

## **Draft CD-OGM for grievances arising out of the Thilawa SEZ**

*The proposal below reflects the first draft of the CD-OGM Design Committee. The content is subject to change based on the input, concerns, and preferences of others in the community. Nothing herein is to be taken as the final position of the community at this stage. Rather, we wanted to share our progress so far, with the purpose of demonstrating our desire to create a process that is both accessible and fair. We believe that this will benefit all parties.*

### **Summary**

The CD-OGM will be run by a multi-stakeholder body, made up of representatives from the affected communities, project stakeholders, and a trusted third party. All members of the multi-stakeholder group must be approved by both parties. All members will be subject to strict scrutiny and regular oversight (discussed below).

The basic structure of the CD-OGM will consist of 5 steps: communicating the grievance, initial determination/filter, investigation, decision and offer of remedy, and implementation. The communication of grievance step outlines how complaints can be filed. The initial determination step filters out complaints that do not arise from the SEZ. The investigation step investigates the claims and assesses the level of harm. The decision and offer of remedy step is where the final determination is made, and if the claim is valid, the offer of the remedy is negotiated. The final step is implementation to ensure that the offered remedy is provided.

After the filter and the decision stages, there will be an option to appeal if the complainant does not agree with the decision. There will also be an option to leave the process at any stage. Further, this mechanism will not restrict the complainant's right to pursue remedy through a judicial process, even if the complainant goes through the full CD-OGM process.

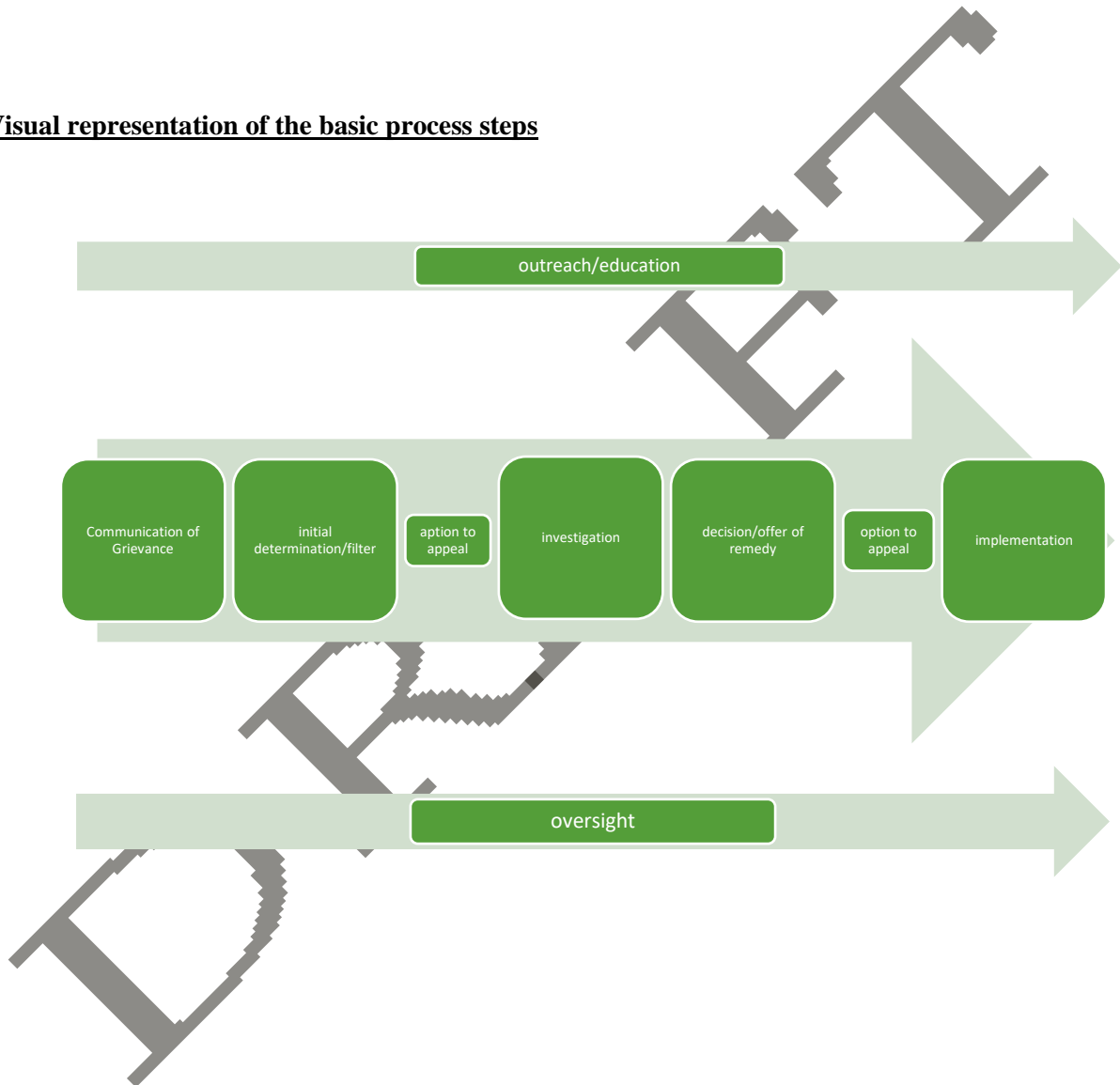
The running of the mechanism will be conducted by a multi-stakeholder body which will include community representation, project proponent representation, and the inclusion of an independent third party. This body will be responsible for implementing each step. Whoever fills these roles must be trusted by all parties, agreed to by all parties, and will be subject to oversight. The appeals will be heard by a separate multi-stakeholder body. This body will include a special investigation unit who may be asked to conduct additional investigation. The members will be chosen in the same way as the mechanism body, and will also be subject to oversight.

