**Intervention regarding GCF/B.11/18:**

**Policies addressing fraud, corruption and other prohibited practices, and policies addressing anti-money laundering and countering the financing of terrorism (status update)**

Risks of corruption and fraud must be mitigated in GCF activities. This is true from the executive to the local project level. Ultimately, such [risks](http://www.transparency.org/whatwedo/publication/global_corruption_report_climate_change) can negatively reduce the impact of mitigation potential as well as the benefits and sustainability of adaptation efforts.

Notably, this week States Parties to the [UN Convention again Corruption are meeting in St. Petersburg](https://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6.html) to strengthen country [obligations](https://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf) and compliance to the Convention to prevent and criminalize corruption in all its forms. We ask that the GCF Board take note of this and urge that governments demonstrate their commitments under this policy framework to bolster support, [trust and confidence in climate finance arrangements](http://uncaccoalition.org/en_US/corruption-in-an-era-of-climate-change-stakeholders-discuss-at-high-level-un-anti-corruption-meeting/).

We welcome the progress made by the GCF to adopt high standard policies to prevent and mitigation corruption, fraud and money laundering as elaborated in [GCF/B.11/18](http://www.gcfund.org/fileadmin/00_customer/documents/MOB201511-11th/18_-_Policies_addressing_fraud_corruption_and_other_prohibited_practices_20151018_fin.pdf#page=11&zoom=auto,-107,842). We further welcome proposed decision of the Board to request the Secretariat to further elaborate those policies.

Some areas to which the Board may wish to give high priority include:

* **Adopting a Fund-wide zero tolerance of corruption, fraud and money laundering policy** which provides an overall core strategy that links the numerous policies affecting various Fund actors. This will provide a clear policy message of the Fund’s commitment to safeguard Fund resources at all levels;
* **Ensuring that strong accountability and integrity mechanism, namely, the IIU and the IRM, are established urgently and that, until such mechanisms are established, a clear interim policy to address grievances and integrity issues is determined.** The recruitment of the Heads of the IIU and the IRM has been delayed. The forecast for recruitment is March 2016. Only after the Heads are recruited will the Unit and the Mechanism be constructed and staffed. This suggests that the operationalization of the IIU and IRM might further be delayed until this time next year. This may present serious accountability and integrity challenges for the Fund. At this Board meeting alone, concerns of unethical practices have been suggested;
* **Adopting a clear policy which ensures that contracts between the Fund and recipients of GCF Funds, both for readiness and project finance as well as agreements with Accredited Entities**, **provide that diverted or misused GCF Funds must be repaid to the GCF.** This should apply in cases where the Fund recipient has engaged in Prohibited Practices. The repayment of such Funds should not be contingent on whether the recipient acts to remediate the Prohibited Practice. The fact that a Prohibited Practice has occurred indicates that the recipient has failed to safeguard against corruption in accordance with its contractual obligations to the GCF. Such a failure should trigger a repayment condition when GCF Funds have been diverted or misused.

Therefore, in light of [GCF/B.11/18](http://www.gcfund.org/fileadmin/00_customer/documents/MOB201511-11th/18_-_Policies_addressing_fraud_corruption_and_other_prohibited_practices_20151018_fin.pdf#page=11&zoom=auto,-107,842) including Annex III Part V para 7 (f)(v) of that document, and in consideration the arguments presented below, the following contractual revisions are suggested:

* + The [Standard Conditions for Readiness and Preparatory Support Grants](http://www.gcfund.org/fileadmin/00_customer/documents/Key_documents/Standard_Conditions_readiness_grants_March2015.pdf) Section 13.03 be revised by removing the clause, “without the Recipient having taken timely and appropriate action satisfactory to the Fund to address such practices when they occur”;
  + The [Accreditation Master Agreements with CSE](http://www.greenclimate.fund/documents/20182/46513/20151024_-_Legal_arrangement.pdf/40c18cf3-75a3-428f-9d59-bcc5764f93c9) be amended as follows:

