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GCF/B.27/10

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

Summary

By Decision B.22/22 of 26 February 2019 the Board 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.”

In pursuance of Decision B.22/22, the Head of the IRM in consultation with the Ethics and Audit Committee has prepared the draft Guidelines set out in Annex II for consideration and adoption by the Board. A draft Decision is also provided at Annex I. The Certificate of the Ethics and Audit Committee is at Annex III.

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I. Background

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.”

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.”

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 was considered and approved by the EAC for Board presentation. A draft Board Decision is also provided at Annex I. A certificate from the Chair of the EAC is attached at Annex III.

II. Key features of the Guidelines

4. 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
- (f) Conflicts of Interest and Recusal
- (g) Closed-Door Meetings
- (h) Board Decision Making in the Absence of Consensus

III. Recommended action by the Board

5. The IRM, together with the Ethics and Audit Committee, recommends the draft guidelines set out in Annex II for consideration and adoption by the Board (Annex III). Once adopted, the Guidelines could be applied by the Board whenever an IRM report on a reconsideration request or complaint/grievance has to be considered by the Board.

Annex I: Draft decision of the Board

The Board, having considered document GCF/B.27/10 titled “Guidelines to facilitate Board consideration of IRM reports on reconsideration requests, grievances or complaints”:

Adopts the Guidelines as set out in Annex II to this document.

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) Expeditiously at its following meeting or between meetings as the case may be, 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;

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

- (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;
- (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, together with all relevant documents and recommendations by ITAP as attachments to the report;
 - (b) A summary of the request for reconsideration, together with the original submission for reconsideration as an attachment to the report;
 - (c) A summary of the steps taken, and decisions/actions 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, together with the original submission as an attachment to the report, subject to applicable confidentiality;
 - (b) A summary of the response from the GCF Secretariat together with the original response as an attachment to the report;
 - (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.

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

³ See paragraph 58 of the IRM's PGs.

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 of the PGs state:
19. The Board shall consider such report as soon as possible or at the next Board meeting 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 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 In relation to requests for reconsideration, the Board is required to "consider the report as soon as possible or at the next Board meeting". 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 Early consideration of the agreement is essential for providing a speedy remedy and as such the Board will consider IRM reports referred to in paragraph 4.3 above according to the procedure set out in paragraph 4.6 below.
- 4.5 In the case of IRM reports on grievances or complaints, paragraph 63 of the PGs 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. Any such steps should be taken by the Board within thirty (30) calendar days from the date of circulation of the report to the Board on a no objection basis in accordance with the relevant provisions of the rules of procedure of the Board.
- 4.6 In the case of a grievance or complaint, the IRM's report will ordinarily be circulated (with the usual 21-day notice) to the Board (including Active Observers, subject to

paragraph 7.1 of these Guidelines) for consideration and decision at the very next Board meeting. Where there is urgency or where the issues involved are uncomplicated or self-evident, and the next Board meeting is more than 30 days from the date the IRM's report is issued, the IRM report will be circulated to the Board (including Active Observers, subject to paragraph 7.1 of these Guidelines) with the invitation to consider the grievance or complaint and approve the proposed recommendations on a no-objection basis within 30 days.⁴

- 4.7 In the case of a grievance or complaint, IRM reports shall facilitate this decision-making by the Board, by proposing text for a composite Board decision in accordance with the findings, conclusions and the recommendations on the complaint or grievance. At the end of the 30-day period, if there are no objections, the proposed Board decision will be deemed approved and the IRM will, where appropriate, monitor the implementation of the decision. If, however, objections are received from Board members, the relevant provisions of the Rules of Procedure of the Board shall apply with regard to addressing such objections.

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.⁵
- 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 report⁶ 'based on the findings and any recommendations contained in the final compliance report'.⁷ 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, in the exceptional cases under paragraph 7.1, where the Co-Chairs decide to conduct a closed-door session of the Board to consider an IRM report, the Board shall, in the event of it disagreeing with a finding or recommendation of the IRM, prepare a summary⁸ of the reasons given by Board members for such disagreement. The summary will be prepared with the assistance of the Secretary to the Board and the Office of General Counsel and 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

⁴ Please also see Section 7.1 of the Rules of Procedures of the Board, paragraph 63 of the IRM's PGs and paragraphs 7.1 and 7.2 of these Guidelines.

