

United Nations Development Programme

Proposal for Social and Environmental Compliance Review and
Dispute Resolution Process

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TABLE OF CONTENTS

Glossary of Key Terms	4
Executive Summary	5
Introduction	7
I. The Need for Compliance Review and Dispute Resolution Processes at UNDP	7
II. Experience with Accountability Mechanisms at other International Institutions	10
III. Elements of a Compliance Review Process	11
A. Principles	11
B. Organizational Structure and Staffing	11
C. Policy Scope and Exclusions	13
D. Who Can File a Complaint: Eligibility Requirements	13
E. Initial Receipt and Handling of Complaints	14
F. The Proposed Compliance Review Process	15
G. Responses and Remedies	15
H. Monitoring and Reporting	16
I. Information Disclosure	16
J. Advisory Function	16
IV. The Proposed Compliance Review Process	17
A. Purpose	17
B. Principles	17
C. The Social and Environmental Compliance Unit: Staffing and Responsibilities	18
D. Scope and Eligibility for Compliance Review Process	19
E. How to File a Complaint	20
F. The Compliance Review Process	21
G. Monitoring	23
H. Advisory Notes	24
I. Annual Reports	24
J. Public Outreach and Training	24
K. Legal Implications	25
V. Elements of the Dispute Resolution Process	25
A. Principles for the Dispute Resolution Process	26
B. Providing Multiple Windows to Access a Dispute Resolution Process	26
C. Corporate Level Policy, Procedure and Guidance on Dispute Resolution	27
D. Country Office Roles and Responsibilities	27
E. The Dispute Resolution Support Office	28
F. Tracking and Monitoring Grievances and their Resolutions	28
VI. UNDP's Proposed Dispute Resolution Support Office and Procedures for Dispute Resolution	28
A. Purpose of the Dispute Resolution Processes	29
B. Principles	29

C. UNDP’s Dispute Resolution Process: Staffing and Responsibilities	30
D. Scope and Eligibility of the Dispute Resolution Process	32
E. How to File a Request for Dispute Resolution	33
F. Procedural Steps for Addressing Requests to the Dispute Resolution Support Office	33
G. Tracking and Monitoring Grievances and their Resolutions	35
H. Monitoring	35
I. Advisory Notes	35
J. Annual Reports	36
K. Public Outreach and Training	36
VII. General Implementation Issues	37
A. The Relationship between Compliance Review and Dispute Resolution	37
B. Cost Implications	37
C. Staff Training and Capacity Building	38
D. Legal Implications	38
E. Interim Arrangements, Implementation and Evaluation	39
F. Outreach	39
G. Implications for UNDP’s Participation in Future Funding Programs	39
H. Implications for UN-wide System of Safeguards	40
I. Relationship to Other Accountability Mechanisms	41
Conclusion	41
Annex I: International Accountability Mechanism Benchmarking	42

Glossary of Key Terms

Accountability Framework –UNDP’s existing Accountability Framework, which applies to all levels of UNDP through Planning & Strategic Direction, Policy & Programme, Results & Performance and Partnership Management. The compliance review and dispute resolution processes proposed here would supplement the existing Accountability Framework by enhancing UNDP’s accountability to project-affected people for environmental and social impacts.

Accountability Mechanism – this term has been typically used to describe both compliance review and dispute resolution at the international financial institutions and bilateral finance agencies. This term is also described in the Forest Carbon Partnership Facility (“FCPF”) Readiness Fund, Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners, as equivalent to the compliance review process as defined below.¹

Compliance Review – the process of accepting and addressing complaints alleging non-compliance with the environmental and social elements of UNDP’s policies and procedures in an independent, transparent, fair, accessible and effective manner. This paper proposes that UNDP’s existing Office of Audit and Investigation (“OAI”) be expanded to include a process for compliance review.

Dispute Resolution Process – a framework for accepting requests from affected people and ensuring that those requests are addressed by effective dispute resolution processes. Dispute resolution is the consensual process of addressing a conflict through mediation, conciliation, facilitation, negotiation or other non-adversarial means. The dispute resolution process described in this proposal will receive requests from people affected by UNDP operations and employ different methods for trying to reach a voluntary agreement that resolves the issues of concern. UNDP will prioritize addressing these concerns at the country level.

¹ According to footnote 12 of the Forest Carbon Partnership Facility (“FCPF”) Readiness Fund, Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners (9 June 2011): “‘Grievance mechanism’ means the mechanism(s) established by the Country or by the [Delivery Partner] in order to address grievances of people alleging an adverse effect related to the implementation of the readiness grant. ‘Accountability mechanism’ means the independent mechanism established by the [Delivery Partner] to address eligible claims that the [Delivery Partner’s] alleged failure to comply with its policies and procedures or the Common Approach has been or is likely to be the direct cause of harm to the claimant(s).”

EXECUTIVE SUMMARY

The United Nations Development Programme (UNDP) is proposing to establish:

- a **compliance review** process to respond to claims that UNDP is not in compliance with applicable environmental and social policies, including its proposed environmental and social screening procedure; and
- a **dispute resolution process** that ensures individuals, peoples, and communities affected by UNDP programmes and projects have access to appropriate dispute resolution procedures for hearing and addressing project-related disputes.

Among the reasons for UNDP to adopt new compliance review and dispute resolution processes are to:

- Enhance UNDP's development effectiveness through ensuring compliance with the environmental and social elements of UNDP policies and procedures, including its environmental and social screening procedure;
- Provide access to processes that would empower and protect the rights and interests of local communities, indigenous peoples and vulnerable groups and afford them greater voice and a fair hearing in the development process, particularly in light of UN agency immunities;
- Complement opportunities for stakeholder response and dispute resolution at the country or project level;
- Promote results-based management and quality programs through feedback from the compliance review and dispute resolution processes; and
- Complement UNDP's current Accountability Framework and policy toward encouraging transparency, accountability and effectiveness in its operations.

After an evaluation of the various options for how to implement compliance review and dispute resolution processes for UNDP, this paper proposes the following approach: creation of a self-contained compliance review unit (referred to hereinafter as the Social and Environmental Compliance Unit) within UNDP's Office of Audit and Investigation (OAI) and the development of a dispute resolution process through a Dispute Resolution Support Office, clear delegation of responsibility in each country office, and a set of procedures for dispute resolution at the corporate and country levels. This approach takes advantage of UNDP's current capacities and provides a cost-effective way to launch compliance review and dispute resolution processes with the potential for scaling up in the future.

OAI has an effective track record, experience and procedures for conducting fact-finding investigations like those that will be required of the compliance review function. OAI does not currently have experience in environmental and social issues so the compliance review function will have to be staffed with a Lead Compliance Officer who is a senior environmental and social compliance expert. Separate operational procedures will need to be developed building on OAI's current practice but reflecting particularly the public orientation of environmental and social compliance review.

The proposed dispute resolution process takes advantage of UNDP's institutional strengths, including a cooperative, close relationship with host governments and a solid track record in assisting in peace and conflict resolution. The proposal reflects that program- or project-level dispute resolution procedures operated by the host country or project sponsor may be adequate in many instances. Ensuring that affected communities and indigenous peoples have access to a fair and effective dispute resolution process will be the primary responsibility of the Resident Representative or their designee responsible for dispute resolution processes (the Country Office Designee). To support this country-level approach, UNDP will

incorporate a corporate level policy and procedures into the Programme and Operations Policies and Procedures (POPP) for developing and implementing dispute resolution processes. UNDP will also provide a Dispute Resolution Support Office to: provide a corporate level window for receiving requests from affected people; support the implementation of effective dispute resolution processes in country offices; train UNDP regional and country level staff on dispute resolution; and collect, evaluate and report on UNDP's efforts to address grievances across the various country offices.

The compliance review and dispute resolution processes will be fully evaluated no later than three years after they are operationalized to ensure the needs of UNDP and its stakeholders are being met. To help develop its permanent approach and to meet the requirements of the Forest Carbon Partnership Facility (FCPF), hosted by the World Bank and of which UNDP is a Delivery Partner, and the Global Environment Facility (GEF), of which UNDP is an Implementing Partner, UNDP will create an interim compliance review and dispute resolution process. Experiences gained through the implementation of the interim processes will inform the further development of the permanent approaches.

This proposal builds on a Discussion Paper on the same topic that underwent a global consultation from April to July 2011² (click [here](#) to review the comments received and UNDP's responses). The proposal intends to generate further discussion within UNDP and with partners and stakeholders that can surface additional and more specific challenges and recommendations in developing UNDP's compliance review and dispute resolution processes. In particular, this proposal seeks input from UNDP staff, especially those from Country Offices, Regional Bureaux and Regional Service Centres.

² The following organizations, besides UNDP, provided input during this consultation, including: Aarhus Convention Secretariat; Accountability Counsel; Asia Indigenous Peoples Pact (Thailand); Ateneo School of Government (Philippines); Australian Agency for International Development (AusAID); Center for International Environmental Law (CIEL); CDM Watch (Belgium); Climate Justice Programme (Australia); Earthjustice (US); EOTO World (US); Environmental Investigation Agency (US); Federation for the Self-Determination of Indigenous Peoples (FAPI) (Paraguay); Federation of Community Forestry Users, Nepal (FECOFUN) (Nepal); Forest Peoples Programme (UK); Foundation for GAIA (UK); Global Witness (UK); Hawai'i Institute for Human Rights (US); Indian Law Resource Center (ILRC); Institute for Global Environmental Strategies (IGES); Jeunes Volontaires pour l'Environnement (Nepal); National Alliance Against Hunger and Malnutrition (NAAHM) (Nigeria); Office of the UN High Commissioner for Human Rights (OHCHR); Planetary Association for Clean Energy (Canada); Rainforest Foundation Norway (RFN) (Norway); Society for New Initiatives and Activities (SONIA) (Italy); UN-REDD Programme; Universidade Federal de Minas Gerais (UFMG); United Nations System Staff College; World Wildlife Fund (WWF).

INTRODUCTION

This paper proposes environmental and social compliance review and dispute resolution processes for the United Nations Development Programme (UNDP). The compliance review process is designed to respond to claims that UNDP is not in compliance with its own applicable environmental and social commitments, including the new environmental and social screening procedure (ESSP). The dispute resolution process ensures that individuals and communities affected by UNDP programmes and projects have access to appropriate procedures for raising their concerns with UNDP, and for resolving those disputes in a non-adversarial way.

The emergence of environmental and social safeguard policies reflects the general shift in development institutions toward accepting the goal of sustainable development, including the need to integrate economic, environmental and social goals in development activities and to improve long-term development effectiveness by emphasizing and safeguarding the interests of affected people. The environmental and social policy frameworks set minimum standards for the design and implementation of development projects, particularly those that pose significant environmental or social risks. Among other things, environmental and social policies are designed to avoid unreasonable environmental impacts, promote human rights, protect disadvantaged vulnerable groups (e.g., through indigenous people, gender and involuntary resettlement policies), and ensure participation of local rights-holders and stakeholders (e.g., access to information and consultation policies). The policies also improve the consistency of project implementation and set substantive standards for managing the activities of international organizations.

With the recognition of the need for environmental and social policies comes the need to ensure that the policies are well implemented and that communities who are meant to benefit from the policies have a voice in their implementation. The existence of immunity for international institutions also argues in favor of creating independent compliance review and dispute resolution processes for local project-affected communities.

Compliance review and dispute resolution processes have become a common part of the development landscape, at least since the establishment of the World Bank's compliance review panel in 1993. Similar compliance and dispute resolution processes have been developed at most of the international financial institutions and several bilateral financial institutions.³ Dispute resolution processes have also been implemented in many programs and projects to give local stakeholders an avenue for airing their concerns. Many international agencies, civil society organizations, and governments believe such compliance and dispute resolution processes, along with the associated environmental and social policies, are critical for ensuring effective development outcomes on the ground.

I. THE NEED FOR COMPLIANCE REVIEW AND DISPUTE RESOLUTION PROCESSES AT UNDP

A number of factors have recently converged to highlight the importance for UNDP to develop a process to ensure UNDP complies with its applicable policies and that stakeholders affected by UNDP projects have access to appropriate dispute resolution processes. UNDP's current Accountability Framework provides an extensive and effective approach to many aspects of accountability, but it does not provide a means for ensuring compliance with UNDP's environmental and social commitments, nor does it provide a process for addressing the environmental and social concerns of people potentially harmed by UNDP-supported activities. The functions and processes discussed here are designed to complement the existing UNDP Accountability Framework.

³ The experience with these mechanisms is discussed in Section III, below, and in Annex 1.

In late 2011, UNDP incorporated the following statement into the [UNDP Programming and Operations Policies and Procedures \(POPP\) for Programme and Project Management](#):

Environmental and social sustainability, including climate change resilience, is fundamental to the achievement of development outcomes including the MDGs and must be systematically mainstreamed into UNDP's programme and project management cycles. Opportunities to strengthen environmental and social sustainability, including climate resiliency, of programming need to be identified and realized. Potential adverse impacts and risks need to be avoided or minimized, where possible, and mitigated if not.

UNDP then approved an [environmental and social screening procedure](#) (ESSP) and adopted a mandatory requirement to undertake an environmental and social screening of UNDP projects (country, regional and global and all thematic areas) with a budget of \$500,000 or more. The screening procedure is meant to determine whether a project should be subject to further environmental and social review and management. The screening procedure is currently being rolled-out.

The ground-truthing phase of the ESSP highlighted the need for UNDP to establish an accountability mechanism to receive and address complaints from those affected by UNDP-supported projects. While the current guidance requires that project-level grievance mechanisms be established for projects with potentially significant adverse environmental and social impacts, the ground-truthing process highlighted the need to establish an organization-wide mechanism. Such a mechanism would be a key component of ensuring accountability to the application of environmental and social commitments and would further strengthen UNDP's capacity to respond to the needs of the people it aims to help.

Further, best practice at other development institutions suggests that environmental and social safeguard policies should be accompanied by mechanisms for affected people to raise grievances and to ensure compliance with the policies meant to protect them. Such "accountability mechanisms" exist at the World Bank Group, the four largest regional development banks, the European Investment Bank and four bilateral export credit and insurance agencies. These existing mechanisms are described in Part III below and in Annex I.

In the UNDP context, general reasons for adopting compliance review and dispute resolution processes include to:

- Enhance UNDP's development effectiveness through ensuring compliance with the environmental and social elements of UNDP policies and procedures;
- Provide access to processes that would empower and protect the rights and interests of affected people, including indigenous peoples and other vulnerable groups, and afford them greater voice and a fair hearing in UNDP's development process;
- Enhance a rights-based perspective for the advancement of human rights principles in UNDP's development process;
- Complement existing opportunities for stakeholder engagement and dispute resolution at the country or project level;
- Promote results-based management and quality programs through feedback from the compliance review and dispute resolution processes;
- Provide recommendations for systemic or institution-wide improvements based on lessons learned in specific cases;

- Supplement UNDP's current Accountability Framework by encouraging transparency, accountability and effectiveness in its operations; and
- Reflect best practices at other international development institutions and pioneer the development of accountability mechanisms within the United Nations system.

