



**GREEN
CLIMATE
FUND**

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Submissions following the call for public submissions on the updated Terms of Reference of the Independent Redress Mechanism

Summary

This informational document contains:

1. A summary of the comments received by the Independent Redress Mechanism (IRM) of the GCF, in response to a public call dated 20 December 2016 published on the GCF website. The public call solicited feedback on the updating of the terms of reference of the IRM; and
2. The original submissions received in response to the said public call. Submissions are compiled as received without formatting and editing.

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I. Summary of comments received

Question included in the public call for submissions	Summary of Comment submitted to the Independent Redress Mechanism
<p>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?</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) 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?</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>c) What should the relationship(s) be, between the IRM and similar redress mechanisms of accredited entities and implementing entities, what are the roles, functions and capacities of such redress mechanisms and how best might those be</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 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>taken into account, in revising the current TOR?</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>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?</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>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?</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>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</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;</p>

<p>fashion to complainants and others identified by the IRM?</p>	<p>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>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?</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>h) What guidelines might be developed on the categories of information that the Head of the IRM might reasonably request from those who are entitled to seek redress from the GCF?</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>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>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?</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>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?</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>k) How best can the IRM ensure that lessons learned by the IRM are incorporated by the Secretariat in its day to day work?</p>	<p>IRM could present its reports to management of the Secretariat as well. (Dr. van Putten)</p> <p>IRM could produce lessons-learned reports. (OHCHR, SIDS)</p>
<p>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?</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"> • Partial funding decisions • Approval with conditionalities, where an affected developing country is concerned that certain conditionalities will be impossible or impracticable to satisfy; <p>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)</p>
<p>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?</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>n) What would be an effective role for the Ethics and Audit Committee with regard to the IRM?</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>Suggestions regarding the IRM's staff</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</p>

	<p>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>Other suggestions</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.

II. Submissions from Board members¹

2.1 Australia

Australia welcomes the opportunity to submit comments on the revision of the Terms of Reference (TOR) of the Independent Redress Mechanism Unit (IRMU). We thank the GCF Secretariat and the IRMU for its work to date. Australia submits the following overarching comments.

In developing a revised TOR of the IRMU and in developing the detailed guidelines and procedures for the Independent Redress Mechanism (IRM) Australia strongly encourages the IRMU to **review the redress mechanisms of other multilateral organisations** of a similar nature to the Fund and draw best practices to inform this work.

We suggest that **technical terms**, such as ‘investigations’, ‘remedial actions’, ‘stakeholders’, ‘complainants’, ‘mediation’ and other relevant terms, should be defined in a glossary, which would ensure that there is clarity on each of the terms.

A further elaboration of the **governance arrangements** of the IRM as outlined in the TOR would promote a more robust understanding of the operation of the IRM.

In addition, the TOR should **identify the different types or categories of redress** that would be available through the Fund, including whether monetary compensation will be provided. This will be an important issue in particular for the Board to consider, given the budgetary implications associated with monetary compensation.

The TOR could also be improved to provide more clarity as to whether and how the IRM would manage a **complaint made by a government body** in relation to a breach of the Fund’s policies. 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.

Given that a number of **proposals have multiple sources of financing** that complement the Fund’s support, the TOR should consider how the IRM should apply to these proposals. Where more than one organisation has a redress mechanism, clear criteria should be established identifying **which organisation’s redress mechanism(s) will be utilised** and in which circumstances this would apply. Consideration could be given to whether the scale of funding invested in a proposal has any weight as to which redress mechanism is utilised.

The TOR also needs to clearly outline the **roles and responsibilities** in the redress process of Accredited Entities, delivery partners, and any other co-funders of proposals, including reporting requirements for each entity.

¹ Submissions are compiled as received without formatting and editing.

It is also important to ensure that **information on the IRM be available in an accessible format to potentially affected communities** if it is to be effective. Consideration should be given in the TOR on whether the IRM may have a role in ensuring appropriate information is communicated.

The TOR should also clearly define the process for **informal resolutions of grievances**. Informal approaches should still be transparent, provide affected persons with timely access to relevant proposal information concerning the grievance, and be conducted in an environment free from undue pressure and coercion.

Timely consideration of **urgent grievances** is important and the parameters around such grievances need to be clearly defined, including which would require out-of-session consideration by the Board.

The TOR should also outline a **rigorous monitoring, review and reporting regime** to enable the quality of proposal-related grievance redress actions to be determined, and to identify lessons learned.

As the Fund is a continuously learning organisation, the TOR should also identify how regular engagement with senior level management of the GCF Secretariat will be undertaken to ensure **that lessons learned inform the improvement and redesign**, where appropriate, of policies, processes, procedures and the work of the Fund and its divisions. This could include participation in planning days and sessions, reviews of processes and procedures, and other direct avenues of feedback on a more regular basis and their frequency, such as quarterly or biannually.

The TOR should also specify the **engagement between the IRM and the Board, including the Ethics and Audit Committee**. In the event that a grievance is lodged with the IRM, the IRMU should advise the Board without delay. Consideration could also be given as to the role the Audit and Ethics Committee may play in considering reports or final assessments of the IRM prior to consideration by the Board, where this is required, and to provide advice in instances where further clarity is needed on IRM-related policies or procedures of the Fund.

2.2 Constituency of Finland, Hungary and Switzerland

19 January 2017

Revised TOR for the Independent Redress Mechanism (IRM)

Submission by the Constituency of Finland, Hungary and Switzerland

In response to the solicitation for initial feedback for revising the current TOR for the IRM, we are pleased to provide the following input. We understand that further feedback will be requested after the preparation of a “consultative draft” of the revised TOR and that a separate consultative process will be launched later this year for the development of detailed guidelines and procedures governing the work of the IRM. Therefore, we limit our comments at this stage to some general principles and issues that we think should be properly addressed when updating the TOR.

We would like to note upfront that the *scope* of the TOR encompass two topics that are different in nature and may require a differentiated consideration by the Board. While article 2b speaks broadly to the *accountability function* of the redress mechanism, article 2a is closely linked to the *decision-making modalities* within the Fund. Given that the initial proposal approval process is currently under review, which may lead to additional decision making options for the Board (“revise and resubmit”), it is critical that the modalities for reconsideration of funding decisions laid out in the TOR be revised in the light of the outcomes of that review. Special attention needs to be paid in this context to the role of the NDAs, which should be informed when a request for reconsideration of a funding decision is filed and submitted to the IRM.

With regard to the accountability function of the redress mechanism, we see a need to flesh out in the revised TOR the following elements in particular:

- **Objective:** The rationale for establishing a redress mechanism is to allow project-affected communities to complain directly to the GCF and to help ensure that grievances or complaints are resolved in a collaborative, timely and efficient way. The overriding objective of the IRM is thus to enhance the GCF’s responsiveness and accountability to concerns of project-affected people and stakeholders in developing countries.
- **Mandate:** It is essential to define upfront what types of complaints the IRM is supposed to handle and how far the mandate of the IRM extends. Some issues, for instance those related to suspected fraud or corruption, misprocurement or staff misconduct, are clearly better dealt with the Independent Integrity Unit. At the same time, we note that currently the scope is limited to cases where the adverse impacts are caused by clear failure to implement the GCF policies and procedures. Therefore, we see some value in broadening the current mandate of the IRM to enable it not only to investigate (non-)compliance with the Fund’s policies and procedures but also cases where adverse impacts occur *despite* compliance with the Fund’s policies and procedures. In this context, we feel it is key for the GCF to develop a general project cancellation and termination policy, which can be triggered for a number of reasons, and link it to the IRM. Finally, it is important to specify in the TOR what the implications of submitting a complaint to the IRM are, so that complainants know what they can expect from the Fund’s redress mechanism.
- **Eligibility:** Who is eligible to file a complaint needs to be defined in the TOR. Unlike what is stipulated in present article 7, we think that individuals and communities who *believe* they have been adversely affected by GCF-financed projects are the ones who should be eligible to submit a complaint. The modalities should also allow for submitting a complaint through a representative designated by the

complainant. In addition, the identity of the complainant must be kept confidential by the IRM when requested to do so.

- *Relationship:* The revised TOR need to spell out explicitly the main principles governing the relationship between the IRM and the corresponding bodies of AEs or IEs. It is preferable to have this policy outlined in the TOR rather than deciding on a case-by-case basis through the AMAs. With regard to the relationship between the Ethics and Audit Committee and the IRM, we believe it is important that the IRM stays responsible and accountable to the entire Board. Close cooperation with the Ethics and Audit Committee is encouraged, as appropriate, but we would like to see the direct reporting line to the Board remaining.
- *Process:* The revised TOR should outline how a complaint is handled, the two options of an informal vs. formal resolution process, and which phases of process a complaint goes through (e.g. receipt of complaint, determination of eligibility, notification of eligibility, proposal of solution). In our view, the steps proposed in present article 8 are not fit-for-purpose and do not reflect international best practices anymore. For instance, the process followed by the ADB still includes the informal way of solving complaints or grievances in an amicable way, but it also allows affected communities to go directly to the formal process (cf. <https://www.adb.org/site/accountability-mechanism/complaint-process-flow>). In line with the practice at the ADB, complainants to the GCF should be given the possibility to choose between an informal and a formal resolution process. It might be useful to collect best practices of other comparable international organizations to help advance the Board's reflections on this matter.

2.3 France

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Call for public input - Independent Redress Mechanism of the Green Climate Fund

In response to the CF call for public inputs, as part of the consultative process related to the terms of reference for the review of the IRM, please find below this submission on behalf of the French Treasury.

1. *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? What guidelines might be developed on the categories of information that the Head of the IRM might reasonably request from those who are entitled to seek redress from the GCF?*

The current ToR should define better the criteria of eligibility. In line with other similar mechanisms, such as the OECD guidelines for multilateral enterprises, in assessing the admissibility of a referral to it, the IRM unit should consider:

- The identity of the party concerned and its interest in the case;
- The significance of the issue and the supporting items provided;
- The apparent connection between the activities of the party raising the concern and the issue raised in the specific instance;
- The relevance of the applicable laws and procedures, notably jurisdictional proceedings;
- How similar issues are being (or have been) examined at the national or international level.

A referral to the IRM must be precise. In this regard, it must stipulate:

- The full identity and contact details of the plaintiff;
- Details of the facts of which the Fund is accused;
- Elements of the governing instrument and policies of which the referral to the IRM is being made.

While requesting information to the party seeking redress, the IRM should ask for detailed facts along the complaint, and shall ascertain whether the issue in question has been raised in “good faith” and in accordance with the governing instrument and policies of the GCF.

2. *What should the relationship(s) be between the IRM and similar redress 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?*

3. *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?*

In our view, there should be not direct contribution to the third-party costs and expenses. However, it is important that:

- the IRM unit should be entitled to meet the party raising the concern in its home country, in connection with the significance of the issue and the incapacity for the party seeking redress to address its case at the IRM-unit office ;
 - there should be no fees for the submission of request to the IRM ;
 - there should be no obligation for the party raising the concern to contract with a law specialist to address its concerns.
4. *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? What would be an effective role for the Ethics and Audit Committee with regard to the IRM?*

We recommend that, after consulting with the parties involved, the IRM unit should make public the results of the procedures, taking into account the need to protect sensitive information, in respect of information relating to the parties involved. Information on the content of the agreement shall be included only if the parties involved agree to and with prior review and approval from the Ethics and Audit committee.

In the event of a disagreement amongst the IRM and the Board of the GCF, regarding the outcome of a specific instance, including the publication of any possible IRM statement, the decision shall be handled by the Board, which holds the final decision to communicate or not on the statement.

The IRM shall issue an annual report, which should at a minimum describe the a disclosure of the type of parties seeking redress, the number of issues raised, the types of procedures the IRM initiated in assisting the parties and when an agreement was reached.

2.4 Germany

Annex

This is the current TOR of the IRM adopted at the 6th Board meeting of the GCF. The Board has requested that this TOR be updated. A revised TOR will be presented to the Board at its 16th meeting in April 2017, following consultations.

Terms of Reference of the Independent Redress Mechanism

I. Role and functions

1. The Governing Instrument mandates the Board to establish “an independent redress mechanism that will report to the Board. The mechanism will receive complaints relating to the operation of the Fund and will evaluate and make recommendations”. The independent redress mechanism (IRM) is not intended to be a court of appeals or a legal mechanism.

2. The IRM is a mechanism within the Fund that will:

(a) Address the reconsideration of funding decisions in accordance with paragraphs 6 to 10 of the Arrangements between the Fund and the Conference of the Parties, and

(b) Address the grievances and complaints by communities and individuals who have been directly affected by adverse impacts through the failure of the project or programme funded by the Fund to implement the Fund’s operational policies and procedures, including environmental and social safeguards, or the failure of the Fund or its intermediaries and implementing entities to follow such policies.

6. The IRM will treat all stakeholders in a fair and equitable manner. While ensuring transparency and fairness, the IRM will be cost-effective, efficient and complementary to other supervision, audit, quality control and evaluation systems of the Fund. The IRM will follow international best practices.

II. Modalities for reconsideration of funding decisions

3. A request can be filed by a National Designated Authority (NDA) or an Accredited Entity (AE), that has been denied funding for a specific project or programme in that country by the Board, even though resources were available. Such a request has to include a description of the project or programme including the application reference that has been denied funding, and has will need to substantiate the reasons why the developing country believes that the denial was inconsistent with the policies, programme priorities and eligibility criteria of the Fund, including those implementing guidance provided by the Conference of the Parties.

