

2 November 2018

Dr. Lalanath de Silva  
Chairperson of the Information Appeals Panel  
Green Climate Fund  
Songdo, International Business District  
175, Art Center-daero  
Yeonsu-gu, Incheon 406-840  
Republic of Korea

**SUBJECT: Civil Society Reaction/Rebuttal to the Responses submitted by the GCF Secretariat, the World Bank and the Asian Development Bank to the Notice of Appeal filed by CSOs under the Information Disclosure Policy of the GCF**

Dear Dr. de Silva,

Thank you for providing civil society organizations (CSOs) active in the Green Climate Fund (GCF), represented for the purpose of this response by members of its CSO Active Observer Team (Liane Schalatek, CSO Active Observer for Development Countries; Erika Lennon, Alternate CSO Active Observer for Developed Countries; and Lidy Nacpil, CSO Active Observer for Developing Countries), with the opportunity to submit a formal response/rebuttal to the responses submitted by the Secretariat, the World Bank, and the Asian Development Bank (ADB) to our initial appeal under the GCF Information Disclosure Policy (IDP), and in line with the procedures for this appeal you outlined in an email to the CSO Active Observer Team on October 16, 2018, and to the responses by the World Bank and Asian Development Bank you shared with us via email on October 23, 2018 and the Secretariat's response you shared with us via email on October 30, 2018.

In light of the responses from the World Bank and ADB, shared with us via email on October 23, 2018, and from the Secretariat, shared with us via email on October 30, 2018 to our notice of appeal to the Information Appeals Panel (IAP), we hereby present the CSOs' formal rebuttal.

#### **RE: The ADB's Response**

In their response to the IAP dated October 19, 2018, the Asian Development Bank clarified that it disclosed the relevant environmental and social documents, including a draft EIA and RP, for the Karachi, Pakistan project not only on their own website in May 2018, but also submitted the information to the GCF on June 22, 2018 and then subsequently again on September 19 when requested to do so by the GCF. It appears from ADB's response that it was in compliance with not only its own policies requiring disclosure 120 days prior to an ADB Board decision, but also submitted the information to the GCF in a timeframe that would allow largely for compliance with the GCF's IDP (although technically

with only 118 days prior to the GCF Board meeting). It also does not appear that the ADB intended to invoke clause 15 of its Accreditation Master Agreement (AMA).

## **RE: The World Bank's Response**

In its response to the IAP from October 18, 2018, the World Bank clarified that it disclosed the relevant draft ESMF and final ESMF for the Indonesia program on its own website on February 26 and May 15, 2018 respectively and also in parallel informed the Secretariat about this disclosure on the World Bank's website, thus well within the 120 days prior notification window. The World Bank clarified that it took this additional step of notifying the GCF Secretariat explicitly in order to enable the Secretariat to comply with the IDP. It also expressed surprise that this notification about the ESMFs provided to the Secretariat was not shared with the CSO Active Observers in compliance with the GCF IDP.

Furthermore, the World Bank in its response disputes the claim by the GCF Secretariat, made in an email sent to the CSO Active Observers only on September 17, 2018 with the notification of the ESS information for the Indonesia project, that the World Bank had invoked Clause 15.01 of its AMA in connection with the environmental and social safeguards (ESS) disclosure. As the World Bank poignantly points out in its response: "Moreover, the AMA has not yet become effective for the World Bank, and as such, the World Bank is bound by its own disclosure requirements." This seems to contradict the argument given by the GCF Secretariat for the acknowledged belated ESS disclosure which reads: "The World Bank invokes the aforementioned AMA provision in relation to the subject disclosure regarding the Indonesia Geothermal Resource Risk Mitigation Project (GREM)."<sup>1</sup>

Thus, it seems that the World Bank was well aware that the GCF's IDP required disclosure via the Secretariat to the Board and the Active Observers 120 days prior to the Board's consideration and attempted to ensure compliance with this requirement without invoking Clause 15.01 of an AMA which has not yet become effective. This is in contrast to what the Secretariat led CSO Active Observers to believe.

## **RE: The GCF Secretariat's Response**

The GCF Secretariat's response begins with the aim to discredit the validity of the CSOs' notice of appeal and asking for its dismissal by the IAP based on the premise that the CSO letter we sent September 24, 2018 "did not contain any request by the CSOs for the GCF Secretariat to provide information related to the environmental and social reports of FP083 and FP085, but only the objections of the CSOs to the agreements reached in the AMAs entered into with the World Bank and ADB...". This is disingenuous in light of the notifications the GCF Secretariat sent out to the Active Observers on September 17 for the World Bank Indonesia program and on September 19 for the ADB BRT Karachi project indicating that the reason for the belated ESS disclosure in both cases (which should have been

---

<sup>1</sup> A copy of the Secretariat's email from September 17, 2018 is attached as Annex 1.

