



GRIEVANCE MECHANISMS IN THE UNFCCC: AN ESSENTIAL COMPONENT OF AN INTERNATIONAL SAFEGUARD SYSTEM

The United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Cancun Agreements recognize that climate change is not only an environmental but also a human rights issue for the millions of people around the world experiencing the most severe impacts of climate change. To ensure that actions taken to address climate change do not further contribute to human harm, paragraph 8 of the Cancun Agreements provides that “Parties should, in all climate change-related actions, fully respect human rights,” which include the rights of affected peoples and communities to participate in decision-making processes (full and effective participation) and to seek recourse when decisions negatively affect them (access to justice and access to remedy).

By recognizing Parties’ existing human rights obligations, the Conference of the Parties (COP) has determined that Parties must avoid or minimize the human impacts resulting from response measures to mitigate or adapt to climate change. To fulfill these obligations, human rights considerations should guide the development, implementation and monitoring of UNFCCC processes and mechanisms. This can be accomplished by implementing an international safeguard system to prevent social and environmental harm and to promote public participation, transparency, accountability and equity.

A safeguard system can only achieve these goals if it includes a robust grievance mechanism that ensures that those who may be negatively impacted by climate-related activities can raise their concerns and have them addressed in a timely manner. Such grievance mechanisms are proven tools in helping institutions minimize harm to communities and ecosystems by protecting existing rights, obligations and standards. By facilitating transparency and stakeholder participation, grievance mechanisms also help ensure that policies and projects are legitimate and effective, and promote sustainable development.

Parties’ long-standing commitment to fundamental rights and freedoms, and to ensuring their respect and implementation within the UNFCCC framework, requires the development and implementation of grievance mechanisms.

DEFINITIONS

INTERNATIONAL SAFEGUARD SYSTEM: A safeguard system consists of institutions, processes, and procedures to implement, monitor, and enforce safeguards. Such systems include: rules (such as laws, regulations, policies and/or standards) to guide activities; enforcement mechanisms (including monitoring systems) to ensure that the rules are followed and enforced and to assess if changes are needed in the regulatory framework; grievance and dispute settlement processes that provide access to redress and remedy; non-compliance measures to respond to a failure to comply with the safeguards; and institutions to oversee and implement these elements.

GRIEVANCE MECHANISM: A grievance mechanism is an institutional administrative body mandated to address claims by or on behalf of affected people or communities concerned that the relevant rules are being violated.

IS THERE A MANDATE TO ESTABLISH GRIEVANCE MECHANISMS IN THE UNFCCC?

Paragraph 92 of the Cancun Agreements describes the need to consider “information from those affected, and evidence of actual impacts” of response measures. This paragraph also requires Parties to consider existing channels, such as national communications and possible submissions of supplementary information, as a means for “those affected” to provide such information. There are also specific mandates to develop grievance processes in some UNFCCC contexts (such as the Adaptation Fund); other such mandates are under negotiation (for the Green Climate Fund and the Clean Development Mechanism, for example).

To operationalize these provisions, the Parties should establish one or more mechanisms to which individuals, peoples or communities whose rights may be impacted by the implementation of response measures (or their representatives) can submit relevant information. The mechanism should assess the impacts of the response measures on the affected peoples or communities, including on their enjoyment of human rights, and should recommend measures for preventing or minimizing harmful effects and for ensuring that the response measures do not interfere with their enjoyment of their rights. In addition, the mechanism should be available to assist policymakers in safeguarding human rights and in implementing the recommended measures.

EFFECTIVE PUBLIC PARTICIPATION IS ESSENTIAL TO DESIGNING AN EFFECTIVE GRIEVANCE MECHANISM

Stakeholders – including potentially affected communities, indigenous peoples and civil society groups – must be afforded meaningful opportunities to provide input into the design of the mechanism. Such participation will help to ensure that the mechanism is legitimate and consistent with the guiding principles described here.

KEY CONSIDERATIONS IN THE OPERATIONAL DESIGN OF A GRIEVANCE MECHANISM

The following section offers considerations regarding the scope, functions, and design elements of a grievance mechanism in the UNFCCC:

Scope: Given the nature of climate change impacts, a UNFCCC-specific grievance mechanism must have the capacity to consider and address complaints regarding both substantive impacts, such as harm to economic, social or environmental interests, and procedural ones. Examples of functioning grievance mechanisms in each of these areas currently exist in the OECD system, where the National Contact Point can address substantive concerns, and the Aarhus Convention, where the Compliance Committee addresses procedural issues.

