials, allowing another person to submit on behalf of a victim at his/her/their request, etc.). In line with this, and as not to put up unnecessary language or reporting format barriers for victims of SEAH, the phrasing "shall endeavor" in the last line should be changed to "shall provide". Language translation or interpretation cannot be optional when the report or testimonial is not in English.

Section IX: Protections and Remedies

Section IX.1: Confidentiality and Anonymity

In **para. 49** instead of referring narrowly to "Whistleblowers" only, the wording from para. 48 should be used which refers more explicitly to "Whistleblowers, Witness, or any other party protected under paragraphs 42 and 43" to indicate the persons that should be informed of the outcome of the review or investigation by the IIU.

Section IX.2: Protections and Remedies for Covered Individuals

Both **paras. 51 and 52** should include a reference to the possibility that SEAH acts committed by GCF personnel and Covered Individuals respectively can be reported to the appropriate national authorities for criminal prosecution.

Right now, the draft SEAH policy, is missing clarity on sanctions. The policy, potentially in the section on protections and remedies, should include that sanctions, or other punishment, will be based on the severity and extent of the SEAH etc. Additionally, while we recognize that spelling out specific sanctions in the SEAH policy may not be appropriate, the SEAH policy could reference that sanctions also will be determined in line with the GCF sanctions policy to be developed by the IIU.

Section X: Policy Implementation, Monitoring, Reporting and Review

This section should include much more detail on monitoring, reporting, evaluation, and review of the SEAH policy. In particular, it should specify a time period for a review of the policy following a comprehensive consultation period and seeking feedback in particular from victims who reported under the SEAH and related policies and those that work in the complaints procedure. Note, in the draft decision text to approve the policy there is a reference to the Secretariat reporting to the Board two years after the adoption of the policy on its implementation experience and lessons learnt as the a basis for the review. The policy might also mention the possibility to seek an independent evaluation of the SEAH policy by the IEU as part of a mandatory review. Allowing for this comprehensive participatory review to evaluate how well the policy works is necessary to improve the effectiveness of the policy as well as the reporting and complaints procedures for SEAH.

Thank you for the opportunity to comment on the development of this critical policy.

Submission on January 28, 2019 by:

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- Asia Pacific Movement on Debt and Development (APMDD), Philippines
- Asian Pacific Resource and Research Centre for Women (ARROW), Malaysia

- Bank Information Center, USA
- Center for International Environmental Law (CIEL), USA
- GenderCC South Africa, South Africa
- Heinrich Böll Stiftung North America, Germany/USA
- Indigenous Peoples' International Centre for Policy Research and Education (Tebtebba), Philippines
- Women's Environment and Development Organization (WEDO), USA

Finally, the following civil society organizations (CSOs) have signed on in support of this submission (in alphabetical order):

- Asian Indigenous Women Network, Philippines
- Asia Pacific Forum on Women, Law and Development (APWLD), Thailand
- Both Ends, The Netherlands
- Centre for 21st Century Issues, Nigeria
- Centro para la Autonomía y Desarrollo de los Pueblos Indigenas (CADPI), Nicaragua
- Climate Action Network Canada (CAN Canada), Canada
- Climate Action Network South Asia (CANSAs), India
- Forest Peoples Programme, United Kingdom
- Institute for Agriculture and Trade Policy (IATP), USA
- International Trade Union Confederation (ITUC), Belgium
- Pastoralist Indigenous Non-Governmental Organization Forum (PINGO's Forum), Tanzania