

Joint Civil Society Comments on the Draft Approach to Developing Environmental and Social Safeguards at the GCF

Thank you for the opportunity to comment and provide input on the GCF's Draft Approach to Developing Environmental and Social Safeguards. As organizations¹ that actively engage with the Green Climate Fund (GCF), we are pleased to see that the GCF is finally developing its own Environmental and Social Safeguards (ESSs) in accordance with decision B.07/02. As stated in prior CSO submissions, we think that it is critical for the GCF to adopt its own ESSs and that it is overdue for doing so given the number of projects and number of entities approved and given that it was supposed to do so within three years from the GCF becoming operational.² The GCF's own ESSs as well as its Environmental and Social Policy (ESP), Indigenous Peoples' Policy, and Gender Policy and Action Plan, among others, are critical to ensuring that the GCF not only does no harm, but also does good.

I. Overarching Comments

As we have previously stated, it is critical that the GCF develop its own ESSs rather than continuing to rely on the IFC's Performance Standards as its interim ESSs. These ESSs should follow the principle of not only doing no harm, but also doing good, and they should be specific to the GCF. By adopting its own ESSs, the GCF can work to ensure both that they are best practices and that they are fit for the GCF. It also helps eliminate concerns, as noted in the draft approach paper, about the GCF having to implement ESSs of another institution. While developing its own ESSs does not necessarily mean that the GCF has to start completely from scratch, it also does not mean merely copying and pasting the IFC's Performance Standards (or any other multilateral development bank (MDB) or bank's safeguards) and re-labeling them as the GCF's.

We appreciate that the GCF Secretariat has undertaken considerable analysis of the GCF's current interim safeguards, as well as looking at safeguards of other institutions, to develop its proposed options. However, we note that this background analysis has not been publicly disclosed. How and when will this analysis be disclosed? Knowing the analysis done and assumptions made would better help CSOs engaged with the GCF to comment on the approach. This is especially critical as the GCF proposes to follow one of the options (option 1) of the proposed approaches.

We agree that of the options presented, option 1 (sec. 4.1) appears best as we have serious concerns about both the process driven approach (sec. 4.2) and country-systems approach (sec. 4.3). These are probably best exemplified by the completely voluntary Equator Principles, which take a process-driven approach,³ and the World Bank's new ESS, which has adopted a more flexible approach

¹ Civil society organizations (CSOs) active in the GCF collaborated in the development of these comments on the draft approach through a small working group and coordination via calls and sharing the document. A number of CSOs provided input in this submission and additional CSOs signed on in support of the joint CSO commentary. They are listed at the end of the submission.

² Decision B.07/02(d).

³ "Revised Equator Principles disappointing" (June 4, 2013), <http://www.facing-finance.org/en/2013/06/revised-equator-principles-disappointing/>; NGO Collective Analysis of the Equator Principles (June 2003), <https://www.globalpolicy.org/component/content/article/213/45635.html>.

that relies on a borrower frameworks (or a country-systems) approach,⁴ both of which have severe deficiencies and shortcomings as elsewhere argued by civil society organizations, and are therefore not appropriate for the GCF and would likely undermine the GCF's mandate to consider to be best practice safeguards. However, we note that if the GCF takes this approach (option 1), it must do so carefully. Taking this approach cannot merely be copying-and-pasting from the IFC Performance Standards or the World Bank's ESSs or other safeguards.

The GCF's Governing Instrument requires the adoption of "best practice environmental and social safeguards".⁵ But best practice does not mean "latest" or "newest" practice. Just because some environmental and social standards are newest that does not mean that they are in fact best (for example, the World Bank's "updated" labor standard, in the view of international labor unions and other civil society representatives, is weaker than the older IFC Performance Standard 2 due to its failure to integrate ILO core labor standards)⁶, as new standards may have faced pressures in their development, such as competition from newer banks or pressures to relax compliance standards, that resulted in them becoming weaker rather than stronger. Instead option 1 should mean that the GCF carefully evaluates other safeguards and then modifies or adapts them with a goal of an overall uplift and improvement or completely creates its own on certain topics or areas of concern as it strives to set the best practice standards. It should be imperative that the GCF understands that its role is to ultimately implement the best standards, and any attention to others' best practice standards should be to this end.

