

Dear Liane and Erika,

We refer to your letter dated 25 September 2018 titled “CSO Letter on AE breach of IDP & ESS disclosure requirements_FINAL_Secretariat”.

In your letter, you expressed your objection to paragraph 15.01(e) of Accreditation Master Agreements (AMAs) with the World Bank¹ and Asian Development Bank (ADB) on the ground that the exception is contrary to (i) the Information Disclosure Policy (IDP),² which provides for a one hundred and twenty (120)-day deadline for the AE’s disclosure on its website and for informing the Board and active observers in case of Category A projects and Category I-1 programmes, as well as (ii) the Environmental and Social Policy³ (ES Policy).

The subject provision, which appears in all AMAs with multilateral development banks (MDBs), states that “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.”

The rationale for the exception is that such MDBs have similar requirements for disclosure of ESS documents under their relevant information disclosure policies, which would allow access by observers and stakeholders to the information before a final decision by the MDB is taken approving the project. In accordance with their policies, disclosure as it relates to ESS shall be prior to the MDB’s Board meeting in which the projects are submitted for approval and not prior to the GCF’s Board meeting.

This exception under the AMAs with the World Bank and ADB follow the exception under the AMA with EBRD. The EBRD AMA was approved by the Board through decision B.16/06, which was adopted in executive session on the basis of document GCF/B.16/14 (limited distribution) titled “Status accreditation master agreements: approval AMA with the European Bank for Reconstruction and Development (Recommendations from the Risk Management Committee)”.

Board approval of the EBRD AMA was required, given that the AMA contained substantive changes – including the provision in question – to the template AMA, which was approved under decision 12/31 and which states in part as follows:

The Board, having reviewed document GCF/B.12/23 [limited distribution] titled “Template Accreditation Master Agreement”:

- (a) Takes note of the information provided by the Secretariat in document GCF/B.12/23 and of the progress made to date by the GCF in engaging with accredited entities on the execution of Accreditation Master Agreements;
- (b) Considers the template Accreditation Master Agreement as set out in annex XXVI adequate for completing stage III of the accreditation process;
- (c) Acknowledges that substantive changes from the template Accreditation Master Agreement may be necessary on a case-by-case basis as a consequence of negotiations with accredited entities, which will each have unique circumstances and requirements that may need to be taken into account. The Accreditation Master Agreement template should be considered flexible enough to ensure executed Accreditation Master Agreements are fit for purpose;
- (d) Requests the Executive Director to regard the template Accreditation Master Agreement as

¹International Bank for Reconstruction and Development and International Development Association.

²This was adopted by the Board through decision B.12/35.

³This was adopted by the Board through decision B.19/10.

the basis for negotiations with accredited entities. The Executive Director will determine, in consultation with the risk and legal teams, and the Risk Management Committee, whether or not a change is considered substantive on a case-by-case basis, and would require Board approval;

(e) Decides to approve the policy guidance, to be deemed substantive under paragraph (d) above in respect of Accreditation Master Agreements as set out in annexXXVII;

(f) Requests the Executive Director, as a matter of urgency, to prioritize the execution of Accreditation Master Agreements with those entities accredited by the Board, and to remain in regular communication with the Co-Chairs between formal meetings on progress made to that end[.]

For the sake of transparency, we wish to note that the full text of all AMAs are routinely disclosed to the public through the following GCF website, notwithstanding the Board approval of AMAs in executive session: <https://www.greenclimate.fund/library/-/docs/list/383065>.

We have taken note of the fact, that 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.⁴

Best,

Javier

⁴ See <https://www.greenclimate.fund/safeguards/environment-social/reports>

September 24, 2018

Dear Colleagues of the Green Climate Fund Secretariat

Civil society organizations (CSOs) active in the Green Climate Fund (GCF) are deeply concerned with two recent instances in which the Environmental and Social Safeguards (ESS) disclosure obligation of Category A/Intermediation 1 (I1) projects under paragraph 17 of the GCF's Information Disclosure Policy for a prior 120 days disclosure before consideration by the Board seems to have been breached, as it appears that those two projects are readied for consideration by the Board at its 21st Board meeting in less than 30 days' time.

