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*via electronic mail*

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**Re: Comments from Accountability Counsel on the draft accountability mechanism policy**

To Whom it May Concern:

Thank you for the opportunity to comment on the draft policy for the new Independent Complaint Mechanism (“CM”). As an international legal non-profit that advocates for people harmed by internationally financed projects, Accountability Counsel employs community driven and policy level strategies to access justice. We have advised on the creation or development of nearly every existing Independent Accountability Mechanism (“IAM”) and have worked in partnership with more than 50 communities who availed themselves of an accountability mechanism process. We have developed a tool called the Accountability Console (available at [www.accountabilityconsole.com](http://www.accountabilityconsole.com)) that includes complaints to every existing IAM and a useful benchmarking system for measuring the best policies and practices of independent accountability mechanisms.

We consent to having this letter published.

***Why climate finance needs an effective accountability mechanism***

Upfront, we write to applaud the Internationale Klimaschutzinitiative (“IKI”) for committing to the establishment of an effective accountability mechanism. Through our casework, we have seen how climate finance can cause unintended harm—including harm to the environment—if investors do not hear from local communities. Communities living near or working at investment sites bear the most risk if a project goes off-course, and they are often the first to know when it does. If they have access to an effective accountability mechanism, communities can raise issues, and investors can resolve issues efficiently and effectively.

Our case experience proves the point. In both Liberia and Mexico, investments in renewable energy projects intended to do good but instead caused unintended environmental and social harm. In [Liberia](#), the United States Overseas Private Investment Corporation (OPIC) invested in a biomass project to create sustainable energy. Instead, the project caused serious human rights, labor, and environmental abuses, including sexual abuse of local women by company employees. OPIC learned of the unintended harm when communities raised issues to OPIC's accountability mechanism to seek redress. In [Mexico](#), OPIC, along with a private equity fund, invested in a hydroelectric project. Using OPIC's accountability mechanism, communities raised concerns about how the project threatened their physical safety and health and would destroy a freshwater spring used for fishing, drinking water, and cultural resources. As a result of the concerns raised during a dialogue process, investors determined not to go ahead with the project.

In addition, when climate finance is not community-led—or at minimum community-informed—it risks harming the environment. In [Myanmar](#), a UNDP-funded conservation project sought to create a protected area. Because the project designers did not adequately consult Indigenous communities who are already stewards of the land, it risked increasing exposure to illegal logging, among other harms. Communities raised concerns to UNDP's accountability mechanism. UNDP paused the project as the accountability process continues, and Indigenous communities have proposed a locally-led conservation plan.

To achieve its purpose and provide the most benefit to communities and investors alike, an accountability mechanism must be effective. Based on our case experience, policy advocacy, and research, we assess below the draft Independent Complaint Mechanism policy according to the effectiveness criteria in Principle 31 of the UNGPs. In line with our community-driven approach, the objective of these comments is to make the CM policy more effective for project-affected communities seeking to use the mechanism to obtain meaningful redress for harm they have experienced.

### ***Analysis of the draft CM Policy***

**1. Multiple provisions of the draft policy are consistent with good policy provisions found at other accountability mechanisms. We highlight a few below and request that the final version of the policy retain these good provisions.**

- The CM's objectives include providing an effective remedy if IKI projects cause harm (2.1.1). Many accountability mechanisms include facilitating remedy as part of their mandate, including that of the International Finance Corporation, African Development Bank, and Green Climate

Fund. Providing remedy is critical for addressing fully any instances of non-compliance with IKI policies, as well as for redressing harms to project-affected people.

