



ADAPTATION FUND

AFB/EFC.19/9/Rev.1
29 September 2016

Ethics and Finance Committee
Nineteenth meeting
Bonn, Germany, 4-5 October 2016

Agenda item 8

**PROPOSED
AD HOC COMPLAINT HANDLING MECHANISM
(ACHM)**

Background

1. At its twenty-seventh meeting, the Adaptation Fund Board (the Board) considered the comments and recommendation of the Ethics and Finance Committee (EFC) and decided *to request the secretariat to prepare a note on possible courses of action to address the complaints related to implementing entities and report back to the nineteenth meeting of the EFC* (Decision B.27/31).

2. In fulfilling this request, the Adaptation Fund Board secretariat (the secretariat) prepared, in consultation with the Inspection Panel of the World Bank, a draft Ad Hoc Complaint Handling Mechanism (ACHM) of the Adaptation Fund (the Fund) to address complaints related to accredited implementing entities.

3. The Fund Board established a Risk Management Framework for the Fund (amended in October 2014)¹ applicable to different types of risks and the different actors of the Fund. Under the risk management framework, implementing entities are covered by the Operational Policies and Guidelines for Parties to access resources from the Fund (OPG), including the environmental and social policy (ESP). When applying for accreditation, applicant implementing entities need to demonstrate that they have policies and procedures related to transparency, anti-corruption measures, self-investigative powers, and a mechanism to address complaints. They also need to demonstrate that an accessible, transparent, fair and effective grievance mechanism is in place to address complaints about any potential environmental and social harm that may be caused by their projects. In addition, once a project/programme is approved and a standard legal agreement with the Board, they are also covered by its terms. Accredited implementing entities are required to investigate any allegation or evidence of misuse of the funds using its own internal investigators or hire investigator(s) acceptable to the Board.²

4. Considering the Fund's applicable rules, policies and procedures, the ACHM is designed to be complementary to the Fund's Risk Management Framework, including the grievance mechanism required for accreditation of Implementing Entities.

5. The ACHM is designed to be available to implementing entities and members of the communities that may be affected by the implementation of projects/programmes funded by the Fund. The purpose of the ACHM is to assist in responding to complaints raised against projects/programmes funded by the Fund through a participatory approach. Main features of the ACHM are to effectively facilitate dialogue among stakeholders, mediate/assist in resolving issues raised, and develop and share lessons to improve future operations.

6. The secretariat will independently manage all aspects related to complaint handling, under the oversight of the Ethics and Finance Committee (EFC).

¹ Available at https://www.adaptation-fund.org/wp-content/uploads/2015/06/AF-risk-management-framework_Board-revised.pdf.

² OPG (amended in March 2016), para. 40. See also standard legal agreement between the Board and the implementing entities, para. 3.03.

7. The ACHM is contained in the Annex to this document.

Recommendation

8. The Ethics and Finance Committee (EFC) may want to consider the proposal for an Ad Hoc Complaint Handling Mechanism (ACHM) as contained in the annex to document AFB/EFC.19/9/Rev.1 and make a recommendation to the Board for approval.

ANNEX: Ad Hoc Complaint Handling Mechanism (ACHM)

What is the ACHM?

1. The Ad Hoc Complaint Handling Mechanism (ACHM) is complementary to the Adaptation Fund's risk management framework, including the grievance mechanism required for accreditation of Implementing Entities.
2. The Adaptation Fund (Fund) makes the ACHM available to Implementing Entities and members of the communities that may be affected by the implementation of project/programmes funded by the Fund. The purpose of the ACHM is to assist in responding to complaints raised against project/programmes funded by the Fund through a participatory approach.
3. Complainants and implementing entities should use the implementing entity's grievance mechanism as a first step. However, the ACHM can be directly used in cases where the Parties have failed to reach a mutually satisfactory solution through the implementing entities' grievance mechanism within a year. The ACHM requires a written submission of a complaint by at least one of the Parties.
4. The Adaptation Fund Board secretariat (secretariat) will independently manage all aspects related to complaint handling, under the oversight of the Ethics and Finance Committee (EFC) of the Adaptation Fund Board (Board).³
5. The ACHM builds on alternate dispute resolution techniques⁴. Main features of the ACHM are to effectively facilitate dialogue among stakeholders, mediate/assist in resolving issues raised, and develop and share lessons to improve future operations.