Kommentar [GER1]: General comments:

-In Para. 69 of the Governing Instrument, it says “The mechanism will receive complaints related to the operation of the Fund and will evaluate and make recommendations.” As it is currently presented, the complaints are limited to two specific cases: a) reconsideration of funding decisions, b) redress for affected communities.

-The terminology is inconsistent and should be checked (e.g. standing parties, the NDA, communities, developing countries, individuals / people/ persons). Similarly, it is unclear what the IRM does with a complaint (e.g. para 69 of the GI says “evaluate”, while the ToRs say “review”, “consider” in the procedure for reconsidering funding decisions, and then “evaluate” in procedure for redress for affected communities.) These inconsistencies might not always matter, but some clearly have the potential for causing confusion and uncertainty.

Kommentar [GER2]: The exact meaning of this sentence including its consequences is unclear.

Gelöscht: people

Gelöscht:

Gelöscht: the

Gelöscht:

Kommentar [GER3]: To be consistent with para 7.

[1] verschoben

Kommentar [GER4]: This paragraph does not seem to be limited to section III but to be valid in general.

Gelöscht: developing country

Gelöscht: will need



4. When considering such a request, the IRM will:

- (a) Review the request within 30 calendar days to determine whether the decision to deny funding was inconsistent with the GCF's policies, programme priorities and eligibility criteria;
- (b) Use informal means such as consultations and mediation (?), in the first instance, for addressing the request to bring about a satisfactory and amicable resolution of the request;
- (c) ~~If informal means are not successful, determine whether the Fund was inconsistent with its policies, programme priorities and eligibility criteria when denying funding to a specific project or programme;~~
- (d) If informal means are not successful, prepare a report for the Board's consideration for the next meeting, including a recommendation on possible remedial actions, in the second instance.

5. The Board will consider the request in view of the report at the next board meeting and may take steps to implement the recommendation of the IRM. If the Board decides to reconsider a previously rejected funding proposal, the funding proposal will be added to the pipeline for the subsequent board meeting.

III. Modalities for redress for affected communities and individuals

7. A grievance or complaint can be filed by a group of persons who have been directly affected by adverse impacts, including but not limited to, through the failure of the project or programme funded by the Fund to implement the Fund's operational policies and procedures, including environmental and social safeguards, or the failure of the Fund or its intermediaries and implementing entities to follow such policies. Other kinds of complaints, such as allegations of corruption, misprocurement, will be handled by other units of the Fund, e.g., the Independent Integrity Unit.

8. When considering such a grievance or complaint, the IRM will follow the steps below:

- (a) Evaluate if the group or individual filing the grievance or complaint meets the eligibility criteria set out in paragraph 7;
- (b) If deemed eligible, assess the grievance or complaint from those directly affected by the projects/programmes funded by the Fund;
- (c) Use informal means for addressing the grievance or complaint such as problem solving and mediation to bring about a satisfactory and amicable redress of the grievance or complaint;
- (d) Where such informal efforts are not successful, determine if project-affected communities or people encountered impacts because of a failure to follow the Fund's operational policies and procedures, including environmental and social safeguards, and make recommendations to the Board for actions, as appropriate;

Kommentar [GER5]: The review has not to be done in an open and transparent manner but the communication of the evaluation should be communicated in such a manner.

Gelöscht: in an open and transparent manner

Gelöscht: Fund

Gelöscht: its

Kommentar [GER6]: 1. It seems necessary to specify a timeline here. 2. The purpose of the review is to check whether, from the fund's perspective, something went wrong, in our understanding.

Gelöscht: when denying funding to a specific project or programme

Kommentar [GER7]: A specification seems helpful here because "informal means" can sound a little threatening and ambiguous.

Formatiert: Durchgestrichen

Gelöscht: P

Gelöscht: ¶

Gelöscht: may

Gelöscht:

Kommentar [GER8]: The ToRs are not clear regarding whether only groups of individuals have standf ... [1]

[1] nach oben: 6. The IRM wif ... [2]

Gelöscht:

Kommentar [GER9]: Same ... [3]

Gelöscht: i.e.

Gelöscht: a

Gelöscht:

Kommentar [GER10]: "eligibil ... [4]

Gelöscht: address

Gelöscht: a

Gelöscht: ¶

Kommentar [GER11]: Is "prof ... [5]

Formatiert: Durchgestrichen

Kommentar [GER12]: This is f ... [6]

The board will decide about a potential redress at the following board meeting, whose form and volume will be based on IRM's assessment and recommendations.

- (e) The IRM may also make recommendations to the Board to make changes to operational policies and procedures;
- (f) Monitor whether the decisions taken by the Board following IRM recommendations have been implemented; and
- (g) Prepare and submit periodic progress reports to the Board, as and when required, and an annual report that will also be disseminated to the public.]

Gelöscht: ¶

Kommentar [GER13]: These three items should be grouped under a separate heading as they seem to address general points and not limited to "redress for affected communities".

IV. Governance and management structure

9. The IRM Unit will have the highest professional and technical standards for its staff and operations and will be headed by a part-time expert with experience in running an accountability mechanism and will comprise two other part-time experts who have relevant background and experience relating to such a mechanism. These persons should enjoy impeccable reputation of honesty and integrity and be widely respected and regarded for their competence and expertise. As and when the workload justifies, the part-time head position could be converted into a full-time position. The Head of the IRM Unit will report to the Board.

10. The Board will be responsible for:

- (a) Appointing and reappointing the Head of the IRM Unit, in an open and transparent manner to be decided by the Board;
- (b) Overseeing the activities of the IRM;
- (c) Considering and approving the annual budget of the IRM;
- (d) Taking decisions and authorizing actions based on consideration of IRM's recommendations, following the investigations; and
- (e) Monitoring the implementation of these se decisions and actions.

Gelöscht: upon

Gelöscht: of the IRM

Gelöscht: taken

11. The tenure of the office of the Head of IRM Unit will be for three years, renewable once. To ensure independence of the office, the incumbent may not be removed from office during his/her term, except for malfeasance or mental incapacitation. His/her terms and conditions of appointment will be decided by the Board. The Head of the IRM Unit shall not be eligible for any type of employment by the Fund within one year after the date of the end of his/her appointment.

Kommentar [GER14]: Please make this consistent with the freezing period of 18 months (?) foreseen for former board members.

12. The IRM Unit will keep a roster of experts with a variety of technical skills who will be selected in an impartial and objective manner. These experts will be invited and assigned the task to carry out compliance appraisals in those cases where screening determines that the complaint meets the eligibility criteria and where mediation has failed. The selection of the candidates will be made carefully to eliminate any possible actual or perceived conflict of interest. These experts will be paid all their expenses, and fees or honorarium on the basis of the work performed.

Kommentar [GER15]: It seems that new terminology is introduced here but it is not entirely clear what it means. If these experts are actually doing the evaluation of the merits of a complaint, then this para should say so.

13The staff of the IRM Unit will be subject to the Code of Conduct of Staff.

PLEASE ADD A PARAGRAPH ON THIRD PARTY COSTS AND EXPENSES HERE

V. Guidelines and procedures

14. The detailed guidelines and procedures governing the work of the IRM will be approved by the Board. The procedures to be followed will be iterative, whereby expeditious and low-cost redress of grievances and resolution of complaints can be facilitated. Only in those cases where such informal resolution of problems is not possible, the subsequent phase of investigation and determination will be invoked.

VI. Budget, staffing and reporting

15. To ensure its financial independence, the Head of IRM Unit will propose a budget for meeting the annual expenses and the Board will consider and approve this budget.

16. For administrative purposes only, the Head of IRM Unit will report to the Executive Director, but for all substantive work, he/she will be responsible to the Board.

17. All staff appointments and terminations of service in the IRM Unit will be the sole responsibility of the Head of IRM Unit and not of the Secretariat.

VII. Delineation of roles and responsibilities of the Fund's independent redress mechanism and those of the accountability mechanisms of implementing entities and intermediaries

18. The Fund's IRM should closely cooperate with the relevant departments or units of implementing entities and intermediaries.

19. The relationship between the IRM and the implementing entities or intermediaries will be covered in agreements which will be entered into by the Fund with these implementing entities or intermediaries which will require these to cooperate with the Fund's IRM, where required.

20. The IIU will share best practices and give guidance that can be helpful for the Fund's readiness activities, by an annual report/semi-annual reports.

Kommentar [GER16]: This would be inconsistent with the sequencing we suggest in para 4a. There, we suggest it seems more "open and transparent" to first evaluate whether a funding decision was inconsistent with the GCF's policies before using informal and thus potentially intransparent means.

Gelöscht: corresponding body of

Gelöscht: .



The ToRs are not clear regarding whether only groups of individuals have standing (to sue). It uses the terms "communities", "people" and "group of persons". This needs to be checked and made consistent. Specifically, it should either be "peoples" in the technical legal sense or "individuals" or "persons".

Seite 6: [2] Auf Seite 5 verschoben (Verschiebung Nr. 1) Germany 20.01.2017 10:15:00

6. The IRM will treat all stakeholders in a fair and equitable manner. While ensuring transparency and fairness, the IRM will be cost-effective, efficient and complementary to other supervision, audit, quality control and evaluation systems of the Fund. The IRM will follow international best practices.

Seite 6: [3] Kommentar [GER9] Germany 20.01.2017 09:41:00

Same comment as above. [including but not limited to]

Seite 6: [4] Kommentar [GER10] Germany 20.01.2017 09:41:00

"eligibility" does not seem a good term to use to describe "standing". Suggest to use "standing" or simply "criteria"

There is a general problem here regarding the sequencing of steps: It is not clear whether or not checking "eligibility" in step 1 (subpara a), includes the evaluation of whether the project / programme is consistent with the GCF's policies etc. In other words it is not clear whether in step 1, the IRM

either : merely checks whether the group is directly affected by the adverse effects from the project or programme - regardless of whether that project/programme complies with the GCF's policies or not; (=> in this case this needs to be checked in subpara (d))

or: checks whether the group is directly affected by the adverse effects from the project or programme **AND also** checks whether the project / programme is consistent with the GCF's policies etc (=> in this case this does not have to be checked again under subpara (d))

Seite 6: 5 Kommentar GER11 Germany 20.01.2017 09:42:00

Is "problem solving" an informal means?

Seite 6: 6 Kommentar GER12 Germany 20.01.2017 09:42:00

This is not consistent with 8 a that needs to evaluate exactly these eligibility criteria – in other words, this would have been done already.

2.5 Samoa, SIDS

Draft Submission on Terms of Reference for the Independent Redress Mechanism of the Green Climate Fund, from Mr. Ali'ioaiga Feturi Elisaia, Board member from Samoa, SIDS

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Thank you for the opportunity to submit views on the revised Terms of Reference for the GCF Independent Redress Mechanism (IRM) as part of the consultative process.

The GCF Board aims to become a standard-setting institution in the global practice of climate finance, and a learning institution that builds on the results of independent evaluations of the consistency of its projects with its own policies and procedures. To achieve these aspirations, the GCF Board will need to put in place TOR for the IRM that provide very clear avenues for affected stakeholders to raise their concerns and very clear procedures to provide redress where GCF policies and procedures have not been appropriately followed.

A well-designed IRM will play an important role in building confidence and trust in the GCF as an effective and accessible multilateral financial institution, responsive and accountable to the needs and concerns of all stakeholders in supporting the goals set by the international community through the UNFCCC and the Paris Agreement.

1. Issues to be addressed through the TOR revision: overarching comments

The call for public input provides a number of very helpful guiding questions that submissions may wish to address. However, some cross-cutting issues need attention in revising the TOR.

The revised TOR should not have the result of constraining the scope of types of complaints that may be presented to the IRM, given the broad purpose of the IRM -- which is to receive complaints related to the operation of the Fund. Different categories of complaints to the IRM may always be handled differently.

The revised TOR should be at a **sufficient level of detail** to enable the development of clear rules that will deliver against the goals of the IRM and give all stakeholders clear guidance on how the IRM will operate. This will require

- Clear terminology

- Clear and transparent processes
- Clear timeframes
- Clear allocations of responsibility

With respect to terminology, many terms in the current TOR should be further defined to provide the necessary clarity to stakeholders and the public. These include the term “rejection” in the context of funding proposal (e.g., does a proposal have to be formally rejected, or can repeated deferrals at some point constitute rejection? if conditionalities are set that cannot be satisfied, can a proponent consider the proposal to have been rejected?), “developing country” (who acts on behalf of a developing country?), “request for reconsideration”, “complaint”, “grievance”, “affected community”, “group of persons”, “directly affected”, “eligible”, “investigations”, “compliance appraisal”, “mediation”, “informal means” etc.

In addition, **GCF-related terminology should be updated** to reflect how these terms are currently used by the Secretariat and the Board. (e.g. the correct technical term for “implementing entities and intermediaries” is now “Accredited Entities”).

With respect to process, if there is to be a sequence of required steps for certain categories of complaints or grievances, then these steps should be clearly set out. Information should be provided on how a complainant triggers and moves through these steps, and anticipated **timeframes** for addressing issues raised to the IRM.

Clarity is needed on the roles of actors involved at different stages of proceedings. The role of the roster of experts, for example, is unclear in the existing TOR. Do they investigate grievances / complaints? Do they facilitate mediation? Is mediation this the job of IRM staff? Professional mediators? Who initiates mediation? Who conducts investigations? Who drafts recommendations? Who funds investigations and in what circumstances?

