



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW (CIEL)

SOME OPTIONS FOR COMPLAINT RESOLUTION AND RECOURSE FOR UN-REDD

I. What obligations--rights, standards, rules, policies, and procedures—apply to actors undertaking UN-REDD activities which could have social or environmental impacts?

The UN Secretary General has called for all UN-funded programmes to mainstream human rights into their various activities and programmes within the framework of their respective mandates.¹ To this effect, the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD, or Programme) has adopted a UN human rights-based approach to programming, with particular reference to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the UN Development Group (UNDG) Guidelines on Indigenous Peoples' Issues.² Accordingly, actors engaged in UN-REDD have an obligation to respect human rights, and UN-REDD has an obligation to ensure its policies and procedures adequately protect and enforce applicable rights. International support provided by UN-REDD must not be complicit in exacerbating or condoning violations of rights.

In order to design and implement a rights-based approach that effectively guarantees rights, avoids harms, and provides remedies for breaches, it is necessary to clearly identify relevant actors' rights and obligations. The first step to resolving conflicts is to clearly define the rules of engagement. At present, the international obligations applicable to UN-REDD activities are found in international human rights treaties, UN human rights committees, various UN policies and procedures, and UN-REDD-specific policies and procedures. In this report, these obligations and responsibilities are referred to collectively as "obligations." This part seeks to describe those various obligations which could be invoked as a part of the conflict resolution process. Part two describes options for designing a mechanism to ensure accountability and effective redress of these obligations. Part three discusses remedies where obligations have been breached.

A. UN-REDD adopts a rights-based approach to its activities.

UN-REDD's adoption of a rights-based approach is evident from the following statement in the Framework Document agreed to by the UN Development Programme (UNDP), the UN Environment Programme (UNEP), and the Food and Agriculture Organization (FAO): "The application of UNDP, UNEP and FAO rights-based and participatory approaches will also help ensure the rights of indigenous and forest-dwelling people are protected and the active involvement of local communities and relevant institutions in the design and implementation of REDD plans."³

The direct relevance of human rights to UN-REDD and the people and institutions involved in, and affected by, it is clear. For example, the Universal Declaration of Human Rights states that "every individual and every organ of society . . . shall strive . . . to promote respect for these rights and freedoms

¹ UNDP Programme and Operational Policies and Procedures.

² UN-REDD Programme Strategic Overview (March 2009), at 3. See also FAO, UNDP, UNEP Framework Document (20 June 2008) (hereinafter Framework), at 6 (The programme will be guided by the five inter-related principles of the UNDG, including that "human-rights-based approach to programming, with particular reference to the UNDG Guidelines on Indigenous Peoples' Issues.").

³ Framework, *supra* note 2, at 7.

and by progressive measures, national and international, to secure their universal and effective recognition and observance.”⁴

B. Different instruments govern different actors and different activities.

UN-REDD is implemented through joint national programmes for country actions and global programmes for international support functions. These programmes, which are described below, are implemented by FAO, UNDP and/or UNEP, in close coordination and participation with other UN-REDD actors.⁵

1. International obligations applicable at the international level

There are a number of actors at the UN level engaged in different ways with UN-REDD. These include the following:

- UN-REDD Policy Board
- UN-REDD technical secretariat
- UN organizations supporting UN-REDD, including UNDP, UNEP, and FAO.
- UN-REDD Coordination Group
- UNDP, serving as Administrative Agent
- UN Resident Coordinators
- UN Secretary General

These actors engage in the following activities associated with UN-REDD:

In tandem with the National Joint Programmes (NJPs) described below, UN-REDD operates a Global Joint Programme (GJP).⁶ The International Support Functions of the GJP are implemented by the participating UN organizations, based upon a memorandum of understanding (including a framework document) between FAO, UNDP, UNEP, and the Administrative Agent (the Multi-Donor Trust Fund Office, UNDP), hereinafter MOU.⁷ The participating UN organizations have a Coordination Group that facilitates implementation and reporting of activities assigned to participating UN organizations under the Joint Programme, ensures coordination (including harmonization of work plans and strategies of participating UN organizations and Secretariat), and provides quality assurance of the Secretariat.⁸

The Joint Programme is presented to the UN-REDD Policy Board for final decision and budget approval.⁹ The Policy Board is responsible for providing overall leadership and strategic direction for the UN-REDD program, as well as facilitating “effective and efficient” coordination with stakeholders.¹⁰ The Policy Board has the authority to impose specific requirements related to policies, procedures, and

⁴ Universal Declaration of Human Rights, Preamble (1948).

⁵ Framework, *supra* note 2, at 22.

⁶ Memorandum of Understanding between the Participating UN Organizations and the Administrative Agent regarding the Operational Aspects of the Multi Donor Trust Fund for UN-REDD (June 2008) (hereinafter MOU), at 1.

⁷ UN-REDD Programme Rules of Procedure and Operational Guidance (2009), at 7.

⁸ UN-REDD Programme Policy Board Meeting, Terms of Reference (March 2009), at 4. The Coordinating group can also revise the Programme Framework Document in accordance with the MOU.

⁹ Framework, *supra* note 2, at 22.

¹⁰ MOU, *supra* note 6, at 1.

resolution of disputes upon the relevant UN agencies provided it also approves funding for those requirements.¹¹

The Policy Board decides on Programme financial allocations, in line with the budget parameters set out in the UN-REDD Framework Document, and develops monitoring mechanisms. The UN-REDD Policy Board ensures coordination with REDD actors at a global scale, such as the World Bank's Forest Carbon Partnership Facility (FCPF) Participants' Committee.¹²

UNDP, UNEP, and FAO "have full programmatic and financial responsibility" for the funds disbursed under UN-REDD. These participating agencies are responsible for their contributory acts and omissions.¹³ Each organization must undertake UN-REDD activities "in accordance with its own regulations, rules, directives and procedures."¹⁴ If an agency elects to utilize its own resources to implement Programme activities, it is "solely responsible" for the decision to initiate those activities.¹⁵

With respect to activities potentially implicated in complaints, UNDP is tasked with, *inter alia*:

- Integrating Indigenous Peoples issues into the implementation of national REDD programmes, with the intent that NJPs follow UN-REDD Operational Guidance on Engagement of Indigenous Peoples and Forest Dependent Communities.¹⁶
- Drafting and presenting to the Policy Board operational guidance regarding application to NJPs.¹⁷
- Providing fora for indigenous issues to be raised and integrated into the negotiation process.¹⁸
- Developing specific guidance for indigenous peoples regarding REDD and UN-REDD.¹⁹
- Assessing payment distribution and benefit sharing options and links with pro-poor and livelihood outcomes.²⁰
- Providing background analysis and review of national legislative frameworks for REDD, institutional and policy reform issues, forest governance and land tenure, and transparency and disclosure.²¹
- Developing quality assurance and a risk management system for international support functions.²²
- Supporting the formulation of national joint programmes.²³

In addition to the UN agencies themselves, the UN-REDD Technical Secretariat serves the Policy Board.²⁴ It ensures policies and strategies decided by the Policy Board are implemented and adhered to.

¹¹ MOU, supra note 6, at 2.

¹² Framework, supra note, at 22.

¹³ MOU, supra note 6, at 2.

¹⁴ MOU, supra note 6, at 5. Note that participating UN organizations are required to maintain standards of conduct that govern the performance of their staff, including anti-corruption requirements, in accordance with Staff Regulations and Rules and Financial Regulations and Rules, including regarding procurement. *Id.*, at 6.

¹⁵ MOU, supra note 6, at 7.

¹⁶ UN-REDD Programme Work Plan (June 2009), at 8.

¹⁷ UN-REDD Programme Work Plan (June 2009), at 8.

¹⁸ UN-REDD Programme Work Plan (June 2009), at 8.

¹⁹ UN-REDD Programme Work Plan (June 2009), at 8.

²⁰ UN-REDD Programme Work Plan (June 2009), at 9.

²¹ UN-REDD Programme Work Plan (June 2009), at 9.

²² UN-REDD Programme Work Plan (June 2009), at 14. As of January 2006, all UNDP development projects are required to incorporate a risk analysis. Projects are reviewed locally on a bi-annual or more frequent basis by UNDP and its project partners.

²³ UN-REDD Programme Work Plan (June 2009), at 14.

