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GCF/B.29/13/Rev.01

30 June 2021

Guidelines to facilitate Board consideration of IRM reports on reconsideration requests, grievances or complaints

Summary

The Independent Redress Mechanism (IRM) is presenting the revised draft of the Board Guidelines to the Board.

The guidelines address the following aspects:

- (a) Objectives of Guidelines
- (b) Principles
- (c) Contents of IRM Case reports
- (d) Procedure for Considering IRM Case Reports
- (e) The Board's Role in Considering IRM Case Reports

A draft Board decision is presented in Annex I with the revised Board Guidelines of in Annex II.

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I. Background

- 1.1 Paragraph 22 of the document GCF/B.22/11 titled “Procedures and Guidelines of the Independent Redress Mechanism”, presented to the Board by the IRM states as follows:

“Board Guidelines for dealing with IRM recommendations on cases: Throughout the 2017 TOR of the IRM, as well as in the proposed Procedures and Guidelines, due process and fairness are emphasised especially with regard to handling complaints from project affected people and reconsideration requests from developing countries. The IRM, having followed procedures that meet such standards, makes findings and recommendations on redress, if any, and submits them to the Board for a decision. Having considered the relevant report from the IRM, and in accordance with the 2017 TOR, the Board may then consider the relevant underlying request or complaint and may take steps to implement the recommendations of the IRM. In the interests of ensuring the credibility of the GCF and its redress processes, and inspiring confidence in them, it is critical for the Board to also act in keeping with the principles of fairness and due process in making any decisions on the IRM’s case findings and recommendations. It may, therefore, be helpful for the Board, and the GCF in general, to develop guidelines to facilitate the Board’s consideration of IRM reports in relation to requests and complaints. Such guidelines could address matters relating to how the Board should conduct its proceedings and make decisions when considering an IRM report on a case, in each case consistent with the rules of procedure of the Board and other relevant Board decisions. For this purpose, the draft Board decision proposes that the Head of the IRM, in consultation with the Ethics and Audit Committee, develop draft guidelines for Board consideration.”

- 1.2 The Board having considered the document GCF/B.22/11 titled “Procedures and Guidelines of the Independent Redress Mechanism”, by Decision B.22/22 of 26 February 2019 requested “the Head of the IRM, in consultation with the Ethics and Audit Committee, to consider options to facilitate the Board’s consideration of reports from the IRM containing its findings and recommendations relating to requests for reconsideration of funding decisions and grievances or complaints by those adversely affected or who may be affected by GCF projects or programmes, and to prepare appropriate guidelines for consideration by the Board by its twenty-fourth meeting.”
- 1.3 In pursuance of Decision B.22/22, the Head of the IRM in consultation with the Ethics and Audit Committee (EAC) prepared the draft Guidelines for consideration and adoption by the Board. The draft Guidelines approved by the EAC was circulated to the Board and Active Observers for comments with a deadline for 30 September 2020. No comments were received from Board members. Two comments were received from Active Observers and civil society organisations. These comments were taken into account and the revised draft Guidelines as set out in Annex II of Document B.27/10 was considered and approved by the EAC for Board presentation. A draft Board Decision and the draft Guidelines were submitted to the Board for consideration at B. 27 by Document GCF/B.27/10 but the Board did not consider the same due to lack of time. The Co-Chairs decided to circulate the Guidelines as a between Board meetings decision by GCF/BM-2020/18 to the Board. The document having been circulated, objections were received from one Board member. At a virtual meeting held on 28 April 2021, The Co-Chairs worked through the objections with the objecting Board member and some members of the Ethics and Audit Committee and the Head of the IRM, and staff from General Counsel’s office and OGA. The Co-Chairs requested the IRM to prepare a revised draft of the Guidelines. On 11 May the IRM prepared a revised version of the Guidelines

and circulated it to the Objecting Board members, the EAC members, the Co-Chairs and other participants and requested feedback. Further consultations during B.29 have resulted in the draft Guidelines presented in this document.

- 1.4 The IRM is presenting the revised draft of the Board Guidelines to the Board. A draft Board decision is presented in Annex I with the revised Board Guidelines in Annex II.

