United Nations Development Programme

Proposal for Environmental and Social Compliance Review and Grievance Processes

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Glossary of Key Terms

Accountability Framework –UNDP's existing Accountability Framework, which applies to all levels of UNDP through Planning & Strategic Direction, Policy & Programme, Results & Performance and Partnership Management. Elements of the existing Accountability Framework include Stewardship, Values & Culture, Risk Management, Quality Assurance, Learning & Change Management, and People. The Compliance Review and Grievance processes proposed here would supplement the existing Accountability Framework by enhancing UNDP's accountability to project-affected people for environmental and social impacts.

Accountability Mechanism – this term has been typically used to describe both compliance review and grievance offices at the international financial institutions and bilateral finance agencies. This term is also described in the Forest Carbon Partnership Facility ("FCPF") Readiness Fund, Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners, as equivalent to the Compliance Review mechanism as defined below.[1] To avoid confusion with UNDP's existing Accountability Framework, we try to avoid the term "accountability mechanism" in this paper.

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

Dispute Resolution – the consensual process of addressing a grievance through mediation, conciliation, facilitation, negotiation or other similar means. Dispute Resolution regarding UNDP-supported operations or programmes would take place through an established Grievance Process outlined herein.

Grievance Process – a framework for accepting complaints and ensuring that those complaints are addressed by effective dispute resolution processes. The Grievance Process outlined in this paper will receive complaints from people or communities affected by UNDP operations and employ different methods of dispute resolution. UNDP will prioritize addressing grievances at the country level.

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

Executive Summary

This paper presents a proposal to the United Nations Development Programme (UNDP) for establishing:

- a **compliance review** process to respond to claims that UNDP is not in compliance with applicable environmental and social policies, including its proposed environmental and social screening procedure; and

- a **grievance process** that ensures individuals and communities affected by UNDP projects have access to appropriate dispute resolution procedures for hearing and addressing project-related disputes.

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

- enhance UNDP's development effectiveness through ensuring compliance with the environmental and social elements of UNDP policies and procedures, including its environmental and social screening procedure;
- provide access to processes that would empower and protect the rights and interests of local communities and vulnerable groups and afford them greater voice and a fair hearing in the development process, particularly in light of UN agency immunities;
- complement opportunities for dispute resolution at the country or project level;
- promote results-based management and quality programs through feedback from the compliance review and grievance processes;
- enable UNDP to compete effectively for donor support in the future, particularly in the climate context or contexts with similarly sensitive issues for sustainable development; and
- complement UNDP's current Accountability Framework and policy toward encouraging transparency, accountability and effectiveness in its operations.

After an evaluation of the various options for how to implement compliance review and grievance processes for UNDP, this paper proposes the following approach: creation of a self-contained compliance function within UNDP's Office of Audit and Investigation ("OAI") that reports to the UNDP Administrator, and the development of a grievance process through adoption of a corporate policy and guidelines, clear delegation of responsibility in each country office, and a help desk to support and track UNDP dispute resolution activities in the country offices. This approach takes advantage of UNDP's current capacities and provides a cost-effective way to launch compliance review and grievance processes with the potential for scaling up in the future.

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

Similarly, the proposed grievance process would take advantage of UNDP's current institutional strengths, most notably UNDP's presence in every country in which it operates. The proposal also reflects that program- or project-level grievance procedures operated by the host country or project

sponsor will be adequate in most instances. UNDP's responsibility for ensuring that affected communities have access to a fair and effective grievance process will be the primary responsibility of the Resident Representative or their designee responsible for grievance processes (the "Country Office Designee"). To support this country-level approach, UNDP will adopt a corporate level policy and guidelines integrated into the Programme and Operations Policies and Procedures (POPP) for developing and implementing dispute resolution processes. UNDP will also provide a Help Desk to support the implementation of effective grievance processes in the country offices, train UNDP regional and country level staff on dispute resolution, and collect, evaluate and report on UNDP's efforts to address grievances across the various country offices.

The paper recommends the following initial staffing levels for implementing the compliance review and grievance processes:

(1) one senior level Compliance Officer expert in conducting compliance reviews;
(2) professional for in-take and evaluation of claims;
(3) one dispute resolution expert at the corporate level to support the grievance process;
(4) expert consultants selected to help in handling specific compliance review complaints or managing dispute resolution processes in specific cases.

The compliance review and grievance processes should be fully evaluated no later than three years after they are operationalized to ensure the needs of UNDP and its stakeholders are being met. To meet the requirements of the Forest Carbon Partnership Facility (FCPF), hosted by the World Bank, of which UNDP is a delivery partner, and the Global Environment Facility (GEF), of which UNDP is an implementing partner, and to help develop the permanent compliance review function, UNDP will create an interim compliance review and grievance process in 2012. Experiences gained through the implementation of the interim process will inform the further development and scaling up of a corporate-wide process.

This discussion paper is intended to generate a discussion within UNDP and with partners and stakeholders that can surface specific concerns and challenges to help develop UNDP's compliance review and grievance processes.

Introduction

This paper proposes environmental and social compliance review and grievance processes for the United Nations Development Programme (UNDP). The compliance review process is designed to respond to claims that UNDP is not in compliance with its own applicable environmental and social policies, including its proposed environmental and social screening procedure. The "grievance process" ensures individuals and communities affected by UNDP projects have access to appropriate procedures for hearing and resolving project-related disputes.

Compliance review and grievance processes have become a common part of the development process, at least since the establishment of the World Bank's compliance review panel in 1993. Similar compliance and grievance processes have been developed at most of the international financial institutions and several bilateral financial institutions.[2] Grievance processes have also been implemented in many projects to give local stakeholders an avenue for airing their concerns. Many international agencies, civil society organizations (CSOs), and governments believe such compliance and grievance processes, along with the associated environmental and social policies, are critical for ensuring effective development outcomes on the ground.

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

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

I. The Need for Compliance Review and Grievance Processes at UNDP

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

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

UNDP's management[3] has approved a proposal to introduce an environmental and social screening procedure into UNDP's POPP. The screening procedure is meant to determine whether a project should be subject to further environmental and social review and management. The procedure is currently being rolled-out.

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

In the UNDP context, general reasons for adopting a compliance review and grievance process include to:

- Enhance UNDP's development effectiveness through ensuring compliance with the environmental and social elements of UNDP policies and procedures;
- Provide access to processes that would empower and protect the rights and interests of vulnerable groups and afford them greater voice and a fair hearing in UNDP's development process;
- Complement existing opportunities for dispute resolution at the country or project level;
- Promote results-based management and quality programs through feedback from the compliance review and grievance processes;
- Provide recommendations for systemic or institution-wide improvements based on lessons learned in specific cases;
- Supplement UNDP's current Accountability Framework and policy toward encouraging transparency, accountability and effectiveness in its operations;
- Enable UNDP to compete effectively for donor support in the future, particularly in the climate context or contexts with similarly sensitive issues for sustainable development; and
- Reflect best practice at other international development institutions and pioneer the development of accountability mechanisms within the United Nations system.

The need for such a mechanism at UNDP is particularly acute in the context of climate finance. Indeed, UNDP's future participation in climate finance likely depends in part on developing a credible and robust safeguards and accountability system. The nature of international financial assistance in the climate context brings more institutional and project-level risks than are present in many other development assistance decisions. These concerns have led to requirements for environmental and social safeguards and associated accountability mechanisms in the design of emerging climate finance initiatives. More specifically,

- The **World Bank-hosted Forest Carbon Partnership Facility (FCPF)**[4], to which UNDP is a Delivery Partner, requires partners to have a compliance review and grievance process to enforce their environmental and social safeguard policies; [5]

[3] Approved at the October 26, 2011 meeting of the OPG.

