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*Via electronic mail*

January 20, 2017

*Re: Comments on the Revised Terms of Reference for the Independent Redress Mechanism – Green Climate Fund*

Dear Mr. de Silva,

Thank you for the opportunity to comment on the revision of the Terms of Reference (“Revised TOR”) for the Independent Redress Mechanism (IRM). The IRM is a critical component of ensuring that the Green Climate Fund (GCF) functions in a way that does not contribute to or exacerbate environmental and social harms. Having a robust independent accountability system in place for the GCF will help to ensure that when GCF-funded projects harm people or the environment redress can be sought and received. This can be accomplished by creating an effective and responsive IRM. A revised TOR that allows for creating an IRM that is accessible, predictable, transparent, equitable, rights-based, and legitimate<sup>1</sup> will ensure that people who are harmed or see that their environment being harmed have a place to go. The GCF can and should build on lessons from other independent accountability systems to ensure that the IRM is a leader.

The following comments address some of the questions set forth in the call for public submissions and are based on our collective experience working with and analyzing other independent accountability mechanisms (IAMs) with the aim of ensuring that the IRM is a state of the art mechanism and an effective space where project-affected people can seek redress when harmed by GCF-funded projects.

### **Access to the IRM**

Accessibility is a key element to ensuring that an accountability mechanism is responsive to affected people. It is also one of the barriers that hinder affected people’s access to remedy. This is due to a number of factors including, but not limited to, lack of knowledge about the mechanism, insufficient resources, or unnecessary procedural hurdles. The current TOR unnecessarily limits who can bring a complaint to the IRM. The revised TOR should be revised so that *anyone* who is being harmed or thinks that he/she will likely be harmed by a GCF-funded project is able to bring a complaint to the IRM.

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<sup>1</sup> See generally C. Daniel, K. Genovese, M. van Huijstee & S. Singh (Eds.), *Glass Half Full? The State of Accountability in Development Finance* (Jan. 2016), available at [glass-half-full.org](http://glass-half-full.org) [hereinafter *Glass Half Full?*].

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, 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.<sup>2</sup> Thus it may be necessary for a representative, either a person or NGO, to file on behalf of the affected person, people, or community. As such current paragraph 7 should be amended to say “[a] grievance or complaint can be filed by a person, group of persons, communities, or their representatives ....” Lastly, the word “directly” should be eliminated because it is both too restrictive and can be challenging to interpret evenly. It should be replaced with the phrase “affected and potentially affected” by a GCF funded project. This is in line with other independent accountability mechanisms, including the Compliance Advisor/Ombudsman<sup>3</sup> and the World Bank Inspection Panel,<sup>4</sup> among others.<sup>5</sup> In addition, the IRM itself should be able to initiate compliance proceedings, which is in line with international best practice.<sup>6</sup> These changes will ensure that the TOR adequately defines who can bring complaints to the IRM.

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<sup>2</sup> Global Witness, *On Dangerous Ground* (June 2016), available at <https://www.globalwitness.org/en/reports/dangerous-ground/> (noting that 2015 was the deadliest year for land and environmental defenders worldwide); Frontline Defenders, *Annual Report on Human Rights Defenders at Risk in 2016* (2016), available at <https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2016> (highlighting that in 2016, over 1,000 human rights defenders were killed, harassed, detained, or subjected to smear campaigns against them).

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

<sup>4</sup> The Inspection Panel at the World Bank, Operating Procedures, section 2.1, para. 10(a) (Apr. 2014) [hereinafter Inspection Panel Operating Procedures] (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 ...”).

<sup>5</sup> Inter-American Development Bank, Policy of the Independent Consultation and Investigation Mechanism of the IDB, para. 13(a) (Dec. 16, 2015) [hereinafter MICI Policy] (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”).

<sup>6</sup> CAO Operational Guidelines, *supra* note 3, at sec. 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.”).

