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MEMORANDUM

TO: Dr. Lalanath de Silva
Head of Independent Redress Mechanism

DATE : 30 December 2019

FROM: Sohail Malik
Head
Office of Portfolio Management

REFERENCE : OPM/2019/113

PAGE : 1 of 1

SUBJECT: FP001 IRM AGREED ACTIONS PROGRESS UPDATE

- *The GCF Secretariat sends the following information as an advisory update on progress towards the agreed actions between GCF Executive Director and Head of the GCF Independent Redress Mechanism for FP001.*



IRM-Secretariat Agreed Actions for the Preliminary Inquiry of FP001

IRM Recommendation	Secretariat Reporting
<u>Free Prior Informed Consent (FPIC)</u>	
<p>1. A freestanding guidance note on FPIC requirements, particularly addressing FPIC documentation requirements, to be produced by pulling information from the draft implementation guideline on the Indigenous Peoples Policy and issued to all AEs and GCF staff to guide them. This would be without prejudice to more comprehensive implementation guidelines being issued under the IP Policy in due course.</p>	<p>31 July 2019: The Secretariat has drafted Indigenous Peoples Policy (IPP) Operational Guidelines, establishing the technical and administrative references and tools for implementing the GCF Indigenous Peoples Policy.</p> <p>As part of the finalization in the development of these guidelines, the Secretariat consulted with stakeholders including AEs, NDAs, and indigenous peoples (pursuant to the IPP paragraphs 56 and 83) through the observer organizations, inclusive of guidance on free, prior and informed consent (FPIC).</p> <p>On 14 June 2019, SMT approved this process for outreach to AEs, NDAs, and observer organizations with circulation of the draft guidance note to invite inputs and comments on the draft IPP Operational Guidelines. The consultation period was provided for 21 days, ending on 5 July 2019.</p> <p>With 250+ comments received in the consultation process, the Secretariat is reviewing comments for incorporation in the IPP Operational Guidelines text - to the extent that comments shared are material and relevant to the IPP Operational Guidelines. The revised draft has been shared with SMT 31 July 2019 and will be finalized shortly.</p> <p>31 December 2019: Due to the volume and level of comments received in the consultation process, the Secretariat requested an additional extension of the deadline to 7 August 2019, which the IRM granted on 31 July 2019. This extension permitted the Secretariat to review the comments, as well as incorporate and complete the revisions for the draft IPP Operational Guidelines. Concluding this action item, on 7 August 2019, the Secretariat shared with the IRM the IPP Operational Guidelines along with the emails for transmittal to GCF Staff and AE focal points.</p>



Environmental and social risk categorization guidance

2. A section dealing with the risk categorization of projects involving IPs to be included in the guidance note on environmental and social screening (including high-level examples of the kinds of activities involving IPs that could fall within Category C). This guidance note is to be issued to all AEs and GCF staff to guide them.

31 July 2019:

The GCF Environmental and Social Policy provides for a risk-based approach to assessing and managing environmental and social risks and impacts of projects. Application of a risks-based approach is intended to ensure due diligence is undertaken at the appropriate level of likely environmental and social risks of the project and its activities.

Additionally based on the GCF business model, with differentiated levels of due diligence, the Secretariat drafted the Guidance Note on Categorization to share practical information within the Secretariat, as well as with AEs and/or EEs to align the conduct of due diligence for activities and clarify the requirements for environmental and social risk categories as described in the GCF Environmental and Social Policy. The Guidance Note on Categorization also provides illustrative examples on the process for determining how projects and activities are categorized.

The draft Guidance Note on Categorization has gone through a consultation process for internal Secretariat and IRM comments; which have been integrated to the extent possible. The draft document was submitted to SMT on 30 July 2019 for approval to transmit the Guidance Note on Categorization publicly to AEs and the Secretariat. Pending SMT decision the Secretariat will further update the IRM via email for the date of circulation.

31 December 2019:

Concluding Secretariat action for this item, on 7 August 2019, the Secretariat shared with IRM the approved Sustainability Guidance Note on Screening and Categorizing GCF Finance activities, along with emails for transmittal to GCF Staff and AE focal points.



Project Specific – FP001

3. Obtain an assessment/opinion from a suitably qualified and experienced expert in land titling of indigenous communities in the Peruvian context, which examines potential impacts of the creation of the Áreas de Conservación Ambiental (ACA) on collective land rights of indigenous people who are part of the project and their ongoing or future efforts to register title to those land rights. Ideally this should be integrated as a component of the proposed technical study Profonanpe has planned. If Profonanpe is unable or unwilling to provide such an assessment/opinion, GCF shall commission an independent expert to provide the same.

31 July 2019:

The Secretariat have reviewed the 2018 APR submitted by the AE and provided comments, including requests for further information with specifics on workplan, activities and ESS queries.

AE's response is pending, and the Secretariat in August 2019 will follow up with the AE as well as look into options to directly commission an independent expert on land titling of Indigenous communities in the Peruvian context related to collective land rights and the creation of the ACA.

The Secretariat anticipates updating the IRM further on this action in the next report submitted.