[4] The World Bank-hosted Forest Carbon Partnership Facility (FCPF) assists developing countries in their REDD+ readiness efforts. The FCPF is "a global partnership focused on reducing emissions from deforestation and forest degradation, forest carbon stock conservation, sustainable management of forests and enhancement of forest carbon stocks (REDD+). The FCPF assists

- The **Global Environment Facility (GEF)**, to which UNDP is an Implementing Partner, will require that implementing agencies have a mechanism for ensuring enforcement of their environmental and social safeguard policies and a grievance process for receiving and responding to complaints (and a mechanism for reporting on how complaints are dealt with); and
- The **Board of the Green Climate Fund (GCF)** will agree on and adopt best practice environmental and social safeguards, which shall be applied to all programmes and projects financed by the Fund. The Fund will also support the strengthening of capacity in recipient countries, where needed, to assist them in meeting the Fund's environmental and social safeguards.
- There is also strong demand from **stakeholders and civil society** for UN agencies undertaking REDD+ activities to have safeguards and accountability measures in place, given the potential impacts on their constituencies.

In light of the growing need for UNDP to develop a compliance review and grievance process, UNDP engaged two consultants in April 2011 to provide additional expertise and guidance in the development of such processes. The consultants participated in initial consultations with staff from key units in UNDP in order to prepare this draft Discussion Paper with options for how UNDP could establish a compliance review and grievance process and the implications of doing so. The draft paper was circulated to the same staff that participated in the initial consultations, comments were provided and the paper has been revised to reflect this feedback.

The recommendations included herein are based on these initial consultations with key UNDP staff and on twenty years of lessons and best practices of other institutions with such mechanisms. The paper also bears in mind the importance of ensuring that the proposed processes are tailored to UNDP's organizational structure, type of operations, legal restrictions, relevant policies, existing accountability framework, and institutional culture. The UNDP Associate Administrator was briefed on the recommendations included in this revised paper on October 24, 2011 and approved of a process to undertake further internal and external consultations before ultimately submitting the proposal to the Operations Performance Group (OPG), made up of the Deputy Directors of all UNDP Bureaux, for final approval.

tropical and subtropical forest countries develop the systems and policies for REDD+ and provides them with performance-based payments for emission reductions...the FCPF has created a framework and processes for REDD+ readiness [the Readiness Fund], which helps countries get ready for future systems of financial incentives for REDD+. Using this framework, each participating country develops an understanding of what it means to become ready for REDD+, in particular by developing reference scenarios, adopting a REDD+ strategy, designing monitoring systems and setting up REDD+ national management arrangements, in ways that are inclusive of the key national stakeholders." See About the FCPF, *available at*: http://www.forestcarbonpartnership.org/fcp/node/12.

[5] In the FCPF Common Approach for environmental and social safeguards developed by a multi-stakeholder task force, delivery partners (including UNDP) have agreed that they will have "accountability measures […] that are designed at a minimum to address breaches of the [delivery partner's] policies and procedures and are not intended to substitute for the country-level accountability, dispute resolution and redress mechanisms." FCPF Readiness Fund, Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners (9 June 2011), para. 34. Such a mechanism shall be "independent, transparent, effective, accessible to affected people, and available to respond to/address claims related to the Common Approach […] or its implementation." Id. Para. 36.

II. Experience with Accountability Mechanisms at other International Institutions

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

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

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

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

A second feature that all IFIs (except for the World Bank Inspection Panel) share is the opportunity for hearing and resolving specific grievances of people or communities affected by the IFI's operations. In these grievance processes, complaints are also registered and screened for eligibility. After acceptance of the complaint, a mediator or dispute resolution expert is assigned to work with the complainant, project operator, and/or IFI staff to address the problem in a mutually agreeable manner. Disputes may be addressed through mediation, conciliation, fact-finding, negotiation or other means. The

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

voluntary process ends when either a solution is not possible and the complaint is formally closed or an agreement is reached, which depending on the agreement of the parties may be made public.

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

With this background in mind, we turn to the elements of the proposed UNDP compliance review and grievance processes. Section III discusses the proposed compliance review process, and the grievance process is discussed in Section IV. UNDP considered the experience of the IFIs and explored several different options for both the compliance review and grievance processes before settling on the proposals described below.

III. Elements of a Compliance Review Process

A. Principles

UNDP's compliance review process must be based on principles that will enable its success: principles of independence, fairness, transparency, professionalism, accessibility and effectiveness. The process must also be tailored to the institution. These principles, which are based on the experience from other similar compliance review functions, should be used as a benchmark for measuring the establishment and implementation of UNDP's compliance review process.

(i) Independence

Independence requires that the compliance review be established and operate without undue influence from the institution's operational decision-makers, states, NGOs or complainants. Independence requires that those who evaluate complaints to the mechanism would be screened and rejected if they have been involved in self-dealing or nepotism; they would recuse themselves if there is an actual or potential conflict of interest.

(ii) Fairness

Fairness and objectivity require the compliance review to give equal weight to the arguments of all sides to conduct independent and impartial investigations. The compliance review procedures should treat all parties fairly, and fairness should be an expectation of all outcomes.

(iii) Transparency

The principle of transparency requires public comment and participation in the design and operation of the mechanism, and clear, demonstrable and publicly available rules of procedure. In addition, the mechanism should publicly report in a timely fashion its methods of investigation, terms of reference, factual findings, non-confidential party submissions, and final reports. Transparency also requires that the mechanism publicize its existence and operations.

(iv) Professionalism

The mechanism's decision-makers and staff should comport with international standards of discretion and professionalism; the mechanism should be able to hire consultants with specific expertise when needed.

(v) Accessibility

In order to be accessible to affected people, the mechanism should maintain open lines of communications and provide information in languages and formats required to allow the greatest access practicable to affected people. Accessibility also requires that no unnecessary barriers impede triggering the mechanism's processes and that complainants may submit their complaints without fear of reprisals, intimidation, demands for payment, or restrictions on their ability to access legal or judicial processes.

(vi) Effectiveness

The compliance review process should be effective in objectively evaluating claims from affected communities, in conducting compliance reviews, and in communicating to all stakeholders, including the complainants, the institution, and the public. Effectiveness also requires that the mechanism operate in a timely and responsive manner.

(vii) Tailored to the Institution

The compliance review process must be designed to take into account the particular features of UNDP's organizational structure, type of operations, legal restrictions, relevant policies, existing accountability framework, and institutional culture.

B. Organizational Structure and Staffing

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

Expanding the mandate of OAI to address compliance reviews related to UNDP's environmental and social policies and procedures will require the following resources:

- A senior consultant (the Compliance Officer) to serve as the primary contact point for the Compliance Review Process and conduct or oversee investigations of any claims of non-compliance found to be eligible, make any findings of non-compliance and report its recommendations to the Director of OAI.

- A professional to:
  - Support the work of the Lead Compliance Officer for UNDP's Compliance Mechanism;
  - Receive and review eligibility of claims;
  - Refer claims that are ineligible for compliance review to the appropriate window in the UNDP grievance mechanism;
  - Develop and implement a communication plan for the launch of the interim compliance review mechanism, including developing a public webpage, press releases and other public announcements or presentations;
  - Work with the company that runs the OAI Hotline reporting system to customize forms, webpages, and the screening guide for staff to answer the telephone calls.

- Work with OAI staff to develop a recording and tracking system for in-coming complaints, building on existing practice and databases;
- Develop a format for the public registry of complaints and a web-based "summary of cases" template for linking to reports.
- Provide advice about the office to potential claimants.

- In addition, the office will need the authority to hire expert consultants to respond to individual claims and budgeted funds to conduct field-based assessments as required.

- Other costs in the first year would be for administrative support and office equipment, training and outreach for staff in Country Offices, Regional Bureaux, Regional Service Centers and Headquarters.