Further, IAMs cannot provide remedy to project-affected communities that do not know about the existence of the IAM.<sup>7</sup> Thus, the TOR should require the accredited entities and the implementing entities to publicly disclose the existence of the IRM as well as their own redress mechanisms during the consultation phase and throughout the life of the project. The disclosure should include information about how to contact the IRM and other redress mechanisms as well as brief information about the processes.

Lastly, in regards to the IRM's role to receive requests related to funding decisions, paragraph 3 of the current TOR says "[a] request can be filed by a developing country that has been denied funding." However, this language is vague. It should be made clearer who in the developing country can bring a claim. Instead it should say that the Nationally Designated Authority (NDA) or Focal Point can submit a request to the IRM when a proposal has been rejected by the Board.

### **Relationship between Grievance Mechanisms**

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 subsequent guidelines and procedures set out clear uniform standards for these relationships. We hope the following will help in doing that.

The IRM should have a collaborative working relationship with similar redress mechanisms at accredited entities and implementing entities and nothing in the TOR should preclude project-affected communities from accessing the IRM and the other relevant redress mechanisms. In a world of increasingly complex financing where projects are not solely funded by one fund or bank, it is logical and advantageous for IAMs to work together. Along those lines, we were pleased that in its 2017 Work Plan, the IRM noted that it was going to join the IAM Network. This will help the IRM further collaborate with other IAMs to share best practices and develop positive working relationships that will hopefully help better serve project-affected people.

Naturally, if the IRM and another mechanism receive the same complaint, then it would be beneficial for both mechanisms to work together to ensure that the concerns are addressed efficiently, as is common practice with many IAMs. As discussed below, the roles, functions, and capacities of redress mechanisms vary by institution. However, the revised TOR does not need to account for all of the differences. Primarily the TOR needs to make clear that when communities are harmed by a GCF funded project, then one of the options for the people is to file a complaint with the IRM. The TOR should clarify that this can happen at any time regardless of whether a complaint has been filed at another redress mechanism.

The IRM is in place to ensure that GCF project-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

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<sup>7</sup> See *Glass Half Full?*, *supra* note 1, at sec. 3.2.

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 compliance with the GCF policies. Thus, project-affected people could face further harm if they were precluded from or forced to go to a redress mechanism other than the IRM.

In defining the relationship, the TOR must reflect the IRM's authority to hear complaints that arise from GCF-funded activities. As such, "where required" should be eliminated from paragraph 19 of the current TOR. The agreements between the GCF and the accredited and implementing entities should specify that they accept that the IRM can receive complaints from project-affected communities. If there is or has been GCF money in a project, then the IRM should be open to the community complaint, regardless of the existence of a redress mechanism at the implementing entity.

Furthermore, nothing in the TOR should preclude complainants<sup>8</sup> from seeking redress through judicial processes or other forums, and the existence of an ongoing judicial proceeding should not limit the complainant's access to the IRM.

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-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 can 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 address the concerns raised in the complaint. If this happens, the IRM can ask the complainants if they knew of the existence of the accredited entity's redress mechanism and, if not, should inform them about it. While the IRM can reach out to the redress mechanism of the accredited entity and/or the project level grievance mechanism to see if they were contacted, the fact that they were not, should not preclude the IRM from addressing the complaint. The complainants may have a reason (such as concerns regarding independence or legitimacy) for why they filed with the IRM and not another mechanism, 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. Additionally, when a redress mechanism of an accredited or implementing entity receives a complaint, it should report that to the IRM. While this does not

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<sup>8</sup> Throughout this document, we use "complainants" and "requestors" interchangeably to refer to the person, group of persons, communities, or their representatives who have submitted a request to the IRM seeking redress because they have been or think they will be harmed by a GCF-funded project.

require the IRM to be brought in to address that complaint, it will allow the IRM to better follow and track trends for GCF-funded projects and programs, which will contribute to its advisory role in helping the GCF be a learning institution.

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. Moreover the findings at another mechanism, while informative, should not prejudice proceedings at the IRM.