2. Input to guiding questions

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?

No, the current TOR is not adequate to bring all possible complaints under paragraph 69 within its scope. Paragraph 69 of the GCF's [Governing Instrument](#) (GI) provides as follows:

*"69. The 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." (emphasis added)*

Further, paragraph 71 of the Governing Instrument provides that

71. The Board will develop mechanisms to promote the input and participation of stakeholders, including private-sector actors, civil society organizations, vulnerable groups, women and indigenous peoples, in the design, development and implementation of the strategies and activities to be financed by the Fund.

The IRM should be capable of receiving complaints on a wide range of issues related to the GCF's operations, particularly if the GCF is to become a **learning institution** that builds on the results of independent evaluations of the consistency of its projects with its own policies and procedures. TOR for the IRM or policies adopted by

the Board that have the effect of **narrowing** the range of permissible complaints that may be taken to the IRM run contrary to this goal, and may be perceived by stakeholders as not allowing for full input by the range of actors referenced in paragraph 71. Narrowing the scope of possible complaints will also cause the loss of some valuable input.

The current TOR's limitation of access to the IRM unnecessarily constrains the types of complaints that may be received and acted upon. Pursuant to Decision B.06/09, and its referenced Annex V,

2. The IRM is a mechanism within the Fund that will:

(a) Address the reconsideration of funding decisions in accordance with paragraphs 6 to 10 of the Arrangements between the Fund and the Conference of the Parties, and

*(b) Address the grievances and complaints by communities and people who have been directly affected by the adverse impacts through the failure of the project or programme funded by the Fund to implement the Fund's operational policies and procedures, **including** environmental and social safeguards."*

The current TOR, as drafted, would limit the scope of issues to (1) rejected funding proposals and (2) grievances and complaints raised only after a funded project or programme has already adversely impacted communities and people. However, neither paragraph 69 of the GI, nor paragraphs 6 to 10 of the [Arrangements](#) between the COP and the GCF, dictate this result.¹

Modalities for reconsideration of funding proposals (TOR section II)

Paragraph 8 provides that "The independent redress mechanism will be open, transparent and easily accessible and will address, **inter alia**, the reconsideration of funding decisions." The IRM should be open to avenues for complaints with respect to any aspect of the Board's consideration of a specific funding proposal that is not perceived as in line with the policies, priorities and eligibility criteria defined by the COP and CMA or not in line with the GCF's policies and procedures.

The current TOR would limit requests for reconsideration to situations involving the rejection of

¹ The [arrangements](#) between the COP and the GCF stipulate as follows:

Reconsideration of funding decisions

6. These arrangements reaffirm that the Board of the GCF has full responsibility for funding decisions.
7. The Board of the GCF has been mandated by paragraph 69 of the governing instrument to establish an independent redress mechanism that will report to the Board.
8. The independent redress mechanism will be open, transparent and easily accessible and will address, **inter alia**, the reconsideration of funding decisions.
9. The GCF will include in its annual reports to the COP the recommendations of its independent redress mechanism, and any action taken by the Board of the GCF in response to those recommendations. The COP may provide additional guidance to clarify policies, programme priorities and eligibility criteria as they impact funding decisions.
10. Further modalities for the reconsideration of funding decisions as per Article 11, paragraph 3(b), will be developed appropriately once the independent redress mechanism is operational. (emphasis added)

proposals, addressing funding proposals that have been "denied funding for a specific project or programme [...] even though funding resources were available". This reflects an overly narrow interpretation of the IRM's function in connection with the "reconsideration of funding decisions."

First, it is not always clear when a funding proposal is being "denied" funding. Guiding question (I) seems to imply that this would be limited to those funding proposals that have been formally rejected by the Board

or the GCF Secretariat or a Board committee. However denial of funding could also mean that certain parts of a funding proposal have been denied funding or that certain unnecessary and/or unrealistic conditionalities have been imposed. What if funding proposals are never explicitly rejected by the Board, but have to be withdrawn, or are repeatedly deferred or revised and resubmitted with no formal rejection, for example, if the Board adopts deferrals or resubmissions as options as part of its reviews of the initial proposal approval process?

In the current proposal approval process, proposals may be **approved, approved with conditions, or rejected**. Section 4.17 of the AMA template provides that if "the Funding Proposal was approved by the Board subject to certain modifications being made thereto, the Accredited Entity will consider such modifications in good faith. **If the Accredited Entity considers such modifications to be unfeasible, it will withdraw the Funding Proposal** and inform the Secretariat accordingly" (emphasis added). As a result, some withdrawn proposals are in essence rejected proposals that are not labelled "rejected" for purposes of enabling requests for reconsideration under the current TOR.

It should be possible to also raise concerns with funding decisions beyond those decisions that formally "reject" proposals. Against the backdrop of current practice and discussions, requests for reconsideration could be extended to:

- affirmative decisions, including where a developing country or its representative wishes to
 - raise concerns about the awarding of funding at less than the amount sought (e.g., partial denial),
 - challenge conditionalities that they consider to be unwarranted, impossible or impractical to satisfy
- funding decisions that become tantamount to rejection because a certain amount of time has elapsed or because a non-decision results in withdrawal or conditionalities related to total revision and resubmission of the funding proposal.

A process could also be established to enable requests for reconsideration to be brought by stakeholder groups that are **potentially** adversely impacted by approved projects, seeking the imposition of additional conditionalities.

Given the broad range of possible recommendations that may come from the IRM, it seems valuable to permit a wider range of complaints to come before the IRM than are permitted in the current TOR.

Second, it should be clarified what "even though funding resources were available" means. Is it possible to appeal when a project was not given priority or did not proceed fast enough through the proposal pipeline and as result, when it is considered by the Board, resources are "not available"?

Modalities for redress for affected communities (TOR section III)

The current TOR state that the IRM will address the grievances and complaints related to a "failure of the project or programme funded by the Fund to implement the Fund's operational policies and procedures, **including** environmental and social safeguards" [emphasis added].

However paragraph 2 of the "background" section in the call for public input IRM deletes the word "including".

The revised TOR should be clear that the IRM is tasked to receive grievances and complaints with respect to implementation of all of the GCF's policies and procedures -- not only environmental and social safeguards, but also other important policies, such as the GCF investment criteria.

In addition, the current TORs do not (but should) address complaints/grievances that may be presented prior to the development of negative impacts. The current scope is limited to complaints arising from **direct effects** resulting from the failure of the GCF funded project to implement the Fund's operational policies. However the language from the GI ("**complaints related to the operation of the Fund**") can and should be understood to include complaints related to **direct negative impacts that can be anticipated** based on a decision to fund certain activities before these impacts are felt. In such cases, complainants may, for example, wish to file a complaint with the GCF showing that certain GCF policies have not been fulfilled, e.g. the need for stakeholder involvement and consultation with affected groups.

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?

No, the current TOR is unclear on who has standing to bring a complaint to the IRM. This is the case both in the context of requests for reconsideration of funding decisions, and in the context of grievances and complaints by those affected by the failure of a project or programme to implement the Fund's policies and procedures.

Modalities for reconsideration of funding proposals (TOR section II)

- The current TOR specify that "a request can be filed by a developing country that has been denied funding for a specific project or programme in that country by the Board, even though resources were available".
- It is unclear how the term "developing country" is to be understood. Guidance is needed on what entity has authority or capacity to present a request for reconsideration to the IRM. • If standing is to be limited to requests presented through and by a developing country's NDA/focal point, rather than any other agency of a developing country government or accredited entity, this should be explicit.
- As explained above, limiting requests to those that have been "denied funding" is unnecessarily narrow in a context in which few proposals are outright rejected (e.g., where conditionalities and deferrals are common).
- If the scope is to be expanded as suggested above (in response to question (a) above), to include complaints by potentially affected groups where funding has been granted, then consideration should be given to how best not to deter complaints from these stakeholder groups, if complaints have to be routed through NDAs. It is possible that these actors will have different interests.
- Revised TOR should also consider how to address requests for reconsideration of regional funding proposals and whether any or all of the developing country governments involved must participate in such requests.
- Finally, it may be valuable to allow for the Head of the IRM to activate the IRM's functions in cases in which the Head perceives breaches with GCF policies and procedures in funding decisions by the Board.

Modalities for redress for affected communities (TOR section III)

The current TOR also do not adequately define who should have standing to bring a grievance or complaint in this context. They would be improved by further clarifying who may bring a complaint, and on whose behalf.

- Para 1.2.(b) refers to “communities and people” who have been directly affected. Yet section III, paragraph 7 refers to a “group of persons”. This leaves it unclear whether an individual person may seek redress (people directly affected) or if the IRM may be invoked only by more than one or two persons (as a group of persons). If a group is more than two, how substantial does this group need to be? Is an organization a “group of persons?” Does a group have to be an organization?
- Again, as noted above, the TOR should also be improved by allowing a broader scope of complaints, to include complaints from potentially affected communities and people who anticipate adverse effects from the granting of a funding proposal.
- Rules should also set out the minimum information required from complainants to satisfy eligibility requirements.

c) *What should the relationship(s) be, between the IRM and similar redress 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?*

The IRM is tasked to receive complaints over whether the GCF's policies and procedures have been properly implemented, and to evaluate these complaints. While some degree of cooperation and collaboration with AEs can be beneficial, the delegation of responsibility to the accredited entities involved has potential for conflicts of interest and defeats the purpose of establishing an Independent Redress Mechanism.

Different institutions have their own mandates and their own policies against which they evaluate complaints, and different redress mechanisms serve different clients and stakeholders. But ultimately, **the IRM is responsible** for addressing grievances and complaints related to the failure of a GCF-funded project to implement **GCF policies and procedures**.

Accredited entities' own internal redress mechanisms are no replacement for the IRM. The existence of these processes should not inhibit the IRM from playing its required role, even where similar issues are raised. Therefore, to the extent the GCF Template AMA (February 2016) defers to the redress mechanisms of AEs, this default language goes too far and should be reconsidered and redrafted.

The current TOR state in paragraph 19 that the relationship between the IRM and the corresponding body of IEs or intermediaries will be covered in agreements between the Fund with these IEs, which will require these to cooperate with the Fund's IRM, where required. See, for example, GCF/B.12/32 (March 2016) at 18, 145, 200 (Annex XXVI: Template accreditation master agreement):

Redress Mechanism

*13.04 The Redress Mechanism is to address grievances and complaints by communities and people who have been directly affected by the adverse impacts through the failure of the Funded Activity to implement the Fund's operational policies and procedures, including environmental and social safeguards. However, the Redress Mechanism is to be complementary to other supervision, audit, quality control and evaluation systems of the Fund, which include such systems of the Accredited Entity. **Therefore, any grievances and complaints should first and foremost be addressed to, and dealt with by, the grievance mechanism of the Accredited Entity and the Accredited Entity agrees that its grievance mechanism will be the primary mechanism to handle such grievances and complaints.** The Accredited Entity shall cooperate with and provide reasonable assistance to the Redress Mechanism in respect of any grievances and complaints filed with the Redress Mechanism, including promoting cooperation between the Redress Mechanism and the corresponding body or unit of the Accredited Entity. (emphasis added)*

See also Annex XXVII: Additional policy guidance for the purpose of accreditation master agreements

IV. Grievance Mechanism

*The Fund and the accredited entity shall cooperate to the fullest extent possible to address grievances by communities and people who have been directly affected by the adverse impacts of funded activities approved by the Board, **whereby the independent redress mechanism of the Fund shall be complementary to the similar mechanism of the accredited entity which will be the primary responsible body to assess and decide on grievances.***

Again, these provisions do not allow the IRM to fulfill its role as an Independent Redress Mechanism and need to be reconsidered. The GCF, as the financing entity, should be superior to internal dispute resolution mechanisms of accredited entities, implementing entities etc., and the GCF IRM should not delegate its functions to AEs, which may have conflicts of interest.

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?

- Where complaints are filed to both the IRM and to an accredited entity, these processes should simply proceed in parallel.
- Accredited entities should collaborate with the IRM by providing notice to the IRM when they have received complaints in connection with any GCF-funded project or programme activities, periodic updates on the status of complaints and information on the resolution of complaints they have received.
- Similarly, the IRM should provide notice to Accredited Entities when it has received complaints with respect to GCF-funded projects or programmes. AEs should be required to collaborate with the IRM by providing information at the request of the IRM to support investigations.

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?

Modalities for redress for affected communities (TOR section III)

The current TORs present a confusing series of steps to be followed by the IRM in connection with grievances or complaints. It is unclear whether these steps are strictly in sequence, or how a complainant or grievant proceeds through these steps. The relationship between investigation and mediation require some consideration. The role of the IRM and IRM staff in each step also require some consideration.

- Is there a difference between a grievance and a complaint?
- What does "address a grievance or complaint" mean under paragraph 8(b)? Is this different from the process set out under 8(c) through 8(g)?
- What or who determines if "informal means" have been unsuccessful or if "informal resolution of problems is not possible" for purposes of 8(d) and 14, and for purposes of advancing to investigation and determination? Is there a timeframe for this?
- If a valid complaint cannot proceed unless mediation has not been successful, the process for mediation should be set out in detail.

