

23 March 2024

Via Electronic Mail, hrc-sr-development@un.org

Mr. Surya Deva
Special Rapporteur on the Right to Development
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10, Switzerland

Re: Centering on accountability in 2024 thematic reports:

Dear Mr. Deva,

Accountability Counsel, an international nongovernmental organisation that advocates for access to redress for human rights violations enabled by international finance, commends your decision to pursue thematic reporting on climate justice and the rights of the child.

In our advocacy and research we have encountered many well-intended projects, including climate finance projects, that have resulted in adverse human rights impacts. Without robust accountability systems to provide redress for harm, development finance risks failing communities that lack economic power and social privilege, even to the point of making them less resilient in their ability to weather impacts. Community-led accountability ensures at least two crucial benefits: (1) that projects are co-developed with the communities that the finance will impact, and (2) that affected communities have the opportunity to raise their grievances before an independent accountability mechanism (IAM) and obtain remedies if and when a project results in harm.

To help guide your exploration of the issues, we submit the following responses to questions specific to our organisational expertise:

QUESTION: What should a human rights-based approach to operationalise and administer the Loss and Damage Fund look like?

The Loss and Damage Fund should be governed with community-led accountability and approach remedy for harm as a distinct climate justice objective. As according to the preamble of the COP28 [decision](#) inviting the World Bank to host the first internationally-supported Loss and Damage Fund ("Fund"):

"Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health the rights

of Indigenous Peoples, local communities, migrants, children persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”¹

The mandate is clear – the World Bank, as the interim trustee and host of the Fund’s secretariat, as well as any future host of the Fund, must ensure that it is operationalized in a rights-forward manner, even if it means pursuing policies more robust than those that presently govern its own operations.² Core to achieving positive human rights impacts are accountability and remedy.

Projects that seek to rebuild after climate disaster or otherwise address the impacts of climate change are not immune from causing harm,³ and in the worst case Loss and Damage projects could cause further harm as well.⁴ In our work, we’ve seen disaster aid result in disaster itself. Accountability Counsel supported more than 420 farmers and families forcibly displaced for the construction of an Inter-American Development Bank-funded industrial park project intended to bring economic energy to Haiti after its devastating 2010 earthquake.⁵ In 2018, the farmers were able to negotiate an agreement through a dispute resolution process facilitated by the IDB’s IAM with the Haitian government and the IDB for replacement land and additional livelihood support. This example demonstrates the need for an effective IAM for the Fund.

Using current best practice and [policy](#) from existing IAMs as a baseline, the Fund IAM should ensure that it is accessible to affected communities and effectively facilitates remedy. The Fund could create its own IAM or use the IAM of the World Bank. If the latter is chosen, changes should be made to the World Bank’s Inspection Panel and Accountability Mechanism (which include the Dispute Resolution service) to ensure that justice is better delivered. This includes making it easier for communities to choose compliance review or dispute resolution,

¹ See, Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, [Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4](#), Preamble, U.N. Doc. FCCC/CP/2023/L.1 (29 Nov 2023); see also, the [Conference of the Parties, Adoption of the Paris Agreement](#), Preamble

U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (12 Dec 2015).

² *Id.*, [Loss and damage fund arrangements](#), ¶ 20(e), (“continued operationalization of the Fund . . . will be conditional on . . . hosting the Fund as a financial intermediary fund in a manner that . . . [e]nsures that the Governing Instrument of the Fund supersedes, where appropriate, the policies of the World Bank in instances where they differ”), U.N. Doc. FCCC/CP/2023/L.1 (29 Nov 2023).

³ See, ALIGN and Columbia Center on Sustainable Investment, [Enabling a Just Transition: Protecting Human Rights in Renewable Energy Projects](#) (Apr 2023).

⁴ See, Lyndsay Walsh, [Will the New Loss and Damage Fund Replicate the Same Old Exclusion of Local Voices and Organisations?](#), Oxfam (3 Nov 2023).

⁵ Haiti case study, available at <https://www.accountabilitycounsel.org/client-case/haiti-caracol-industrial-park/#case-story>.

greater monitoring and transparency of outcomes, and a stronger institutional commitment to facilitating remedy.

