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Via Electronic Mail

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Re: Comments on the UNDP Proposal for Environmental and Social Compliance Review and Grievance Processes

Dear Ms. Laughlin and UNDP:

Accountability Counsel is writing in response to the invitation to submit comments on the April 2012 Discussion Paper presented to the United Nations Development Programme (“UNDP”) on the Proposal for Environmental and Social Compliance Review and Grievance Processes (“Proposal”). We are pleased to submit the following comments concerning the proposed compliance review and grievance processes.

Accountability Counsel works to support communities around the world using accountability mechanisms to uphold environmental and human rights. We also work at the policy level to ensure that accountability systems are robust, fair and effective. Therefore, we take great interest in the proposed compliance review and grievance processes to be created for UNDP because a robust mechanism will better serve the project-affected communities with whom we work, and will improve UNDP’s operations worldwide.

Overall, UNDP’s proposed compliance review and grievance processes represent an important step toward making the institution more accountable, particularly given the institution’s changing role in climate finance. The Proposal improves on several existing accountability mechanisms at other international financial institutions (“IFIs”), and advances UNDP’s stated principles of independence, fairness, transparency, professionalism, accessibility, effectiveness, and being tailored to the institution. There is, however, space for clarifying the Proposal and improving it further. We take this opportunity to present recommendations for the compliance review and grievance processes in the proposed UNDP mechanism. The comments below are based on our extensive experience regarding the design, implementation and use of IFI accountability mechanisms.

Improving Independence

As noted in the Proposal, independence is a key element required for project-affected

people to trust an accountability mechanism. In order to maximize the accountability mechanism's independence, we recommend the following:

Compliance Review

- Currently the Proposal does not outline the hiring process for the Lead Compliance Officer. We recommend that representatives from civil society should be included in the process of selecting the Lead Compliance Officer. By including voices from outside the institution, UNDP can enhance the credibility of and trust in the proposed compliance review process.
- We support the Proposal's enumerated ways of promoting independence on page 12. In particular, Accountability Counsel strongly recommends that the Lead Compliance Officer not only be prohibited from having recently been employed by UNDP, but also be barred from future employment with the institution. This provision is critical to avoid the perception of a conflict by project-affected people and to ensure unbiased compliance reviews.
- As the Proposal states, an important element in mechanism independence is establishing "clear reporting lines to top decision-makers." However, because the compliance review process will be located in the pre-existing Office of Audit and Investigation ("OAI"), which already serves as an accountability office within UNDP, the proposed compliance review function is structurally different from that of other IFIs. Rather than reporting directly to the Board or to the President, the Proposal establishes that the Lead Compliance Officer will report to the OAI Director, who in turn will issue the final compliance reports to the UNDP Administrator. This is a more attenuated chain of command between the Compliance Officer, who conducts the actual compliance reviews, and the final decision-maker than exists in other IFI accountability mechanisms. Therefore, the independence of the OAI Director is equally crucial, and the hiring process for the Director should be similarly transparent and independent.

Grievance Process

- Due to the decentralized and supplemental nature of the proposed grievance process, UNDP needs to monitor existing project level and host country grievance processes to ensure they are following the stated principles for fair and effective accountability mechanisms. Affected communities often distrust processes that are operated by project sponsors or governments because of perceived or actual conflicts of interest. For these reasons, we strongly urge UNDP to maintain its own grievance process at the country level in all countries in which it operates to ensure an independent mechanism exists to facilitate fair, neutral, independent, and transparent dispute-resolution.
- UNDP should ensure that those project level and host country grievance processes are staffed by individuals that are equally independent from the project sponsor's

management, adhering to the guidelines established by the Proposal to minimize conflicts of interest.

Ensuring a Fair Outcome

We strongly support UNDP's efforts to create compliance review and grievance processes with fairness as a central tenet, particularly because project-affected people are often disproportionately vulnerable, with little economic or political power. To ensure a fair outcome, we have the following additional recommendations for the proposed mechanisms:

- The Proposal is currently silent on the issue of representation for project-affected people. Affected people may have limited capacity and means to obtain project information, conduct studies, or file a complaint, and may therefore choose to work with civil society or non-governmental organizations to access the mechanism. UNDP should support complainants' ability and choice to work with civil society to navigate the compliance review and grievance processes.
- In particular, complainants' decision to work with representatives could be marginalized when using a project sponsor or host country grievance process. Therefore, we recommend that UNDP develop principles that ensure integrity and fairness for those processes, which would protect a complainant's right to choose and work with their selected representatives.

