

## **INDEPENDENT REDRESS MECHANISM**

### **DRAFT CONSULTATIVE REPORT ON THE REVISED TERMS OF REFERENCE**

#### **A. Background**

1. The Independent Redress Mechanism (IRM) is mandated in paragraph 69 of the Green Climate Fund's (GCF's) [Governing Instrument](#) which States that "(t)he Board will establish an independent redress mechanism that will report to the Board. The mechanism will receive complaints related to the operation of the Fund and will evaluate and make recommendations."
2. Pursuant to decision B.06/09, paragraph (c), the Board adopted the [Terms of Reference](#) (TOR) of the IRM. The TOR sets out various matters, including the IRM's role and functions, high-level modalities, governance arrangements and administrative arrangements.
3. Pursuant to decision B.13/24, paragraph (e), the Board invited the Head of the IRM, "following consultations with relevant stakeholders, to recommend any necessary updates" to the TOR for the Board's consideration (emphasis added). By decision B.15/12, paragraph (c), the Board authorized the Head of the IRM to undertake such consultations and present a revised draft of the TOR for the Board's consideration at its sixteenth meeting.
4. Pursuant to decision B.13/24, paragraph (c), the Board also requested the Head of the IRM, to prepare for the Board's consideration detailed guidelines and procedures for the IRM through a consultative process. In preparing such guidelines and procedures, the Head of the IRM will consider matters related to third party costs and expenses and categories of information that the Head may request from persons seeking redress. By decision B.15/12, paragraph (d), the Board authorized the Head of the IRM to undertake such consultations and present a draft of such guidelines and procedures for the Board's consideration no later than its eighteenth meeting.
5. A separate consultative process will be launched for developing the detailed guidelines and procedures, following the Board's approval of a revised TOR for the IRM. Accordingly, this consultative report does not address matters which are expected to be covered in such detailed guidelines and procedures, such as the matters referred to in paragraph 4 and timeframes for IRM processes.

#### **B. Consultative process & approach**

6. A public call for submissions on the revision of the TOR was published on 20 December 2016 with a deadline of 20 January 2017. In addition, feedback was solicited from Board members, alternate Board members and accredited observers. Eight submissions were received before the deadline: four from Board members; three from civil society; and one from a compliance expert. Two Board members and a UN agency submitted comments thereafter, bringing the total number of submissions to 11. A summary of these submissions can be found in the annex hereto.

7. Feedback was also received from the Ethics and Audit Committee (EAC) of the Board and the senior management team of the Secretariat on a preliminary draft of this consultative report. The IRM also met with the Accreditation Panel of the GCF.

8. Based on these submissions and feedback and its own research, the IRM (with assistance from the Office of General Counsel (OGC)) has developed this draft consultative report for further formal and informal consultations with members and alternate members of the Board and stakeholders.

9. During the course of February, a series of consultative webinars for Board members, accredited observers, National Designated Authorities (NDAs) and accredited entities (AEs) will be held to solicit further feedback. The IRM will also informally meet with senior Secretariat staff, including the Executive Director, and where possible with members and alternate members of the Board and other stakeholders. Thereafter, a draft Board paper, together with a draft revised TOR will be prepared for the EAC, before being presented to the Board for its consideration.

10. This draft consultative report seeks to facilitate the ongoing consultations. It should therefore be noted, that the draft proposals in this report are tentative and meant for discussion only. They may not all be reflected in the final draft TOR presented to the EAC and the Board. The final revisions to the TOR will be decided by the Board.

11. The GCF was designed to be a learning institution. It is still in the process of scaling up its staffing and operations and the IRM, in particular, is still being operationalized. For these reasons, the general approach in this draft consultative report is to suggest only those revisions to the TOR that are “necessary” to update it. With more institutional experience and capacity, the Board may wish to consider a more extensive revision in a few years. In this context, revisions to the TOR were considered “necessary” only in order to: (a) remove inconsistencies; (b) provide logical sequencing; (c) collate items under common topics; (d) clarify ambiguities; (e) move items from the TOR to the detailed guidelines and procedures; (f) reflect good international practices; or (g) effect consequential amendments. On certain matters, this report posits questions on which feedback is solicited from members and alternate members of the Board and stakeholders. The substantive parts of the provisions of the current TOR that are not proposed to be revised will be retained.