- Is mediation considered informal?
- Who serves as mediators? IRM staff? Third-parties? Experts from the roster of experts?
Nominees of Parties to the mediation?
- Is mediation appropriate in all cases?
- Does it make sense for mediation to precede investigation?
- What is the standard for “where mediation has failed” or purposes of paragraph 12? Is there a timeframe for when a mediation can be deemed “not successful”.
- How is lack of capacity to be addressed in mediation processes (e.g., how to ensure that communities / people do not have to go up against large AEs like UNDP or the World Bank without appropriate support?)
- How do the results of investigations feed in to mediation processes?
- Who investigates? Who funds investigation?
- How do compliance assessments relate to investigations?

If certain process elements are essential steps in accessing redress (as mediation appears to be under paragraph 12), the procedures and timeframes for these steps should be set out very clearly.

It will be useful to give indicative timeframes for each step of the IRM process.

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?

- If a wide range of categories of grievance and complaints is permitted, a wide range of recommendations can be fashioned that gives each request, grievance or complaint appropriate treatment.
- With respect to requests for reconsideration of funding decisions, the IRM recommendations might include, for example, affirmation, reconsideration or modification.
- With respect to grievances and complaints, a wide range of recommendations could be possible, including for further investigation, for modification of previously-adopted decisions (e.g., to include further conditionalities or reconsideration), or recommendations for policy or rule changes to the Board, or to the COP or CMA.
- At the outset, those people, communities or entities submitting grievances or complaints should be asked to specify what kinds of redress, if any, they are seeking.

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?

h) What guidelines might be developed on the categories of information that the Head of the IRM might reasonably request from those who are entitled to seek redress from the GCF?

The IRM guidelines should be designed in a way to allow all GCF stakeholders and potentially affected communities easy access to the GCF IRM. The type of information requested when filing a

complaint/request for redress should be clearly specified and could include inter alia information of the following elements: • provisions breached, if known;

- persons or communities affected;
- types of adverse impacts and expected duration;
- type of redress sought;
- information on any previous attempts to bring issues to the attention of the GCF or its representatives or agents;
- information to support requests for costs, where costs are sought.

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?

- The TOR state that that the IRM is to “address the grievances and complaints by communities and people”. Yet the IRM only appears to have the power to evaluate, make recommendations, monitor what the Board does and report to the COP.
- The TOR could set out expectations for the contents of reports to be filed by the IRM with the Board.
- Maintaining public information on the GCF's website would provide useful transparency.
- Monitoring could include:
 - the compilation of statistics on the number and types of requests, grievances and complaints brought to the IRM, and the identity of relevant projects or programmes that are the subjects of these requests, grievances or complaints;
 - the compilation of periodic or ongoing status reports on pending requests, grievances and complaints;
 - the compilation of specific recommendations and/or categories of recommendations made to the Board or other entities, and any follow up action taken by the Board or AEs based on the results of these recommendations;
 - statistics on the timeframe for addressing requests, grievances and complaints and/or conducting investigations.

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?

The GCF as a learning institution should establish a formal avenue for periodic updates by the IRM to reflect lessons learned in IRM recommendation to the Board for enhancing GCF policies and procedures.

k) How best can the IRM ensure that lessons learned by the IRM are incorporated by the Secretariat in its day to day work?

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?

See response to guiding question (a). Rejection should be understood broadly, to include

- Partial funding decisions



- Approval with conditionalities, where an affected developing country is concerned that certain conditionalities will be impossible or impracticable to satisfy;
- 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.

III. Submissions from active observers

3.1 Group of CSO

Joint Response by a Group of Civil Society Organizations on the Revised Terms of Reference for the Independent Redress Mechanism

I. Background

Paragraph 69 of the Green Climate Fund (GCF) Governing Instrument mandates the Independent Redress Mechanism (IRM) as a key part of the GCF's accountability system. At its Sixth Board meeting in February 2014, the GCF Board adopted the terms of reference (TOR) of the IRM. The Head of the IRM assumed office on November 1, 2016. Following further discussions about the IRM TOR at its Thirteenth and Fifteenth meetings, the Board invited the appointed Head of the IRM, "following consultations with relevant stakeholders, to recommend any necessary updates to the terms of reference, of the Independent Redress Mechanism for the Board's consideration" at its Sixteenth meeting to be held in April 2017. A call for public submissions was launched as part of this consultative process.

Accountability is a key element to the GCF's success. A responsive, legitimate, accessible, predictable, equitable, transparent, and rights-compatible IRM will help to ensure that the GCF fulfills its mandate while not causing or exacerbating harm to people and the environment.

II. Issues to be addressed in a TOR revision

As part of the call for public submissions on the revised TOR for the IRM, a list of questions to be addressed was provided for public consideration and to guide public response. With the following jointly elaborated comments and recommendations by a group of civil society organizations² we hope to inform the review of the IRM's existing TOR and help the IRM effectively carry out its work.

² A number of civil society organizations provided input on this draft and additional civil society organizations signed-on in support of the draft. They are listed at the end of this submission.

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?

Complaints related to funding decisions

Complaints related to the reconsideration of funding proposals, should be mainly based on breaches to meet the investment criteria of the Fund. These should be clearly indicated in the TOR.

Complaints Related to the Projects and Programmes Impacting People and the Environment

Any affected person, group of people, communities, or their representatives should be able to bring a complaint to the IRM when they have been or may be adversely affected by a GCF-funded project or programme. Currently, paragraph 7 of the approved TOR only allows for “a group of persons who have been directly affected by adverse impacts” to file a grievance or complaint. This is unnecessarily narrow as it undermines the right of an individual to be heard. It also limits the ability for a person or community to submit a grievance only after harm has actually occurred. This undermines the ability of the IRM to address anticipated harms through a dispute resolution process or compliance review. Instead paragraph 7 should say that “any person, group of people, communities or their representatives who have been or will be harmed by a GCF-funded project” can bring a complaint to the IRM. This would be beneficial for the GCF because it would allow Implementing Entities to make needed revisions and improvements early during implementation so that harm is minimized and course corrections are taken.

The current TOR are not very explicit about the kinds of complaints that can be received under its mandate. The language seems to narrowly suggest that complaints to be filed relate mainly to funding decisions and environmental and social harms associated with the funded projects only. There is no further articulation of or clarity on whether and what kind of other policy-related or procedural grievances or complaints might be brought forward to comply with the reference in paragraph 2(b) of “failure of the project or programme funded by the Fund to implement the Fund’s operational policies and procedures, **including** environmental and social safeguards, ...” [emphasis added] . However, complaints should not be limited to the environmental and social safeguards policy as this implies. Thus, this should be eliminated and the IRM instead should receive complaints from any person, group of people, communities, or their representatives who have been or anticipate being harmed by a GCF-funded project or programme, including sub-projects.

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?

Accessibility is a key element for ensuring that an accountability mechanism is responsive to affected people. The current TOR unnecessarily limit who can bring a complaint to the IRM and the revised TOR should rectify this so that they adequately define who has standing to bring complaints to the IRM. Paragraph 7 of the current TOR states that “[a] grievance or complaint can be filed by a *group of persons* who have been *directly* affected” (emphasis added). First, as mentioned above, individuals should be able to submit a complaint to the IRM. It is unnecessarily restrictive to require it to be a “group of persons.” Further, representatives of persons and communities should be able to bring a complaint or grievance. Increasingly environmental and human rights defenders are facing retaliation that, in some instances, is deadly. Thus it may be necessary for a person or NGO to file on behalf of the affected people and the TOR should reflect that. Lastly, the word “directly” should be eliminated because it is too restrictive. It should be replaced with the phrase “affected and potentially affected” by a GCF funded project or programme. This is in line with other independent accountability mechanisms (IAMs), including the Compliance Advisor/Ombudsman³ and the World Bank Inspection Panel,⁴ among others.⁵ Further, as noted in response to question (a), individuals or groups of persons should be able to file a complaint in a preemptive manner if it appears likely that a project or programme will cause harm. These changes will ensure that the TOR adequately define who can bring complaints to the IRM.

³ CAO, Operational Guidelines, para 2.1.2 (2013) (“Any individual or group of individuals that believes it is affected, or potentially affected ... may lodge a complaint with the CAO”).

⁴ The Inspection Panel at the World Bank, Operating Procedures, section 2.1, para. 10(a) (Apr. 2014) (a complaint can be submitted by people “who claim that they have been or are likely to be adversely affected”); International Bank for Reconstruction & Development & International Development Association, Resolution No. IBRD 93-10 & Resolution No. IDA 93-6 “The World Bank Inspection Panel” (“Panel Resolution”), para. 12 (Sept. 22, 1993) (“The Panel shall receive requests for inspection presented to it by an affected party ...”).

⁵ Policy of the Independent Consultation and Investigation Mechanism of the IDB, para. 13(a) (Dec. 16, 2015) (requests may be filed by people “who are or anticipate being affected”); European Bank for Reconstruction and Development, Project Complaint Mechanism (PCM) Rules of Procedure, para. 1 (May 2014) (complaints can be submitted by “one or more individual(s) located in an impacted area, or who has or have an economic interest, including social and cultural interests in an Impacted Area” where Impacted Area is defined as “the geographical area which is, or is likely to be, affected by a Project”); FMO, Independent Complaints Mechanism, version 2.0, para. 2.2.3 (Jan. 1, 2017) (“The Independent Complaints Mechanism shall be accessible to affected people”); UNDP, Social and Environmental Compliance Unit, “Who May File a Complaint,” <http://www.undp.org/content/undp/en/home/operations/accountability/secu-srm/social-and-environmental-compliance-unit.html> (“Any person or community who believes the environment or their wellbeing may be affected by a UNDP-supported project or programme may file a complaint”); UNDP, SECU and SRM Brochure, section “The Stakeholder Response Mechanism” (Dec. 22, 2014), available at <http://www.undp.org/content/undp/en/home/librarypage/operations1/secu-and-srm-brochure.html> (“Any person or community potentially affected by a UNDP-supported project may file a request”); African Development Bank, The Independent Review Mechanism Resolution, para. 11 (Jan. 2015) (“The IRM’s function shall be activated when requests are received from persons adversely affected”).

In addition, the Head of the IRM should have the authority to independently initiate compliance proceedings, which is in line with international best practice.⁶

Regarding modalities for the reconsideration of funding decisions, the TOR state that “a request can be filed by a developing country (...)” failing to state who specifically is/are entitled to do so within developing countries. It is not clear if the task corresponds to the focal points (FPs) and National Designated Authorities (NDAs), or if it is broader, including any developing country representative. Given that NDAs/FPs are the connection point between each country and the Fund, and in line with the GCF guiding principle of country ownership, we suggest complaints with regards to rejection of funding proposals should be made only through them, per the current interim practice.

Apart from clarifying who has standing to file complaints it is also crucial to ensure that accessibility is simple, adequate, appropriate, gender-responsive, and equally available to all. This includes providing correct, clear, and accessible information about the mechanism, available in appropriate languages, including local languages, and available through the use of non-written communication forms to address issues of illiteracy for some of the most vulnerable population groups, as well as providing assistance to file and follow complaints for those facing barriers. Additionally, the IRM should be flexible when accepting complaints or grievances. A variety of forms should be accepted (for example considering video testimony or recorded interviews sent to the IRM).

c) What should the relationship(s) be, between the IRM and similar redress 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?

Paragraph 19 of the current TOR explains that “the relationship between the IRM and the corresponding body of implementing entities or intermediaries will be covered in arrangements which will be entered into by the Fund with these implementing entities or intermediaries which will require these to cooperate with the Fund’s IRM, where required.” It is important that the TOR and guidelines and procedures set out clear uniform standards for these relationships.

The IRM is in place to ensure that GCF project/programme-affected communities have an avenue for redress and it is best suited to analyze whether GCF policies were met. While other mechanisms may also be able to address the problem, they are not necessarily equipped to determine if the GCF’s policies are met. Given that the GCF accredits entities that have equivalent, but not necessarily the same, safeguard (and other) policies, there may be gaps. If,

⁶ CAO Operational Guidelines, *supra* note 2, at para. 4.2.1 (stating that “compliance appraisals ... are initiated in response to ... A request from the CAO Vice President based on project-specific or systemic concerns resulting from CAO Dispute Resolution and Compliance casework.”)

and when, these gaps exist, a redress mechanism at the accredited entity may not be able to adequately assess if the project or programme complied with the GCF policies. Thus, project/programme-affected people could face further harm if they were precluded or forced to go to a redress mechanism other than the GCF's IRM.

The agreements between the GCF and the accredited and implementing entities should specify that they accept that the IRM can receive complaints from project/programme-affected individuals and communities or representatives speaking on their behalf. If there is or has been GCF money in a project or programme, then the IRM should be open to receive complaints. The existence of a grievance procedure or redress mechanism (which in some cases might not follow the same standard of independence as that of the IRM, for example in the case of private sector entities accredited to the GCF) should not preclude this. In defining the relationship, the TOR must take into account that the IRM is the independent accountability mechanism for the GCF and has both the authority and the responsibility to hear complaints that arise from GCF-funded activities. As such, "where required" should be eliminated from paragraph 19.

Additionally, the IRM should have a collaborative working relationship with similar redress mechanisms of accredited entities. Nothing in the TOR should preclude project/programme-affected people and communities from accessing the IRM and other relevant redress mechanisms. Naturally, if the IRM and another mechanism receive a complaint, then the two mechanisms should work together to ensure that the concerns are addressed efficiently. As discussed below, the roles, functions, and capacities of independent grievance and redress mechanisms vary by institution. However, the revised TOR do not need to account for all of the differences. Primarily the TOR need to make clear that when individuals or communities are harmed by a GCF funded project or programme, then one of the options for the people is to file a complaint with the IRM at any time.