How does it function?

6. **Receipt:** Within **5 business-days** of receiving a complaint, after determining whether the complaint is not excluded from the process as per below, the Manager of the secretariat informs the Parties of the receipt of the complaint.
7. In the course of information sharing between the Parties, the secretariat ensures that names and other identifiers are redacted if confidentiality is requested.
8. **Assessment and Agreement:** The secretariat, based on consultations with the Parties prepares a draft assessment report laying out the concerns and expectations of the

³ See Adaptation Fund risk management framework, *available at* <https://www.adaptation-fund.org/documents-publications/operational-policies-guidelines/>.

⁴ These include facilitation, mediation, cooperative or interest-based problem-solving, neutral evaluation, joint fact-finding, negotiation, conciliation, arbitration etc.

Parties within **20 business-days**. The Parties can provide comments to this report within **10 business-days**.

9. The secretariat incorporates relevant comments into a public Final Assessment Report, annexing the Parties comments and the complaint. The secretariat will design and include, in consultation with the Parties and based on their good faith, an agreed upon strategy towards the mutual understanding of the issues (confirming or dispelling complaints) and potential acceptable ways forward in order to reach solutions. The strategy will be based on alternate dispute resolution techniques. The Final Assessment Report is submitted to the EFC, which will make a recommendation for approval by the Board, as per the Fund's risk management framework.

10. **Approval:** The secretariat confirms that the agreement of the Parties is included in the Report. The secretariat then promptly circulates this report to the EFC by email and seeks their absence of objection within **14 business-days**. If the approval is not provided, the secretariat informs the Parties that the secretariat will cease all dispute resolution activities with regard to such complaint.

11. In case the approval is provided, the secretariat in consultation with the Parties and their participation implements the strategy. Relevant trust building measures or dispute resolution activities can be based on specific issues raised, or grouping of issues, addressing them independently one from the other, or holistically covering all aspects of the complaint.

12. **Implementation and Monitoring:** The ACHM requires trust building measures, and continued good faith engagement. Hence, it cannot be time bound. The secretariat will prepare and submit the update reports on the implementation of the approved dispute resolution strategy proposed in the Final Assessment Report. The Update Reports are submitted to the EFC. The cost for ACHM activities is covered by the Fund.

13. The ACHM is not a guarantee to achieving resolution. If within two Update Reports the ACHM was not able to implement any activity part of the dispute resolution strategy, the Manager of the Fund's secretariat in consultation with the EFC Chair may decide to suspend or terminate the dispute resolution activities.

14. In case the dispute resolution activities are suspended, the secretariat informs the Parties that the ACHM will temporarily cease with regard to such complaint and the reasons behind the suspension.

15. The Manager of the secretariat in consultation with the Parties revisits the decision to suspend dispute resolution activities on a bi-monthly basis. In doing so, the secretariat seeks the Parties' good faith agreement to reengage. The ACHM resumes such activities if the Manager of the secretariat in consultations with the Parties deems that conditions are met to do so.

16. **Remedy and Incentive:** In case such activities are to be terminated because of the lack of cooperation by any of the Parties, the secretariat may refer the complaint to the EFC, who may recommend to the Board the measures included in the Risk Management Framework.

17. **Resolution:** Once all matters are deemed resolved or dispute resolution activities are terminated, the secretariat issues a Final Resolution Report, making mention of any interim solutions reached in the process.