- The CM reports to a supervisory body rather than to ZUG management, and its operations are independent from ZUG's (2.6). Independence from a financial institution's management is a fundamental element of an effective accountability mechanism, which is why the accountability mechanisms of the World Bank, Inter-American Development Bank, European Bank for Reconstruction and Development, European Investment Bank, Asian Development Bank, and the African Development Bank, among others, all report to a board.
- Implementing organizations (IOs) are required to inform the project-affected people about the IKI's complaint mechanism as part of project implementation (2.7). This provision is key to the CM's accessibility, as implementing organizations are often in direct contact with project-affected communities. Similar provisions are in the AfDB's IRM policy, the AIIB's Environmental and Social Framework, the IDB's Environmental and Social Safeguards, and the U.S. International Development Corporation's resolution creating a new accountability mechanism.
- Complaints are admissible up to 3 years after implementation of the project is completed (3.7). Increasingly, complaints about closed projects are being considered eligible by accountability mechanisms, including at the World Bank's Accountability Mechanism and Inspection Panel, the International Finance Corporation's CAO, the AfDB's IRM, the Agence Française de Développement's ("Afd") ESCM, and the European Bank for Reconstruction and Development's IPAM.
- Complaints can be submitted in any language, in a variety of formats: through the online form, email or post, or through audio or video recording (3.2; 3.3). Allowing project-affected people to submit complaints in their own language and in the format that is most practical for them enhances the CM's accessibility. This is standard practice at accountability mechanisms, including the World Bank's Inspection Panel, IFC's CAO, AfDB's IRM, GCF's IRM, IDB's MICI, UNDP's SECU and SRM, and the shared ICM of FMO, DEG, and Proparco.
- The policy includes measures for protecting complainants from retaliation, including a presumption against disclosing complainants' identities without permission (8). This mirrors best practice as found in the policies of the IFC's CAO, AfDB's IRM, IDB's MICI, and GCF's IRM.
- CM has authority to undertake compliance reviews without supervisory body/ZUG management approval (4.2.3(g)). This authority is critical for preserving the independence and legitimacy of the investigation. This

good practice is also in place at the EBRD's IPAM, the AfDB's IRM, the IFC's CAO, the GCF's IRM, the UNDP's SECU, the U.S.'s International Development Finance Corporation's Office of Accountability, and the shared CM of FMO, DEG, and Proparco.

- CM is empowered to self-initiate compliance reviews (5). This power, which the GCF's IRM also has, is crucial for enabling the mechanism to prevent and remediate harm, especially in situations where community members would face security threats if they were to file a complaint. Additionally, the policy should clarify that a self-initiated compliance review does not preclude subsequent complaints from project-affected communities.
- Management must consult with complainants, clients, and partner organizations (if appropriate) on the development of draft remedial action plans (4.2.3(o)). Consulting with complainants about remedial action plans helps enshrine communities' agency over the outcomes of the process and helps to better address issues. This type of consultation is built into accountability processes at the World Bank's Inspection Panel, the IFC's CAO, and AfDB's IRM.

**2. A few provisions in the draft policy require further clarification. As is, they risk interpretation that would not meet good practice.**

- a. Language in sections 2.7 and 3.6 about how different grievance mechanisms interact should be edited to clarify that there is no hierarchy among mechanisms and that complainants' preference should prevail.

Section 3.6 enshrines that complainants have free choice to select which applicable complaints mechanisms to use and that they can file at multiple mechanisms. This is good practice because it increases accessibility and provides complainants with the agency to select which mechanism is best for them.

Section 2.7, however, includes potentially confusing language about when the IKI CM will engage upon learning that an implementing organization received a complaint. Once an implementing organization notifies the IKI CM of a complaint, "[t]he IKI CM may decide at any stage to take action itself, if necessary in addition to investigations by the IO. From the IKI CM's perspective, the yardstick for determining whether to do this is the extent to which the IO complaint mechanism meets the eight (8) criteria stipulated in No. 31 of the UN Guiding Principles on Business and Human Rights for effective non-judicial complaint

mechanisms as well as the basic tenets of the Independent Accountability Mechanisms Network.”

The issue here is two-fold: (1) it should be the complainant’s decision as to whether the IKI CM engages; and (2) committing the IKI CM to undertake an effectiveness assessment of the IO complaint mechanism might require extensive resources and time.