## **Functions of the IRM**

The steps taken to address concerns of complainants should be driven by the complainants themselves. Since 1994 when the first 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. Dispute resolution offers a variety of tools (mediation, conciliation, problem solving, etc.) to address the individual and community concerns. In contrast, compliance proceedings investigate and report on compliance with relevant policies. Because the functions differ in terms of what they offer and in their goals, complainants should drive the decision about which function they request and in which order.

The process described by the current TOR indicates that the IRM would sequence dispute resolution before compliance review in an effort to address the harms through an “informal process.” In discussing the compliance review, the current TOR indicates it only occurs following failure to reach a solution through dispute resolution.<sup>9</sup> In revising the TOR, this sequencing should be eliminated. The complainants 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 complainants to go through an informal dispute resolution process they do not want would likely delay redress and waste IRM resources. Thus, if the complainants only want a compliance review, then the IRM should allow that initially.

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

Likewise, when the IRM receives a complaint from a person or persons seeking remedy through a dispute resolution process, then the IRM should attempt to facilitate that. In

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<sup>9</sup> Green Climate Fund, Terms of Reference of the Independent Redress Mechanism, para. 7(c)-(d) (Feb. 2014) (indicating that the IRM will “(c) use informal means” to address the communities grievance and “(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 ...”).

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. Professional dispute resolution requires a number of elements, which should be further addressed in 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.

## **Types of Redress**

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. Thus, being overly prescriptive in what the redress is could be problematic. Primarily, the redress should be responsive to the needs of the affected person(s) as expressed by him or her, and should address the harm.

### *Complaints Related to the Projects 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, the IRM should be responsive. Thus, no one type of redress should be mandated because no two situations will be the same. The IRM should be able to determine the redress that is 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 either entirely or until the identified problem(s) are addressed; financial and non-financial compensation for the harm; punitive sanctions where possible; consequences for staff in situations of non-compliance; specific performance of an action that should have been taken; and other remedial action to address the harm and prevent future harm through injunctions or guarantees of non-repetition, among others. These recommendations should be accompanied by a timeline for the implementation of the redress. Allowing the IRM to compel action will help it avoid the problems of realizing remedy that have been found in other institutions.<sup>10</sup>

In situations when the harm is ongoing and/or the threat of harm is imminent, the IRM should be able to recommend immediate suspension of the funding for the project or program in question as a precautionary measure so that a proper investigation can take place. The IRM should also be able to evaluate and conclude that the harm has ceased or is no longer imminent for the funding suspension to be lifted.

### *Complaints Related to Funding Denials and Reconsideration of Rejected Funding Proposals*

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<sup>10</sup> See *Glass Half Full?*, *supra* note 1, at sec. 2.4.

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 does not need to specify the remedial actions, however, they could include options such as a process for reconsideration, including a timeline and guidance on how to align the project or program with the GCF mandate, and recommendation that the Board fund the project or program and reconsider the proposal at the Board meeting immediately following the IRM giving its recommendation, among others.

If an NDA or Focal Point brings a complaint to the IRM and, after evaluating the situation, the IRM determines that the funding application was potentially wrongly rejected, the IRM should recommend that the Board reconsider. The Board should then either reconsider the funding application or publicly disclose the reasoning behind their decision not to. This may only happen when a proposal has been rejected; understanding that rejection of a proposal should be defined as the formal rejection of a funding proposal by the Board after it has been submitted for consideration.

The new TOR should therefore revise paragraph 5, which currently states that the Board “may consider the request [from the country related to the denial of funding] in view of the report and take steps to implement the recommendation of the IRM.” Instead the TOR should state that the Board “shall consider the request” along with the report from the IRM and review the IRM’s recommendations. Additionally, the following should be added: “If the Board does not, then it shall publicly disclose an explanation of the reasons for not doing so.”