Clause 19.01 (i): At any time, the Fund determines that any representative of the Accredited Entity, any executing Entity, or third party contracted by the Accredited Entity or the Executing Entity in respect of a Funded Activity, which results in the misuse and/or diversion of GCF Proceeds or Other GCF Funds;

Clause 20.01 (b) include Events of Default stipulated in 19.01 (i) and (j);

* + All future AMAs adopt the same or similar amended texts be used in future AMAs with Accredited Entities;
  + Insofar as the AMA with CSE cannot be amended, the same deficiencies in the present AMA with CSE be addressed in the Funded Activity Agreement[[1]](#footnote-1) by including provisions stated in GCF/B.11/18, Annex III Part V para 7 (f)(v).

***Discussion on contractual repayment terms for misuse, diversion of GCF Funds***

The repayment condition is stated in GCF/B.11/18, Annex III Part V para 7 (f) (v)[[2]](#footnote-2) which we expect the Board will approve at the present Board meeting. It is also express in the Board’s decision [GCF/B.09/23,](http://www.greenclimate.fund/documents/20182/24949/GCF_B.09_23_-_Decisions_of_the_Board___Ninth_Meeting_of_the_Board__24_-_26_March_2015.pdf/2f71ce99-7aef-4b04-8799-15975a1f66ef?version=1.0) Annex II: Financial terms and conditions of grants and concessional loans at page 23.[[3]](#footnote-3)

Adopting this policy is critical as, in addition to a number of other penalties and sanctions envisaged to be taken by the Fund and its Accredited Entities, ensuring a financial liability on the part of finance recipients provides a strong incentive for the recipients to safeguard against Prohibited Practices in their use and management of GCF funds and to ensure that GCF finance is further safeguarded in downstream funding arrangements and contracts. This is important because the risk of corruption and the diversion of GCF resources often increases as the number and scope of sub-contractors increase.

However, at present, the readiness agreements concluded to date do not fully ensure that GCF Funds should be repaid when such Funds are misused or diverted in connection with Prohibited Practices. This refers to the Signed Grant Agreements with the governments of [Rwanda](http://www.gcfund.org/fileadmin/00_customer/documents/Readiness/Grants/2015-9-7_Rwanda_Grant_Agreement_countersigned.pdf), [Ethiopia](http://www.gcfund.org/fileadmin/00_customer/documents/Readiness/Grants/Ethiopia_GA_-June_2015.pdf), and [Mali](http://www.gcfund.org/fileadmin/00_customer/documents/Readiness/Grants/Grant_Agreement_Signed_April_2015.pdf) and the accompanying [Standard Conditions for Readiness and Preparatory Support Grants](http://www.gcfund.org/fileadmin/00_customer/documents/Key_documents/Standard_Conditions_readiness_grants_March2015.pdf) and the [General Principles to Prevent Prohibited Practices](http://www.gcfund.org/fileadmin/00_customer/documents/Key_documents/General_Principles_to_Prevent_Prohibited_Practices_March2015.pdf) . According to Section 13.03 of the Standard Conditions, “If the Fund determines that an amount of the Grant has been used in a manner inconsistent with the provisions of the Grant Agreement, including these Standard Conditions and General Principles, the Recipient shall, upon notice by the Fund to the Recipient, promptly refund such amount to the Fund. Such inconsistent use shall include, without limitation, engaging by the Recipient (or any of its directors, officers, employees or agents) in Prohibited Practices or Unauthorized Transactions in connection with the use of such amount, *without the Recipient having taken timely and appropriate action satisfactory to the Fund to address such practices when they occur*. Except as the Fund may otherwise determine, the Fund shall cancel all amounts refunded pursuant to this Section.”