We recommend the following edits to the draft policy:

“The IKI CM may decide at any stage to take action itself, if necessary in addition to investigations by the IO. **If the complainant’s identity is known, then IKI CM will reach out to them to explain the IKI CM’s process and inquire whether the complainant would like the IKI CM to begin a complaint process. If the complainant’s identity is not known, the IKI CM will consider whether to initiate an investigation proprio suo motu, per section 5.**~~From the IKI CM’s perspective, the yardstick for determining whether to do this is the extent to which the IO complaint mechanism meets the eight (8) criteria stipulated in No. 31 of the UN Guiding Principles on Business and Human Rights for effective non-judicial complaint mechanisms as well as the basic tenets of the Independent Accountability Mechanisms Network.”~~

We support the IKI CM having a mandate to assess the effectiveness of IO mechanisms, but this should be part of a more systematic process and should not be a prerequisite for the IKI CM to begin a case process. IKI can be led by the practice of the Green Climate Fund in this regard, which requires accredited entities to establish effective grievance redress mechanisms, and the GCF’s accountability mechanism technically has the purview to accept complaints alleging the ineffectiveness of an accredited entity’s mechanism.

- b. Section 3.7 states that the IKI CM will “assess the eligibility of identical claims already being processed by comparable accountability mechanisms or courts.” This language could be misinterpreted to create a parallel proceedings bar that would unduly impede the accessibility and effectiveness of the IKI CM.

While it is fine for an IAM to learn whether any other mechanisms or courts are already addressing a claim for the purposes of establishing context and avoiding unnecessarily duplicating work, the existence of parallel proceedings should never be a bar against complaints filed with the IAM. An IAM should always be able to undertake a compliance

review, regardless of other ongoing processes, because no other forum has the mandate or authority to assess a financial institution's compliance with its own policies. Additionally, if the parties are willing to engage in a dispute resolution process, the IAM should facilitate such a process, notwithstanding other processes. Thus, neither a complaint at another accountability mechanism nor a domestic judicial proceeding should be used to exclude a complaint from an IAM's jurisdiction. In fact, very few IAMs have parallel proceedings bars, and two that did eliminated those restrictions in 2021 (IBD MICI: [The clause that excluded the issues under judicial processes from a MICI process is rendered without effect \(July 2021\)](#); and AfDB IRM: [African Development Bank adopts new policy to strengthen its accountability and support people affected by its operations \(September 2021\)](#)).

We recommend striking the following paragraph:

~~"The complaint mechanism will assess the eligibility of identical claims already being processed by comparable accountability mechanisms or courts (members of the Independent Accountability Mechanisms Network) on a case-by-case basis so as not to duplicate work already done or impede ongoing proceedings."~~

Alternatively, "The complaint mechanism will **consider** ~~assess~~ the eligibility of identical claims already being processed by comparable accountability mechanisms or courts (members of the Independent Accountability Mechanisms Network) on a case-by-case basis so as not to duplicate work already done or impede ongoing proceedings. **This will not affect eligibility.**"

- c. Although the CM draft policy refers to a complainant's representative, it does not explicitly enshrine a right to representation. To avoid any doubt, the policy should clarify this right.

We recommend adding the following language to section 3.1:

"3.1 Submitting a complaint

Any person, group of persons or community that may be/may have been negatively impacted by an IKI project and/or would like to report significant adverse environmental impacts caused directly by the IKI project and/or that would like to provide evidence of economic crime or violations of budgetary law by or in the course of an IKI project may file a complaint.

Complainants may elect any individual(s) or organization(s) to represent them throughout the complaint process.

Throughout the procedure, the complaint mechanism will consider whether and to what extent appropriate anonymisation is required to protect the complainant. See also Section 9.”

**3. Finally, we recommend changes to provisions of the policy that fall short of existing good practice at other accountability mechanisms and that threaten the effectiveness of the IKI CM process.**

- a. The policy should better ensure the independence of mechanism staff by: (1) imposing a longer pre- and complete post-employment ban from the financial institution on members of the expert panel, rather than a 2-year restriction; (2) explicitly requiring panel members and any other staff with conflicts of interest to recuse themselves from the complaints process; and (3) specifying that expert panel members can only be removed by the supervisory body for cause.

