

Redress

Compliance Appraisal Report

Case C-0006-Nicaragua



GREEN
CLIMATE
FUND

FP146: Bio-CLIMA: Integrated climate action to reduce deforestation and strengthen resilience in BOSAWÁS and Rio San Juan Biospheres

24 March 2022

ABBREVIATIONS

Abbreviation	Definition
AE	Accredited Entity
CABEI	Central American Bank for Economic Integration
EE	Executing Entity
ENDE-REDD+	National Strategy for Avoided Deforestation, and the Caribbean Coast Emission
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
ESP	Environmental and Social Policy of the GCF
FAA	Funded Activity Agreement
FP	Funding Proposal for the Project
FPIC	Free, Prior, and Informed Consent
GAP	Gender Action Plan
GCF	Green Climate Fund
GRM	Grievance Redress Mechanism
GTI	Indigenous Territorial Governments
IACHR	InterAmerican Commission on Human Rights
IDP	Information Disclosure Policy of the GCF
IFC	International Finance Corporation
IP	Indigenous peoples
IPP	Indigenous Peoples Policy of the GCF
IPPF	Indigenous peoples planning framework
IRM	Independent Redress Mechanism
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCRA	Peaceful Co-habitation Regime Agreement
PGs	Procedures and Guidelines of the Independent Redress Mechanism
REDD+	Reduced Emissions from Deforestation and Forest Degradation
TOR	Terms of Reference of the Independent Redress Mechanism
UGP	Updated Gender Policy of the GCF
UN	United Nations
USD	US Dollars
WB	World Bank

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EXECUTIVE SUMMARY

On 30 June 2021, the IRM received and acknowledged a complaint regarding FP146 “Bio-CLIMA: Integrated climate action to reduce deforestation and strengthen resilience in BOSAWÁS and Rio San Juan Biospheres.” The complainant(s) alleged that the project would harm indigenous and Afro-descendant communities as (i) there was no proper consultation with communities, including no free, prior, and informed consent; (ii) the project would lead to environmental degradation and attacks by armed non-indigenous settlers; (iii) the Accredited Entity’s (AE) actions do not seem to comply with the Green Climate Fund’s (GCF) policies on participation and information disclosure; (iv) the GCF Board conditions placed on the project, would not be defined and complied with effectively; and (v) the executing entity would not fulfil its obligations in the implementation of the Bio-CLIMA project.

The complainant(s) requested and were granted confidentiality by the IRM in accordance with its Terms of Reference (TOR) and Procedures and Guidelines (PGs) and as a result of its retaliation risk assessment. The complaint was declared eligible on 21 July 2021, the initial steps phase (including attempts at problem solving/mediation) concluded on 17 January 2022, and the case was referred to compliance review. Subsequently, the IRM requested the GCF Secretariat to provide a response to the complaint and a response was submitted on 3 March 2022.

Having received the response, the IRM undertook its compliance appraisal to consider whether there is *prima facie* evidence that the complainant(s) have been affected or may be affected by adverse impacts through non-compliance of the GCF-funded project or programme with GCF operational policies and procedures, in particular, GCF Interim Environmental and Social Safeguards, GCF Environmental and Social Policy (ESP), GCF Indigenous Peoples Policy (IPP), and GCF Updated Gender Policy (UGP). The IRM reviewed materials such as the complaint, the response of the GCF Secretariat and attached documents, project documentation prepared by the AE and Secretariat, additional documentation and information provided by the complainant(s) and publicly available information from reliable and credible sources.

The IRM considered three central questions in the preparation of the compliance appraisal report. As a result of non-compliance with GCF policies and procedures, (i) will indigenous and vulnerable populations face increased violence, including gender-based violence, from non-indigenous settlers? (ii) have the rights of indigenous communities to “Free, Prior and Informed Consent” (FPIC) been violated or will such rights be violated in the future? and (iii) will afro-descendent and indigenous communities face increased usurpation of lands titled to them and restrictions to access natural resources?

Following the compliance appraisal process and assessment set out in this appraisal report, the IRM concludes that there is *prima facie* evidence of adverse impacts caused or that may be caused by the non-compliance of the project with GCF’s operational policies and procedures. The IRM will now commence a compliance investigation to investigate the matter further and prepare a compliance report for the Board.

INTRODUCTION

1 The Independent Redress Mechanism (IRM) is an accountability and redress mechanism established by the Green Climate Fund (GCF) to increase the effectiveness of the GCF's operations, and to be responsive to the concerns of people adversely affected by GCF funded projects or programmes.

2 Among others, the IRM is mandated to receive and consider complaints from people who believe they have been, or may be, adversely impacted by GCF projects or programmes failing to comply with GCF policies and procedures (including social and environmental safeguards).

3 The IRM is independent of the GCF Secretariat, and reports directly to the GCF Board, which oversees the GCF's investments and management.

PROJECT BACKGROUND

4 On 13 November 2020, the GCF Board approved FP146 "Bio-CLIMA: Integrated climate action to reduce deforestation and strengthen resilience in BOSAWÁS and Rio San Juan Biospheres" (B.27/01) with conditions imposed by the Board ("Board Conditions").¹ The project aims to promote sustainable land-use management and forest management to ultimately restore degraded forest landscapes in the Bosawás and Rio San Juan Biosphere Reserves in the Caribbean Region of Nicaragua. The AE of this project is the Central American Bank for Economic Integration (CABEI) and the Executing Entity (EE) is the Government of Nicaragua.

5 The total project cost is USD 116,642,213 which includes GCF funding and co-financing amounting to USD 64,094,029. The Project is co-financed with loans from the AE, and with grants from the Global Environment Fund. The Funding Proposal (FP) contextualizes the project as part of Nicaragua's programmatic approach to implement its National REDD+ Strategy.²

6 Per the FP, the project seeks to reduce emissions by addressing deforestation in the Caribbean Region of Nicaragua; a region that covers 54% of the national territory, contains 80% of Nicaragua's forests and is home to most of the country's indigenous populations. The target project locations (Autonomous Region of the Caribbean North Coast (RACCN), Autonomous Region of the Caribbean South Coast (RACCS), Alto Wangki / Bocay Region, and Río San Juan Department) are important areas for the conservation of biodiversity and the livelihoods and cultures of indigenous and afro-descendant peoples.

7 The project aims to fulfil its objectives through (i) investments for sustainable landscape restoration and management; (ii) the creation of an enabling investment environment; and (iii) strong local capacities for territorial governance and law enforcement. The project is expected to support 95 sub-projects in sustainable community enterprises for business plan preparation and 98 sub-projects for sustainable forest management and harvesting. A total of approximately 165 Sub-projects are expected to be supported towards commercial community forest restoration.