### **Providing Funds for Compensation and Remedy**

Seeking redress through an IAM requires extensive use of complainant resources, namely due to the time demand and financial cost.<sup>11</sup> 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-affected people face a long path<sup>12</sup> and are typically at a power disadvantage as they tend to come from more vulnerable populations, while the project proponents are typically well-resourced financial institutions, 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 advisors, among other costs, in addition to the expenses related to dealing with the harm the project caused. Thus, the GCF should make every effort to reimburse these expenses. The IRM should be able to work with the requestors to determine what the expenses related to bringing the request for redress and participating in the

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<sup>11</sup> The Board recognized this difficulty in Decision B.13/32/Rev.1, para. (c)(i).

<sup>12</sup> 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?*, *supra* note 1, at sec. 2.4.6. This presents significant challenges to communities that are already being negatively-impacted by a development finance project.

process with the IRM would encompass, so that it may be submitted to the GCF for compensation from the fund.

As discussed above 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 provide adequate monetary compensation to the requestors to remedy the harm should the dispute resolution process or compliance review not do so adequately.<sup>13</sup> 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 or implementing entities to obtain insurance or apportion a percentage of the funding they receive from the GCF for a contingency redress fund or bonds. Contributions could be based on the level of project risk and should be built into GCF contractual arrangements with relevant entities.

The complainants and others who helped file the complaint 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.

Thus, the TOR should call for the GCF to create a compensation and remedy fund with enough resources to cover these potential expenses.

### **Interactions with the Requestors: Ensuring the IRM is Responsive, Accessible, Transparent and Predictable**

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. Filing a request for redress with the IRM should require *at the most*: contact information for the person filing the request, a brief description of the project, the description of the harm or impact, and location of the project or program. Moreover, the IRM should be culturally sensitive, allowing complaints to be received in a variety of formats to accommodate for differences with respect to access to information and communication technology, as well as literacy levels. The IRM should also accept requests in all languages. Further, the IRM must guarantee that information related to the complainant be kept confidential if requested.

Once a request is received, the IRM should work with the requestors to obtain any additional information necessary related to the complaint as well as to ascertain whether the requestor is seeking dispute resolution process, a compliance review, or both, and in what order. Importantly, in the request, a complainant need not prove or show causality. Rather they must merely include information of how they may be actually or potentially harmed due to a project or program 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 specific policies or procedures.

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<sup>13</sup> See *Glass Half Full?*, *supra* note 1, at sec. 5.2.



In communicating with requestors the IRM should be mindful of the situation and country context so as to avoid putting communities at risk of retaliation.

In many countries it is increasingly dangerous to be an environmental and human rights defender.<sup>14</sup> Environmental and human rights defenders 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 do what it can to ensure that those who come to it seeking redress do not face reprisals for doing so. As part of its response, we recommend that the IRM inform the UN Special Rapporteur on the Situation of Human Rights Defenders or another relevant person in the UN Human Rights Office of the High Commissioner when a complainant is at risk. Additionally, many IAMs are producing or developing protocols for addressing situations of threats and/or actual retaliation against complainants or those who are associated with the complaint process. We recommend that the IRM undertake such an initiative as well.

Additionally, the IRM should be responsive to the requestors. A key component to creating an effective IAM is predictability. As noted above, requestors put a considerable amount of time and resources into filing a complaint and often do so at their own peril. Thus, the IRM should be respectful of the requestors, as well as those implementing the project, by providing timely communications. Complainants should be kept apprised of the progress of their complaints from the time it is submitted, throughout the dispute resolution or compliance process, and until remedy has been received or issues of non-compliance have been addressed. Further, to ensure equitability, the draft and final compliance reports and other complaint information should be shared with the complainants at the same time that it is shared with the GCF and relevant accredited and implementing agencies.

Lastly, we appreciate that the 2017 Work Plan of the IRM mentions that it will develop a webpage on the GCF website. In addition to the documents listed in the Work Plan, we encourage the IRM to have an online case registry that includes details about the complaints it receives, information about current status within the process of each complaint, and other relevant information, including, but not limited to, the complaints, outcome documents, and monitoring reports. Further, we encourage the IRM to follow-up on the statement in paragraph 17 to develop its own separate website to indicate its independence.