Grievance Process

- Because project level and host country processes are prone to abuse, we are wary of the Proposal's statement on pg. 19 that "most disputes should continue to be addressed at the programmatic or project level with minimum or little involvement by UNDP." Although the Proposal goes on to say "UNDP also has an interest in ensuring that such processes are fair and effective, and available at the project, country, and corporate levels," we believe that a stronger provision for UNDP oversight and monitoring of project level and host country processes is necessary. We recommend that project level or host country grievance processes related to a UNDP project include a UNDP staff member who can ensure the fairness and neutrality of the process. In addition, local grievance processes should have access to the Help Desk for knowledge resources on creating fair dispute resolution processes.
- The use of UNDP Country Offices in the creation of a corporate level grievance mechanism, while establishing a central Help Desk, is an innovative way to maximize the unique structure of the institution, and promote flexibility and context appropriate responses. Decentralization, however, requires oversight to ensure quality and consistency of the processes. The final policy should include methods for monitoring and evaluating how Country Offices respond to complaints, and their ability to maintain the principles laid out in the Proposal for a fair, effective, and transparent process. In cases where Country Office

processes are found to be deficient, there must be a process for the Help Desk to intervene and remedy problems.

- Where Country Office processes cannot provide adequate distance and independence from the project to provide fair results, complainants should be able to appeal to a central office in UNDP to address their concerns about the grievance process.

Ensuring Accessibility

The Proposal describes an admirable effort on the part of UNDP to guarantee the compliance review and grievance processes are as accessible to project-affected people as possible. We fully support UNDP's intent to eliminate unnecessary barriers to accessing the mechanism and agree that complainants should not have to allege particular policy violations, state specific desired remedies, or write in a designated language in order to be deemed eligible. To complement the proposed means of maximizing accessibility, we have the following suggestions:

- We strongly agree with the Proposal that individuals and groups that are *potentially* affected by a UNDP-supported project should be able to file a complaint. As such, the second bullet point under subsection "D" on page 13 of the Proposal should be clarified so that a complaint can be "submitted on behalf of a person or people affected *or potentially affected* by the project or programme."
- In addition to not having to allege specific policy violations, complainants should also not have to allege direct harm in the complaint, as discussed under accessibility and fairness of other international accountability mechanisms in Annex 1. A complaint should be found eligible where a complainant explicitly or implicitly raises compliance issues, which may or may not include an articulation of direct harm.
- We strongly suggest UNDP allow project-affected people to choose whether to use the grievance process or compliance review function, and in which order. Complainants should be able to enter either process first or request that compliance review and the grievance process be conducted simultaneously. This decision should be left to the individuals or communities filing the complaint. Such flexibility will ensure that both channels remain accessible to complainants and that one process is not used to prevent access to the other.
- Because complainants may not always be aware of alternative accountability processes at UNDP, we suggest that mechanism staff provide information about the two processes to a party submitting a complaint and the opportunity to amend their decision regarding which process to use.
- The Proposal does not stipulate procedures by which complainants can amend

their complaints, allege new violations, or provide additional evidence. Including a procedure to amend a complaint will make the process more fair and accessible to complainants who need to initiate a process while collecting data or information to support their claims, and to those who discover new information or experience new harm after filing a complaint.

- The Proposal also does not specify the time frame for submitting an eligible complaint. To ensure that all project-affected people have access to the compliance review and grievance processes, we recommend that UNDP accept complaints throughout the duration of UNDP’s involvement in a project. Because many projects—especially those that impact the environment or involve resettlement plans—could lead to long-term, serious, adverse impacts that become apparent only after many years have passed, “involvement” should be interpreted broadly and not pose a barrier to access.

Grievance Process

- The Proposal currently states that in assessing the feasibility for UNDP-facilitated dispute resolution, the UNDP Country Office Designee must evaluate whether the complainant should first be required to file their complaint with any grievance process established by the project sponsor or host country. Greater clarity is needed on how the Country Office Designee will decide whether UNDP, a project sponsor, or a host country will facilitate the grievance process. We strongly urge UNDP not to require complainants to first use project sponsor or host country grievance processes, but rather to demonstrate a good faith effort on the part of the complainants to resolve their concerns with the relevant authority, either through the use of an established grievance process or by some other means.
- While utilizing existing apparatuses can be effective in some cases, UNDP should not require project-affected people to first engage other processes where it would be futile or dangerous to the complainants. Ultimately, complainants should be able to decide whether they prefer to use processes at the program, project, or host country level, or the UNDP Country Office process.
- While the nature of grievance processes may not allow for complainants’ identities to be kept confidential throughout the process, this should be assessed on a case-by-case basis, taking into account factors like local security context, the nature of claims being made, history of retaliation, etc. If requested, the identities of complainants should be kept confidential during assessment of eligibility and interest of all parties to participate in a grievance process.