Furthermore, nothing in the TOR should preclude the complainant(s) from seeking redress through judicial processes or other fora, and the existence of an ongoing judicial proceeding should not limit a complainant's access to the IRM.

The TOR should compel accredited entities to disclose information regarding the availability of the IRM of the GCF and of their own grievance and redress mechanisms during consultation processes. Grievance and redress mechanisms at similar institutions have often failed to provide remedy because affected individuals or communities do not have the necessary information to file complaints or may not even be made aware that such possibility exists.⁷ Disclosure should include clear information on the procedure and time frame for each

⁷ C. Daniel, K. Genovese, M. van Huijstee & S. Singh (eds.), *Glass Half Full? The State of Accountability in Development Finance*, sec. 3.2 (Jan. 2016), available at glass-half-full.org [hereinafter *Glass Half Full? The State of Accountability in Development Finance*].

stage of the process, clarity on the types of processes and possible outcomes, and means of monitoring implementation.

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?

How the IRM interacts with the redress mechanisms of accredited and implementing entities can and should vary depending on the circumstance and this should be reflected in the revised TOR. If affected people file a request with both the IRM and the redress mechanism of an accredited or implementing entity, then the IRM and the entity should work together to address the issues raised in the request. Redress mechanisms vary across institutions in both capacity and effectiveness, and scope of functions. For example, if project/programme-affected people indicate that they want to seek redress through a dispute resolution process and the redress mechanism of the accredited or implementing entity does not have that function as part of its mandate, i.e. the World Bank Inspection Panel, then the IRM should likely take the lead in addressing the concerns in that request. However, should this same situation arise with a mechanism that has a dispute resolution function, then the IRM and that entity should work together to address the concerns.

However, if a complaint is filed with only the IRM and not another redress mechanism, then the IRM should be obligated to address the concerns raised in the complaint. The complainant(s) may have a reason for why he/she or they filed with the IRM and not another mechanism (for example doubts about its independence), and the IRM should respect their choice. Thus, the revised TOR should state that the IRM will work with the other redress mechanisms of accredited entities and implementing entities when a complaint is filed with both mechanisms.

Further, while all the redress mechanisms focus on addressing the complainants' concerns, each has its own mandate and own set of standards against which it evaluates performance and compliance. Thus, while they can, and should, work together to ensure that the concerns are addressed and complainants get redress, they may be looking at slightly different policies. The revised TOR should not do anything to compromise the ability of the IRM to address the concerns of people affected by GCF-funded projects and programmes. Moreover, the findings of another mechanism, while informative, should not prejudice proceedings at the IRM. All entities receiving GCF-funding must adhere to the jurisdiction of the IRM and having gone to another grievance or redress mechanism does not preclude filing a complaint at the IRM.

The IRM must retain oversight over all grievances or complaints, including those addressed at the respective complaints and redress mechanisms at accredited entities, to ensure that all grievances and complaints are properly addressed and that it is done in accordance with its own policies and procedures.

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?

Since 1994 when the first independent accountability mechanism (IAM) was created at the World Bank, many other international financial institutions have developed their own accountability mechanisms. While the IAMs share many features, there are differences in how each operates to address the concerns and impacts on the people and the environment. Often, dispute resolution (mediation, conciliation, problem solving, etc.) is seen as the best way to address the concerns raised by the people because it allows the project/programme-affected people to obtain remedy more quickly than if a compliance proceeding is undertaken. Additionally, compliance proceedings have the potential to not result in an appropriate remedy.

However, how the IRM responds to a complaint -- whether through mediation, conciliation, or another dispute resolution method or by conducting compliance proceedings -- should depend on the desires of the complainant(s). The process described by the current TOR indicates that the IRM would first try to address the harm and bring about redress through mediation or some other informal measure, and then if that is not successful, do a compliance review and make recommendations. However, in discussing the compliance review, the current TOR also indicate it only occurs following failure to reach a solution through dispute resolution. In revising the TOR, this sequencing should be eliminated. The complainant(s) should be able to decide whether they want to go through an informal dispute resolution process or whether they want a compliance review or both. Forcing the complainant(s) to go through an informal dispute resolution process they do not want would likely delay redress because the process takes time. Thus, if the complainant(s) only want a compliance review, then the IRM should do that from the start, provided the eligibility requirements are met.

Compliance reviews should also take place, as indicated in the current TOR, if the informal dispute resolution process is unsuccessful. Additionally, the IRM should be able to initiate a compliance review if it sees potential harm, especially systemic harm.⁸

Should the IRM receive a complaint from a person or persons who want to seek remedy through a dispute resolution process, then the IRM should attempt to facilitate that. In developing its procedures, the IRM should seek input from experts on the best ways to undertake mediation, reconciliation, and other dispute resolution processes. Additionally, it should ensure that it has the ability to hire consultants to assist in a dispute resolution process should one be undertaken. Good dispute resolution requires a number of elements, including provisions stipulating that the process is voluntary for parties, conducted in good faith, and that mediators are professional and independent, and those should be further addressed in the development of the IRM procedures.

⁸ See, e.g. CAO Operational Guidelines, *supra* note 2, at sec. 4.2.1.

In addition, to avoid the potential for bias, perceived or actual, separate IRM staff or teams should independently undertake the dispute resolution and compliance processes. For example, after conducting a problem solving initiative, the IRM staff could reach conclusions about the parties or the issues that cloud his/her ability to undertake an independent investigation of the separate issues related to compliance. The IRM should receive sufficient staffing resources to avoid this potential conflict. Furthermore, the IRM should not engage dispute resolution or compliance consultants with a conflict of interest, regardless of the timing of their last engagement with the IRM.

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?

The specific kinds of redress that the IRM can recommend to the Board to resolve a complaint raised by an affected party will likely vary widely depending on circumstance and the type of complaint brought forward. Thus, being overly prescriptive could exacerbate the existing problem. At a more basic level, adequate staff and staff resources are fundamental to ensuring that the IRM functions in a timely, effective, equitable, and efficient way.

Complaints Related to the Projects or Programmes Impacting People and the Environment

When a person or group of people comes to the IRM to seek redress for impacts stemming from a GCF-funded project or programme, the IRM should be responsive to the needs of the affected person(s) as expressed by him/her and should address the real or anticipated harm. Thus, no one type of redress should be mandated because no two situations will be the same.

However, in cases where the damage is ongoing and/or imminent harm could occur, the IRM should be given the mandate to recommend immediate suspension of the funding for the project or programme in question, as a precautionary measure, while the investigation takes place. After the initial problems have been addressed and corrections have been implemented, the IRM must have the option to recommend that the Board cancel funding for the project or programme and/or revoke the Implementing Entity's accreditation.

The IRM should also be given the mandate to compel action when investigations find that there is non-compliance with GCF policies meriting remedy. Experience with other accountability mechanisms has shown that many complaints that have been found eligible never actually proceed to problem-solving or compliance review.⁹

⁹ *Glass Half Full? The State of Accountability in Development Finance*, *supra* note 6, at sec. 2.4.

The IRM should be able to determine the redress that is most appropriate for the situation when determining how /to address the complainants' concern(s). The IRM should be able to recommend the following types of redress: halting the project or programme either entirely or until the identified problem(s) are addressed; financial and non-financial compensation for the harm; punitive sanctions where applicable; specific performance of an action that should have been taken; and other remedial action to address the harm, and the prevention of future harm through injunctions or guarantees of non-repetition, among others. A timeline should also be indicated for the implementation of the given type of redress.

Complaints Related to Funding Denials

The IRM can propose a variety of redress options depending on the results of the informal process to address the complaint from the country regarding the denial of funding. The TOR do not need to specify the remedial actions; however, they should include things along the lines of a process for reconsideration, including a timeline and guidance on how to align the project or programme with the GCF mandate and recommendation that the Board fund the project or programme and reconsider the proposal at the Board meeting immediately following the recommendation from the IRM, among others. Further, the current TOR state that the Board “may consider the request in view of the report and take steps to implement the recommendation of the IRM.” The revised TOR should clarify that the Board “*shall consider*” the request in light of the report and determine whether to implement the IRM’s recommendation. Further, the revised TOR should specify that if the Board does not implement the IRM’s recommendation then it must provide a formal statement indicating why.

That being said, before such cases are brought before the IRM, the Board really needs to decide on its own processes. For example, even though it comes up repeatedly, there still is not an option for the Board to defer a decision on a funding proposal. Plus, the current process of addressing shortcomings in a funding proposal by loading it up with many conditions prior to dispersal of funds has been widely recognized by the Board as a subpar way of working.

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?

Seeking redress through an independent accountability mechanism (IAM) can be extremely costly in terms of money and time.¹⁰ Thus, in revising the TOR, the GCF should commit to establishing a compensation and remedy fund that can be used to help with these costs.

When seeking redress from an IAM, project/programme-affected people face a long path¹¹ and are typically at a disadvantage as they tend to come from more vulnerable populations while the project or programme proponents are international financial institutions, banks, government agencies, or companies. This means that communities and organizations that support them incur significant expenses in seeking redress. These expenses vary case-by-case depending on a number of factors, including whether the process is a dispute resolution or compliance. Regardless, complainants and representatives spend not only time, but money to travel, interact with the accountability mechanism, and hire experts, among other things, in addition to the expenses related to dealing with the harm the project caused. Thus, the GCF should reimburse these expenses. The IRM can work with the requestors to determine the expenses related to bringing the request for redress and participating in the process with the IRM. These can then be submitted to the GCF for compensation from the Fund.

The people who file the complaint as well as others who help them in the process, for example local or international NGOs, should be entitled to claim reimbursement for such costs and expenses, provided they have a legitimate claim at the IRM. This reimbursement should not be limited to instances where the IRM finds harm, but rather should be given when the complaint is deemed eligible. Naturally, the amount being reimbursed will vary depending on the length of the process, among other things.

As discussed in the section related to types of redress, the GCF should ensure that in addition to a fund for the compensation of expenses incurred by bringing a claim to the IRM, that it has funding available to provide monetary compensation to requestors in order to make them whole again should the dispute resolution process or compliance review not do so adequately.¹² Also, the timeline should be clearly defined so as to avoid a long wait for compensation, resulting in it taking years or never happening.

The specific fund for furnishing redress may be financed through a variety of means. For example, GCF donors could contribute to a third-party administered contingency arrangement, such as an escrow fund, to provide financial or other remedy in case negative impacts occur. Alternatively, the GCF may require accredited implementing as well as executing entities to obtain insurance or apportion a percentage of the funding they receive

¹⁰ The Board recognized this difficulty in Decision B.13/32/Rev.1, para. (c)(i).

¹¹ In the *Glass Half Full? The State of Accountability in Development Finance*, the authors found that the average time for a complaint to an IAM before the process ended or went to monitoring ranged from 12-31 months. See *Glass Half Full? The State of Accountability in Development Finance*, *supra* note 6, at sec. 2.4.6. This presents significant challenges to communities that are already being negatively-impacted by a development finance project.

¹² See *Glass Half Full? The State of Accountability in Development Finance*, *supra* note 1, at sec. 5.2.

from the GCF for a contingency redress fund. Contributions could be based on the level of project or programme risk and should be built into GCF contractual project or programme arrangements with relevant entities such as the GCF-AE Funded Activity Agreement (FAA).

For all these reasons, the GCF should create a remedy fund with enough resources to cover all those aspects.

h) What guidelines might be developed on the categories of information that the Head of the IRM might reasonably request from those who are entitled to seek redress from the GCF?

The IRM should not erect unnecessary barriers that impair people's ability to seek redress from the GCF, thus guidelines for information needed should be minimal. Moreover, the IRM should be gender-responsive and allow complaints to be received in a variety of formats to accommodate for gender and cultural differences with respect to access to information and communication technology, as well as literacy levels. To file a request for redress with the IRM, a person should only have to provide a name, contact information, description of the harm that is occurring, and location. The IRM should accept requests in all languages and in other than written form (such as video or recorded interviews). Further, the IRM must guarantee that information related to requestor(s) can be kept confidential, if requested by the requestor(s).

Once a request is received, the IRM should work with the requestor(s) to obtain any additional information necessary related to the complaint. Importantly, a complainant need not prove or show causality. Rather, she/he must merely include information that people were actually or could potentially be harmed due to a project or programme funded by the GCF. Furthermore, a complainant should not be required to show that the actual or potential harm resulted from a failure to implement the Fund's operational policies and procedures.

In many countries it is increasingly dangerous to be an environmental and human rights defender. They face reprisals, including jail, violence, and even death in response to their efforts to protect their land and their human rights. It is critical that the IRM does what it can to ensure that those who seek redress do not face reprisals for doing so. Many IAMs are developing protocols for addressing situations of threats and/or actual retaliation against complainants or those who are associated with the complaints process. We recommend that the IRM undertake such an initiative as well.

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?