## **Monitoring**

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. Actions can be mandated, but it is critically important that those actions be implemented. The IRM, therefore, can and should play a primary role in a participatory monitoring process, incorporating ongoing feedback from all parties, about progress (or lack thereof) following a complaint 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 and the Board takes a decision on how to address the problem, then the IRM

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<sup>14</sup> See Global Witness, *On Dangerous Ground*, *supra* note 2; Frontline Defenders, *supra* note 2.

should formally monitor, incorporating complainant feedback, and publicly report on the implementing entities' progress towards taking those actions. Further, if there is ongoing non-compliance or a breach of an agreement reached through a dispute resolution process, then the IRM can make a recommendation to the Board that additional actions should be taken. This could include a variety of actions, including sanctions of some kind, removal of accreditation status, or additional relief for the community, among others.

## **Lessons Learned and Policy Guidance**

As the entity that receives complaints from project-affected peoples, the IRM is in a unique position of being able to analyze trends, when and why harm tends to occur, and how potential harms could be better addressed to prevent it 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 and we are pleased to see that collaborating on development of the GCF safeguards is part of the IRM's 2017 Work Plan.

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 daily work. Thus, the Secretariat should apply such advice to its processes when assessing project and program proposals submitted to the GCF. Further, these lessons should be integrated into the Secretariat's advice to countries regarding how to access GCF funding.

Further the IRM should play an advisory role regarding trends. For example, if the IRM receives multiple complaints alleging similar concerns or harm, then there may be an underlying policy or procedure at issue. The IRM can provide advice to the Secretariat and Board through a public written report, as well as any other oral or informal means of reinforcing the advice. Further, and in the interest of full transparency, to the extent possible, the IRM should publicly disclose its findings on lessons learned. Additionally, the IRM should have the power to undertake this analysis and suggest improvements on its own initiative as well as at the request of the Secretariat or the Board. This should also include the ability to recommend that the Board not provide additional funding to accredited entities that have continually been found to be in non-compliance with GCF safeguards and other relevant policies until they correct this.

Lastly, as mentioned previously, the IRM should be able to initiate its own compliance investigations. 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. Thus, the IRM should be able to initiate a compliance review.

## **Independence**

To ensure legitimacy, the IRM must be (and must always act in a manner which is) completely independent from the GCF Secretariat. We appreciate that the background on the call

for submissions on the revised TOR specifies that the IRM is independent of the GCF Secretariat and that the TOR confirms this. The TOR should specify, as it currently does, that “[t]he head of the IRM Unit will report to the Board.” The IRM should report to the full Board and not just the Ethics and Audit Committee. This will prevent potential conflict of interests that could arise if the IRM is reporting on a complaint(s) in a country(ies) that are on the Ethics and Audit Committee.

Further, to ensure independence there should be additional restrictions on pre-employment and post-employment work. The current TOR says in paragraph 11 that “[t]he 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.” However, to be in line with best practice the TOR should be revised to require a permanent ban from working at the GCF Secretariat.<sup>15</sup> This will ensure that the IRM will not be compromised in doing his/her job because he/she wants to be employed at the GCF beyond his/her term at the IRM. Further and in line with best practice, the TOR should also be expanded to include a post-employment prohibition of at least two years for the other employees of the IRM.<sup>16</sup> Additionally, the revised TOR should provide pre-employment cooling off periods of at least two years for the head of the IRM and the people he/she hires as this is in line with best practice.<sup>17</sup> We commend the IRM for following best