A single Central Office will be built to serve as the main location for staff and information. It will house the responsible parties for each step on different floors, and the parties will not have access to the other offices or information therein except as outlined in the process steps. All information related to each complaint will be stored in the Central Office, and can be accessed by the complainant at the satellite office upon request. Taking the necessary precautions regarding anonymous and confidential information, complainants shall at all times be able to access the updated information about his/her complaint. Further, information stored in the Central Office will be used for the monthly reporting.

Additionally, four (4) satellite complaints desk offices will be set up to provide convenient and accessible locations for all complainants to obtain information and to file complaints. A separate office will be built for the Appellate body in order to maintain the integrity and independence of each body.

The mechanism will include oversight processes to ensure the proper functioning of each step, as well as the functioning of the mechanism overall. These will include, but are not limited to, an external monitoring body, a community monitoring body, monthly public reporting, and adequate documentation provided to the complainant at each stage.

**Visual representation of the basic process steps**



## **The Process Steps**

### **Step 1: Communication of the grievance**

We have identified 6 Access Points which we see as convenient avenues for complainants to file a complaint. Complainants shall have the option to file a complaint over the phone, via SMS or Viber, by postal mail, at monthly meetings, at designated Complaints Desks, and through a Complaints Box. All complaints will be sent to the central information office. Phone complaints can be made Monday to Friday from 9am to 4pm. Viber complaints may be filed any time. The complaints desk will be open daily from approximately 9am-5pm, with the exact hours subject to change pending further community input and depending on who will be staffing it. The complaints boxes will be accessible 24 hours and will be located outside of the complaints desk offices. The complaints will be collected from the boxes daily. The meetings will take place monthly, and the location to be determined. Periodic feedback collection will be conducted, and additional Access Points may be added based on community members' preferences and needs.

When filing a complaint, the complainant will provide: his/her name (with the option to file confidentially or anonymously, or through an advocate); information on what happened; information on when the harm occurred; the location where the harm occurred. The complainant can, if they choose, also provide: any additional evidence that you have (photos, etc.); any information on specific guidelines, rules, laws, etc., that have been broken; information on any history of trying to resolve the harm prior to filing, if applicable.

The complainant will receive a formal written acknowledgement at the time of filing. The acknowledgement is to include: an acknowledgement that the complaint has been filed; a case number; a summary of the complaint; an explanation of the process steps in the mechanism; the timeline to next step; how to contact someone for questions, including specifically who to contact and their contact information. This acknowledgement is to be signed by the individual receiving the complaint and stamped with an official stamp.

For complaints filed over the phone or via the complaints box, the acknowledgement will be either mailed to the home of the complainant, mailed to a different address of his/her choice such as the address of an advocate, and it is also to be available for collection at the complaints desk if requested. For complaints filed via SMS or Viber, the acknowledgement may be sent via SMS or Viber as a photo, with the option to collect a copy at the complaints desk if requested. The acknowledgements sent this way shall be received within three (3) days of the complaint being filed.