18. The secretariat will include in the Final Resolution Report a succinct analysis of systemic policy-related aspects that may have led to the complaint or its lack of resolution. Such aspects may include Policy compliance, institutional capacity, environmental and social risk management framework, weakness in supervision, technical expertise, disclosure and consultations, or other relevant aspects.

19. This report is shared with the Parties **14 business-days** to provide their comments. The secretariat incorporates any relevant comments in the Final Resolution Report, annexes the Parties' comments, and submits the report to the Board.

Who can complain, can it be confidential?

20. Any individual, or their representative(s), living in an area where impacts of a Fund-supported project may occur, can bring a written complaint forward to the secretariat.

21. If complainants believe that there may be a risk of retaliation for raising their concerns, they can request confidentiality. Confidentiality includes names, addresses, pictures and any other identifying information. This provision also applies to complainants' representatives or any other individual believed to be, at present time or in the future, at risk of retaliation.

22. Confidentiality can be requested at any time and is provided throughout the process. Except the secretariat, no one will have access to confidential information.

How and when to complain?

23. Complaints will be submitted in writing in any UN language.⁵ However, when a complaint is not submitted in English and for the purposes of translation, additional time may be required to prepare the draft assessment report referenced in paragraph 8.

24. Contact information to submit a complaint are as follows: 1- by electronic email to complaints@adaptation-fund.org; or 2- by hard copy to Adaptation Fund Board secretariat, 1818 H Street NW, N7-700, Washington, DC 20433, USA.

⁵ The official languages of the UN are Arabic, Chinese, English, French, Russian and Spanish.

25. Complaints will indicate names and addresses of the complainants. They will also indicate whether representative(s) are appointed, listing the representative(s) names and addresses.

26. Complaints will include any information relevant to the project (i.e., title, location, sector, description ...) including the project activities believed to be the actual or potential source of the harm, the nature of the harm attributed to those activities

27. Complaints can be sent up to the date of the submission of the final evaluation report of the project concerned.

Exclusions

28. Complaints with any of the following characteristics are excluded from the ACHM:
- a) Anonymous complaints (confidential complaints are different and provided for as per above);
 - b) Frivolous, malicious, or vexatious complaints⁶;
 - c) Complaints from executing entities or their staff against the implementing entity with which they are contracting;
 - d) Complaints related to activities that have no relevance to the Fund-supported project; or,
 - e) Complaints related to matters already addressed in the context of an earlier complaint and for which a solution was agreed upon, unless this complaint is based on new facts not known at the time of the initial complaint.

Disclosure

29. In accordance with Implementing Entities' fiduciary duties to comply with the standard on transparency, anti-corruption measures, and self-investigative authority, the Adaptation Fund will maintain a page on its website, the Accountability Register, relevant to the grievance mechanisms of the Implementing Entities. This page will list each Implementing Entities' grievance mechanisms as well as this ACHM.

⁶ The generally accepted meanings of the terms "frivolous, malicious and vexatious" are as follows: (i) frivolous-trivial, trifling or futile, not serious; (ii) malicious-bearing active ill-will or spite, or having wrongful intention toward any other; and (iii) vexatious-causing or tending to cause irritation, frustration or distress, or not having sufficient grounds for action and seeking only to cause annoyance. The factors which may indicate that a complaint is frivolous, malicious or vexatious include the complaint: fails to identify clearly the substance or precise issues which require to be addressed; complains solely about trivial matters to an extent out of proportion to their significance; is part of a "tit for tat" complaint; continually changes, apparently to prolong the engagement with the ACHM; adds no new information from a complaint which has already been addressed by the ACHM; is made by a person who makes excessive contact or unreasonable demands, including abusive behavior and threats.

30. In the interest of transparency, the Adaptation Fund also dedicates on its Accountability Register a page for each complaint received where all relevant documents are disclosed, including final assessment reports, public notices, update reports, and final resolution reports. This page is cross-linked to the project's page.

31. Implementing Entities are encouraged to link the Adaptation Fund's Accountability Register to their website.