The two project proposals in question are:

- **Intermediation 1 World Bank "Indonesia Geothermal Resource Risk Mitigation Project"**, for which the active observers received notification by the GCF Secretariat of ESS disclosure on September 17, 2018
- **Category A Asian Development Bank (ADB) "Green Bus Rapid Transit (BRT) Karachi"** project, for which the active observers received notification by the GCF Secretariat of ESS disclosure on September 19, 2018

In both cases, the notification 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]."***

This seems to indicate that both the World Bank and the Asian Development Bank, and indeed apparently all of the MDBs as we found a similar passage in the EBRD's AMA with the Secretariat, have negotiated a carve-out from applying the GCF's Information Disclosure Policy to be used as needed. And that they have done so despite the fact that their own policies require the same 120 day disclosure prior to Board consideration for high risk projects that may cause irreversible environmental or social harm.

This is very troubling and highly objectionable. It is not enough to indicate, as has been the case in both project proposals, that a timely disclosure of the relevant ESS reports has happened via the accredited entity's website (which is recorded as having happened in the case of the ADB project on May 30, 2018 and in the case of the World Bank on May 15, 2018).

Approved 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**. This is clearly not the case here. The reasoning for this principle enshrined in both the GCF's Information Disclosure Policy (IDP) and its Environmental and Social Policy (ESP) is that it is not possible for the public (or the Board members for that matter) to actively monitor the websites of all of the 59 GCF accredited entities for potential GCF proposal relevant ESS disclosures. The burden should not be on the public to have to monitor all accredited entities, or all MDBs, on the chance that one of the Category A projects that they disclose 120 days prior to their own Board votes (as that is most often the requirement) is going to also be a project

for which the AE is seeking GCF funding. The GCF followed best practice in recognizing that 120 day disclosure prior to Board consideration is critical for high risk projects that may cause irreversible environmental or social harm. Not 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.

The language in the relevant GCF policies couldn't be any clearer and does not allow for any ambiguity. Paragraph 17 of the GCF Information Disclosure Policy states explicitly:

*"Environmental and social reports. With respect to project and programme funding proposals that have an environmental or social impact, the Accredited Entities (AE's) 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; ...

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." [emphasis added]

In relevant parts, the **GCF's Environmental and Social Policy** states:

Paragraph 5: *"The policy will apply to all GCF-financed activities ... (c) At the activity level, the policy establishes the requirements for environmental and social risk assessment and management to be aligned to GCF ESS standards ensuring that due diligence is undertaken for all GCF-financed activities."*

Paragraph 12: *"Information disclosure, stakeholder engagement and grievance redress. Within the parameters of the activities financed or proposed for financing by GCF, GCF will be responsible for:*

(a) Confirming that all information related to the environmental and social safeguards of activities are appropriately disclosed to meet the requirements of the GCF Information Disclosure Policy and section 7.1 of this policy, and working with accredited entities to address any gaps or weaknesses in the disclosure of relevant information;"

Paragraph 14(a)(v), which details Responsibilities of the AEs, includes: *"Ensures disclosure of information on the GCF-financed activities and component subprojects pursuant to the GCF Information Disclosure Policy,"*

Paragraph 62: *"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 in the form of environmental and social reports, including additional documents described in paragraph 64 and 65, will be provided through electronic*

links to the websites of the accredited entities and of GCF (in the case of the GCF website, upon submission of the funding proposal to the Secretariat), as well as in locations convenient to affected peoples. 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."

Paragraph 63: ***"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."*** (emphasis added)

In light of this, we are seeking reassurance and clarity from your side that:

- 1) The principle must be guaranteed that respective GCF policies will be met in all GCF projects and programmes, and that AEs are not able to negotiate loopholes through their AMAs that effectively undermine GCF policies. The GCF Secretariat has to ensure that the AEs fully meet GCF policies with their funding proposals.
- 2) Neither project will be considered at B.21 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.

We urge you to ensure that the Secretariat does its due diligence in compliance with GCF policies and does not allow Accredited Entities, especially potentially more powerful ones like MDBs, to dictate to the Secretariat the terms of their engagement with the GCF by undermining existing GCF policies. This would set a very bad precedent and lead to a very dangerous slippery slope regarding information disclosure and the guaranteed consideration and application of environmental and social safeguards.

As the CSO active observer team, we feel obligated to not only point out our concerns to you, but, if necessary, to the broader public to ensure that the GCF follows the high standards and best practice that have been set by Board-approved policies on IDP and ESS.

Thank you for your consideration. We look forward to your response and clarification.

With best regards,

The GCF CSO Active Observer Team

(contacts: Liane Schalatek, CSO Active Observer for Developed Countries, liane.schalatek@us.boell.org and Erika Lennon, Alternate CSO Active Observer for Developed Countries, elennon@ciel.org)