The Secretariat also manages UN-REDD's overall monitoring and evaluation function which includes, *inter alia*, monitoring allocations to and delivery by the international support functions and country joint programmes, and tracking Programme-wide progress and ensuring that monitoring mechanisms are applied. It will include independent third party verification/evaluation of emission reductions, an on-line review and comment process, and an ombudsman system for complaints.²⁵

The Coordination Group provides oversight and quality assurance of the Secretariat.²⁶ UNDP is responsible for developing quality assurance and a risk management system for international support functions.²⁷

Considerations applicable to the World Bank

To the extent that UNDP intends to harmonize its guidance with the World Bank's FCPF, it has obligations to ensure that any joint guidance or other agreement that it signs with the World Bank (which is a specialized agency of the UN) has adequate procedures to avoid involvement in projects that infringe on human rights. The rights-based approach applicable to UN-REDD demands consistency with the findings of the UN Human Rights Council's Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social, and cultural rights. This independent expert has found that the World Bank and the International Monetary Fund (IMF) have, in common with all other United Nations agencies, certain obligations arising under the Charter of the United Nations, including the implementation of international covenants. This is acknowledged by general comment No. 2 on article 22 of the International Covenant on Economic, Social and Cultural Rights, which holds that the Covenant "should be interpreted so as to include virtually all United Nations organs and agencies involved in any aspect of international development cooperation," including agencies such as the World Bank and the IMF. As such, the independent expert finds that "international agencies 'should scrupulously avoid involvement in projects' that infringe human rights, and they should promote projects and approaches which contribute not only to economic growth and other defined objectives, but also to enhanced enjoyment of all human rights."²⁸

2. International obligations applicable at the national level

a. Human rights and other international obligations

States have a primary obligation to ensure human rights are respected and enforced. To ensure that NJPs are consistent with a rights-based approach, it is helpful to identify relevant human rights treaties and other relevant international instruments applicable to a State which could apply to activities undertaken pursuant to the national programme. Customary international law may also be relevant to a State that is not a Party to a particular human rights treaty, of course, but this report does not address that question because virtually all the rights are discussed below in connection with a treaty and the application of customary international law in this connection is ultimately State-dependent.

The International Covenant on Civil and Political Rights provides that States Parties are required to ensure that "any person" whose Covenant rights or freedoms are violated "shall have an effective

²⁴ Framework, supra note 2, at 22.

²⁵ Framework, supra note 2, at 22.

²⁶ UN-REDD Programme Policy Board Meeting, Terms of Reference (March 2009), at 4. The Coordinating group can also revise the Programme Framework Document in accordance with the MOU.

²⁷ UN-REDD Programme Work Plan (June 2009), at 14.

²⁸ See Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, UN Doc A/HRC/11/10, at ¶ 74 (April 3, 2009).

remedy,” “determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the State”, and to have a decision in their favor enforced. Additionally, while the International Covenant on Economic, Social and Cultural Rights does not contain a specific provision dealing with the State obligation to provide access to remedy for abuses of Covenant rights, the general requirement in article 2 (1) providing for the progressive realization of all rights contained in the Covenant “by all appropriate means” has been interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) as implying such an obligation.²⁹

The International Convention on the Elimination of All Forms of Racial Discrimination sets out State obligations to provide access to remedy for violations of Convention rights and freedoms. Article 6 ensures both the procedural and substantive aspects of remedy in providing that: “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”³⁰

The Special Rapporteur on the independence of judges and lawyers, established in 1994, examines issues related to the independence of the judiciary, and access to real remedies by the citizens of certain countries.³¹ According to the Rapporteur, the basic obligation of States is as follows: “States have an obligation to guarantee the exercise of the rights required under domestic law and in international treaties to which they are parties. This means that they must unreservedly respect the rights established therein and set up institutional mechanisms to prevent or remedy acts that violate those rights. All States governed by the rule of law have a positive obligation to eliminate obstacles that impair or restrict access to justice.”³²

This right exists not only as a moral and natural law prerogative, but also in existing international laws, particularly in Latin America: at the fourteenth meeting of the Latin-American Judicial Summit, most Latin American countries (notably absent Brazil) adopted the Brasilia Rules on access to justice for persons in vulnerable situations, which suggest measures to guarantee access to justice for those made vulnerable for many reasons, including membership in indigenous or minority communities, or internal displacement.³³ However, the Rapporteur has also observed a lack of adequate procedural mechanisms for justice, and a lack of independence among judicial decision-makers-- problems that it has noted “go hand in hand...with the marginalization of indigenous peoples’ customary approaches to conflict resolution and the administration of justice.”³⁴

Particular to resolution of matters pertaining to land tenure and usufruct rights, the United Nations’ Basic Principles and Guidelines on Development-Based Evictions and Displacement lays out states’ obligation to refrain from, and protect against, forced evictions from homes and land.³⁵ This right comes from the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the

²⁹ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

³⁰ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

³¹ Special Rapporteur on the independence of judges and lawyers (A/HRC/8/4).

³² Id.

³³ <http://www.aiamp.net/sistema/UserFiles/File/Reglas%20de%20Brasilia%20Ingles.pdf>.

³⁴ http://www.judicial-ethics.umontreal.ca/en/textes%20int/documents/RAPPORTEUR_2008_ANG.pdf.

³⁵ http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf; and <http://daccessdds.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>.

Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination. In order to enforce these violations, the guidelines provide that “States must ensure that adequate and effective legal or other appropriate remedies are available to any person” claiming violation of their rights. All persons threatened with or subject to evictions have the right to access to remedy, which includes a fair hearing, legal counsel, legal aid, and any of many possible types of compensation, including damages, resettlement, and/or right of return. To this effect, the international community “bears an obligation to promote, protect and fulfill the human right to housing, land and property”; and UN-REDD, therefore, should specify specific procedures for forced evictions cases and provide legal remedies to victims.

In a similar vein, the Independent Expert on Minority Issues has recognized such a right when associated with discrimination, or exclusion from decision-making processes over land rights held by minorities:³⁶

“Governments should adopt and enforce laws that safeguard the equal rights of minorities to land and property. Land laws should recognize a variety of forms of ownership, both individual and collective. Minorities should be enabled to register legal title to their land. Legal remedy and/or compensation should be made available to those previously displaced from their homes or traditional lands.”

International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries provides in article 4 that special measures “shall be adopted as appropriate” by State Parties to safeguard the rights of indigenous and tribal peoples. In terms of the substantive aspects of remedy, it contains, in articles 15 and 16, several provisions relating to compensation for harm suffered through exploration, or use of resources, on indigenous and tribal peoples’ lands. Additionally, the African Charter on Human and Peoples’ Rights requires that national remedies must be “available, effective and sufficient” to be considered.³⁷ Moreover, the Commission has clearly stated that States have positive obligations under the Charter to prevent and sanction third party abuses of human rights.³⁸

b. UN-REDD obligations at the national level

In addition to human rights and other international obligations, UN-REDD-specific documents containing obligations also apply at the national level. National level actions are designed as Joint Programmes.³⁹ NJPs follow the agreed UN Development Group format for Joint Programmes.⁴⁰ The NJP is governed by a programme document signed by all participating organizations and national partners and includes a work plan, budget, and the roles and responsibilities for coordinating and managing the programme.⁴¹

³⁶ http://www.wunrn.com/news/2007/05_07/04_30_07/050607_un3.pdf;
http://www.wunrn.com/news/2009/04_09/04_27_09/042709_un_files/Independent%20Expert%20on%20Minority%20Issues%20Report%20to%20UN%20HRC%2010.pdf; and
<http://daccessdds.un.org/doc/UNDOC/GEN/G08/113/51/PDF/G0811351.pdf?OpenElement>.

³⁷ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

³⁸ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

³⁹ Framework, supra note 2, at 8.

⁴⁰ UN-REDD Programme Rules of Procedure and Operational Guidance (2009), at 8. For more information, see <http://www.undg.org/index.cfm?P=240>. See also Framework, supra note 2, at 24.

⁴¹ A Joint Programming Guidance Note explains in detail the process of UN organizations and national partners working together to prepare, implement, monitor and evaluate development activities in order to achieve nationally prioritized development results related to MDGs or commitments arising from UN conferences, summits and

Resident Coordinators facilitate the development of Joint Programme documents at the country level.⁴² “National actions are identified and led by the host government and supported by the UN Country team.”⁴³ A National REDD Steering Committee mechanism provides operational coordination to the Joint Programme and integration under the UN Development Assistance Framework (UNDAF) thematic structures in place at the country level.⁴⁴

The UN-REDD Joint Programmes follow operational guidance developed by the UN-REDD Secretariat, including guidance on engaging with Indigenous Peoples, other forest dependent communities and Civil Society Organizations.⁴⁵

Guidance issued by the UN-REDD Secretariat applies to the Joint Programme and includes guidance on engaging with Indigenous Peoples, other forest dependent communities and Civil Society Organizations.⁴⁶ The UN-REDD Technical Secretariat is responsible for providing oversight of national programme activities.⁴⁷ The Secretariat manages the national joint programme review process when a draft Joint Programme document is submitted to the Policy Board.⁴⁸ The UN-REDD Secretariat reviews the document with a view to ensuring consistency in design standards.⁴⁹ In the context of this review, the Secretariat is responsible for providing comments to the Policy Board with regard to, *inter alia*, ownership of the NJP by non-government stakeholders; level of consultation, participation and engagement; and consistency with the UN-REDD Programme Framework Document; Compliance with UN-REDD operational guidance.⁵⁰

After the Policy Board’s final budget approval, the Technical Secretariat authorizes the Resident Coordinator to proceed with the signing of the NJP document.⁵¹ Representatives of each of the three UN agencies involved in UN-REDD are required to sign the NJP, as does the Resident Coordinator.⁵²

On receipt of a copy of the signed Joint Programme document, the Multi Donor Trust Fund Office will pass funds through the Administrative Agent to the Participating UN Organization(s) to meet their commitments to the Joint Programme.⁵³ As the Administrative Agent, UNDP is required to follow directions for disbursement given by the Policy Board and to ensure consistency of the approved Joint

conventions. See UNDP Programme and Operational Policies and Procedures, 2.4 Joint Programming Guidance Note. The joint programming process includes the CCA, UNDAF, joint strategy meetings (JSM), joint monitoring, annual review of UNDAF, UNDAF Evaluation, etc.