120 days prior to the GCF Board meeting) was because both the World Bank and the ADB had invoked Clause 15.01(e) in their respective AMA agreements with respect to the two proposals.<sup>2</sup>

Based on the responses from both the World Bank and ADB to this appeal, it does not appear that either requested to invoke clause 15.01(e), especially given that they provided the relevant documents largely in line of the 120 day requirement. Instead it appears that the GCF Secretariat used the clause to justify its own non-compliance with the IDP and the delayed notification to the Active Observers following both the World Bank's and ADB's timely disclosure and notification. If the Secretariat had notified the Active Observers at the time of receipt of the World Bank disclosure, there would have been full compliance with the IDP through notification by the Secretariat to the Board and Active Observer 120 days prior to the 21st GCF Board meeting. In the case of the ADB, notification to the Active Observers at the time of the GCF's receipt of information on June 22 would have been provided *nearly* 120 days prior to the Board meeting, which is significantly, namely four times longer than the less than 30 days it actually was.

The CSO letter requesting clarification and voicing concern about the potential undermining of timely information provision to affected communities was in response to the GCF Secretariat's late disclosure accompanied by reference to the AMA clauses. It is our contention that the GCF Secretariat's apparently incorrect claim that the World Bank and the ADB requested to invoke the AMA clause as justification for a delayed ESS information disclosure is **in effect and impact akin to a denial by the Secretariat of the provision of timely information in compliance with IDP**. CSOs should not have to formally request information that, according to the GCF's own IDP, is supposed to be disseminated in specific timeframes and following specific procedures. It would put the GCF's IDP *ad absurdum* if 120 days before every GCF Board meeting, the CSO Active Observers had to formally write to the GCF Secretariat requesting the disclosure of all relevant ESS information for category A/intermediation I proposals that may be considered by the Board at the upcoming meeting and to repeat the same procedure 90 days later for category B/intermediation II project proposals falling under the 30 days information disclosure provision.

If the IAP can only consider denied requests as they are narrowly defined in the GCF Secretariat's response, the panel would have no standing whatsoever when disclosure procedures and timelines under the IDP are violated either knowingly or erroneously, as they were in this case. This would undermine the function and mandate of the IAP to safeguard the implementation of the IDP.

It is our view that the IAP should consider the full context of our rebuttal and initial letter to the GCF in making its determinations about this appeal and our ability to file it. We believe that we have the grounds for this appeal for the following reasons:

#### *Maximum Disclosure and proactive disclosure*

Throughout the IDP, the GCF makes it clear that its goal is to maximize information disclosure. As such, in interpreting its policy, including in response to this submission to the IAP, the GCF should do

---

<sup>2</sup> Both notifications received by the Active Observers providing this justification are attached as Annex I and Annex 2.

so in light of the fact that the first principle of the policy is to “maximize access to information.” IDP paragraph 6(a) states: “Principle 1: Maximize access to information. The GCF reaffirms its commitment to transparency in all of its activities and therefore seeks to maximize access to any documents and information that it produces and to information in its possession that is not on the list of exceptions as set out in Chapter V of this Policy.” Environmental and social information is not an exception under the Chapter V of the IDP. Furthermore IDP paragraph 8 states, “As a matter of principle, the GCF will share the majority of the information in its possession with stakeholders and the public at large, either *proactively* or upon request, subject to specified exceptions to presumed disclosure” (emphasis added).

These provisions, as well as others, demonstrate that the GCF intends to maximize information disclosure and to do so proactively. We think this is of vital importance and appreciate the GCF’s commitment to ensuring that the public and potentially affected communities have information and have it in a timely manner. Unfortunately, the GCF Secretariat’s response indicates that it is not governed by this principle, and instead has attempted to justify that decision or lack of procedures in narrow readings of the rules. Even the choice to interpret the AMA clause as favoring the non-timely disclosure of information is a choice in interpretation of the clause that errs not on the side of maximizing information disclosure, but minimizing it. Instead the GCF should read the AMA clause, as well as other provisions, in light of the principle of maximum information disclosure as that would be consistent with the GCF’s policies as well as the World Bank’s and ADB’s policies regarding 120-day disclosure of information for high risk projects.