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

Ensuring Independence of the Compliance Review Staff

The perceived and actual independence of the compliance review office is critical for its acceptance by potential claimants and for its effective operation. Promoting independence in the compliance review function can be done in several ways:

- existing accountability mechanisms ensure clear reporting lines to the top decision-makers;
- some of the mechanisms prohibit panel members or key personnel from having been recently employed by the institution (typically in the last two years or so);
- most of the mechanisms do not allow the principle personnel to work again for the institution (e.g., World Bank Inspection Panel members are precluded from future employment);
- the terms of employment for decision-makers are typically non-renewable (although the CAO is a notable exception to this);
- most of the mechanisms have clear rules for addressing conflicts of interest;
- the mechanisms must be supported with sufficient budget and no interference from operational staff; and
- panel members or other key personnel can only be removed for cause by the top decision maker (e.g., the Board of Directors in the case of the World Bank Inspection Panel) .

Independence can also be furthered by ensuring a fair and transparent process for selecting key personnel, with clear criteria identified to meet the unique professional requirements of the position. Among the selection criteria should be: (a) the ability to deal thoroughly and fairly with any request brought to them; (b) integrity and independence from UNDP Management; (c) exposure to developmental issues and living conditions in developing countries; and (d) knowledge and experience of UNDP operations or those of comparable institutions. The public orientation of accountability mechanisms also

means that the key personnel hiring process should be particularly transparent to the public with input from a variety of stakeholders.[7]

C. Policy Scope and Exclusions

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

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

D. Who Can File a Complaint: Eligibility Requirements

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

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

- relates to a project or programme in which UNDP has a role (where "role" would need further definition);
- is submitted by or on behalf of a person or people affected by the project or programme (where the type of "people or person" may need further definition);
- and raises potential issues relating to compliance with UNDP's environmental and social policies.

Other similar compliance review functions at the IFIs include other restrictions. For example, many IFI compliance mechanisms disallow any complaint that is filed fraudulently, or for malicious purposes. In contrast, note that OAI currently allows malicious complaints so long as they otherwise merit an investigation, although the malicious nature of a complaint may later reflect on the complainant's credibility.[8] IFI compliance mechanisms also typically exclude complaints that raise issues of fraud or abnormalities in the procurement process, which are typically handled by wholly separate institutions

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

[8] OAI Investigation Guidelines §8.5.

within the IFIs. The situation may be different in the case of UNDP. We are proposing that the compliance review function be placed within OAI, which already has authority to investigate fraud or problems with procurement, and any cases raising those concerns can be transferred to the appropriate units of OAI.[9]

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

In addition to responding to external complaints, we are recommending that UNDP either through the UNDP Administrator or through its OAI Director in consultation with the Senior Compliance Officer should have the authority to initiate a compliance review into projects. Such a proactive approach to compliance review could improve UNDP's overall understanding of the impacts of its projects, identify strengths and weaknesses in UNDP's policy approach, and broaden the impact of lessons learned in externally driven complaints on specific projects.[10]

E. Initial Receipt and Handling of Complaints

One of the advantages that comes with the proposal to house compliance review in OAI is that OAI has a well-established system for receiving and handling complaints. The proposed compliance should ultimately be designed to take advantage of OAI's existing complaint-receiving structure at some level, which may well be appropriate for the majority of environmental and social compliance issues that OAI will face. Indeed, the existing OAI structure for receiving complaints is state-of-the-art when compared with the methods for receiving complaints at the IFI compliance review mechanisms. For example, OAI's Investigation Guidelines provide for receipt of complaints through a hotline, via email, via a website, facsimile, and by mail. These channels of contact are available to UNDP staff and non-staff.[11] The procedures related to acknowledging receipt of complaints (within one week), and the procedure for anonymous and malicious complaints, is in line with best practice at other accountability mechanisms.

One discrepancy between the OAI Investigation Guidelines and best practice at IFI accountability mechanisms is the OAI provision stating, "Complainants are not entitled to demand information about the investigation, its status or its conclusions and, importantly, they do not "own" the reported information."[12] The public orientation of compliance review procedures related to UNDP's environmental and social policies and procedures would require a somewhat different approach. The ability to request and the

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

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

[11] OAI Investigation Guidelines §§ 8.1, 8.2.

[12] OAI Investigation Guidelines § 8.6.

reasonable expectation of receiving information about an investigation and its status is a hallmark of the transparency of accountability mechanisms where trust in the process depends on claimants' access to information about complaint handling. Moreover, the general lack of a punitive purpose or of sanctions on staff in the environmental and social compliance context means that there is less reason for strict confidentiality about the investigation.

F. The Proposed Compliance Review Process

The main purpose of the compliance review process is to investigate alleged violations of UNDP's environmental and social commitments in a project financed, or to be financed, by UNDP or any other project where UNDP policies apply. The compliance review process results in findings of non-compliance and makes recommendations about how to bring the Project back into compliance and, where appropriate, mitigate any harm resulting from UNDP's failure to follow its policies or procedures.

Specific activities of the compliance review process recommended above will include the following:

1) receiving and determining eligibility of requests for compliance review;
2) conducting thorough and objective reviews of policy compliance, including in-country inspections, interviews of project-affected people, and comprehensive information gathering to allow a factual determination of the issues raised and a reliable basis for any recommendations made;
3) issuing reports with findings on policy compliance to UNDP staff and requesters;
4) issuing draft recommendations for bringing the project into compliance to UNDP staff and requesters
5) receiving comments from, and consulting with, UNDP staff, the requesters and host governments on any recommendations;
6) issuing final reports to the UNDP Administrator with findings and recommendations;
7) monitoring implementation of decisions made by the UNDP Administrator;
8) issuing reports to the Administrator that provide systemic advice based on lessons learned from past cases;
9) reporting at least annually to the UNDP Administrator on the functions, operations and results of the compliance review process; and
10) conducting outreach to potentially affected persons explaining UNDP's compliance review and grievance processes.

In carrying out its functions, the compliance reviewers will need full access to UNDP personnel, policies and records. It will also need the authority to conduct site visits of UNDP-supported projects.

The following are illustrative procedural steps and proposed timeframes for a compliance review (a diagram of the process is included as Annex 2). These steps are intended only to provide a general indication of how the process might operate; a more detailed set of procedures that highlights similarities and differences with OAI's operations will need to be developed if UNDP decides to adopt such an approach.

Step 1: Filing of the Request. A complaint for compliance review is filed with the compliance review office housed at the OAI.

Step 2: Registration and Acknowledgement of the Request. Within five business days of receiving a complaint for compliance review, the OAI compliance officer will register the complaint and acknowledge receipt of the complaint to the complainant. This is mainly an administrative step. If the OAI compliance officer can immediately determine that the complaint is not eligible, it should so notify the complainant in writing. The registration of the complaint will be made on a register accessible to the public through the compliance review web site.

Step 3: Determining Eligibility of the Compliance Review Complaint. Within twenty business days from registration of the complaint, the OAI compliance officer determines eligibility of the complaint and informs the complainant of the decision. Assuming the complainant does not allege any specific policy violations, the OAI compliance officer will evaluate the complaint itself to determine if the complaint raises issues of potential safeguard policy violations. During the eligibility phase, the OAI compliance officer may consult the complainant, UNDP staff and project sponsors, and review available documents. If the complaint is deemed ineligible, because for example it does not raise issues of compliance, the compliance officer may refer the complainant to the grievance process outlined in section IV below.

Step 4: Developing Terms of Reference for Compliance Review. Within twenty business days of determining that a complaint is eligible, the OAI compliance officer will endeavor to develop and publicly release a draft terms of reference and timeframe for their investigation. UNDP staff, complainants and other interested parties will be given ten business days to comment on the draft terms of reference. After considering all comments, the OAI compliance officer will issue final terms of reference, which can be amended at any time after allowing a similar opportunity for complainants and the public to comment.