The need for such a mechanism at UNDP is particularly acute in the context of climate finance. The nature of international financial assistance in the climate context brings more institutional and project-level risks than are present in many other UNDP activities. These concerns have led to requirements for environmental and social safeguards and associated accountability mechanisms in the design of emerging climate finance initiatives. More specifically,

- The **World Bank-hosted Forest Carbon Partnership Facility (FCPF)**⁴ requires its Delivery Partners, which includes UNDP, to have a compliance review and dispute resolution process to enforce their environmental and social safeguard policies;⁵
- The **Global Environment Facility (GEF)** requires implementing agencies, which includes UNDP, to have a mechanism for ensuring enforcement of their environmental and social safeguard policies and a dispute resolution process for receiving and responding to complaints (and a mechanism for reporting on how complaints are addressed);⁶
- The **Board of the Green Climate Fund (GCF)** is expected to adopt best practice environmental and social safeguards, which will be applied to all programmes and projects financed by the Fund. The Fund will also support the strengthening of capacity in recipient countries, where needed, to assist them in meeting the Fund's environmental and social safeguards;⁷
- There is also strong demand from **stakeholders and civil society** for all institutions involved in climate finance to have effective safeguards and accountability measures in place.⁸

In light of the growing need for UNDP to develop a compliance review and dispute resolution process, UNDP engaged two consultants in April 2011 to provide additional expertise and guidance in the development of such processes. The consultants participated in initial consultations with staff from key units in UNDP in order to prepare a draft Discussion Paper with options for how UNDP could establish a compliance review and dispute resolution process and the implications of doing so. The draft paper was circulated first to the same staff that participated in the initial consultations, comments were provided, and the paper was revised to reflect this feedback. The UNDP Associate Administrator was briefed on the general approach included in the revised paper on October 24, 2011 and approved a process to undertake further internal and external consultations. The paper was subsequently released for public comment as well as additional comments from UNDP staff. The proposal will ultimately be submitted to the Operations Performance Group (OPG), made up of the Deputy Directors of all UNDP Bureaux, for their approval.

This proposal has been prepared after considering all of the comments received to date, from both inside and outside UNDP. The proposal also reflects twenty years of lessons and best practices of other development institutions with similar accountability mechanisms. The paper emphasizes the importance of tailoring the proposed processes to UNDP's organizational structure, type of operations, legal restrictions, relevant policies, existing accountability framework, and institutional culture.

⁴ See www.forestcarbonpartnership.org.

⁵ See [FCPF Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners](#).

⁶ See [GEF Policy on Agency Minimum Standards on Environmental and Social Safeguards](#).

⁷ See [p. 11 of the draft decision -/CP.17 - Green Climate Fund -Report of the Transitional Committee](#).

⁸ See [letter from CSOs to UNDP Administrator, 14 October 2011](#).

II. EXPERIENCE WITH ACCOUNTABILITY MECHANISMS AT OTHER INTERNATIONAL INSTITUTIONS

Because accountability mechanisms at the international financial institutions (IFIs) are among the best analogs for the UNDP compliance review and strategic response process proposed here, lessons learned from the history, design and operation of IFI accountability mechanisms are discussed below.

The World Bank Inspection Panel was created in 1993 and began operations in 1994. Six other institutions followed suit with similar mechanisms; these include (1) the International Finance Corporation's and Multilateral Investment Guarantee Agency's Compliance Advisor/Ombudsman (CAO); (2) the Asian Development Bank's Accountability Mechanism; (3) the Inter-American Development Bank's Independent Consultation and Investigation Mechanism; (4) the European Investment Bank's Complaint Mechanism; (5) the European Bank for Reconstruction and Development's Project Complaint Mechanism; and (6) the African Development Bank's Independent Review Mechanism.⁹ Such mechanisms have also been established at four bilateral financial institutions: (1) the Japan Bank for Investment Cooperation's Examiner for Environmental Guidelines; (2) the Nippon Export and Investment Insurance's mechanism; (3) the U.S. Overseas Private Investment Corporation's Office of Accountability; and (4) Export Development Canada's Compliance Officer.

Each of the institutions that have created accountability mechanisms, have done so in response to their own needs, pressures and dynamics. While the mechanisms have some common elements, each is also distinctly designed to respond to its institutional context.

The function that each of these mechanisms share is compliance review, which ensures that the institution is in compliance with its own environmental and social policies and procedures through investigation and reporting on potential violations. Compliance reviews are typically triggered by a complaint from an affected person or group. Complaints are generally registered on a public log and screened for eligibility. Eligibility reviews may involve a site visit to speak to the complaining party to verify or clarify the complaint. Once deemed eligible, a complaint will form the basis for an investigation into whether the institution properly applied its own policies and procedures. To enhance independence, compliance reviews are typically conducted by an independent panel of experts who serve for a limited time and who meet certain conditions for their past and future employment with the IFI. The investigation generally takes the form of a review of all documents, interviews with the complainant and relevant staff and management, and a visit to the area. Staff or management is often provided several formal opportunities to respond to the issues of non-compliance raised in a complaint. Responses by management to initial findings of non-compliance often trigger creation of a "management action plan" that proposes how to address the non-compliance. Finally, the compliance review report with findings (and sometimes recommendations regarding how the project should be brought into compliance) is made public and submitted to the IFI's board of directors for a decision. Increasingly the compliance review team is also authorized to monitor implementation of action plans and report publicly its findings until compliance is achieved.

A second feature that all IFIs (except for the World Bank Inspection Panel) share is the opportunity for receiving and resolving specific grievances of people or communities affected by the IFI's operations. In these dispute resolution processes, complaints are also registered and screened for eligibility. After acceptance of the complaint, a mediator or dispute resolution expert is assigned to work with the complainant, project operator, and/or IFI staff to address the problem in a non-adversarial manner. Disputes

⁹ These mechanisms, along with the U.S. Overseas Private Investment Corporation (OPIC) Office of Accountability, are further described, compared and analyzed in Annex 1 to this report.

may be addressed through mediation, conciliation, fact-finding, negotiation or other means. The voluntary process ends when the parties agree to a solution or it is determined that an agreement is not possible.

A third feature that some of the IFIs have adopted explicitly is the ability to provide more systemic or institution-wide advice derived from their unique experiences in carrying out the other two functions. Advice is usually provided through written reports and is typically made available to the public as well.

With this background in mind, we turn to the elements of the proposed UNDP compliance review and dispute resolution processes. UNDP considered the experience of the IFIs and explored several different options for both the compliance review and dispute resolution processes before settling on the proposals described below. Section III discusses issues relating to the design of the compliance review and Section IV provides the actual proposal. Section V discusses issues relating to the design of the dispute resolution process and Section VI provides the proposal. Section VII addresses some general implementation issues.

III. DESIGN ELEMENTS OF A COMPLIANCE REVIEW PROCESS

A. Principles

UNDP's compliance review process should be based on principles that will enable its success and that reflect the experience from other similar compliance review functions. These principles include:

- (i) independence,
- (ii) fairness,
- (iii) transparency,
- (iv) professionalism,
- (v) accessibility
- (vi) effectiveness.

The process should also be tailored to the institution. These principles should be used as a benchmark for measuring the establishment, implementation, and evaluation of UNDP's compliance review process.

B. Organizational Structure and Staffing

The perceived and actual independence of the compliance unit is critical for its acceptance by potential claimants and for its effective operation. The existing accountability mechanisms have sought to ensure independence and effectiveness in several ways:

- All of the accountability mechanisms ensure clear reporting lines to the top decision-makers;
- Some of the mechanisms prohibit panel members or key personnel from having been recently employed by the institution (typically in the last two years or so);
- Most of the mechanisms do not allow the principal personnel to work again for the institution (e.g., World Bank Inspection Panel members are precluded from future employment);
- The terms of employment for decision-makers are typically non-renewable (although the CAO is a

notable exception to this);

- Most of the mechanisms have clear rules for addressing conflicts of interest;
- The mechanisms must be supported with sufficient budget and without interference from operational staff; and
- Panel members or other key personnel can only be removed for cause by the top decision maker (e.g., the Board of Directors in the case of the World Bank Inspection Panel).

Independence can also be furthered by ensuring a fair and transparent process for selecting key personnel, with clear criteria identified to meet the unique professional requirements of the position. The public orientation of accountability mechanisms also means that the key personnel hiring process should be particularly transparent to the public and preferably with input from a variety of stakeholders.¹⁰

With the goal of building on existing structures within UNDP to the greatest extent possible, this paper proposes that the compliance review process be established within the Office of Audit and Investigation (“OAI”). Housing the compliance review function within OAI takes advantage of OAI’s existing expertise in conducting investigations and developing evidence on which to base decisions in controversial cases. This is the core of the compliance function. OAI is also known and respected within UNDP for its professionalism, fairness and independence. OAI operates with independence from the rest of UNDP operations, and the head of OAI reports directly to the Administrator. OAI already has procedures for receiving and processing complaints; those procedures will be modified, where necessary, to better suit the type of complaints expected from affected communities under the compliance review process. The procedure could allow for complaints filed directly with OAI or for complaints forwarded to OAI from Country Offices or lower levels.

This paper recommends that UNDP’s compliance review function be implemented by a senior level compliance officer housed inside OAI who is responsible for overseeing the effective operation of the compliance function, including through hiring panels of expert consultants as needed. This approach has the advantage of being relatively cost-effective, because the system can readily be scaled up or down depending on the workload. Responsibility and accountability for the compliance function’s overall effectiveness is also clearly placed in one identifiable individual. Such an approach also allows for the use of a panel of consultants where the added input or credibility on a case requires it.

Expanding the mandate of OAI to address compliance reviews related to UNDP’s environmental and social policies and procedures will require the creation of a Social and Environmental Compliance Unit (SECU) with a senior compliance officer. The senior compliance officer will serve as the primary contact point for the compliance review process and conduct or oversee investigations of any claims of non-compliance found to be eligible, make any findings of non-compliance and report its recommendations to the Director of OAI.

The SECU will have to be provided sufficient resources to be able to respond to whatever specific complaints it receives, including to hire consultants and conduct field-based assessments. The total budget may be difficult to predict from year-to-year because it will depend on the number and complexity of complaints received. Other mechanisms have effectively used a revolving operating budget in addition to

¹⁰ As one example, the CAO was selected by the World Bank President based on the recommendation of a multi-stakeholder committee that included member so both the private sector and civil society with no formal participation by IFC or MIGA staff. Similarly, at the European Bank for Reconstruction and Development (EBRD), the director of the accountability mechanisms is “nominated by a committee composed of five members, both internal and external to the Bank [who] solicit nominations for the position ... through a transparent process”. EBRD, Project Compliance Mechanism: Rules of Procedure 18 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

core funding to ensure adequate funds are available. Financial resources must also be available for administrative support and office equipment, training for UNDP staff and SECU consultants, and public outreach.

C. Policy Scope and Exclusions

The purpose of a compliance review process is to evaluate whether the institution has complied with its obligations; whether any non-compliance has caused harm to the complainant; and how the institution can correct the non-compliance. In order to make these determinations, the scope of the obligations against which compliance is determined must be clearly defined. Put differently, the question is “to what obligations will UNDP be held accountable through the compliance process?”

The compliance review process should be able to review compliance with any environmental and social related policies or commitments made by UNDP. This will include at a minimum UNDP’s proposed environmental policy and screening procedure and other environmental and social components of UNDP’s POPP. The scope should also include environmental and social commitments made in the context of specific funding programmes or projects, as well as any obligations imposed by international law.

D. Who Can File a Complaint: Eligibility Requirements

In keeping with the practice at similar mechanisms, any person or group of persons who are potentially affected by a UNDP-supported project should be able to file a complaint. Complaints could be received in a wide variety of ways, including by mail, email, fax or over OAI’s dedicated hotline. Anonymous complaints are not typically accepted but the complainants’ names should be kept confidential if they so request it. Investigations can also be triggered on the Lead Compliance Officer’s own initiative or at the request of the UNDP Administrator.

Once a complaint is received, the eligibility of the claim will be evaluated. Based on experience at other mechanisms, eligibility requirements for complaints will likely include that the complaint:

- Relates to a project, programme or activity that is receiving or has received funding or other support from UNDP;
- Is submitted by or on behalf of people affected by the project or; and
- Raises potential issues relating to compliance with UNDP’s environmental and social policies.

Other similar compliance review functions at the IFIs include other restrictions. For example, many IFI compliance mechanisms disallow any complaint that is filed fraudulently, or for malicious purposes. In contrast, note that OAI currently allows malicious complaints so long as they otherwise merit an investigation, although the malicious nature of a complaint may later reflect on the complainant’s credibility.¹¹ IFI compliance mechanisms also typically exclude complaints that raise issues of fraud or abnormalities in the procurement process, which are typically handled by wholly separate institutions within the IFIs. The situation may be different in the case of UNDP. This proposal places the compliance review function within OAI, which already has authority to investigate fraud or problems with procurement, and so

¹¹ OAI Investigation Guidelines §8.5.

the portion of any cases raising those concerns can be transferred to the appropriate units of OAI.¹²

Some mechanisms require that the complainant identify a policy violation, while others allow their compliance review staff to interpret alleged violations into the complaint (even if they are not explicitly enumerated) based on the reality that affected people are likely unfamiliar with all – or even any – relevant policies and procedures of the institution. Where alleging particular policies is an eligibility requirement, this presents an unnecessary barrier to access to the compliance review mechanism. Many mechanisms have compromised by encouraging enumeration of alleged policy violations *if possible*. Regardless, a compliance review mechanism’s policy should make clear that complaints that *neither* explicitly nor implicitly raise compliance issues are not eligible for compliance review. Many mechanisms also require the complainants to have raised their issues with the financial institution’s staff before filing a complaint.

In addition to responding to external complaints, UNDP, on the initiative of the UNDP Administrator or the Lead Compliance Officer, should have the authority to initiate a compliance review. The head of the CAO has used such authority effectively to enhance accountability at IFC and MIGA. Such a proactive approach to compliance review could improve UNDP’s overall understanding of the impacts of its projects, identify strengths and weaknesses in UNDP’s policy approach, and broaden the impact of lessons learned in externally driven complaints on specific projects.¹³

E. Initial Receipt and Handling of Complaints

One of the advantages of the proposal to house compliance review in OAI is that OAI has a well-established system for receiving, investigating and tracking complaints. The proposed compliance review process should ultimately be designed to take advantage of OAI’s existing complaint-receiving protocols, which may well be appropriate for the majority of environmental and social compliance issues that the compliance unit will face. Indeed, the existing OAI structure for receiving complaints is state-of-the-art when compared with the methods for receiving complaints at the IFI compliance review mechanisms. For example, OAI’s Investigation Guidelines provide for receipt of complaints through a hotline, email, a website, facsimile, and mail. These channels of contact are available to both UNDP staff and outsiders.¹⁴ OAI’s existing procedures for acknowledging receipt of complaints (within one week), and the procedure for anonymous and malicious complaints, is in line with best practice at other accountability mechanisms.