A crucial part of ensuring that affected people receive remedy when appropriate is following up beyond the completion of a dispute resolution process or compliance review. It is

critically important that mandated actions are actually taken. The IRM, therefore, can and should play a primary role in a participatory monitoring process, incorporating ongoing feedback from complainants, about progress (or lack thereof) following a complaints process. If parties agree to remedial actions following a successful dispute resolution process, the IRM should monitor the project to ensure that the actions are taken. Similarly, if, following a compliance review, the IRM makes recommendations to the Board about what should be done to address the harm being caused by a GCF-funded project or programme and the Board takes a decision on how to address the problem, then the IRM should formally monitor, incorporating complainant(s) feedback, and publicly report on the implementing entities' progress towards taking those actions. As part of its monitoring mandate, the IRM should report on issues of ongoing non-compliance or non-compliance with what was agreed on in a dispute resolution process to the Board, and make recommendations on how to resolve these issues.

Further, the IRM's monitoring activities (as well as other responsibilities and information related to the IRM) must be publicly disclosed as part of their own accountability to the communities and to enhance participatory monitoring. Thus, in line with the IRM's 2017 Work Plan, the IRM should create a comprehensive, independent website that provides the public and potential users of the mechanism with information related to how the mechanism functions, the complaints it receives and progress updates on how those complaints are addressed through the IRM procedures, and other information it deems relevant. In addition, the IRM should make the following relevant information publicly available to the potential users of the mechanism, at a minimum in all UN official languages, including, but not limited to:

- Clear information about who can make claims, including a list of requirements and timeframes.
- An IRM process flow chart
- Information about the applicable policies and decisions
- Information on the redress mechanisms of accredited and implementing entities
- Examples of the types of claims that one can make, including a model complaint as well as some templates to facilitate submittal of all relevant information for the complainant(s).
- Clear and transparent information on the process for reviewing a claim, including steps and timing.
- Information about the complaints it receives and an up-to-date complaints registry

In addition to the information above, draft and final compliance reports and other complaint information should be shared with the complainant(s) at the same time it is shared with relevant accredited and implementing entities. The complainant(s) should be kept apprised of the progress of his/her or their complaints, including through the provision of clear timelines.

The IRM should ensure that the overall process taken to address/resolve grievances is transparent, balanced, impartial, and free from conflict of interest.

Further, the IRM should be gender-responsive and culturally sensitive, for example allowing complaints to be received in a variety of formats, including in native languages, video formats, or in person to accommodate differentiated access to information and communication technology as well as literacy levels for example between men and women, for older or marginalized people, or for indigenous groups. Additionally, non-compliance with the mandate for a gender-sensitive approach to GCF funding should be considered cause for a compliance review or dispute resolution process and redress.

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?

As the entity that receives complaints from project/programme-affected peoples, the IRM is in a unique position to analyze trends, when and why harms tend to occur, and how potential harms could be better addressed to prevent them from occurring in the first place. Thus, the IRM can play a critical advisory role, including in improving the GCF's safeguard policy and procedures. The IRM can provide comments to the Secretariat on its development of the GCF's environmental and social safeguard policies and procedures. For example, there should be a direct line of communication between the IRM and the GCF's environmental specialist now designing the Environmental and Social Management System (ESMS).

Further, the IRM should play an advisory role based on the requests it receives, especially when there are trends. For example, if the IRM receives multiple complaints alleging similar concerns and harms, then there may be an underlying policy failure or procedural issue. In this instance, the IRM can and should provide advice to the Secretariat and Board either informally or through a written report. However, transparency is key and so, to the extent possible, the IRM should publicly disclose its findings on lessons learned.

Additionally, the IRM should have the power to undertake this trend analysis and suggest improvements on its own initiative, as well as at the request of the Secretariat or the Board. For example, it could suggest that the Board refrain from providing additional funding to accredited entities that have been found to be in non-compliance with social and environmental standards and/or other GCF policies, until they rectify their actions.

Lastly, the IRM should be able to initiate its own compliance investigations of the portfolio of GCF projects and programmes. Given the position of the IRM, it has the ability to see systemic problems and those may warrant further investigation even absent receiving an official complaint. This also will contribute to the IRM providing lessons learned and improve the work of the GCF, thus helping the Fund to fulfill its mandate to be a constantly learning institution.

k) How best can the IRM ensure that lessons learned by the IRM are incorporated by the Secretariat in its day to day work?

The revised TOR should specify that the IRM can provide advice and lessons learned to the Secretariat and the Board both informally and through written reports. The IRM should publish lessons learned, annual reports with trends, and other documents on its publicly available website. Additionally, the Secretariat should commit to being responsive and incorporating the advice from the IRM into its day to day work. The Secretariat should apply such advice when assessing project and programme proposals submitted to the Board for consideration. The Secretariat should also integrate this information when providing advice to countries seeking information on how to access funding, for example, during regional workshops. Further, the Secretariat should be required to publish semi-annual briefings elaborating on how it has incorporated the learnings of the IRM.

In addition, GCF policy should mandate that IRM and Secretariat staff undergo ethics and integrity training, including related to the lessons learned, on a regular basis.

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?

Only NDAs and FPs should be allowed to exercise this function, and it should be in a manner free from pressure by accredited entities. If a NDA or FP brings a complaint to the IRM and, after evaluating the situation, the IRM determines that the funding application was potentially wrongly rejected then it can recommend that the Board reconsider it. The Board should then either reconsider the funding application or provide a publicly-disclosed response explaining why they do not agree with the recommendation to reconsider. This should only happen when there is a rejection of a proposal and rejection of a proposal should be defined as the Board formally rejecting a funding proposal that was submitted to the Board for consideration.

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?

The IRM should report directly to the full Board. To minimize potential conflicts of interest, especially if the complaints arise in a Board member’s country, the IRM should not report to a Board subcommittee, such as the Ethics and Audit Committee. Reporting to a subcommittee may result in one Board Member having more influence than he/she should or would if the IRM reported to the full Board.

In order to ensure legitimacy, the IRM must demonstrate independence from the GCF. The TOR state that “the Head of the IRM Unit shall not be eligible for any type of employment by the Fund within one year after the date of the end of his/her appointment.” To ensure proper independence and avoid conflicts of interest, the “cooling-off period” should instead be a permanent ban, which is consistent with other IAMs. Furthermore, the provision should apply to all IRM staff. Additionally, if GCF staff or board members seek employment at the IRM, there should be a three year “cooling-off period” between when they worked at the GCF and when they will potentially work at the IRM, in line with best practice at other IAMs.

Additionally, the selection process for IRM staff should include outside stakeholders, including civil society representatives. Ideally, the IRM should have an external stakeholder advisory group to provide feedback on their work.

n) What would be an effective role for the Ethics and Audit Committee with regard to the IRM?

The Ethics and Audit Committee --- at the request of the full Board -- could oversee the process for a periodic independent evaluation to verify that IRM processes are conducted with the highest standards of full transparency and accountability while safeguarding the independence of the IRM. Any role for the Ethics and Audit Committee should be void of perceived or actual conflicts of interest and not undermine the independence of the IRM.

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The following civil society organizations (CSOs) have provided input for this submission in addition to AIDA and CIEL (in alphabetical order):

Accountability Counsel
Friends of the Earth US
Heinrich Böll Stiftung North America
RECACOF (Cameroon)
Transparency International - South Korea Chapter

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

Aksyon Klima Pilipinas (Philippines)
Asian Peoples Movement on Debt and Development
Asociación Ambiente y Sociedad (Colombia);
Bangladesh Krishok Federation;
Both ENDS (The Netherlands)
Buliisa Initiative for Rural Development Organization (BIRUDO) (Uganda)
Friends of the Earth Malaysia
Gender and Environmental Risk Reduction Initiative (GERI) (Nigeria)
Gender Equity: Citizenship, Work and Family (Mexico)
Grupo Para o Desenvolvimento da Mulher e Rapariga (GDMR)
Humana People to People (Zimbabwe)
Institute for Policy Studies (United States)
Labour, Health, and Human Rights Development Centre (Nigeria)
Lumiere Synergie pour le Developpement (LSD) (Senegal)
Mexican Center for Environmental Law (Mexico)
OT Watch (Mongolia)
Pan African Climate Justice Alliance (PACJA) (Africa)
Rivers without Boundaries Mongolia; Tebtebba (Philippines)
Third World Network (Malaysia)
Transparency International (United States)

3.2 TEBTEBBA and Forest Peoples Programme



Indigenous Peoples' Joint Submission to the Call for Input for the ToR of the Independent Redress Mechanism of the GCF

Indigenous peoples' organizations and support groups welcome the opportunity to provide comments to the draft Terms of Reference (ToR) for the Independent Recourse Mechanism (IRM). The following are our comments and recommendations on some of the key issues raised in the questionnaire provided as guidance for inputs.

We look forward to the next steps in further defining the scope, functions and modalities of operation of the IRM, a crucial instrument to ensure compliance, accountability and quality of GCF projects and programs.

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?

We recommend two critical changes that are, in our view, needed to improve and broaden the definition of who has standing to bring a complaint to the IRM:

First, the current ToR allow only groups of people that are *already* impacted by the lack of compliance to safeguards to raise a complaint to the IRM. This is not in line with current practice in other Redress and Accountability Mechanisms that instead allow complaints from (or on behalf of) people who *may* be affected by a funding entity's activities to raise a complaint. This would help to identify problems at an early stage in order to prevent harm.

Secondly the ToR speak of complaints and grievances filed by "a group of persons who have been directly affected", but other grievance mechanisms also allow for the circumstances when those that may be affected have their complaint filed by others on their behalf. To address this, adding "or their chosen representatives" would enable affected, or potentially affected, persons to access the mechanism even if circumstances do not allow them to directly petition the mechanism. In doing so a further requirement could be stipulated, that when the complaint is registered by a person or organization on behalf of the affected person(s), that "the claimant must identify the individual and/or people on behalf of who the grievance or complaint is submitted and provide written confirmation by the individual and/or people represented that they are giving the claimant the authority to present the grievance or complaint".



What should the relationship(s) be, between the IRM and similar redress 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?

The Green Climate Fund and the accredited and/or implementing entities have distinct responsibilities for the social and environmental performance of the projects funded (in the case of the GCF) and/or implemented by them. The use of one redress mechanism should not create a barrier to access alternative redress mechanisms by funding entities and therefore the IRM should act in addition to, but not in replacement of, the redress mechanisms already established by accredited entities. The choice of complaint process should rest with the complainant himself or herself, and there should be no barrier to accessing the IRM before exhausting the implementing agency redress mechanism.

The ToR does not say anything about what happens if the affected persons/groups do not accept the Board's decision. At a minimum, it should be clear that use of this mechanism does not prejudice in any way the affected party's accessibility to other remedies and grievance mechanisms (domestic, international, administrative, or judicial) that can still be used by the complainants.

A further challenge that the IRM will face vis-à-vis its relationship with the redress mechanisms of accredited and/or implementing entities is that the GCF has a distinct responsibility to ensure that accredited entities have adopted *and are applying* adequate environmental and social safeguard policies to their projects. This responsibility is implicit within an accreditation system, and the GCF will need to develop systems to assure itself of the social and environmental performance of its accredited entities. This requirement should be included in the mandate of the IRM as it is developed, and form a distinct section of the ToR. Specifically, we are recommending:

- that accredited entities be required to share with the GCF IRM, on an annual basis, any complaints registered that deal with financing received from the GCF. This reporting must include, at a minimum, the complaint claims and the status of the complaint;
- that the GCF be authorized to perform 'spot-checks' on projects with significant GCF funding to assure itself of performance 'in the field'. This would include authority to access and review relevant project documents, whether or not in the public domain.

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?

The mediation and conciliation as problem solving procedures should be accessible when there is no potential violation of procedures/safeguards. In fact, in many other redress mechanisms, the two issues are delinked: access to mediation and conciliation is not conditional on non-compliance, and non-compliance reviews do not need to be accompanied by mediation.



The current ToR envisage a two-step procedure: first problem solving, then compliance review in case problem solving fails. This sequencing is too rigid. Complainants should be allowed to choose between the two options, and access either, or both, in the order that is most effective or responsive to the complainant. It should be pointed out that other IRMs, such as the Compliance Advisory Ombudsman (CAO) of the IFC, have abandoned the idea of a first stage of problem solving and have de-linked the two functions in this way.

Mediation must also be recognized as a mechanism to seek and achieve an agreed solution (a transparent, collaborative and amicable resolution) to resolving and remediating the concerns of the complainants (in some cases, but not necessarily, linked to a violation of the safeguards). Mediation and conciliation should be available irrespective of a claim that safeguard standards have been violated, and may serve to alleviate the need for further grievance processes. Furthermore, mediation can be used AFTER a violation of the Fund's operational policies and procedures is found. At present, these two functions of the IRM are not clear in the ToR.

What guidelines might be developed on the categories of information that the Head of the IRM might reasonably request from those who are entitled to seek redress from the GCF?

The Fund can refer to current practices in various equivalent mechanisms, such as the CAO. Information in a complaint might include:

- a. date, name, signature of the affected persons or groups, and whether the claimant wishes to keep their identity confidential;
- b. means for contacting the claimant (email, phone, address, radio signal, other);
- c. if the submission is on behalf of those alleging a potential or actual harm, the identity of those on whose behalf the grievance or complaint is made, and written confirmation by those represented of the Claimant's authority to lodge the grievance or complaint on their behalf;
- d. description of program or project and of the procedures/guidelines that might have been violated, or might be violated;
- e. explanation of actual or potential harm, and evidence – also gathered via Community Based Monitoring and Information Systems (CBMIS) if applicable (see below);
- f. a description if known, of the individual(s) or institutions allegedly responsible for the risk/harm, the location(s) and date(s) of harmful activity);
- g. steps that have been undertaken to resolve the problem with the implementing entities and/or GCF;
- h. changes that the complainant would like to see as a consequence of the complaint.