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<sup>15</sup> See, e.g. Inspection Panel Operating Procedures, *supra* note 4, at para. 1.3 (stating “Members of the Panel may not be employed by the World Bank Group following the end of their service on the Panel.”); CAO Operational Guidelines, *supra* note 3, at para. 1.3 (stating “The CAO Vice President is restricted for life from obtaining employment with the World Bank Group.”); MICI Policy, *supra* note 5, at para. 52(c) (stating “Upon completion of his or her service to the Bank, the MICI Director, the Compliance Review Phase Coordinator, and the Consultation Phase Coordinator may not work at the IDB in any capacity.”); African Development Bank Group, The Independent Review Mechanism, Operating Rules and Procedures, para. 85 (Jan. 2015) [hereinafter AfDB IRM Operating Rules and Procedures] (requiring that “If an Expert is called upon to work for the IRM during his or her term, the Expert shall not be entitled to work for the Bank or the Fund (either as staff member, Elected Officer, Senior Adviser or Adviser to an Executive Director or Consultant) after the expiry of his or her term.”); European Bank for Reconstruction and Development, Project Complaint Mechanism (PCM) Rules of Procedure, para. 51 (May 2014) [hereinafter EBRD PCM Rules of Procedure] (stating that “The PCM Expert, upon completion of his or her term of service, will not be entitled to work for the Bank (either as a staff member, Bank official or consultant) at any point in the future”).

<sup>16</sup> See, e.g., CAO Operational Guidelines, *supra* note 3, at para. 1.3 (stating that “Contracts for CAO staff restrict specialists and staff above that level from obtaining employment with IFC or MIGA for a period of two years after they end their engagement with CAO.”); MICI Policy, *supra* note 5, at para. 52(c); EBRD PCM Rules of Procedure, *supra* note 12, at para. 58 (requiring that “The PCM Officer, upon completion of his or her term of service, will not be entitled to work for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director’s Adviser or consultant) for at least the three (3) years immediately following.”).

<sup>17</sup> See, e.g., Inspection Panel Operating Procedures, *supra* note 4, at para. 7 (specifying that the Panel Secretariat staff cannot have worked at the World Bank for at least two years prior to joining the Panel); MICI Policy, *supra* note 5, at para. 52(b) (stating in paragraph 52(b) that “Executive Directors, Alternate Executive Directors, Temporary Alternate Executive Directors, Counselors, and IIC or IDB staff wishing to serve in these positions may not serve in the MICI until three (3) years have lapsed since the end of their employment or relevant appointment with the IIC or the IDB.”); AfDB IRM Operating Rules and Procedures, *supra* note 15, para. 85 (stating that “Executive Directors, Alternate Executive Directors, Senior Advisers and Advisers to Executive Directors, any Officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster of Experts at the end of their service with the Bank.”); EBRD PCM Rules of Procedure, *supra* note 15, at paras. 51, 58 (stating in paragraph 51 that “The PCM Experts will not have worked for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director’s Adviser or consultant) for at least two (2) years prior to being hired as a PCM Expert” and in paragraph 58 that “The PCM officer will not have worked for the Bank (either as a staff

practice by having the head of the IRM hire the IRM staff; this should be retained in the revised TOR. Lastly, the TOR should include that in hiring the head of the IRM, the hiring committee will also include external stakeholders, including members of civil society.

Further, in regards to staffing, paragraph 9 of the current TOR says that the IRM unit “will be headed by a part-time expert with experience in running an accountability mechanism and will comprise two other part-time experts .... As and when the workload justifies, the part-time had position could be converted to a full-time position.” The head of the IRM unit should always be a full-time position. Additionally, the TOR should not specify that the other positions be part-time. This determination should be made by the head of the IRM and the TOR should not limit the IRM to only hiring part-time experts. As such, in the revised TOR the word “part-time” should be eliminated entirely from existing paragraph 9.

Thank you for your consideration of our recommendations. We look forward to continuing our participation in the consultation process for the revision of the TOR of the Independent Redress Mechanism. Please do not hesitate to contact me at [elennon@ciel.org](mailto:elennon@ciel.org), +1 (202) 742-5856 if you have any questions or would like further clarification on the content of this submission.

Sincerely,

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member, Bank official, Director, Alternate Director, Director’s Adviser or consultant) for at least two (2) years prior to being appointed as the Officer.”); *Glass Half Full?*, *supra* note 1, sec. 5.1, table 2.