⁵ See paragraph 60 of the IRM's PGs.

⁶ Paragraphs 10 and 15 of the IRM's TOR and paragraph 19 of the PGs.

⁷ Paragraph 63 of the PGs.

⁸ The summary will be based on a confidential verbatim record of the closed-door meeting maintained by the Secretary to the Board.

the IRMs Reports together with its decisions. Additionally, the Board may include the notes of the meeting relevant to the consideration of the IRM report or in the case of a closed-door meeting under paragraph 7.1, the summary of reasons on the IRM's Reports.

- 5.4 Paragraph 7 of the Policy states that “any form of discrimination based on any ground, such as gender, race, colour, national, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be against the Policy.” This standard will be followed by the Board when the Board considers IRM reports on cases. The Policy further states that Board members should not “...act in any manner that will undermine public confidence and trust in the Fund’s governance”.

VI. Conflicts of Interest and Recusal

- 6.1 The Policy and Rules of Procedure apply in full to the Board when making decisions on IRM case reports. The paragraphs relating to conflicts of interest are set out in Section VIII of the Rules of Procedure and in more detail in Section VI of the Policy.
- 6.2 The attention of Board members is drawn in particular to the provisions in the Policy which deal with reasonable perceptions of conflicts of interest (paragraph 17 and 18 of the Policy). When called upon to consider IRM case reports, Board members are encouraged to reflect on whether there may be a reasonable perception that a conflict of interest exists in the eyes of the developing country requester, complainant, Secretariat, or accredited entity arising from their interests or actions, or those of their immediate family members or any associated institution.
- 6.3 In accordance with paragraph 21 of the Policy, all actual or potential conflicts of interest or the reasonable appearance thereof must be disclosed in writing to the Ethics and Audit Committee (EAC).
- 6.4 In accordance with paragraph 23 of the Policy, when it is determined by the EAC that an actual or potential conflict of interest exists, the Board member shall not participate in the consideration of the IRM case reports absent a waiver from the EAC or, if the matter has been referred to the Board, from the Board.

VII. Closed-Door Meetings

- 7.1 The Board will hold open meeting sessions for the consideration of IRM reports on complaints and reconsideration requests. On an exceptional basis the Co-Chairs may decide to hold a closed-door Board session on such an IRM report, either at the request of the IRM or a Board member, on account of security reasons, or to preserve confidentiality in the interests of the complainant, other stakeholders or the GCF. When the Board decides to hold a closed-door session on an IRM report, the Board will exclude all observers and GCF staff. The only persons allowed in the Board room will be the Board members, Alternate Board members, Advisors to Board members, a report writer and the Head of the IRM and IRM staff. The Executive Director of the GCF may also be present during a closed-door session but should not participate in the deliberations

unless called upon to do so by the Board. Regarding decisions that are made between Board meetings, Board discussions will be conducted through the established channel for such discussions.

- 7.2 The Board should only consider an IRM report between Board meetings where there is urgency or where the issues involved are uncomplicated or self-evident.
- 7.3 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-door meeting under paragraph 7.1, will be made public by the IRM in accordance with the PGs and these Guidelines.

VIII. Board Decision Making in the Absence of Consensus

- 8.1 If the Board is unable to reach a consensus on its decision on an IRM case report, the provisions applicable to Board decision making in the absence of consensus will be followed to arrive at a Board decision on the recommendations of the IRM.

Annex III: Certificate of the Ethics and Audit Committee

The Ethics and Audit Committee (EAC) considered the IRM’s draft “Guidelines to facilitate Board consideration of IRM reports on reconsideration requests, grievances or complaints” at its 78th meeting held on 1st April 2020, 80th meeting held on 7th May 2020, 81st meeting held on 19th May 2020, 82nd meeting on 11th June 2020, 83rd meeting held on 30th June 2020, 84th meeting held on 16th July 2020, and the 86th meeting held on 7th October 2020, and having made several revisions to the draft, including revisions in response to comments received as a results of consultations with the Board and Active Observers, has decided by consensus to recommend and forward the final version of the “Guidelines to facilitate Board consideration of IRM reports on reconsideration requests, grievances or complaints” set out in the Board paper and Annex II in this document to the Board for its consideration and adoption.



Stefan Schwager,
Chairperson,
Ethics and Audit Committee
7th October 2020.