There is nothing obvious noting how accessibility will be promoted in the process, including the language and form of communication with the IRM Unit. There is no advice on where and how complaints and grievances will be filed. Must they be in writing, in person, and in what offices? They should ensure that access to the mechanism is in principle made as easy as possible, addressing communities whose access to communications and infrastructure are limited. The



ToR also do not address how awareness of the ToR will be generated so all potential affected persons know about the mechanisms and can access it as equally as any other.

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?

As regards local communities and indigenous peoples, the IRM might consider suggesting the GCF Secretariat to support CBMIS participatory monitoring tools in order to integrate local and traditional knowledge, and to complement the current monitoring capacities of the IRM. The information gathered via CBMIS with regard to possible or effective harm caused by lack of compliance to GCF standards or procedures can also complement the information to be produced by the complainant.

In terms of monitoring the implementation of the decisions, the ToR could specify at III.8(f) that the IRM Unit will invite, receive and review comments and observations from the relevant stakeholders (affected persons, responsible implementing agencies etc.) about the status and progress of implementation of the Board's decisions.

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?

With respect to complaints and grievances (not requests for review of funding decisions), the TOR currently envisage two roles for the IRM; notably, to make recommendations for remedial measures, and to monitor implementation of remedial measures. They should be complemented in such a way as to clarify that the role of the IRM is also to increase effectiveness and project quality, to respond to peoples' grievances and to contribute to ensuring the highest standards in the GCF operations. This can be done, for example, by participatory monitoring and IRM reporting to the public; identifying possible trends giving rise to emerging conflicts and dispute resolution; and formulating recommendations to improve implementation and application of the social and environmental procedures and policies (in entity accreditation, project development and implementation).

Furthermore, they should specify:

- a. that the IRM ToR and further elaborated procedures needs to be made a part of a stakeholder consultation procedure/guidance;
- b. the potential to discuss progress of the IRM with stakeholders, including evaluating lessons learned;
- c. the requirement that a grievance log be established to register and monitor cases in order to learn specific and wider lessons about grievances;
- d. the obligation of the IRM Unit to publish case studies and guidance for stakeholders, GCF and implementing entities, related to both conflict prevention and grievance and redress as well as lessons learned in improving GCF operations.



In terms of monitoring and transparency of the IRM, the independent integrity unit – or an independent team of individuals appointed by them - should review the work of the IRM periodically. This could be after its first year of operation, and then every two years thereafter. It should provide a publicly available report to the Board, with an evaluation and recommendations for improvements. This team should have access to the IRM reports and files, and authority to access and communicate with claimants and representatives of institutions that have been involved in processes before the IRM, while respecting confidentiality. A further function of evaluation is also required to ensure an effective IRM enabling continuous learning. It would examine cases that have come before it, have a process for identifying lessons learned and ways to improve and prevent future grievances and harms.

A grievance mechanism should be **predictable** outlining clear, transparent, and well-known procedures with a specified timeframe for each stage, and clarity on the kinds of processes and outcomes which are available. There is currently no explanation of the possible outcomes. These do not need to be exhaustive, but should be illustrative e.g. modification of project, cancellation of activity, suspension of funding upon conditions, etc. Also, there are no time frames stipulated. There are no clear obligations on the part of the IRM Unit to log, acknowledge and track the grievance or complaint (within a specified time-period) and keep the relevant parties updated as to progress of the complaint or grievance. For instance, a claimant should know that within [x] days the Unit will acknowledge receipt of their grievance and complaint and they should know how long it will take before a decision/recommendations are made. If all of this is to be elaborated in the so called “detailed guidelines and procedures” referenced in V.14 of the existing ToR, then there should at least be a commitment to also consult upon these with stakeholders.

Regarding requests for reconsideration of funding decisions in section II (which may have an effect on communities and stakeholders), there is nothing in the ToR that suggests any involvement of potential stakeholders other than the entity seeking accreditation. For instance, there is no mechanism by which the IRM might also receive reports and inputs from potential stakeholders that have cause to believe that the entity will not, or has not, upheld its obligations under prior applicable policies, safeguards and procedures. This would require that in the logging, acknowledgment and tracking of such requests (per II.3 of the existing ToR), notice of the request for reconsideration would have to be posted somewhere; made available to the public.

With respect to the consideration of requests (per II.4 of the existing ToR), it should be specified that the goal is to address the “request to bring about a satisfactory, **collaborative**, and amicable resolution of the process” (this collaborative approach with all concerned should be specified in III.8(c) as well).

Further on accessibility, transparency, and to promote legitimacy of the mechanism, ongoing learning, and predictability in its mechanisms, it should be specified in the ToR what should be contained in the proposed annual report. For instance, it should be specified that the report should describe thoroughly the work of the IRM Unit. This includes: listing the number and



nature of accreditation review requests, and grievances and complaints received and processed in that year, including dates and descriptions of the complaint or request; decisions made (and reasoning for the same); solutions and recommendations proposed; and referrals and ongoing efforts, including the status of the implementation, where applicable. Of course, the level of detail can be tailored depending on the nature of the request, grievance or complaint (e.g. being resolved, outstanding, subject to confidentiality issues), but always balancing the need for transparency. The report should also make an effort to examine and highlight key patterns or trends that the Unit has observed based on their experiences with respect to emerging grievances and conflicts and mechanisms for dispute resolution (mediation, local conciliation efforts etc.). In its report the Unit should make recommendations regarding:

- (i) measures that can be taken by the Fund, and the implementing agencies, to avoid future violations of applicable procedures and policies and - more importantly - to avoid harms; and
- (ii) possible improvements to the way the IRM functions so as to increase its capacity, credibility and legitimacy in the eyes of those that would access it, and its overall effectiveness, predictability, transparency and accessibility.

Independence: The Board approves the Unit's prepared budget and selects the IRM Unit, and oversees its work. This can give the appearance of a lack of independence. Some suggestions to address this are that:

- (a) the Board approves the Unit's prepared budget, but said approval "*should not be unreasonably withheld*";
- (b) the ToR for the Head of the Unit (the required experience and qualifications) should be drafted with input from stakeholders; the call for applicants made public; and perhaps the names and biographies (at least of the short list) should be made public with solicitations for comments/observations. As well as these measures, or as an alternative, it can also be considered that a search and selection committee of the Board be established and include (at least as advisors) several stakeholder representatives (such as implementing agency partners, individuals representative of potential affected parties, etc.).

IV. Submissions from the public

4.1 Office of the High Commissioner for Human Rights

Comments of the Office of the High Commissioner for Human Rights on the Review of the Terms of Reference of the Independent Redress Mechanism of the Green Climate Fund

2 February 2017

The Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes this opportunity to comment on the Terms of Reference (TOR) of the Independent Redress Mechanism (IRM) of the Green Climate Fund (GCF).

The right to a remedy is a core tenet of the international human rights system. This consultation provides an important opportunity to incorporate lessons learned from the operation of similar accountability mechanisms at international financial institutions, ensure that the documented obstacles to access to remedy under these mechanisms are adequately understood and addressed in the TOR for the GCF's IRM, and promote access to effective remedies for all those potentially impacted by GCF funded projects.

In the context of efforts to fund climate mitigation and adaptation, the importance of ensuring effective access to remedy is eminently clear. Under international human rights and environmental law, States have an obligation to protect against environmental harm that infringes upon human rights, including by providing effective remedy for violations of human rights related to climate change.¹³ Human rights norms and standards relevant to ensuring access to justice for rights-holders are set out in a series of international and regional human

¹³ John Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (A/HRC/31/52) 2016

OHCHR, *Key Messages on Human Rights and Climate Change*

http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf

rights instruments.¹⁴ To address human rights violations, duty-bearers are required to have in place appropriate procedures to guarantee rights-holders access to justice, adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and redress mechanisms.

Equally relevant for the functioning of the IRM are the human rights standards entitling rights-holders to access appropriate and timely information and to participate in all public affairs that can impact the enjoyment of their rights. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights enshrine the right to freedom of expression, to seek, receive and impart information, and the right to take part in the conduct of public affairs.¹⁵ Moreover, the UN Framework Convention on Climate Change, the Conference of Parties for which the GCF reports annually, requires States Parties to promote and facilitate public participation and access to information on climate change and its effects.¹⁶ Importantly, the linkages between human rights and climate change have been recognized by the UN Human Rights Council which has also stated that human rights obligations, standards, and principles should inform and strengthen international and national policy-making in the area of climate change, promoting policy coherence, legitimacy, and sustainable outcomes.¹⁷ The Paris Agreement to the UN Framework Convention on Climate Change further calls upon States to respect, promote and consider human rights when taking climate action. According to the GCF's website, "[GCF] is guided by the principles and provisions of the [UNFCCC]", which would include these human rights provisions.

In its recent advocacy for a human-rights based approach to climate change adaptation and mitigation, OHCHR has emphasized that such an approach should inform both the allocation of climate finance and the implementation of related projects.¹⁸ OHCHR is particularly concerned that climate finance has sometimes been directed towards projects that have caused negative impacts on human rights. In some cases, projects such as hydroelectric dams or biofuel production have been documented to cause loss of livelihoods and biodiversity as well as forced displacement, often with particularly severe impacts for indigenous peoples among others.¹⁹ The GCF IRM has a critical role to play in preventing such harms and ensuring adequate remedies where they do occur. In its advisory capacity, the IRM can also promote

¹⁴ See e.g. The Universal Declaration of Human Rights, art. 8; The International Covenant on Civil and Political Rights, art 2; The International Convention on the Elimination of Racial Discrimination, art. 6; The Convention on the Rights of the Child, art. 39; The African Charter on Human and Peoples' Rights, art. 7; The American Convention on Human Rights, art. 25; The European Convention on Human Rights, art.13.

¹⁵ Art. 19 of the International Covenant on Civil and Political Rights and Universal Declaration of Human Rights.

¹⁶ Article 6 of the United Nations Framework Convention on Climate Change (1992).

¹⁷ See Human Rights Council Resolution 32/33 (2016).

¹⁸ OHCHR, *Key Messages on Human Rights and Climate Change*. OHCHR, *Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/32/23 (2016).

¹⁹ United Nations Environment Programme, *Climate Change and Human Rights* (2015), p. 8-9.

integration of human rights due diligence and a “do no harm” approach throughout the GCF and its funding operations.

This submission contains OHCHR’s preliminary observations on the current TOR of the IRM (which are under revision). These observations focus largely on the role of the IRM as a grievance mechanism designed to address harms caused by GCF funded projects and programmes. OHCHR’s analysis begins with a set of key principles and effectiveness criteria and further addresses several procedural aspects.

I. THE IRM SHOULD BE GROUNDED IN HUMAN RIGHTS PRINCIPLES

The UN Guiding Principles on Business and Human Rights, which were adopted by the Human Rights Council in 2011, clarify the complementary, but distinct, human rights responsibilities of States and private enterprises. The third pillar of these Guidelines proposes a set of effectiveness criteria to guide the design, revision and assessment of non-judicial grievance mechanisms.²⁰ These standards constitute an authoritative normative basis that can be useful, *mutatis mutandis*, for the design of the IRM and represent a legitimate basis against which it can benchmark its subsequent rules of procedures and guidelines.

Paragraph 6 of the TOR which states “the IRM will follow international best practices” could be strengthened by explicitly referencing the UN Guiding Principles and other human rights instruments. The Guiding Principles’ effectiveness criteria as well as their implications for the configuration of the IRM are briefly outlined below.

Legitimacy is achieved by enabling trust from the stakeholder groups for whose use a redress mechanism is intended, and accountability for the fair conduct of grievance processes. The IRM should have clear recruitment and appointment rules that remove any doubts about political capture or potential conflicts of interest. Credible mediation and fact finding efforts require staff to have knowledge about the local contexts where projects are undertaken, critical skills to recognize and address asymmetries of power, and sensitivity to cultural contexts. The functioning of the IRM should be assessed following an independent evaluation process. Legitimacy is affected not only by the actions of the IRM, but also by the extent to which the management implements the remedial measures suggested, including in respect to the cessation of funding and the withdrawal of the accreditation from implementing entities in cases of significant adverse impacts.

Accessibility entails that the redress mechanism be known to all stakeholder groups for whose use it is intended, and provide adequate assistance for those who may face particular barriers to access. To meet this criterion, the IRM should be publicized through public

²⁰ UN Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), para. 31.

outreach campaigns, but also through disclosure requirements included in the loan agreements with clients. Affected parties should be supported in accessing the mechanism, through the removal of any barriers linked to language, disability, literacy, costs, etc. When designing the procedural and formal requirements for the eligibility of a complaint, IRM should aim at accommodating different levels of legal knowledge among plaintiffs, with the aim of making the process the least burdensome as possible for complainants.

Predictability refers to the IRM providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.

Equitability assesses the degree to which the aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms. The power asymmetries between plaintiffs and the organizations and/or institutions they complain against are real and consequential, and the IRM should aim at reducing these at all stages. The reimbursement of third party costs and expenses when a complaint is deemed eligible could facilitate greater access for all affected individuals and groups.