### **C. Key draft proposals for revision of the TOR**

12. **Guiding principles of IRM:** Guiding principles of the IRM, such as fairness, transparency and responsiveness, which are scattered throughout the current TOR, will be brought together in a single paragraph.

13. **IRM functions (jurisdictions):** The current TOR assigns two main functions to the IRM –those related to the reconsideration of funding decisions and those related to complaints from persons affected by projects. There is a third ancillary function– an advisory one, to provide recommendations for policy and procedural changes, based on lessons learned from complaints by affected persons. The current TOR does not have a similar role for the IRM with respect to lessons learned from requests for reconsideration of funding decisions. In keeping with the principle that the GCF should be a continuously learning institution, it is proposed to include such a role in relation to the IRM’s reconsideration function, and to bring these two ancillary functions together in one paragraph. It is also proposed to include a provision in the revised TOR which would allow the Board in future, to entrust to the IRM other functions consistent with paragraph 69 of the Governing Instrument, without requiring a formal amendment to the revised TOR.

14. While the IRM makes recommendations to the Board, it remains for the Board to decide on the fate of complaints and requests and, when appropriate, on redress and remediation measures.

15. **Governance of the IRM:** Notwithstanding that the IRM performs a key accountability function, it reports directly to the Board and is independent of the Secretariat. The proposed revisions could clarify and strengthen several matters concerning the governance of the IRM:

a. The current TOR states that the IRM comprises of the Head and two part-time experts. It is unclear whether the three form a panel for the purposes of making recommendations or whether the Head of the IRM makes recommendations himself/herself. Both models exist globally among other redress mechanisms. It will be helpful to clarify the original intention. Given the need to keep the IRM's costs low and the nature of the GCF, an IRM with a Head and supporting staff and consultants is a more appropriate model. The TOR text will be clarified;

b. At its fifteenth meeting, the Board invited the Head of the IRM to consult with the EAC in the implementation of the work plan of the IRM. The TOR ought to be revised to reflect this new role of the EAC;

c. Independence and impartiality are essential for the legitimacy and credibility of redress mechanisms. For this reason, good international practice prevents the principals of such mechanisms from being re-employed by the institution in any capacity, after leaving office either for lifetime or for significantly long periods (e.g. 5-10 years). It is proposed to revise the current TOR to reflect this good practice, notwithstanding and in derogation of the one-year cooling-off period set out in the Policy on Ethics and Conflicts of Interest for Board Appointed Officials (see decision B.13/27, Annex V); and

d. The current TOR text will be clarified to entrust the Head of the IRM with the operation of the mechanism, consistent with the TOR, detailed guidelines and procedures, and international good practice.

16. **Modalities for reconsideration of funding decisions:** The current TOR provides for an NDA from a developing country to file a request for reconsideration with the IRM, when the Board has denied funding to a specific project or programme. This function has its genesis in Article 11, paragraph 3(b), of the Convention. In the case of the Adaptation Fund, the COP retained the power to reconsider funding proposals which were denied funding. However, in the case of the GCF, this function was entrusted to the Board, upon a recommendation of the IRM.

17. These provisions of the TOR were considered as recently as the thirteenth meeting of the Board in 2016. Interim procedures have been adopted by the Board in this regard. These procedures will be merged with the detailed guidelines and procedures to be drafted later this year. Concerns have been raised in submissions as to the exact meaning of the term "denied funding" with reference to a Board decision on a funding proposal. In particular, there remain questions whether a denial of funding is the same as a rejection of a funding proposal. Given that there is a review of the initial proposal approval process currently underway, it may be more appropriate to address this matter within the context of that review. It is therefore prudent to proceed cautiously on this matter, learning from experience along the way. No revisions (other than as suggested in paragraph 18(h) below) are suggested to this part of the TOR.