#### *Role of the IAP*

As noted above, the GCF Secretariat’s response that the IAP can only be used if a request for information is actively denied renders the IAP only partially effective. It is difficult to request information that you do not know you should have already received. Given that CSOs do not know specifics about projects in the pipeline nor which projects definitely will be discussed at which Board meeting more than 3-4 weeks in advance, it is difficult for CSOs to know that there are environmental and social documents for high risk project(s) that they need to request. As we have noted above, this would mean that observers should submit requests asking the Secretariat for any environmental and social documents related to high risk projects 120 days before every Board Meeting. This would be unduly burdensome for both CSOs and the Secretariat who would then have to go through extra steps to respond. The IDP was not designed to outline a series of time-consuming and inefficient procedures to be followed in order to access information in a timely manner; that, indeed, would not be in the “spirit of the IDP” referenced by the Secretariat and would be an affront to Principle 3, “simple and broad access to information.” Additionally, it could mean that information is often disclosed later than it should be as those requests would take time to process and the information would potentially not be received 120 days prior to the Board Meeting.

#### *Harm to community due to lack of access to information*

In its response, the Secretariat minimizes the potential harm to communities when information disclosure policies are not followed and undermines the right to access to information and the right to participate in environmental decision-making. Claiming as the Secretariat does in its response that the

“spirit of the IDP is observed” even in cases where the timely disclosure of the required ESS information happens only on the accredited entities’ websites (here the World Bank’s and ADB’s websites), “as the local communities had their right to access information preserved” clearly undermines the requirement of the IDP to “maximize access to information” (para 6(a) IDP). In effect what this amounts to is a minimizing of access for affected communities, as it artificially narrows the plurality of channels and thus opportunities for communities to learn about an upcoming GCF project and its potentially harmful environmental and social impacts. It is often difficult for local communities to find out about proposed projects, by the GCF as well as MDBs and other accredited entities, that may impact them and having more avenues for disclosure can only better ensure that their rights are respected. Moreover, while there is some overlap, there are also distinctly different civil society stakeholder groups engaging with the GCF versus individual accredited entities. It is often only through active outreach by the GCF CSO network (having been informed via timely ESS disclosure by the Secretariat) that a national or sub-national level civil society organization or local communities even become aware that a proposed project is related to the GCF and thus required to comply with GCF mandates (such as the gender policy and indigenous peoples’ policy, in addition to the ESS requirements).

Failing to recognize the ways in which civil society organizations, with their limited resources, must network and prioritize their work is ultimately dismissive of the affected communities the Secretariat claims were “fully and timely informed” and the avenues they have for advocacy, participation, and potentially for redress. This amounts to forcing CSOs and communities interested in learning about upcoming GCF projects and programs and their potentially harmful environmental and social impact to proactively search the websites of now 75 implementing entities accredited with the GCF to find disclosed ESS information and to try and guess at which projects they are potentially funding may also be under consideration at the GCF. This is an unreasonable expectation, especially for local communities, and puts an undue burden on capacity- and resource-stretched civil society groups and potentially affected communities. Thus, it is indispensable that in order to comply with both the letter and the spirit of the GCF’s IDP the ESS information for submitted GCF proposals posted on the website of AEs be distributed by the GCF Secretariat to the Board and Active Observers and posted simultaneously on the GCF website in the timeframes specified in the IDP.

Further, the Secretariat’s response pre-judges and assumes “no harm is caused to such affected communities”. This is not possible to know and minimizes harms that may result from the lack of information disclosure. The track record of multilateral development banks, including the World Bank and ADB, when it comes to timely information disclosure and stakeholder consultation is far from perfect. In fact, many complaints that have been filed with the independent accountability mechanisms of the MDBs include lack of access to information and meaningful consultation. In a study of complaints submitted to the independent accountability mechanisms (IAMs) of 11 development finance institutions, the authors found that “consultation and disclosure” was raised in more than 40 percent of complaints.<sup>3</sup> Moreover, in IAMs own annual reports and lessons learned, they have noted that information disclosure

---

<sup>3</sup> C. Daniel, K. Genovese, M. van Huijstee & S. Singh (eds), *Glass Half Full? The State of Accountability in Development Finance*, sec. 2.3.7 (SOMO, January 2016), available at [www.glass-half-full.org](http://www.glass-half-full.org).

and consultation are raised in many of the complaints they receive.<sup>4</sup> The Secretariat should not assume that not complying with its information disclosure policy will not cause harm because an accredited entity has complied with theirs.