¹ See p. 17-19, <https://www.greenclimate.fund/sites/default/files/document/gcf-b27-22.pdf>

² <https://www.greenclimate.fund/document/bio-clima-integrated-climate-action-reduce-deforestation-and-strengthen-resilience-bosaw-s>

8 The Funding Activity Agreement (FAA) for the Project was executed on 11 August 2021, and subsequently, came into effect on 9 December 2021. The FAA reflected the several conditions imposed by the GCF Board in its decision to approve the project. The AE has been given time by the GCF Secretariat until 7 June 2022 to fulfill the Board's conditions prior to the first disbursement of funds for this project.

COMPLAINT

9 On 30 June 2021, the IRM received and acknowledged a complaint regarding FP146. The complainant(s) requested confidentiality, and the IRM granted it in accordance with its Terms of Reference (TOR)³ and Procedures and Guidelines (PGs)⁴ of the IRM, and because of its own retaliation risk assessment.

10 The complainant(s) alleged that the project has and would harm indigenous and Afro-descendant communities as

- (i) prior to the approval of the project, there was no proper consultation with communities, including no free, prior, and informed consent (FPIC);
- (ii) the project will lead to environmental degradation and attacks by armed non-indigenous settlers;
- (iii) the indigenous communities affected by this project have been victims of multiple attacks, and the communities fear that this could further increase these attacks;
- (iv) the Accredited Entity's actions do not seem to comply with the GCF's policies, especially on participation and information disclosure;
- (v) the GCF Board conditions placed on the project, especially relating to the implementation of FPIC and to the selection of independent third-party monitor(s), will not be defined and complied with effectively; and
- (vi) the executing entity will not fulfil its obligations in the implementation of the Bio-CLIMA project.

PROCEDURAL HISTORY

11 On 21 July 2021, the IRM determined that the complaint was eligible⁵ under paragraphs 20-21 and 23-4 of the PGs. Subsequently, the IRM began engaging with the complainant(s) and other stakeholders in the initial steps phase, to further evaluate the issues in the complaint and to provide further information on the options available regarding the processing of the complaint.

12 As part of this process, the IRM's Compliance and Dispute Resolution Specialist undertook a mission to Central America to meet with several stakeholders and conducted virtual online consultations with the AE and the government of Nicaragua, and both virtual and in-person consultations with the AE and GCF staff. At the conclusion of these meetings, parties initially agreed to engage in problem-solving, facilitated by the IRM. However, despite the 180 days provided (exceeding the 60 days normally allowed for this purpose by the

³ <https://irm.greenclimate.fund/document/irm-tor>

⁴ <https://irm.greenclimate.fund/document/2019-procedures-and-guidelines-irm>

⁵ <https://irm.greenclimate.fund/sites/default/files/case/c0006-nicaragua-eligibility-determination.pdf>

PGs) the parties were unable to agree on the content and issues for mediation. Consequently, the IRM referred the complaint for compliance review on 17 January 2022.

13 Following the referral of the complaint to compliance review, on 31 January 2022, the IRM requested the GCF Secretariat to provide a response to the complaint within twenty-one days i.e. on or before 21 February 2022 in accordance with the PGs. On 31 January 2022, the IRM also informed the AE and the National Designated Authority that it had requested a response to the complaint from the Secretariat and to liaise with the Secretariat regarding the same. On 7 February 2022, the Secretariat also wrote to the AE asking it to liaise with the Secretariat as it prepares its response.⁶

14 In addition to the issues raised in the complaint, the IRM identified the following potential non-compliances of the project with GCF's operational policies and procedures by the GCF Secretariat and/or the Accredited Entity and/or the Executing Entity which, if proven, may potentially adversely affect the complainant(s):

- Non-compliance with the GCF's Interim Environmental and Social Safeguards [Performance Standards of the International Finance Corporation] (Decision B.07/02, paragraph (c) and Annex III), in particular with performance standards 1, 3, 4, 5, 6 and 7;
- Non-compliance with the GCF's Environmental and Social Policy (as originally adopted by Decision B.19/10, paragraph (b) and annex X), in particular with paragraphs 8(a), (i), (m), (p), and (q), 12(b), 13, 14(a)(v), 16-18, 26-27, 37-38; 47-48, 60, 62-63, 67, 69, and 78;
- Non-compliance with the GCF's Indigenous Peoples Policy (Decision B.19/11 of Annex XI), in particular with paragraphs 26-27, 31, 35, 44, 46, 48, 51, 52, 58, and 60 and paragraph 39 of the Operational Guidelines issued by the Secretariat under the said Policy; and
- Non-compliance of the above GCF project with the GCF's Updated Gender Policy (Decision 24/12), in particular with paragraphs 5, 20, 21, 22 and 25.

15 As indicated in the PGs, the Secretariat was requested to provide information: (i) related to the factual statements and allegations in the complaint; (ii) about the steps taken by the GCF Secretariat to ensure compliance with applicable GCF operational policies and procedures, including those identified by the complainant(s) or IRM; and (iii) about remedial actions, if any, that the GCF Secretariat may have taken or intends to take to ensure compliance with such policies or procedures, as appropriate.

16 On 21 February 2022, the GCF Secretariat requested an extension of time to submit its response, citing the following reasons: a) challenges related to COVID-19 working arrangements within the GCF Secretariat; and b) more time required for interdivisional collaboration and effort within the Secretariat to prepare the response. Acting in terms of paragraph 95 of the PGs, the IRM extended the period for the Secretariat to provide a response from 21 February 2022 to 3 March 2022 (10 calendar days). On 3 March 2022, the GCF Secretariat submitted a response to the complaint. In its response, the Secretariat limited the scope to a review and assessment of the FP and the status of preparation and risk management prior to the start of project activity implementation.

17 In summary, the Secretariat maintains that the project has complied with the operational policies and procedures of the GCF applicable to the matters raised in the complaint, as assessed by the Secretariat in its due diligence, and review of the funding proposal submitted by the AE. The Secretariat states that the project has complied with applicable GCF policies and procedures concerning stakeholder engagement, consultation, and FPIC, at the development and approval stages of the project. The Secretariat states that in

⁶ The Secretariat submitted a copy of its communication to the AE as part of its response.

its assessment, the Environmental and Social Management Framework (ESMF) of the project adequately addressed the key issues and risks relating to GCF's interim Environmental and Social Safeguards (ESS), including safeguard 1: "Assessment and Management of Environmental and Social Risks and Impacts", 3: "Resource Efficiency and Pollution Prevention", 4: "Community Health, Safety, and Security", 5: "Land Acquisition and Involuntary Resettlement", and 7: "Indigenous Peoples". Regarding transparency, the Secretariat states that the AE has complied with the Information Disclosure Policy (IDP) and Environmental and Social Policy (ESP) in respect to disclosure of environmental and social reports of the Project.