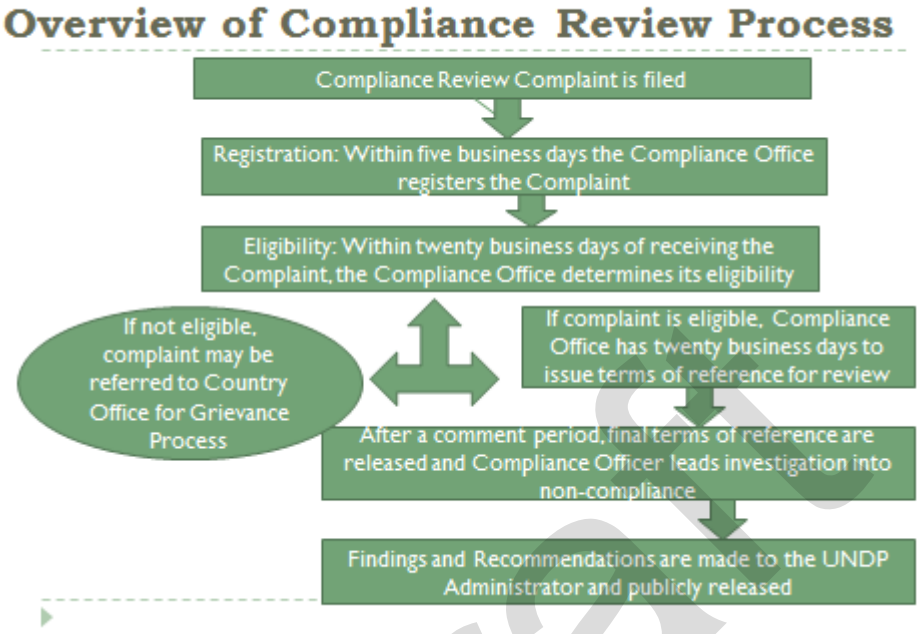
Step 5: Conducting the Compliance Review. The OAI compliance officer will have all of the powers currently enjoyed by OAI in conducting its investigations, including the authority to conduct on-site visits. The OAI compliance officer will also have sufficient budget and authority to hire consultants as it deems necessary to conduct an effective compliance review, given the specific cultural and policy context of the complaint. The compliance officer's review is not time-bound unless a schedule is set forth in the terms of reference, because the amount of time will vary considerably depending on the nature, complexity and scope of the project and the potential policy violations.

Step 6: The Draft Compliance Review Report. After completing its investigation and making findings and proposed recommendations, the OAI compliance officer will issue to the Director, OAI, a draft compliance review report, which will subsequently be released to UNDP staff, the complainants and the public. Comments can be provided on the draft for twenty business days by UNDP, complainants, or any other interested party.

Step 7: Submission of Final Report. Within twenty-five business days of receiving comments on the draft report, the OAI compliance officer will issue to the Director, OAI, a final compliance report, including findings and recommendations. The Director, OAI will review and submit the report to the UNDP Administrator with a copy sent to the requesters, and released to the public.

Step 8: The Administrator's Decision. Within twenty-five business days from receipt of the final compliance review report, the UNDP Administrator will make the final decision regarding steps necessary to bring the project or programme into compliance and/or mitigate any harm, if appropriate, to the complainants. The UNDP Administrator's decision shall be sent to the complainants and publicly released.

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



G. Responses and Remedies

Among the possible powers that could in theory be attached to a compliance function are the following:

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

Power to Make Recommendations. The OAI compliance officer should be able to make both case-specific and UNDP-wide recommendations for improving implementation.

Power to Condition Disbursements on Modifications of the Project or Programme. Although the OAI compliance officer would not have the power to order changes in the project or programme, the UNDP Administrator should have the authority to condition future UNDP participation in a project or programme on compliance with UNDP policies.

Power to Temporarily Stop Disbursements. Where harm to affected people is imminent, the Administrator should have the authority to stop UNDP's financial disbursements or other support to a

project, pending the outcome of the compliance review process, at least where there is the potential for irreversible damage to the affected people should the project continue.

Power to Permanently Suspend Disbursements. The UNDP Administrator should be able to order the permanent suspension of any financial disbursements, assuming that the project is not otherwise able to come into compliance with UNDP's policies. Underlying legal documents should clarify that breach of environmental and social policies are material breaches of the project documents.

Compensation and Restitution. The UNDP Administrator could also decide that affected people should be compensated or restored to a pre-harm state, where the circumstances and resources allow for it. None of the existing compliance mechanisms have this explicit authority, although the ultimate decision makers in all of the existing institutions have the inherent power (and in rare cases have used that power) to decide in light of a finding of non-compliance to provide compensation or restitution.

Note that in all cases the ultimate remedy is decided by the UNDP Administrator; no decision is legally required. The compliance review function is not a court of law nor does any finding change any underlying legal responsibility, immunity or liability of the UNDP. Nothing in the proposed compliance review process should be construed as a waiver, express or implied, of the privileges and immunities of UNDP. The process is internal and does not create any expectation that a specific recourse is required nor permit any legal cause of action against the organization.

H. Monitoring and Reporting

The OAI Compliance Officer should have the authority to monitor implementation of any decisions made as the result of a compliance investigation. Monitoring and reporting would typically be conducted on an annual or bi-annual basis and until implementation and/or compliance are confirmed through the process, at which time the monitoring period would conclude. This may mean monitoring implementation of steps to bring the institution back into compliance where non-compliance has been documented. This is consistent with current practice within OAI, which "will follow up on recommendations contained in the management letter until fully implemented or no longer actionable."[13]

Nearly all accountability mechanisms have recognized the importance of post-decision monitoring as a tool to ensure the effectiveness of the mechanism. The responsibility for monitoring is typically vested with the compliance auditor. Reporting the results of the monitoring to the institution's leadership, complainants, and the public is a further key element, which ensures transparency of process and outcomes and enables the institution and all parties to the complaint process to understand the status and promote implementation of outcomes.

I. Information Disclosure

Information disclosure is a key element required to ensure transparency and effectiveness for compliance review mechanisms. The operation of the compliance review and grievance processes would comply with UNDP's Information Disclosure Policy. Printed materials about the OAI compliance review process should be distributed as widely as possible, including at the interface of the institution to project- or programme-affected people. A website for the compliance review process should also be established; information that would be routinely disclosed on the website is the following:

[13] OAI Investigation Guidelines §13.2.

- Basic information about the compliance review procedures;
- Instructions for how to file a complaint;
- Detailed rules of procedure;
- A registry of complaints, including basic information about the complaint and the complaint's status;
- Draft and final terms of reference and investigation reports as discussed above; and
- Annual reports describing the OAI compliance review activities.

J. Advisory Function

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

K. A Hypothetical Compliance Review Complaint

The following is a realistic, albeit complex, hypothetical claim that might be filed with the UNDP compliance review function in the future. It is intended to provide more concrete context for the development of the compliance review process.

A small group of forest-dependent families bring a claim alleging that they have been deprived of their customary and traditional use of lands by the government. Their claim is that in preparation of participating in a forest carbon program associated with REDD+, the government tried to regularize land ownership by determining title to wide areas of forested land. During this process the families were not consulted about the titling or future use of the land. Another neighboring set of landowners were recognized by the government as the owner of some of the disputed land and the government itself claimed ownership over other parts of the disputed land. The government received UNDP assistance to prepare for its participation in forest carbon markets, specifically with respect to conducting an inventory of forest resources on these disputed lands. The community claims they had a right to be consulted and a right to compensation for the taking of their lands. They allege violations of international human rights, including the declaration of the rights of indigenous peoples, national law, and UNDP's environmental and social screening procedure. They are seeking a determination of whether UNDP has complied with its policies in the context of hoping to get compensation for their lost lands.