⁴² Framework, supra note 2, at 24.

⁴³ Framework, supra note 2, at 7.

⁴⁴ Framework, supra note 2, at 23. A Joint Programming Guidance Note explains in detail the process of UN organizations and national partners working together to prepare, implement, monitor and evaluate development activities in order to achieve nationally prioritized development results related to MDGs or commitments arising from UN conferences, summits and conventions. See UNDP Programme and Operational Policies and Procedures, 2.4 Joint Programming Guidance Note. The joint programming process includes the CCA, UNDAF, joint strategy meetings (JSM), joint monitoring, annual review of UNDAF, UNDAF Evaluation, etc.

⁴⁵ UN-REDD Programme Rules of Procedure and Operational Guidance (2009), at 8. For more information, see <http://www.undg.org/index.cfm?P=240>.

⁴⁶ UN-REDD Programme Rules of Procedure and Operational Guidance (2009), at 8. For more information, see <http://www.undg.org/index.cfm?P=240>.

⁴⁷ Framework, supra note 2, at 24.

⁴⁸ Framework, supra note 2, at 22.

⁴⁹ Framework, supra note 2, at 24.

⁵⁰ UN-REDD Programme Rules of Procedure and Operational Guidance (2009), at 10.

⁵¹ Framework, supra note 2, at 24.

⁵² UN-REDD Programme Rules of Procedure and Operational Guidance (2009), at 11.

⁵³ Framework, supra note 2, at 8 and 24.

Programme with the applicable provisions of the Standard Administrative Arrangements (SAA) entered between donors and the Administrative Agent, and the MOU between the Participating UN Organizations and the Administrative Agent.⁵⁴ In its capacity as the Administrative Agent, UNDP maintains reporting and accountability lines distinct from those of UNDP acting in its capacity as a participating UN agency.⁵⁵

c. International obligations applicable at the sub-national level

Even though States have primary responsibility to ensure rights are respected within their national borders, UN agencies are responsible for ensuring consistency with UN system requirements.

i. Considerations applicable to States

The Human Rights Council has clearly stated that States Parties are required under the International Covenant on Economic, Social and Cultural Rights to legislate against abuse of the rights of individuals within their territory and/or jurisdiction by private actors, to impose adequate sanctions, and to ensure the existence of appropriate complaints mechanisms, and it has specifically discussed employers in this regard. More specifically with respect to REDD, the Committee has expressed concern about adverse effects on indigenous peoples and minorities caused by extractive and land development activities, and has recommended that States Parties take steps to regulate and adjudicate activities capable of jeopardizing rights in such situations, including activities affecting access to justice.⁵⁶

ii. Considerations applicable to private actors

Consistent with a rights-based approach, where a Participating UN Organization wishes to carry out its Programme activities through or in collaboration with a third party, it is responsible for discharging all commitments and obligations with such third parties.⁵⁷ The increased attention that Committees in the UN human rights system are devoting to the need to prevent corporate abuse has been cited as evidence that businesses are capable of both breaching human rights and contributing to their protection.⁵⁸ The International Covenant on Economic, Social and Cultural Rights supports access to remedy for abuses of Covenant rights pursuant to article 2 (1). Although the Committee has discussed and indicated support for a wide range of remedies, it has put particular emphasis on judicial remedies. It also calls for enforcing agencies to investigate and address alleged violations relating to article 2 (2), including actions by private actors. Enforcing agencies should be empowered to provide effective remedies, and are obliged to monitor effectively the implementation of laws and policies to comply with article 2 (2). This includes establishing the necessary monitoring institutions and encouraging other actors such as civil society and the private sector to carry out such a function.”⁵⁹

According to the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, while some argue that international human rights instruments impose only indirect responsibilities on private actors in accordance with States’

⁵⁴ UN-REDD Programme Rules of Procedure and Operational Guidance (2009), at 11; MOU at 2, 3.

⁵⁵ MOU, *supra* note 6, at 2.

⁵⁶ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

⁵⁷ MOU, at 5.

⁵⁸ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

⁵⁹ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

international obligations, others have found that international human rights instruments already impose direct legal responsibilities on corporations but merely lack direct accountability mechanisms.

In either case, a rights-based approach supports the availability of a grievance mechanism to consider allegations of harm caused by private actors. In the first instance, an international grievance mechanism would respond to allegations of State failures to enforce obligations and allegations of private actors' failures to comply with obligations contained in UN-REDD rules, guidance, policies and procedures (which include obligations to respect rights). In the second instance, a grievance mechanism could also respond to allegations of private actors failing to respect international obligations whether or not they were explicitly contained in UN-REDD rules, guidance, policies and procedures.

II. Who can ensure accountability and evaluate whether an obligation has been violated?

A. General Considerations

Because UN-REDD follows a rights-based approach, it has an obligation to ensure that national programmes do not violate obligations and that the global programme does not violate obligations. To ensure that the global and national programmes follow a rights-based approach, a mechanism should be available to resolve disputes alleging violations of obligations to ensure that the rights guaranteed are adequately protected. This mechanism should effectively address international obligations at the international, national, and sub-national levels. Obligations apply to actors designing policies and programmes, actors implementing policies and programmes, and actors overseeing policies and programmes. Decisions and actions taken can occur at the international, national, and project/community level.

Different instruments govern oversight of UN-REDD activities undertaken at various scales, including international, national, subnational, and community levels. The primary objective is to avoid adverse impacts. Decisions taken at different times at the international, national, subnational, and community levels may be removed from the effects, which are primarily expressed at the community level. An effective grievance mechanism should have the authority to consider violations of procedures at every decision point that could lead to adverse impacts. Given the diverse actors, activities, and obligations discussed above, UN-REDD may wish to provide a suite of options to resolve conflicts. These options are discussed below.

Because States have a primary obligation to implement human rights, and because States already have an obligation to provide recourse to vulnerable groups, it makes sense that the primary resolution of disputes should occur domestically. This report will not address domestic options other than to note that there is a general presumption that in order for an international claim to go forward, a claimant should first make a good faith effort to resolve the complaint domestically and exhaust national remedies when that could be reasonably expected to occur and would not be futile. In some cases, resolution at the national level may not be an option due to power differences, lack of access to justice, political instability, or a host of other reasons. The requirement to attempt to resolve the complaint at a national level should not serve as a barrier to justice but rather as guidance to promote efficient resolution of complaints and provide a timely and effective remedy.

States have the primary obligation to ensure human rights are enforced. Regarding the question of what it means to "ensure" rights, the Inter-American Court of Human Rights has observed in the *Case of Velazquez-Rodriguez vs. Honduras* that States have a duty to juridically ensure the free and full enjoyment of human rights via organization of the governmental apparatus and, in general, all the

structures through which public power is exercised.⁶⁰ Additionally, the African Charter on Human and Peoples' Rights requires that national remedies must be "available, effective and sufficient."⁶¹

Because UN-REDD has an obligation to ensure that activities are consistent with a rights-based approach, if States fail to meet their obligations, UN-REDD needs to ensure that activities undertaken by actors who benefit from UN-REDD support are in coherence with international obligations. Accordingly, UN-REDD should maintain policies that clearly communicate the expectation that States will ensure rights, include in each NJP agreement a clause by which the State accepts the authority of the Technical Secretariat or designated entity to monitor national programme activities and resolve complaints, and detail the obligations of UN-REDD actors tasked with oversight of States in the context of ensuring rights.

Beyond this, the UN-REDD Technical Secretariat is tasked with providing UN-REDD's overall monitoring and evaluation function which includes, *inter alia*, ensuring that monitoring mechanisms are applied and an ombudsman system for complaints.⁶² Three options exist for the Secretariat in this capacity: (1) specify the obligations of actors to resolve complaints, (2) refer complainants existing entities competent in the subject matter, or (3) hear the complaints directly. These options are explored below.