Below are examples of policy language for the above recommendations:

**AfDB's IRM Operating Rules and Procedures** para. 84: “The Director shall not have worked for the Bank Group in any capacity whatsoever for a period of at least five (5) years prior to their appointment ...”

**IFC's CAO Policy** paras. 18, 21: “Upon conclusion of the appointment, the CAO [Director General] is restricted for life from obtaining employment with the World Bank Group.”

**IDB's MICI Policy** para. 65: “When any official of the MICI has been previously involved in the planning, appraisal, implementation, or evaluation of a project that comes before the MICI, said official will recuse him or herself from working on that Request and will notify the MICI Director immediately of any conflict. If the MICI Director is potentially in conflict of interest, he or she will immediately inform the Board, recuse him or herself, and assign a team member to work on the Request.”

**World Bank's 2020 Panel Resolution** para. 9: “Members of the Panel may be removed from office only by decision of the Executive Directors, for cause.”

- b. The IKI CM should provide the following additional resources for potential complainants: (1) make a model complaint form or letter available in several languages on the CM's website; (2) respond to complaints in the language of the submission; and (3) cover complainants' costs associated with participating in the complaints process.

Below are examples of policy language for the above recommendations:

**IFC's CAO Policy** para. 35: "On request, CAO will provide guidance on how to lodge a complaint without providing advice regarding the substance of the complaint. The CAO website includes a model complaint letter. Potential complainants may also contact CAO for clarification before lodging a complaint."

**AfDB's IRM Operating Rules and Procedures** para. 24: "The IRM will endeavor to respond to Complaints in the language of submission, but will in any event, respond in either of the official languages of the Bank Group with which the Complainants are most comfortable."

**IFC's CAO Policy** para. 165: "CAO publishes all CAO reports in English, including case reports, advisory reports, and annual reports. All publicly disclosed reports on casework — including assessment reports, dispute resolution reports, and compliance reports — will be translated into the Complainant's local language. When deemed necessary, CAO will translate its reports into additional local languages and present them in a culturally appropriate manner."

**GCF's IRM Procedures** para. 91: "The IRM shall bear the costs of conducting problem solving, compliance review and monitoring as well as the costs of ensuring the meaningful participation of complainants, witnesses and stakeholders in problem solving, compliance review or monitoring."

Complainants incur a range of costs when participating in a complaint process. For example, complainants may need mobile phone credits so that they can communicate with the mechanism or bus fare to travel to meeting locations. Complainants may also incur opportunity costs if they must lose a day's wage to participate at a dialogue table or a compliance review site visit. This is in contrast with staff of the financial institution or client, whose job responsibilities include participation in



the complaint process. In addition to the GCF's IRM (noted above), the AfDB's IRM's policy also enshrines the good practice of covering complainants' costs of participation.

- c. The IKI CM process can better center and safeguard complainants' recommendations for remedial actions by explicitly permitting the CM to share complainants' comments on the adequacy of the management action plan with the supervisory body before approval.

Based on examples from existing good policies,<sup>1</sup> we recommend the following edits:

"4.2.3 Compliance processes [...]

- o. Remedial action plan: if the supervisory body requires a remediation plan to be developed, ZUG management submits a draft remediation plan **that includes any comments made by consulted parties** within 60 days of the supervisory body's decision. The draft remedial action plan must be approved by the supervisory body."
- d. To better fulfill the goals of remediating and preventing harm, CM's mandate should explicitly include the ability to: (1) monitor whether remedial actions indeed remediated harm; (2) continue monitoring until all instances of non-compliance have been remedied; and (3) recommend the suspension of a project in the event of imminent harm.
    - (1) As part of its monitoring function, CM should be able to recommend improvements to remedial action plans either when (a) they are not being implemented properly or (b) their proper implementation is nevertheless failing to remediate harm to the complainants. Even with the best of intentions, the implementation of the remedial action plan may not achieve its intended purpose of bringing the project back into compliance with the financial institution's policies. In such cases, it is not enough for CM just to publish a monitoring report. Instead, the mechanism should have the ability to alert BMU and make