Function: To be effective, a grievance mechanism must, at a minimum, have the authority to consider complaints and issue recommendations. It should be able to monitor and assess compliance with the relevant rules. To do this, it should have the capacity to engage in fact-

GUIDING PRINCIPLES

Any grievance mechanism in the UNFCCC should achieve the following goals:

Effectiveness, in providing timely and meaningful recourse;

Legitimacy, which requires independence from political influence;

Accessibility, particularly for complainants;

Predictability, by way of clear and known procedures and monitoring of implementation;

Equitability, by ensuring aggrieved parties can engage in a process on fair and equitable terms;

Transparency of process and outcome;

Rights compatibility to ensure consistency with internationally recognized human rights standards;

Participation, at all relevant stages of the decision-making process.

finding. It should also have the power to award remedies such as just compensation, remediation and/or injunctive relief. The Aarhus Compliance Committee, the World Bank Inspection Panel, and the UN Committee against Torture are examples of grievance mechanisms empowered to undertake fact-finding and to monitor and assess compliance. Other mechanisms, such as the World Bank Inspection Panel and OECD National Contact Point, assist with dispute resolution. Beyond core functions of fact-finding, compliance assessment, and awarding remedies, grievance mechanisms could include an appellate function and offer mediation or adjudication services.

Design: An effectively designed grievance mechanism must ensure access to justice for affected people, jurisdiction over offending actors, a competent body to review complaints, and a means of enforcing that body's recommendations.

- **Who can submit a complaint:** To be effective, a grievance mechanism must allow affected people, as well as NGOs or others with information concerning potential threats to the affected people's rights, to submit complaints. All indigenous peoples and local communities, regardless of language, culture, and technical resources, must be able to use the process of preparing, submitting and receiving complaints without the assistance of outside experts. Some grievance mechanisms, including those established under the human rights treaty bodies, require individuals using the mechanism to be within the jurisdiction of the State party against whom their complaint is registered. Because of the transboundary nature of climate change effects and response measures, such a restriction would be inappropriate in a UNFCCC grievance mechanism, which should draw from the more relevant examples of bodies that do not include such constraints, such as the Aarhus Compliance Committee and the OECD National Contact Point.
- **Who must respond to a complaint:** Those submitting a complaint must be able to submit it with respect to the entity most responsible for the potential harm and most able to provide a remedy. Depending on the issue, this could include one or more of many different actors, including international, national, and local government agencies.
- **Characteristics of the body addressing the grievance:** The mechanism authorized to receive complaints must be impartial, independent, transparent and credible. To be independent, the budget for the mechanism should be sufficient, reliable, and not subject to political manipulation. To be credible, members of the body should be highly qualified and internationally recognized as providing quality expertise in a fair and efficient manner. Their expertise should emphasize the rights, rules and standards that the grievance mechanism is intended to guarantee (for example, it is more important that a member of a REDD grievance mechanism have human rights expertise than that she be an expert in the trading of forest-related carbon credits). To maximize effectiveness, transparency, and legitimacy, outcomes of the grievance process, including interim and final decisions on both process and substance, should be made public immediately (subject to the redaction of any legitimately confidential information). The process should proceed according to a timeline that balances the realities of local community participation with the need for rapid decisions. The mechanism should report back to the persons or community making the complaint about what happened to the complaint, as the World Bank Inspection Panel does. The mechanism should also have the capacity to monitor how findings are addressed and recommendations are implemented.

- **Potential remedies:** To be effective, a grievance mechanism must be able to issue appropriate remedies if it finds a violation of an obligation or breach of duty. The degree of harm or the potential for ongoing violations may determine the appropriate action for remedy. If specific action is warranted to remedy a situation, the mechanism should have a sufficient budget and authority to monitor outcomes. Further, it is important to establish a clear understanding of who has oversight and authority to provide a remedy. It is also important to agree on applicable rules and dispute resolution processes before harm occurs to ensure that remedial action is satisfactorily completed. Depending on the circumstances, potential remedies may include: declarations and public disclosure (findings of violation); injunctions against initiating or continuing a project or other activity that is or may be in violation of relevant rules; compensation; sanctions; and/or restitution.

EXAMPLE OF A GRIEVANCE MECHANISM: COMPLIANCE ADVISOR/OMBUDSMAN

As the complaint mechanism for projects supported by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the Compliance Advisor/Ombudsman (CAO) of the World Bank Group addresses complaints submitted by people affected by the social and environmental impacts of IFC and MIGA projects, whether or not there is an allegation of a violation of policies or procedures. The office first uses its ombudsman function to determine whether a complaint can be resolved collaboratively and, if not, may use its compliance function to assess whether the IFC (or MIGA) violated its own policies, performance standards, guidelines, procedures and requirements.

The CAO process for addressing complaints is as follows:

1. The Ombudsman conducts an assessment of the issues and concerns raised in the complaint. The Ombudsman identifies key stakeholders to be consulted, and considers their views and incentives to reach resolution and determine what processes may be most useful to them. The assessment can include review of IFC/MIGA files, meetings with stakeholders, site visits, and public meetings in the project area. The Ombudsman offers suggestions to the principal parties on how to proceed.
2. Based on the assessment, the Ombudsman works with the stakeholders to agree on a collaborative process for addressing the issues raised in the complaint. Collaborative processes can include various approaches, including facilitation and information sharing, joint fact-finding, dialogue and negotiation, and if agreed by all parties, conciliation and mediation.
3. If the collaborative phase does not result in progress, then the Ombudsman can refer the complaint to the CAO's compliance function. An audit will then evaluate whether IFC or MIGA complied with its policies, performance standards, guidelines, and procedures.

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