One discrepancy between the OAI Investigation Guidelines and best practice at IFI accountability mechanisms is the OAI provision stating, “Complainants are not entitled to demand information about the investigation, its status or its conclusions and, importantly, they do not ‘own’ the reported information.”¹⁵ The public orientation of compliance review procedures related to UNDP’s environmental and social commitments would likely require a somewhat different approach. The ability to request information and the reasonable expectation to receive information about an investigation and its status is a hallmark of the transparency of accountability mechanisms, where trust in the process depends on claimants’ access to information about complaint handling. Moreover, the general lack of a punitive purpose or of sanctions on staff in the environmental and social compliance context means that there is less reason for strict confidentiality about the investigation.

¹² Complaints to IFI grievance mechanisms related to fraud or procurement issues are typically referred out to be addressed by other offices within the institution. In the case of the UNDP, complaints alleging fraud or issues related to procurement are referred to OAI, thereby potentially rendering this restriction unnecessary.

¹³ The International Finance Corporation’s CAO has the authority to propose a compliance audit. This has enabled the CAO to address potential systemic issues that might not arise solely from externally driven complaints.

¹⁴ OAI Investigation Guidelines §§ 8.1, 8.2.

¹⁵ OAI Investigation Guidelines § 8.6.

F. The Compliance Review Process

The main purpose of the compliance review process is to investigate alleged violations of UNDP's environmental and social commitments in a project financed, or to be financed, by UNDP or any other project where UNDP policies apply. The compliance review process results in findings of non-compliance and makes recommendations to the Administrator about how to bring the Project back into compliance and, where appropriate, mitigate any harm resulting from UNDP's failure to follow its policies or procedures. In carrying out its compliance review functions, the compliance unit will need full access to UNDP personnel, policies and records. It will also need the authority to conduct site visits of UNDP-supported projects. A detailed proposal for the compliance review process, based on the considerations noted above, is provided in Section IV.

G. Responses and Remedies

The Powers of the Compliance Review Function: Findings of Non-Compliance and Recommendations. The primary power of compliance functions at other institutions is the authority to publicly release findings of non-compliance and associated recommendations. In the case of the IFI accountability offices, the findings of non-compliance relate primarily to the underlying institution—thus, UNDP's compliance function within OAI would report primarily on UNDP's non-compliance with its own relevant commitments. Such public disclosure can build pressure on UNDP to take additional steps to remedy the situation (perhaps including compensating for harm), even if such remedies are not clearly within the mandate of the compliance review. Public findings of non-compliance and associated recommendations, even if centered primarily on UNDP, may also indirectly encourage improved performance by the project sponsor.

UNDP Administrator Authorities. Although the compliance office will make recommendations, the UNDP Administrator remains the sole decision maker for approving any recommendations or taking any other steps. The compliance review function does not change the authority of the Administrator; whatever powers the UNDP Administrator has, implicitly or explicitly, to modify a project remain the same. Nevertheless, to ensure the potential for an effective response to compliance review complaints, the Administrator may utilize the following authorities:

- to condition future UNDP participation in a project or programme on compliance with UNDP policies;
- to stop UNDP's financial disbursements or other support to a project, pending the outcome of the compliance review process, at least where there is the potential for imminent and irreversible damage to the affected people should the project continue;
- to order the permanent suspension of any financial disbursements, assuming that the project is not otherwise able to come into compliance with UNDP's environmental and social commitments. Underlying legal documents should clarify that breach of environmental and social policies are material breaches of the project documents;
- to mitigate harm caused by a project's non-compliance with UNDP policies and procedures, and to restore claimants to a pre-harm state, in collaboration with the implementing partner, where the circumstances and financial resources allow for it.

Note that in all cases the ultimate remedy is decided by the UNDP Administrator; no decision is legally

required. The compliance review function is not a court of law nor does any finding change any underlying legal responsibility, immunity or liability of the UNDP. Nothing in the proposed compliance review process should be construed as a waiver, express or implied, of the privileges and immunities of UNDP. The process is internal and does not create any expectation that a specific recourse is required nor permit any legal cause of action against the organization.

H. Monitoring and Reporting

The OAI Lead Compliance Officer should have the authority to monitor implementation of any decisions made as the result of a compliance investigation. Monitoring and reporting would typically be conducted on an annual or bi-annual basis and until implementation and/or compliance are confirmed through the process, at which time the monitoring period would conclude. This may mean monitoring implementation of steps to bring the institution back into compliance where non-compliance has been documented. This is consistent with current practice within OAI, which “will follow up on recommendations contained in the management letter until fully implemented or no longer actionable.”¹⁶

Nearly all accountability mechanisms have recognized the importance of post-decision monitoring as a tool to ensure the effectiveness of the mechanism, although not all of them have that explicit authority. Where the authority is explicitly granted, the responsibility for monitoring is typically vested with the compliance unit. Reporting the results of the monitoring to the institution’s leadership, complainants, and the public is a further key element, which ensures transparency and enables the institution and all parties to the complaint process to understand the project’s status and promote implementation of outcomes.

I. Information Disclosure

Information disclosure is a key element required to ensure transparency and effectiveness for compliance review mechanisms. The operation of the compliance review and dispute resolution processes would comply with UNDP’s Information Disclosure Policy. Printed materials about the OAI compliance review process should be distributed as widely as possible, including at the interface of the institution to project- or programme-affected people. A website for the compliance review process should also be established that would routinely disclose general information about the function as well as the registry of complaints with specific information relating to each claim.

J. Advisory Function

The UNDP Lead Compliance Officer should be given explicit authority to provide systemic or general advice that is derived from its work on compliance review. Although giving advice on specific future projects (in the absence of any claim) may lead to a potential conflict of interest should any claims subsequently arise pertaining to the project, the compliance office is in a unique position to gather lessons learned about the impacts and issues affecting local communities. The advice should typically be given in writing to the Administrator and should be conducted transparently and openly with opportunities, as appropriate, for public input.

¹⁶ OAI Investigation Guidelines §13.2.

IV. THE PROPOSED COMPLIANCE REVIEW PROCESS

A. Purpose

The purpose of the compliance review process is to evaluate whether the institution has complied with its obligations; whether any non-compliance has caused harm to the complainant; and how the institution can correct the non-compliance. More generally, the compliance review process is expected to:

- (1) Enhance UNDP's development effectiveness through ensuring compliance with the environmental and social elements of its policies and procedures;
- (2) Protect the rights and interests of affected people, including indigenous peoples, and afford them an opportunity to be heard, in UNDP's development process;
- (3) Promote results-based management and quality programs by providing advice and making general recommendations based on lessons learned in specific cases; and
- (4) Contribute to operationalizing UNDP's current Accountability Framework and policy by enhancing transparency, accountability and effectiveness in its operations;

B. Principles

UNDP's compliance review process will be based on the following principles:

Independence. The Compliance Review Unit will operate independently, without undue influence from the institution's operational decision-makers, states, civil society or complainants. The Social and Environmental Compliance Unit (SECU) will be subject to a strict conflict of interest policy that will require disclosure of, and potential recusal for, any actual or potential conflict of interest.

Fairness. All parties will be treated fairly, and fairness should be an expectation of all outcomes in the compliance review processes. All investigations, fact-finding and recommendations will be made impartially and objectively.

Transparency. The SECU will operate with the highest degree of transparency. Transparency requires public comment and participation in the design and operation of the compliance review process, and clear, demonstrable and publicly available rules of procedure. The SECU will communicate in a timely and effective way to all stakeholders, including the complainants, the institution, governments and the public. Transparency also requires that the SECU publicize its existence and operations. The operation of the compliance review process will also comply with UNDP's Information Disclosure Policy.

Professionalism. The SECU's decision-makers and staff will comport with international standards of discretion and professionalism. The SECU will hire consultants with specific and relevant expertise when needed, who will meet the same high standards of professionalism and independence.

Accessibility. The SECU will strive to be accessible to all people affected by UNDP projects. The Unit will maintain open lines of communications and provide information in languages and formats that allow the greatest access practicable to affected people. No unnecessary barriers will be put in place that could impede triggering the compliance review process. Complainants will be able to submit their complaints without fear of reprisals, intimidation, demands for payment, or restrictions on their ability to access legal or judicial processes.

Effectiveness. The Unit will strive to be effective in objectively evaluating claims from affected communities and in conducting compliance reviews. Effectiveness also requires that compliance review be conducted in a timely and responsive manner.

Promoting UNDP's Mission. The compliance review process will be designed and operated to support UNDP's mission and to be consistent as far as possible with UNDP's organizational structure, operations, legal restrictions, relevant policies, existing accountability framework, and institutional culture.

C. The Social and Environmental Compliance Unit: Staffing and Responsibilities

The compliance review process will be implemented by a Social and Environmental Compliance Unit established within the Office of Audit and Investigation (OAI) to benefit from OAI's existing expertise and experience in conducting investigations and developing evidence on which to base decisions in controversial cases. OAI operates with independence from the rest of UNDP operations, and the head of OAI reports directly to the Administrator. OAI's existing procedures for receiving and processing complaints will be modified for use by the compliance review process to reflect the type of complaints expected from affected people in the environmental and social context.

Lead Compliance Officer. The compliance review process will be run by a Lead Compliance Officer, who will have the primary responsibility for managing SECU and implementing and managing the compliance review process. The Lead Compliance Officer will, among other things, serve as the primary contact point for the compliance review process, review and determine eligibility, provide guidance to stakeholders and complainants, conduct or oversee investigations, make and report any findings of non-compliance, and provide the final reports, with recommendations, to the Director of OAI. He/she will be responsible for hiring any other staff members, such as compliance officers and administrative staff, to carry out the mission of the Unit.

The Lead Compliance Officer will report to the Director of OAI. The Lead Compliance Officer will serve one five-year term, renewable once, and will be terminated only for cause by decision of the UNDP Administrator. The Lead Compliance Officer will not have worked for UNDP within three years of being appointed as the Lead Compliance Officer. The Compliance Officer cannot work for UNDP again after their service is over.

The Lead Compliance Officer will be selected by the Director of OAI through a fair and transparent process, after a widely publicized search for candidates and input from multiple stakeholders. Among the selection criteria for the Lead Compliance Officer are:

- a. extensive experience in environmental and social compliance in the development context;
- b. the ability to deal thoroughly and fairly with any complaint brought to them;
- c. integrity and independence from UNDP Management;
- d. exposure to developmental issues and living conditions in developing countries; and
- e. knowledge and experience of UNDP operations and policies or those of comparable institutions.

Responsibilities. The Compliance Review Unit will have responsibility for implementing the compliance review process, including the following functions:

- a. Review and revise the operating procedures for receiving, evaluating and responding to complaints;

- b. Receive and review eligibility of claims and in consultation with the Dispute Resolution Support Office provide advice to complainants regarding their choice to use either the compliance process, the dispute resolution process, or both;
- c. Prepare training and outreach materials explaining the compliance review process;
- d. Maintain and implement a communication plan, including developing and distributing training and outreach materials, maintaining a public web-based registry of claims and associated reports, and providing press releases and other public announcements or presentations;
- e. Investigate or supervise the investigation by expert consultants of all eligible claims of non-compliance;
- f. Communicate with all stakeholders, including the complainants, regarding the status of any investigation or claim;
- g. Issue a report to the Director of OAI making factual findings and recommendations to bring UNDP back into compliance and/or to reduce harm caused to the complainants;
- h. Provide general advice to the Administrator of UNDP regarding systemic or institution-wide issues based on the experience gained through investigating specific claims;
- i. Cooperate with the Dispute Resolution Support Office and other relevant parts of UNDP in the processing of claims and in promoting compliance with environmental and social elements of UNDP's policies.

Budget. UNDP will ensure that the SECU has sufficient funding to operate effectively and independently, including the costs of outreach, training, use of consultants, and investigations. UNDP will consider making a revolving fund available for covering the costs of investigating claims, which are unpredictable from year-to-year.

Conflicts of Interest. The Lead Compliance Officer and any person working with the SECU will be subject to a conflicts of interest policy that will be developed for the Unit. The conflicts of interest policy will require disclosure of any potential or actual conflict of interest and identify the conditions requiring recusal. The Lead Compliance Officer or any other person working with the SECU will avoid the appearance of any conflict of interest or favoritism that would diminish the perceptions of independence or objectivity of the Compliance Office. The conflicts of interest policy will also apply to any consultants working with the Compliance Office.

D. Scope and Eligibility for Compliance Review Process

Eligibility. Any person or group of persons who is potentially affected by a UNDP-supported project will be eligible to file a complaint to the compliance review process. Investigations can also be triggered by the Lead Compliance Officer on his or her own initiative or at the request of the UNDP Administrator. Complaints may also be referred to the SECU from the Dispute Resolution Support Office. To be eligible for compliance review, a complaint must also:

- relate to a project or programme supported by UNDP;
- and raise actual or potential issues relating to compliance with UNDP's environmental and social commitments.

Environmental and Social Commitments. The compliance review process is intended to investigate alleged or potential violations of UNDP's environmental and social commitments in the context of specific UNDP-supported projects. For purposes of compliance review, UNDP's environmental and social commitments will include the following:

(1) Environmental and social elements of any UNDP policies and any environmental or social commitments made by or applicable to UNDP. This will include at a minimum UNDP's proposed environmental policy and screening procedure and other environmental and social elements of UNDP's Programme and Operations Policies and Procedures (POPP);

(2) Environmental and social commitments made by UNDP in the context of the specific funding programme or project;

(3) Any environmental and social obligations, including any human rights obligations, applicable to UNDP or the project under international law.

Exclusions. The following complaints will be excluded from UNDP's compliance review process:

(1) Any complaint that is filed fraudulently or for malicious purposes. Note that the SECU may continue on its own initiative to investigate a complaint that was filed with malicious intent but otherwise merited an investigation;

(2) Allegations in and complaints that raises issues of fraud, corruption or abnormalities in the procurement process will not be processed by the Unit, but will be forwarded to the appropriate units of the OAI;

(3) Complaints that neither implicitly nor explicitly raise issues of potential non-compliance with UNDP's environmental and social commitments in a specific project or programme;

(4) Complaints relating to projects or programmes that are not supported by UNDP or where UNDP's support has ended and its role can no longer reasonably be considered a cause of the concerns raised in the claim;

(5) Complaints by a complainant who has already raised the same issue with respect to the same project, unless significant new information is available or there has been a significant change in circumstances;

(6) Anonymous complaints.