Additionally, we find it concerning that the "best practices" discussed as being the potential model for or to serve as the basis of the GCF's ESSs are primarily limited to the IFC's Performance Standards and the World Bank's new Environmental and Social Framework (ESF). While the structures of these two policies, having an overarching ESP and underlying ESSs, may represent common practice in terms of policy structure, it does not mean all of their ESSs are best practice. The GCF should look to a broader range of actors beyond the multilateral development banks, for example other development institutions like UNDP or the UN-REDD program, as it develops its own best practice ESSs. This is especially critical as due diligence for assessing ESSs requires looking at track records and not just what is written on paper. Thus the GCF should also look at actual practice and at reports from independent evaluation units or independent accountability mechanisms of existing institutions as areas of non-compliance in those investigations may provide insight on where policies could be improved.⁷

⁴ Bretton Woods Observer, "Civil Society apprehensive as World Bank launches new Environmental and Social Framework" (Dec. 6, 2018), <https://www.brettonwoodsproject.org/2018/12/civil-society-apprehensive-as-world-bank-launches-new-environmental-and-social-framework/>; Michael Igoe, "World Bank chief defends new safeguards," Devex (Aug. 5, 2016), <https://www.devex.com/news/world-bank-chief-defends-new-safeguards-88545>; Press Release, NGO Response to the World Bank's Proposed Environmental and Social Framework (July 22, 2016), <https://www.ciel.org/news/safeguard-policy-endangers-rights/>.

⁵ GCF Governing Instrument, para. 65.

⁶ Peter Bakvis, "Orthodoxy, evidence and action: Labour rights at the World Bank," International Union Rights Magazine (ITUC, April 2017), <https://t.co/2d1cXA4XJx> (link also available at <https://www.brettonwoodsproject.org/2017/07/imf-conditions-weaken-labour-rights-world-bank-labour-policy-inconsistent/>).

⁷ For example, see the extensive audit conducted by the IFC's Compliance Advisor Ombudsman (CAO) of IFC Investments in Financial Intermediaries and its ability to ensure that its own performance standards are complied with in intermediated IFC investments. The CAO FI audit is available at <http://www.cao-ombudsman.org/newsroom/documents/FIAUDIT.htm>.

We feel very alarmed by the possibility mentioned in the approach paper that the GCF's Environmental and Social Policy (ESP) and Environmental and Social Management Framework (ESMF) could be revised (para. 28). As noted in para. 34(a), the ESP is closely related to the ESSs and therefore they will have to be brought into conformity with one another. We completely agree. However, this should not mean that the ESP, which the Board adopted a year ago (February 2018) following a process of intense civil society stakeholder engagement with various rounds of submissions and upgrades to an initial GCF draft ESP, is revised. Instead the ESSs should be drafted in a way that ensures they are consistent with the human rights-centered ESP as well as with the Indigenous Peoples Policy, Gender Policy, and Information Disclosure Policy and its pro-active mandate. The drafting of the ESSs should not result in these critical policies being undermined or "adjusted" downward. Instead the ESSs should conform to these policies and, if building on existing safeguards from other institutions, then they should be amended to be in accordance with the GCF's previously adopted policies.

We also appreciate the recognition that the GCF is different than and may require different ESSs than MDBs or other development institutions due to its "singular mandate on climate change" (para. 26). The GCF's explicit climate mandate does indeed make it different from traditional development finance institutions and this should not be forgotten. However, the GCF's climate mandate should not be used as justification to consider a less comprehensive set of ESSs as is potentially suggested in para. 35(c). Climate change should instead be used as a lens through which to view various ESSs. This will also require consideration of whether there should be a separate "climate" ESS, similar to other safeguard policies, that should then be enhanced, or if climate considerations should be mainstreamed throughout or both. However, as climate mitigation and adaptation projects could potentially result in involuntary resettlement or impact biodiversity or cultural heritage, among other impacts, the GCF's ESSs should not exclude safeguards that traditionally exist at other institutions. Additionally, the ESSs should apply to all GCF projects or programs.