18 The Secretariat also noted its role in actively monitoring the Board conditions linked to the first and second disbursements. The response states that where gaps or weaknesses exist, the Secretariat will require that the AE address these concerns, so an effective system is put in place before GCF-financed activities are implemented on the ground. With regard to remedial actions undertaken by the Secretariat (if any), the response states that as the Secretariat views the project to be in compliance with GCF's operational policies and procedures, there is no basis for taking any such action. In its response the Secretariat has detailed the various steps and assessments it undertook as part of its due diligence.

19 Having received the response, the IRM undertook its compliance appraisal to consider whether there is *prima facie* evidence that the complainant(s) has been affected or may be affected by adverse impacts through non-compliance of the GCF funded project or programme with GCF operational policies and procedures. This appraisal report is the result of that process.

20 At this stage, the two issues for decision by the IRM is whether the "GCF funded project or programme" has complied with GCF operational policies and procedures, and if not, whether the non-compliance has led or will lead to the complainant(s) being affected. It is important to note, that the focus of the IRM is on "project or programme" compliance, irrespective of who might be responsible for ensuring that compliance. Compliance is ensured by the AE, the Secretariat, and the EE through the exercise of various levels of due diligence as applicable to them with regard to the adherence and implementation of the operational policies and procedures of the GCF and the AEs own policies. At this stage, the IRM will assess the two issues stated above as at the date the project was approved by the Board.

21 In the compliance appraisal process, the IRM must be satisfied that there is *prima facie* evidence that the complainant(s) have been affected or may be affected by adverse impacts through non-compliance of the project with GCF operational policies and procedures. In other words, when assessing the limited material available to the IRM at this preliminary stage, on first sight what does the evidence show? When the IRM makes a finding at this stage regarding a fact, it is only a preliminary conclusion and may well be contradicted by further evidence collected during an investigation that may follow. A *prima facie* finding is a conclusion that the IRM makes to decide whether or not to proceed to a full investigation. In this context, a *prima facie* finding is not conclusive nor is it the final finding by the IRM.

COMPLIANCE APPRAISAL

ISSUES RAISED

22 In the preparation of this compliance appraisal report, the IRM has reviewed the following materials available to it at this time: (i) the complaint; (ii) the response of the GCF Secretariat and attached documents; (iii) project documentation prepared by the AE and Secretariat (for example Funding Proposal, Environmental

and Social Management Framework, Indigenous Peoples Plan, Gender Action Plan, Stakeholder Engagement Plan); Records of stakeholder engagement meetings; (iv) additional documentation and information provided by the complainant(s); and (v) publicly available information from reliable and credible sources, including material referenced in (i) to (iv) above. This is the first appraisal report of the IRM in a complaint. It is perhaps longer than would typically be the case, as it seeks to explain applicable concepts for future reference and guidance.

23 In the IRM's view, the following three central issues arise for consideration in the compliance appraisal of this case.

- (i) Will indigenous and vulnerable populations face increased violence, including gender-based violence, from non-indigenous settlers through non-compliance with GCF Interim Environmental and Social Safeguards, GCF Environmental and Social Policy, GCF Indigenous Peoples Policy and Updated Gender Policy?
- (ii) Have the rights of indigenous communities to "Free, Prior and Informed Consent" been violated or will such rights be violated in the future by non-compliance of the project with GCF's Interim Environmental and Social Safeguards, GCF Environmental and Social Policy, and GCF Indigenous Peoples Policy?
- (iii) Will afro-descendent and indigenous communities face increased usurpation of lands titled to them and restrictions to access natural resources due to non-compliance of the project with GCF Interim Environmental and Social Safeguards, GCF Environmental and Social Policy, and GCF Indigenous Peoples Policy?

24 As a preliminary matter in addressing these central questions, the IRM observes that in all the documentation relating to this funding proposal, it is referred to as a "project", and never as a "programme". The AE, the EE and the Secretariat refer to the collection of activities in the funding proposal as a "project", including when it was publicly presented to the Board for approval. While the term programme has not been used regarding this funding proposal, the term "sub-project" is often used to describe future activities within this proposal. Per the GCF Programming Manual,⁷ in one view, this funding proposal ought to have been classified and called a "programme." For example, the proposal is supported by an Environmental and Social Management Framework (ESMF), which is typically a document prepared for a programme. The Secretariat and AE appear to have treated the proposal as such in their application of GCF policies.

25 There is a critical and important distinction between a "project" and a "programme". The nature, scope and content of environmental and social impact assessments required for a programme and project differ significantly. At this stage, the IRM makes no finding with regard to the impact of such labelling on the perception of the FP by the complainant(s) or other stakeholders. For the purposes of this appraisal report, the IRM will follow the terminology of "project" used by the Secretariat in documentation related to the FP and reflected in its response, noting that in essence the proposal is a programme. The IRM will now turn to the three central questions which are addressed below.

⁷ "[a] GCF programme could be defined as a set of interlinked individual sub-projects or phases, unified by an overarching vision, common objectives and contribution to strategic goals, which will deliver sustained climate results and impact in the GCF result areas efficiently, effectively and at scale." GCF Programming Manual (2020)
<https://www.greenclimate.fund/sites/default/files/document/gcf-programming-manual.pdf>

CONFLICT BETWEEN NON-INDIGENOUS SETTLERS AND INDIGENOUS AND AFRO-DESCENDENT COMMUNITIES: VIOLENT ATTACKS, DISPOSSESSION AND DISPLACEMENT OF VULNERABLE POPULATIONS LOCATED IN THE PROJECT AREA

26 It is common ground between the complainant(s), the Secretariat, and the AE that the Bosawás and Rio San Juan Biosphere Reserves, where the project will be implemented, are areas in which there are ongoing violent conflicts and ‘invasions’ by non-indigenous settlers occupying indigenous territories. As alleged in the complaint, the locations, severity, and nature of the violence in the region vary – ranging from massacres to forced displacement of indigenous and afro-descendent peoples, villages and targeted threats, attacks, and injury of individuals, including gender-based violence.

27 In the period between 2011-2020, complainant(s) allege “49 indigenous Miskitus were killed, 49 injured, 46 kidnapped, and four persons remain missing... around a thousand indigenous people have been forcibly displaced. These acts have also generated serious food insecurity among indigenous people deprived of their lands and livelihoods.⁸” The complainant(s) also allege that “[t]he GCF project is set to be implemented in reserves that currently are being deforested by the massive invasion of settlers, extensive cattle ranching, the introduction of extractive companies for logging, gold mining and monoculture plantations, such as African palm...”. In particular they allege that “...in the case of gold mining [the national government] even participates in perpetuating these harms through the state company...”. Complainant(s) further allege that “impunity for these violent acts is the norm” and that the State of Nicaragua has failed to provide information on the number and status of investigations of the murders and attacks.