B. Basic requirements of the mechanism

Complaints could be received from persons harmed or potentially harmed by UN-REDD activities undertaken at either the project or national level, and potentially could also include public interest complaints, such as from non-governmental organizations (NGOs) or civil society organizations (CSOs) based on allegations of noncompliance with existing obligations. The process of submitting and receiving complaints should be such that communities of varying capabilities are able to effectively communicate their concerns and make a complaint without the need to hire outside experts.

The office receiving complaints could review a submission for eligibility based upon specific terms of reference and could then consider all the complaints itself or could consider referring some of the complaints to other expert bodies which have specific competency to hear a subset of complaints. Any NJP agreement could contain an explicit requirement to (1) enforce obligations and ensure access to justice at the national level, (2) accept the jurisdiction of an international office to hear complaints not effectively resolved at the national level, (3) notify potentially affected persons of the existence of the office as a part of required consultations, and (4) comply with any resulting actions taken in connection with addressing the complaint.

The evaluator must have integrity and be impartial, independent, transparent and credible. To be independent, the budget for the office should be sufficient, reliable, and not subject to political manipulation. The evaluator should report directly to senior decision-makers (such as the Policy Board, head of an agency, or the Office of the Secretary General). In order to be credible, the evaluator should be well qualified and internationally recognized for providing quality expertise in a fair and efficient manner. The evaluator's reports should be written and made easily available to the public, subject to redacting any legitimate confidential business information or State secrets. The evaluator should report back to the persons or community making the complaint about what happened to the complaint, as the

⁶⁰ Case of Velásquez-Rodríguez v. Honduras, Inter-Am. C.H.R. 35, OAS/Ser. L/V/III. 19, doc. 13, app. VI, ¶ 166 (1988).

⁶¹ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

⁶² Framework, *supra* note 2, at 22.

World Bank Inspection Panel does. There should be the capacity to monitor how reports are treated by the ultimate decision makers and how that treatment is implemented.

In addition, any national or international grievance mechanism or expert reviewing claims should have an annual reporting requirement to the Policy Board, Technical Secretariat, and Administrative Agent describing complaints received, decisions taken, lessons learned, and recommendations for future action.

C. Option to refer complainants to existing entities

Some experts already exist to determine violations of certain obligations applicable to UN-REDD activities. The Technical Secretariat could review any complaints received and assess whether they could be effectively considered by an existing entity qualified to address matters underlying the complaint. If this option is to be made available, the Technical Secretariat would still have the obligation to ensure complaints are addressed in a timely and just manner, and should maintain policies on the amount of time in which a complaint must be considered. To guarantee the effectiveness of this process, it would likely be necessary for UN-REDD to negotiate formal memoranda of understanding detailing the authority, responsibilities, competencies, and expectations of any entity to which a complaint is referred.

Given that no existing entity has specialized experience in UN-REDD, it may be more helpful to consider the option of referring cases as a non-exclusive one: while UN-REDD could refer relevant claims to another entity when there is specific need for particular subject-matter expertise, it would be helpful to provide claimants with additional means to resolve their disputes.

Some existing entities which might have specific knowledge and capacity to address certain complaints are described below.

1. UN human rights system

As discussed above, many of the existing mandate holders under the Human Rights Council (HRC) could consider matters related to UN-REDD related to impacts upon indigenous peoples and local communities. As such, it may be possible within the UN system to refer a complaint to a specific mandate holder whose jurisdiction covers issues involved in a complaint. Under this situation, the Technical Secretariat could receive complaints and refer them to the appropriate mandate holder.

While this approach has the advantage of utilizing existing institutional architecture and therefore commands a relative ease of administration when compared to establishing an entirely new mechanism to hear complaints under UN-REDD, it also has the challenge of ensuring impartial, credible, timely and full response to every complaint. Depending on the policies and rights applied, the scope of potential complaints offered under a grievance mechanism could transcend the collective jurisdiction of the HRC mandate holders. Additionally, the relatively formalistic nature of addressing complaints under the existing human rights regime, the added layer of bureaucracy by involving new entities, existing case backlogs, and limited resources could all result in delays to the resolution of a complaint.

In light of these considerations, it may be more helpful to consider the option of referring cases as a non-exclusive one: while UN-REDD could refer relevant claims to the mandate holders when their expertise provides compelling justification, it would be helpful to provide claimants with additional means to resolve their disputes.

Another option is to utilize the reporting functions of the mandate holders to provide guidance and lessons learned to UN-REDD. For example, the Special Rapporteur on the situation of human rights

and fundamental freedoms of indigenous peoples is expected to report annually on his activities to the HRC, and could be requested to do the same regarding UN-REDD.

The UNDRIP contains an overarching provision dealing with resolution of disputes, stating in article 40 that: “Indigenous peoples have the right to access to, and prompt decision through, just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.” UN-REDD’s approach should fulfill this provision.

2. Utilize UN agency accountability mechanisms

Existing UN agency accountability mechanisms may also be utilized. As previously stated, UNDP, UNEP, and FAO “have full programmatic and financial responsibility” for the funds disbursed under UN-REDD and are responsible for their contributory acts and omissions.⁶³ Each organization must undertake UN-REDD activities “in accordance with its own regulations, rules, directives and procedures.”⁶⁴ Activities carried out by the UN Agencies are subject to internal and external audit as articulated in their applicable Financial Regulations and Rules. In addition, the UN-REDD Policy Board consults with the UN Agencies on any additional specific audits or reviews that may be required, subject to the respective Financial Regulations and Rules of the UN Agencies.⁶⁵

Another key option that does not currently exist but is under consideration: there may be proposals for a UNFCCC complaint resolution mechanism, either under REDD or under the broader UNFCCC architecture. Because this is not currently an option, the contours are not sufficiently defined to provide analysis and recommendations to UN-REDD at this point. If this option becomes available, then it will be important to explore options in detail related to UN-REDD complaint resolution.

a. The MDTF Office of UNDP could consider alleged violations of use of funds.

The Multi-Donor Trust Fund (MDTF) Office of UNDP serves as the Administrative Agent of UN-REDD. The MDTF Office manages the distribution of resources and oversees the work of UNDP Country offices that may be involved in the provision of Administrative Agent function at the country level. The MDTF Office, as Administrative Agent, is responsible for, *inter alia*, administration and management of contributions from donor and disbursement of funds to the Participating UN Organization in accordance with the instructions of the UN-REDD Policy Board.⁶⁶

In its capacity as the Administrative Agent, UNDP maintains reporting and accountability lines distinct from those of UNDP acting in its capacity as a participating UN agency.⁶⁷ As per UN guidance, Implementing Partners must have sufficient knowledge and experience in project management to successfully deliver project results. Additionally, “financial capacities shall be assessed jointly by the UN Country Team, using the Harmonized Approach to Cash Transfers to Implementing Partners (HACT).

⁶³ MOU, supra note 6, at 2.

⁶⁴ MOU, supra note 6, at 5. Note that participating UN organizations are required to maintain standards of conduct that govern the performance of their staff, including anti-corruption requirements, in accordance with Staff Regulations and Rules and Financial Regulations and Rules, including regarding procurement. MOU, at 6. Additionally, If an agency elects to utilize its own resources to implement Programme activities, it is “solely responsible” for the decision to initiate those activities. MOU, at 7.

⁶⁵ Framework, supra note 2, at 25.

⁶⁶ Framework, supra note, at 23.

⁶⁷ MOU, supra note 6, at 2.

These assessments should be reviewed during this process to validate the selection of the Implementing Partner and identify any required level of assurance activities and support services.”⁶⁸

b. UNDP could accept complaints to request evaluation of project where the complaining individuals or communities believe their rights are being, have been, or will be violated, at the project or national level.