Additional Recommendations for a Loss and Damage Fund IAM

A rights-forward IAM governing the Loss and Damage Fund must be equipped beyond baseline good policy.⁶

- First, the World Bank team managing the Fund must engage forthright with the IAM whenever rights violations are raised. Whether it be to participate as a party in dispute resolution if the parties so desire, or to readily provide information in a compliance investigation, the Fund must take ownership over its projects and responsibility for securing positive outcomes.
- Second, the Fund must be equipped to fund remedy for harm as a distinct objective.
- Third, just as the Fund should approach projects with robust stakeholder engagement, all remedial actions to address human rights harm should be developed in consultation with the aggrieved people and communities. The Fund IAM should proactively assess and manage risks of reprisal against complainants to ensure the safety of all in the process of remediation.

Without a strong IAM, projects and initiatives supported by the Fund risk missing their mark and harming communities who have already suffered climate impacts. If the Fund will create a separate IAM for the Fund, this IAM should be created with robust public consultation on its scope and procedures. If the World Bank's IAM is to cover the Fund's activities, the ongoing review of the IAM becomes all the more important and should result in a more effective system for achieving justice.⁷

QUESTION: How to create child-friendly judicial and non-judicial remedial mechanisms to address violations of children's rights in the context of development policies, projects or programmes?

There have been multiple allegations of harm to children raised to the IAMs attached to financial institutions already, so it is absolutely critical that those processes safeguard children. As education is a development sector that greatly affects children, lessons from how IAMs have addressed violations of childrens' rights in these projects might be instructive. Notably, [27 IAM complaints](#) have been raised about education projects. The IAM of the International Finance Corporation (IFC), the Compliance Advisor Ombudsperson (CAO),

⁶ See, [Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms](#) (2024).

⁷ World Bank, "External Review of the Board Approved Reforms to the Inspection Panel Toolkit and Creation of the World Bank Accountability Mechanism", available at <https://www.worldbank.org/en/about/leadership/brief/external-review-of-the-board-approved-reforms>.

recently concluded investigation into allegations of child sexual abuse regarding an equity investment by IFC into a chain of low-cost schools in Africa, known as [Bridge International Academies](#). In planning its investigation, the IFC's IAM, the Compliance Advisor Ombudsperson (CAO), referred to UNICEF's [Child Safeguarding Toolkit for Business](#) as a core standard for assessing the adequacy of diligence in safeguarding and protecting children from abuse.⁸ The CAO also engaged with external experts, choosing them based on the following qualifications:

- Significant expertise and experience in child rights and international good practice regarding child safeguarding and child protection policies, particularly in the context of low-income communities and educational settings.
- Significant expertise in conducting reviews of institutional approaches to child safeguarding and protection, particularly in the context of child sexual abuse, including policies, procedures, implementation, and incident response.
- Significant expertise and experience in the assessment and management of sexual and gender-based violence of minors, including interviewing survivors and their families.
- Demonstrated ability to analyse policies and practices and develop proposals for reform in complex institutional contexts.⁹

Of course, whether many remedial actions are actually undertaken in response to the CAO's investigation depends on IFC's and its client's willingness to respond.¹⁰ This stands to be yet another example of a remedy gap inflicting many accountability frameworks. Response and engagement on the part of development finance institutions is essential, and unfortunately the response thus far by IFC has included attempts to [delay and cover-up](#) abuses reported by the independent investigation.

Further, protecting the confidentiality of aggrieved children is vital to ensure their safety and right to privacy. It is therefore crucial that financial institutions not insist on knowing the identities of children when deciding and implementing remedy for harm surfaced through an IAM process. Financial institutions should defer to the findings of their respective IAMs, and work with those independent offices to ensure that remedy reaches every unnamed child of a complaint.

Conclusion

Again, we thank you for taking a close look at accountability and remedy gaps potentially hindering the success of the Loss and Damage Fund and also overlooking the rights of

⁸ See, CAO, [Terms of Reference for Compliance Investigation of IFC](#), IFC Investment in Bridge International Academies-04, pp. 4-5 (21 Oct 2021).

⁹ *Id.*, at p. 6.

¹⁰ See, Accountability Counsel, Inclusive Development International, and Gender Action, [IFC's Response to Sexual Abuse Does Not Provide Remedy to Bridge Survivors; Executive Directors Should Reject It](#) (8 Mar 2024).

children. Development finance institutions must be equipped to proactively manage human rights impacts and support remedy when abuses are uncovered. We encourage you to visit the [Accountability Console](#) for a searchable database of complaints submitted to the IAMs of major development finance institutions. There you can discover several more complaints implicating the rights of children, as well as many more implicating climate finance projects.

- Accountability Counsel