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<sup>1</sup> See, e.g., **EBRD's IPAM Policy** para. 2.7.1(f): "Upon a finding of non-compliance in respect of a Project, IPAM will submit the final Compliance Review Report; the final Management Action Plan; the Management Response, if any; and Requesters' or Representatives' comments on the draft Management Action Plan, if any, to the President and the Board... The IPAM Head will communicate to the Board, whether, in IPAM's view, the commitments identified in the final Management Action Plan adequately address the findings and recommendations of the Compliance Review Report."

recommendations as appropriate on what additional steps should be taken to achieve compliance, so that the BMU can take appropriate action.

We recommend the following edits to the draft policy:<sup>2</sup>

“4.2.3 Compliance processes [...]

q. The complaint mechanism will monitor the implementation of the remedial action plan and report to the supervisory body if the remedial action plan, or parts thereof, are not implemented and/or cannot be implemented **and whether implementation has resulted in bringing the project into compliance and remediating harm.**”

- (2) Instead of cutting off monitoring after 3 years, the CM policy should not prescribe the duration of the monitoring period. Instead, monitoring must focus on actual remediation of all instances of non-compliance.

We recommend the following edits to the draft policy:<sup>3</sup>

“The complaint mechanism sets the monitoring period. **Monitoring will continue until the project is brought into compliance and harm is remediated.**~~This is project specific and should not exceed three (3) years.~~”

- (3) Being able to recommend project suspension is an important part of the mechanism’s mandate to prevent harm. Because complaint processes can take a year or more to complete, CM should do what it can to ensure that, if needed, measures up to and including suspension of the project will be taken to protect affected communities from harm throughout the process.

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<sup>2</sup> See, e.g., **GCF's IRM Procedures** paras. 68, 70: “The IRM shall report to the Board any cases of which it becomes aware where a final remedial action plan, or any part thereof, cannot be or is not being implemented. ... [The IRM’s prior agreement on the final remedial action plan (see paragraph 67)] shall not prevent the IRM from recommending improvements to the final remedial action plan, if necessary, during its implementation. Where the IRM recommends improvements to a final remedial action plan, the Secretariat shall take appropriate steps to amend such final remedial action plan...”

<sup>3</sup> See, e.g., **UNDP's SECU Investigation Guidelines** para. 50: “In cases where UNDP is found to be out of compliance and the Administrator directs staff to undertake remedial measures, SECU will keep the case open and monitor the situation until actions taken by UNDP assure SECU that UNDP is addressing the noncompliance. This monitoring may involve desk review, correspondence with the affected communities, progress reports from the Country Office or relevant business unit, and onsite inspections, as appropriate. When UNDP completes the steps to bring the project into compliance, SECU will close the case.”

We recommend the following paragraph be added to the draft policy:<sup>4</sup>

“If at any time during the processing of the Complaint, the complaint mechanism believes that serious, irreparable harm could be caused by further project execution, the complaints mechanism may recommend that IKI suspend disbursements for the project.”

- e. To strengthen the effectiveness of CM's compliance investigations, the policy should: (1) explicitly require IKI to grant the CM access to information for its work; and (2) require Management to develop a remedial action plan in response to *all* compliance review reports finding non-compliance.

- (1) While it is good that the policy requires both IKI and IO staff to cooperate with CM processes, the policy should go further and require that CM be automatically granted access to all project information and staff without needing to request it. Moreover, contractual provisions should require IOs to allow the mechanism access to its sites, personnel, and records.

We recommend that the draft policy add the following sentence:<sup>5</sup>

“Compliance mechanism staff will have full and direct access to relevant IKI staff and all project files. IKI management and consultants engaged by IKI management will be required to fully cooperate with compliance mechanism staff.”