Lastly to this specific line of argumentation by the GCF Secretariat, we would like to point out that the GCF Board in approving several financial intermediation program proposals at B.21 in Bahrain, clearly acknowledged and responded to the fact that just posting information on the AEs' websites is not enough to give affected communities and civil society the opportunity to be fully and timely informed and to comply with the intent of the GCF IDP. A condition added to FP086 "Green Cities Facility" by the EBRD approved by the Board (with similar ones imposed on several other approved projects by the World Bank, FMO and AFD) reads:

"The Accredited Entity, 120 calendar days in advance of its Board meeting, shall disclose, in English and the local language (if not in English), the Project Disclosure Package on its website and shall require that the Borrower does so in locations convenient to affected peoples, and **provide the Project Disclosure Package to the GCF Secretariat for further distribution to the Board and Active Observers and for posting on the GCF website.**" (emphasis added).

*The Clauses in the AMAs as well as their invocation here are concerning*

In both the initial disclosure and the response to the appeal, the GCF highlights the clause 15 (the carve out) in the AMAs of the World Bank and the ADB.<sup>5</sup> As noted above, paragraph 15 of the AMA should be read in light of the GCF's IDP and its spirit, and not used to narrow disclosure requirements. Of note, the Secretariat in its response indicates that in its own assessment of the AMAs, that it shared with the Board as the AMAs for the IDB and EBRD were being negotiated and then approved by the Board, it "clearly states that the deviation negotiated with those entities is not in line with the requirements of the IDP for the disclosure of environmental and social reports." Even if the Board ultimately approved those, the GCF Secretariat, in light of its own assessment, should try to do its utmost to discourage accredited entities from invoking the AMA clause and to ensure compliance with the GCF's IDP. Instead of using the AMA clause as an excuse to not comply with the IDP, the Secretariat should be encouraging the MDBs to provide them with timely information and working to disclose that information to the Board and Active Observers.

In one of the last paragraphs of its letter, the GCF Secretariat acknowledges that an application of the AMA exception "is unprecedented and the GCF does not have yet a procedure to guarantee the timely dissemination of disclosure information under these exceptional circumstances." It is clear from the effective denial of timely information provision to CSO stakeholders and potentially affected communities as a result of the GCF Secretariat claiming that the AMA exception had been invoked that

---

<sup>4</sup> See, e.g., World Bank Inspection Panel, Emerging Lessons Series No. 4 - Consultation, Participation & Disclosure of Information (Oct. 2017), available at <http://documents.worldbank.org/curated/en/891651511972161278/Consultation-participation-and-disclosure-of-information> (noting, among others, in Lesson 2 that "disclosing all critical project-related information, including on potential risks and impacts, in a timely and accessible manner is the foundation for ensuring effective and meaningful participation).

<sup>5</sup> Of concern, it is also in the AMAs of the other multilateral development banks.

the establishment of relevant procedures to guarantee the simultaneous disclosure of the information to the GCF Board and active observers and its posting at the GCF website at the time that MDBs are disclosing ESS information on upcoming GCF projects on their own websites has to be established as a matter of urgency.

From the point of view of civil society such a procedural remedy is not the same as accepting the validity of the claimed AMA exception as being in full compliance with the IDP. It is instead a matter of practicality to ensure that potential harmful impacts for civil society stakeholders and affected communities due to faulty IDP implementation are minimized. As such, having procedures in place to guarantee timely disclosure in these exceptional circumstances is just a patch not a remedy. We also hope that this is truly an exceptional circumstance and the GCF will work to ensure that it does not become a pattern.

With the mandated five-year re-accreditation procedure of many MDBs coming up in 2020, we feel this provides the GCF, as a learning institution, with an opportunity for the GCF Board and Secretariat in cooperation with the MDBs to revisit and revise their existing AMAs, including by removal of the clause in question, 15.01(e). We as CSO Active Observers Team and the broader community of civil society and local stakeholders active in the GCF will certainly advocate for it.

For the aforementioned reasons presented in this rebuttal, we would like to reiterate our contention that our concerns warrant the consideration by the IAP of our appeal under the IDP.

We look forward to the IAP's determination and are available to present additional information in support of our reasoning and arguments.

Sincerely,

On behalf of the CSO Active Observer Group:



Liane Schalatek  
CSO Active Observer  
for Developed Countries  
[liane.schalatek@us.boell.org](mailto:liane.schalatek@us.boell.org)



Erika Lennon  
Alternate CSO Active Observer  
for Developed Countries  
[elennon@ciel.org](mailto:elennon@ciel.org)



Lidy Nacpil  
CSO Active Observer  
for Developing Countries  
[lnacpil@gmail.com](mailto:lnacpil@gmail.com)

**Annex 1****Liane Schalatek - Disclosure of environmental and social safeguards information for Category I-1 programme**


---

**From:** Green Climate Fund - OBSERVERS <observers@gcfund.org>  
**Date:** 9/17/2018 7:17 AM  
**Subject:** Disclosure of environmental and social safeguards information for Category I-1 programme  
**Bc:** Liane Schalatek  
**Attachments:** ESS\_20180917\_WB-Indonesia\_Geothermal\_m final.pdf

---

**Subject: IDP – Disclosure of environmental and social safeguards information for Category I-1 programme****To: Active Observers of the Green Climate Fund**

Dear active observers,

The Board, by its decision B.12/35 adopted the Information Disclosure Policy (IDP) of the Green Climate Fund. Paragraph 17(b) of the IDP states that “[w]ith 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:... in 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....”

