



ADAPTATION FUND

AFB/EFC.9/3
21 May 2012

Adaptation Fund Board
Ethics and Finance Committee
Ninth Meeting
Bonn, Germany, 26-27 June 2012

Agenda Item 3

INVESTIGATIVE PROCEDURE

Background

1. At its 16th meeting the Board considered a document on the procedure to trigger an investigation, including addressing cases of financial mismanagement, prepared by the secretariat. The document also contained an overview of the applicable rules approved by the Board and an outline of procedures of other financial mechanisms.¹ Following the recommendation by the EFC, the Board decided to:

(a) *Request the secretariat to present a proposal for an investigative procedure for consideration at the next EFC meeting, including the cost implications of implementing such proposal and taking into account any possible conflict of interest;*

(b) *Instruct the secretariat that the procedure should contain the following elements:*

(i) *Establishment of a specific function to carry out investigations (option a or b) above²);*

(ii) *Adequate mandate to initiate, undertake and complete an investigation to address cases of corruption/mismanagement of funds that may have occurred in the context of project/programme preparation and implementation;*

(iii) *The outcome of an investigation will be shared with the relevant Party so that the process at the domestic level is initiated. The process will establish the nature of the communications related to the case under investigation;*

(iv) *The EFC will consider the outcome of the investigation and subsequently forward a recommendation to the Board for a decision;*

(v) *The procedure shall clearly establish the steps to take pending the outcome of an investigation and in the event that the case of corruption/mismanagement is proven.*

[...]

(Decision B.16/22)

2. Following the mandate above, the secretariat submitted a proposed investigative procedure for consideration by the Ethics and Finance Committee (EFC) at its 8th meeting. Having considered the recommendation by the EFC, the Board at its 17th meeting decided to:

(a) *Request Board members and alternates to send comments on the proposal of investigative procedures, as appropriate; and*

(b) *Request the secretariat to:*

¹ Document AFB/EFC.7/5.

² The two options presented in document AFB/EFC.7/5 are: a) An independent officer/unit accountable to the Board; or b) A dedicated staff position/unit within the secretariat.

- (i) *Continue its consultations on the proposal of investigative procedures, as appropriate; and*
- (ii) *Present a revised version of the investigative procedure to the EFC at its 9th meeting for consideration, taking into account comments provided by Board members and alternates.*

(Decision B.17/18)

3. In response to the request made by the Board, the secretariat concluded its consultations on the procedure and incorporated comments made during the EFC meeting. As of the date of issuance of this document, the secretariat had received no additional comments from Board members and alternates. Annex I to this document presents a revised proposal of an investigative procedure for consideration by the EFC.

Document's structure

4. The proposed investigative procedure, including options for its implementation, is contained in Annex I to this document.

5. Between the two options presented to the Board, the secretariat recommends a dedicated staff position/unit within the secretariat. Given that the cost implications of both options are the same, the main argument in favor of this option is that it minimizes conflict of interest, as Board members may have conflicts of interest related to projects under investigation. The secretariat's staff will be exempt from any potential investigation.

6. The secretariat also proposes a transitional period to test this option.. Given the developing nature of the Fund and its relatively small portfolio, the secretariat proposes, as a first step, the hiring of two short term consultants (STCs), for an initial period of two years each in order to better assess the amount of work that would be required of this officer/unit. If deemed necessary by the Board, and based on assessments of the consultancy experience, permanent positions can be opened after the transitional period.

7. Annex II contains the cost estimates for these positions.

8. In drafting this proposal, the secretariat has consulted the following sources:

- *Uniform Guidelines for Investigations*, 2nd edition. As endorsed by the 10th Conference of International Investigators held on 10-12 June 2009 at the Dead Sea in Jordan. <http://www.un.org/depts/oios/pages/uniformguidelinesenglish.pdf>

- *Uniform Guidelines for Investigations* as endorsed by the 4th Conference of International Investigators held in Brussels on 3 and 4 April 2003. http://www.un.org/en/pseataforce/docs/uniform_guidelines_for_investigations.pdf

- *Investigations Manual*. UN Office of Internal Oversight Services, Investigations Division. March 2009. http://www.un.org/Depts/oios/pages/id_manual_mar2009.pdf 3

Recommendation

9. Following consideration of document AFB/EFC.9/3, the EFC may want to recommend the Board to:

- (a) Approve the investigative procedure as contained in Annex I; and
- (b) Request the secretariat to:
 - (i) Develop TORs for the investigative consultants;
 - (ii) Advertise the positions and proceed with the recruitment of two investigative consultants for a transitional period of two years;
 - (iii) Include a provision in the proposal of the Board and secretariat budget for FY13 to cover the salary of the investigative consultants; and
 - (iv) Prepare a revised version of the approved investigative procedures based on the experience after two years of implementation of this procedure for submission to the Board, if deemed necessary.

