

## Comments on BMF: Countries' Transparent No-Objection Procedure, GCF/B.05/06

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A well-designed and -implemented no-objection procedure is a critical tool to ensure that both country ownership and meaningful gender-sensitive civil society engagement are central to all climate financing delivered by the Green Climate Fund. Indeed, the no-objection procedure should be a primary tool to (1) allow developing country governments to shape and direct GCF-supported private sector activities, and (2) help to ensure that civil society, including affected communities, is actively engaged in developing national climate strategies and plans. (It is important to remember that the text of the no-objection procedure evolved at the Durban COP largely to address concerns by some Parties that direct access to the GCF by the private sector, as provided for in the Governing Instrument, could allow investors to bypass national governments' priorities.)

Analogous no-objection procedures at institutions such as the IFC, GEF, and CDM have been largely ineffective.<sup>1</sup> For example, CDM Designated National Authorities issue letters of endorsement/no objection in a highly inconsistent manner. The GCF should not repeat such flawed processes: it is thus critical that all NDAs/focal points at the GCF carry out high-quality no-objection procedures according to clear, binding, and uniform standards and criteria.

### I. Purpose (Annex II: Draft initial no-objection procedure of the GCF for NDAs or focal points)

The purpose of a no-objection procedure is two-fold. First, as noted in GCF/B.05/06, it should help facilitate genuine country ownership of projects and programs that are financed through the GCF. The no-objection procedure should be a tool that allows a host country to reject or halt any proposed activity within its borders that it determines is in conflict with its development plans and priorities, strategies for addressing climate change, and/or national laws.

Second, a no-objection procedure should ensure that the people living within a country, particularly affected communities, can reject a GCF activity that would harm their lives, livelihoods, or environment. This second purpose is not adequately reflected in Annex II. We therefore suggest amendment of paragraph 1 of Annex II to reflect this:

*1. The purpose of the no-objection procedure is to ensure funding proposals presented to the Fund by NDAs or focal points are consistent with the country's climate strategies and plans and are approved by the NDA/ focal point following effective engagement and consent of relevant stakeholders, including affected communities and civil society. NDAs/focal points shall pro-actively endorse funding proposals following comprehensive in-country gender-sensitive consultations, conducted according to international best practice, with all relevant stakeholders, including affected communities, civil society, and multiple government agencies (e.g. ministries of environment and development, national climate commissions, and relevant local government bodies). The no-objection letter shall only be communicated to the Fund following a process in which the consent of relevant stakeholders is attained in a non-coercive, transparent process conducted according to the international right of free, prior and informed consent.*

### II. Communication of no-objection (Annex II)

While the Annex II draft mentions in paragraph 2 that the NDA "will be responsible for timely communication to the Fund of the country's no-objection procedure," there is no mention of a defined, adequate timeframe to ensure that the public knows about the funding proposal and thus is able to engage in informing the no-objection procedure. Thus, we suggest the following:

*2. The NDA or focal point will be responsible for timely communication to the Fund of the country's no-objection to a funding proposal, as well as the provision of sufficient time - at least 60 days - and appropriate and gender-sensitive means of communication for stakeholders, including civil society and affected communities, to understand and raise potential objections to proposals, in languages that local communities understand and with concerted outreach to marginalized groups.*

### III. Review of the no-objection procedure (Annex II)

We suggest addition of the following:

*The GCF should periodically review and evaluate NDA/focal point compliance with the no-objection procedure.*

### Suggested addition to Annex II

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<sup>1</sup>For further explanation, see "The Green Climate Fund's 'No-Objection' Procedure and Private Finance: Lessons Learned from Existing Institutions," Friends of the Earth U.S., Global Alliance for Incinerator Alternatives, and Institute for Policy Studies, August 2012. Available at: <http://www.foe.org/news/archives/2012-08-gcf>.

Compliance with the Fund’s environmental and social safeguards, including observance of the “do no harm” principle, and consultation/consent and fiduciary standards are essential to a meaningful no-objection procedure. Thus, we suggest inclusion of the following:

*The development and implementation of the no-objection procedure must be closely coordinated with the development and implementation of the Fund’s safeguard and information disclosure policies, and its fiduciary and transparency standards. The no-objection procedure must include NDA/focal point certification of (1) a funding proposal’s compliance with all fiduciary/transparency standards and environmental/social/gender safeguards set by the GCF, including for sub-projects of financial intermediaries; and (2) that public gender-sensitive consultations were held according to international best practice, with attainment of the consent of stakeholders, including affected communities and civil society, in accordance with the international right of free, prior and informed consent.*

#### **Further considerations**

- Sequencing of no-objection procedure: The no-objection process should be conducted very early in the funding proposal process, but this should not preclude a country from exercising its right to object at any stage of GCF activity. Experience of no-objection procedures at other institutions has demonstrated that there will undoubtedly be cases whereby early no-objection letters are based on incomplete information, or where projects as implemented do not conform to their approved design.
- Appeals mechanism: The GCF should consider establishment of an appeals mechanism at the international level through which stakeholders (including affected communities, civil society groups, and local governments) can appeal the approval of a project or program via the no-objection procedure on substantive and/or procedural grounds.
- Financial intermediaries and sub-projects: Special care must be taken for any sub-projects undertaken through financial intermediaries. In such cases, compliance with safeguard implementation, transparency and fiduciary standards, and community consultation/consent – all of which are required for a meaningful no-objection procedure - will be very challenging.<sup>2</sup>

#### **Comments on Annex I: Draft decision of the Board**

We have questions and comments on:

-- (c) *Requests the Secretariat to present to the Board, for consideration in 2014, a transparent no-objection procedure for funding proposals submitted by intermediaries.* This requires further clarification. An operative definition of “intermediaries” is required (similar to the guidance on implementing entities provided in Annex V in paper B.05/08). It is also unclear why a separate no-objection procedure would be necessary for intermediaries. This could be covered under the main procedure, as long as there is explicit mention of the inclusion of intermediaries’ sub-financing in the no-objection procedure.

-- (d) *Decides that the procedure in Annex II to document GCF/B.05/06 refers to the submission of funding proposals only.* It is unclear why this is stated as a separate decision and, in particular, what the scope of the restriction “to the submission of funding proposals only” is. We would suggest that it be deleted, pending clarification. At present, it risks contradicting the understanding that the no-objection procedure should also apply to the accreditation of financial intermediaries and implementing entities (consistent with paragraph 44(a) in paper B.05/08 on Access Modalities – Accreditation).

-- (f) *Requests the Secretariat to publish the transparent no-objection procedure on the Fund’s website and to communicate its operational details to all NDAs or focal points.* We suggested adding: **NDAs/focal points should ensure that all relevant in-country stakeholders, including affected communities and civil society, are made aware of the operational details of the no-objection procedure.**

-- (g) *Notes convergence that, consistent with the principles of country ownership, NDAs or focal points should apply agreed best-practice in-country coordination and multi-stakeholder engagement.* We suggest changing “should apply” to “**shall apply.**”

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<sup>2</sup> A 2013 CAO audit carried out on the IFC’s large financial intermediary portfolio demonstrated that the IFC was unable to trace, understand, or document the environmental and social impacts of its financial intermediary investments, presenting a dangerous risk to the environment and affected communities.