### **Step 2: Initial Determination/Filter**

Within one (1) week of filing the complaint, the complainant shall receive a formal notification whether the complaint will proceed to investigation. If the decision cannot be made within that week, then a formal notification shall be received explaining in detail the cause of the delay and the updated deadline. We are still in discussion on the length of time that the extended deadline may be.

The formal notification must explain how the decision was made. If the complaint is rejected, the notification must detail why. The notification must also outline the other options available to the complainant, including other grievance redress processes. The notification must notify the complainant of his/her right to appeal the decision, and explain in detail the appeals process. If the complaint is accepted, it must outline the timeline to the next step.

All notifications must include the signature of the party responsible for the decision, as well as a different stamp indicating the complaint has gone through the second step. Complainants shall receive the formal notification via mail, Viber, or in-person delivery. A copy of the notification must be available at the complaints desk.

### **Step 3: Investigation**

For complaints that are accepted during Step Two (2) or through the appeal, investigations will be conducted in order to verify the truth of the complaint, as well as to identify the cause and extent of the harm, and if possible, the responsible party(ies).

Investigations may be conducted through interviewing the complainant or other relevant actors, either in person or over the phone. For anonymous complaints, the representative who filed on behalf of the complainant may be interviewed on the complainant's behalf. Interviews with the complainant will take place at the location of their choosing. For the other interviews, interviews will take place at a location where the interviewee feels comfortable.

Investigations may also include physical inspection of the area where the impact occurred and places possibly connected to the cause of the impact, scientific investigation, and review of documents. Outside scientists or experts may be brought in to assist with the scientific testing, but must be approved by the community to ensure objectivity. Evidence collected during physical inspection and/or scientific testing may include photos, videos, sound recordings, notes, and copies of documents, signatures and stamps.

The investigation shall take no more than fifteen (15) days. If it cannot be completed within fifteen (15) days, then the investigators must produce a proposed new timeline. The time frame for that must be reasonable, and it can be denied by the complainant.

### **Step 4: Decision and Offer of Remedy**

Once the investigation is complete, the investigators will submit their findings to the decision-making body. Decisions will be made on a case-by-case basis, after reviewing the evidence collected during the investigation. While final decisions- and if applicable, an offer of a remedy -are decided case by case, they must conform to both domestic law and international standards and norms. Once the decision is made, a proposed Agreement is sent as a formal document either by post or for collection at the Central Office, at the choice of the complainant.

If a remedy is offered, the proposed Agreement must include: a detailed explanation of how the decision was made; the remedy offered and a detailed explanation of why the remedy offered is reasonable; information on the next steps (the option to negotiate the offer and the process for doing so); a proposed Implementation Action Plan (IAP) (subject to adjustment based on the negotiations); information on who will be responsible for implementation and who to contact for questions, status updates, or problems; an explanation of the oversight processes; a provision explaining that the final Agreement is a binding contract, and will include consequences for non-compliance (consequences which may include the intervention of an outside party, escalation to another dispute resolution process such as mediation or arbitration, litigation, public declaration of breach of contract, or additional financial compensation); and a provision explicitly stating that signing this agreement DOES NOT preclude access to judicial redress.

The proposed Implementation Action Plan will include: details of each implementation step with a proposed timeline; explanation of why the timeline is reasonable; the process for if the timeline cannot be met (including the timeline for requesting an extension, the information required in the request, and the complainant's right to deny the request); the process for providing regular updates on the progress of the implementation; the contact person responsible for providing updates; and the process for making changes to Plan (either party can request and both parties must agree). The complainant retains the right to challenge the implementation plan and demand more detail where needed.

If the complainant chooses to negotiate the remedy and/or the IAP, the negotiation meeting must take place within seven (7) days. The meeting will be held in the Central Office. The meeting participants will include the complainant, the decision-making body, the party responsible for implementation, and the responsible stakeholder (if identified). The responsible stakeholder also has the right to challenge the decision and/or the remedy offered, and to raise concerns during this meeting. The complainant has the right to have a lawyer or advocate present for all of the negotiations, and has the right to think about the options outside of the meeting before making a decision. The final offers and agreements will be recorded in the final Agreement.

If a remedy is not offered, the document must include: a detailed explanation of how the decision was made; information on the appeals process; and information on other remedial mechanisms that may be available and how to access them.