II. Key features of the Guidelines

- 2.1 The guidelines address the following aspects:

- (a) Objectives of Guidelines
- (b) Principles
- (c) Contents of IRM Case reports
- (d) Procedure for Considering IRM Case Reports
- (e) The Board's Role in Considering IRM Case Reports

III. Recommended action by the Board

- 3.1 The Board is invited to adopt the draft decision in Annex I of this document.

Annex I: Draft decision of the Board

The Board, having considered document GCF/B.29/13/Rev.01 titled “Guidelines to facilitate Board consideration of IRM reports on reconsideration requests, grievances or complaints”:

- (a) Adopts the Guidelines as set out in annex II to this document; and
- (b) Agrees to delete:
 - (i) The words “as soon as possible or at the next Board meeting” from paragraph 19 of the Procedures and Guidelines of the Independent Redress Mechanism as adopted by the Board in decision B.22/22 (“Procedures and Guidelines”); and
 - (ii) The final sentence from paragraph 63 of the said Procedures and Guidelines.

Annex II: Guidelines to facilitate Board consideration of IRM reports on reconsideration requests, grievances or complaints

I. Objectives of Guidelines

- 1.1 Paragraph 3 of the Governing Instrument of the GCF, the 2017 updated Terms of Reference (TOR) of the IRM, and the Procedures and Guidelines (PGs) of the IRM, emphasize the importance of fairness, equity, independence, transparency, accountability and justice regarding the handling of complaints from project affected people, and requests for reconsideration of Board decisions denying funding that are filed by a developing country. These fundamental standards are further affirmed in the Policy on Ethics and Conflicts of Interest for the Board (Decision B.09/03) (“the Policy”). Both the TOR and the PGs of the IRM state that the IRM should “be fair and equitable to all stakeholders” and “be independent and transparent” in its work.¹
- 1.2 The IRM, having followed procedures that meet such standards, makes findings and recommendations on requests for reconsideration of funding decisions or on complaints, and submits them to the Board for consideration and decision. Having considered the relevant report from the IRM regarding a request, grievance or complaint, and in accordance with the TOR and the PGs, the Board may take steps to implement the recommendations of the IRM.
- 1.3 In the interests of ensuring the credibility of the GCF and its reconsideration and grievance redress processes, it is critical for the Board to act in keeping with the same standards of fairness, equity, impartiality, transparency and justice in making any decisions on the IRM’s case findings and recommendations.
- 1.4 These guidelines address matters relating to Board proceedings and decision making when considering an IRM report on a complaint, grievance or reconsideration request. These guidelines are to be applied, in a manner consistent with the Rules of Procedure of the Board (Rules of Procedure) and other relevant Board decisions.

II. Principles

- 2.1 In considering reports on complaints and reconsideration requests presented by the IRM to the Board, the Board will:
 - (a) In accordance with the Rules of Procedure, expeditiously consider the IRM report, findings and any recommendations and decide whether to accept them or not;
 - (b) Not engage in a fresh (*de novo*) investigation of the complaint/grievance or request;
 - (c) Satisfy itself that all procedural steps prescribed in the Procedures and Guidelines of the IRM (Decision B.22/22) have been followed by the IRM;
 - (d) Satisfy itself that the report, findings and recommendations fall within the mandate of the IRM, as set out in its Terms of Reference (Decision B.BM-2017/10);
 - (e) Satisfy itself that the IRM has conducted its proceedings and arrived at its findings and recommendations in a transparent, independent, timely and impartial manner;

¹ See, for instance, paragraph 3(c) & (d) of the IRM’s TOR (Decision B.BM-2017/10)

- (f) Seek clarifications on the report, findings and recommendations from the IRM; and
- (g) Consider the report fairly, in an unbiased fashion with a view to providing redress, where appropriate.

III. Contents of IRM Case Reports

3.1 The contents of IRM reports are set out in paragraphs 18(d) and 58 of the PGs of the IRM adopted by the Board.

3.2 For reconsideration requests, the IRM report to the Board will contain:²

- (a) The original Board decision denying funding;
- (b) A summary of the request for reconsideration;
- (c) A summary of the steps taken, and decisions made by the IRM; and
- (d) The IRM's findings in relation to the request for reconsideration together with its recommendations.