Under the proposed compliance review approach, they would file a complaint for a compliance review through the window established within OAI. The UNDP Compliance Officer would follow the procedures outlined above in registering and acknowledging receipt of the complaint and then in determining its eligibility under the compliance review procedures. If the complaint is deemed ineligible, for example because it does not raise any significant compliance issue, the Compliance Officer may refer the complainant to the grievance process described further below, if the complaint seems to raise concerns that could be effectively resolved through a dispute resolution process. Assuming that the complaint is deemed eligible, the Compliance Officer will develop a terms of reference for their compliance review and, if necessary, empanel one or more experts in forest tenure issues. The investigation would primarily focus on UNDP's role in the program, including for example whether UNDP had screened the project appropriately and whether the project had implemented any environmental or social measures required in

the project as part of the screening, particularly in this case any measures intended to address the risks relating to land tenure (*see, e.g.,* Category 3.3 in Table 5.1 of the Environmental Screening Policy).

After the investigation is completed the Compliance Officer would determine whether the project met UNDP's environmental and social requirements, including requirements that were associated with the environmental screening procedure. As a result of any non-compliance, the Compliance Officer would recommend to the UNDP Administrator whatever actions were deemed appropriate. If there was a finding that the project had not met its commitments with respect to land tenure and titling, UNDP could conceivably withhold future disbursements on the project and/or work with the government to ensure that the project comes into compliance.

IV. The Proposed Grievance Process

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

Grievance mechanisms are an increasingly common requirement in international financial institutions, both at the specific project or program level and at the corporate level. The FCPF, for example, requires grievance processes at the project or programmatic level. Project level grievance mechanisms are also required in many projects financed by the International Finance Corporation (IFC). The public sector side of the World Bank has recently hired a specialist in dispute resolution at the corporate level to support the growing number of project-level dispute resolution processes that now exist in the World Bank portfolio. The IFC, the InterAmerican Development Bank, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the US Overseas Private Investment Corporation all have dispute resolution processes at the corporate level that seek to address project-related grievances. Like these institutions, UNDP has an increasing corporate-level interest in ensuring that effective grievance processes are available in projects or programs supported by UNDP.

The Grievance Process proposed for UNDP in this paper is comprised of five elements:

(i) Access through the Country Office or through a corporate level window.

(ii) Corporate level policy and guidance on addressing environmental and social grievances;

(iii) Country level responsibility for receiving and responding to grievances;

(iv) Guidance and support to regional or country offices from a centralized Help Desk; and

(v) Tracking and monitoring disputes and their resolutions;

A. Principles for the Grievance Processes

UNDP's grievance process needs to be shaped by the same principles outlined above with respect to compliance review (i.e. principles of independence, transparency, fairness, professionalism, accessibility, effectiveness, and institutional fit). In addition, UNDP's grievance process should also be decentralized, supplemental and flexible.

(i) *Decentralized.* The grievance process should be decentralized, relying whenever possible on existing processes at the country, program or project level. Addressing grievances through dispute resolution processes, in contrast to compliance review, requires the voluntary, continuing and active participation of the communities, project sponsors and in some cases UNDP. Although grievance processes will benefit from support at the corporate level, the grievance process typically needs to operate as close to the project level and affected communities as possible. Grievance processes are rapidly becoming a regular, integrated part of project management, and the costs of establishing a project level grievance process are increasingly considered part of the underlying project or program. Thus, in most cases grievances should be addressed at the project level although national level grievance processes may also be available, offered either by the host country or in some cases by UNDP.

(ii) *Supplemental.* UNDP's grievance process should be supportive of existing program- or project-level grievance processes that are available with respect to a particular complaint. UNDP will thus seek to offer additional expertise or resources to support the resolution of disputes in grievance processes operated by the project sponsor or host country. UNDP's grievance process will thus be primarily available when existing program- or project-level grievance processes do not exist or have been shown to be ineffectual.

(iii) *Flexible.* To facilitate the resolution of disputes or grievances, the process must allow for flexibility in using different techniques as required in specific cases or contexts. Dispute resolution involves the voluntary participation of various stakeholders in a consensual process of addressing a grievance through mediation, conciliation, facilitation, negotiation or other similar means. The motivations for participating in these processes can vary greatly across different contexts, and those facilitating the process must be allowed to use a large variety of techniques with flexible timelines and approaches.

B. Providing Multiple Windows to Access a Grievance Process

As part of a grievance process, UNDP will establish several windows for receiving grievances from affected communities or other stakeholders adversely affected by UNDP programmes/projects. As with the compliance review, any person or group of persons who are potentially affected by a UNDP-supported project should be able to file a grievance. UNDP should be prepared to receive grievances by mail, email, fax or by telephone. Given the nature of the grievance process and its reliance on the voluntary and active participation of all stakeholders, the identity of affected people seeking to use the grievance process will typically not be kept confidential.

Many projects supported by UNDP, including for example those supported through the FCPF, may establish project- or program-specific grievance processes. Many other projects may have functioning grievance processes operated by the project sponsor or the national host government. UNDP's approach will also include providing capacity support to such project- or program-specific grievance processes. In addition, UNDP should enhance access to grievance processes by creating windows within UNDP for receiving grievances associated with UNDP-supported projects. UNDP's

primary window for receiving grievances should be established at the country level. Some complaints may also be received at the corporate level through the grievance process Help Desk described below. These would be referred to the Country Office Designee for receiving and handling grievances. In addition, complaints filed by affected people to the compliance review process, which do not raise compliance-related issues, may also be transferred to the appropriate Country Office Designee. Thus, under this recommendation, grievances may be filed with UNDP through the following windows:

(i) at the country level through the Country Office Designee for grievances;

(ii) at the corporate level through the Grievance Process Help Desk;

(iii) at the corporate level as referred from the Compliance Review Process.

In any case, the grievance would be referred to the country office, where the Country Office Designee will be responsible for ensuring that the grievance is addressed fairly and effectively, according to the guidance established by UNDP. In some cases, grievances may ultimately be referred to dispute resolution processes established at the project or programmatic level by the host government or project sponsor.

C. Corporate Level Policy and Guidance on Addressing Grievances

Although the locus for addressing community-based grievances and resolving disputes will remain at the country level, UNDP has a corporate wide interest in ensuring that community-based complaints about UNDP-supported activities are addressed promptly, fairly and effectively. We thus recommend the adoption of a corporate level policy and guidelines linked to the POPP that can formalize, clarify and strengthen existing dispute resolution processes and set out the conditions and procedures for enhanced UNDP engagement in dispute resolution. The policy would demonstrate the corporate commitment to effective dispute resolution, and the guidance would provide best practice procedural framework to the country level staff responsible for implementing effective grievance processes.

The corporate guidance would include illustrative procedures and approaches for designing and implementing an effective grievance process. The Country Offices would be expected to operate grievance processes tailored to the particular cultural and social context within which they operate, but most grievance processes would likely include the following procedural steps (which would be further elaborated in the corporate guidance):

Step 1: Filing of the Request. The affected party files a request to one of the windows established by UNDP for receiving grievances; grievances filed with UNDP at the corporate level would be transferred to the Country Office Designee immediately upon receipt.

Step 2: Registration and Acknowledgement of the Request. Within five business days from receipt of the request, the Country Office Designee registers the request and sends an acknowledgement to the requester and a copy to the Project sponsor and Host government.

Step 3: Review of Eligibility of the Request. Within twenty business days of registering the request, the Country Office Designee will inform the requester and the public whether the request meets the eligibility criteria.

Step 4: Assessing Feasibility for Dispute Resolution. Within twenty-five business days of determining that the request is eligible, the Country Office Designee will provide the requester, UNDP and any other interested stakeholders with an assessment of the feasibility of conducting dispute resolution activities. The assessment will also include recommended actions, if any, that UNDP is willing to undertake or facilitate to promote further dispute resolution, or will conclude that dispute resolution would not be useful and close out the case. This assessment may also evaluate whether the requester should first be required to file their request with any grievance processes established by the project sponsor or host government.

