

GCF Information Disclosure Policy (IDP)

Information Appeals Panel (IAP)

Summary of Appeal No: IDP/2018/C001

Date of Appeal	13 October 2018
Appellant	Liane Schalatek , CSO Active Observer for Developed Countries, on behalf of the CSO Active Observer Team
Responding Parties	Secretariat of the Green Climate Fund (GCF), International Bank for Reconstruction and Development (The World Bank), Asian Development Bank (ADB)
Authority receiving the IAP decision and recommendations	<p>The Ethics and Audit Committee (EAC) of the Green Climate Fund (GCF)</p> <p>The IAP is presenting this decision and recommendations to the EAC since the appeal relates to the timely disclosure of Board documents, and as such paragraph 33 of the IDP requires that the IAP's recommendations should be approved by the EAC and notified to the Appellant upon the EAC's decision.</p> <p>The IAP decision and recommendations were approved by the EAC at its meeting on 27 November 2018.</p>
Issues Raised in Appeal	<p><i>Substantive issues:</i> The substantive question raised in this appeal is whether the GCF Secretariat disclosed and announced the ESS documents for funding proposals FP083 and FP085 to the Board and Active Observers at least 120 days in advance of the GCF's Board decision in accordance with paragraph 17 of the IDP.</p> <p><i>Preliminary Objection:</i> The GCF Secretariat asserted that the IAP has no jurisdictional competence to entertain this appeal and requested the IAP to dismiss it on such grounds.</p>
Decision of the IAP made on 15/11/2018	<ol style="list-style-type: none"> 1. The IAP decided that it has jurisdiction and considered the appeal on its merits. 2. The IAP concludes that the GCF Secretariat has not complied with the policy requirements (laid out in paragraph 17 of the IDP) to disclose and announce the ESS documents for funding proposals FP083 and FP085 to the GCF's Active Observers (and the Board) in a timely manner. 3. The IAP also concludes that overall any delay in providing such documents is a risk to the reputation of the GCF and should be avoided in the future.
IAP recommendations	<ol style="list-style-type: none"> 1. The Board decided at B21 in October 2018 to approve funding for these two projects in question (FP083 and FP085). Hence, the IAP does not make a specific recommendation regarding the ESS documents in question in this appeal. 2. In the future, the IAP recommends that the GCF Secretariat ensure that Board members and Active Observers receive ESS documents for the requisite time specified in paragraph 17. This duty is in addition to the duty of public disclosure of the documents by the AEs and the Secretariat for the periods required by paragraph 17 of the IDP. 3. The IAP also recommends that the Board directs the Secretariat to ensure that ESS documents are disclosed and announced to the Active Observers and Board members in a timely manner in accordance with paragraph 17 of the IDP, and that a project or

	<p>programme proposal which does not comply with this policy requirement should not be presented to the Board for a funding decision.</p> <p>4. Additionally, the Secretariat is requested to upload the following documents to the IDP website of the GCF:</p> <ul style="list-style-type: none">a. letter of 24 September 2018 from the Appellant;b. Secretariat's response to that letter, andc. this decision of the IAP.
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Detailed decision and recommendation of the IAP is below. It was approved by the Ethics and Audit Committee of the Board on 27 November 2018.

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Responding Parties	Secretariat of the Green Climate Fund (GCF), International Bank for Reconstruction and Development (The World Bank), Asian Development Bank (ADB)

To: The Ethics and Audit Committee (EAC) of the Green Climate Fund (GCF)