Transparency refers to stakeholders being informed about the progress of complaints before the IRM, and being provided sufficient information about the mechanism's performance to build confidence in its effectiveness. The IRM should publicly disclose information about its compliance review and mediation activities, the remediation measures proposed, and the conclusions of its monitoring efforts. The requirement for transparency should be balanced against the distinct needs for confidentiality of plaintiffs.

Rights-compatibility requires that outcomes and remedies accord with internationally recognized human rights. The IRM should be equipped with the expertise to recognize when alleged adverse impacts amount to a violation of human rights, and ensure that the human rights legal framework is used to inform its findings and recommendations. When complaints highlight serious and irreversible risks of human rights harms, the IRM should have the competence to halt a project and prevent the occurrence of harm.

The criterion of continuous learning entails that the mechanism be designed in a way that allows it to draw upon lessons learned to improve policies and procedures and prevent future grievances.

II. FUNCTIONS OF THE IRM

OHCHR welcomes the recognition of an advisory role for the IRM, as evidenced by its competence to make recommendations to the GCF Board. However, the current TOR do not clearly delineate the two functions of problem solving/mediation (para 8c) and compliance

review (para 8d) as two independent procedures through which the IRM can discharge its responsibility to address project related grievances.

A. Separation of functions

While compliance review is a fact finding and investigation activity, the purpose of mediation is to achieve consensus-based solutions through flexible means. As such, they should be contemplated as two distinct procedures with a separate institutional setup, as their effective realization requires the commitment to distinct sets of professional behaviours and standards. The IRM should assign different members of its staff to the mediation and compliance review teams, respectively, and design separate procedural rules to guide their engagement and interaction with the Board, the Secretariat and the operational departments. The clarification of the differentiated nature of these two mechanisms should inform a more comprehensive definition of the types of complaints that the IRM can hear, as discussed below.

B. Lessons learned

In accordance with the effectiveness criteria outlined above, and within the IRM's mandate to make recommendations to the Board, OHCHR would suggest that the TOR include a provision whereby the IRM can produce lessons-learned reports to inform the continuous improvement of practices and operational policies and procedures. The IRM is in a distinctively unique position to understand broader patterns of harm and adverse impacts resulting from structural failings in operational policies, and should consequently integrate its findings into recommendations for the improvement of performance at the GCF.

III. REPRISALS

With reprisals against human rights and environmental defenders increasing, including against complainants to the independent accountability mechanisms of international financial institutions, it is important that the IRM have a protocol or policy on how to handle cases where aggrieved parties fear retaliation.²¹ In this respect, OHCHR would like to highlight relevant guidance on the protection of human rights defenders developed by UN human rights mechanisms to address the issue of potential reprisals against those seeking to engage with them.²²

²¹ See e.g. the World Bank Inspection Panel, *Guidelines to Reduce Retaliation Risks and Respond to Retaliation during The Panel Process* (30 March 2016).

²² See e.g. UN Human Rights Treaty Bodies, *Guidelines against Intimidation or Reprisals ("San Jose Guidelines")*, adopted at the twenty-seventh meeting of chairpersons of the human rights treaty bodies, HRI/MC/2015/6 (2015); UN Special Procedures, *Acts of intimidation and reprisal for cooperation with the special procedures* available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Actsofintimidationandreprisal.aspx>; UN Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on Human Rights Defenders: an essential guide to*

In addition to “ensuring transparency and fairness” (para. 6), IRM should also commit itself to ensuring confidentiality. In order to mitigate any risks of reprisals, the complainants’ names and personal details should be kept confidential when so requested.

IV. ELIGIBILITY CRITERIA

A. Complainants

The provisions in the current TOR, which limit access to the IRM to “a group of persons” (paras 2(b), 7), are excessively restrictive. The IRM should be open to *any individual or group of persons and their representatives acting on the behalf and with the consent of the plaintiffs* that allege potential and actual harm. In addition to affected parties and their representatives, the TOR should also recognize a role for the IRM itself to initiate an investigation when it learns about actual and potential adverse impacts on people and environment.

B. Definition of impact

According to the draft TOR, the IRM can receive complaints from persons “directly affected by adverse impacts” resulting from a failure to implement GCF operational policies and procedures, including but not limited to the environmental and social safeguards (paras. 2(b), 7). In OHCHR’s view, the strict limitation of the scope of the complaint procedure to *direct* and *actual* impacts is problematic, as it can limit the accessibility of the mechanism and therefore weaken its role for harm prevention.

Firstly, the IRM should consider complaints that allege both actual and potential adverse impacts. Affected parties should be allowed to lodge complaints prior to the implementation of a project, which is a necessary condition for preventing irremediable and irreversible impacts.

Secondly, proving direct impacts as an eligibility condition (para. 8a) imposes an unnecessary burden of proof on complainants, whereas the complaint procedure should be sufficiently simple and straightforward to allow persons without legal knowledge to make use of it. In addition, ascertaining the nature of causality prior to the launch of a proper investigation may be objectively difficult.

Thirdly, it is not clear why indirect impacts should not be eligible for consideration by the IRM. Mitigation and adaptation projects are not implemented in a vacuum, but in socio-economic contexts that should be factored in when assessing their environmental and social risks. The GCF and the accredited and implementing entities have a responsibility to ensure that

the right to defend human rights (2011) available at:
<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CommentarytotheDeclarationonHumanRightsDefenders.aspx>;

projects do not exacerbate underlying situations of inequality or discrimination, and /or compound existing adverse impacts associated with their business relationships and the activities of other actors.

C. Mandatory mediation

Depending on the specific case, making compliance review conditional upon the prior use of the problem solving/mediation approach (para. 8(d)) could amount to an unnecessary obstacle to access timely remedies. The IRM, like other accountability mechanisms,²³ could allow complainants to express a preference for one of the two functions when lodging a complaint. This choice may be particularly important in specific instances involving severe human rights impacts. Moreover, attention should be drawn to the fact that the IRM will co-exist with other grievance mechanisms, as mentioned in paragraph 18 of the draft TOR. If, for example, complainants already used the mediation procedure of one of the accredited entities and was dissatisfied with its outcome, they should be given the opportunity to opt directly for compliance review when accessing the IRM.

D. Breach of operational policies

According to paragraph 7, grievances can be solely raised in relation to the failure of the Fund, or projects and programmes funded by the Fund, to comply with and implement its operational policies. However, in line with the procedures of other independent complaint procedures, mediation/problem-solving should be made available to all complainants who allege having been affected by a project, irrespective of whether operational policies and procedures have been complied with. It is therefore suggested that paragraphs 2(b) and 7 be reformulated to reflect the broader nature of complaints eligible for mediation/problem-solving. As indicated in paragraph 8(d), the eligibility of cases brought under the complaint procedure could remain contingent upon allegation of a breach of operational policies and procedures.

V. GOVERNANCE AND MANAGEMENT STRUCTURE

Finally, OHCHR recommends that the language on the independence of the Head of IRM be strengthened. The proposed period of a one-year employment ban with the GCF after the completion of a mandate may be insufficient to prevent conflicts of interest and/or the appearance of impropriety. The TOR should also stipulate the number of years that should lapse before a former GCF employee can apply for the position of the Head of the IRM.

²³ See e.g. Asian Development Bank, *Accountability Mechanism Policy* (2012), African Development Bank Independent Review Mechanism, *Operating Rules and Procedures* (2015).

4.2 Dr. Maartje van Putten

Terms of Reference for the Independent Redress Mechanism Of the Green climate Fund Comments by Dr. Maartje van Putten

First of all it is important to notice the decision of the Governors of the Fund while establishing the Fund to also establish (Par 69) an Independent Redress Mechanism (IRM). This was a wise decision and by doing so the Governors of the Fund show understanding of the importance that people that are harmed or could be harmed by projects financed by the Fund have access to the Fund in order to find solutions for the problems that occurred. Similarly the Governing Instrument of the Fund underlines the importance given to accountability and transparency.

The draft TOR is already a strong text that does not need a lot of amendments. The following few comments are addressing the different paragraphs of the draft TOR.

Par. 3

It is remarkable and very much welcomed that countries also can address the IRM when they are denied a project. Unfortunately so far no other accountability mechanism of the Multilateral Financial Institutions (MFIs) and Bilateral Financial Institutions (BFIs) offers this option and access.

Par. 7

In the paragraph the word 'directly' affected implicates that indirectly affected people cannot file a complaint. The words directly and indirectly have been discussed heavily overtime in the different MFIs. A well-known example is when a (hydro-power) dam in a river is build and a large part of a community has to be resettled while another part of the community could remain in its surroundings, these people also could be indirectly impacted. Shop owners that stay behind for example lose their clients or schools are closed because a majority of the students have been resettled. In the same project it could be fishermen 20 km down the river that are confronted by a heavy impact on the available fish. Therefore I recommend to NOT use the word directly. It should be the wisdom of the IRM to determine if the impacts mentioned in a complaint are related to the project concerned or not.

Another question regarding par. 7 is why the Fund has not given the opportunity for ONE person to file a grievance or complaint. Some of the other accountability mechanisms give this opportunity. In many if not all cases grievances come from communities, however excluding the option for one individual is not necessary. So far very little (if any) grievances of individuals arrived in the offices of other mechanisms. However one should not exclude it for principal reasons.

Par. 8 (b and c):

In general this paragraph is a very good text Add at the end of (b): as fast as possible.

Add at the end to (c): for example by introducing a local mediator to support the mediation process.

Between par. 11 and 12:

Add a new paragraph something like:

“The IRM Unit will have regular meetings with management about the developments and experiences of the IRM, given the importance for transparency and accountability of the Fund, and take part in trainings for new staff of the Fund.”

Between par. 18 and 19 in chapter VII:

What is missing is a paragraph describing for the IRM that they should work together with the Independent Accountability Network (IAM-Network) uniting the growing group of independent accountability mechanisms for financial institutions. If the Fund would finance a project together with another MFI or a BFI that also received a grievance/complaint, the IRM should be able to work together with the other mechanism(s) for pragmatic and financial reasons (costs of specific technical experts necessary to answer very specific technical question, could be shared with the other mechanisms), however in the same time the IRM should stay independent since it will reflect findings/issues only regarding the Green Climate Fund actions.

Issues in the Call for Public Submissions:

12 b) and c): See above new paragraph between 18 and 19

12 e):

See also suggestion for local mediators to be involved in local situations when mediation takes place. The IRM is the principal mediator and facilitator, however it could employ a local independent mediator trusted by all stakeholders/parties around the table. This local mediator is the ‘front-runner’ who knows the sensitivities of the local/regional area and who can find out in the project area more specific issues such as the legitimacy of names on a list of the complainants that filed the complaint/grievance. This is especially useful when people (in a remote area) only speak a local language or dialect or do not trust outsiders.

12 f):

It is hard to know in advance what could be recommended to the Board. It always depends on the project. Not one project is similar to another. A minimum is that people are seriously listened at and respected in all circumstances, also when management does not believe the complainants have a serious case. If that is

correct, it is the task of the IRM to recommend how to convey this message. Depending on the case this could also be a task for the IRM itself.

12 g):

When redressing harm to people on the project level includes costs, it in principle should be looked after by the project sponsor/client and/or National Authorities that decided on the project and not by the financing institution. It is a matter of due diligence for the management of the GCF and assure a proper Environmental and Social Impacts Assessment (ESIA) is produced before a project is sent to the Board for approval. If risks are determined in the ESIA (often the case in projects categorized as an A), for example if loss of land and involuntary resettlement are at stake, the GCF then should insist that a fund is available to redress the financial impacts. The GCF could also consider to set aside a reasonable sum into the total loan that could be used for unforeseeable costs for impacted people when still problems occur. This could be a part of the contract. This special (proportional) sum could be used as a 'stick' towards clients that will do everything to make sure the special sum is not needed.

12 h):

Complainants and especially vulnerable people should be given the opportunity to send a grievance/complaint, even in handwriting. One could consider if they also have the right to do this in their own language not being an official language of the Fund. One should not forget that filing a grievance/complaint also is costly for the people concerned and not only for the financial institution. People often have to travel and bring the complaint to the right counter. It will cost them often a lot of time, that usually is not what poor people have.

One could ask complainants to describe in what way they think the policies and procedures of the Fund are not adhered to. However this should not be mandatory. People far away do not understand those policies and procedures.

12 i):

After handling a complaint/grievance the IRM is supposed according to the draft TOR, to advise the Board how to respond. The IRM could also propose at the same time a monitoring schedule in order to look at the implementation of the actions as decided by the Board. Monitoring could be in several ways, such as regular (telephone/skype etc) contact with stakeholders in the region about progress, if necessary a visit to the region and reporting on progress to the Board.

12 j):

How can the IRM help to improve the GCFs safeguard policies and procedures? Also here a lot can be said. In brief one could say the IRM should keep records of the systematic of the described harm in the projects. For example one could often find that people in the area were not informed/consulted at a proper moment. About the systematic the IRM could report in the first place to the Board but also to the management in regular meetings. The IRM should be received by the GCF as a learning-by-doing system.

12 k):

See above 12j.

12 l):

See earlier answer under par. 3 of the draft TOR.

12 m):

The IRM should have a direct contact within the Board and CEO and should be able to communicate with other GCF internal committees direct if it finds during its inquiries errors not under its jurisdiction such as corruption or internal ethical questions.

Amsterdam 12 January 2017

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This is an individual reaction of Dr. van Putten, an expert on accountability mechanisms for the financial sector. All can be used by IRM in its consultative process.