31 December 2019:

For project ownership, the Secretariat prioritized the generation of the legal opinion's incorporation into on-going/planned project activities. Accordingly, the Secretariat met with Profonanpe in Songdo during the Global Programming Conference (August 2019) to further discuss the generation of a legal opinion on the potential impacts of the creation of ACAs on collective land rights of indigenous people. During these discussions, the AE agreed to incorporate a deliverable to obtain the legal opinion in the procurement for the planned study. The Secretariat subsequently provided feedback to the AE on draft TORs, including on the legal opinion. On 27 September 2019, after internal follow up and confirmation with the AE the Secretariat advised the IRM that the AE had agreed to generate the legal opinion, however undertaking of the identified study was delayed. Unfortunately, the timeline as agreed with the IRM by the Secretariat no longer matched forecasts for AE project implementation plans. The Secretariat accordingly requested to delay the deadline for the action item. IRM requested clarifications to consider this request to which the AE provided a response, including the AE confirmation that the delivery of the study (inclusive of the legal opinion) would take approximately 5 months. Accordingly, the Secretariat requested to extend the action item deadline until 1 April 2020. The IRM granted this extension on 1 October 2019.

In December 2019, at the request of the AE, OPM and ESS colleagues joined a fact-finding mission with the project team on three (3) project site visits. At the initiation of the mission in Lima, the Secretariat inquired with the AE regarding the status of the study and legal opinion. The AE advised that the tendering had been slightly delayed due to implementation challenges, changes in the project team/management, and clarifications requested by the chair of the



	<p>project's governing board (Minister of Environment) regarding the necessity of obtaining a legal opinion. However, while the tendering was delayed to address these issues, the AE confirmed that the tender was pending signature and expected to be contracted in Dec 2019. Despite these delays, the AE continues to believe it will be able to contract and deliver the legal opinion within the same timelines. The Secretariat will continue to follow up and confirm this and status for issuance of the legal opinion in early Q1 2020.</p>
<p>4. Based on the guidance note on FPIC requirements prepared (as per point 1 above), ensure that the consent documentation submitted by Profonanpe for the establishment of the ACA is complete and compliant with the guidance.</p>	<p>31 July 2019: Secretariat response on this action requires submission of the FPIC documentation for the establishment of the ACA and circulation of the IPP Operational Guidance Note (which per action 1 is in finalization). The Secretariat anticipates updating the IRM further on this action in the next report submitted.</p> <p>31 December 2019: Progress on this action item is contingent upon the conduct of the consultations in relation to the proposed ACA. As confirmed to the IRM, the AE confirmed that pending the issuance of a legal opinion that "Profonanpe won't start the process to establish a new ACA (or similar)." As the study is not expected to be completed prior to 1 April 2020, the Secretariat is not able to sample the FPIC consent documentation as maintained by the AE on the establishment of the ACA for completion and compliance with the guidance.</p> <p>In December 2019, at the request of the AE, OPM and ESS colleagues joined a fact-finding mission with the project team on three (3) project site visits. During the field visit, the team was able to observe first-hand the process of consultation and how the consent was provided by Kandhozi tribe representatives. While the AE will need to incorporate the principles of FPIC in its documentation as outlined in the GCF Indigenous Peoples Policy Operational Guidelines, an important dimension to consider in understanding the land tenure and property rights issues related to indigenous territories is the notion of independent and self-governed indigenous territories. This notion and political positioning are advanced by some indigenous peoples/tribes (including promoted by CORPI indigenous peoples federation). Key interviews were conducted during the field visit where the community leaders or "<i>apus</i>" indicated that the presence of ACA does not inhibit their process for pursuing community land title. They have indicated their reservation however, on the ACA, as they would have wanted more control of the management of ACAs themselves.</p>



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	<p>The mission team considers that potential opposition to ACAs could be borne out of this notion of independently governed indigenous territories more than the concept of ACAs and land tenure rights themselves. Accordingly, the AE as part of its study will need to consider the most relevant modality to secure community management of resources that can achieve the project expected results (emissions reductions) such as ACAs, traditional or indigenous conservation areas (TICAs) or otherwise, and adapt the consultation and FPIC processes accordingly.</p>
<u>Monitoring</u>	
<p>5. Provide the IRM with quarterly progress reports with regard to the above actions and respond to clarifications and further information, if any, requested by the IRM.</p>	<p>31 July 2019: Reporting was provided to the IRM on 31 July 2019 as per the agreed timelines for quarterly progress reporting regarding actions undertaken to date.</p> <p>31 December 2019: In extending the duration of the activities the Secretariat and the IRM agreed to provide additional reporting in June 2020, when the Secretariat anticipates reporting and closing action item 3; however, the Secretariat and IRM held different opinions on further reporting due to the conditionality of the actions of the AE (conducting FPIC) for GCF review, which is furthermore conditional on the findings of the legal opinion returning positive findings in relation to the establishment of ACAs and the maintenance of IP land tenure rights. IRM maintains that reporting should be provided even if there is no additional information or actions taken to report against. Thus “in a subsequent discussion between the Head of the IRM and the Secretariat’s focal point, the Secretariat agreed to providing the two progress reports in 2020, regardless of progress made in relation to the FPIC process as at 31 December 2020.”</p>