Decision and Recommendations of the IAP

Appeal

1. An appeal was filed on 13 October 2018 by the Appellant under section XI of the Information Disclosure Policy (IDP) of the GCF. The Appellant is an Active Observer of the GCF and has filed this appeal on behalf of other Active Observers and on her own behalf. The Appellant states that she had written a letter on 24 September 2018 to the GCF Secretariat, indicating that the Secretariat was out of compliance with paragraph 17 of the IDP by not disclosing the environmental and social safeguards (ESS) documents relating to two project proposals for a period of at least 120 days before they were decided upon by the GCF's Board. The Appellant referred to two project proposals, namely:
 - a. **FP083:** Intermediation 1 World Bank (WB) "Indonesia Geothermal Resource Risk Mitigation Project"; and
 - b. **FP085:** Category A Asian Development Bank (ADB) "Green Bus Rapid Transit (BRT) Karachi".
2. In the letter, the Appellant had also stated that the Active Observers of the GCF received notification by the GCF Secretariat of the ESS documents on 17 September 2018 for FP083 and on 19 September 2018 for FP085. Both projects were scheduled to be considered by the GCF Board at its 21st Board meeting (B21) from 17-20 October 2018, in Manama, Bahrain.
3. The Appellant's position is that the ESS documents for FP083 were disclosed and announced by the Secretariat 31 days before the Board meeting, and those for FP085 were disclosed 29 days before the Board meeting.
4. The Appellant states that the notifications sent by the GCF to the Active Observers "indicated that the respective accredited entities, the Asian Development Bank and the World Bank, invoke

an identical specific provision in their respective Accreditation Master Agreements (AMAs) with the GCF, namely paragraph 15.01 (e) related to information disclosure stating:

'records relating to Funded Activities are made publicly available in a timely manner, provided that – subject to Clause 25 – this shall not prevent the Fund from making the records relating to Funded Activities publicly available in accordance with its own Information Disclosure Policy.

With respect to disclosure related to ESS, such disclosure shall be made in accordance with the Accredited Entity's policies [emphasis supplied].'

5. Citing paragraph 17 of the IDP, the Appellant asserted that the “(a)pproved policies by the GCF are very clear that the 120 days prior information disclosure has to be made **via the Secretariat, to the Board and Active Observers**” and that “(t)his is clearly not the case here.”
6. The Appellant requested the GCF Secretariat to provide an assurance to the Appellant that the above two projects will not be considered by the Board at B21 and the earliest they would be considered would be at B22 after the lapse of the disclosure period of 120 days in accordance with the requirements of the IDP.
7. A few days before 13 October the Deputy Executive Director of the GCF Secretariat sent an undated response stating that the World Bank and the ADB were acting under an exemption in paragraph 15.01(e) of their respective Accreditation Master Agreements (AMAs), and that disclosures of the ESS documents had to be done in accordance with the relevant policies of the World Bank and the ADB. The GCF Secretariat further stated:

...albeit there may be no irreversible prejudice to CSOs if the timeline stipulated in the IDP is missed, as there will always be an opportunity for any objection that CSOs may have to a particular MDB project, for that objection to be registered under the relevant disclosure policy of that MDB. Nevertheless, we are cognizant of the substance of your complaint and given that the World Bank and ADB elected to invoke the exception in their respective AMAs, the Secretariat will relay your concerns to said MDBs. The Secretariat will also urge the said MDBs to ensure compliance with their respective policies on ESS disclosure as mandated under the AMA and as represented to the Board and Active Observers through the notification. We note that, despite the AMA exception, efforts to comply with the IDP were done through the said notification and the publication of the ESS reports form as annexed to the funding proposals and as stand-alone documents on the GCF website.

8. The Appellant has filed this appeal against this decision of the Secretariat not to disclose and announce the ESS documents to the Active Observers for at least 120 days in advance of the GCF Board meeting (B21).

IAP Process

9. The IDP does not provide any guidance to the IAP regarding the procedure it should follow in entertaining and deciding appeals. This was the first appeal to be filed under the IDP and the IAP decided on 15 October 2017 to adopt a set of guidelines that assured basic due process and fairness to all parties. The IAP did so on the basis that it had inherent power to regulate its own business in carrying out the mandate granted to it by the Board under the IDP, in the absence of guidance in the IDP.
10. The Chairperson of the IAP notified the Co-Chairs of the GCF Board on 15 October 2018 of the receipt of this appeal and requested the Co-Chairs to notify the Board of the same. The Chairperson of the IAP also notified the EAC of the filing of this appeal on 15 October 2018 at its meeting held in Manama, Bahrain.
11. On 15 October 2018 the Chairperson of the IAP forwarded a copy of the appeal with the attached documents to the Deputy Director of the GCF Secretariat, Dr. Christian Ellermann of the ADB and Ms. Claudia Croce of the World Bank¹ with a request to file a formal response to the appeal by 23 October 2018. The ADB and the World Bank both filed responses to the appeal on 19 October 2018. The GCF Secretariat did not file a response on 23 October 2018 but requested additional time due to engagement with the Board meeting. The IAP allowed additional time until 30 October 2018 when the Secretariat filed its response.
12. The responses were forwarded to the Appellant with a request to submit a rebuttal, if any, by 2 November 2018 and the Appellant submitted a rebuttal on that date. The rebuttal was communicated to the GCF Secretariat, World Bank and ADB on 3 November 2018.
13. The IAP carefully reviewed and considered the appeal, responses and rebuttal and submits this decision and recommendations to the EAC, within the 30-working day time limit provided in the IDP.