The UNDP Evaluation Office is in charge of governance, accountability, quality assurance capacity development, knowledge management and ensuring that policy is in line with UN reforms.⁶⁹ Senior managements of country offices and associated funds are charged with ensuring evaluability of programs and ensuring effective monitoring in collaboration with Stakeholders.⁷⁰ Evaluation units of associated funds are in charge of evaluations conducted within their organizations.⁷¹

The Evaluation office conducts strategic and programmatic evaluations while the country offices and regional bureaus conduct decentralized evaluations (evaluations in programmatic frameworks for which they are responsible).⁷² Under decentralized evaluations, what is evaluated and the number of evaluations to be conducted are decided with the Stakeholders at the beginning of a project or program cycle.⁷³ Also, they are further categorized into outcome evaluations and project evaluations. Outcome evaluations address the effectiveness, efficiency, sustainability, and relevance of programmes or a cluster of UNDP projects, including non-intended effects.⁷⁴ They must be identified in the evaluation plan. Project evaluations are similar, except that they are only mandatory when required by partnership protocols.⁷⁵ Associated funds also conduct strategic and thematic evaluations, country reviews, outcome evaluations, and project evaluations.⁷⁶

UNDP’s Evaluation policy defines evaluation as “judgment made of relevance, appropriateness, effectiveness, efficiency, impact and sustainability of development efforts based on agreed criteria and benchmarks among key partners and Stakeholders.”⁷⁷ Monitoring is a “continuous function providing managers and key Stakeholders with regular feedback on the consistency or discrepancy between planned and actual activities and programme performance and on the internal factors affecting results.”⁷⁸

To ensure effectiveness of evaluations, the responsibilities are shared among the Executive board of UNDP, Evaluation office of the UNDP, evaluation units of associated funds, the administrator of UNDP and senior managements of country offices, regional and policy bureaus. Functions of the executive board include approval of evaluation policy and ensuring independence of evaluations, among others.⁷⁹ UNDP evaluation policy is based on certain norms, several of which comport with the general components of a grievance mechanism, including, *inter alia* (a) independence, in that evaluations should be distinct from operational management and decision making processes to ensure that they are free from undue influence;

⁶⁸ UNDP Programme and Operational Policies and Procedures, 2.4 Implementation Modality and Management Arrangements.

⁶⁹ Evaluation policy of UNDP, available at <http://www.undp.org/eo/documents/Evaluation-Policy.pdf>, para 18.

⁷⁰ Evaluation policy of UNDP, available at <http://www.undp.org/eo/documents/Evaluation-Policy.pdf>, para 20.

⁷¹ Evaluation policy of UNDP, available at <http://www.undp.org/eo/documents/Evaluation-Policy.pdf>, para 21.

⁷² Id. paras 22, 23 & 24.

⁷³ Id. para 24.

⁷⁴ Id. para 25.

⁷⁵ Id. para 26.

⁷⁶ See id. paras 27-30.

⁷⁷ Evaluation policy of UNDP, <http://www.undp.org/eo/documents/Evaluation-Policy.pdf>, para 9.

⁷⁸ Evaluation policy of UNDP, available at <http://www.undp.org/eo/documents/Evaluation-Policy.pdf>, para 10.

⁷⁹ See id. para 17.

(b) transparency, noting that Consultation with Stakeholders is required; and (c) impartiality, in that they must be objective and not biased.⁸⁰

Note that UNDP requires risks to be identified, assessed and prioritized. “Then the possible actions to deal with these risks need to be considered and an appropriate action plan needs to be developed. This involves planning for and implementing resources to carry out selected actions to address the risks. These actions must be incorporated in the project work-plan, and require periodic monitoring and reporting to ensure that all risk management activities are having the desired effect.”⁸¹

c. UNDP, UNEP or FAO could refer complaint of alleged violations of obligations by the Resident Coordinator to the Secretary General’s Office.

The UN Resident Coordinator is responsible for oversight of the joint programme at the national level, ensuring the participating UN organizations are meeting their obligations. The Resident Coordinator is entrusted with “. . . ongoing programmatic oversight of the UN-REDD activities and UN coordination with the National REDD Office where such exist. . . He/she will also facilitate ongoing monitoring and evaluation of Fund-supported activities in conformity with UN standards and any guidance provided by the UN-REDD Technical Secretariat or Policy Board. . . UN-REDD also looks to Resident Coordinators to reach out to NGOs, CSOs, national governments and non-resident UN agencies, where appropriate.”⁸² In the case of alleged violations of obligations of the UN Resident Coordinator, the complaint could be referred to the entity responsible for oversight of the Resident Coordinator. In this case, that entity is the Office of the Secretary General.

3. Utilize partner accountability mechanism: World Bank Inspection Panel

UN-REDD intends to support and complement the World Bank’s Forest Carbon Partnership Facility. If UN-REDD and the World Bank succeed in harmonizing guidance related to indigenous peoples and local communities and/or social and environmental safeguards, one novel option would be to provide impacted persons under UN-REDD access to the World Bank’s Inspection Panel to consider alleged violation of UN-REDD policies and procedures. The Inspection Panel process is described in the next section. Although the GEF is currently the only non-World Bank entity whose policies may be reviewed by the Inspection Panel, the Panel does have the advantage of already being established and the added bonus of being more insulated from political pressures of UN-REDD than many of the other options offered here. While this approach might be administratively challenging to establish at the outset, it perhaps is worth briefly considering this as an option. This would, of course, require agreement by the World Bank.

Even if guidance is harmonized, it is not practical to presume all complaints related to multilateral REDD pilot projects could be handled by the Inspection Panel. This is due in part to the Panel’s mandate to only consider violations of institutional policies and procedures and in part due to the relationship

⁸⁰ Evaluation policy of UNDP, available at <http://www.undp.org/eo/documents/Evaluation-Policy.pdf>, para 8.

⁸¹ “During this process, risks should be identified and assessed using the project Risk Log, which shall be submitted to the PAC as an annex to the project document. The Risk Log shall be examined by the PAC as part of its recommendations on whether to go ahead with the project. Once a consensus on the risks, including possible countermeasures if known, has been reached, and once the project Award has been created in Atlas, the risks should be recorded in the Atlas Project Management module. The Risk Log should be maintained and updated as required in Atlas for the duration of the project,” UNDP Programme and Operational Policies and Procedures, 2.5 Risk Management.

⁸² Framework, supra note 2, at 23.

between the World Bank and the UN system generally. The World Bank⁸³ is one of 15 Specialized Agencies of the United Nations (UN), organized under the purview of the Economic and Social Council (ECOSOC).⁸⁴ The Specialized Agencies and their place within the structure of the UN are provided for in the 1945 UN Charter.⁸⁵ Specialized Agencies are independent, international institutions that have entered into agreements with the UN pursuant to Articles 57 and 63 of the UN's 1945 Charter.⁸⁶ The UN defines these Specialized Agencies as "legally independent international organizations with their own rules, membership, organs and financial resources...brought into relationship with the United Nations through negotiated agreements."⁸⁷ In general, there are degrees of 'independence' among Specialized Agencies,⁸⁸ and the degree to which each agency deviates from mandates, conventions or requests of the UN varies depending on the specific agreement between the entities and the function of the organization, among other factors.⁸⁹

The relationship between the UN and the World Bank was formalized in the 1947 Agreement between the UN and the International Bank for Reconstruction and Development (IBRD).⁹⁰ The agreement came into force upon adoption by the General Assembly on November 15, 1947.⁹¹ The relationship between the Bank and the UN, as memorialized in its agreements and official documentation, shows a Bank relatively free from the influences of the UN. While the agreement broadly outlines the relationship between the two entities as a cooperative one, it explicitly notes that the Bank "is, and is

⁸³ For the purposes of this report, the term "World Bank" will be limited to the International Bank for Reconstruction and Development (IBRD), one of two arms of the institution. The IBRD was formed at the United Nations Monetary and Financial Conference, convened at Bretton Woods, New Hampshire to discuss ways to help rebuild Europe after World War II. See World Bank History, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTARCHIVES/0,,contentMDK:20053333~menuPK:63762~pagePK:36726~piPK:36092~theSitePK:29506,00.html> (last visited July 23, 2009). The IBRD expanded to become the World Bank, and now includes both IBRD, which makes loans to middle-income countries, and the International Development Association (IDA), which focuses on the world's poorest countries. The International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID) are also affiliates of the World Bank. World Bank, About Us, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20046292~menuPK:51123588~pagePK:50004410~piPK:36602~theSitePK:29708,00.html> (last visited July 23, 2009). The Articles of Agreement of the International Development Association (IDA), the other arm of the Bank, are similar and even identical in many respects to those of the IBRD.

⁸⁴ United Nations Economic and Social Council, UN Agencies, <http://www.un.org/docs/ecosoc/unagencies.html> (last visited July 23, 2009).

⁸⁵ UN Charter, supra note 4.

⁸⁶ United Nations, *Charter of the United Nations*, 24 October 1945, 1 U.N.T.S. XVI, available at <http://www.un.org/en/documents/charter/intro.shtml>, at ch. IX art. 57 & ch. X, art. 63, [hereinafter UN Charter].

⁸⁷ United Nations System, <http://www.unsystemceb.org/reference/system/> (last visited July 23, 2009).

⁸⁸ MAC DARROW, *BETWEEN LIGHT & SHADOW; THE WORLD BANK, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL HUMAN RIGHTS LAW*, STUDIES IN INTERNATIONAL LAW NO. 1, at 124 (Hart Publishing 2005).