Maintaining Transparency

The Proposal outlines several important avenues to maintain transparency at every stage of the compliance review and grievance processes. These include releasing draft reports on which complainants can provide comment throughout the compliance review and at every stage, as well as maintaining an online database where the public can track complaints. Accountability

Counsel supports these proposals and believes that their adoption is key to the maintenance of a truly transparent mechanism. We suggest the following additions to increase transparency of the processes:

- An accountability mechanism transparency policy requires transparency at the project level, so that project-affected people know they can use the UNDP compliance review and grievance processes. In addition to the planned outreach by UNDP staff to project-affected people and civil society, there should be an easily accessible database of UNDP projects and programs, with a clear description of activities and sub-projects, UNDP's role in the project or program, any reports or impact assessments that have been conducted, sources of funding, timelines, contact persons, etc.

Compliance Review

- On page 15, the Proposal enumerates various activities of the compliance review, which offer opportunities to enhance transparency. In the third, fourth, sixth, and eighth points on the list, we recommend that the reports mentioned be released to the public via the website in addition to UNDP staff, complainants, and the Administrator. Releasing information to the public is one of the most important steps to ensure the mechanism's overall transparency and accountability.
- Concerning the ninth enumerated activity that requires "reporting at least annually to the UNDP Administrator on the functions, operations, and results of the compliance review process," Accountability Counsel urges UNDP to also make this information available to the public.

Grievance Process

- A website for the grievance process, similar to that of the compliance review, should also be created. It should include the registry of cases maintained by the Help Desk, as well as be regularly updated with assessment and eligibility reports, public documents, progress updates, and anything else that parties agree to share publicly. It should also include full policies and procedures of the UNDP grievance process, information about project level and host country grievance processes, contacts to relevant Country Offices, and potentially a mechanism to submit complaints. The grievance process and compliance review websites should be openly and clearly linked.

Effectiveness of the Mechanism

The effectiveness of the mechanism is crucial if complainants are to trust the process and the overall accountability of UNDP is to be increased. The Proposal outlines several important provisions to promote effective outcomes, for which we would like to voice our support and offer a few additional recommendations.

Compliance Review

- The Responses and Remedies section (p.17) is extremely important for complainants to be assured that their complaint can have a real impact on a project, and lead to positive environmental and social outcomes for people affected by UNDP-supported activities. These remedies will be critical for effectiveness. In particular, the ability of the Administrator, on the basis of the OAI Compliance Officer's recommendation, to condition UNDP participation in a project on compliance with its policies is essential.
- The current Proposal recommends that the Administrator have the authority to stop UNDP's financial disbursements and support to a project, pending the outcome of compliance review, at least where there is potential for irreversible damage to affected people should the project continue. To institutionalize this important protection for communities subject to suspect UNDP-supported projects, we recommend that an additional step be added to the Proposed Compliance Review Process (pg. 15). After a complaint is deemed eligible (Step 3), we suggest that the Administrator be notified of the upcoming investigation and asked to make a formal determination as to whether UNDP will temporarily halt disbursements. For greatest transparency, this determination should be released to the public and published on the website.
- We also strongly support the OAI compliance officer's advisory function and power to make recommendations for systemic change. Making sure that this advice has a place in future UNDP programming will enable UNDP as a whole to improve the effectiveness of its operations. The Proposal contains provisions for making this process open to public input, and we would only add that final advisory documents should also be made available to the public.

Grievance Process

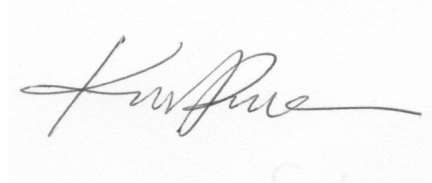
- The Country Office Designee should monitor the implementation of agreements reached by the parties through the UNDP grievance process, and issue periodic status reports available to the public until the agreement has been completed. UNDP should also monitor implementation of agreements reached through project level or host country grievance processes, soliciting periodic reports from the staff of those processes.
- Because the Country Office Designee is in a unique position to comment on larger lessons learned during a dispute resolution process, his/her reporting and advisory function is essential for improving UNDP's overall effectiveness. Therefore, we recommend that the Country Office Designee oversee and provide reporting about all grievance processes related to UNDP activities, including those processes operated by project sponsors or host country.
- We agree that the Country Office Designee's final report summarizing the

complaint, the steps taken to resolve the issues, and future recommendations should be made available to the public. This, along with monitoring reports, should be made available on the grievance process website.

We appreciate the opportunity to comment on the UNDP Proposal for Environmental and Social Compliance Review and Grievance Processes discussion paper, and we look forward to continued engagement with UNDP on this important endeavor. We hope that UNDP will continue an open and participatory process in the development of the Environmental and Social Compliance Review and Grievance Processes. Accountability Counsel urges UNDP to provide a public comment period and facilitate consultation on the draft policy once it is complete. In addition, we ask UNDP to make all comments, from this round and future ones, publicly available.

We invite members of UNDP working on this initiative to contact us with any questions regarding our comments. We look forward to continued communication in the creation of the UNDP Environmental and Social Compliance Review and Grievance Processes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Komala', is centered on a light gray rectangular background.

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