Responses

14. The GCF Secretariat in its response raised a preliminary objection asserting that the IAP did not have jurisdictional competence under the IDP to entertain this appeal. The Response provided reasons for this assertion which the IAP has addressed below. Without prejudice to this objection, the response stated that clause 15.01 (e) of the Accreditation Master Agreements (AMAs) with the ADB and WB carved out an exemption from paragraph 17 of the IDP in favour of the Accredited Entities (AEs) allowing them to disclose ESS information and documents in accordance with the ADB's and WB's disclosure policies respectively. The response stated that public disclosure had been done for a period of 120 days by publication on the AE's websites, allowing affected communities in Indonesia and Karachi (Pakistan) to be fully informed in a timely manner, thus complying with the letter and spirit of the IDP.

¹ These contacts for the Accredited Entities were supplied by the Secretariat to the IAP at the IAP's request.

15. The World Bank in its response stated that it had disclosed to the public the ESS documents relating to FP083 for 120 days in keeping with its own disclosure policies. Additionally, the World Bank stated that it has fully complied with its obligations with regard to the disclosure of ESS documents and that its AMA with the GCF was not as yet effective and as such its provisions did not apply and that disclosure was governed by the World Bank's own disclosure policies.

16. The World Bank also stated as follows:

In addition, the World Bank informed the GCF Secretariat about the disclosures of the draft ESMF on February 28, 2018 and on March 12, 2018 (well in advance of the 120 days of the Board decision at B21). The World Bank took this additional step of notifying the GCF Secretariat to enable the Secretariat to comply with GCF's Information Disclosure Policy requirements. Unfortunately, it appears from the CSO letters that they were only notified by the GCF Secretariat of the ESS disclosure on September 17, 2018, despite the Bank's early notification. (emphasis added)

17. The ADB in its response also stated that it had complied with clause 15.01 of its AMA between the GCF and itself and disclosed the ESS documents in keeping with its disclosure policies for 120 days before the consideration of the project by its Board. The ADB stated that ESS documents have been disclosed on its website on 30 May 2018. The ADB also stated as follows:

Separately, ADB provided the links to the disclosed EIA and RP to the GCF Secretariat on 22 June 2018 for GCF's reference. On 19 September 2018, ADB received a request from the GCF Secretariat for the safeguard-related documents for the Pakistan project, and ADB, on the same day, provided (again) the links to the EIA and RP disclosure on the ADB website.

Rebuttal

18. The Appellant in the rebuttal stated that (a) given the facts set out in the World Bank's and ADB's responses, that neither the World Bank nor the ADB appeared to have invoked the exception of clause 15.01(e) of their respective AMA's as justification for not complying with the 120-day requirement to send the ESS documents to the Board and Active Observers, (b) that on the contrary, both the World Bank and ADB had complied with the GCF's IDP and sent the ESS documents to the Secretariat in a timely fashion that should have enabled the latter to disseminate the same to the Board and Active Observers for the requisite 120-day period, but the latter had not done so, (c) that the invocation of the exception in clause 15.01(e) by the Secretariat as justification for not complying with paragraph 17 of the IDP was concerning in the light that neither of the AEs had claimed any such exemption, (d) that the purpose of the 120-day period for the dissemination of ESS documents to the Board and Active Observers was to ensure that unexpected or unnecessary environmental or social harm to communities is avoided or mitigated, and that the claim of the Secretariat that no such prejudice was caused is unfounded and unacceptable and (e) that the attempt of the Secretariat to raise objections to the entertaining of the appeal was erroneous and (f) that the IDP creates proactive obligations to disclose ESS information to Active Observers and that such information could not have been known to the latter until and unless so disclosed, making a request for information impossible and impractical to make, until notice of the existence of ESS documents or a funding proposal is revealed by the Secretariat to the Board and Active Observers.

