Annual Report

Independent Complaints Mechanism

DEG / FMO / Proparco

January – December 2021

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Definitions

Client	The entity that is financed by DEG/FMO/Proparco based on a direct contractual relation and responsible for carrying out and implementing all or part of the DEG/FMO/Proparco-Financed Operation.
Complaints Office	Function performed by FMO's Internal Audit function, by DEG's Corporate Strategy and Development Policy Department, and by Proparco's Risk Department respectively, which registers and acknowledges receipt of Complaints, coordinates adequate fulfilment of the Complaints process, and provides practical support to the Independent Expert Panel.
Compliance Review	The process to determine whether DEG/FMO/Proparco have complied with the policies that may be relevant for an admissible complaint.
Dispute Resolution	The process to assist in finding a resolution for the issues underlying an Admissible Complaint. This process may include information sharing, fact-finding, dialogue, and mediation. A pre-condition for Dispute Resolution is that all relevant parties are willing to participate in such a process.
DEG/FMO/ Proparco-Financed Operation	Any activity or any asset of the Client that is or is going to be financed by DEG/FMO/Proparco funds or from funds administered by DEG/FMO/Proparco in whole or in part, regardless of the nature of the financial instrument (loans, equity, project financing, grants, technical cooperation assistance and guarantees).
Independent Expert Panel	A group of three persons assessing and handling Complaints, with environmental, social, legal, and financial expertise. In exercising its mandate, the Panel is fully independent of DEG, FMO and Proparco.
Mechanism	Independent Complaints Mechanism
Panel	Independent Expert Panel

1. Introduction

1.1 Why and how the ICM has been created

As part of their commitment to act responsibly and transparently, in 2014, DEG and FMO established the Independent Complaints Mechanism (ICM) to ensure that individuals, groups, communities or other parties who believe to be adversely affected by a DEG and/or FMO-Financed Operation have the right to be heard and the right to raise complaints with both institutions, where they believe there has been a breach of the organizations' policies or procedures.

Based on the experience of the first cases and after consultations with civil society actors involved in them, on 1 January 2017, the ICM published an updated and improved version of its ICM policy. Proparco joined the ICM in February 2019.

The ICM started at a time, when complaint handling and remedy mechanisms were becoming more and more important. Since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) by the Human Rights Council in 2011, all business actors are encouraged to have a functioning remedy system in place as part of their overall human rights due diligence. The UNGP framework is relevant for DEG's, FMO's and Proparco's clients as well as for banks and the banking sector in general. The UNGPs have also been taken up by the latest OECD Guidelines on Multinational Corporations as well as recent OECD guidance describing and explaining human rights due diligence in general and for specific sectors.

1.2 The mechanism today

The ICM consists of the Complaints Offices of DEG, FMO and Proparco and an Independent Expert Panel (IEP). The IEP decides on the admissibility of each complaint, performs preliminary reviews to determine whether a complaint should proceed to the next stage, and when applicable, either performs a Compliance Review or supports a Dispute Resolution Process in accordance with the ICM Policy. The ICM also monitors the implementation of measures to bring a project into compliance or measures agreed as outcome of a mediation process. The IEP is composed of three members, all of them being internationally recognized human rights experts:

- Inbal Djalovski
- Dr. Arntraud Hartmann
- Michael Windfuhr

The ICM adheres to good international practice and works in line with its policy and procedures available under https://www.deginvest.de/icm, https://www.fmo.nl/icm, https://www.proparco.fr/icm and https://www.proparco.fr/en/icm.

This is the seventh annual report of the Mechanism. It covers the activities of the ICM from January 1, 2021 until December 31, 2021. The annual report is published simultaneously by DEG, FMO and Proparco on their respective websites, after it has been submitted for information to their supervisory boards.

1.3 Impact of CoViD-19 restrictions

The CoViD-19 crisis continued to impact the ICM's activities. Save for one site visit in Panama in September 2021, CoViD-19 restrictions on travelling and gatherings have largely precluded the Panel from conducting site visits and in-person consultations. Therefore, the ICM adjusted its case handling, in discussion with the parties involved, to the extent possible. The IEP continued its communications with complainants and other parties via videoconferencing and calls with the view to achieve as much progress as possible under the circumstances. However, virtual communications with complainants and other local stakeholders have not always been possible and, in certain cases, CoViD-19 restrictions led to delays in handling and monitoring of cases.

