

numbered subject for which a response is submitted.

#### *General Effectiveness of Safe Harbors*

1. Are the section 512 safe harbors working as Congress intended?
2. Have courts properly construed the entities and activities covered by the section 512 safe harbors?
3. How have section 512's limitations on liability for online service providers impacted the growth and development of online services?
4. How have section 512's limitations on liability for online service providers impacted the protection and value of copyrighted works, including licensing markets for such works?
5. Do the section 512 safe harbors strike the correct balance between copyright owners and online service providers?

#### *Notice-and-Takedown Process*

6. How effective is section 512's notice-and-takedown process for addressing online infringement?
7. How efficient or burdensome is section 512's notice-and-takedown process for addressing online infringement? Is it a workable solution over the long run?
8. In what ways does the process work differently for individuals, small-scale entities, and/or large-scale entities that are sending and/or receiving takedown notices?
9. Please address the role of both "human" and automated notice-and-takedown processes under section 512, including their respective feasibility, benefits, and limitations.
10. Does the notice-and-takedown process sufficiently address the reappearance of infringing material previously removed by a service provider in response to a notice? If not, what should be done to address this concern?
11. Are there technologies or processes that would improve the efficiency and/or effectiveness of the notice-and-takedown process?
12. Does the notice-and-takedown process sufficiently protect against fraudulent, abusive or unfounded notices? If not, what should be done to address this concern?
13. Has section 512(d), which addresses "information location tools," been a useful mechanism to address infringement that occurs as a result of a service provider's referring or linking to infringing content? If not, what should be done to address this concern?
14. Have courts properly interpreted the meaning of "representative list" under section 512(c)(3)(A)(ii)? If not, what should be done to address this concern?

15. Please describe, and assess the effectiveness or ineffectiveness of, voluntary measures and best practices—including financial measures, content "filtering" and takedown procedures—that have been undertaken by interested parties to supplement or improve the efficacy of section 512's notice-and-takedown process.

#### *Counter Notifications*

16. How effective is the counter-notification process for addressing false and mistaken assertions of infringement?
17. How efficient or burdensome is the counter-notification process for users and service providers? Is it a workable solution over the long run?
18. In what ways does the process work differently for individuals, small-scale entities, and/or large-scale entities that are sending and/or receiving counter notifications?

#### *Legal Standards*

19. Assess courts' interpretations of the "actual" and "red flag" knowledge standards under the section 512 safe harbors, including the role of "willful blindness" and section 512(m)(1) (limiting the duty of a service provider to monitor for infringing activity) in such analyses. How are judicial interpretations impacting the effectiveness of section 512?
20. Assess courts' interpretations of the "financial benefit" and "right and ability to control" standards under the section 512 safe harbors. How are judicial interpretations impacting the effectiveness of section 512?
21. Describe any other judicial interpretations of section 512 that impact its effectiveness, and why.

#### *Repeat Infringers*

22. Describe and address the effectiveness of repeat infringer policies as referenced in section 512(i)(A).
23. Is there sufficient clarity in the law as to what constitutes a repeat infringer policy for purposes of section 512's safe harbors? If not, what should be done to address this concern?

#### *Standard Technical Measures*

24. Does section 512(i) concerning service providers' accommodation of "standard technical measures" (including the definition of such measures set forth in section 512(i)(2)) encourage or discourage the use of technologies to address online infringement?
25. Are there any existing or emerging "standard technical measures" that could or should apply to obtain the benefits of section 512's safe harbors?

#### *Remedies*

26. Is section 512(g)(2)(C), which requires a copyright owner to bring a federal lawsuit within ten business days to keep allegedly infringing content offline—and a counter-notifying party to defend any such lawsuit—a reasonable and effective provision? If not, how might it be improved?
27. Is the limited injunctive relief available under section 512(j) a sufficient and effective remedy to address the posting of infringing material?
28. Are the remedies for misrepresentation set forth in section 512(f) sufficient to deter and address fraudulent or abusive notices and counter notifications?

#### *Other Issues*

29. Please provide any statistical or economic reports or studies that demonstrate the effectiveness, ineffectiveness, and/or impact of section 512's safe harbors.
30. Please identify and describe any pertinent issues not referenced above that the Copyright Office should consider in conducting its study.

Dated: December 28, 2015.

**Maria A. Pallante,**

*Register of Copyrights, U.S. Copyright Office.*

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## **MILLENNIUM CHALLENGE CORPORATION**

**[MCC FR 15–06]**

### **Report on the Selection of Eligible Countries for Fiscal Year 2016**

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D, (the "Act"), 22 U.S.C. 7708(d)(1).

Dated: December 18, 2015.

**Maame Ewusi-Mensah Frimpong,**  
*Vice President and General Counsel,*  
*Millennium Challenge Corporation.*

### **Report on the Selection of Eligible Countries for Fiscal Year 2016**

#### **Summary**

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, as amended, Public Law 108–199, Division D, (the "Act") (22 U.S.C. 7707(d)(1)).