Decision on Preliminary Objection

19. The Secretariat has asserted that the IAP has no jurisdictional competence to entertain and decide this appeal. The IAP addresses this preliminary objection first.
20. Citing paragraph 22 of the IDP, the Secretariat states that anyone can contact the Secretariat under the IDP and “request any document or information which is not accessible on the GCF’s website”. The Secretariat’s response states that such requests can be made for documents or information that are not available through the routine disclosures made by the Secretariat. The response then details the various steps that must be taken under the IDP to make a request for information disclosure, such as the filing of the request via a given email address etc. The response further states that under paragraph 25, the Secretariat is required to respond to such requests by either providing the requested information or the reasons why the request has been denied.
21. The Secretariat takes the position that the Appellant’s 24 September letter “did not request disclosure of any information by the GCF but questioned the grounds for granting exception in the AMA’s with the MDBs,² and therefore there was no denial by the GCF Secretariat of a request for Information”. The Secretariat asserted that the appeal “if it can be characterized as such was not competent on this ground.”
22. Citing paragraph 29 of the IDP, the Secretariat’s response stated that an appeal may be filed “in the event access to information is denied by the GCF.” The response stated that this paragraph requires a “denial by the GCF to provide the information” or a “restriction of access to information by the GCF” to trigger the right to appeal. The response further stated that “(t)his is not the case here, as the information was provided by the GCF before the appeal was filed with the IAP.”³
23. Based on the above statements, the Secretariat summarized its objection to the IAP’s jurisdiction to entertain this appeal as follows: -

A denial of a request to access information refers to nondisclosure, which implied that the requester is not in possession of the document or information requested from the Secretariat. **The test for determining the IAP’s jurisdiction is the presence of or absence of disclosure, i.e. disclosure or non-disclosure, and not timeliness of disclosure.** Hence, for the IAP to have jurisdiction over an appeal, there must be a request to access information that is not yet in the requester’s possession and then a consequent denial of such request and the possibility for the IAP to make a recommendation for disclosure or nondisclosure. **In this case it is the submission of the Secretariat that the pre-requisites for the exercise of the IAP’s jurisdiction has not been satisfied.** (Emphases added)

24. The Appellant in her rebuttal countered the preliminary objection by stating that (a) the claim of the Secretariat that the Active Observer’s letter of 24 September did not contain any request for information was disingenuous because the Secretariat’s own letter of 17 September to the

² Multilateral Development Banks

³ The Appellant agrees that the ESS documents of the ADB and WB projects were provided to the Active Observers and the Board by the Secretariat 31 days and 29 days respectively, before the Board meeting.

Active Observer's sought to justify the belated disclosure of ESS documents on the basis of the AEs claiming an exemption from such disclosure under clause 15.01(e) of the AMAs, (b) that such exemptions had not been claimed by the two AEs concerned and that the exemption was being claimed by the Secretariat to justify its own non-compliance with the IDP, (c) that it was entirely within the capability of the Secretariat to have disclosed the ESS documents for the requisite period of 120 days as the AEs had sent the documents well in time to do so, (d) that the GCF Secretariat's apparently incorrect claim that the World Bank and the ADB had invoked the AMA clause as justification for a delayed ESS information disclosure was in effect and impact akin to a denial by the Secretariat of the provision of timely information in compliance with the IDP and (e) in interpreting the IDP, the IAP should be guided by the principles and purpose of the policy, as set out in the policy itself.

25. The IAP has given earnest consideration to this preliminary objection and concludes that the IAP has jurisdictional competence to entertain and decide this appeal within the meaning of paragraph 29 of the IDP. The IAP's reasons for this decision follow.