Annex I: Proposed investigative procedure for the Adaptation Fund

Scope of application

1. This procedure shall apply to information regarding possible cases of misconduct related to the implementation of a project/programme funded by the Adaptation Fund, involving accredited implementing entities or their staff, received or identified by the secretariat. Cases involving executing entities working under the oversight of the implementing entities shall be investigated by the relevant implementing entities following their own rules and procedures as assessed through the accreditation process.
2. Cases of misconduct related to the implementation of a project/programme include, but are not limited to:
 - (a) Corruption of or by implementing entity's staff, including fraudulent practice, collusive practice, coercive practice, and obstructive practice;
 - (b) Misuse of project/programme resources, including, but not limited to, use of funds for purposes other than the object of the project/programme. This may include gross negligence or reckless disregard in the use of project/programme funds by the implementing entity or its staff that results in a mistake, a misinterpretation of the eligibility of activities, insufficient justification of expenses, or violation of applicable rules and procedures; and
 - (c) Gross negligence or reckless disregard that results in material breach of the agreement between the Board and the implementing entity, attributable to the implementing entity or their staff.

Investigative function

3. The investigative function will be fulfilled by the secretariat mainly through the Investigative Consultants recruited for a transitional period of initially two years. At the expiration of the transitional period, based on the experiences of the consultancy and lessons learned, the Board could consider its continuation for an additional period of time to be determined, or the creation of a permanent staff positions at the secretariat.
4. The investigative function will pursue investigation with the aim of establishing facts. In light of the investigative function findings, the secretariat will make recommendations to the Ethics and Finance Committee (EFC) for decision making by the Board. The investigative function will be carried out in coordination with relevant counterpart authorities of either the country or organization concerned.

*Triggering an investigation*⁵. The information about a possible case of misconduct can originate with:

- (a) Reviews of project/programme annual reports; project/programme completion reports; mid-term evaluations; final evaluations; project/programme audited financial statements³;
- (b) Information provided to the secretariat by staff acting in official capacity, whistleblowers, individual witness to the possible misconduct, civil society organizations;
- (c) Information not directly originated by the implementation of the project/programme such as audits, inspection;
- (d) Media reports; and
- (e) Any other credible sources of information.

6. The information can be submitted to the investigative function either verbally or in writing: by phone or sent by post, e-mail, or other means of communication. The source information should have sufficient detail to determine whether the actions reported might be considered misconduct if ultimately established; including dates, places, names of those implicated and possible witnesses. The investigative function will record time, date, contact information of the source, and other circumstances of the report.

7. Information received from anonymous sources will be assessed and may lead to an investigation. The information must include sufficient detail to allow for independent corroboration of the facts reported. If there are no means of independently corroborating the information provided from the source, the matter will not be considered actionable.

8. The identity of the source shall be protected by all those involved in the investigation process, unless:

- (a) The source consents to disclosure; or
- (b) It is determined that the source transmitted allegations that were knowingly false, or made allegations with reckless disregard as to whether they were true or false.

9. The protection of whistleblowers shall be assured and appropriate rules will be developed.

Assessment of the information related to possible misconduct

10. The investigative function will assess any information on possible cases of misconduct related to project/programme implementation and determine the appropriate course of action, including:

- (a) Referral: When the matter falls beyond the scope of this process it may be referred to another authority, in which case provisions to adequately protect the source shall

³ The standard legal agreement between the Board and the implementing entities, section 7: records and reporting, outlines the reporting obligations of the implementing entities that have received funding for project/programme implementation. <http://www.adaptation-fund.org/sites/default/files/Model%20Legal%20Agreement%20%28Board%20Approved%29.pdf>

be made. Issues related to possible misconduct attributable to Executing Entities or their staff will be referred to the relevant implementing entity for investigation. In this case, the investigative function will periodically follow up with the implementing entity on the course of its own investigation;

- (b) Information: When the matter is not actionable and is not appropriate for referral, it will be recorded for information purposes;
- (c) Suspension: When the matter does not include sufficient information to proceed and further clarification is possible, the matter may be suspended pending the receipt of clarification; and
- (d) Assignment for investigation: When the matter is deemed actionable, it will be assigned for investigation.