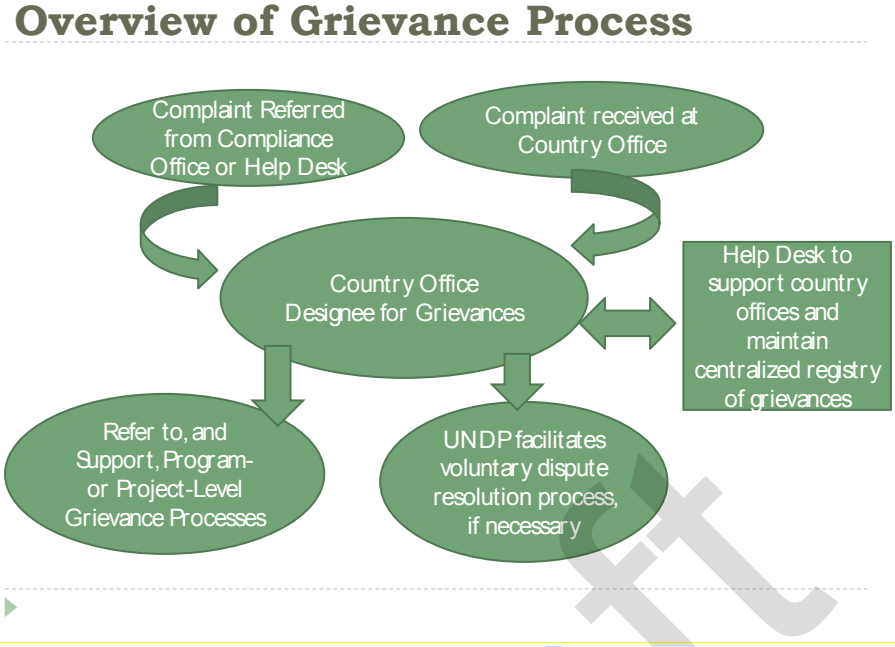
Step 5: Gaining Consent for Dispute Resolution. Any effort at dispute resolution is predicated on the consent of the primary stakeholders, including for example the requesters, affected communities, project sponsors, host government and/or UNDP. No dispute resolution process can go forward without the voluntary consent of the primary parties.

Step 6: Dispute Resolution Process. Assuming that the key stakeholders have agreed to a course of action for potentially resolving their dispute or redressing the concerns of the requesters, the grievance process will go forward in implementing the agreed course of action. Flexibility is required because the appropriate approach will necessarily be tailored to the individual request and the consent of the parties. If consent does not exist, then the options available for dialogue and consultation will be necessarily reduced. If the consultation process is working, all parties may continue with the process until an agreement is reached.

Step 7: Reaching Agreement or Not. When the dispute resolution process is complete, the Country Office Designee will submit its report, including the settlement agreement (if any) and any recommendations for further UNDP actions to the Resident Representative, the UNDP Administrator and all relevant stakeholders.

Step 8: Termination of the Consultation Process. All parties to the consultation, including the Country Office Designee, can terminate the dispute resolution process at any time if they no longer agree to the course of action being undertaken. In some circumstances, the consultation process may end with no resolution. In such circumstances the grievance process will submit a report to the UNDP Resident Representative and the UNDP Administrator, summarizing the Request, the steps taken to try to resolve the issues raised by the request, and any recommendations for further UNDP actions. This final report will also be provided to the Requester, the project sponsor, the host government and the public.

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



D. Country Office Roles and Responsibilities

As noted above, under this proposal the responsibility for ensuring that effective grievance processes are available for projects and programs supported by UNDP shall remain at the country level. Resident Representatives will be responsible for overseeing the grievance process but will likely designate a staff person in the Country Office (the Country Office Designee) responsible for developing the country office's approach to addressing grievances and receiving, handling and tracking specific disputes. The Country Office Designee will also be responsible for identifying and evaluating any existing program- or project-level grievance mechanisms to which grievances may be effectively referred.

The Country Office Designee will receive complaints, review their eligibility and assess the complaints in light of potential opportunities for dispute resolution. The goal is to ensure that affected people have access to an effective, fair and independent grievance process, where their concerns can be heard. Such a grievance process may be operated at the project or programmatic level by the host government or project sponsor. In such a case, UNDP's primary role will be to refer complaints to those processes, provide support and resources, if warranted, for the effective handling of those grievances by the existing mechanisms, and monitor the processes to ensure they meet basic standards of independence, fairness and effectiveness. Where no adequate grievance process exists, UNDP's Country Office Designee may choose to conduct the dispute resolution process according to procedures developed in accordance with the corporate guidance as illustrated above. In some cases, UNDP's involvement in a particular grievance process or in a particular country may require additional budgetary or staffing resources, which will be determined as the need arises.

E. Support from a Grievance Help Desk

Although UNDP will address grievances primarily at the country level, UNDP has a corporate-level interest in ensuring that these grievance processes are responsive, treat claimants fairly, and operate effectively. To meet these standards while maintaining a decentralized approach, UNDP will provide a Help Desk that will work with the Regional Bureaus to support the country level grievance processes with administrative support, trainings, information about best practice, lessons learned from addressing grievances in other UNDP offices, and a database of effective mediators and dispute resolution professionals. The Help Desk will be responsible for collecting and reporting on UNDP's efforts to address grievances across the various countries and regions.

F. Tracking and Monitoring Grievances and their Resolutions

The Country Office Designee will be responsible for tracking grievances and their outcomes and for registering and reporting them to the Help Desk, which shall maintain a centralized registry of all grievances. Monitoring and tracking the handling of grievances will allow UNDP to: understand and report on the nature and frequency of complaints and how effectively they are being addressed; identify systemic trends regarding environmental and social conflicts with communities; and build a knowledge-base for refining and strengthening UNDP's role in community-oriented dispute resolution. The collected information will also be valuable, and perhaps required, in UNDP's relationship with other programs or agencies such as the GEF, the FCPF or the UN-REDD Programme.

G. Hypothetical Grievance Process

The following describes how the proposed grievance process might work in a hypothetical claim similar to the one presented above with respect to compliance review. A small group of forest-dependent families bring a request alleging that they have been deprived of their customary and traditional use of lands by the government. They claim that in preparation of participating in a forest carbon program , the government tried to regularize land ownership by determining title to wide areas of forested land. The government received FCPF assistance through UNDP to prepare for its participation in forest carbon markets, specifically with respect to conducting the inventory of forest resources on these disputed lands. During this process the families were not consulted about the titling or future use of the land. Another neighboring set of landowners were recognized by the government as the owner of some of the disputed land and the government itself claimed ownership over other parts of the disputed land. The community feels that they have been harmed by this process and cannot get anyone to listen to them.

Under the proposed UNDP grievance process, these families might file a claim to one of the UNDP windows established for receiving grievances: i.e. the Country Office Designee, the Help Desk, or the compliance review process. Both the Help Desk and the compliance review officer (assuming that there is no request for compliance review) will refer the complainant to the Resident Representative or his designee. The Country Office Designee will first register the request and then evaluate it for eligibility. If there exists an effective and fair grievance process at the program or project level, UNDP will refer the families to that process. If, for some reason, program or project level mechanisms are not available, or if the families have already tried those mechanisms, UNDP will then assess the request to determine if further dispute resolution is appropriate and to identify in consultation with all stakeholders potential course of action to try to respond to the concerns raised in the request. UNDP would use a flexible approach in designing a dispute resolution process that could be accepted by the requesters and other stakeholders. In this case, for example, the various families and government agency involved in the land tenure decisions might agree to sit down to a series of mediated discussions to determine if a compromise can be worked out. UNDP would provide neutral mediation services and an institutional framework for moving the discussions forward. The process is closed once an agreement is reached or if any necessary

party decides that further participation in the process is not worthwhile. At that point, the UNDP Country Office Designee will compile a final report, including any agreement that is reached, and submit it to the UNDP Administrator and the public.