### **Step 5: Implementation**

The activities and timeline for the implementation will be outlined in the finalized IAP. The IAP is developed on a case-by-case basis, so the specific activities and timelines will vary. However, the standard of the implementation activities must be aligned with both domestic legal standards and international norms, particularly the right to "adequate, effective, and prompt" remedy. Similarly, the timeline must be reasonable. Both the activity details and the timeline must be agreed to by the complainant. The one exception to the case-by-case basis is with cash compensation remedies, which must be paid within one week.

If the responsible party wishes to change any activity agreed upon in the IAP, the party must submit a request in writing to the complainant with a detailed explanation of why the activity cannot be followed as planned, and proposing alternatives. The complainant has the right to refuse this request, and if the responsible party fails to follow the original IAP, the complainant may treat it as a breach of the Agreement, and take additional measures.

The implementing party will be responsible for sending regular updates on the progress of the implementation to the complainant. The complainant will have the contact information for the person responsible for providing updates. The complainant may also access this information at the Central Office. Status updates on implementation are to be considered as a responsibility of implementation, and failing to provide updates will be considered a breach of the Agreement.

If the responsible party cannot meet the timeline agreed upon in the IAP, the party must submit a request in writing to the complainant with a detailed explanation of why the timeline cannot be met, and proposing a new timeline. The complainant has the right to refuse this request, and if the responsible party fails to meet the original deadline, the complainant may treat it as a breach of the Agreement, and take additional measures.

## **Appeals**

Complainants will have the opportunity to file an appeal at any stage where a decision has been made, identified at Steps Two (2) and Four (4). For Step Four (4), the complainant may file an appeal if the decision was not in his/her favor, as well as if the parties are not able to come to an agreement on the terms of the remedy offer and IAP during negotiations. At the final decision stage, any particular stakeholder found to responsible or will be responsible for implementation of the remedy, they also have the right to file an appeal through the same process, or informally through the negotiation meetings. All appeals will be filed in writing and sent to the Appellate Body Office. If needed, the complainant may have an advocate or representative assist in writing the letter. The appeal must be filed within two (2) weeks of receiving notification of the decision or within two (2) weeks of the failure to reach an agreement during negotiations.

The complainant shall provide the original complaint, plus any additional documentation or evidence to support his/her claim. If the responsible stakeholder files an appeal, it shall provide documentation and evidence to support its claim.

The Appellate Body will review all documentation and evidence provided, and will make a decision within two (2) weeks. If the body deems that there is not enough information to make a decision for an appeal from Step Four (4), it shall require the special investigation unit to conduct further investigations. These investigations may be conducted through the same means as the original investigation. The special investigation unit may choose to interview additional people, expand the scope of scientific testing or physical inspection, and require additional documentation from any relevant party. The locations of the interviews will follow the same guidelines as the original investigation. If further investigation is needed, the Appellate Body may extend the deadline by fifteen (15) days.

If the Appellate Body finds in favor of the appellant in an appeal filed at Step Two (2), the Appellate Body will send the complaint to the responsible parties in Step Three (3) to initiate the investigation. The responsible party in Step (3) will note in its reporting that the complaint was received by the Appellate Body.

If the Appellate Body finds in favor of the appellant in an appeal filed at Step Four (4), the decision will be sent back to the responsible party at Step Four (4), so that the parties can draft a new proposed Agreement and IAP. The parties will then negotiate the new documents. The responsible party in Step (4) will note in its reporting that the new agreement was created according to the instructions of the Appellate body. The responsible party for Step Five (5) will also note in its reporting which Agreements were finalized after an appeal.

If the Appellate Body does not find in favor of the appellant, the appellant may seek redress through another remedial process, including mediation or litigation.

## **Oversight**

Robust oversight is critical to the proper functioning of an OGM. We have identified a number of oversight processes that will help ensure that the mechanism functions properly and that all actors perform their duties in a responsible and transparent manner.

Noncompliance on the part of the body responsible for that step will have consequences including removal of the responsible individual(s) from their position, possible re-structuring of the responsible body for that step, and further investigation into the functioning of the responsible bodies for all steps, public reporting of the noncompliance, financial compensation for the complainant in addition to the remedy for the harm itself, escalation of the complaint to another remedial mechanism, including litigation. For the individuals working in the multi-stakeholder body, consequences for non-compliance will be articulated in detail in the employment contracts.

Noncompliance on the part of the stakeholder will have consequences including reporting of the noncompliance to stakeholders and the public, financial compensation for the complainant in addition to the remedy for the harm itself, escalation of the complaint to another remedial mechanism, including litigation.