The Act authorizes the provision of Millennium Challenge Account

(“MCA”) assistance under section 605 of the Act (22 U.S.C. 7704) to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (“MCC”) to determine the countries that will be eligible to receive MCA assistance for the fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as on the opportunity to reduce poverty and generate economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The countries that are “candidate countries” for assistance for fiscal year (“FY”) 2016 based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act (22 U.S.C. 7707(a)));

2. The criteria and methodology that the Board of Directors of MCC (the “Board”) will use to measure and evaluate the policy performance of the “candidate countries” consistent with the requirements of section 607 of the Act in order to select “eligible countries” from among the “candidate countries” (section 608(b) of the Act (22 U.S.C. 7707(b))); and

3. The list of countries determined by the Board to be “eligible countries” for FY 2016, with justification for eligibility determination and selection for compact negotiation, including with which of the eligible countries the Board will seek to enter into compacts (section 608(d) of the Act (22 U.S.C. 7707(d))).

This is the third of the above-described reports by MCC for FY 2016. It identifies countries determined by the Board to be eligible under section 607 of the Act (22 U.S.C. 7706) for FY 2016 and countries with which the MCC will seek to enter into compacts under section 609 of the Act (22 U.S.C. 7708), as well as the justification for such decisions. The report also identifies countries determined by the Board to be eligible for MCC’s Threshold Program under section 616 of the Act (22 U.S.C. 7715).

### Eligible Countries

The Board met on December 16, 2015, to select countries that will be eligible

for assistance under section 607 of the Act (22 U.S.C. 7706) for FY 2016. The Board selected the following countries as eligible for such assistance for FY 2016: Cote d’Ivoire, Kosovo, and Senegal. The Board also reselected the following countries as eligible for FY 2016 compact assistance: Niger, Nepal, and the Philippines. The Board did not vote on the re-selection of Tanzania and Lesotho. The Board also reaffirmed its support for Mongolia’s continued effort to develop its compact proposal that will access funds appropriated to MCC when Mongolia was a candidate country.

### Criteria

In accordance with the Act and with the “Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2016” formally submitted to Congress on September 22, 2015, selection was based primarily on a country’s overall performance in three broad policy categories: Ruling Justly, Encouraging Economic Freedom, and Investing in People. The Board relied, to the maximum extent possible, upon transparent and independent indicators to assess countries’ policy performance and demonstrated commitment in these three broad policy areas. The Board compared countries’ performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of low income countries (“LIC”) or the group of lower middle income countries (“LMIC”).

The criteria and methodology used to assess countries on the annual scorecards are outlined in the “Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2016.”<sup>1</sup> Scorecards reflecting each country’s performance on the indicators are available on MCC’s Web site at [www.mcc.gov/scorecards](http://www.mcc.gov/scorecards).

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country’s commitment to fighting corruption, investments in human development outcomes, or poverty rates. For example, for additional information

in the area of corruption, the Board considered how a country is evaluated by supplemental sources like Transparency International’s Corruption Perceptions Index, the Global Integrity Report, Open Government Partnership status, and the Extractive Industry Transparency Initiative, among others, as well as on the defined indicator. The Board may also take into account the margin of error around an indicator, when applicable. In keeping with legislative directives, the Board also considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall information available, as well as the availability of appropriated funds.

This was the sixth year the Board considered the eligibility of countries for subsequent compacts, as permitted under section 609(k) of the Act (22 U.S.C. 7708(k)). The Board also considered the eligibility of countries for initial compacts. The Board sees the selection decision as an annual opportunity to determine where MCC funds can be most effectively invested to support poverty reduction through economic growth in relatively well-governed, poor countries. The Board carefully considers the appropriate nature of each country partnership—on a case by case basis—based on factors related to economic growth and poverty reduction, the sustainability of MCC’s investments, and the country’s ability to attract and leverage public and private resources in support of development.

MCC’s engagement with partner countries is not open-ended, and the Board is very deliberate when determining eligibility for follow-on partnerships. In determining subsequent compact eligibility, the Board considered—in addition to the criteria outlined above—the country’s performance implementing its first compact, including the nature of the country’s partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country has implemented the compact in accordance with MCC’s core policies and standards. To the greatest extent possible, this was assessed using pre-existing monitoring and evaluation targets and regular quarterly reporting. This information was supplemented with direct surveys and consultation with MCC staff responsible for compact implementation, monitoring, and evaluation. MCC published a Guide to

<sup>1</sup> Available at <https://www.mcc.gov/resources/doc/report-selection-criteria-and-methodology-fy16>.

the Supplemental Information Sheet<sup>2</sup> and a Guide to the Compact Survey Summary<sup>3</sup> in order to increase transparency about the type of supplemental information the Board uses to assess a country's policy performance and compact implementation performance. The Board also considered a country's commitment to further sector reform, as well as evidence of improved scorecard policy performance.

As with previous years, a number of countries that performed well on the quantitative elements of the selection criteria (*i.e.*, on the policy indicators) were not chosen as eligible countries for FY 2016. FY 2016 was a particularly competitive year: Several countries were already working to develop compacts, multiple countries passed the scorecard (some for the first time), and funding was limited due to budget constraints. As a result, only three countries that passed the scorecard were newly selected for MCC compact eligibility, and two others for the threshold program.