28 In their preparation of the FP and due diligence review of the same, the AE and Secretariat respectively acknowledged the conflicts in the region. The project ESMF, prepared by the AE, acknowledges existing tensions (“increasing presence of illegal settlers – “colonos” - in indigenous and afro-descendant territories, that could spur violence⁹”) and further notes the underlying factors. (“Settlers came to these indigenous territories through invasion, legal or illegal purchase of land or land transfer to colonists made by the Governments in the context of the Agrarian Reform, or also a form of compensation for ex-combatants. This has led to recurrent tensions in the territories”).¹⁰

29 The Secretariat in its assessment of the FP identifies the “aggravation of conflicts between IPs and colonos” as one of the major risks of the project. The assessment further concurred with the assigned environmental and social risk (Category A), given that the “current socio-political situation in the project area¹¹” could trigger major conflicts. The Secretariat further identified the prevalence of gender-based violence in the region in its Gender Action Plan, albeit with no mention or analysis on how the project and/or the conflict situation may escalate or exacerbate these risks.

30 In this context, the complainant(s) have drawn the attention of the IRM to several decisions of the Inter-American Commission of Human Rights (IACHR i.e. a commission established by the Organisation of American States), including a recent decision of 13 February 2022 granting precautionary measures in

⁸ Text of the complaint (Confidential). See <https://irm.greendimate.fund/case/c0006>

⁹ See p. 57 Environmental and Social Safeguards Management Framework “BIO-CLIMA Project” https://www.bcie.org/fileadmin/user_upload/Annex_6_English_Bio-Clima_Environmental_and_Social_Safeguards_Management_Framework.pdf

¹⁰ See p. 58 Environmental and Social Safeguards Management Framework “BIO-CLIMA Project” https://www.bcie.org/fileadmin/user_upload/Annex_6_English_Bio-Clima_Environmental_and_Social_Safeguards_Management_Framework.pdf

¹¹ Secretariat’s Assessment of FP146

pending complaints filed with that commission by indigenous people in the project area.¹² These precautionary measures were first granted in October 2015 and have since been extended to different indigenous communities in this area from time to time. The most recent decision of the IACHR delivered on 13 February 2022, having set out a series of facts about killings of, injuries to, abductions of and violence against indigenous peoples in these areas, concluded that precautionary measures should be issued. In doing so, it adopted the self-same *prima facie* approach to the evidence presented to it by the indigenous people who filed those applications and the State of Nicaragua. In its decision, the IACHR also observes:

“The Commission expresses its extreme concern about the serious and intense violence that is shown by the facts alleged by the representatives in the context of violence assessed by the Inter-American Court in provisional measures in force. The Commission observes that the third parties or “settlers” are reportedly heavily armed and seek to seize indigenous lands that have been in a land titling process for years. The factual elements indicate that over time not only have there been threats against indigenous people who are the proposed beneficiaries, but also that they have materialized over time. Only in August and October 2021, the Commission notes that there were violent events against Mayangnas, including violent deaths. The Commission also observes that, despite the domestic complaints, the representatives have raised questions about the lack of investigation on the acts of violence.”

31 The 2022 Annual Report of the UN High Commissioner for Human Rights on Nicaragua¹³ delivered to the 49th Session of the UN Human Rights Council stated: *“Nicaragua’s indigenous peoples have continued to suffer violent attacks in the context of land disputes, most of them in complete impunity. In 2021, OHCHR received reports of at least six attacks and violent incidents, resulting in at least 11 indigenous men killed, one woman and one girl raped and seven persons injured, including two children.”*

32 The complainant(s) in this case have provided the IRM with a map indicating the locations, names, and dates of killings of dozens of Mayangna indigenous people in the Bosawás area during the 2020-2021 period. Two notable incidents indicate the use of violence as a tool to intimidate communities. In January 2020, 6 indigenous people were reportedly killed, and 10 kidnapped after scores of armed men allegedly raided Mayangna Sauni As territory.¹⁴ Additionally, testimony by community members indicate that 13 houses were burned and survival goods were looted, which seriously affected the community.¹⁵

33 In August 2021, a massacre of at least 11 indigenous people including the sexual assault and murder of women and girls, was widely reported in the Mayangna Sauni As territory. Two Indigenous women were reportedly sexually assaulted. Per statements recorded by IACHR, one victim was repeatedly raped prior to her death and had a leg mutilated. Another victim, who survived the attack, was repeatedly sexually abused by the attackers, and was forced to witness the murder of her husband.¹⁶ A minor who was present at the time of the attack, was forced to watch his stepfather being murdered and tortured. The locations show that these incidents are allegedly occurring in the project area and within the Bosawás reserve.

34 The AE’s project ESMF and FP define management measures to address the risk of increased conflict. The proposed measures include a mix of project interventions (implementation of Territorial Development

¹² https://www.oas.org/en/iachr/decisions/mc/2022/res_9-22_mc_505-15_ni_en.pdf

¹³ See (A/HRC/49/23) 2022 Annual Report on Situation of Human Rights in Nicaragua. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_49_23_AdvanceEditedVersion.pdf

¹⁴ <https://www.theguardian.com/world/2020/jan/30/nicaragua-massacre-six-indigenous-killed-nature-reserve>

¹⁵ See p.4 https://www.oas.org/en/iachr/decisions/mc/2022/res_9-22_mc_505-15_ni_en.pdf

¹⁶ See p.5 https://www.oas.org/en/iachr/decisions/mc/2022/res_9-22_mc_505-15_ni_en.pdf

Plans and facilitating peaceful cohabitation through agreements), capacity building of environmental and forest law enforcement and accountability mechanisms, and adoption of strict exclusion criteria for sub-project activities that may adversely impact indigenous and afro-descendent communities. At the sub-project level, an “analysis of any situation of conflict or violence in the areas” and “consideration of more specific mitigation measures” are included in the environmental and social assessments. The Secretariat, at the overall project level, found these measures to be sufficient as part of the due diligence and risk management undertaken by the AE.

35 In summary, the AE, Secretariat, and complainant(s) are all in agreement about the prevalence of recurrent violent conflicts in indigenous territories where the project will be located. The *prima facie* evidence assessed above shows that these recurrent violent conflicts include (1) killings of dozens of indigenous and afro-descendent peoples, (2) forcible invasions and occupation of lands titled to indigenous peoples by non-indigenous settlers, (3) disappearances of and bodily injuries to indigenous and afro-descendent peoples, (4) gender based violence, including sexual assaults on indigenous and afro-descendant women and girls, (5) exposure of indigenous children to the trauma of witnessing violence on their parents and (6) damage to property.