Further, CSOs strongly believe in the importance of having direct access entities and country ownership, but these should not be used as justification for having weaker ESSs. While CSOs have pushed for and strongly support the accreditation of more direct access entities, concerns about whether accredited entities have a "level-playing field" must be addressed through the provision of capacity-building to ensure potential direct access entities can meet the environmental and social safeguards. Weaker standards should never be adopted in the interest of catering to the ability of applicant entities to become accredited, because the ultimate purpose of accreditation is to enable entities to propose and implement the best projects that achieve the GCF's overarching goals. The strength of the standards contributes to ensuring these projects are proposed and implemented to achieve their goals and do good, not harm. The overarching approach must be developing the best safeguards, then continuing to provide capacity-building through programs such as the readiness program, rather than developing standards that meet the current capacity of entities anticipated to apply for accreditation. The performance of the GCF and whether it is doing well is based on the ability of its projects to meet the challenges of climate change, not the ultimate number of entities accredited within a certain timeframe.

Related to the issue of accreditation for new applicant entities to the best-practice standards of the GCF's own ESSs that are to be developed is the consideration of the re-accreditation of accredited entities

(AEs) with the higher standards. For some of the first entities accredited to the GCF, among them many MDBs and UN agencies, the issue of re-accreditation will come up in Spring 2020. Thus, while the ESS development process is still underway, the approach paper in its time-table must also consider this and how to ensure that all GCF AEs seeking re-accreditation will be able to comply, as they are expected to do so, with the new best practice GCF ESS standards.⁸

II. Scope of ESSs

As mentioned in our overarching comments, the ESSs should be consistent with the ESP and take a human rights-based approach that ensures gender rights and indigenous peoples' rights are integrated and mainstreamed into the new ESSs and related guidance. This also means ensuring that in the GCF's new ESSs the universality of human rights standard is protected and that any effort to regionally or nationally contextualize related human rights' commitments is rejected, as allowing this would mean a weakening of those standards in the name of country ownership or "in favor of an approach that is deemed more relevant to the region" as para. 30 in the draft paper seems to imply could be under discussion. The example of the African Development Bank (AfDB) not articulating an Indigenous Peoples standard because African governments assume all Africans are indigenous would be an example of exactly what the GCF's own ESSs need to avoid. It should also not mean merely pointing to the Gender Policy or Indigenous Peoples Policy as a supplement, but rather they should be integral parts of the overall environmental and social management system and the ESSs should be consistent with and incorporate relevant aspects of these policies. For example, on these aspects, this would require a significant upgrading of the IFC Performance Standards guidance notes, which currently form the implementation guidelines for the GCF's interim ESSs. Thus, the proposed "updating" and development of best practice ESSs should not only be for the standards themselves, but also for their implementation guidelines. This will also be critically important for the accredited entities so that they know how to implement the ESSs in their projects and programs.

As we have elaborated above, the ESSs should be comprehensive and not limited by the fact that the GCF is a fund with an explicit climate mandate. Mitigation and adaptation projects can have a broad range of environmental and social impacts. For example, the ESSs should include that the GCF will only finance projects that respect human rights, indigenous peoples' rights, gender equality, workers' rights and a Just Transition, and protect ecosystem integrity and biodiversity, among others. In developing its ESSs, the GCF can and should look at a wide-range of institutions beyond just development banks as this will provide a more comprehensive approach to determining what is best practice.

As highlighted in the draft paper (para. 15) and recognized in our overarching comments, the structure of ESSs and accompanying ESP is increasingly standardized. The structures tend to include an overarching policy and underlying ESSs that are a mix of procedural and substantive standards. This structure seems a logical one for the GCF to adopt as well given that it has already adopted an ESP and is

⁸ It would be important to establish the principle that the Accreditation Panel, which will have to do the ESS assessment of the entity seeking re-accreditation, conducts a gap analysis to determine possible gaps or needs for improvements between the AE's ability to comply with the current GCF ESS standards (which was determined and addressed during the initial accreditation) and the GCF's future new best practice ones. As was the standard practice for initial accreditation, in the case of ESS gaps identified, re-accreditation should be conditioned on these shortcomings being addressed, before GCF funding can be accessed.

now developing ESSs. These ESSs should also include both procedural and substantive safeguards as both are critical to ensuring that GCF projects do good as well as do no harm.