18. **Modalities for redress for affected persons or groups:** While the current TOR establishes this function, the following revisions may be considered in accordance with good international practice:

- a. Individuals should also be allowed to file a complaint with the IRM for mediation and when systemic issues are identified, for compliance review as well;
  - b. The current TOR allows a group to file a complaint. The group should be defined as two or more persons. The term “community” is a subspecies of “group” and can be deleted;
  - c. It should be made possible to file a complaint through an authorized representative;
  - d. The IRM should be able to keep the identities of the complainants confidential;
  - e. The current TOR should be revised to include “potential” or “likely” impacts on the principle that it is better to prevent harm than to remedy it afterwards;
  - f. Mediation and compliance reviews are two complementary procedures with distinct goals. When a complaint is filed, the current TOR makes mediation compulsory. The TOR might be revised, so a complainant will have the freedom to choose either mediation or compliance or both. In order to seek mediation, it should be possible for a complainant to approach the IRM without alleging a violation of GCF policies and procedures. This is a matter that can also be dealt with in the detailed guidelines and procedures;
  - g. Compliance reviews seek to assess whether the complainant suffered adverse impacts as a result of non-compliance of a GCF funded project or programme with policies and procedures of the GCF. As such the TOR might clarify that a complainant seeking compliance review must allege that there has been a violation of such policies or procedures. This should also be the case where mediation fails and the complainants or IRM wish to move the complaint into a compliance review phase. This too is a matter that can be dealt with in the TOR or in the detailed guidelines and procedures; and
  - h. Some of the procedural provisions in paragraphs 3 and 8 of the current TOR are best dealt with in detailed guidelines and procedures and may be removed from it.
19. Given that there are redress mechanisms within AEs with whom the IRM will need to work collaboratively, those redress mechanism should, when appropriate, be allowed to refer complaints they receive to the IRM for processing and the IRM to refer complaints to them, where appropriate.
20. In this context, the TOR can set out broad categories of remedies that the IRM can recommend to the Board. Remedies following a compliance review could include, (a) specific steps that ought to be taken by the GCF or AEs to bring a project and programme into compliance with GCF policies and procedures, and (b) compensation for affected persons. Provision can also be made for the Secretariat to present a remedial action plan that responds to the IRMs recommendations and consequent Board decisions. In recommending redress, the IRM can be mandated to take into account the extent of the GCF's investment in a project or programme.
21. Should the revision of the TOR include urgent interim measures to maintain the *status quo* of the complainants (through a temporary suspension of funding or identified activities of a project or programme) that the IRM can recommend to the Board, in the event of an imminent threat to life or property of the complainants or affected persons? This latter remedy is one the Board will either need to decide on an urgent basis or delegate to an appropriate body such as the EAC. It is also not a remedy that is seen in other redress mechanisms, though it is found in human rights courts and commissions around the world.

22. **Modalities for advice and reviews:** The current TOR allows the IRM to make recommendations to the Board on changes to policies and procedures. However, the TOR could be revised to clarify that the IRM will make recommendations to the Board; (a) when the Board requests such recommendations; or (b) when they arise out of lessons learned from cases handled by the IRM.

*(See Annex on next page)*

**ANNEX**

**Summary of submissions received by the IRM in response to the public call for submissions and the solicitation of comments from the Board.**