36 Even though the documentation prepared and reviewed by the AE and Secretariat acknowledge recurrent violent conflicts in the project area, it does not provide an assessment of the nature, extent, scope, causation, and severity of that ongoing violent conflict. It is therefore reasonable to expect that in the context of the serious and egregious nature of the ongoing violent conflict in the project area, data gathering and analysis of that conflict would have been done as part of project assessments. This latter information could have been obtained through a robust conflict analysis for the project as a whole, but as detailed above, conflict analysis, if at all, is proposed to be conducted only at the sub-project level in the future. Conflict analysis is a well-known and established tool. Notwithstanding the severity of risk of recurrent violent conflict identified in the project documents, no evidence of a robust conflict analysis for this project has been presented to or found by the IRM.

37 When designing a sound FPIC process, whether for a project or programme, the requirement to undertake good faith robust due diligence around the assessment of conflicts is further heightened, when it comes to conflicts between indigenous people on the one hand, and non-indigenous stakeholders on the other (as in this case). This is clearly set out in para 58 of the Operational Guidelines: Indigenous Peoples Policy of the GCF.¹⁷ Incidents of violence in indigenous territories where the project is to be implemented have been previously reported by national, regional and international media. The scope and severity of such incidents have been documented by international bodies such as the Inter-American Commission on Human Rights.

38 Relatedly, *prima facie*, project documents do not appear to identify or assess risks to human rights, including the right to life, expression, livelihood, due process and access to remedy. Some of that information is more readily accessed in documentation prepared by the World Bank for the complementary Emissions

¹⁷ See para 58(c) of GCF Operational Guidelines: Indigenous Peoples Policy “*The occurrence of conflict—whether past or present—within the affected communities of indigenous peoples or between the affected communities of indigenous peoples and other stakeholders (e.g. non-indigenous peoples, companies or the State) should be assessed in terms of the nature of the conflict, the different interest groups and the affected communities’ approaches to conflict management and resolution mechanisms.*” <https://www.greenclimate.fund/sites/default/files/document/ipp-operational-guidelines.pdf>

Reduction Program.¹⁸ The Appraisal Environmental and Social Review Summary, prepared by the World Bank offers a more detailed account of the human rights concerns in the project area (“*there is also some opposition from civil society in Nicaragua...raising concerns with respect to the consultation process, including with Indigenous Communities (IPs), the risk of retaliation, the passing of repressive laws and the complex political situation of the country*”) and country more broadly.¹⁹

39 Furthermore, as previously noted, violent attacks experienced by indigenous communities include instances of alleged gender-based violence targeting indigenous women and girls. The Gender Assessment and Action Plan for this project provides comprehensive background and general information about violence against women in Nicaragua and the Caribbean Coast. A portion of the plan further describes the project’s “integral approach to violence against women, in keeping with...the priority placed on reducing and responding to violence against women in the Bio-CLIMA project.” The plan outlines specific interventions designed to address the issue, including the setting up of a Grievance Redress Mechanism specifically to address gender-based violence.

40 However, project activities, risks, and proposed mitigation measures, as described in the document, *prima facie* do not sufficiently analyse the phenomenon in the context of the ongoing recurrent violent conflict in the project area, and do not consider the differential impacts on indigenous women and girls. Research noting “*violence against indigenous and Afro-descendent women also takes the form of violent confrontations and the dispossession of land*” is cited but the proposed activities and analysis of the situation make no mention of previously acknowledged project risks, specifically the risk of exacerbating violent conflict and consequently the risk of increased violence towards indigenous women and girls. The Updated Gender Policy of the GCF states that GCF will prioritize mainstreaming gender issues in its “framework” for projects. In this regard, it is reasonable to expect that the project would have had a robust analysis of the violent conflict, including an assessment of risks towards indigenous women and girls.

41 The violent conflict situation and severity of social risk detailed above raises questions about whether ‘appropriate and necessary’ due diligence has been conducted for the project to ensure compliance with GCF Policies and Procedures, particularly with regard to the application of robust environmental and social due diligence.²⁰ The Interim Environmental and Social Standards further provide for the use of human rights

¹⁸ Appraisal Environmental and Social Review Summary for World Bank Project P167434: <https://documents1.worldbank.org/curated/en/718511610473918129/pdf/Appraisal-Environmental-and-Social-Review-Summary-ESRS-Emission-Reductions-Program-to-Combat-Climate-Change-and-Poverty-in-the-Caribbean-Coast-the-BOSAWAS-and-the-Indio-Maiz-Reserves-P167434.pdf>

¹⁹ “*The response of the government to the protests of April 2018 is considered by many sources as disproportionate, with allegation of human rights abuses against people that expressed dissent and protested against government. Actors like the Inter-American Commission on Human Rights, International Amnesty, UN High Commissioner for Human Rights, the European Parliament and the United States Government among others voiced their concerns.*” Appraisal Environmental and Social Review Summary for World Bank Project P167434 <https://documents1.worldbank.org/curated/en/718511610473918129/pdf/Appraisal-Environmental-and-Social-Review-Summary-ESRS-Emission-Reductions-Program-to-Combat-Climate-Change-and-Poverty-in-the-Caribbean-Coast-the-BOSAWAS-and-the-Indio-Maiz-Reserves-P167434.pdf>

²⁰ “*GCF will require the application of robust environmental and social due diligence so that the supported activities do not cause, promote, contribute to, perpetuate, or exacerbate adverse human rights impacts.*” GCF Revised Environmental and Social Policy: <https://www.greenclimate.fund/document/revised-environmental-and-social-policy>

due diligence²¹ and additional recommendations on emergency preparedness and response.²² Further, an important component guiding the principles of GCF's Environmental and Social Policy is the promotion, protection and fulfilment of human rights in all activities supported by the GCF.²³

42 In this context, a question deserving of investigation is whether there was a need for a comprehensive human rights due diligence report and a robust conflict analysis to have been completed prior to the presentation of the project to the Board for approval. While some aspects of human rights may be arguably said to have been dealt with in the ESMF, *prima facie*, it does not appear to include a human rights due diligence report that has increasingly become standardised in scope and methods. Such an analysis would have provided the Board, the accredited observers, the Secretariat, and the AE with a much better dataset to make informed decisions about the viability of the project, its compliance with GCF safeguards and operational policies and mitigatory measures and conditions that might have been required to ensure that identified risks arising from violent conflict and from human rights violations were adequately identified, reduced and/or eliminated.

43 For the reasons described above, the IRM finds that there is *prima facie* evidence that indigenous and vulnerable communities may face increased risks of violence due to the non-compliance of the project with GCF operational policies and procedures, and that the risk from violent conflict and human rights violations have not been adequately assessed in compliance with GCF's Interim Environmental and Social Safeguards (PS 1, 4, 5, and 7), GCF Environmental and Social Policy, Indigenous Peoples Policy and Updated Gender Policy.