Additionally, the background note on this draft approach paper explaining the process identifies a number of trends that the GCF should incorporate. For example, on page 6, para. 28, the GCF notes the trend towards assessing associated and indirect impacts of projects, not just direct ones, and towards assessing cumulative impacts. When developing its ESSs, the GCF should follow this trend and take into consideration cumulative impacts and not look at projects in isolation. Further, regarding the social impacts of ESS requirements highlighted on page 6, para. 29, we support the position that “stakeholders” shall be both, groups and individuals directly affected by projects, and also groups and individuals indirectly affected by them. This broadening of scope will allow for the inclusion of a greater range of stakeholders other than those directly affected by projects, as well as the relationship among diverse groups of affected people.

We appreciate that the GCF draft approach paper has included a set of guiding principles (para. 19) for developing its ESSs. However, these principles need to be used to raise GCF ESSs to being best practice and not used as an excuse or justification for lowering ESS standards at the GCF. As currently written, these principles are concerning. For example, in relation to capability (para. 19(d)), the development of the GCF’s own ESS should be used to develop the capacity of the GCF and to take advantage of being a young institution with a paradigm shifting mandate as the justification to strive to set a higher standard. Similarly, harmonization and continuity should both be seen as opportunities for achieving upward harmonization towards best practice and not just to harmonize or keep continuity for the sake of it.

The approach paper also references other GCF policies that are related and may be implicated (para. 34), but fails to include mention of the Independent Redress Mechanism (IRM) whose experience and findings should continually inform the ESSs. Relatedly, reports of independent accountability mechanisms like the IRM, for example the World Bank Inspection Panel, IFC’s CAO, etc., could be looked at in developing the GCF’s ESS approach. These mechanisms can provide critical lessons learned about existing safeguards policies and their implementation that could help inform the GCF’s development of its own ESSs to ensure that the GCF does not repeat past mistakes and instead moves toward best practice.

Lastly, the draft approach paper in paras. 8, 9, and 17 seems to make the case that a particular reason to look at and draw lessons from the new World Bank ESF for the GCF’s own ESS is that they are for public sector investments versus the IFC’s Performance Standards, which apply to the private sector. There is no question that the GCF’s own ESSs, as they are developed as best practice safeguards, need to be applicable in their entirety to both public and private sector GCF investments and that this includes stripping the interim ESSs, to the extent that they are partially retained or upgraded, of those provisions that explicitly or implicitly presume that the AE making the GCF-funded investment is a private sector entity, as suggested in para. 21. However, we take issue with the argument that public sector lending requires an entirely different set of environmental and social standards than private sector lending. Protection of the environment and of fundamental rights of project-affected people via social safeguards and the responsibility to do good and no harm in implementing ESSs are the same regardless of whether

the accredited entity receiving GCF funding is a public or private entity. Further, there is frequently overlap because public sector projects – defined as such because the borrower might be a public agency – are utilizing private sector sub-borrowers or executing entities (EEs), or projects are structured as public-private partnerships (PPPs). Thus, the differentiation between public and private sector investments for the sake of an update of the GCF interim ESSs is less important than the difference between direct project investments and financially intermediated programmatic and fund-of-fund approaches. This is something that the updated implementation guidelines for the GCF’s new ESSs will need to clearly address. As, for example, the IFC’s CAO has clearly demonstrated, the oversight over and implementation of a program’s ESMF is often insufficient in financially intermediated investments.⁹ Thus, the development of the GCF’s own ESSs provides an opportunity to make further progress on strengthening overall requirements and ESS procedures for GCF financial intermediary investments that go beyond the IFC’s.

III. Consultation Plan

We appreciate the emphasis on stakeholder consultations as a vital part of developing the GCF’s ESSs and agree that “the active and consultative engagement with a wide range of stakeholders is fundamental to developing the ESS” (para. 40). It is positive to see that the GCF is planning on having multiple rounds of consultations on drafts of the ESSs and we appreciate the indicative timeline and budget. However, we have some concerns that the process laid out in the approach paper will not allow for critical consultations with local communities and project-affected people in a comprehensive manner.

To ensure this consultation with stakeholders, the draft approach should include that relevant documents will be translated into local languages. Additionally, the GCF needs to guarantee that within the phases adequate time is given for CSOs to comment on draft policies. This will require at least the full two months specified in the chart in para. 37 as commenting often involves numerous CSOs collaborating globally to develop comprehensive responses.

