

Redress

Independent Redress Mechanism (IRM)

IRM Initiated Proceedings: C-0002-Peru / Request for Third Extension of Time

1 October 2019



IRM Decision on a Request for Third Extension of Time by the GCF Secretariat

GCF Project **FP001 - *Building the Resilience of Wetlands in the Province of Datem del Marañón, Peru***
Date **1 October 2019**

1. On Friday, 27 September 2019 the IRM received a request in writing from the GCF Secretariat to extend the timeline for item 3 of the IRM-Secretariat undertaking given pursuant to the IRM's preliminary inquiry into FP001.
2. This is the third request for an extension of the agreed timeline received by the IRM from the GCF Secretariat.
3. Item 3 of the IRM-Secretariat undertaking requires that the Secretariat obtain an assessment/opinion from a suitably qualified and experienced expert in land titling of indigenous communities in the Peruvian context, which will confirm i) the current owner(s) or rights holder(s) of all land within the Áreas de Conservación Ambiental (ACA); ii) the rights of the indigenous people who benefit from project implementation to use the land as described in the funding proposal and; iii) the future possibility of such indigenous people to register title or land rights over the relevant land within the ACA. The IRM-Secretariat undertaking noted that this assessment should ideally be integrated as a component of the proposed technical study Profonanpe (the AE) has planned, but that if Profonanpe is unable or unwilling to provide such an assessment/opinion, the Secretariat will commission an independent expert. It was agreed that this assessment would be obtained by 30 September 2019.
4. In its request for an extension of time, the Secretariat indicated that that AE has agreed to provide this assessment. The Secretariat further indicated that "the timeline initially agreed with the IRM does not now align with the project implementation plans of the AE. Profonanpe has advised that it is in the preparation phase for procurement and the AE is seeking to procure the consultant(s) to conduct the study shortly and contract deliverable deadlines are expected to prioritise the generation of the legal opinion." The Secretariat requested that the deadline be extended "from 30 September 2019 to reporting to the IRM within 30 calendar days of receipt of the initial study report from the AE."
5. The IRM responded to the Secretariat on Friday, 27 September with two requests for clarification. Firstly, that the Secretariat clarify that the establishment of the ACA will be stayed until the submission of the legal opinion affirming that the establishment of the ACA will not adversely impact the legal rights to titling claimed by IPs. Secondly, that the Secretariat suggest an exact date for the extended deadline, since the requested extension is indefinite and conditional.
6. The Secretariat responded on Tuesday, 1 October 2019 indicating that the IRM's requests for clarification were shared with Profonanpe, and that the Secretariat could confirm that:
 - a. "Profonanpe won't start the process to establish a new ACA (or similar) until having the results from the report of the assessment."
 - b. "[A]s it was a priority for the Secretariat to utilize on-going implementation by the AE to obtain the legal opinion, the capacity of the Secretariat to respond to the IRM on this action item is conditional on the AE/consultant's delivery of the assessment/study. This is similar to the action item 4 related to FPIC consent documentation; hence the Secretariat's intention was to apply a similar approach aligned with the FPIC action item

deadline (“on submission of consent documentation for ACA establishment by Profonanpe.”). Should IRM request the Secretariat to specify an exact date, the AE have advised that procurement is expected conclude this week and that the assessment/study is anticipated to take approximately 5 months. Accordingly, we would propose to extend the deadline until 1 April 2020. This accounts for the AE timeline, allows for some margins and enables the Secretariat to review and ensure that the legal opinion is considered valid after receipt from the AE/consultant.”

7. The agreed deadlines in the IRM-Secretariat undertaking for items 3 and 4 are each of a different nature. Item 4 is entirely dependent on Profonanpe’s consultation process, whereas item 3 concerns an undertaking which was provided by the Secretariat in the context of this case. The undertaking is for the Secretariat to obtain an assessment/opinion. While it is acknowledged in the IRM-Secretariat undertaking that it would be preferable for this assessment to be provided by Profonanpe, the commitment rests with the Secretariat, who undertakes to provide the assessment if Profonanpe is unwilling or unable to do so. The deadline of 30 September 2019 was a deadline which was proposed by the Secretariat, and the Secretariat, while ideally wanting the AE to undertake the assessment, has the ability to manage deadlines in relation to this process. For these reasons, the IRM is not prepared to change the nature of the agreed deadline for item 3 from a fixed deadline to a contingent deadline.
8. Notwithstanding this distinction between the nature of the deadlines for undertakings in items 3 and 4, the IRM’s primary concern is whether the requested extension of time will have an adverse impact on project affected people. With the assurance provided by the Secretariat and Profonanpe that Profonanpe will not start the process to establish the new ACA until the results of the assessment are available, the IRM’s concern is allayed, and the IRM is able to be more flexible, cognisant of the fact that time is needed for a thorough assessment. The IRM recognises that such a study will require assessment of complex land rights, land laws, and customary and indigenous land claims.
9. For the reasons stated above, the IRM grants the request for an extension of time, and extends the deadline for the Secretariat undertaking in item 3 from 30 September 2019 to 1 April 2020.
10. The IRM further wishes to emphasise the need for timely requests for any extensions of time. Requests should not be made at the last minute (less than two working days before the agreed deadline). Requests for an extension should be made in a timely manner, with enough time for the IRM to seek clarifications and deliver its decision before the expiry of the agreed deadline. In the future, such requests for extension of time, unless justified by cogent reasons, are unlikely to be viewed favourably by the IRM.
11. The IRM also requests that the Secretariat proposes additional monitoring updates for item 5, given that items 3 and 4 will not be completed by the last monitoring update scheduled for 31 December 2019.

[Signed]

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Green Climate Fund