LACK OF PRIOR CONSULTATION AND FREE, PRIOR, AND INFORMED CONSENT (FPIC)

44 As noted previously, the Caribbean Region of Nicaragua, where the project will be implemented, is home to the majority of indigenous communities in the country. Beneficiaries of project activities (Territorial Development Plans, Land Use Management Plans, Emission Reduction benefits of payments) are afro-descendent and indigenous communities. As such, per the GCF's Indigenous Peoples Policy, and the Interim Environmental and Social Safeguards of the GCF, the AE is required to seek the Free, Prior, and Informed Consent (FPIC) of affected communities for both projects and programmes that impact the lands and titles of indigenous people. Additionally, FPIC is a recognized right of indigenous people under international laws and treaties. There are some important differences to note, regarding the manner in which FPIC is

²¹ Per IFC Performance Standard 1 in "*limited high-risk circumstances... it may be appropriate for the client to complement its environmental and social risks and impacts identification process with specific human rights due diligence*"

²² Per IFC Performance Standard 4 "*[i]n conflict and post-conflict areas, the level of risks and impacts described in this Performance Standard may be greater. The risks that a project could exacerbate an already sensitive local situation and stress scarce local resources should not be overlooked as it may lead to further conflict.*"

²³ "*All activities supported by GCF will be designed and implemented in a manner that will promote, protect and fulfil universal respect for, and observance of human rights for all recognized by the United Nations*" and "*GCF will require and ensure that activities are screened, including component subprojects of programmes and activities requiring financial intermediation, for any potential adverse impacts on the promotion, protection, respect for, and fulfilment of human rights.*" GCF Revised Environmental and Social Policy: <https://www.greenclimate.fund/document/revise-environmental-and-social-policy>

undertaken with regard to a programme, as opposed to a project. These differences are well explained in Paragraph 51 of the Operational Guidelines on GCF Indigenous Peoples Policy.²⁴

45 The complainant(s) allege that the consultation processes for this project were insufficient and inadequate and that the project has not fulfilled the requirements of FPIC of indigenous peoples. Additionally, they allege that the parties which were consulted did not have the legitimacy to represent Indigenous and Afro-descendant peoples, describing them as unlawfully established “parallel” governments.

46 In its response to this complaint, the GCF Secretariat stated that FPIC, stakeholder engagement and consultation, at the overall project-level, were undertaken pursuant to the GCF’s Environmental and Social Safeguards and the Indigenous Peoples Policy, at the project development stage. Furthermore, according to the GCF Secretariat response and the project ESMF, site-specific consultation and FPIC will be conducted upon the determination of sub-projects which will take place after the first disbursement. However, project documentation examined by the IRM, *prima facie* does not demonstrate that meaningful consultation and FPIC was conducted with indigenous and afro-descendant peoples for this project during the project development stage.

47 The consultations cited in the Environmental and Social Management Framework and in ‘Annex 7 Summary of consultations and stakeholder engagement plan’ appear to relate to the Nicaraguan National Strategy for Avoided Deforestation (ENDE REDD+) and to the Caribbean Coast Emissions Reduction Program (ER Program). In the ESMF, the ER Program and FP146 are described as complementary components of the ENDE REDD+ and share overlaps in terms of the territories they cover. Nevertheless, based on the account of these consultations, documented on the EE’s (MARENA) website, there is evidence to suggest that meetings were held with various stakeholders regarding the ENDE REDD+ and ER Programmes. The various stakeholders mentioned in attendance lists include representatives from indigenous territorial governments and regional bodies. However, apart from a few references to the Bio-Clima project in these documents, there is nothing to indicate that FP146 was discussed in the detail to be expected for meaningful consultation. Nor has a “framework agreement” duly attested by the relevant indigenous people, as required by the Operational Guidelines: Indigenous Peoples Policy²⁵ been produced, and in its absence a justification presented for not having done so.

48 According to the ESMF, specific components of the project such as the establishment of Peaceful Co-habitation Regime Agreements will depend on the consent and request of territorial indigenous governments. Additionally, the ESMF argues that consultations and agreement to the overall project was

²⁴ *“In certain cases, it may not be possible to define all aspects of the activity and its locations, identify affected communities (including indigenous peoples) and review project environmental and social assessment and related mitigation plans before decisions are taken about project design aspects (e.g. programmatic approaches). In the absence of these elements, achieving FPIC prior to approving a project may not be feasible or considered meaningful because the determination should be closely related to the defined impacts of a known project on indigenous peoples. The appropriate sequencing of achieving FPIC is generally to first agree on key principles through an overall framework, and then consult on specific aspects once designs are further advanced and locations are determined. Documents that are required to be submitted in the process of achieving FPIC should, in almost all cases, include a framework agreement on engagement and consultation and agreements demonstrating FPIC. The absence of such a framework agreement would need to be carefully justified.”* Operational Guidelines: Indigenous Peoples Policy <https://www.greenclimate.fund/document/operational-guidelines-indigenous-peoples-policy>

²⁵ See para 51 Operational Guidelines: Indigenous Peoples Policy <https://www.greenclimate.fund/document/operational-guidelines-indigenous-peoples-policy>

obtained from these governments. However, the legitimacy of some of the regional, territorial, and communal authorities of the Caribbean Coast, which were key factors in the consultation processes for ENDE REDD+ and ER programme, has been questioned by the complainant(s) and some indigenous peoples. They argue that illegal “parallel” governments have been established undermining the lawful indigenous authorities, and that consents are being given by these parallel governments that are not representative of the indigenous people.

49 In its fifth periodic report on Nicaragua, the UN Committee on Economic, Social and Cultural Rights highlighted its concerns about the lack of consultations with indigenous and afro-descendant peoples in relation to large-scale investment projects and by the alleged establishment of “parallel governments” usurping the function of legally constituted autonomous authorities.²⁶ This concern was then relayed by the UN High Commissioner for Human Rights in her 2022 Annual Report on the Human Rights situation in Nicaragua.²⁷

50 This type of situation is expressly dealt with in the GCF’s Indigenous Peoples Policy in the context of designing FPIC processes, including conducting assessments of governance and representativeness.²⁸ There does not appear to be *prima facie* evidence to indicate that such an assessment was carried out during the design stages of this project, nor that such assessments are mentioned as part of the mitigatory and safeguard measures to be undertaken in designing the FPIC processes for the sub-projects.

51 There is no evidence to show that the legitimacy of regional, communal and territorial governments in granting “consent” on behalf of the Indigenous and Afro-descendant peoples of the Caribbean Coast was assessed during the development stages of the project. Furthermore, risks related to the alleged usurpation of the function of legally constituted autonomous authorities in FPIC processes conducted in the region have not been assessed in the ESMF or the Indigenous Peoples Planning Framework for this project. Additionally, given the risks arising from ongoing violent conflict and the possible exacerbation of that conflict by this project, the issue of whether indigenous people will be able to exercise free will in the context of FPIC will be a cross-cutting concern. As a result, it is unclear how the project will mitigate this risk and ensure adequate and genuine Free Prior Informed Consent (FPIC) is secured in the future for sub-projects.