E. How to File a Complaint

Complaints to the SECU can be submitted by mail, email, fax or OAI's dedicated hotline. Complaints can be submitted either directly to the SECU at UNDP Headquarters or through any UNDP country office or regional bureau. Anonymous complaints will not be accepted but the complainants' identities will be kept confidential if they so request it.

Representation in filing Complaints. Complaints may be submitted by an authorized representative on behalf of a person or group of people affected by the project or programme.

What should be in a Complaint. Complaints should at a minimum include the following basic information:

(1) Name of, and contact information for, the complainants, and if applicable a statement that the complainants want to keep their names and identities confidential;

(2) Name and description of the UNDP-supported project or activity;

(3) Current or future adverse effects or impacts that may be caused by the UNDP-supported project or activity;

(4) If possible, identify any provisions of UNDP environmental and social commitments that are believed to have been violated;

(5) Requested action or remedy by UNDP (may be stated in general or specific terms);

(6) In case complainants are being represented, the name of, and contact information for, any representative of the complainants and a written statement authorizing the representatives to act on the complainants' behalf.

F. The Compliance Review Process

The compliance review process is a systematic investigation into whether UNDP has complied with its environmental and social commitments. The process can result in findings of non-compliance and recommendations about how to bring the project back into compliance and, where appropriate, mitigate any harm resulting from UNDP's failure to follow its policies or procedures. The following are the general procedural steps and proposed timeframes for a compliance review (a diagram of the process is included below as Diagram 1). Further detailed procedures will be developed by the SECU.

Registration and Acknowledgement of the Request. Within five business days of receiving a complaint for compliance review, the SECU will register the complaint and acknowledge receipt of the complaint to the complainant. This is mainly an administrative step. If the Unit can immediately determine that the complaint is not eligible, it should so notify the complainant in writing. The registration of the complaint will be made on a registry accessible to the public through the compliance review web site. The will also inform the Dispute Resolution Support Office and provide them with a copy of the complaint.

Determining Eligibility of the Compliance Review Complaint. Within twenty business days from registration of the complaint or referral of a request from the Dispute Resolution Support Office, the SECU will determine the eligibility of the complaint and inform the complainant of the decision. Assuming the complainant does not allege any specific violations, the Unit will evaluate the complaint itself to determine if the complaint raises potential issues of violations of UNDP's environmental and social commitments. During the eligibility phase, the Unit may consult the complainant, UNDP staff and project sponsors, and review available documents. If a complaint is determined to be ineligible, the Unit will provide to the complainant and the public a clear and detailed explanation of the reasons for the ineligibility determination.

Consultation with the Dispute Resolution Support Office and the Complainants. While determining the eligibility of the complaint for compliance review, the SECU will consult with the Dispute Resolution Support Office and Country Office Designee to discuss their assessment of the complaint. The offices may together provide information to the complainant about the potential for either compliance review, dispute resolution, or both. If both processes are applicable, the choice as to whether to proceed with compliance review, dispute resolution, or both, will be up to the complainant. If the complaint is deemed ineligible by the Unit, the complaint may still be eligible for dispute resolution and may be referred to the Dispute Resolution Support Office.

Developing Terms of Reference for Compliance Review. Within twenty business days of determining that a complaint is eligible, the SECU will endeavor to develop and publicly release a draft terms of reference and timeframe for their investigation. UNDP staff, complainants and other interested parties will be given

ten business days to comment on the draft terms of reference. After considering all comments, the Unit will issue final terms of reference, which can be amended at any time after allowing a similar opportunity for complainants and the public to comment.

Conducting the Compliance Review. The SECU will have all of the powers currently enjoyed by OAI in conducting its investigations, including the authority to conduct on-site visits, review all UNDP documents and interview all UNDP personnel. The timeline for the compliance review will be set in the terms of reference, although the amount of time will vary considerably depending on the nature, complexity and scope of the project and the alleged policy violations. The Unit will hire any consultants as it deems necessary to conduct an effective compliance review, given the specific cultural and policy context of the complaint. Complainants are also free to submit new evidence or information to assist the Unit in evaluating the complaint.

The Draft Compliance Review Report. After completing its investigation and making findings and proposed recommendations, the SECU will issue to the Director, OAI, a draft compliance review report, which will subsequently be released to UNDP staff, the complainants and the public. Comments can be provided on the draft report for twenty business days by UNDP, complainants, or any other interested person. The compliance review report will include:

- (1) a discussion of the procedural steps taken to address the complaint;
- (2) any factual findings, including any findings of non-compliance;
- (3) recommendations to bring UNDP into compliance with its environmental and social commitments or to mitigate harm to the complainants; and
- (4) a plan for monitoring implementation of any recommended actions that UNDP decides to take in response to the complaint.

Submission of Final Report. Within twenty-five business days of receiving comments on the draft report, the SECU will issue to the Director, OAI, a final compliance report, including findings and recommendations. The Director, OAI, will review and submit the report to the UNDP Administrator with a copy sent to the requesters and released to the public.

The Administrator's Decision. Within twenty-five business days from receipt of the final compliance review report, the UNDP Administrator will make a final decision regarding what steps, if any, UNDP will take to bring the project or programme into compliance and/or mitigate any harm to the complainants. The UNDP Administrator's decision will be sent to the complainants, publicly released, and summarized on the Compliance Review Unit web-site.

Timelines. If for any reason, a stated timeline cannot be met in a particular phase of a compliance review, the complainant and the public will be informed of the delay, the reasons for the delay, and the expected new timeline. Table 1 below illustrates an overview of the compliance review process.

Overview of Compliance Review Process

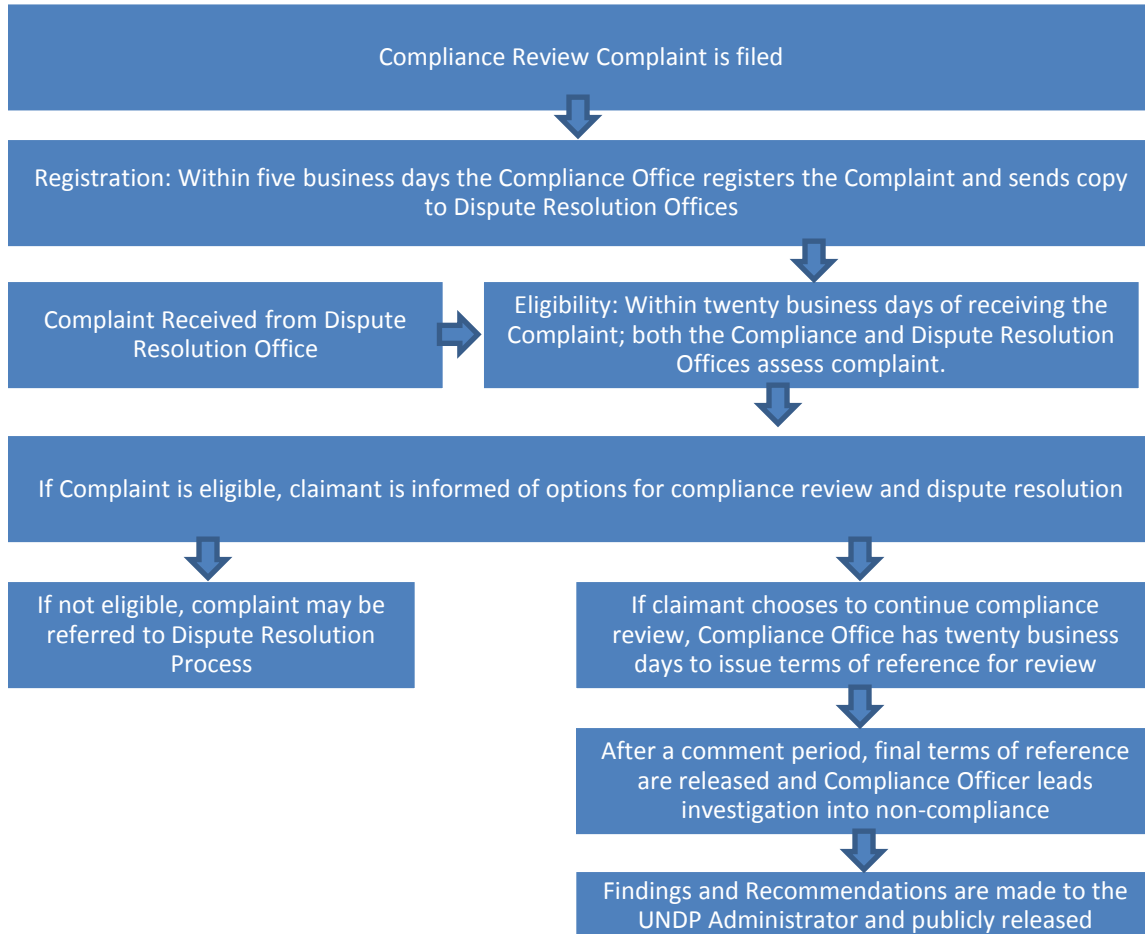


TABLE 1

Temporary and Preemptive Measures. Notwithstanding the procedures set forth above, if at any time after receiving a complaint, the Lead Compliance Officer believes significant, irreversible harm to the complainants or other affected people is imminent, the Lead Compliance Officer may recommend to the Administrator that UNDP take interim measures pending completion of the compliance review. Such interim measures could include suspending financial disbursements or taking other steps to bring UNDP into compliance with its environmental and social commitments or to address the imminent harm.

G. Monitoring

The SECU will propose as part of its compliance review report a plan for monitoring implementation of any decisions made as the result of a compliance investigation. At a minimum, the Unit will issue a monitoring report on the status of implementation at least annually until such time as the actions identified by the Administrator have been completed. As part of the monitoring plan, the Unit will consult with the complainants. All monitoring plans and monitoring reports will be made available to complainants and the public on the SECU website.

H. Advisory Notes

The SECU may on its own initiative provide Advisory Notes to the UNDP Administrator regarding systemic, institution-wide, or policy issues that it believes need to be addressed, based on lessons learned from investigating environmental and social non-compliance in specific cases. The UNDP Administrator may also request an Advisory Note from the Unit on environmental and social issues. Advisory Notes will be made available to the public on the SECU website. For complex issues, the Unit may decide to release a draft advisory note and solicit comments from the public and other stakeholders.

I. Annual Reports

The SECU will report at least annually to the UNDP Administrator on the functions, operations and results of the compliance review process. Such annual reports will also be made available to the public and to other stakeholders.

J. Public Outreach and Training

The SECU is authorized to conduct outreach to potentially affected persons explaining UNDP's compliance review process. Printed materials about the compliance review process will be distributed as widely as possible, including at the interface of the institution to project- or programme-affected people. A website for the compliance review process will also be established. At a minimum, the following information will be publicly disclosed on the website:

- Basic information about the compliance review process and contact information for the SECU;
- Instructions for how to file a complaint;
- Detailed operating procedures for the compliance review process;
- A registry of complaints, including basic information about the complaint and the complaint's status;
- A summary of the eligibility findings, including a detailed explanation of any determination that a complaint was not eligible;
- Terms of reference for conducting the compliance review;
- Non-confidential party submissions made during the course of the compliance review;
- Draft and final compliance reports, including findings of facts and recommendations;
- Advisory notes prepared by the SECU;
- Annual reports describing the activities of the SECU.

K. Legal Implications

The compliance review process is not a court of law nor does any finding change any underlying legal responsibility, immunity or liability of the UNDP. Nothing in the proposed compliance review process will be construed as a waiver, express or implied, of the privileges and immunities of UNDP.

V. ELEMENTS OF THE DISPUTE RESOLUTION PROCESS

This paper proposes that UNDP develop a dispute resolution process to enhance its approach to resolving community-based grievances that arise in the context of UNDP-supported activities. The dispute resolution process outlined in this paper will establish a system for receiving complaints from people or communities affected by UNDP operations, track those complaints and support efforts at all levels to resolve the disputes through a variety of dispute resolution methodologies. Most disputes should continue to be addressed at the programmatic or project level by national implementing partners with minimal involvement by UNDP, but UNDP also has an interest in ensuring that such processes are fair and effective, and available at the project, country and corporate levels. At all levels, the focus of the grievance process is to improve the environmental and social outcomes for local communities and other stakeholders affected by UNDP-supported activities.

Dispute resolution mechanisms are an increasingly common requirement in international financial institutions, both at the specific project or program level and at the corporate level. The UN-REDD Programme and FCPF, for example, require dispute resolution processes at the programmatic level. Project level grievance mechanisms are also required in most projects financed by the International Finance Corporation (IFC). The public sector side of the World Bank has recently increased their focus on dispute resolution to provide corporate-level support to the growing number of project-level dispute resolution processes that now exist in the World Bank portfolio. The IFC, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the US Overseas Private Investment Corporation all have dispute resolution processes at the corporate level that seek to address project-related grievances. For UNDP projects screened as Category 3 using the ESSP, the guidelines recommend the establishment of a project-level grievance mechanism. Beyond this, UNDP has an increasing corporate-level interest in ensuring that effective dispute resolution processes are available in projects and programs supported by UNDP.

UNDP's proposed dispute resolution process is comprised of five elements:

- 1) Corporate level policy, procedures and guidance on addressing requests for dispute resolution in the environmental and social context;
- 2) Public access to the process through the country office or through a corporate level window;
- 3) Country level responsibility for receiving and responding to requests for dispute resolution;
- 4) Guidance and support to country offices from a centralized support office; and
- 5) Tracking and monitoring disputes and their resolutions.

UNDP's preferred approach is to use the dispute resolution procedures of relevant national partners, strengthening those procedures where needed to meet UNDP's requirements. UNDP's own dispute resolution process should be used only when existing program- or project-level dispute resolution processes are not adequate to resolve the complaint. UNDP will thus seek to offer additional expertise or resources to support the resolution of disputes in dispute resolution processes operated by the project sponsor or host country. UNDP's dispute resolution process will thus be primarily available when program- or project-level dispute resolution processes do not exist or have been shown to be ineffectual.

Dispute resolution processes are rapidly becoming a regular, integrated part of project management, and the costs of establishing a project level dispute resolution process are increasingly considered part of the underlying project or program. Thus, in most cases requests for dispute resolution should be addressed at the project level.

During program and project design, it may become clear that a) there is a significant risk of disputes, and b) partners do not have effective dispute resolution capacity or procedures to manage this risk. In these cases,

UNDP and partners will need to build capacity and procedures tailored to the project or program context. Such a project- or program-specific dispute resolution mechanism can also lay the groundwork for development of an ongoing, organization-level mechanism. Over time, UNDP should seek to build national capacity and minimize the use of its own staff and procedures for dispute resolution.