26. The IAP's jurisdiction to entertain and decide appeals under the IDP is set out in Part XI (paragraphs 28-34). Paragraph 29 and 30 of the IDP states:

29. A **requester** who is **denied access to information** may file an appeal if the requester is able to:

- (a) Establish a prima facie case that **the GCF has violated this Policy by restricting access to the information requested; or**
- (b) Make a case to **overturn an override of this Policy that restricts access to the information requested.**

30. Such appeals will be considered by the Information Appeals Panel which will be authorized to receive requests for review from parties outside the GCF and to recommend to uphold or reverse prior **decisions to deny access to information...**(emphasis added)

27. We are of the view that in accordance with these two governing paragraphs of the IDP, the following conditions need to be fulfilled for the IAP to assume jurisdiction over an appeal under the IAP:

- a. there must be a **requester** for information;
- b. who has been **denied** access to information by the Secretariat; or
- c. whose access to the information requested has been **restricted** by the Secretariat;
- d. in **violation** of the IDP.

28. The 24 September 2018 letter from the Appellant to the Secretariat clearly stated, *inter alia*, that the "(a)pproved policies by the GCF are very clear that the 120 days prior information disclosure has to be made via the Secretariat, to the Board and Active Observers" and that "this is clearly not the case here." The Appellant also stated that "(n)ot disclosing it in a timely manner in accordance with both the GCF's IDP and the ESS undermines the public's right to know, as well as the ability of communities, civil society organizations, and other **stakeholders** to reach out to the accredited entities for more information and clarity or **to provide objections and comments** (emphasis added)." Finally, in this context the Appellant stated "...we are seeking reassurance and clarity from your side that...the principle must be guaranteed that respective **GCF policies will be met in all GCF projects and programmes**, and that ...(n)either

project will be considered at B21 and that instead that the earliest that either or both projects could be presented for consideration by the Board is at B.22 in 2019 **in accordance with the requirement for adequate information disclosure** (emphasis added).” No doubt, the letter also contains other matters such as concerns regarding exemptions granted to MDBs in violation of the IDP, but these don’t change the main thrust of the letter.

29. The pith and substance of this letter is a “request” by the Appellant, that the GCF Secretariat not present the two projects concerned to the Board, until the expiration of the 120-day period of disclosure of the ESS documents to the Board and Active Observers. The purpose of the letter is to enable the Appellant and other Active Observers to have the time guaranteed to them under the IDP, to study the ESS documents and present objections or comments on the projects to the Board when it considers the proposals for funding. We therefore disagree with the Secretariat that the letter of 24 September 2018 “did not request disclosure of any information by the GCF...and therefore there was no denial by the GCF Secretariat of a request for Information”. As we see it, a “requester” within the meaning of paragraph 29 of the IDP is a person who asks the Secretariat for provision of information in timely fashion. While provision of the actual document or information is fundamental under the IDP, so also is the duty to provide that document or information in a timely fashion – these are intrinsically linked to each other.
30. Provisions in the IDP ought not to be read in isolation but rather in the context of the entire policy. Paragraph 1 of the IDP sets out the aspirations of the policy to ensure “public access and **stakeholder participation**” (emphasis added) in fulfilling the GCF’s role. Active Observers are recognized as GCF stakeholders. The policy seeks to ensure transparency in all its activities “through effective dissemination of information to **stakeholders** and the public at large.” The IDP therefore is premised upon the foundational idea that information enables full and effective participation of GCF’s stakeholders in its affairs. This is particularly true of Board members and Active Observers both of whom have a voice, and in the case of Board members a vote, in the Board room. Without timely information guaranteed to them under the IDP, neither Board members nor Active Observers can effectively perform their roles as decision-makers and participants respectively.
31. The Principles enunciated in paragraph 6 of the IDP are equally important in understanding the policy. Principle 1 emphasizes that information will be disclosed “in accordance with **timelines and procedures specified for that purpose**” (emphasis added). Principle 2 allows the Secretariat to “delay” dissemination of information in very limited circumstances set out in that Principle. Principle 3 emphasizes the importance of using all practical means to facilitate access to information, maximize such access and use “clear and cost-effective **procedures and timelines** for processing requests.” (emphasis added)
32. The provision on standards of disclosure in paragraphs 7-8 of the IDP sets benchmarks for the entire policy and the GCF. Paragraph 7 states that “(a)ll documents in the GCF’s possession **subject to disclosure as per this policy, will be released** on the GCF’s website or **through other appropriate means, ...**(emphasis added).” Finally, paragraph 8 makes a very important statement. It states that the GCF “...will share the majority of the information in its possession with **stakeholders...either proactively or upon request...**” and further states “(t)he **timing of disclosure** of different types of information may vary, based on the nature of the information as further set out in Section X of this policy” (emphasis added).