⁸⁹ Further research in this area would be helpful. For example, the relationships of the WHO and the WTO with the UN might be interesting to compare with the World Bank's relationship with the UN. The WTO has a very different relationship with the UN than any of the other agencies, and the WHO's operations are far reaching. All agreements between Specialized Agencies and the United Nations are available at: <http://www.unsystemceb.org/reference/system/agreements>.

⁹⁰ Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, 60 Stat. 1440, T.I.A.S. No. 1502, U.N.T.S. 134, amended Dec. 17, 1965, 16 U.S.T. 1942 [hereinafter Articles of Agreement of the IBRD]. See also Draft Agreements between the United Nations and International Bank for Reconstruction and Development and the International Monetary Fund, U.N. Doc. [A/349](#) (Sept. 2, 1947) [hereinafter Agreement between the UN and the IBRD].

⁹¹ Resolution Adopted on the Report of the Joint Second and Third Committee; Agreements with specialized agencies, U.N. Doc. [124\(II\)](#) (Nov. 15, 1947).

required to function as, an independent international organization.”⁹² It is unclear whether this agreement would be interpreted so as to prohibit the Inspection Panel from having the authority to hear a complaint from UN-REDD: while it is a possibility, such an arrangement would likely need to be carefully designed and negotiated, which could take significant time. Nothing in the ‘relationship agreement’ between the two entities requires the Bank to comply with a decision of any organ of the United Nations, and the independence between the two entities is asserted throughout Bank and UN documents.⁹³

4. Utilize donor accountability mechanism: OECD National Contact Points⁹⁴

A rights-based approach under the UN system could be seen to include an obligation by donor governments or governments housing corporations or other private actors engaged in UN-REDD activities to provide some access to a remedy. To this effect, the Committee on Economic, Social and Cultural Rights (CESCR) has discussed and indicated support for a wide range of remedies, and it has put particular emphasis on judicial remedies. Notably, the CESCR has spoken to the importance of States seeking to prevent negative impacts by “their own citizens and companies” operating overseas, by preventing their own citizens and national entities from violating human rights in other countries.⁹⁵ Additionally, the Committee on the Elimination of Racial Discrimination in recent concluding observations on the reports of individual States Parties has encouraged them to take appropriate legislative or administrative measures to prevent “adverse impacts” on the rights of indigenous peoples in other countries from the activities of corporations registered in that State, and has recommended that States explore ways to hold such transnational corporations “accountable.”⁹⁶

As such, one option applicable to Organisation for Economic Co-operation and Development (OECD) countries which are either donors or which house corporations or other non-state actors engaged in UN-REDD activities is to utilize the system of national human rights institutions (NHRIs) and the National Contact Points (NCPs) of States adhering to the OECD Guidelines. According to the research carried out under the Special Envoy of the Secretary General (SESG), of the 85 recognized national human rights institutions (NHRIs) at least 40 are able to handle grievances related to the human rights performance of private actors. Of these, 31 are accredited under the Paris Principles (which establish standard roles for such bodies).⁹⁷ Some are limited to human rights abuses alleged against State-owned enterprises or private companies providing public services. Others can address grievances against a broader set of actors, but only with regard to specific kinds of human rights-related grievances, often discrimination. A third group - notably in Africa - admits grievances against all companies with regard to any human rights issue.

Where NHRIs are able to address grievances, they can provide a means to hold them accountable. NHRIs are particularly well-positioned to provide processes - whether adjudicative or mediation-based - that are culturally appropriate, accessible, and expeditious. Even where they cannot themselves handle grievances, they can provide information and advice on other avenues of recourse to those seeking remedy. Through increased interchange of information, they could act as lynchpins within the wider

⁹² Agreement between the UN and the IBRD, *supra* note 22 at art. 1, §2.

⁹³ *See, e.g.*, United Nations System, *supra* note 8.

⁹⁴ Much of the material in this section is directly attributable to the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, whose findings are available in full at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

⁹⁵ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

⁹⁶ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

⁹⁷ <http://www2.ohchr.org/english/law/parisprinciples.htm>.

system of grievance mechanisms, linking local, national and international levels across countries and regions.

The 40 States adhering to the OECD Guidelines for Multinational Enterprises⁹⁸ must provide a NCP whose tasks include handling grievances. OECD provides procedural guidance, with individual NCPs having flexibility in the application of the Guidelines. The NCPs are potentially an important vehicle for providing remedy. However, with a few exceptions, experience suggests that in practice they have too often failed to meet this potential. The housing of some NCPs primarily or wholly within government departments tasked with promoting business, trade and investment raises questions about conflicts of interest. NCPs often lack the resources to undertake adequate investigation of complaints and the training to provide effective mediation. There are typically no time frames for the commencement or completion of the process, and outcomes are often not publicly reported. In sum, many NCP processes appear to come up short when measured against the minimum grievance mechanism principles set out above.⁹⁹

NCPs stress the need for operational flexibility that reflects national circumstances. But to ensure the credibility of the system as a whole, this ought to be delimited by minimum performance criteria in line with those set out by the Special Representative on the issue of human rights and transnational corporations and other business enterprises.¹⁰⁰ Certain NCPs, including those in Great Britain and the Netherlands, recognizing such shortfalls, have sought innovative solutions. Several have involved multiple government departments and created multi-stakeholder advisory groups. Perhaps most interesting is the decision of the Dutch Government to reorganize its NCP such that a four-person multi-stakeholder group handles grievances independent of, though supported administratively by, the Government. Alternative suggestions have included placing NCPs under the legislative branch or within a NHRI.¹⁰¹

⁹⁸ <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.

⁹⁹ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

¹⁰⁰ The Special Representative has set out criteria specifying that grievance mechanisms should be: “(a) Legitimate: a mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process; (b) Accessible: a mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal; (c) Predictable: a mechanism must provide a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome; (d) Equitable: a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms; (e) Rights-compatible: a mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards; (f) Transparent: a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes. (g) Specifically for company-level mechanisms, they should operate through dialogue and mediation rather than the company itself acting as adjudicator.” See

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>

¹⁰¹ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

D. Create an accountability mechanism specific to UN-REDD

Consistent with a rights-based approach, if existing mechanisms are inadequate to guarantee resolution of the full spectrum of complaints that could arise in the case of violation of rights, and to ensure that complaints receive timely resolution, it may be advisable for UN-REDD to create a new mechanism to resolve complaints. In this case, the new mechanism would not only receive complaints but also would have the competence to consider the merits of alleged violations of obligations.

Note that UN-REDD already has some obligations related to accountability functions. For example, Participating UN Organizations are responsible for notifying the Policy Board of any allegations of “corrupt, fraudulent, collusive or coercive practices” which are credible enough to warrant an investigation.¹⁰² Such an allegation must be dealt with in accordance with the respective UN Organization’s accountability and oversight framework and by the unit in charge of investigations.¹⁰³ If such an investigation proceeds, that agency has a duty to inform the UN-REDD Policy Board and the Administrative Agent regarding the results of the investigation.¹⁰⁴

Regarding specific types of mechanisms, there are several options to consider, and the options below are not necessarily exclusive.

Option: The new mechanism could issue findings of fact relating to alleged violations of obligations.

The new mechanism could report to the Policy Board and Administrative Agent within a specified amount of time with investigative findings related to the alleged violations contained in complaints received. The new mechanism could also make recommendations to the Policy Board to address any violations or other problems. The new mechanism would also have the authority to decide whether or not to proceed with a complaint, determining, for example, whether the requirements for submitting a complaint had been satisfied, subject to overview by the Policy Board.

An example of a fact-finding office is the World Bank’s Inspection Panel. Established by the World Bank Board of Directors in 1993 in response to public pressure for increased accountability, the Inspection Panel was the first of its kind to allow non-State actors—citizens and their communities—to challenge decisions of international bodies through a clear and independently administered accountability and recourse process. The creation of the Inspection Panel established a new doctrine in international law, opening up new avenues for citizen involvement in a complex world that increasingly interacts through international institutions.¹⁰⁵ The Inspection Panel supports a process initiated by local and affected people to ensure that the safeguards embodied in Bank policies are adhered to and that, in the case of noncompliance, corrective measures are initiated.¹⁰⁶

As described by the Inspection Panel, the process of considering complaints is as follows:¹⁰⁷

Access to the Panel is intended to be an uncomplicated process: two or more people affected by a Bank-financed project may send a letter to the Panel asking for an investigation. Once the Panel has received and registered a Request, Bank Management has the opportunity to

¹⁰² MOU, supra note 6, at 7.

¹⁰³ MOU, supra note 6, at 7.

¹⁰⁴ MOU, supra note 6, at 7.

¹⁰⁵ World Bank Inspection Panel, *Accountability at the World Bank: The Inspection Panel at 15 Years* (2009), at ix.