A. Principles for the Dispute Resolution Processes

UNDP's dispute resolution process needs to be shaped by the same principles outlined above with respect to compliance review: independence, transparency, fairness, professionalism, accessibility, effectiveness, and institutional fit. In addition, UNDP's dispute resolution process should be:

- (i) decentralized,
- (ii) supplemental, and
- (iii) flexible.

B. Providing Multiple Windows to Access a Dispute Resolution Process

As part of a dispute resolution process, UNDP will establish several windows for receiving grievances from people, groups or communities adversely affected by UNDP-supported programmes or projects. As with the compliance review, any person or group of persons who are potentially affected by a UNDP-supported project should be able to file a grievance. UNDP should be prepared to receive grievances by mail, email, fax, telephone, or meeting.

Given the nature of the dispute resolution process and its reliance on the voluntary and active participation of all stakeholders, the identity of affected people seeking to use the dispute resolution process will typically not be kept confidential throughout the process. Identities may be kept confidential during intake and assessment, up to the point where the complainant makes a decision to proceed with the dispute resolution process.

As noted above, UNDP's aim is to ensure that projects supported by UNDP will have functioning dispute resolution processes operated by the project sponsor or the national host government. UNDP should enhance access to national counterpart agencies' dispute resolution processes by creating windows within UNDP for receiving requests for dispute resolution associated with UNDP-supported projects, and referring those requests to the appropriate national agency. UNDP's primary window for receiving such requests should be established at the country level. Some complaints may also be received at the corporate level through the Dispute Resolution Support Office described below. These would be referred to the Country Office Designee for receiving and handling grievances.

In addition, to ensure that UNDP's country-level stakeholders can raise complaints and concerns about UNDP's own staff, operations or involvement in a program or project, UNDP Country Offices should also have their own, clearly defined dispute resolution procedures.

Finally, complaints filed by affected people to the compliance review process, which raise a combination of compliance and dispute resolution issues, may be handled jointly by the Social and Environmental Compliance Unit and the Dispute Resolution Support Office. Compliance complaints may also be transferred to the Dispute Resolution Support Office, if compliance issues are resolved or none are found, but there is still potential for non-adversarial dispute resolution on some issues.

Regardless of the window through which the request or complaint comes, the Country Office Designee will normally be responsible for logging the request, and ensuring that the request is addressed fairly and effectively, according to the guidance established by UNDP. The Dispute Resolution Support Office will normally play an oversight and support role.

C. Corporate Level Policy, Procedure and Guidance on Dispute Resolution

Although the locus for addressing community-based grievances and resolving disputes will remain at the country level, UNDP has a corporate-wide interest in ensuring that national and local stakeholder complaints about UNDP-supported activities are addressed promptly, fairly and effectively. We thus recommend the adoption of a corporate level policy, procedures and guidelines that can formalize, clarify and strengthen existing dispute resolution processes and set out the conditions and procedures for enhanced UNDP engagement in dispute resolution.

Corporate Level Policy and Procedures on Dispute Resolution. The policy would demonstrate the corporate commitment to effective dispute resolution. The corporate level procedures would detail the process for receiving and handling requests for dispute resolution that are made through the corporate window established at the Dispute Resolution Support Office. It would also set out minimum requirements for Country Office dispute resolution capacity and procedures. These procedures would be detailed in additional corporate guidance to the country offices to support their dispute resolution efforts. The proposed structure and operating procedures for the corporate Dispute Resolution Support Office are provided in more detail in Part VI below.

Corporate Guidance on Country Office Dispute Resolution. The corporate guidance on dispute resolution will provide a best practice procedural framework to the country level staff responsible for implementing effective dispute resolution processes. The corporate guidance will include illustrative procedures and approaches for designing and implementing an effective dispute resolution process. The Country Offices will be expected to operate dispute resolution processes tailored to the particular cultural and social context within which they operate, but most dispute resolution processes would likely include many of the same procedural steps as the corporate-wide dispute resolution process described in Part VI below.

D. Country Office Roles and Responsibilities

As noted above, the primary responsibility for ensuring that effective dispute resolution processes are available for projects and programs supported by UNDP will remain at the country level. Resident Representatives will be responsible for overseeing the dispute resolution process but will likely designate a staff person in the Country Office (the Country Office Designee) to be responsible for developing and implementing the Country Office's approach to addressing requests for dispute resolution and receiving, handling and tracking specific requests.

The Country Office Designee will also be responsible for identifying and assessing UNDP national partners' program- or project-level dispute resolution mechanisms during program and project design. As part of the assessment, the Designee or the appropriate UNDP program/project manager should confirm with national counterparts how requests and complaints will be handled, including the preference for using national mechanisms first, and the option to use UNDP's dispute resolution process where necessary. The assessment may lead to changes in program or project design to strengthen existing national dispute resolution capacity, to development of project/program-specific capacity, and/or to use of UNDP's dispute resolution process as an interim mechanism while national capacity is developed.

The goal is to ensure that affected people have access to an effective, fair and independent dispute resolution process, where their concerns can be heard. Again, UNDP's primary role will be to refer complaints to appropriate national processes; provide support and resources, if warranted, for the effective handling of those grievances by the existing mechanisms; and monitor the processes to ensure they meet basic standards of independence, fairness and effectiveness. Where no adequate dispute resolution process exists, UNDP may choose to conduct the dispute resolution process according to procedures developed in accordance with the corporate guidance provided by the Dispute Resolution Support Office. In some cases, UNDP's involvement in a particular dispute resolution process or in a particular country may require additional budgetary or staffing resources, which will be determined as the need arises.

E. The Dispute Resolution Support Office

Although UNDP will address requests for dispute resolution primarily at the country level, UNDP has a corporate-level interest in ensuring that these dispute resolution processes are responsive, treat claimants fairly, and operate effectively. To meet these standards while maintaining a decentralized approach, UNDP will establish a Dispute Resolution Support Office to, among other things, support country level dispute resolution processes and provide a corporate window for receiving requests.

F. Tracking and Monitoring Requests/Complaints and their Resolutions

The Country Office Designee will be responsible for registering and tracking dispute resolution requests/complaints and their outcomes, through a global database that will be created and managed by the Dispute Resolution Support Office. Monitoring and tracking the handling of requests will allow UNDP to understand and report on the nature and frequency of requests/complaints and how effectively they are being addressed; identify systemic trends regarding environmental and social conflicts with communities; and build a knowledge base for refining and strengthening UNDP's role in stakeholder-oriented dispute resolution. The collected information will also be valuable, and perhaps required, in UNDP's relationship with other programs or agencies such as the GEF, the FCPF or the UN-REDD Programme.

VI. UNDP'S PROPOSED DISPUTE RESOLUTION SUPPORT OFFICE AND PROCEDURES FOR DISPUTE RESOLUTION

UNDP is proposing a decentralized system for receiving and responding to requests for dispute resolution from people who believe they have been or could be harmed by UNDP-supported programmes or projects. UNDP will generally handle requests for dispute resolution at the country level through a staff member designated to handle disputes (the Country Office Designee). UNDP will also establish a corporate-level Dispute Resolution Support Office to receive requests and to support dispute resolution processes at the country level.

A. Purpose of the Dispute Resolution Process

UNDP's dispute resolution process aims to facilitate the voluntary participation of various stakeholders in a non-adversarial process of addressing grievances that arise from UNDP-supported activities. Such dispute resolution processes may include dialogue, mediation, conciliation, facilitation, negotiation or other similar means. More generally, UNDP's dispute resolution process is intended to:

- Enhance UNDP’s development effectiveness through providing a forum for resolving conflicts arising from UNDP-supported activities;
- Provide access to processes that empower and protect the rights and interests of affected people, including indigenous peoples, and afford them an opportunity to be heard in UNDP’s development process;
- Complement existing national mechanisms and processes for program and project dispute resolution;
- Promote results-based management and quality programs through feedback from the dispute resolution process;
- Provide recommendations for systemic or institution-wide improvements based on lessons learned in specific cases; and
- Respond to the expectations of UNDP’s stakeholders, including governments, civil society, indigenous peoples, and international partner agencies, by reflecting best practice among development institutions.

B. Principles

UNDP’s dispute resolution process will be based on the following principles:

Independence. The dispute resolution processes will operate independently, without undue influence from the institution’s operational decision-makers, states, civil society or requesters. The people responsible for dispute resolution in UNDP will be subject to a strict conflict of interest policy that will require disclosure of, and potential recusal for, any actual or potential conflict of interest.

Fairness. All parties will be treated fairly in the process, and UNDP will strive to achieve fairness in the outcomes of the process.

Transparency. The dispute resolution process will operate with a high degree of transparency. Transparency requires public comment and participation in the design and operation of the dispute resolution process, and clear, demonstrable and publicly available operating procedures. The Dispute Resolution Support Office and Country Office Designees will communicate in a timely and effective way to all stakeholders, including the complainants, UNDP management, governments and other stakeholders regarding dispute resolution procedures, and regarding the status of specific disputes. Transparency also requires that the Dispute Resolution Support Office publicize its existence and operations. The dispute resolution process will comply with UNDP’s Access to Information Policy. At the same time, UNDP will respect requests for confidentiality from participants in a dispute resolution process, and will use its best judgment in providing public information about particular disputes subject to the need to maintain the integrity of ongoing dispute resolution processes.

Professionalism. The Dispute Resolution Support Office will meet international standards of discretion and professionalism. UNDP will hire consultants with relevant expertise when needed, who will meet the same high standards of professionalism and independence.

Accessibility. The Dispute Resolution Support Office will strive to be accessible to all people affected by UNDP projects. The Dispute Resolution Support Office will maintain open lines of communications and provide information in languages and formats that allow the greatest access practicable to affected people. No procedural barriers will impede access to UNDP’s dispute resolution processes. Requesters will be able to submit their requests for dispute resolution in their own language, with confidentiality when requested, and without fear of reprisals, intimidation, demands for payment, or restrictions on their ability to access

legal or judicial processes.

Effectiveness. The Dispute Resolution Support Office/Country Office Designee will strive to be effective in objectively assessing complaints and requests from affected communities and in designing and supporting dispute resolution processes. Effectiveness also requires that the Dispute Resolution Support Office/Country Office Designee operate in a timely and responsive manner.

Decentralization. The dispute resolution process will be decentralized, relying whenever possible on existing processes at the country, program or project level. Addressing grievances through dispute resolution processes requires the voluntary, continuing and active participation of the requester, other affected stakeholders, national implementing partners, and in some cases UNDP. Although dispute resolution processes will benefit from support at the corporate level, the dispute resolution process typically needs to operate as close to the program/project level and affected stakeholders as possible.

Supplementarity. UNDP's dispute resolution process should be primarily available when no other adequate dispute resolution process exists for the complainants. UNDP's dispute resolution process will be supportive of existing national, program- or project-level dispute resolution processes. UNDP will seek to offer expertise or resources to support the resolution of disputes in dispute resolution processes operated by the project sponsor or host country.

Flexibility. UNDP's dispute resolution process will allow for flexibility in using different techniques as required in specific cases or contexts. The Dispute Resolution Support Office will be able to support and employ a large variety of techniques with flexible timelines and approaches, while being accountable for timely and effective action in response to requests and complaints.

Promoting UNDP's Mission. The dispute resolution process will be designed and operated to support UNDP's mission to drive and sustain the kind of growth that improves the quality of life for everyone, and to be consistent with UNDP's core values, policies, and existing accountability framework.

C. UNDP's Dispute Resolution Process: Staffing and Responsibilities

UNDP's dispute resolution process will be implemented by a corporate Dispute Resolution Support Office, which will support and supplement dispute resolution efforts within the Country Offices.

The Dispute Resolution Support Office. The Dispute Resolution Support Office will be a center for dispute resolution in UNDP. The Dispute Resolution Support Office will, among other things:

- Support country level dispute resolution processes through ongoing oversight and communication, trainings, guidance on best practice in dispute resolution, lessons learned from addressing grievances in other UNDP offices, and a database of effective mediators and dispute resolution professionals;
- Provide a corporate window for receiving requests for dispute resolution and conduct the dispute resolution process when it cannot be done at the country level;
- Liaise with the Social and Environmental Compliance Unit being established within OAI, receive complaints referred from the compliance process, and coordinate response to requesters that may be eligible for both dispute resolution and compliance review;
- Conduct public outreach to inform global stakeholders about UNDP's dispute resolution process and procedures, and support Country Offices in performing parallel outreach at country level;
- Establish a global database which will be used by Country Office Designees to register requests/complaints and the steps taken to resolve them; and track and report annually on UNDP's

- efforts to address requests for dispute resolution across the various countries and regions;
- Provide informal advice, written advisory notes and annual reports to the UNDP Administrator regarding lessons learned from Country Office and corporate experience responding to requests for dispute resolution.

The Dispute Resolution Support Office will be run by a Senior Dispute Resolution Specialist, who will have the primary responsibility for managing UNDP's corporate level dispute resolution activities. The Senior Dispute Resolution Specialist will, among other things, serve as the primary contact point with the Country Office Designees and with the Social and Environmental Compliance Unit. The Senior Dispute Resolution Specialist will report to the UNDP Administrator. The Senior Dispute Resolution Specialist will serve one five-year term, renewable once, and will be terminated only for cause by decision of the UNDP Administrator. The Senior Dispute Resolution Specialist cannot work for UNDP again after his/her service is over.

The Senior Dispute Resolution Specialist will be selected by the UNDP Administrator through a fair and transparent process, after a widely publicized search for candidates and input from multiple stakeholders. Among the selection criteria for the Senior Dispute Resolution Specialist are:

- a. extensive experience with dispute resolution involving communities in the development context;
- b. the ability to deal thoroughly and fairly with any request brought to them;
- c. integrity and independence from UNDP Management;
- d. exposure to developmental issues and living conditions in developing countries; and
- e. knowledge and experience of UNDP operations and policies or those of comparable institutions.

The Country Office Designee. Country Offices will have primary responsibility for ensuring that effective dispute resolution processes are available for projects and programs supported by UNDP at the country level. Resident Representatives will be responsible for overseeing the dispute resolution process but in most instances will designate a staff person in the Country Office (the Country Office Designee) responsible for developing the country office's approach to addressing grievances and receiving, handling and tracking specific disputes. The Country Office Designee will be responsible for identifying, assessing, and strengthening (wherever feasible) UNDP national partners' program- or project-level dispute resolution mechanisms during program and project design.

When a request or complaint does come to the Country Office, The Country Office Designee will

- a. receive it;
- b. register it into a database shared with the corporate Dispute Resolution Support Office;
- c. review its eligibility, together with the Dispute Resolution Support Office and the Social and Environmental Compliance Unit;
- d. assess the request/complaint to identify opportunities for dispute resolution; and
- e. propose a response to the requester/complainant.