33. A wholistic reading of the IDP shows that “access” to information under the policy is not only about access to the information itself, but also about the **timeliness of access** to that information. The obligation of the GCF Secretariat, under the policy, is not confined to responding to “requests” for information but extends to the timely provision of that information – sometimes proactively. Under the IDP, the Secretariat has a duty to release information proactively in accordance with the procedures set out in the policy (as in this case). It also has a duty to release information on request. If the Secretariat does not act in accordance with the IDP in proactively releasing information, a “requester” has a right to ask that the information be released or that it be released in a timely fashion as stipulated in the IDP. That too would only be possible if the requester is aware of the information that the Secretariat was obligated to release proactively in the first place. To interpret the IDP otherwise would render the timelines specified in the IDP for the release of information nugatory.
34. The IAP is of the view that a “denial” or “restriction” of access to information may take place when there is a refusal to provide the information, as well as when there is a delay in providing the information as required by the IDP. In this field, the principle that “access delayed is access denied” is now well established.
35. In this case, the Appellant made a request that the ESS documents in the two subject projects be provided to Active Observers (of which she is one) in a timely fashion as required by the IDP (i.e. for 120 days before the GCF Board meeting). The Secretariat in its response, justified not providing the documents in a timely fashion based on exemptions granted to the World Bank and ADB in their AMAs. The Appellant can therefore show a *prima facie* violation of paragraph 17 of the IDP that requires a 120-day period of notice to be provided by the AEs via the Secretariat to the Board and Active Observers for these ESS documents.
36. In the IAP’s view, a denial of access to information or a restriction to access to information in violation of the IDP could take place when the Secretariat: (a) refuses to provide information to a requester, (b) does not respond to the information request, (c) responds to the request in an untimely manner (d) does not provide all the requested information or (e) fails or refuses to provide timely information proactively when obligated by the IDP to do so. This list of possible restrictions or denials of information is not exhaustive. In this case, the Appellant wrote to the Secretariat and requested that the ESS documents disclosed and announced to the Active Observers be provided for the requisite 120-day period. This request has not been acceded to by the Secretariat in its response to that letter. In the IAP’s view, this constitutes sufficient *prima facie* grounds for the Appellant to file this appeal in terms of paragraph 29 of the IDP.
37. For the foregoing reasons the IAP overruled the preliminary objection raised by the GCF Secretariat and decided to review the appeal on its merits.

Decision on Merits

38. The substantive question raised in this appeal is whether the GCF Secretariat disclosed and announced the ESS documents for FP083 and FP085 to the Board and Active Observers at least 120 days in advance of the GCF’s Board decision in accordance with paragraph 17 of the IDP.
39. The Appellant and Responding Parties do not dispute that:

- a. FP083 was an “intermediation 1(I-1)” project and FP085 was a “category A” project in terms of the GCF’s, World Bank’s and ADB’s social and environmental categorization respectively;
 - b. Paragraph 17(a) and (b) of the IDP applies to these two projects;
 - c. The ESS documents of FP083 were disclosed to the public on the World Bank’s website in English on 26 February 2018 and 15 May 2018, and in Bahasa in March 2018, 120 days prior to the GCF’s and World Bank’s Board meetings in keeping with the World Bank’s disclosure policies;
 - d. The ESS documents of FP085 were disclosed to the public on 30 May 2018 and 21 June 2018, 120 days prior to the GCF’s and ADB’s Board meetings in accordance with ADB’s disclosure policies;
 - e. The ESS documents for FP083 and FP085 were disclosed and announced to the GCF Board and Active Observers by the Secretariat on 17 September and 19 September respectively, 31 days and 29 days respectively, before the GCF Board meeting (B21) decisions on these two projects which were taken on 20 October 2018.
 - f. The World Bank and the ADB publicly disclosed the ESS documents related to their respective projects on their websites at least 120 days before the GCF Board **decision** taken at B21.
40. The World Bank in its response states that it informed the GCF Secretariat about the public disclosure of ESS documents related to its project on 28 February 2018 and 12 March 2018 well in advance of 120 days of B21. The ADB in its response states that it informed the GCF Secretariat of the disclosure of the ESS documents on 22 June 2018. Had the GCF Secretariat disclosed and announced ADB’s ESS documents to the Board and Active Observers on 23 June 2018, the 120-day period would have ended on 20 October 2018. This is the date on which the Board took a decision on FP085. As such, the ADB has also notified the GCF Secretariat of the ESS documents, giving adequate time to the Secretariat to disclose and announce them to the Board and Active Observers for 120 days prior to B21.
41. This issue is governed by paragraph 17 of the IDP. Paragraph 17 states as follows:
- “Environmental and social reports.** With respect to project and programme funding proposals that have an environmental or social impact, the Accredited Entities (AEs) shall disclose and announce to the public and, via the Secretariat, to the Board and Active Observers:
- (a) in case of Category A projects, the Environmental and Social Impacts Assessment (ESIA) and an Environmental and Social Management Plan (ESMP) at least 120 days in advance of the AE’s or GCF’s Board decision, whichever is earlier;