<b>Question included in the public call for submissions</b>	<b>Summary of Comment submitted to the Independent Redress Mechanism</b>
<p><b>a) Does the current TOR adequately cover all complaints that may be received by the IRM under clause 69 of the Governing Instrument of the GCF and how best might the revised TOR cover such complaints?</b></p>	<p>The IRM should be able to investigate in cases where adverse impacts occur despite compliance with the Fund’s policies and procedures. (Constituency of Finland, Hungary and Switzerland, OHCHR)</p> <p>Complaints should not be limited to the environment and social safeguards policy, but should include other important policies. (CSO, SIDS)</p>
<p><b>b) Does the current TOR adequately define who should have standing to bring a complaint to the IRM, and if not how might it be improved?</b></p>	<p>Individuals should be able to file a complaint. (CSO, Germany, Dr. van Putten, Indigenous Peoples, Constituency of Finland, Hungary and Switzerland, OHCHR and a commentator.)</p> <p>People potentially affected and people who believe they have been affected should be able to file a complaint, as well as stakeholders directly affected. (CSO, Dr. van Putten, Indigenous Peoples, Constituency of Finland, Hungary and Switzerland, OHCHR, SIDS)</p> <p>IRM should allow for submitting a complaint through a representative designated by the complainant. (CSO, Dr. van Putten, Constituency of Finland, Hungary and Switzerland, OHCHR)</p> <p>ToR should clarify whether and how the IRM would manage a complaint made by a government body. Given country ownership is a critical part of the operations of the Fund, and as the Fund not only has a number of country direct access entities but also that countries are often delivery partners in implementing funding proposals, further detail is required on this issue. (Australia)</p> <p>The Head of the IRM should have the authority to independently initiate compliance proceedings. (CSO)</p> <p>The Head of the IRM should be allowed to activate the IRM functions when he perceives breaches with GCF policies in the review of funding proposals by the Board. (SIDS)</p>
<p><b>c) What should the relationship(s) be, between the IRM and similar redress</b></p>	<p>The ToR should specify that filing a complaint to IRM doesn’t exclude filing complaints to other IAM nor to access to other</p>

<p><b>mechanisms of accredited entities and implementing entities, what are the roles, functions and capacities of such redress mechanisms and how best might those be taken into account, in revising the current TOR?</b></p>	<p>remedies and grievance (domestic, international, judicial) (CSO, Indigenous Peoples)</p> <p>IRM could inform the complainant of the existence of the AE's GRM, if it has one. (CSO)</p> <p>The agreements between the GCF and the AE should specify that they accept that the IRM can receive complaints on the project. (CSO)</p> <p>When the AE has its own grievance and redress mechanism, the AE's GRM should serve as the main instance of resolution and keep the IRM fully informed and updated of the process. (A COMMENTATOR)</p> <p>The current template AMA, stating that the AE's GRM is the primary mechanism to handle grievances, is not satisfactory and may lead to conflicts of interest. The IRM should be superior to the AE's GRM. (SIDS)</p>
<p><b>d) How best might the IRM and other redress mechanisms of accredited entities and implementing entities collaborate to address complaints resulting from GCF funded projects and how should this be reflected in the revised TOR?</b></p>	<p>AE could be asked to annually share the complaints registered for projects co-funded with the GCF, including the claim brought and the status of the complaint. (Indigenous Peoples)</p> <p>If a complaint is filed with both the IRM and the redress mechanism of an AE, then the IRM and the AE should work together to address the issues. (CSO)</p> <p>The AE's GRM and IRM should proceed in parallel, when complaints are filed to both. (SIDS)</p> <p>AE should notify the IRM when it receives a complaint on a GCF funded activity, and vice-versa. (SIDS)</p>
<p><b>e) How best might mediation and conciliation efforts be deployed by the IRM in response to complaints and when and under what circumstances should compliance proceedings be initiated?</b></p>	<p>Involve local mediators trusted by all stakeholders. (Dr. van Putten)</p> <p>IRM should firstly evaluate whether a funding decision was inconsistent with the GCF policies, before using informal means to resolve the dispute. (Germany)</p> <p>Complainants should be able to choose between mediation ("informal dispute resolution") and non-compliance review, or both. (CSO, Indigenous Peoples, Constituency of Finland, Hungary and Switzerland, OHCHR)</p> <p>Separate IRM teams should independently undertake the dispute resolution and compliance processes, to avoid the potential for bias, perceived or actual. (CSO, OHCHR)</p>