D. Scope and Eligibility of the Dispute Resolution Process

Who is eligible to file a request. Any person or group of persons potentially affected by a UNDP-supported project will be eligible to file a request for assistance with the dispute resolution process. To be eligible for UNDP's dispute resolution process, the request must:

- a. relate to a project, programme or other activity supported by UNDP; and
- b. identify how the requesters have been or may be adversely affected by the UNDP-supported activity.

Exclusions. The following requests will be excluded from UNDP's dispute resolution process:

- a. any request that is filed fraudulently or for malicious purposes;
- b. requests relating to projects or programmes that are not supported by UNDP or where UNDP's support has ended and its role can no longer reasonably be linked to the concerns raised in the request;
- c. requests by people or groups who have already raised the same issue with respect to the same project, unless significant new information is available or there has been a significant change in circumstances;
- d. requests that have not first been brought in good faith to an available project- or programme-level dispute resolution process that UNDP believes is fair and effective;
- e. anonymous complaints.

E. How to File a Request for Dispute Resolution

Requests for dispute resolution may be filed through the following windows:

- (i) at the country level through the Country Office Designee for dispute resolution;
- (ii) at the corporate level through the Dispute Resolution Support Office;
- (iii) at the corporate level, via referral to the Dispute Resolution Support Office from the Social and Environmental Compliance Unit.

Complaints and requests to use UNDP's dispute resolution process can be submitted by mail, email, fax or by telephone, or in a face-to-face meeting. Requests can be submitted either directly to the Dispute Resolution Support Office at UNDP Headquarters or to the Country Office Designee in any UNDP country office or to the regional bureau.

Representation in filing Requests. Requests may be submitted by an authorized representative, on behalf of a person or group of people who believe they have been or may be adversely affected by a UNDP-supported project, programme or other activity.

What should be in a Request. Requests should at a minimum include the following information:

(1) Name of, and contact information for, the requestors, and a statement on confidentiality, indicating whether or not the requestors want to keep their names and identities confidential during the initial assessment;

(2) Name and description of the UNDP-supported project or activity;

(3) Adverse effects or impacts caused by the UNDP-supported project or activity;

(4) A description of other efforts, including other dispute resolution processes, through which the requestors have tried to resolve their concerns; and

(5) In case the requestor(s) are being represented, name of, and contact information for, the representative of the requestor(s) and a written statement from the requestor(s), authorizing the representatives to act on the requestor(s)' behalf.

F. Procedural Steps for Addressing Requests to the Dispute Resolution Support Office

The Dispute Resolution Support Office will use the procedural steps described below in responding to any requests for dispute resolution where that Office is taking the lead on responding to the request. In addition, the corporate guidance provided by the Dispute Resolution Support Office to Country Office Designees for responding to requests for dispute resolution will also follow these procedural steps.

Receipt of a Request. The affected party files a request either to the Dispute Resolution Support Office or the Country Office Designee. Requests received by the Dispute Resolution Support Office will be shared immediately with the relevant Country Office Designee, and requests received by the Country Office Designee will be shared immediately with the Dispute Resolution Support Office.

Registration and Acknowledgement of the Request. Within five business days from receipt of the request, either the Dispute Resolution Support Office or the Country Office Designee (whichever window received the request) registers the request and sends an acknowledgement to the requester and a copy to the Project sponsor, the Host government and the Social and Environmental Compliance Unit within OAI.

Review of Eligibility of the Request. Within ten business days after the request has been received, the Dispute Resolution Support Office in consultation with the Country Office Designee will determine the eligibility of the request and determine who should take the lead in responding to the request. The Dispute Resolution Support Office or the Country Office Designee (which ever has been determined to be the lead dispute resolution office in this case) will inform the requester and the public whether the request meets the eligibility criteria, and, if the request is determined to be ineligible, provide a clear explanation of the reasons for the ineligibility determination. Where a request is deemed ineligible because it has not been submitted to an available project- or programme-level dispute resolution mechanism, UNDP will support the requester in making such a submission and will track and report on the progress of the request in the alternative mechanism.

Consultation with the Social and Environmental Compliance Unit and the Requesters. While the eligibility of the request is being determined for dispute resolution, the Dispute Resolution Support Office will consult with the SECU and Country Office Designee to discuss the request. The offices may together provide information to the complainant about the potential either for dispute resolution, compliance review, or both. If both processes are potentially applicable, the choice as to whether to proceed with dispute resolution, compliance review, or both, will be up to the requestor. If the request is deemed ineligible or inappropriate for dispute resolution, the request may still proceed through the compliance review process.

Assessing Feasibility for Dispute Resolution. Within twenty-five business days of determining that the request is eligible, the Dispute Resolution Support Office or Country Office Designee will provide the requester, UNDP and any other interested stakeholders with an assessment of the feasibility of conducting dispute resolution activities. The assessment will include recommended steps, if any, that UNDP is willing to undertake or facilitate to promote further dispute resolution, or will conclude that dispute resolution would not be useful and close out the case. The assessment may also indicate whether the requester should first be required to file their request with any dispute resolution processes available at the national, project or programmatic level.

Seeking Consent for Dispute Resolution. Any effort at dispute resolution will require the consent of the primary stakeholders, including the requesters, affected people, project sponsors, host government and/or UNDP. No dispute resolution process can go forward without the voluntary consent of the primary parties to the dispute.

Dispute Resolution Process. Assuming that the key stakeholders have agreed to a course of action for potentially resolving their dispute or redressing the concerns of the requesters, the dispute resolution process will go forward in implementing the agreed course of action. The approach will necessarily be tailored to the individual request and the ongoing consent of the parties. The dispute resolution process will continue as long as the stakeholders agree that the process is beneficial or an agreement is reached. One or more stakeholders may opt out of a process that others wish to continue. It will be up to UNDP whether and how long to continue a dispute resolution process that does not include all stakeholders.

Reaching Agreement or Not. When the dispute resolution process is complete, the Dispute Resolution Support Office or Country Office Designee will submit its report, including the stakeholders' agreement (if any) and any recommendations for further UNDP actions to the Resident Representative, Dispute Resolution Support Office, the UNDP Administrator and all relevant stakeholders. Agreements must reflect voluntary consent of all participating stakeholders. Any agreement that assumes or requires specific actions by UNDP must also be agreed to by UNDP. UNDP will not endorse or agree to any agreement that violates UNDP policies or accountability requirements.

Termination of the Dispute Resolution Process. All parties to the process, including UNDP, can terminate the dispute resolution process at any time if they no longer agree to the course of action being undertaken. In some circumstances, the process may end with no resolution. In such circumstances the Dispute Resolution Support Office or Country Office Designee will submit a report to the UNDP Resident Representative, the Dispute Resolution Support Office, and the UNDP Administrator, summarizing the Request, the steps taken to try to resolve the issues raised by the request, and any recommendations for further UNDP actions. This final report will also be provided to the Requester, the project sponsor, the host government and the public.

Timeline. If for any reason, a stated timeline cannot be met in a particular case, the requester and the public will be informed of the delay, the reasons for the delay and the expected new timeline. Table 2 below illustrates the proposed dispute resolution process.

Overview of Dispute Resolution Process

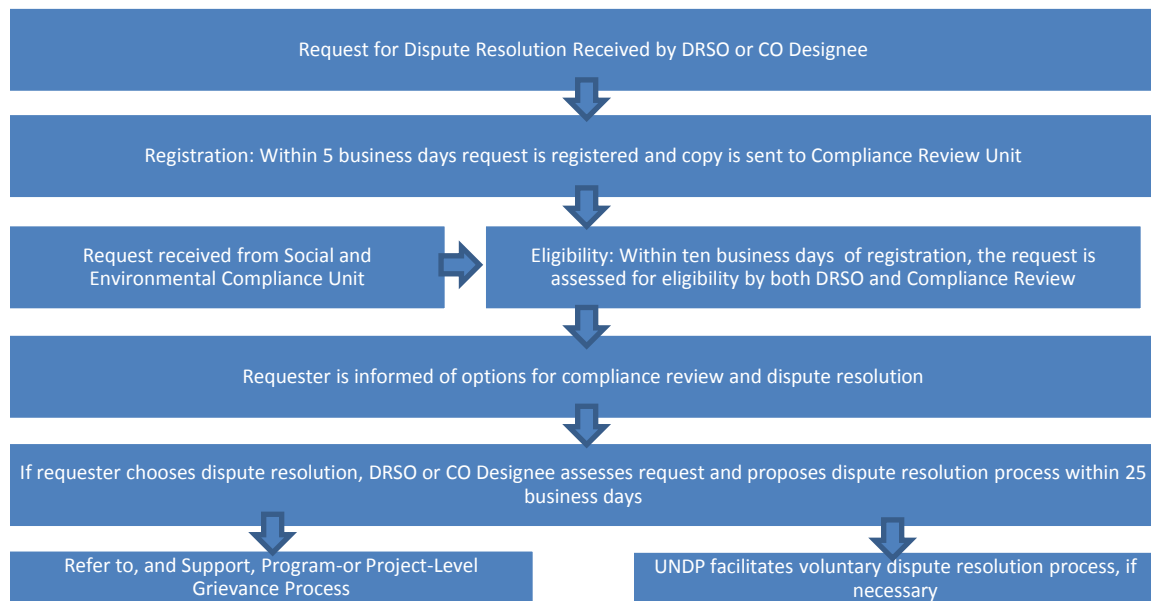


TABLE 2

G. Tracking and Monitoring Grievances and their Resolutions

The Dispute Resolution Support Office will maintain a centralized registry on its web page that reports the status of all requests and provides copies of the requests, assessment reports and any non-confidential agreements or summaries of agreements reached through the dispute resolution process. Where the Country Office Designee has taken the lead in the dispute resolution process, the Designee will have responsibility to report to the Dispute Resolution Support Office the information needed for maintaining the registry, using the global database administered by the Dispute Resolution Support Office.

H. Monitoring

The Dispute Resolution Support Office or the Country Office Designee (whichever has taken the lead in overseeing a specific dispute resolution process) will include with any agreement an agreed plan for monitoring at least annually the implementation of the agreement made as the result of the dispute resolution process. UNDP will issue a monitoring report at least annually until such time as the agreement has been fully implemented. All monitoring plans and reports will be made available to the requestors and the public on the Dispute Resolution Support Office’s website.

I. Advisory Notes

The Dispute Resolution Support Office may provide written Advisory Notes to the UNDP Administrator regarding systemic, institution-wide, or policy issues that it believes need to be addressed, based on lessons

learned from responding to specific requests. The UNDP Administrator may also request an Advisory Note from the Dispute Resolution Support Office on appropriate issues. Advisory Notes will be made available to the public on the Dispute Resolution Support Office's website. For complex issues, the Dispute Resolution Support Office may first decide to release a draft Advisory Note and solicit comments from the public and other stakeholders.

J. Annual Reports

The Dispute Resolution Support Office will report at least annually to the UNDP Administrator on the functions, operations and results of the dispute resolution process. Such annual reports will also be made available to the public and to other stakeholders.

K. Public Outreach and Training

The Dispute Resolution Support Office and Country Office Designees will conduct outreach to potentially affected persons explaining UNDP's dispute resolution process. Printed materials about the dispute resolution process will be distributed as widely as possible, including to project- or programme-affected people. The Country Office Designee will be responsible for ensuring that all UNDP project and program managers in the Country Office, and national program and project partners, are aware of UNDP's dispute resolution procedures, capacity, and requirements. The Dispute Resolution Support Office will also establish a website for reporting on its activities. At a minimum, the following information will be publicly disclosed on the website:

- Basic information about the dispute resolution process and contact information for the Dispute Resolution Support Office and the Country Office Designees;
- Instructions for filing a request for dispute resolution;
- Detailed operating procedures for the dispute resolution process;
- Registry of requests, including basic information about the request and its status;
- Explanations for any determination that a request was ineligible;
- Assessment reports, including proposed steps for dispute resolution;
- Non-confidential party submissions or reports developed during the process;
- Periodic updates reporting on the status and progress of the dispute resolution process;
- Final agreements reached by the parties, excepting confidential elements that UNDP has agreed not to disclose;
- A final report, summarizing the request, actions taken, any non-confidential terms of agreement, and recommended future actions by UNDP, including a plan for monitoring implementation of the agreement;
- Advisory notes prepared by the Dispute Resolution Support Office; and
- Annual reports describing the Dispute Resolution Support Office activities.

The Dispute Resolution Support Office will also develop and implement training for regional and country level staff on how to conduct outreach regarding the dispute resolution processes, how to inform potential requestors about the procedure for submitting requests, and how to implement or manage dispute resolution processes.

VII. GENERAL IMPLEMENTATION ISSUES

A. The Relationship between Compliance Review and Dispute Resolution

The compliance review and dispute resolution processes at UNDP are related, but separate, functions. They may both be triggered by complaints from affected people, but they have different purposes: compliance review is meant to ensure UNDP complies with its environmental and social commitments, and dispute resolution is meant to resolve concerns that affected people have regarding impacts of UNDP-supported activities by facilitating dialogue and voluntary agreements.

At UNDP, different units and different processes will be used to implement the compliance review and dispute resolution processes. There is no hierarchy or sequencing between the two functions. Affected people will have the choice of whether to file a complaint for compliance review or a request for dispute resolution, without being required to do the other one first. When either of the two UNDP offices (the Social and Environmental Compliance Unit or the Dispute Resolution Support Office) receives a complaint/request, it will automatically send the complaint/request to the other office so that both offices can simultaneously review its eligibility. At the end of the eligibility phase, the two offices will consult with one another and, depending on the outcome of the eligibility reviews, may provide information to the complainant/requester regarding their options in pursuing their claims. Again, the complainant/requester will have the option to choose whether to pursue compliance review, dispute resolution, or both.

B. Cost Implications

The cost of the compliance review and dispute resolution processes includes both fixed costs reflecting primarily the staff required and variable costs dependent on the number and complexity of cases that are submitted for compliance review or dispute resolution. The recommended option includes one new senior level compliance officer, a mid-level staff member, and administrative support for operation of the compliance review within OAI. The dispute resolution process will entail one senior dispute resolution specialist who would head the Dispute Resolution Support Office and administrative support for that office. The approaches to both compliance review and dispute resolution as described here could be scaled up to meet increased workload through the regular use of consultants. In addition, both the compliance review and the dispute resolution process will need to be supported by a budget that is sufficient, transparent, reliable and not vulnerable to political manipulation. This funding must be available to support individual compliance reviews and dispute resolution processes operated at the country office level. Some of the mechanisms, most notably the CAO, have had a revolving fund available to ensure that they would be able to meet operating costs of ongoing dispute resolution processes or compliance reviews.