(b) in the case of Category I-1 programmes, the Environmental and Social Management System (ESMS)² at least 120 days in advance of the AE's or GCF's Board decision, whichever is earlier;" (emphasis added)

42. A plain reading of paragraph 17 manifests two distinct and separate obligations related to the disclosure and announcement of ESS documents. First, it casts a duty on AEs to disclose and announce ESS documents **to the public** in the case of category A and Category I-1 projects "at least 120 days in advance of the AE's or GCF's **Board decision**, whichever is earlier (emphasis added)." This obligation is related to **public disclosure** of ESS documents. Second, paragraph 17 casts an obligation on the AE to disclose and announce ESS documents "**via the Secretariat**, to the Board and Active Observers (emphasis added)." This is an obligation distinct and separate from the "public" disclosure obligation. For this obligation to be workable, the AE needs to timely supply the ESS documents to the Secretariat, and the Secretariat needs to timely notify the Board members and Active Observers of the same. On the other hand, the Secretariat needs to request the documents from the AE in a timely fashion so that it can comply with the 120-day requirement and notify the Board members and Active Observers. One way or the other or in combination, both the AE and the Secretariat need to ensure there are procedures to enable this obligation to be discharged. It is an obligation cast on the AE and the Secretariat.
43. The purpose of this obligation is to give the Board and Active Observers timely notice of ESS documents relating to category A and I-1 projects and programmes so that they may give their minds to social and environmental issues in evaluating funding proposals. Often Board members may well refer ESS documents for study by experts available to them through their supporting state agencies or academic institutions. Active Observers may seek the assistance and advice of experts to study ESS documents. Board members and Active Observers alike need adequate time (120 days) to exercise due diligence to study and assess ESS document, which in large projects as in these two projects, can sometimes run into hundreds of pages of complex technical information.
44. In this case, both AEs have discharged their obligations under the IDP and notified the GCF Secretariat of the ESS documents in a timely fashion. This should have enabled the disclosure and announcement of these documents by the Secretariat to the Board and Active Observers for the requisite 120-day period prior to the GCF's Board decisions on the projects. However, the GCF Secretariat has not complied with its obligations under paragraph 17 of the IDP and has instead disclosed and announced the ESS documents to the Board and Active Observers only for periods of 31 days and 29 days respectively, well short of the 120-day period required under the IDP.
45. The IAP also considered the assertion made by the GCF Secretariat that an exemption was granted to the World Bank and the ADB under clause 15.01 from clause 17 of the IDP with regard to disclosure of ESS documents allowing them to follow their institutional disclosure policies, rather than the GCF's disclosure policy. Closer analysis of clause 15.01 of the AMAs and paragraph 17 of the IDP shows that they can and should be interpreted harmoniously. Paragraph 17 of the IDP – the main policy document of the GCF on disclosure – states that the AEs shall "disclose and announce **to the public...**" (emphasis added) ESS documents in the mentioned project categories, within the time periods set out in sub-paragraphs (a) to (d). Whereas clause 15.01 of the AMAs state as follows:

The Accredited Entity shall ensure that, subject to its applicable policies and procedures, including its access to information policy, and subject to Clause 25... (e) records relating to Funded Activities are made **publicly available** in a timely manner, provided that – subject to Clause 25 – this shall not prevent the Fund from making the records relating to Funded Activities **publicly available** in accordance with its own Information Disclosure Policy. With respect to disclosure related to ESS, such disclosure shall be made in accordance with the Accredited Entity's policies. (Emphasis added)

46. On a plain reading of clause 15.05 it applies to “public” disclosure of records. The last sentence in clause 15.01 regarding ESS disclosure must be read in the context of that paragraph⁴ and harmoniously as applying to “public” disclosure (i.e. not with regard to disclosure to Board members and Active Observers). And even here the Secretariat is not prevented “from making the records relating to Funded Activities publicly available in accordance with its own Information Disclosure Policy.” As such, in the IAP’s view, clause 15.01 of the AMA and Paragraph 17 are harmonious and the former does not create an exception to paragraph 17 regarding ESS disclosure and announcement to GCF Board members and Active Observers. Nor does clause 15.01 of the AMA relieve the Secretariat of the obligation to disclose and announce the ESS documents to Board members and Active Observers as set out in the IDP.
47. Besides, references to “Funded Activities” in clause 15.01, raises the question whether that clause applies only to activities that take place after the Board has decided to fund the project, and as in this case, not before it is funded. This appears to be the case, given the definition of “Funded Activity” in the AMAs. But this latter issue need not be decided upon in this appeal as it is not essential to dispose of this case. Clause 15.01 is therefore irrelevant to the consideration of the substantive issue raised in this appeal.
48. Accordingly, the IAP decides to allow this appeal and concludes that the GCF Secretariat has not complied with paragraph 17 of the IDP to disclose and announce the ESS documents for funding proposals FP083 and FP085 to the Active Observers (and the Board) for at least 120 days in advance of the GCF’s Board decision (B21). The IAP also concludes that overall any delay in providing such documents is a risk to the reputation of the GCF and should be avoided in the future.

Recommendations

49. In view of the IAP’s above decision, the IAP would ordinarily have requested the Secretariat to disclose and announce the ESS documents concerned to the Board and Active Observers for the requisite period of 120 days. However, in this case, the GCF Board has decided to grant funding for FP083 and FP085 at B21 on 20 October 2018 notwithstanding the lack of disclosure for the period of 120 days required by paragraph 17 of the IDP. Additionally, the ESS documents concerned were communicated before B21, albeit with insufficient time, to the Board and Active Observers.
50. In these circumstances, requiring the Secretariat to now provide the ESS documents for the requisite 120-day period before the GCF Board decision would be fruitless and meaningless. Hence, the IAP does not make a specific recommendation regarding this appeal.

⁴ Contextual reading of rules and policies is a well-established method in the art of interpreting statutes and documents and is known by its Latin maxim “Noscitur a sociis”.

51. The IAP however makes a general recommendation that in the future the GCF Secretariat should ensure that Board members and Active Observers receive ESS documents for the requisite time specified in paragraph 17. This should be in addition to the public disclosure of the documents by the AEs and the Secretariat for the requisite periods required by paragraph 17 of the IDP.
52. The IAP also recommends that the Board directs the Secretariat to ensure that ESS documents are disclosed and announced to the Active Observers and Board members in a timely manner in accordance with paragraph 17 of the IDP, and that a project or programme proposal which does not comply with this policy requirement should not be presented to the Board for a funding decision.
53. Additionally, the Secretariat has not entered the Appellant's request of 24 September 2018 on the register of requests on the IDP webpage of the GCF website. Given the IAP's conclusion, the IAP requests the Secretariat to enter the 24 September 2018 request from the Appellant, the Secretariat's response to that letter and this decision of the IAP on the registry of requests maintained by the Secretariat on the IDP webpage of the GCF.
54. The IAP is presenting this decision and recommendations to the EAC since the appeal relates to the timely disclosure of Board documents, and as such paragraph 33 of the IDP requires that the IAP's recommendations should be approved by the EAC and notified to the Appellant upon the EAC's decision.

Songdo, Republic of Korea, 19 November 2018.

Signed

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Signed

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