52 In summary, the IRM concludes that there is *prima facie* evidence that the rights of indigenous communities to “Free, Prior and Informed Consent” have been, and may be violated due to non-compliance of the project with the GCF’s Environmental and Social Policy, Indigenous Peoples Policy (including the Operational Guidelines under the same) and Interim Environmental and Social Standards (PS 1 and 7).

²⁶ See para 11, (E/C.12/NIC/CO/5). Concluding observations on the fifth periodic report of Nicaragua <http://undocs.org/en/E/C.12/NIC/CO/5>

²⁷ See para 23 (A/HRC/49/23) 2022 Annual Report on Situation of Human Rights in Nicaragua. Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_49_23_AdvanceEditedVersion.pdf

²⁸ “As with many communities, communities of indigenous peoples may be affected by issues related to governance, leadership and representativeness. Assessment of these issues will inform the engagement and negotiation process. Where administrative and traditional systems recognize different leaders, where leadership is known to be highly politicized and/or only marginally representative of the affected population or if there are multiple groups representing different interests, FPIC should rely on identification, recognition and engagement of greater numbers or representativeness of stakeholder sub-groups” GCF Operational Guidelines: Indigenous Peoples Policy

INCREASED RISKS RELATED TO USURPATION OF LANDS OF INDIGENOUS COMMUNITIES AND RESTRICTIONS TO ACCESS NATURAL RESOURCES

53 The complainant(s) allege that the State of Nicaragua *“has not complied with its Constitution or national laws that mandate it to protect indigenous and Afro-descendant peoples and their territories.”* In particular, complainant(s) draw attention to Law No. 445 or the Law of Communal Property that titles the territories of indigenous and Afro-descendant peoples, officially recognizing them as full owners of their communal property. Complainant(s) allege that the lack of definition of the limits of the rights of third parties or settlers within the titled indigenous and Afro-descendant territories, has resulted in communities being *“prevented from the full and effective access, use and enjoyment of [their] lands and natural assets.”*

54 The State of Nicaragua, by its Constitution and laws, recognizes the rights of the indigenous and Afro-descendant peoples. In addition, the project documents (including the Annex on legal due diligence) acknowledges the applicability of Law 445 to this project. Article 45 of Law 445 outlines five stages of land demarcation and titling, four of which have been implemented, ending with the titling of indigenous peoples' lands within the project area. One final stage is still left to be completed, namely title clearance of third party occupiers (*Saneamiento* in Spanish). Article 59 elaborates that *“each of the communities, once they have obtained their title deed, may commence, with the technical and material support from the Rural Lands Titling Office, the title clearance stage, in relation to third parties occupying their lands.”* However, according to the complainant(s) the implementation and enforcement of this part of the legislation has not been concluded for over 15 years, allegedly despite repeated request for assistance to do so from governmental authorities.

55 The complainant(s) allege that the State of Nicaragua has done little to prevent non-indigenous settlers from invading the indigenous territories and forcibly or surreptitiously occupying them, and that the Bio-clima project would adversely impact the implementation of the last stage of titling under Law 445. The complainant(s) are concerned that the Project would aggravate and encourage the illegal settlers' violence and expropriation of their territories and natural resources and will regularize and legitimate their illegal occupation

56 In the context of addressing the issue of illegal occupation of indigenous lands by non-indigenous settlers, Activity 1.1.1.4 of the Project, proposes to facilitate, among others, the settlers to enter into a *“Peaceful Co-habitation Regime Agreement (PCRA)”* on the promise of renouncing any claim they might have to ownership of the land. The FP states that *“Non-indigenous families (so called “terceros”) that have settled within indigenous territories will be supported by the Project to legalize their land use and occupation through a “Peaceful Co-habitation Regime Agreement” with the GTI [...].”*²⁹ The project documentation also states that PCRA's are arrangements created and recognised by indigenous people themselves. However, the complainant(s) allege that PCRA's are not acceptable to them and that these instruments would only further entrench illegal occupancy and regularise them, stultifying and rendering nugatory the 5th and last stage of land title clearance (*Saneamiento*) under Law 445. Given the alleged recurrent violent conflict and the parallel governments operating in their areas, the complainant(s) fear that this activity would force indigenous and Afro-descendant communities to sign the PCRA's with settlers who have invaded their territories, legitimizing their otherwise illegal occupation of the indigenous territories.

²⁹ Funding Proposal: <https://www.greenclimate.fund/document/bio-clima-integrated-climate-action-reduce-deforestation-and-strengthen-resilience-bosaw-s>

57 The ESMF recognizes the risk that non-indigenous farmers could claim land tenure rights based on PCRAs, the facilitation process of which can escalate latent land conflicts. It also admits that the settlers “came to these territories through invasion, legal or illegal purchase of land or land transfer to colonists [and this] situation has caused recurrent tensions in the territories.” The proposed mitigation measures are to enforce the legal framework that does not allow to sell or make and cession of land rights of indigenous territory and for the government to strengthen law enforcement and defend IP rights.

58 What the project documentation does not address, or manifest is an analysis of why there has been such a long delay in the completion of the 5th stage of titling under Law 445 that would have allowed the clearance of the lands titled to IPs. This is a fundamental issue that goes to the root of both the capacity and the commitment of the relevant agencies to implement Law 445 and bring the titling to a satisfactory conclusion. There is no documentation to suggest that the agencies have attempted to implement stage 5 of the title process. On the contrary, documentation examined by the IRM, and referred to below, *prima facie* suggests that attempts by indigenous people to clear their lands of illegal third party occupiers have not received the assistance of the agencies, and that illegal settlers have often forcibly returned to indigenous lands they evacuated at the behest of indigenous peoples, carrying firearms, and bringing with them more settlers.

59 The delay in completing the 5th stage of titling and clearance of land of illegal occupants under Law 445 should have raised serious questions regarding the project that ought to have been subjected to more assessment by all concerned. For this reason, a question arises as to whether the proposed mitigation measures meet the level of the anticipated risks and addresses the real reasons for the delay in completing stage 5 of the titling process. Given these circumstances and concerns, it is understandable that complainant(s) would fear PCRAs and see them as a means to forcibly legitimize and regularize illegal occupation of lands titled to indigenous peoples by non-indigenous settlers.

