



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

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

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

Does the current TOR adequately define who should have standing to bring a complaint to the IRM, and if not how might it be improved?

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

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

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

What should the relationship(s) be, between the IRM and similar redress mechanisms of accredited entities and implementing entities, what are the roles, functions and capacities of such redress mechanisms and how best might those be taken into account, in revising the current TOR?

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

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

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

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

How best might mediation and conciliation efforts be deployed by the IRM in response to complaints and when and under what circumstances should compliance proceedings be initiated?

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

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

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

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

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

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

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

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

What kinds of monitoring activities would be most useful and effective for the IRM to undertake and how should these be reflected in a revised TOR?

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

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

How best can the current TOR be revised to ensure that the IRM helps the GCF improve its safeguard policies and procedures and suggest systemic improvements through proactive investigations and advice?

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

Furthermore, they should specify:

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

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

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

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

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

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

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

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

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

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