Precautionary measures and notifications

11. The investigative function will present to the Ethics and Finance Committee (EFC) general information on the possible cases of misconduct brought to its attention and the course of action followed. In particular, the investigative function will inform the EFC about any matters assigned for investigation. The rules of procedure related to conflict of interest and code of conduct will apply. Any information related to a matter under investigation shall be recorded by the investigative function and treated as confidential.

12. In case the matter is deemed actionable by the investigative function and assigned for investigation, and taking into account the evidence available, the investigative function can recommend to the EFC as a precautionary measure, the suspension of any transfer of funds for the implementation of the project/programme concerned. The EFC will forward its recommendation to the Board for decision making.

13. If the individual source of information is identified, the investigative function will acknowledge receipt of the information and include general information on the course of action. No other party is automatically entitled to any such notification, including the implementing entity supervisor or the subject of any reported misconduct.

14. The Designated Authority whose project is concerned and the management of the implementing entity may be informed about the possible case of misconduct.

Conducting the investigation

15. Once a matter is assigned for investigation, the procedures will be carried out by the investigative function, ensuring accuracy and confidentiality of the process.

16. The investigative function will be responsible for:

- (a) Preparation of a workplan for investigation, including:
 - (i) Identification of known and possible sources of evidence and the means of securing those sources until the investigative function can actually collect the facts required as well as the subsequent recovery, handling, and storage of that evidence;

- (ii) Identification of witnesses to be interviewed and the support of the relevant counterpart authorities needed; and
 - (iii) Records, resources and logistics.
- (b) Establishing the circumstances relevant to the matter to be investigated and the investigative methodology to be employed; and
- (c) Preparing a report for consideration by the EFC.

17. Whenever needed, the investigative function will carry out its tasks in coordination with the relevant counterpart authorities, either from the country or the organization concerned. When access to on-site information or records is needed, the investigative function will seek collaboration with relevant counterpart authorities.

18. Individuals implicated by a report of possible misconduct can expect the following:

- (a) Explanation of the investigation process;
- (b) Interviews for the purpose of obtaining relevant facts;
- (c) Scheduling of interviews at a reasonable place and time;
- (d) Identification of the individual(s) conducting the investigative interview;
- (e) Assistance of interpreters during an interview, if required;
- (f) Opportunity to review the record of the interview for correction before signing. Depending on the circumstances and the importance of the investigation, audio recording and transcription may be considered;
- (g) Investigators accessing official records and facilities according to established procedures that ensure appropriate collection of facts where justified;
- (h) Opportunity to identify relevant witnesses or information for investigation; and
- (i) A copy of the draft investigation details for correction or a closure letter if the investigative findings do not support a conclusion of misconduct.

Investigation report

19. Once the investigation is complete, the investigative function will prepare an investigation report for consideration by the EFC. The report will be structured to outline the reported misconduct linked to applicable rules and regulations. It will succinctly explain the steps taken to gather evidence, set forth analyses of and findings based on the evidence obtained, and demonstrate that conclusions drawn and recommendations made are rational and justifiable.

20. The investigation report shall contain recommendations for consideration by the EFC which may include:

- (a) Appropriate action to be taken, including the suspension or cancelation of the project/programme concerned;
- (b) Referral to national authorities;
- (c) Financial recovery of resources already disbursed for project/programme implementation;
- (d) Advice on weaknesses in administrative or operational policies which could affect project/programme implementation; and
- (e) Risk areas identified and measures to address them.

21. A closure report will be issued if as a result of an investigation it is determined that there is no basis on which to pursue the investigation, that the available evidence does not substantiate the reported misconduct or, due to extenuating circumstances, that an investigation is no longer possible.

22. The secretariat will present to the EFC a recommendation on the appropriate action to be taken, based on the conclusions of the report. The recommendation may include the suspension or cancelation of the project/programme concerned. The EFC will forward its recommendation on the investigation report for decision making by the Board.

23. The investigation report will be deemed confidential and shared only with the Designated Authority and implementing entity's management.

Annex II: Cost estimates to cover the investigative consultants

Short term consultants

Based on an experience of 30 years per consultant

US\$850 x 150 days/year = \$127,500

2 consultants = \$ 255,000