### **Monthly Reporting**

The responsible parties at each step, including the Appellate Body, will be required to submit monthly public reports. The specific content of the reports will vary for each step. For Step One (1), the reports will include the number of complaints, through which channel it was filed, and the type of harm that occurred. For Step Two (2), the reports will include how many complaints were rejected and the reason for rejection (including the methodology used to make the decisions), and how many have gone through. For Step Three (3), the reports will include how many complaints have been received from the Step Two (2) body, how many have finished the investigation, how many are still under investigation and the status and expected completion timeline of active investigations, and a breakdown of the different investigation methods used. For Step Four (4), the reports will include the number of complaints received from the investigation team, the number that were offered remedies and not, with a detailed explanation of the methodology used to decide and what the complaints were about, the number resolved and in negotiations. For Step Five (5), the reports will include the number of complaints that received remedy, the number still in progress and status updates on the progress, explanations of any delays, and what types of remedies are being implemented. For the Appellate Body, the reports will include the number of appeals filed, whether the appeal was filed by a complainant or a responsible stakeholder, from which Step the appeal was filed, the number of appeals decided in favor of the appellant and the methodology used to decide, the number of appeals decided not in favor of the appellant and the methodology used to decide, how many appeals required the special investigation unit and a breakdown of the different investigation methods used, and how many appeals are still open.

In order to protect the privacy and personal security of the complainants, reports shall under no circumstances include names of complainants or descriptions that may cause his/her identity to be known.

### **Monitoring**

Monitoring and auditing will be conducted by two different groups. There will be an External Monitoring Body as well as a Community Monitoring Body. The two bodies may share information, concerns, and updates, though they will work independently.

#### ***External Monitoring Body***

The External Monitoring Body members will be chosen by all parties in the multi-stakeholder group, though they do not report to them.

The External Monitoring Body will visit the Central Office monthly, before the monthly reports are due. The External Monitoring Body will review the monthly reports, and can require the responsible party to

fill in additional required details. Additionally, the External Monitoring Body will also conduct at least one more unscheduled visit per month.

The External Monitoring Body will review documents and interview the parties. If appropriate, they may also visit the complainant, the location where the alleged harm occurred, or any relevant location to verify the accuracy of the reporting and to check on the progress of the relevant Step. The Monitoring Body will document their visits and will share the results directly with all project stakeholders as well as publicly.

Identification of noncompliance will result in penalties for the individual staff members responsible as well as project stakeholders, as discussed above.

### ***Community Monitoring Body***

This monitoring body will serve as an opportunity for concerns community members to conduct additional oversight through methods of their choice. The details of this monitoring body will be outlined after outreach and collaboration with the broader community.

### **Linking to other Remedial Mechanisms**

Complainants may choose to leave the CD-OGM at any time to pursue remedy through a different remedial mechanism. Both complainant and defendant company may request the information gathered during the CD-OGM investigation to present as evidence in any other remedial process, and may bring investigators as witnesses.

### **Implementation of the overall OGM- Outreach, Review, and Amendments**

To sustain the implementation of the mechanism itself and to ensure that it is accessible, trusted, and satisfactory to the intended users, a long-term plan will be developed for outreach, monitoring and feedback collection. The outreach will be led by the community members, who will share information about the mechanism: what it is, how it works, and a complainant's rights and responsibilities under it. The outreach will also provide regular opportunities for community members to give feedback, voice concerns and suggest improvements, and to ask questions. All concerns and questions raised will be recorded (anonymously if requested) and will be used to make improvements.

Any proposed changes to the CD-OGM as a result of the feedback will be formalized through an Amendment of the original CD-OGM, and must be agreed upon by all stakeholders in writing in the same manner as this Agreement.

### **Logistics- Staffing and Funding the CD-OGM**

#### **Staffing**

The staffing of the CD-OGM will consist of workers at each step, including appeal, managers at each step, including appeal, a separate investigation team for the appellate body, a separate oversight body for each step, an oversight body for the overall mechanism, and community trainers/outreach team.

#### ***Workers at Each Step***

***The specific roles and responsibilities for the individual step members is still in discussion.***



### ***Process Step Managers***

There will be one Process Step Manager for each step, who will come from all three groups in the multi-stakeholder body. The managers will be responsible for: overseeing the work of the step that they manage; monthly reporting; managing the budget; answering queries on the status of complaints from complainants; reporting any problems or non-compliance; and coordinating with other managers to ensure smooth transitions from step to step. The Process Step Managers will work out of the central office, on the designated floor for their process step.