Having enough opportunities to meet with communities and potentially project-affected people cannot be overstated. While we appreciate that the GCF acknowledges this (para. 42), we find it concerning that “representatives of communities affected by GCF-supported programs/projects” is listed last in the list of groups from whom the GCF will solicit inputs. Additionally, the importance of consulting with local groups and communities means that it is critical that face-to-face consultations should be explored on different levels (global, regional, national). These consultations also should not be tied only to structured dialogues, or other similar GCF events, as these can limit CSO engagement and do not necessarily include the engagement of local communities. The GCF could also hold consultations in conjunction with (after) GCF Board meetings or UNFCCC COPs as well as other similar events. We also want to know why the Secretariat is proposing only 4 regional consultations (as it does so on page 8 describing the budget), and where those consultations are likely to take place?

Additionally, we appreciate that the GCF will accept written comments as well as having other ways of receiving feedback orally such as through focus groups, select group meetings, interviews, and

⁹ See for example the latest IFC CAO Monitoring Report of Financial Intermediation Investments, available at http://www.cao-ombudsman.org/documents/CAOMonitoringReport_FIAudit_March2017.pdf.

video conferences, among others (para. 41). However, we find it concerning that in stage 3 (para. 36(c)), it indicates that consultations will be done mostly through electronic submission of input and feedbacks. This stage should also include in-person consultations.

As acknowledged by the approach paper, the development and implementation of the ESSs will require significant communications (para. 43). Communicating broadly with stakeholders throughout development of the ESSs is critical. Additionally, we appreciate that the Secretariat is planning to develop and launch an outreach and dissemination plan that will target the AEs, countries, and other stakeholders once the ESSs are adopted. This is critical as AEs, as well as local communities, will need to be able to access and understand the ESSs. As such this plan should include capacity-building for AEs and EEs as well as for GCF staff to ensure that the policy is implemented.

As we are at the beginning of this process, the GCF should disclose the detailed review and comparisons of ESS standards that it did. This will help CSOs and other stakeholders understand the assumptions that the GCF is making as well as being able to provide input and comments as assessments may differ. This is particularly important to ensure that the GCF is also considering critical experience from groups on the ground when it comes to the GCF's assessment of other policies. Thus, the consultation plan should be modified to include this as part of stage 1 (para. 36(a)).

Lastly, the approach paper notes that the Independent Evaluation Unit (IEU) is conducting an evaluation. However, there is little information on how this evaluation will be conducted and what the role of stakeholders should be. Stakeholders should be included and the IEU should clarify this.

IV. Concluding Remarks

Thank you for the opportunity to comment! If you have any questions, please feel free to contact us. We look forward to working with the GCF Secretariat over the upcoming months and years on developing these critical best practice ESSs for the GCF.

Submitted on January 21, 2018 by:

Center for International Environmental Law (CIEL)
Erika Lennon (GCF Focal Point)
Senior Attorney
elennon@ciel.org
+1-202-742-5856

Heinrich Böll Stiftung North America
Liane Schalatek
Associate Director
GCF CSO Active Observer for Developed Countries
liane.schalatek@us.boell.org
+1-202-462-7512, ext. 225

This submission was compiled and written by Erika Lennon and Liane Schalatek, based on input and contributions provided by the following civil society organizations (CSOs) in support of this submission (in alphabetical order):

- Center for International Environmental Law (CIEL), USA
- GenderCC: Southern Africa-Women for Climate Justice, South Africa
- Global Forest Coalition, International
- Heinrich Böll Stiftung North America, Germany/USA
- Interamerican Association for Environmental Defense (AIDA), Regional
- International Trade Union Confederation (ITUC)
- Indigenous Peoples' International Centre for Policy Research and Education (Tebtebba), Philippines
- Rainforest Foundation Norway, Norway
- Women's Environment and Development Organization (WEDO), USA

Finally, the following civil society organizations (CSOs) have signed on in support of this submission (in alphabetical order):

- Aksi! for gender, social and ecological justice, Indonesia
- Asian Indigenous Women's Network, Regional
- Asian-Pacific Resource and Research Centre for Women (ARROW), Malaysia
- Bank Information Center, USA
- Both ENDS, the Netherlands
- CARE International
- Humana People to People, Zimbabwe
- Indigenous Environmental Network
- Labour, Health and Human Rights Development Centre, Nigeria
- Lelewal Foundation, Cameroon
- Nepal Federation of Indigenous Nationalities (NEFIN), Nepal
- Policy Analysis and Research Institute of Lesotho
- Third World Network