The budgets of the existing compliance and grievance mechanisms at other institutions have grown over time. Currently the budgets (including all staff costs) of the largest and most active mechanisms--the Inspection Panel and the CAO--are approximately \$3.5 million annually each, and the CAO has access to a revolving fund of \$800,000. By comparison, ten years ago the World Bank Inspection Panel's annual budget was less than \$2 million and the CAO's was \$1.3 million. We would not expect the UNDP costs to be so high. Perhaps a more relevant scale is presented by the Inter-American Development Bank mechanism, which during its early years had an operating budget of less than \$250,000. Also as a comparison the African Development Bank's mechanism has spent about \$500,000 annually.

In addition under this proposal, all UNDP Country Offices would be required to designate a staff person to manage the dispute resolution process. There are staff and budget implications of this proposal for Country

Offices, which may be significant when aggregated to the corporate level. Although country-specific use of the dispute resolution process will vary widely, establishing a Country Office dispute resolution process and conducting outreach could require approximately 0.25-1 full time staff member at a P3 or P4 level per office over a 1 year period. Ongoing management of the dispute resolution process could require 0.1-1 full time staff member at P3 or P4 level per office per year. However, if UNDP decides to make “dispute resolution capacity development” for national counterpart agencies a service line, it could offset a substantial portion of the cost of internal management. The Country Office Designee (supported by national and international consultants where appropriate) could be defined as program staff with this expertise, and could support both the UNDP dispute resolution mechanism and capacity development for national partners.

C. Staff Training and Capacity Building

UNDP’s adoption of a new environmental and social screening procedure and associated compliance review and dispute resolution process suggests an increased need for staff training and capacity building. These training and capacity needs include:

(i) The staff, particularly in Country Offices, must be informed about the substance of the environmental and social screening procedure and the existence and operation of the compliance review and dispute resolution processes.

(ii) UNDP will need to invest in capacity to implement the environmental and social screening procedure. This is not strictly speaking a capacity need arising from the compliance review and dispute resolution processes, but rather from the establishment of an environmental and social safeguard framework.

(iii) The staff, particularly in Country Offices, should be trained in how to conduct outreach regarding the compliance review and dispute resolution processes and how to inform potential claimants how to submit complaints.

(iv) The staff in targeted countries, particularly those that will be Country Office Designees for dispute resolution, should be provided with dispute resolution training in light of the guidance and procedures provided by the Dispute Resolution Support Office. Eventually in the long term each country involved in high-risk projects should have a person trained in community-oriented dispute resolution techniques.

(v) UNDP’s thematic bureaus should also develop expertise in dispute resolution in their programmatic areas, and should support Country Office Designees in assessing national counterpart dispute resolution procedures and capacity during program and project design.

D. Legal Implications

Neither the compliance review nor dispute resolution processes are courts of law nor should any finding change any underlying legal responsibility, immunity or liability of the UNDP. Nothing in the proposed compliance review or dispute resolution processes should be construed as a waiver, express or implied, of the privileges and immunities of UNDP. The process is internal and does not create any expectations of a specific recourse or cause of action against the organization. Other institutions that have studied the question of liability have concluded that the findings of noncompliance from an internal review mechanism would not create any new cause of action.¹⁷

¹⁷ *Note on the Question of ADB's Potential Liability for its Failure to Comply with its Policies and Procedures in the Formulation, Processing and/or Implementation of a Proposed or Ongoing Project*, 21 December 2001.

E. Interim Arrangements, Implementation and Evaluation

As stated above, compliance review is required as a condition for UNDP to be a delivery partner under the FCPF. In this regard, UNDP has already agreed to take steps to implement an interim compliance review and dispute resolution process for those pilot countries UNDP is supporting under the FCPF. FCPF is expected to cover the costs of the first year of this interim mechanism, while UNDP is establishing permanent compliance review and dispute resolution processes. Additional support for the interim mechanism may also be available through UNDP-GEF.

The interim approach will be designed and implemented partly with the goal of providing lessons and expertise that will assist in the development and implementation of the permanent compliance review and dispute resolution processes as described in this paper. The interim compliance approach, for example, will be organized under OAI and implemented by a compliance consultant, who in addition to addressing specific cases that may arise will also provide input into developing the permanent procedures for compliance review.

Scaling Up UNDP's Compliance and Dispute Resolution Processes. The proposal will build a platform for scaling up UNDP's capacity for compliance review and dispute resolution as appropriate. The first priority will be those countries where UNDP support is helping to implement activities under the FCPF, GEF and the UN-REDD Programme. Lessons learned in these initial efforts can be used to enhance the system-wide approach to dispute resolution and compliance review. Over time, UNDP may be seen as setting the benchmark for compliance review and as a lead provider within the UN system for dispute resolution services to help in addressing community-based and other stakeholder grievances.

Pilot Phase and Evaluation. We recommend that the permanent compliance review and dispute resolution processes be fully evaluated no later than three years of operation. This should provide sufficient time to accumulate a meaningful set of experiences to form the basis of the evaluation. Even after the processes are fully operational, we expect that only a few claims will come in the first year or two of operation.

F. Outreach

Establishing compliance and dispute resolution processes is only the first step; project-affected people still have to use them—and to use them, they need to know about them. Public outreach thus needs to be an important part of the compliance office's mandate as well as the mandate of the Dispute Resolution Support Office and each of the Country Office Designees for dispute resolution. Sufficient resources should be made available to ensure that UNDP can be proactive at both the corporate and country level in educating potential claimants about the compliance review and dispute resolution processes. As noted above, UNDP's country level staff should be trained so that they can promote the compliance review and dispute resolution processes to potentially affected communities. The Social and Environmental Compliance Unit will be responsible for developing outreach and training materials and carrying out the outreach and training activities with respect to compliance. The majority of these costs is thus included in the need for a full-time staff and will be part of the core operating budget. Training and outreach for the country-level staff responsible for the dispute resolution processes will be developed over time with support of the Dispute Resolution Support Office described above and consultants hired for outreach and training purposes. Trainings may be conducted through the Regional Bureaux, Regional Service Centres or at the country level.

Outreach activities at other accountability mechanisms have included issuing information brochures and designing websites in multiple languages; ensuring clear website access from the institution's home page;

speaking at conferences; meeting with government, business and civil society organizations; training UNDP staff to publicize the compliance review and dispute resolution processes; and organizing outreach events in countries where the institution has a large portfolio. The IFC and MIGA also include references to the CAO in their commitment letters to clients. Some of these outreach activities, particularly conferences, meetings and trainings, can be done jointly with other mechanisms to spread the costs among several institutions.

G. Implications for UNDP’s Participation in Future Funding Programs

UNDP’s adoption of compliance review and dispute resolution processes will have clear implications for UNDP’s successful participation in future funding programs. Where partners have accountability mechanisms, UNDP will be better able to collaborate in compliance and dispute resolution processes. Where partners have no mechanism, UNDP’s compliance review process may help to ensure that the project complies at least with UNDP environmental and social commitments.

UNDP will also be better positioned to meet any reasonable future requirement for corporate level compliance review and grievance functions. Establishing permanent compliance review and dispute resolution processes will better position UNDP to receive future funding, particularly climate financing. The proposed approach would, for example, meet the current requirements set forth in the common approach for FCPF multiple delivery partners. UNDP’s compliance review and dispute resolution process would likely also meet any requirements adopted by the GEF Council for implementing agencies if, as in their most recent draft safeguards policy, they require agencies “to demonstrate that their environmental and social safeguard systems include mechanisms for ensuring enforcement and accountability for the application of their policies.” A well-designed, independent, transparent system that is responsive to affected parties should meet most standards or conditions for accountability mechanisms placed on UNDP through future joint funding programs.

H. Implications for UN-wide System of Safeguards (under discussion by the EMG)

The senior officials of the UN Environmental Management Group (EMG)¹⁸ (Executive Heads of UN Agencies, Funds and Programmes), of which UNDP is a member, endorsed a Framework for Advancing Environmental and Social Sustainability in the United Nations System in 2011 as a means of furthering sustainability performance by: 1) strengthening environmental and social sustainability in the activities of their respective organizations; 2) supporting the further development and implementation of a UN System-wide framework for environmental and social sustainability including environmental and social safeguards; 3) monitoring collective efforts; and, 4) reporting back to the governing bodies of their respective organizations on progress made, good practice and lessons learned. It is reasonable to assume that over time the UN system will set forth some common approach or guidelines to harmonize and promote environmental and social policies within the UN system. With this focus on environmental and social policies will also come an associated requirement to ensure that the policies are consistently applied. This mechanism could be at the UN system level or could be a requirement that each agency has a system meeting certain general parameters. In either case, UNDP will benefit from being a first mover with respect to compliance review and dispute resolution, and the experience gained by implementing the proposed processes will likely be influential for the discussion at the UN system level.

¹⁸ The Environment Management Group (EMG) is a United Nations System-wide coordination body. Its [Membership](#) consists of the specialized agencies, programmes and organs of the United Nations including the secretariats of the Multilateral Environmental Agreements.

I. Relationship to Other Accountability Mechanisms

As noted above, accountability mechanisms now exist at ten international and bilateral financial institutions. Over time, the accountability mechanisms have recognized the value of cooperating and sharing experiences. In addition, to informal relationships and communications, cooperation takes two different forms. First, several of the accountability mechanisms have developed joint memoranda of understanding with one another to elaborate how the mechanisms will coordinate their work in the event that a claim is filed simultaneously at both mechanisms. Given the growth of accountability mechanisms, the increasing awareness of these mechanisms by affected communities, and the prevalence of co-financing arrangements, we expect claims to be filed increasingly at more than one mechanism. The second formal avenue for cooperation is an annual meeting of all the principals of the accountability mechanisms. The accountability mechanisms meet for two days each year to share their experiences, discuss common challenges and generally support one another. UNDP should cooperate closely with the other accountability mechanisms, including by participating in the annual meeting.

CONCLUSION

As discussed above, this paper recommends that UNDP establish a compliance review process within OAI and strengthen processes for receiving and responding to requests for dispute resolution at both the corporate and the country level. This approach takes advantage of UNDP's current capacities and provides a cost-effective way to launch compliance review and dispute resolution processes with the potential for scaling up in the future.

This paper presents an overview of the recommended compliance review and dispute resolution processes. This framework must be more fully developed, including the development of detailed operating procedures for both the compliance review and dispute resolution processes. More detailed procedures should be developed to explore how the proposed compliance review process would fit within OAI's current operations, UNDP's existing Accountability Framework, and UNDP's project development and management process.

The compliance review and dispute resolution processes should be fully evaluated no later than three years after they are operationalized to ensure the needs of UNDP and its stakeholders are being met.

To support UNDP's participation as a Delivery Partner for FCPF and to help develop the permanent compliance review and dispute resolution functions, UNDP is also creating an interim compliance review and dispute resolution process, pending the development of permanent processes.

ANNEX I INTERNATIONAL ACCOUNTABILITY MECHANISM BENCHMARKING¹⁹

This benchmarking exercise analyzes the accountability mechanisms of seven international financial institutions (IFIs) and one export credit agency:

1. The African Development Bank's Independent Review Mechanism ("AfDB"),
2. The Asian Development Bank's proposed accountability mechanism ("ADB"),²⁰
3. The European Bank for Reconstruction and Development's Project Complaint Mechanism ("EBRD"),
4. The European Investment Bank's Complaints Mechanism ("EIB"),
5. The Inter-American Development Bank's Independent Consultation and Investigation Mechanism ("IADB"),
6. The U.S. Overseas Private Investment Corporation's Office of Accountability ("OPIC"),
7. The World Bank's Inspection Panel ("WB IP"), and
8. The International Finance Corporation's / the Multilateral Investment Guarantee Agency's Compliance Advisor Ombudsman ("CAO").

The analysis is conducted against the underlying principles of accountability mechanisms: fairness, accessibility, independence, transparency, professionalism, and effectiveness.

Because the compliance mechanisms at the IFIs have largely been modeled after and then improved on the World Bank Inspection Panel, the design of the Inspection Panel warrants particular attention. A second type of mechanism, with compliance review, dispute resolution and advisory roles is the World Bank Group's CAO. These two World Bank Group accountability mechanisms are described below to present a feel for the structure and operations of two different existing mechanisms. We note that while the Inspection Panel and CAO are two of the longer established mechanisms, the regional banks created their accountability mechanisms later and have each undergone a substantial subsequent review, sometimes improving on the design of the Inspection Panel and CAO. Nonetheless, the overall structure and functions of the Inspection Panel and CAO remain most instructive.

The mandate of the Panel is to address complaints from project-affected people alleging non-compliance with World Bank policies and procedures. The Panel has no jurisdiction to review a complaint unless the project at issue in the complaint was financed in whole or part by either the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA). The Panel is comprised of three permanent members, each of whom serves for five years. To ensure independence, Panel members cannot have served the Bank in any capacity for the two years preceding their selection, nor can they ever subsequently work for the Bank again. The Panel also has a permanent staff Secretariat to support its activities.

¹⁹ This annex is updated as of June, 2011.

²⁰ Because the ADB is in the last stages of review of its Accountability Mechanism ("AM"), this paper draws on the ADB AM policy from the June 2011 ADB AM Working Paper.

Claims to the Panel can be filed by any affected party or parties (other than a single individual) in the borrower's national territory. Claims must be in writing and must explain how the affected parties' interests have been, or are likely to be, directly affected by "a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank."²¹ The claimant must demonstrate that it has exhausted other remedies by first providing Bank staff reasonable opportunity to respond to the allegations. Upon receiving a complete request for inspection that is not clearly outside the scope of the Panel's authority, the Panel registers the claim, notifies the claimant and the Board of Executive Directors, and forwards a copy of the claim to Bank Management, which has twenty-one days to respond. The Panel then has an additional twenty-one days to review Management's response and to make a recommendation to the Board of Executive Directors regarding whether the claim warrants a full investigation.

The Board of Executive Directors has exclusive authority to authorize or deny a full investigation. While this led to significant politicization of the Panel process in the first few years, the Board has supported every Panel recommendation for an investigation since changes were made in 1999 after the Second Review of the Panel. Once an investigation is authorized, the Panel enjoys broad investigatory powers including access to all Bank staff. Members of the public may also provide the Panel with supplemental information relevant to the claim. After the investigation, the Panel issues a report evaluating the Bank's compliance with its policies. Within six weeks of receiving this report, Bank Management must submit a report to the Board of Executive Directors with recommendations in response to the Panel's findings. The Panel's Report, Management's response, and the Board's decision are publicly released two weeks after Board consideration.

As of May 2011, the Inspection Panel had received 72 formal requests for inspection and had registered all but nine of them. The Panel had found that the eligibility requirements were met and recommended an investigation in thirty-two claims, and the Board had approved investigations in twenty-eight of those requests.²² After findings of non-compliance, the Bank's Board has taken a variety of measures depending on the type and extent of the violations found (sometimes minor, sometimes egregious), the type and stage of the project at issue (sometimes in project development and sometimes near completion), and the stakeholders involved (some borrowers/complainants have been more vocal than others).