### ***Oversight Monitoring Body***

The oversight body for each individual step is described above.

### ***Oversight Management Body***

The oversight body that oversees the whole mechanism will be made up of three members, one from each of the stakeholder groups in the multi-stakeholder body. The Oversight Management Body will be responsible for overseeing the work of the individual oversight bodies (both External and Community), as well as the work of the managers at each step. The Oversight Management Body has the authority to fire the members of the individual oversight bodies and the managers at each step. *The protocol for firing is still in discussion.*

### ***Operational Fund Management Body***

The operational funds will be managed by a multi-stakeholder body, similar in makeup to the body running the process steps. It will consist of representation from project proponents, community members, and a third party. The third party must be agreed upon by both of the other stakeholders, and must have relevant personal and professional qualifications, including expertise in finance management, objectivity, and understanding of the situation on the ground. They must be unbiased and able to mediate potential disagreements that may arise. The OFMB will work out of the central office, on a designated floor.

## **Funding**

### ***Remedial Funds***

The remedial funds will be paid by the party/parties found responsible for causing the harm. If the party/parties cannot be identified, or if the party/parties are insolvent at the time of payment, the remedial funding will be drawn from a supplementary fund. All parties who obtain benefit from the Thilawa SEZ, including tenant companies, the project developer, and permanent related companies such as contractors and service providers, will contribute to this fund.<sup>1</sup> The payments will be held in a trust. *Details of the management of the trust is still in discussion.* The amount of funds to be paid will be negotiated in a separate agreement, and will be memorialized in a written contract and binding on each party. Each party will be required to report on their payments annually. The SEZ Management Committee will be responsible for ensuring that the parties make their annual payments. Non-compliance will result in actions described above.

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<sup>1</sup> Myanmar's Environmental Conservation Law, para 7(o) and Environmental Conservation Rules para 30(b) requires a similar fund which all parties who "benefit from the natural environmental service system and businesses which explore, trade and use the natural resources" must pay into, to ensure that polluters pay, and that in circumstances where the polluter is insolvent or leaves, payments can still be made.

The disbursement of funds will come after the agreement is signed by all parties in Step 4. The manager of the trust does not have the authority to deny or later the disbursement amount, timeline, or recipient. If the trust manager has legitimate concerns over the legality of the final agreement, he/she can raise it with the parties running Step 4. This process shall not be used to intentionally delay the implementation of a remedy, and if it is found to be the intention, the trust manager will be considered non-compliant in his/her duty.

### ***Operational Funds***

The operational funds will be the responsibility of the project developer, MJTD. The project developer may seek to reclaim these funds from other parties, or to require them in advance from other parties, but will bear the responsibility for paying into the fund annually. The specific budget will be negotiated separately, and will be signed by representatives from all parties in the Multi-stakeholder body. Any changes to the budget must be approved in writing by all of the signatories.

The funds will be managed by the Operational Fund Management Body, described above. The process for disbursing the funds will consist of two main processes. The first process is the disbursement from MJTD to the Operational Fund Management Body (OFMB). MJTD and the OFMB will sign a contract to formalize the fund disbursement process and to guarantee the funding. The funds will be disbursed automatically to the OFMB and held in a bank account managed by the OFMB. *The disbursement timeline is still in discussion.* In addition to the contract, both parties must provide a signature acknowledging sending and receiving the funds.

The second process is for the disbursement of funds from the OFMB to the Process Step Managers. Each process step, including Appeals, will have a budget agreed upon in advance. The Managers must send a request for disbursement when funds are needed. The request must meet criteria set out in advance, and the request must be granted if it meets the criteria. The funds must be disbursed within 7 days. If the funds needed exceeds the original budget, the Manager may request additional funding. The request process is the same, with additional criteria to meet. *The criteria for both regular and additional disbursements are still in discussion.*

All OFMB and Process Step Managers will have Guidelines that must be followed. These Guidelines will include the budget, details of the disbursement processes, including the timeline, details of the responsibilities of each role, and the consequences for failing to follow the Guidelines. Any actor who does not follow the Guidelines will be removed from their position.

All parties will report regularly on the funds received and spent. Other oversight processes will fall under the responsibilities of the Oversight body overseeing the CD-OGM overall.

*\*We are still working on other logistical details, such as details on the staffing of the multi-stakeholder body, the specific budget, the scope of harms and remedies, and consequences for non-compliance. We will update this draft as the decisions are made, and will discuss these at subsequent meetings.*