	<p>The modalities should be clarified regarding timeframe, appointment of mediator, definition of mediation failure... (SIDS)</p>
<p><b>f) What kinds of redress might the IRM recommend to the Board and how best might the revised TOR ensure that redress is delivered in a timely and efficient fashion to complainants and others identified by the IRM?</b></p>	<p>The IRM should be able to recommend the following types of redress: halting the project either entirely or until the identified problem(s) are addressed; financial and non-financial compensation for the harm; punitive sanctions where possible; consequences for staff in situations of non-compliance; specific performance of an action that should have been taken; and other remedial action to address the harm and prevent future harm through injunctions or guarantees of non-repetition, among others.(CSO)</p> <p>It should also be able to recommend immediate suspension of the funding as a precautionary measure. (CSO, OHCHR)</p> <p>The IRM should have the option to recommend that the Board cancels funding for the project or revoke the implementing entity’s accreditation. (CSO, OHCHR)</p> <p>The different types of redress available should be detailed. (Australia)</p> <p>The ToR should address urgent grievances which would require out-of-session consideration by the Board. (Australia)</p> <p>Complainants should be asked to specify what kind of redress they are seeking. (SIDS)</p>
<p><b>g) How should the GCF contribute to the third-party costs and expenses incurred by those who are entitled to seek redress from the GCF and under what circumstances might such costs be claimed?</b></p>	<p>Creation of a fund to compensate expenses incurred by bringing a claim to the IRM. (CSO, OHCHR)</p> <p>The GCF should also ensure that it can provide monetary compensation to requestors to remedy the harm. (CSO)</p> <p>The project sponsor/client and/or National Authorities that decided on the project should pay for redress and not the GCF. The GCF could consider setting aside a reasonable sum into the total loan that <u>could</u> be used for unforeseeable costs for impacted people. (Dr. van Putten)</p> <p>GCF should not directly contribute to the third-party costs and expenses, provided that IRM doesn’t ask for fees nor requires the complainant to be legally assisted. (France)</p>
<p><b>h) What guidelines might be developed on the categories of information that the Head of the IRM might reasonably</b></p>	<p>When filing a complaint one should not be asked to prove or show causality, but only to indicate how the project might harm him. (CSO)</p>

<p><b>request from those who are entitled to seek redress from the GCF?</b></p>	<p>IRM should ensure the confidentiality of all the information sent, if requested by the complainant. (CSO, Constituency of Finland, Hungary and Switzerland, OHCHR, and A COMMENTATOR)</p> <p>IRM should accept complaints in all languages. (CSO, Dr. van Putten, OHCHR)</p> <p>IRM should be flexible when accepting complaints, and accept for instance video testimony. (CSO, OHCHR)</p> <p>The plaintiff should detail facts of which the GCF is accused and refer to the GCF's governing instruments. (France)</p> <p>IRM should ascertain whether the complaint was raised in "good faith". (France)</p> <p>When filing a complaint, one could be asked to provide information to support requests for costs, where costs are sought. (SIDS)</p>
<p><b>i) What kinds of monitoring activities would be most useful and effective for the IRM to undertake and how should these be reflected in a revised TOR?</b></p>	<p>Stakeholders could be involved in monitoring the scheduled actions decided by the Board via phone or Skype contact. (Dr. van Putten)</p> <p>IRM could support Community-based monitoring and information systems (CBMIS) to complete its monitoring capacity. (Indigenous Peoples)</p> <p>IRM could compile statistics on the number and type of complaints, the timeframe to address them, which recommendations were made to the Board, etc. (SIDS)</p>
<p><b>j) How best can the current TOR be revised to ensure that the IRM helps the GCF improve its safeguard policies and procedures and suggest systemic improvements through proactive investigations and advice?</b></p>	<p>IRM could make its reports public. (Indigenous Peoples, France)</p> <p>Draft written reports to the Board to improve and learn from the past. (Australia)</p> <p>The IRM should keep an online case registry. (CSO)</p> <p>The IRM should report annually or semi-annually. (Germany, France)</p> <p>An independent integrity unit or an independent team should periodically review the IRM's work. (Indigenous Peoples)</p>
<p><b>k) How best can the IRM ensure that lessons learned by the IRM are incorporated by the</b></p>	<p>IRM could present its reports to management of the Secretariat as well. (Dr. van Putten)</p>