#### **Countries Newly Selected for Compact Eligibility**

Using the criteria described above, Cote d'Ivoire, Kosovo, and Senegal are the only candidate countries under section 606(a) of the Act (22 U.S.C. 7705(a)) that were newly selected as eligible for assistance under section 607 of the Act (22 U.S.C. 7706).

**Cote d'Ivoire:** After years of working with MCC and MCC indicator institutions in order to strengthen their scorecard performance, Cote D'Ivoire went from passing 5 to 13 indicators over the last four years, due to updating data and pursuing policy reforms linked to the scorecard. In FY 2015, Cote D'Ivoire met the minimum scorecard criteria for the first time, passing 10 indicators, including both hard hurdles. Given the continued improvement from FY 2015 to FY 2016, selection for a compact program allows MCC to continue strengthen its relationship with Cote d'Ivoire while rewarding continued policy improvement.

**Kosovo:** After years of working to improve data collection and quality, as well as improve policy outcomes, Kosovo passed the MCC scorecard for the first time in FY16, passing 13 of 20 indicators including both hard hurdles and passing Control of Corruption. The country remains one of the poorest in Europe with close to 30% of the

population living on less than \$2/day, and an economy highly dependent on remittances. A compact investment will serve as an opportunity to reduce poverty through sustainable economic development while also building on the positive relationship built over the past few years.

**Senegal:** Senegal has consistently passed the scorecard criteria for eight consecutive years and scored above the 90th percentile in Control of Corruption for three consecutive years. Through its first compact, Senegal has proven to be a strong partner, successfully completing the compact (\$540 million) in September 2015. In working on a second compact, MCC is able to continue to partner with the Government of Senegal to reduce poverty and support strong economic investments in the country.

#### **Countries Reselected To Continue Compact Development**

Three of the countries selected as eligible for compact assistance for FY 2016 were previously selected as eligible in FY 2015. These countries are Niger, Nepal and the Philippines. The Board reselected these countries based on their continued or improved policy performance since their prior selection. The Board also expressed its support for continued development of a compact with Mongolia using funds appropriated in FY 2015 and prior years, as the country moved in FY 2016 to the upper middle income category before its proposal was finalized. The Board deferred a vote on the selection of Tanzania and Lesotho and emphasized the seriousness with which it takes a country's commitment to MCC's eligibility criteria.

**Tanzania:** The Board deferred a vote on Tanzania's reselection. The Board discussed the fact that due to ongoing concerns about the Zanzibar elections, as well as the use of Tanzania's Cyber Crimes legislation in the context of the national elections, a vote on reselection would be premature at this time. The Board may revisit its decision over the course of 2016 as more information becomes available.

**Lesotho:** The Board deferred a vote on Lesotho's reselection. The Board discussed the fact that due to ongoing concerns over the rule of law and accountability in the country, and an expected report from the Southern Africa Development Community on these same issues, a vote on reselection would be premature at this time. The Board may revisit its decision over the course of 2016 as more information becomes available.

#### **Countries Selected as Eligible To Receive Threshold Program Assistance**

The Board selected Sri Lanka and Togo as eligible to receive threshold program assistance.

**Sri Lanka:** Sri Lanka consistently passed the scorecard from FY 2011 through FY 2015. Though Sri Lanka failed the scorecard in FY 2016 due to failing the democratic rights indicators, this was largely due to the indicators reflecting events in 2014, and likely not yet capturing the democratic rights improvements following the 2015 elections. A threshold program investment is an opportunity to build on this positive momentum, and allows Sri Lanka the opportunity to further strengthen its scorecard performance. It also allows MCC the opportunity to work with the government on the country's ongoing efforts in policy reform.

**Togo:** Togo has shown consistent improvements on the MCC scorecard over the past three years. A government committee has been strongly engaged with MCC to strategize and prioritize policy improvements, including reforming the family code to ensure gender equality and improving control of corruption. As a result, Togo moved from passing 5 of 20 indicators in FY 2014 to 10 of 20 indicators in FY 2016. Togo's eligibility for threshold program assistance will allow MCC to engage with Togo on continued policy reform, as well as offer Togo an opportunity to further strengthen its scorecard performance.

#### **Ongoing Review of Partner Countries' Policy Performance**

Once MCC has signed a compact with a country, MCC does not consider the country for reselection on an annual basis during the term of its compact. However, the Board emphasized the need for all partner countries to maintain or improve their policy performance. If it is determined during compact implementation that a country has demonstrated a significant policy reversal, MCC can hold it accountable by applying MCC's Suspension and Termination Policy.<sup>4</sup>

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<sup>2</sup> Available at <https://www.mcc.gov/resources/doc/guide-to-supplemental-information-fy16>.

<sup>3</sup> Available at <https://www.mcc.gov/resources/doc/guide-to-the-compact-survey-summary-fy15>.

<sup>4</sup> Available at <https://www.mcc.gov/resources/doc/policy-on-suspension-and-termination>.