This provision essentially makes repayment condition on whether or not the Recipient takes action to address Prohibited Practices: If such action is taken, GCF Funds need not be repaid. This condition should be removed. This is because the occurrence of Prohibited Practices, in particular corruption and money laundering, indicates that a Recipient has failed to adopt and implement measures to prevent Prohibited Practices which are likewise required by the GCF’s fiduciary standards and safeguards. This failure alone which results in the misuse, abuse and/or diversion of GCF Funds should require the repayment of such Funds to the GCF. GCF Fund recipients should take action to address Prohibited Practices when they occur but such remedial action should not relieve the Recipient’s from the responsibility and liability for repaying the amount of GCF Funds lost to corruption or fraud, or diverted such as in cases of money laundering.

Similarly, with reference to the only AMA concluded to date with CSE, clauses 19 and 20 of the Agreement, does not require that the Accredited Entity return GCF Funds for project financing when that money is misused or diverted through Prohibited Practices.

Section 19 does state that an Accredited Entity would be in Default of its Agreement if:

19.01 (i) At any time, the Fund determines that any representative of the Accredited Entity, any executing Entity, or third party contracted by the Accredited Entity or the Executing Entity in respect of a Funded Activity, has engaged in a Prohibited Practice, without the Accredited Entity (or, other such entity) having taken timely and appropriate action satisfactory to the Fund to address such Prohibited Practices when they occur;

19.01 (j) At any time, a finding is made by a duly authorised investigative or adjudicative body that the Accredited Entity (or any of its directors, officers or employees) has engaged in fraudulent, corrupt, coercive, abusive or obstructive practices (as may be defined under any applicable law).

Section 19.01 (i) is problematic in that it determines that a Default is conditioned on whether the Accredited Entity takes “timely and appropriate action….” In this case, and similar to the rationale applied with regard to readiness grants above, the 19.01 (i) Default should be unconditional.

Further, according to Clause 20, the remedial action stipulated for 19.01 (i) and (j) Defaults, is that the Accredited Entity is required to “remedy such an Event of Default within a period of time set by the Fund at its sole discretion….” (CSE AMA 20.01 (a)). While such remedial action is certainly desirable, it does not include the requirement that the Accredited Entity return any “GCF Proceeds or Other GCF Funds for any Funded Activity” for 19.01 (i) and (j) Defaults. This absence of this provision is made clear in contrast to Clause 20.01 (b) (iii) which does provide for such restitution in the event of Defaults stipulated under 19.01 (d),(e), and (f).[[4]](#footnote-4)

Therefore, in light of GCF/B.11/18 including Annex III Part V para 7 (f)(v) of that document, we strongly urge that the Board take into consideration the amendments suggest above.

1. This would be permissible in line with Clauses 1.02 and 1.03 of the example AMA concluded with Senegal which provides that the terms of the Funded Activity Agreement prevail over the AMA. [↑](#footnote-ref-1)
2. “The Fund, through the Integrity Unit or any office of the Fund duly authorized to receive reports, investigate, and address allegations or suspicions of Prohibited Practices prior to the establishment of the Integrity Unit, shall: Without limiting the generality of the foregoing, have the right to impose one or more of the following measures on a Counterparty for engaging in Prohibited Practices in connection with a Fund-related Activity:… (including) Restitution of funds – the Fund may require restitution of improperly used or diverted Fund proceeds….” [↑](#footnote-ref-2)
3. The footnote states: “All grants will be subject to an obligation for repayment if the recipient is found to be in material breach of its contractual obligations towards the Fund or involved in a material violation of the Fund’s integrity or fiduciary standards, including those on corruption and fraud.” [↑](#footnote-ref-3)
4. In addition, it is unclear whether Clause 20.01 (c) (i) would address the repayment issue as it refers to the Fund’s right to seek or invoke any other remedy available in law, including but not limited to: (i) making a claim for damages (if any) caused to it as a result of the default by the Accredited Entity….” [↑](#footnote-ref-4)