

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 organizations¹ we hope to inform the review of the IRM's existing TOR and help the IRM effectively carry out its work.

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.

¹ 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.

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/Ombudsman² and the World Bank Inspection Panel,³ among others.⁴ 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.

In addition, the Head of the IRM should have the authority to independently initiate compliance proceedings, which is in line with international best practice.⁵

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.

² 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”).

³ 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 ...”).

⁴ 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”).

⁵ 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.”)

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, 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.⁶ Disclosure should include clear information on the procedure and time frame for each 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

⁶ 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*].

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.⁷

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.

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.

⁷ See, e.g. CAO Operational Guidelines, *supra* note 2, at sec. 4.2.1.

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.⁸

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.

⁸ *Glass Half Full? The State of Accountability in Development Finance*, *supra* note 6, at sec. 2.4.

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.⁹ 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 path¹⁰ 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

⁹ The Board recognized this difficulty in Decision B.13/32/Rev.1, para. (c)(i).

¹⁰ 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.

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.¹¹ 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 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

¹¹ See *Glass Half Full? The State of Accountability in Development Finance*, *supra* note 1, at sec. 5.2.

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 sub-committee 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)