60 In the view of the IRM, *prima facie*, the complainant(s) concerns around the project promoting PCRAs as the key instrument, through which peaceful occupation and sustainable landscape management is to be accomplished, appears to be reasonable. If as argued by the complainant(s) PCRAs would stultify and render nugatory the 5th stage of titling under Law 445 to the detriment of indigenous peoples, the entire project required FPIC from them. Besides, since the lands where the project is to be carried out have already been titled to the indigenous people – i.e. they are recognised under Nicaraguan law as the common property owners of these lands, burdening them with PCRAs might amount to a taking or restriction of their land ownership, requiring the application of GCF’s interim performance standard 5 on Land Acquisition.

61 In summary, *prima facie*, it appears that the project, in its pre-approval assessments, did not adequately address the long delay in completing the 5th stage of the titling process under Law 445, the role of state agencies in that delay and how that might adversely impact the project objectives and risks. Rather, the Project added an activity that seeks to regularise illegal occupancy of lands titled to indigenous people and there is no documentation to show the impact of PCRAs on the 5th stage of titling.

62 The IRM concludes that *prima facie* there is non-compliance of the project with the GCF’s Interim Environmental and Social Safeguards (Performance Standard 1, 5 and 7) and GCF Indigenous Peoples Policy regarding the adequacy of assessment of adverse impacts arising from the delay in completing stage 5 of the titling process and the facilitation of PCRAs between GTIs and illegal settlers on indigenous lands. Judging by existing and past recurrent violent conflict between indigenous peoples and illegal settlers, this non-compliance may lead to an increase in violence and further encroachments of indigenous lands by illegal settlers.

OTHER ISSUES

63 Complainant(s) alleged lack of adequate information disclosure from the AE and requested that the IRM look into AE's non-compliance with GCF policies for accreditation. The details provided by complainant(s) with regard to concerns on transparency were redacted and a summary shared with the Secretariat.

64 The Secretariat's response stated that the level of transparency at the overall project level was aligned with relevant GCF policies. The response noted the lack of sufficient details as to the nature of the alleged lack of transparency on the part of the AE. Per the Secretariat, the AE complied with the Information Disclosure Policy in respect of disclosure of environmental and social reports of the Project and stated that the ESMF had been disclosed at least 120 days in advance of the GCF Board meeting.

65 Given that the IRM has already concluded that there was *prima facie* non-compliance with FPIC requirements, there is no necessity to make a separate finding at this stage on this allegation. The obligation to provide project affected people, including the complainant(s), with information as part of project disclosures or in response to information requests can be investigated as part of the adequacy of FPIC.

66 The IRM also notes that the Board in approving funding for this project imposed several conditions, including independent third-party monitoring. It specified conditions that needed to be fulfilled before the first and second disbursement of funds. The discussion at the Board meeting shows that there were significant concerns raised by Board members and accredited observers about the environmental and social impacts of, and safeguards for, this project. It is in that context that the Board, in its wisdom, imposed additional conditions on the project. The complainant(s) have alleged that these conditions may help mitigate some of the impacts they fear. However, they allege that given the history in the project area of recurrent violent conflicts and other situational circumstances detailed above, these conditions will not be fulfilled. At this preliminary stage, it is far too early in the life of this project for the IRM to come to *prima facie* findings on this allegation. The IRM will investigate this allegation as part of its fuller investigation into this complaint, as investigative facts and data on it will assist the Board in determining the final outcome of the IRM's investigations.

CONCLUSION

67 In summary, given the findings made above, the IRM is satisfied that there is *prima facie* evidence of adverse impacts caused or that may be caused to the complainant(s) by the non-compliance of the project with GCF operational policies and procedures. The issues raised are of a serious enough nature as to warrant a compliance investigation. For these reasons the IRM has decided to commence a compliance investigation, the scope of which is set out below – to investigate the matter further and reach a final finding on the issues – and to present a compliance report to the Board, with appropriate recommendation, if any.

SCOPE OF COMPLIANCE INVESTIGATION

68 The questions that will be investigated through the compliance investigation are as follows:

- (i) Will indigenous and afro-descendent communities face increased violence, including gender-based violence, from non-indigenous settlers because of non-compliance with the GCF Interim Environmental and Social Safeguards (Performance Standards of the International Finance Corporation 1, 4, and 7); GCF Environmental and Social Policy (paragraphs 8(p), 8(q),

17, 26, 37, 47-48 and 69); Indigenous Peoples Policy (paragraphs 31, 46 and 48) Updated Gender Policy (paragraph 5).

- (ii) Have the rights of indigenous communities to “Free, Prior and Informed Consent” been violated or will they be violated by non-compliance of the project with Interim Environmental and Social Standards (Performance Standards of the International Finance Corporation 1, 4, and 7); GCF’s Environmental and Social Policy (paragraphs 8(i), (p), and (q), 12(b), 13, 14(a)(v), 18, 47-48, 60, 62, 67 and 69); and Indigenous Peoples Policy (paragraphs 26(a), 26(c), 26 (d), 31, 35, 44, 51, 52(a), 52(b), 52(d) and 58) and paragraph 39, 51 and 58 of the Operational Guidelines issued by the Secretariat under the said Policy?
- (iii) Will afro-descendent and indigenous communities face increased risks of expropriation of lands and resources and reduced access to natural resources due to non-compliance of the project with Interim Environmental and Social Standards (Performance Standards of the International Finance Corporation 1, 5, and 7); GCF’s Environmental and Social Policy (paragraphs 17, 26, and 37); and Indigenous Peoples Policy (paragraphs 31, 46, 48 and 60)?

69 As part of its compliance investigation, the IRM will gather information, as appropriate, from all stakeholders and witnesses concerned, including the complainant(s), the GCF Secretariat, the NDA or Focal Point, AE, EE, and other independent panels of the GCF. The compliance investigation may include document reviews, meetings, discussions, site visits, evidence gathering, and expert opinions.

70 At the conclusion of its investigation, the IRM will prepare a compliance investigation report for submission to the Board of the GCF. The report will include such recommendations on remedial actions, if any and as are appropriate, in the light of the findings of the IRM.

71 The Secretariat in its response states that “[r]ecognizing the concerns raised in the Complaint, the Secretariat has undertaken additional measures to ensure that the AE implements the Project in accordance with the GCF’s policies and procedures and the Board Conditions”. It has detailed some of these steps taken since receiving this complaint. In its response the Secretariat has also welcomed “the opportunity to continue to take up the important concerns in the Complaint with Central American Bank for Economic Integration (“CABEI”) as the AE and other stakeholders.” The IRM welcomes these commitments made by the Secretariat and encourages it to continue with them. While the compliance investigation is ongoing, the IRM also encourages all parties to proactively pursue possible mediation of their disputes in the safe space that it creates, with a view to arriving at a mutually satisfactory resolution. Should all parties decide to do so, the IRM will continue the compliance investigation but may consider delaying the issuance of a compliance report to provide reasonable time for the parties to mediate.

24th March 2022, Songdo, Republic of Korea

(Signed)

Lalanath de Silva
Head of the Independent Redress Mechanism

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