<p><b>Secretariat in its day to day work?</b></p>	<p>IRM could produce lessons-learned reports. (OHCHR, SIDS)</p>
<p><b>l) Under what circumstances might the Board reconsider a funding application that has been rejected either by the Board or by the GCF Secretariat or a committee or other mechanism of the GCF? How should the term “rejection of a proposal” be defined? Where and how should these be reflected in the revised TOR?</b></p>	<p>The final answer to reconsidering a funding proposal should be done in an open and transparent way. (Germany)</p> <p>Request for reconsideration should feature the same description of the project/programme as the one that was previously submitted to the Board because the mechanism isn’t a resubmission mechanism. (A COMMENTATOR)</p> <p>FP/NDAs should be the only one to file complaints with regards to rejection of funding proposals. (CSO)</p> <p>NDAs and AE should be able to file this type of complaints. (Germany)</p> <p>Rejection of a proposal should be understood broadly, to include</p> <ul style="list-style-type: none"> <li>• Partial funding decisions</li> <li>• Approval with conditionalities, where an affected developing country is concerned that certain conditionalities will be impossible or impracticable to satisfy;</li> <li>• Funding decisions that are tantamount to a rejection, such as funding proposals that after a defined period of time have not been approved by the Board or funding proposals that had to withdraw. (SIDS)</li> </ul>
<p><b>m) What specifics with regard to the relationship between the Board and the IRM should be specified in the revised TOR, including reporting lines through the Ethics and Audit Committee of the Board?</b></p>	<p>Reports or final assessments of the IRM could be considered by the Ethics and Audit Committee prior to consideration by the Board, where this is required. (Australia)</p> <p>Information on the content of the agreement should be made public only if the parties involved agree to and with prior review and approval from the Ethics and Audit committee. (France)</p>
<p><b>n) What would be an effective role for the Ethics and Audit Committee with regard to the IRM?</b></p>	<p>Define which complaints are handled by the IRM and which are handled by the IIU. (Constituency of Finland, Hungary and Switzerland)</p> <p>IRM should closely cooperate with the Ethics and Audit Committee but report directly to the Board. (Constituency of Finland, Hungary and Switzerland)</p>

<p><b>Suggestions regarding the IRM's staff</b></p>	<p>The Head of the IRM should be permanently banned from working at the GCF Secretariat. (CSO)</p> <p>Post-employment prohibition of at least two years for the other employees of the IRM. (CSO)</p> <p>Call for applicants to the Head of the Unit position should be made public. (Indigenous Peoples)</p> <p>The name and biography of the Head of the Unit should be available online. (Indigenous Peoples)</p> <p>The Head of the IRM Unit shall not be eligible for any type of employment by the Fund within 18months. (Germany)</p> <p>The Head of the IRM Unit should be accountable to the Board for its budget, and all expenses shall be expeditiously processed by the Secretariat at the direction of the IRM Head. (A commentator)</p> <p>Language on the independence of the Head of IRM should be strengthened. (OHCHR)</p> <p>Clarify the role of the roster of experts: investigation? Mediation? Drafting recommendations? (SIDS)</p>
<p><b>Other suggestions</b></p>	<p>IRM should introduce a protocol on how to address threats against complainants. (CSO, OHCHR)</p> <p>Define the technical terms such as “stakeholders”, “investigations”, “remedial actions” in a glossary. (Australia, SIDS)</p> <p>The IRM could follow the UN Guiding Principles on Business and Human Rights as a legitimate basis for its design. (OHCHR)</p> <p>The agreements with AE/EE could require these entities to disclose the existence of the IRM. (OHCHR)</p> <p>IRM should be publicized through public outreach campaigns, to ensure it is well known by all stakeholders. (OHCHR)</p> <p>ToR should detail timeframes for each step. (SIDS)</p>

**Note:** Many of the comments received are more relevant for consideration when the detailed guidelines and procedures are developed, after the Board adopts the revised TOR. Accordingly, they will be taken into account when detailed guidelines and procedures are prepared by the IRM for submission to the Board.