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<sup>4</sup> See, e.g., **AFD's ESCM Rules of Procedure** para. 7: “... if at any time during the processing of the Complaint, the External Expert, Internal Mediator, Complaints Office, or Ethics Advisor believes that a serious, irreparable E&S harm could be caused by further Project execution, especially when such execution depends on AFD providing funds for it, the Ethics Advisor (in collaboration with the Complaints Office) may recommend that AFD suspend disbursements for the Project. This type of recommendation should take into account co-financing implications, if applicable.”

<sup>5</sup> See, e.g., **EBRD's IPAM Policy** para. 3.1(f)-(g): “In connection with a Case, IPAM staff will have full and direct access to relevant Bank staff and all Project files (including electronic and hardcopy files) and will have access to cabinets and other storage facilities. Bank management and consultants engaged by Bank management will be required to fully cooperate with IPAM staff. ... Financing agreements between the Bank and Clients will include requirements for Clients to disclose Project-related information to IPAM in connection with a Case, upon reasonable request by the Bank and subject to any applicable laws and regulations.”

- (2) Rather than giving BMU discretion over whether to make ZUG management prepare a remedial action plan in response to a compliance review finding non-compliance with IKI safeguards, the CM policy should require an action plan in all such instances.

We recommend that the draft policy amend the following paragraph:<sup>6</sup>

“o. Remedial action plan: if **the complaint mechanism’s report includes findings of non-compliance, then** the supervisory body will require a remediation plan to be developed; ZUG management **will** submit a draft remediation plan within 60 days of the supervisory body’s decision. The draft remedial action plan must be approved by the supervisory body.”

- f. Finally, the IKI itself can strengthen its own policies and procedures to support the effectiveness of the CM. We recommend that the IKI: (1) include information about the CM in its own policies and procedures; (2) develop procedures for preventing and responding to retaliation against complainants; and (3) set aside resources to finance remedy.
  - (1) As IKI updates its environmental and social safeguards, it should include a description of the CM and require implementing organizations to inform project-affected communities about the CM.<sup>7</sup>
  - (2) Through consultation, the IKI should develop policies and guidelines to prevent, become aware of, and address retaliation risks, including to complainants.<sup>8</sup>

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<sup>6</sup> See, e.g., **AfDB’s IRM Operating Rules and Procedures** para. 69: “If IRM finds the Bank to be non-compliant, Management shall: (a) Prepare a Management Action Plan based on the recommendations of the Compliance Review within sixty (60) Business Days of submission of the Compliance Review Report...”

<sup>7</sup> See, e.g., Inter-American Development Bank’s Environmental and Social Safeguards at paragraph 38 on page 42: “The Borrower will inform project-affected people about the project’s grievance mechanism and the IDB’s Independent Consultation and Investigation Mechanism in the course of the stakeholder engagement process.” See *also*, the International Development Finance Corporation’s 2020 Resolution at paragraph 5: “The Corporation will assist the IAM in carrying out its outreach efforts, including requiring clients and sub-clients (for financial intermediary projects) to disclose the existence of the IAM to project-affected communities in a culturally appropriate, gender sensitive, and accessible manner.”)

<sup>8</sup> See, e.g., the IFC’s Good Practice Note For the Private Sector Addressing the Risks of Retaliation Against Project Stakeholders, *available at*

(3) Finally, IKI should devote resources to ensure remedy for complainants is available.

It is not enough for remedial actions to focus on bringing projects into compliance, or even on learning lessons from cases to improve future outcomes. Remedy also must provide project-affected communities with meaningful redress for the harms they have suffered. To do this, IKI must ensure that financial resources are available for implementing remedial actions by reserving resources to remedy environmental and social harms if they occur.

At minimum, this requires setting up a remedy fund. IKI should design a remedial environment through a robust, transparent, and public consultation process with a broad range of stakeholders, including project-affected communities.

Thank you again for your commitment to developing an effective accountability mechanism and for consulting on its design. Please do not hesitate to reach out if you have any questions or if we can be of any further assistance.

Sincerely,



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