V. Issues Relating to Implementation

A. Cost Implications

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

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

B. Staff Training and Capacity Building

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

(1) the staff, particularly country level staff, must be informed about the substance of the environmental and social screening procedure and the existence and operation of the compliance review and grievance processes;

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

(3) the staff, particularly at the country office, should be trained in how to conduct outreach regarding the compliance review and grievance processes and how to inform potential claimants how to submit complaints;

(4) staff in targeted countries should be provided with dispute resolution training in light of the guidance provided by UNDP. Eventually in the long term each country involved in

high-risk projects should have a person trained in community-oriented dispute resolution techniques.

C. Legal Implications

As noted above, neither the compliance review nor grievance processes are courts of law nor should any finding change any underlying legal responsibility, immunity or liability of the UNDP. Nothing in the proposed compliance review or grievance processes should be construed as a waiver, express or implied, of the privileges and immunities of UNDP. The process is internal and does not create any expectations of a specific recourse or cause of action against the organization. Other institutions that have studied the question of liability have concluded that the findings of noncompliance from an internal review mechanism would not create any new cause of action.[14]

D. Interim Arrangements, Implementation and Evaluation

The time required to launch the new compliance review and grievance process may interfere with UNDP's ability to qualify for some FCPF and GEF funding. As stated above, compliance review is required as a condition for UNDP to be a delivery partner under the FCPF. In this regard, UNDP has already agreed to take steps to implement an interim compliance review and grievance process for those pilot countries UNDP is supporting under the FCPF. FCPF is expected to cover the costs of the first year of this interim mechanism, while UNDP is establishing permanent compliance review and grievance processes. Additional support for the interim mechanism may also be available through UNDP-GEF.

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

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

Pilot Phase and Evaluation. We recommend that the permanent compliance review and grievance processes be fully evaluated after three years of operation. This should provide sufficient time to accumulate a meaningful set of experiences to form the basis of the evaluation. Even after the processes are fully operational, we expect that only a few claims will come in the first year or two of operation.

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

E. Outreach

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

Outreach activities at other accountability mechanisms have included issuing information brochures and designing websites in multiple languages; ensuring clear website access from the institution's home page; speaking at conferences; meeting with civil society organizations; training UNDP staff to publicize the compliance review and grievance processes; and organizing outreach events in countries where the institution has a large portfolio. The IFC and MIGA also include references to the CAO in their commitment letters to clients. Some of these outreach activities, particularly conferences, meetings and trainings, can be done jointly with other mechanisms to spread the costs among several institutions.

F. Implications for UNDP's Participation in Future Funding Programs

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

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

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

Discussions for the development of a UN-wide system of environmental and social safeguards is still at the beginning stages, but it is reasonable to assume that over time the UN system will set forth some common approach or guidelines to harmonize and promote safeguards within the UN system. With this focus on safeguards will also come an associated requirement to ensure that safeguards are consistently applied. This mechanism could be at the UN system level or could be a requirement that each agency has a system meeting certain general parameters. In either case, UNDP will benefit from being a first mover with respect to compliance review and dispute resolution, and the experience gained by implementing the proposed processes will likely be influential for the discussion at the UN system level.

H. Relationship to Other Accountability Mechanisms

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

VI. Recommendations and Conclusions

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

OAI has an effective track record, experience and procedures for conducting fact-finding investigations like those that will be required of the compliance review function. OAI does not currently have experience in environmental and social issues so the compliance review function would have to be staffed with a senior environmental and social compliance expert with authority to report directly to the UNDP Administrator. Separate operational procedures would need to be developed building off of OAI's current practice but reflecting particularly the public orientation of accountability mechanisms.

Similarly, the grievance function would build off of UNDP's current institutional strengths, most notably UNDP's presence in every country in which it operates. It also reflects that program- or project-level grievance procedures operated by the host country or project sponsor will be adequate in most instances. UNDP's responsibility for ensuring that affected communities have access to a fair and effective grievance process will primarily be operationalized by the Country Office Designee responsible for grievance processes. To support this country-level approach, UNDP will adopt a corporate level policy and guidelines integrated into the POPP for responding to community-based complaints about UNDP-supported activities. UNDP will also provide a Help Desk to support the implementation of

effective grievance processes in the country offices and to collect, evaluate and report on UNDP's efforts to address grievances across the various country offices.

This paper presents an initial overview of the recommended compliance review and grievance processes. This framework must be more fully developed, including the development of detailed operating procedures for the compliance review function and guidelines for addressing grievances at the country level. More detailed procedures should be developed to explore how the proposed compliance review process would fit within OAI's current operations, UNDP's existing Accountability Framework, and UNDP's project development and management process.

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

To support UNDP's participation as a Delivery Partner for FCPF and to help develop the permanent compliance review function, UNDP is also creating an interim compliance review and grievance process in 2012, pending the development of a permanent process. UNDP expects to hire an expert in environmental and social compliance, who would be available to receive and process claims relating to UNDP's actions under the FCPF until such time as the permanent compliance review process is adopted. The compliance consultant would also be available to guide UNDP in operationalizing the permanent process. Lessons learned from operationalization and implementation of the interim process for FCPF would then inform the further development of a corporate-wide process.

Annex 1
International Accountability Mechanism Benchmarking[15]

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

1. The African Development Bank's Independent Review Mechanism ("AfDB"),
2. The Asian Development Bank's proposed accountability mechanism ("ADB"),[16]
3. The European Bank for Reconstruction and Development's Project Complaint Mechanism ("EBRD"),
4. The European Investment Bank's Complaints Mechanism ("EIB"),
5. The Inter-American Development Bank's Independent Consultation and Investigation Mechanism ("IADB"),
6. The Overseas Private Investment Corporation's Office of Accountability ("OPIC"),
7. The World Bank's Inspection Panel ("WB IP"), and
8. The International Finance Corporation's / the Multilateral Investment Guarantee Agency's Compliance Advisor Ombudsman ("CAO").

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

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

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

Claims to the Panel can be filed by any affected party or parties (other than a single individual) in the borrower's national territory. Claims must be in writing and must explain how the affected parties' interests have been, or are likely to be, directly affected by "a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed

[15] This annex is updated as of June, 2011.
[16] Because the ADB is in the last stages of review of its Accountability Mechanism ("AM"), this paper draws on the ADB AM policy from the June 2011 ADB AM Working Paper.

by the Bank."[17]The claimant must demonstrate that it has exhausted other remedies by first providing Bank staff reasonable opportunity to respond to the allegations. Upon receiving a complete request for inspection that is not clearly outside the scope of the Panel's authority,the Panel registers the claim, notifies the claimant and the Board of Executive Directors, and forwards a copy of the claim to Bank Management, which has twenty-one days to respond. The Panel then has an additional twenty-one days to review Management's response and to make a recommendation to the Board of Executive Directors regarding whether the claim warrants a full investigation.

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

As of May 2011, the Inspection Panel had received 72 formal requests for inspection and had registered all but nine of them. The Panel had found that the eligibility requirements were met and recommended an investigation in thirty-two claims, and the Board had approved investigations in twenty-eight of those requests.[18] After findings of non-compliance, the Bank's Board has taken a variety of measures depending on the type an extent of the violations found (sometimes minor, sometimes egregious), the type and stage of the project at issue (sometimes in project development and sometimes at completion), and the actors involved (some borrowers/ complainants have been more vocal than others).

