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# Report on the activities of the Secretariat – Addendum IV

Issues on the disclosure of environmental and social safeguards emanating from the assessment of projects and programmes by multilateral development banks

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## **Summary**

The Secretariat seeks to inform the Board of an urgent issue of policy conflict relating to environmental and social safeguards (ESS) disclosure of projects and programmes, which has the potential to materially impact the GCF pipeline and ability to programme resources from the first replenishment of the GCF.

## I. Introduction

1. Decision B.17/09, paragraph (h), states:

*“Also requests the Secretariat to present to the Board implementation challenges identified in the application of the initial proposal approval process, including policy matters identified during the Secretariat’s assessment of funding proposals, for the Board’s consideration at the earliest opportunity, including information on budgetary considerations”.*
2. Based on the recent experience of the Secretariat in the assessment of projects and programmes from multilateral development banks (MDBs), the Secretariat seeks to inform the Board of an urgent issue of policy conflict relating to environmental and social safeguards (ESS) disclosure of projects and programmes, which has the potential to materially impact the GCF pipeline and ability to programme resources from the first replenishment of the GCF.

### **Multilateral Development Bank Accreditation Master Agreement deviation from Information Disclosure Policy and environmental and social safeguards**

3. MDB accreditation master agreements (AMAs): By its decisions B.15/10 and B.16/06, respectively, the Board approved a deviation from the GCF Information Disclosure Policy (IDP) requirement on ESS disclosures for AMAs to be entered into with MDBs. Accordingly, under the AMAs entered into with MDBs: *“with respect to disclosure related to ESS, such disclosure shall be made in accordance with the Accredited Entity’s policies”* and therefore, the AEs do not have the obligation to disclose in accordance with the GCF IDP or Environmental and Social Policy.
4. Paragraph 17 of the IDP (adopted at the twelfth meeting of the Board (B.12)) states:
  - (a) *“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) at least 120 days in advance of the AE’s or GCF’s Board decision, whichever is earlier; (c) in the case of Category B projects, the ESIA and an Environmental and Social Management Plan (ESMP) at least 30 days in advance of the AE’s or GCF’s Board decision, whichever is earlier; and (d) in the case of Category I-2 programmes, the ESMS at least 30 days in advance of the AE’s or GCF’s Board decision, whichever is earlier. The reports will be available in both English and the local language (if not English). The reports will be available via electronic links in both the AE’s and the GCF’s website (in the case of the GCF website, upon submission of a funding proposal to the Board) as well as in locations convenient to affected peoples....”.*
5. In relation to E&S, paragraphs 62 and 63 of the E&S Policy (adopted at B.19) states:
  - (a) *“The information will be made available in accordance with the provisions of the Information Disclosure Policy, allowing the stakeholders time to review, seek further information and provide inputs on a proposed activity, including ways to improve design and implementation of its environmental and social safeguards ... The information will be available in both English and the local language (if not English) to foster adequate understanding by the affected and potentially affected communities, stakeholders and the general public.”*
  - (b) *“The GCF Information Disclosure Policy requires the accredited entities to disclose to the public and, via the Secretariat, to the Board and active observers, the necessary*

*documentation relevant to the environmental and social safeguards of the activities and meeting the required disclosure period. The required disclosure will also apply to Category A and Category B subprojects of GCF-funded programmes and investments through medium- to high-level of intermediation.”*

## Decision of Information Appeals Panel

6. On 13 October 2018, the civil society organization active observers filed an appeal with the GCF Information Appeals Panel (IAP) under Section XI of the IDP. The substantive question raised in the appeal was whether the GCF Secretariat disclosed and announced the ESS documents for two funding proposals: FP 083: Intermediation 1 World Bank “Indonesia Geothermal Resource Risk Mitigation Project” and FP 085: Category A Asian Development Bank (ADB) “Green Bus Rapid Transit (BRT) Karachi to the Board and active observers at least 120 days in advance of the GCF Board’s decision in accordance with paragraph 17 of the IDP.

7. The IAP, in its decision dated 15 November 2018, concluded that:

(a) *“...the GCF Secretariat has not complied with the policy requirements as (laid out in paragraph 17 of the IDP) to disclose and announce the ESS documents for the two funding proposals to the GCF’s Active Observers (and Board) in a timely manner.”*

8. The IAP also recommended, inter alia, that (see paras. 51 and 52 of the Decision and recommendations on appeal no IDP/2018/C001):

(a) *“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;*

(b) *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.”*

9. The IAP further noted that *“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.”* (see para. 42 of the Decision and recommendations on appeal no IDP/2018/C001)

10. The IAP decision and recommendations were approved by the Ethics and Audit Committee (EAC) at its meeting on 27 November 2018, in accordance with paragraph 33 of the IDP, and the decision was circulated to the Board on 12 December 2018.