Nevertheless, paragraph 15.01(e) of the Accredited Master Agreement with the World Bank (International Bank for Reconstruction and Development and International Development Association) states: “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].”

The World Bank invokes the afore-quoted AMA provision in relation to the subject disclosure regarding the Indonesia Geothermal Resource Risk Mitigation Project (GREM).

For the Board’s information, please find attached form containing the link to the Draft Environmental and Social Management Framework (ESMF), which was disclosed in the website of the World Bank in English on 15 May 2018. The Draft ESMF contains an ESMS consistent with the requirements for a Category I-1 programme. The website of the intermediary, PT. Sarana Multi Infrastruktur, contains the English and Bahasa Indonesia versions of the Draft ESMF.

We thank you for your consideration.



Best wishes,

Dae

**Danielle-Anne (Dae) O. Rubinos**  
**Information Disclosure and Observer Liaison Specialist**  
Office of Governance Affairs  
T: [+82 32 458 6299](tel:+82324586299)  
M: [+82 10 7458 6299](tel:+821074586299)  
E: [drubinos@gcfund.org](mailto:drubinos@gcfund.org)



**Green Climate Fund**  
Songdo International Business District  
G-Tower, 175 Art Center-daero  
Yeonsu-gu, Incheon 22004  
Republic of Korea  
[www.greenclimate.fund](http://www.greenclimate.fund)

The information contained in or accompanying this email and any attachment thereto, is intended solely for the use of the stated recipient(s) and may contain information that is confidential and/or privileged. Any dissemination, distribution or copying of this email and any attachment by anyone who is not a stated recipient is strictly prohibited. If you receive this message in error, please notify the sender immediately and delete the message and any attachment from your system without retaining a copy.

## **Annex 2**

### **Liane Schalatek - IDP – Disclosure of environmental and social safeguards information for Category A project**

---

**From:** Green Climate Fund - OBSERVERS <observers@gcfund.org>  
**Date:** 9/19/2018 10:12 PM  
**Subject:** IDP – Disclosure of environmental and social safeguards information for Category A project  
**Bc:** Liane Schalatek  
**Attachments:** ESS\_20180919\_ADB\_Pakistan\_m final.pdf

---

### **Subject: IDP – Disclosure of environmental and social safeguards information for Category A project**

#### **To: Active observers of the Green Climate Fund**

Dear active observers,

The Board, by its decision B.12/35 adopted the Information Disclosure Policy (IDP) of the Green Climate Fund. Paragraph 17(a) of the IDP states that “[w]ith 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:... 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 ....”

Nevertheless, paragraph 15.01(e) of the Accredited Master Agreement with the Asian Development Bank (ADB) states: “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 and procedures** [emphasis supplied].”

ADB invokes the afore-quoted AMA provision in relation to the subject disclosure regarding the Green Bus Rapid Transit (BRT) Karachi.

For the Board’s information, please find attached form containing the link to the comprehensive Environmental Impact Assessment (EIA), which was disclosed in the website of the ADB in English, one of the official languages in Pakistan, on 21 June 2018. The comprehensive EIA contains an ESIA and ESMP consistent with the requirements for a Category A project.

We thank you for your consideration.

Best wishes,

Dae

**Danielle-Anne (Dae) O. Rubinos**  
**Information Disclosure and Observer Liaison Specialist**

Office of Governance Affairs

T: [+82 32 458 6299](tel:+82324586299)

M: [+82 10 7458 6299](tel:+821074586299)

E: [drubinos@gcfund.org](mailto:drubinos@gcfund.org)



**Green Climate Fund**

Songdo International Business District

G-Tower, 175 Art Center-daero

Yeonsu-gu, Incheon 22004

Republic of Korea

[www.greenclimate.fund](http://www.greenclimate.fund)

The information contained in or accompanying this email and any attachment thereto, is intended solely for the use of the stated recipient(s) and may contain information that is confidential and/or privileged. Any dissemination, distribution or copying of this email and any attachment by anyone who is not a stated recipient is strictly prohibited. If you receive this message in error, please notify the sender immediately and delete the message and any attachment from your system without retaining a copy.