¹⁰⁶ World Bank Inspection Panel, *Accountability at the World Bank: The Inspection Panel at 15 Years* (2009), at x.

¹⁰⁷ World Bank Inspection Panel, *Accountability at the World Bank: The Inspection Panel at 15 Years* (2009), at x.

provide an initial response, which generally focuses on whether it has complied with the relevant Bank policies in that particular project. The Panel then examines the eligibility of the Request for a full investigation. If the Panel decides that the Request is eligible, it sends its recommendation for a full investigation to the Board of Executive Directors, or which traditionally has agreed with the Panel's recommendations without interference in the Panel's work.

The Panel's methodology for an investigation includes field work, fact finding, verification, public meetings, interviews with affected people and Bank operations staff, and review of relevant project documents and policies. Once the Panel completes its investigation it sends its final report with findings to the Board and to Bank Management. Management, in consultation with the borrower and increasingly also with Requesters and affected populations, responds to the Panel's final report with recommendations and an action plan that lays out the process by which the project should be brought into compliance and the operational corrections that are to be initiated. The Board makes a decision regarding next steps based on both the Panel Report and Management's Response.

Option: The new mechanism could offer mediation services. If affected persons and project or programme proponents agree, the office could offer mediated dispute resolution services to parties to a complaint.

An example of a mediation office is the Compliance Advisory Ombudsman (CAO) of the International Finance Corporation (IFC). The CAO accepts complaints regarding any social or environmental impact, including any human rights abuses, whether or not there is an allegation of a violation of IFC policies or procedures. The compliance function is limited to assessing compliance specifically with the IFC's and the Multilateral Investment Guarantee Agency's (MIGA) own policies and standards.

Essentially the CAO process of receiving complaints functions as follows:¹⁰⁸

1. Review process: the Ombudsman assesses the complaint and its context, including the stakeholders, their views and incentives to reach resolution, and what processes might be most useful to them. The review process can include research in IFC files, meetings with stakeholders, site visits and public meetings in the project area. The Ombudsman puts suggestions to the principal parties on how to proceed. Complainants can accept or reject these suggestions.
2. Based on this process, the Ombudsman can either work with the stakeholders to agree a clear process to address the complaint through collaboration, or conclude that collaborative resolution is not possible and pass the issues to the CAO's Compliance function.
3. Collaborative processes can include various problem-solving tools including, if the parties consent, conciliation and mediation. They may also involve processes of fact-finding investigation leading to recommendations by the Ombudsman for remediation, if deemed appropriate.
4. If no resolution between the parties is reached through collaboration, the case is passed to the Compliance function of the CAO, and that decision is reported publicly. When receiving a complaint from the Ombudsman function, the Compliance function audits the project based on the issues raised in the complaint, but looking specifically at whether it meets the IFC's/MIGA's own policies, standards, guidelines, procedures and conditionality.

¹⁰⁸ World Bank Group: Compliance Advisor/Ombudsman, BASES wiki, available at [http://www.baseswiki.org/En/2GrievanceMechanisms/AGlobal_Mechanisms/World_Bank_I%3a_Compliance_Advisor%2f%2fOmbudsman_\(CAO\).](http://www.baseswiki.org/En/2GrievanceMechanisms/AGlobal_Mechanisms/World_Bank_I%3a_Compliance_Advisor%2f%2fOmbudsman_(CAO).)

Note that the initial assessment phase has a time limit of 120 days, which may be reduced or increased with the consent of the parties. The time-table for the problem-solving process is agreed on a case-by-case basis with the parties.

Note also that the option for mediation is not exclusive of the option to engage in fact-finding. For example, the International Finance Corporation's Compliance Advisory Ombudsman is a hybrid of compliance fact-finding and mediation services.

Option: The new mechanism could offer formal adjudication services.

Some Trade Agreements such as the North American Free Trade Agreement give affected persons (generally investors) an opportunity to bring a claim before a tribunal. Chapter 11 of the agreement allows corporations or individuals to sue States (in this case Mexico, Canada and the United States) for compensation when actions taken by those governments or sub-national actors under their jurisdiction have adversely affected the claimant's investment.¹⁰⁹ In this model, States explicitly agree to submit to arbitration with adversely affected complainants under the rules of the International Centre for Settlement of Investment Disputes (ICSID) or the UN Commission on International Trade Law (UNCITRAL) if claims have not otherwise been resolved in a timely manner.¹¹⁰

Option: The new mechanism could serve an appellate function for project-based mechanisms or national-level adjudications.

A project-specific grievance mechanism can provide the first means of recourse to resolve complaints, and if effective, may be the most efficient option. An example of this is found in the requirement under IFC performance standards that private parties receiving international financing for a project must establish a specific process to receive complaints related to project activities.

Best practice indicates that a project-specific grievance mechanism should focus on direct or mediated dialogue.¹¹¹ It should be designed and overseen jointly with representatives of the groups who may need to access it (including indigenous peoples and otherwise vulnerable populations).¹¹² Particular should be taken to redress imbalances in information and expertise between parties, enabling effective dialogue and sustainable solutions.¹¹³ It is also essential that a project-specific mechanism should not negatively impact opportunities for complainants to seek recourse through State-based or international mechanisms, including the courts.¹¹⁴

Option: Incorporate indicators for compliance with obligations into the (Measurable, Reportable and Verifiable (MRV) process.

Indicators of specific obligations related to MRV will enable better identification and understanding of those obligations which apply. MRV requirements can help address due diligence

¹⁰⁹ See <http://www.sice.oas.org/trade/NAFTA/chap-111.asp>.

¹¹⁰ See <http://www.sice.oas.org/trade/NAFTA/chap-111.asp>.

¹¹¹ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

¹¹² <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

¹¹³ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

¹¹⁴ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; and <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

obligations. Monitoring, reporting, and verifying compliance with obligations can help resolve disputes. In theory, it may even be possible to incorporate some of the reporting functions of human rights mandate holders such as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

III. What action can be taken in the case of a violation?

A. Generally

Finding of a violation of an obligation or breach of duty needs to have an appropriate remedy in order to be effective. The degree of harm or the potential for ongoing violations may determine the appropriate action for remedy. In order to ensure the remedy is effective, it is important to establish a clear understanding of who has oversight and authority to require a remedy. It is also important to agree on applicable rules and dispute resolution process before harm occurs to ensure that action for remedy is satisfactorily completed.

Particular to resolution of matters pertaining to land tenure and usufruct rights, the United Nations' Basic Principles and Guidelines on Development-Based Evictions and Displacement lays out states' obligation to refrain from, and protect against, forced evictions from homes and land.¹¹⁵ This right comes from the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination. In order to enforce these violations, the guidelines hold that "States must ensure that adequate and effective legal or other appropriate remedies are available to any person" claiming violation of their rights. All persons threatened with or subject to evictions have the right to access to remedy, which includes a fair hearing, legal counsel, legal aid, and any of many possible types of compensation, including damages, resettlement, and/or right of return. To this effect, the international community "bears an obligation to promote, protect and fulfill the human right to housing, land and property" and UN-REDD, therefore, should specify specific procedures for forced evictions cases and provide legal remedies to victims. In a similar vein, the Independent Expert on Minority Issues has recognized such a right when associated with discrimination, or exclusion from decision-making processes over land rights held by minorities:¹¹⁶

"Governments should adopt and enforce laws that safeguard the equal rights of minorities to land and property. Land laws should recognize a variety of forms of ownership, both individual and collective. Minorities should be enabled to register legal title to their land. Legal remedy and/or compensation should be made available to those previously displaced from their homes or traditional lands."

B. Remedy options

Action to provide a remedy could take any of the following forms:

¹¹⁵ http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf; and <http://daccessdds.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>.

¹¹⁶ http://www.wunrn.com/news/2007/05_07/04_30_07/050607_un3.pdf; and http://www.wunrn.com/news/2009/04_09/04_27_09/042709_un_files/Independent%20Expert%20on%20Minority%20Issues%20Report%20to%20UN%20HRC%2010.pdf; and <http://daccessdds.un.org/doc/UNDOC/GEN/G08/113/51/PDF/G0811351.pdf?OpenElement>.

- Declaration and sunshine: issue and publicize findings of violation. Compatible with fact-finding function.
- Injunction: halt violation. Compatible with arbitration or other forms of dispute resolution such as, fact-finding (if the terms of reference for the relevant institution (TOR) created allow for recommendations and those recommendations are not rejected).
- Compensation: pay for harm caused by violation. Compatible with mediation, arbitration, and fact-finding (where the TOR allow for recommendations and those recommendations are not rejected). For example, International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries provides in article 4 that special measures “shall be adopted as appropriate” by State Parties to safeguard the rights of indigenous and tribal peoples. In terms of the substantive aspects of remedy, it contains, in articles 15 and 16, several provisions relating to compensation for harm suffered through exploration, or use of resources, on indigenous and tribal peoples’ lands.
- Sanction: punish violation. Primarily compatible with adjudication but could potentially be awarded as component of fact-finding, depending on TOR. The African Charter on Human and Peoples’ Rights requires that national remedies must be “available, effective and sufficient” to be considered, and the Commission has clearly stated that States have positive obligations under the Charter to prevent and sanction third party abuses of human rights.
- Restitution (restore to pre-harm state): compatible with adjudication and potentially awarded as component of mediation or fact-finding recommendations; it also is the remedy favored by international law when it is practical.