As the first of the IFI accountability mechanisms, the Inspection Panel remains the only one without a dispute-resolution function at the corporate level. Each of the subsequently created mechanisms has dual, or even tripartite functions where advisory functions have been added. An example of a mechanism with three functions is the IFC and MIGA's Compliance Advisor/Ombudsman ("CAO"), worthy of review as a final example.

The CAO was created in 1999 to address complaints relating to the World Bank Group's private sector arms – the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO's office has Advisory and Compliance functions, but it considers its Ombudsman function as its primary and most important responsibility. The Ombudsman function was designed to respond to complaints by persons who are affected by IFC/MIGA projects by "attempting to

²¹ Inspection Panel, *The Inspection Panel for the International Bank for Reconstruction and Development and International Development Association: Operating Procedures*, 34 ILM 510, 511 (1995).

²² See Inspection Panel, *Requests for Inspection*, available at <http://www.worldbank.org/inspectionpanel>.

resolve fairly the issues raised, using a flexible, problem-solving approach.”²³ Any individual, group, community, entity, or other party affected or likely to be affected by the social or environmental impacts of an IFC or MIGA project may make a complaint to the Ombudsman. Representatives of those affected by a project may also file a complaint with appropriate proof of representation. The CAO acknowledges receipt of all complaints and evaluates whether the complaint falls within its mandate, and, if it does, whether to accept or reject the complaint. A complaint must demonstrate that the affected party has been, or is likely to be, affected by actual or potential social or environmental impacts on the ground. The complaint must relate to an aspect of the planning, implementation, or impact of an IFC or MIGA project.

Once a complaint is accepted, the CAO immediately notifies the complainant, registers the complaint, refers the complaint to the relevant IFC or MIGA personnel with a request for information, and informs the project sponsor of the complaint. The CAO then undertakes an assessment to determine how it proposes to handle the complaint. During the assessment, the CAO will communicate with the claimant, the project sponsor, and the IFC to attempt to identify a process for resolving the dispute. The CAO’s proposal may include anything from convening informal consultations with IFC/MIGA or the project sponsor to organizing a more formal mediation process. Overall, the ombudsman’s office seeks to take a proactive and flexible approach where the “aim is to identify problems, recommend practical remedial action and address systemic issues that have contributed to the problems, rather than to find fault.”²⁴ If at any time after completion of the assessment the CAO Ombudsman believes that resolution of the complaint is not possible, the complaint is automatically transferred to the compliance side of the CAO for an assessment of whether a Compliance audit is warranted.

In both its Ombudsman and Compliance roles, the CAO has broad investigatory powers, including authority to review IFC or MIGA files; meet with the affected people, IFC or MIGA staff, project sponsors, and host country government officials; conduct project site visits; hold public meetings in the project area; request written submissions from any source; and engage expert consultants to research or address specific issues. Compliance audit findings are sent to senior IFC/MIGA staff for comment and ultimately to the President of the World Bank Group for review. The CAO concludes the complaint process either when an agreement has been reached through the Ombudsman or when the IFC/MIGA are deemed to be in compliance with their policies. In this regard, the CAO will keep any compliance audit “open and monitor the situation” until it is satisfied that IFC/MIGA are moving back into compliance.²⁵ The Compliance audits and monitoring status of any projects under review are made public.

As of the end of 2010, the CAO’s office had received 79 claims, involving 41 different projects. While some of these claims have resulted in long and complex involvement by the CAO, others have involved relatively short interventions.

With this background regarding the Inspection Panel and CAO in mind, we turn to a comparison of the policies of the IFI accountability mechanisms:

Fairness and Accessibility

A primary issue within the principles of fairness and accessibility of these mechanisms is who can bring a claim and under what conditions. There is a trend toward allowing individuals to bring claims. There

²³ *CAO Operational Guidelines* at 5 (April 2007) available at http://www.cao-ombudsman.org/html-english/documents/CAO_OpGuide_April07.pdf.

²⁴ *Id.* at 11.

²⁵ *Id.* at 25-26.

is also a trend toward allowing foreign representation, with the majority of mechanisms not limiting foreign representation to instances in which local representation is not available. Almost all of the mechanisms allow requesters to file complaints in national or official languages, and a majority of the mechanisms allow the local languages of the claimants. A little less than half of the institutions (namely, EBRD, EIB, CAO, and the compliance review function of OPIC) do not require an allegation of direct harm.

With respect to time boundaries, the majority of mechanisms require complainants to file requests within one year after full dispersal of funds. However, the CAO is a positive outlier in that it does not have a time limit for filing and the WB IP is a negative outlier in that it only allows claims prior to 95% dispersal of the loan.

None of the institutions allows a claimant to file anonymously, but all of the mechanisms allow confidential requests. EIB is the only mechanism with a presumption of confidentiality, which can be waived by the requestor. EBRD, AfDB, and IADB are the only mechanisms that do not have express provisions for keeping outside information confidential.

The majority of mechanisms require good faith efforts to resolve the grievance prior to entering the accountability mechanism process. However, exceptions to this rule are EIB, CAO, and the compliance review function of OPIC, which do not require such an effort. For mechanisms with a good faith efforts requirement, the EBRD embodies the best practice of waiving the requirement if it would be dangerous or futile to pursue good faith efforts.

If requesters express interest in both a problem-solving and compliance review, three of the mechanisms are sequenced and present a barrier to access (i.e. you must start in problem-solving), while three are not (meaning a claimant may proceed straight to compliance review).

Independence

While all of the mechanisms embody language that reflects the importance of independence, their structures and the resulting levels of independence differ. For determinations of *compliance* with the IFIs policies and procedures, three of the mechanisms explicitly report to the IFI’s president or vice president (CAO, EIB, OPIC), four explicitly report to the board (ADB, EBRD, IADB, IP), while the AfDB splits reporting in a hybrid form, depending on the stage of the project (see Figure 1).

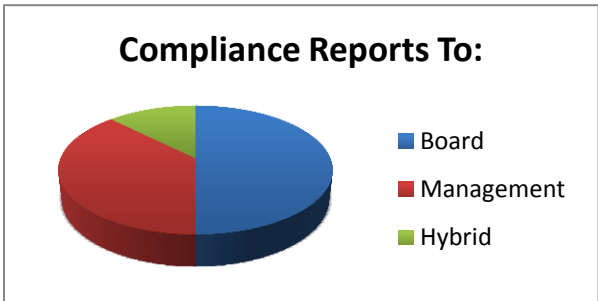


Figure 1

With regard to *problem-solving*, the mechanisms that report to the president are the CAO, OPIC, EIB, EBRD, ADB and AfDB (depending on the stage of the project). Mechanisms that report to the board for problem-solving are the IADB and AfDB (again depending on the stage of the project).

The IAMs are structured in varying ways. All of the IAMs have a designated office, fully independent of Management, for the mechanism, except EBRD, which is housed within the Office of the Chief Compliance Officer. ADB has two designated offices: one for problem-solving and one for compliance review, each headed by its own director. AfDB, CAO, EBRD, and OPIC have one dedicated coordinator of the entire mechanism and all of its functions. IP and IADB have a dedicated administrative staff member, often called the Executive Secretary, in charge of managing the office of the mechanism, but they do not manage actual performance of problem-solving or compliance review.

The IP, IADB, ADB, and CAO each have at least one full-time person responsible for performing compliance reviews. ADB, AfDB, EBRD, IDB, and WBIP have a roster of experts or panelists who are called-upon, as needed, to conduct problem-solving and/ or compliance review. Additionally, most of the IAMs have other support staff members (“staff”) in charge of administrative tasks and/ or assisting in the problem-solving or compliance review processes.

For most mechanisms, the IFI’s president hires the director, administrator, or executive secretary of the IAM. However, an outlier is the IADB, which allocates hiring of the executive secretary to the Board. Most of the mechanisms have either president or board (or both) approval for hiring panelists and experts. EBRD, IP and ADB, demonstrate the best practice of requiring a transparent hiring process.

Many of the mechanisms have employment requirements for directors, staff and panelists in order to ensure independence. AfDB and the problem-solving office of ADB have the highest guarantees for the IAM director’s independence by requiring that the director has not worked for the institution for at least five years prior to employment at the IAM. The EBRD PCM Officer and IP secretariat staff and consultants must not have worked for the IFI for at least two years prior to employment at the mechanism. For panelists or experts, ADB has the strongest rule of a three-year ban on prior employment, while EBRD, AfDB, IP, and IADB have a two-year ban.

Regarding a post-employment ban on IAM staff, the EBRD PCM Officer requires a three-year cooling off period, and the CAO requires two. The best practice for panelist or expert subsequent employment prohibitions (as opposed to secretariat staff) is a complete ban on employment at the IFI, as seen with EBRD, ADB, and the IP. OPIC and EIB are outliers, with no bans on previous or subsequent employment at the IFI. Most of the mechanisms require staff or panelists to recuse themselves if they have a conflict of interest with a particular case.

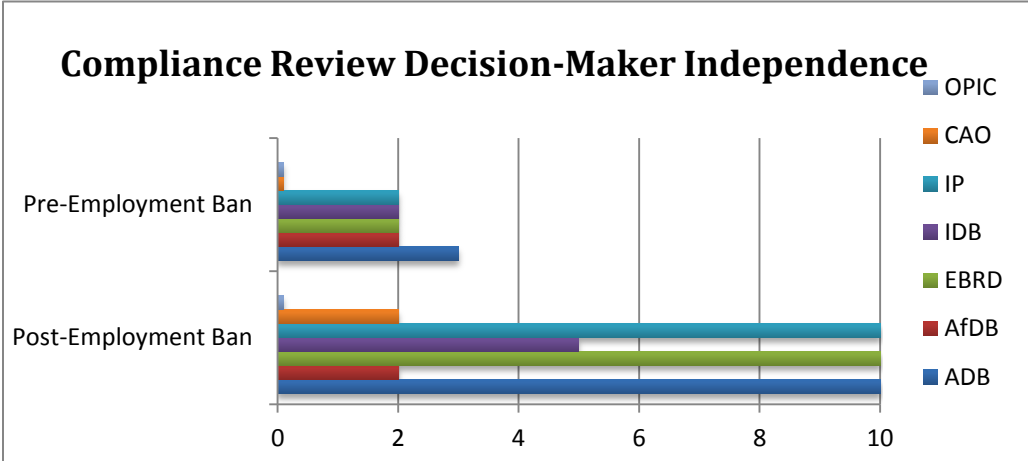


Figure 2, x-axis is number of years, where 10 indicates full ban.

For OPIC, identification of the “decision-maker” is for compliance review is unclear. Under the Board resolution creating OPIC’s Office of Accountability, the Director of the mechanism has the authority to “draw independent conclusions and make recommendations to the President regarding OPIC compliance or future steps to resolve a conflict.” From this language, it could be interpreted that the Director is the decision-maker. However, according to OPIC’s website flowchart of the compliance review process, “[t]he Office of Accountability examines whether OPIC has complied with relevant policies in the course of design or implementation of an OPIC-supported project, with the objective of providing a basis for the President & CEO to determine whether there has been a failure to comply, and any preventative or corrective action should be taken.”²⁶ This language implies that it is the President/CEO who makes compliance review assessments.

Transparency

All of the mechanisms have websites on which they publish their annual reports, but the level of information from site to site varies dramatically. All of the websites, except OPIC’s, have their policies and procedures available to the public on the website. OPIC does not have a full ‘policies and procedures’ document (as one does not exist), but rather only has the Board resolution creating the mechanism (which is only partially operationalized in practice) and information on various web pages.

Public registries on mechanism websites are a primary way of remaining transparent. All of the mechanisms, except EIB, have a public registry of all requests registered, but only OPIC and AfDB require a public registry for all claims submitted. The EBRD, WBIP, ADB, and IADB require public disclosure of compliance eligibility reports, while EBRD, CAO, and IADB require public disclosure of problem solving eligibility reports. All of the mechanisms require public disclosure of final compliance review reports, final problem solving reports, and the final decisions, except for the EIB, which only discloses summaries of such reports for cases where confidentiality has been waived. All of the mechanisms, except for EIB, require public disclosure of recommendations. Follow-up/monitoring reports (when applicable) are required to be made public for EBRD, IADB, CAO, and ADB, but not for the others. Only the WB IP requires public disclosure of investigators.

Professionalism and Effectiveness

Each mechanism, except the WB IP, has both a problem solving function and a compliance review function. Only EIB and CAO have an official advisory function. EIB is the only mechanism with the right to appeal, with a process for unsatisfied claimants to complain to the European Ombudsman. Most of the mechanisms have training procedures, but AfDB, EIB, and OPIC are lacking important provisions for training the institution’s staff about the mechanism. Most of the mechanisms require that information about the mechanism be distributed to project sponsors (except IADB, AfDB, and EIB).

The time limits and efficiency guidelines for the mechanisms and the different steps in the process vary. EBRD and ADB are most efficient with a 2-5 day decision about whether to register the complaint. The CAO and IADB determine eligibility and which function to use quickly (within 2-3 weeks of registration). Only ADB and EIB offer an estimated full process timeline of less than 6 months, but these overall time limits may be unattainable in many cases. All of the mechanisms, except OPIC, have a provision that allows for the extension of time limits that are in place.

²⁶ See OPIC Office of Accountability Compliance Review Chart, available at <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>.

For mechanisms that have both problem solving and compliance review functions, their rules of sequencing differ. Simultaneous use of both functions is permitted only at the EBRD, EIB, and OPIC. None of the institutions require the project to be suspended while the claim is brought, although some allow the mechanism to recommend that it be suspended (EBRD, AfDB, ADB, IADB).

Once the claim is accepted, the institutions' procedures differ. Only the IADB allows the project sponsor to respond to the claim, and only EBRD has a provision that allows the claimants to respond to opposing party responses to the claim.

Other than IADB, which only allows review of records, all of the mechanisms allow site visits for eligibility determinations. All of the mechanisms allow site visits in the investigation phase, however, none of the mechanisms require site visits. Only WB IP has a provision to allow site visits to communicate outcomes to claimants, but the other mechanisms don't prohibit such a visit.

Only EBRD, AfDB, and WB IP require management to create an action plan to address eligible claims. After the final report, all of the mechanisms allow monitoring at some level. Most of the mechanisms have the independent ability to undertake monitoring, but WB IP and IADB require the Board to request a monitoring process. EBRD and ADB are notable because they require that follow up and monitoring reporting be done in consultation with the claimants. There is a positive trend shown by EBRD, ADB, and IADB to require monitoring reports to be released on a specific time frame (annually by ADB; bi-annually for EBRD and IADB).