3.3 For complaints and grievances, the IRM report to the Board will contain:³

- (a) A summary of the grievance or complaint and the issues raised;
- (b) A summary of the response from the GCF Secretariat;
- (c) A summary of applicable GCF operational policies and procedures;
- (d) A description of the procedures and investigative methods followed by the IRM;
- (e) A summary and evaluation of the relevant evidence;
- (f) The findings of the IRM on issues raised in the grievance or complaint;
- (g) Recommendations on remedial actions as appropriate; and
- (h) Additional information, lessons learned and recommendations as appropriate and in accordance with its TOR.

IV. Procedure for Considering IRM Case Reports

4.1 The Board procedure for consideration of the IRM's case reports are set out in the IRM's PGs. In the case of a report of the IRM on a request for reconsideration of a funding decision, paragraph 19 as amended of the PGs state:

- 19. The Board shall consider such report following the submission of the report by the IRM and, in view of such report, may consider the request and may then take steps to implement the recommendation of the IRM. If the Board considers the request, it shall communicate its decision to the Head of the IRM, who will then communicate the same to the requester and other relevant stakeholders, if any. If following its consideration of the request, the Board decides to fund the project or programme, the IRM will close the case

² See paragraph 18(d) of the IRM's PGs.

³ See paragraph 58 of the IRM's PGs.

and the GCF Secretariat will resume processing the project or programme in accordance with the relevant rules and procedures. If the Board refuses to reconsider its funding decision or rejects or does not approve funding for the project or programme, the IRM will close the case.

4.2 IRM reports on reconsideration requests would ordinarily be placed on the agenda of the next Board meeting.

4.3 In the case of agreements reached through problem solving which require a Board decision, paragraph 45 of the PGs state:

45. If an agreement reached through problem solving necessitate a Board decision concerning any project or programme, such agreement shall be submitted to the Board for approval.

4.4 In the case of IRM reports on grievances or complaints, paragraph 63 of the PGs as amended state:

63. The Board shall consider the final compliance report and may make such decision as it sees appropriate, based on the findings and any recommendations contained in the final compliance report. If the Board decides to consider the grievance or complaint in light of the final compliance report, it may also take steps to implement the recommendations of the IRM.

V. Board's Role in Considering IRM Case Reports

5.1 The Board's role is to give earnest consideration to IRM case reports, their findings and recommendations. Under the PGs, the IRM is required to submit a copy of the draft case report to the requester or complainant(s), the Secretariat, and the accredited entity for feedback before it is presented to the Board.⁴

5.2 It is important to note that the Board remains the final arbiter of the outcome of the complaint or request and applicable policy, and that it has full authority to agree or disagree with the findings or recommendations of the IRM. The Board is to make its decision in view of such report⁵ 'based on the findings and any recommendations contained in the final compliance report'.⁶ The Board's role is not to initiate a *de novo* review of the facts, but to base its decision on the IRM's report. The Board decisions based on IRM reports may serve to inform future cases for the IRM, the GCF Secretariat, requesters, complainants, national designated authorities, accredited entities and the interested public alike. As such, if the Board decides to consider an IRM report in closed executive session pursuant to paragraph 28 of the Rules of Procedure of the Board and the Board disagrees with a finding or recommendation of the IRM, the Board shall prepare a summary⁷ of the reasons given by Board members for such disagreement.

⁴ See paragraph 60 of the IRM's PGs.

⁵ Paragraphs 10 and 15 of the IRM's TOR and paragraph 19 as amended of the PGs.

⁶ Paragraph 63 as amended of the PGs.

⁷ The summary will be based on a confidential verbatim record of the closed-door meeting maintained by the Secretary to the Board.

The summary will be communicated to the IRM within 21 days of the Board meeting at which the decision was made. The IRM will publish such summary on its website.

- 5.3 In providing annual reports to the Conference of the Parties (COP) of the UNFCCC under paragraph 9 of the Arrangements between the COP and the GCF, the Board will include the IRMs Reports together with its decisions thereon.
 - 5.4 When the Board has come to a decision on the IRM report, that decision, together with the notes of the Board meeting relevant to that decision, or the summary of reasons in the event of a closed executive session, should be made public by the IRM in accordance with the PGs and these Guidelines.
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