11. The decision and findings of the IAP, as approved by the EAC, in effect contradicted the exemption from the IDP provided to the MDBs in their AMAs with the GCF, pursuant to a decision of the GCF Board. This also de facto created a two-policy regime: on the one side under the AMA (MDBs comply with their own policies for ESS disclosure and GCF cannot impose its IDP (paragraph 17) requirements on the MDBs), and on the other side, pursuant to the decision and recommendations of the IAP, the Secretariat would need to comply with the GCF IDP for ESS disclosures.

## Conflicting policy regimes and operational implications

12. As noted above, there is a policy conflict between:
  - (a) The disclosure carve-out agreed in AMAs with MDBs and approved by the Board in 2016–2017; and
  - (b) Provisions of the IDP and ESS policies related to the disclosure of Category A or B projects or programmes and investments through a medium- to high-level of intermediation (Cat. I-2/I-1) as applied by the IAP decision in 2018.
13. In practical terms, the difference in disclosure provisions is as follows:
  - (a) MDB AMA language allows for disclosures to be made in accordance with the AE policies. Some MDBs do not have a requirement for ESS documents to be publicly disclosed in English if the local language is not English, and have different requirements for the number of days for Category A/I-1 and B/I-2 disclosure (some do not have Category B disclosure requirements);
  - (b) The GCF ESS Policy and IDP require Category A/I-1 projects to be disclosed 120 days before consideration by the AE board or GCF Board, whichever is earlier, and for Category B/I-2, the policies require projects to be disclosed 30 days before consideration by the AE board or GCF Board, whichever is earlier, in both English and the local language (if not English).
14. While this policy conflict remains unresolved, the Secretariat has been faced with attempting to negotiate to resolve this issue on a case-by-case basis for every relevant MDB project or programme. MDB counterparts, consistent with their legal agreements with GCF, have generally asserted their ability to follow their own disclosure policies.
15. The resulting stalemate is increasingly proving unworkable for normal functioning of the orderly technical review process. Should this situation continue, the Secretariat judges it will endanger future programme consideration with MDBs and also endanger Funded Activity Agreement (FAA) negotiations of approved programmes.
16. From a practical standpoint, MDBs face challenges in ESS disclosure in English, especially when their own policy states that they publish these in local languages only. While translation may address this issue, related questions arise on which documents should be translated and who should pay the costs of translation. In some cases of multi-country programmes, ESS disclosure can entail up to hundreds to thousands of pages of documents.
17. Some MDBs also face challenges in ESS disclosure for Category A/I-1 projects and programmes 120 days before GCF Board consideration and 30 days for Category B/I-2 projects and programmes. Other challenges include non-disclosure in locations convenient to affected peoples, use of summaries, and disclosure of the local language version only on the executing entity's website.
18. For example, the policy conflict described above has created major challenges in implementing a number of previously approved projects, including FP096 (AfDB DRC Green Mini-Grid Program) and FP140 (EBRD High Impact Programme for the Corporate Sector). In the case of FP096, a condition precedent has been stipulated in the executed FAA stating that the modalities for ESS disclosure at subproject level will have to be agreed prior to effectiveness. This means that disbursement of funds to the beneficiary projects in the Democratic Republic of the Congo will be contingent upon a satisfactory resolution of the matter in the future.
19. The Secretariat is currently engaged in active discussions with MDBs for the submission and delivery of a pipeline for approval beyond B.28. The delivery of this pipeline will be difficult without the resolution of the policy conflict described above.

## Recommended way forward

20. In light of the above, the Secretariat recommends that the Board urgently consider action to resolve the policy conflict relating to ESS information disclosure. As noted at the outset, this could be brought to the Board for consideration under the mandate set out in decision B.17/09, paragraph (h), requesting the Secretariat to *“present to the Board implementation challenges ... including policy matters identified during the Secretariat’s assessment of funding proposals, for the Board’s consideration at the earliest opportunity”*.

21. In the near term, the Secretariat can prepare for the Board’s consideration, either in the leadup to or at B.29, a proposal for a decision to resolve the policy conflict. Given the pressing operational urgency of the matter, this proposal will be aimed at providing a specific remedy to the immediate issue described above.

22. The Secretariat notes that the Board workplan will also include items on the review of the IDP as well as the development of GCF’s ESS Standards. While these items will not be considered by the Board in sufficient time to provide a resolution to the pressing operational issue, an eventual comprehensive update of the IDP and ESS policies would help establish a clear, consistent and transparent policy basis for ESS information disclosure matters going forward.

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