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

The CAO was created in 1999 to address complaints relating to the World Bank Group's private sector arms – the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO's office has both an Advisory and Compliance function, but it considers its Ombudsman function as its primary and most important responsibility. The Ombudsman function was designed to respond to complaints by persons who are affected by IFC/MIGA projects by "attempting to resolve fairly the issues raised, using a flexible, problem-solving approach."[19] Any individual, group, community, entity, or other party affected or likely to be affected by the social or environmental impacts of an IFC or MIGA project may make a complaint to the Ombudsman. Representatives of those affected by a project may also file a complaint with appropriate proof of representation. The CAO acknowledges receipt of all complaints and evaluates whether the complaint falls within its mandate, and, if it does, whether to accept or reject the complaint. A complaint must demonstrate that the affected party has been,

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

[18] *See* Inspection Panel, *Requests for Inspection*, available at http://www.worldbank.org/inspectionpanel.

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

or is likely to be, affected by actual or potential social or environmental impacts on the ground. The complaint must relate to an aspect of the planning, implementation, or impact of an IFC or MIGA project.

Once a complaint is accepted, the CAO immediately notifies the complainant, registers the complaint, refers the complaint to the relevant IFC or MIGA personnel with a request for information, and informs the project sponsor of the complaint. The CAO then undertakes an assessment to determine how it proposes to handle the complaint. During the assessment, the CAO will communicate with the claimant, the project sponsor, and the IFC to attempt to identify a process for resolving the dispute. The CAO's proposal may include anything from convening informal consultations with IFC/MIGA or the project sponsor to organizing a more formal mediation process. Overall, the ombudsman's office seeks to take a proactive and flexible approach where the "aim is to identify problems, recommend practical remedial action and address systemic issues that have contributed to the problems, rather than to find fault."[20] If at any time after completion of the assessment the CAO Ombudsman believes that resolution of the complaint is not possible, the complaint is automatically transferred to the compliance side of the CAO for an assessment of whether a Compliance audit is warranted.

In both its Ombudsman and Compliance roles, the CAO has broad investigatory powers, including authority to review IFC or MIGA files; meet with the affected people, IFC or MIGA staff, project sponsors, and host country government officials; conduct project site visits; hold public meetings in the project area; request written submissions from any source; and engage expert consultants to research or address specific issues. Compliance audit findings are sent to senior IFC/MIGA staff for comment and ultimately to the President of the World Bank Group for review. The CAO concludes the complaint process either when an agreement has been reached through the Ombudsman or when the IFC/MIGA are deemed to be in compliance with their policies. In this regard, the CAO will keep any compliance audit "open and monitor the situation" until it is satisfied that IFC/MIGA are moving back into compliance.[21] The Compliance audits and monitoring status of any projects under review are made public.

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

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

Fairness and Accessibility

A primary issue within the principles of fairness and accessibility of these mechanisms is who can bring a claim and under what conditions. There is a positive trend toward allowing individuals to bring claims. There is also a trend toward allowing foreign representation, with the majority of mechanisms not limiting foreign representation to instances in which local representation is not available. Almost all of the mechanisms allow requesters to file complaints in national or official languages, and a majority of the mechanisms allow the local languages of the claimants. A little less than half of the IFIs (namely, EBRD, EIB, CAO, and the compliance review function of OPIC) do not require an allegation of direct harm. While most require a causal link to harm, there are a number of positive outlier mechanisms that do not, including EIB, OPIC, and CAO.

[20] *Id.* at 11.

[21] *Id.* at 25-26.

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

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

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

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

Independence

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

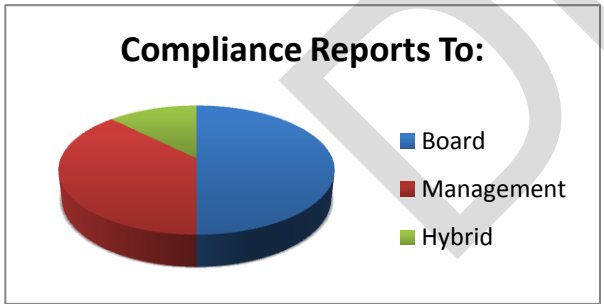


Figure 1

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

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

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

For most mechanisms, the IFI's president hires the director, administrator, or executive secretary of the IAM. However, an outlier is the IDB, which allocates hiring of the executive secretary to the Board. Most of the mechanisms have either president or board (or both) approval for hiring panelists and experts. EBRD is the most independent of the mechanisms in that it allows external stakeholders to take part in the selection process of panelists and experts. EBRD, IP and ADB, demonstrate the best practice of requiring a transparent hiring process.

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

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

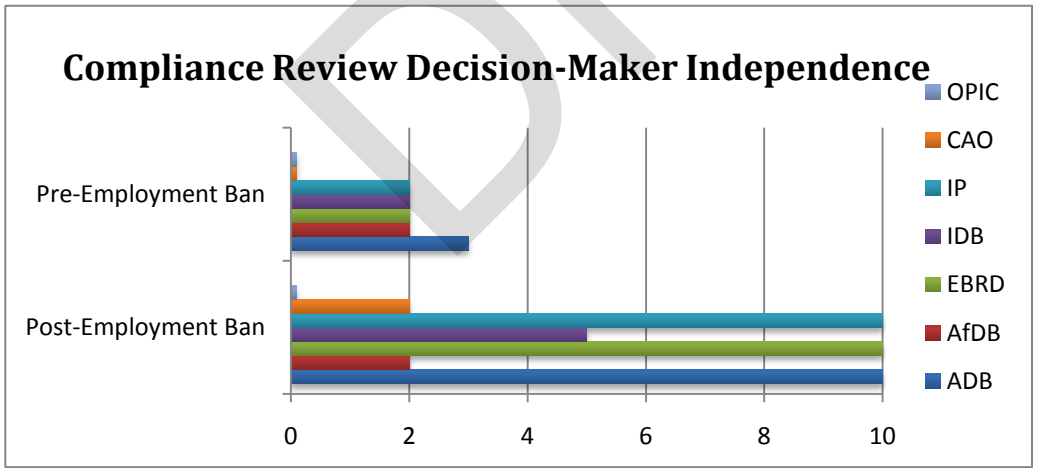


Figure 2, x-axis is number of years, where 10 indicates full ban.

For OPIC, who the "decision-maker" is for compliance review is unclear. Under the Board resolution creating OPIC's Office of Accountability, the Director of the mechanism has the authority to "draw independent conclusions and make recommendations to the President regarding OPIC compliance or future steps to resolve a conflict." From this language, it could be interpreted that the Director is the decision-maker. However, according to OPIC's website flowchart of the compliance review process, "[t}he Office of Accountability examines whether OPIC has complied with relevant policies in the course of design or implementation of an OPIC-supported project, with the objective of providing a basis for the

President & CEO to determine whether there has been a failure to comply, and any preventative or corrective action should be taken."[22] This language implies that it is *the President & CEO* who makes compliance review decisions.

Transparency

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

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

Professionalism and Effectiveness

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

The time limits and efficiency guidelines for the mechanisms and the different steps in the process vary. EBRD and ADB are positive outliers with a 2-5 day decision about whether to register the complaint. The CAO and IADB determine eligibility and which function to use quickly (within 2-3 weeks of registration). ADB and EIB offer an estimated full process timeline of less than 6 months, but all of the other mechanisms do not offer a time limit and these overall time limits may be unattainable in many cases. All of the mechanisms, except OPIC, have a provision that allows for the extension of time limits that are in place.

For mechanisms that have both problem solving and compliance review functions, their rules of sequencing differ. Simultaneous use of both functions is generally not permitted, with the exceptions of EBRD, EIB, and OPIC. None of the institutions require the project to be suspended while the claim is brought, although some allow the mechanism to recommend that it be suspended (EBRD, AfDB, ADB, IADB).

[22] *See* OPIC Office of Accountability Compliance Review Chart, *available at* http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf.

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

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

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