Of perhaps particular interest to UN-REDD matters, Article 40 of the UNDRIP states that “Indigenous peoples have the right to access to, and prompt decision through, just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”

Additionally, UNDRIP addresses the appropriate substantive remedies for the loss of indigenous peoples’ lands or resources, or harm suffered through the use of such lands and resources, without their free, prior and informed consent in articles 10, 28 and 32. Under article 8, States are expected to provide effective mechanisms to prevent and provide redress for actions that violate the right of indigenous peoples not to be subjected to forced assimilation or destruction of their culture. Under article 11, States are also expected to provide redress where indigenous cultural property is appropriated without the free, prior and informed consent of the peoples involved.

Link to funding

Funding provides an important incentive to meet obligations. Consistent with a rights-based approach, UN-REDD should ensure that international support provided by UN-REDD is not complicit in financing activities known to violate rights.

While most details of funding still need to be worked out, UN-REDD contemplates that “upfront payments could be received by national governments (with some sort of guarantee backing) and dispersed in-country over time. Annual payments could also be made, gradually linked to annual deforestation rates as REDD Programs are implemented and monitoring capacity increases. . . It is probably not feasible to spread payments over the full duration of REDD interventions (which could be over 100 years).”¹¹⁷ A

¹¹⁷ Framework, supra note 2, at 12.

variety of funding distribution mechanisms may be tested at the national level, including direct payments to individuals where rights are clearly established, as well as indirect payments (e.g. to local government units) also being made to improve development service delivery. “Elite capture is the main risk for legitimate beneficiaries. This risk can only be reduced through strong democratic processes in local institutions and placing conditionalities on payments, such as transparent audit procedures.”¹¹⁸

IV. Conclusion and Recommendations

Taking into account the discussion and options above, the following recommendations may be particularly worth considering:

Recommendation #1: Identify State obligations and incorporate into the National Programme Agreement. States have already agreed to international standards, including human rights, either via specific treaties or through the National Joint Programme (NJP). Activities undertaken via the National Joint Programme must be consistent with UN-REDD operational guidance, which requires consistency with a rights-based approach. Explicitly listing these obligations and incorporating them directly into the NJP agreement reduces the likelihood of accidental violations and improves understanding of their application.

Option for implementation: The Policy Board could approve operational guidance that includes a requirement to list the relevant treaties and other national obligations applicable to activities taken pursuant to actions proposed in the NJP. The Policy Board could explicitly identify components of UN-REDD policies, procedure, and operational guidance which apply to actions proposed in the NJP. This would require consultations prior to finalizing the list in order to build understanding of obligations and enable transparent disclosure of information to the public.

Recommendation #2: Elaborate specific procedures for a new mechanism (or the Technical Secretariat) to consider complaints related to UN-REDD and other international obligations. Complaints could be received from persons harmed or potentially harmed by UN-REDD activities undertaken at either the project or national level. The process of receiving complaints should be such that communities of varying capabilities are able to effectively communicate their concerns without the need to hire outside experts. The mechanism could review a complaint for eligibility based upon specific terms of reference and could then consider all the complaints itself or could consider referring some of the complaints to other expert bodies which have specific competency to hear a subset of complaints. Any NJP agreement could contain an explicit requirement to (1) enforce obligations and ensure access to justice at the national level; (2) accept the jurisdiction of an international office to hear complaints not effectively resolved at the national level; (3) notify potentially affected persons of the existence of the office as a part of required consultations; and (4) comply with any resulting actions taken in connection with addressing the complaint. Either a new mechanism or the Technical Secretariat must have integrity and be impartial, independent, transparent and credible. It should have the authority to monitor in appropriate circumstances, and its reports should be written and publicized.

Option: The mechanism could issue findings of fact relating to alleged violations of obligations. The mechanism could report to the Policy Board within a specified amount of time with investigative findings related to the alleged violations contained in complaints received. The mechanism could also make recommendations to the Policy Board to address any violations or other problems.

Option: The mechanism could offer mediation services. If affected persons and project or programme proponents agree, the mechanism could offer mediated dispute resolution services to parties

¹¹⁸ Framework, supra note 2, at 11.

to a complaint. Note that the option for mediation is not exclusive of the option to engage in fact-finding. For example, the International Finance Corporation's Compliance Advisory Ombudsman is a hybrid of compliance fact-finding and mediation services.

Option: The mechanism could refer some complaints to subject matter experts. For example, some human rights treaties have mandate holders or commissions which could consider specific rights violations. As another example, if UN-REDD provides joint guidance with the World Bank's FCPF, then there may be an option for the Inspection Panel to consider allegations that staff at UN-REDD or the implementing agencies violated specific policies and procedures.

Option: The Technical Secretariat could directly consider complaints. The advantage of this option is that the expert body would have specialized expertise in UN-REDD and its credibility would be accepted by the Policy Board. The disadvantage of this option is that unless carefully designed, the expert body could be subject to political influence by the Policy Board and/or might not have sufficient control over and access to budgetary resources.

Option: House the new mechanism in one of the UN Operational Agencies. While any of the agencies could serve this ombudsman function, UNDP may be most appropriate because it is the lead agency for social impacts and also because it is the Administrative Agent of UN-REDD. Consider building this office into UNDP's existing accountability framework. The advantage of this option is that the mechanism would not be under directly control of the Policy Board and therefore might have more independence and objectivity. Additionally, because UN-REDD and its operating agencies "have programmatic and financial responsibility" for funds disbursed and must ensure consistency with UN system requirements (including human rights) in addition to UN-REDD specific obligations, such a mechanism may be more effective in ensuring that UN agencies satisfy their own obligations (including due diligence considerations) and act in accordance with a rights-based approach. The disadvantage of this option is that it would be a more general mechanism and may not be specifically familiar with UN-REDD activities, and use of existing accountability frameworks could pose some limitations to effectively addressing the full scope of complaints which could potentially arise under UN-REDD.

Recommendation #3: Require project developers to address complaints at the project level. Decisions by different actors at different levels can all cause harm at the community level. The NJP is an agreement between UN-REDD, UN agencies, and States, but non-State actors are likely to have direct involvement in UN-REDD activities. States have an obligation to regulate non-State actors such as project developers and ensure that actions are consistent with international obligations, and this is consistent with a rights-based approach at the UN level. Actions which could result in direct impacts need clear rules of engagement, and an office that receives complaints can help promote a better understanding of the rules.

Option for implementation: The Policy Board could approve operational guidance that requires any UN-REDD activity undertaken at the community level to include a project-level mechanism to address project-level complaints. The IFC requires this in their Performance Standards. For the sake of efficiency, complaints that can be effectively addressed should be resolved directly at the project level. However, *some complaints will not be able to be effectively resolved at the project level* due to differences in power, culture, access to information, and understanding of obligations. As such, a project-level grievance mechanism must be *in addition to* and not a substitute for additional conflict resolution tools.

Recommendation # 4: Ensure effective remedies for violations. Operational guidance should contain a requirement that international funding flows should be contingent on compliance with applicable obligations. Action to resolve disputes could include declaration (issue findings of violation),

injunction (halt violation), compensation (pay for harm caused by violation), sanction (punish violation), and/or restitution (restore to pre-harm state). The degree of harm or the potential for ongoing violations may determine the appropriate action for remedy. In order to ensure the remedy is effective, it is important to establish a clear understanding of who has oversight and authority to require a remedy. It is also important to agree on applicable rules and dispute resolution process before harm occurs to ensure that action for remedy is satisfactorily completed.

Recommendation #5: Incorporate indicators for compliance with obligations into the MRV process. Indicators of specific obligations related to MRV will enable better identification and understanding of those obligations which apply. MRV requirements can help address due diligence obligations. Monitoring, reporting, and verifying compliance with obligations can help resolve disputes. In theory, it may even be possible to incorporate some of the reporting functions of human rights mandate holders such as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

Recommendation #6: Incorporate lessons learned. Any national or international grievance mechanism or expert reviewing claims could have an annual reporting requirement to the policy board describing complaints received, decisions taken, lessons learned, and recommendations for future action.

FOR MORE INFORMATION, PLEASE CONTACT:

Kristen Hite, khite@ciel.org or +1 202-742-5846.