1.4 Complaint-related activities

During the reporting period from January 1st until December 31st, 2021 the following complaint-related activities took place:

- Regarding DEG complaints:
    - The IEP conducted several meetings with relevant stakeholders in the case of PHC, a company based in the Democratic Republic of the Congo. On 19 March 2021, the Panel issued an Interim Report on the status of the Dispute Resolution Process and expected next steps. The Panel's activities focused on searching and selecting a suitable expert mediator to lead a dispute resolution process. A Mediator was selected in October 2021.
- Regarding FMO complaints:
    - The IEP conducted its Preliminary Review into the Nyamagasani case in Uganda, where community members filed complaints concerning impacts of the Nyamagasani I and II Hydro Power Plant and published its Preliminary Review Report on 9 February 2021. Based on the parties' agreement, a Dispute Resolution Process was launched in June 2021. The Dispute Resolution successfully ended with a settlement agreement in December 2021.
    - In September 2021, the IEP declared a complaint concerning a solar energy project in Jordan inadmissible, finding that this was a client-supplier dispute and therefore not within the scope of the ICM policy.
    - In October 2021, the IEP declared a complaint concerning a solar power project of FMO in Ukraine inadmissible, finding that there was no linkage to environmental, social and human rights issues.
    - In December 2021, the IEP declared inadmissible a complaint concerning another hydropower plant investment of FMO in Uganda, finding that the complainant failed to sufficiently provide indicia of substantive harm.
- Regarding FMO and DEG joint complaints:
    - In September 2021, as part of monitoring activities, the IEP visited the Barro Blanco site in Panama.
    - Due to CoViD-19-related travel restrictions, it was not possible to visit the Lomé Container Terminals (LCT) in Togo. In 2021, the IEP continued in its Compliance Review activities.
- Regarding Proparco and FMO joint complaint:
    - In April 2021, the IEP declared a complaint concerning a project in Sierra Leone inadmissible. The complaint was filed in November 2020 and the Panel has decided to

close the case in light of the lenders' efforts made to remedy the issue, making the complaint procedure unnecessary in light of the circumstances of the case.

- Regarding Proparco and DEG joint complaint:
  - The IEP declared a complaint admissible concerning a joint financial sector financing of DEG and Proparco in FirstRand Bank, South Africa. FirstRand Bank extended loans (from funds other than Proparco and DEG loans) to a gold mine in Liberia which allegedly caused adverse impacts to neighboring communities. The IEP conducted a Preliminary Review of the complaint and recommended to initiate a Dispute Resolution Process.

2 Overview of complaints

2.1 Complaints received in the reporting period

In the reporting period from January 1st until December 31st, 2021 the ICM received four new complaints.

Complaint number	Date of complaint	Receiving complaints office	Business sector	Country of DFI client	Status	Phase
21-001	25.02.2021	DEG, PROPARCO	Finance	South Africa	complaint admissibility confirmed	Preliminary review
21-002	23.08.2021	FMO	Energy	Uganda	Complaint declared inadmissible	Closed
21-003	30.08.2021	FMO	Energy	Jordan	Complaint declared inadmissible	Closed
21-004	16.09.2021	FMO	Energy	Ukraine	Complaint declared inadmissible	Closed

2.2 Monitoring - Barro Blanco (14-001, 14-002 / FMO and DEG)

In May 2015, the IEP issued a Compliance Review Report related to a complaint regarding the Barro Blanco Hydroelectric Project (BBHP) in Panama. Therein, the IEP has made several findings of non-compliance in relation to FMO and DEG. In accordance with the ICM Policy, the IEP has monitored the implementation of actions aimed to address these non-compliances. The IEP issued two Monitoring Reports in August 2016 and November 2017. The IEP visited the BBHP site in Panama in September 2021 in order to assess the current situation and meet with affected communities and stakeholders.

2.3 Monitoring - Sendou I (16-001, 16-002 / FMO)

Sendou I is a 125 MW coal-fired power plant project near the town of Bargny in Senegal. The ICM received two complaints in 2016 in relation to this project, in May 2016 and in July 2016. The IEP decided to treat the two complaints as one case. The complaints relate to similar alleged harms with respect to relocation and resettlement, air pollution and health issues and community consultation.

In October 2017, the Panel issued a Compliance Review Report. The Report stated non-compliance findings regarding environmental and social policies applicable to FMO financed projects.

In January 2020, the Panel issued a Monitoring Report, which assessed actions taken to bring the project into compliance. The Monitoring Report found substantial outstanding non-compliance issues. A second monitoring visit, originally planned for 2021, had to be postponed due to COVID-19 travel restrictions.

2.4 Compliance Review - Lomé Container Terminal (18-001 / FMO and DEG)

The complaint in relation to Lomé Container Terminals (LCT) in Togo was received by the Complaints Offices of FMO and DEG on 28 August 2018. The complainants are local community members represented by a civil society organization called “Collectif des personnes victimes d’érosion côtière”

(Collective of victims of coastal erosion).

The complainants allege that the project has accelerated the erosion of the coast with negative impacts on their homes, livelihoods, and communities. The complaint raises several questions in relation to both the due diligence carried out by FMO and other lending institutions and the quality of the Environmental and Social Impact Assessment. This complaint contains certain overlapping issues with a complaint that was filed with the Compliance Ombudsman Office (CAO) of the IFC in 2015. The CAO issued a Compliance Investigation Report on this complaint in August 2016.[1]

The IEP issued a Preliminary Review Report in January 2020. The IEP concluded that the complaint should proceed to investigation, while taking notice of the findings made by the CAO in its 2016 Compliance Review Report. The ICM investigation will thus rely on the findings of the CAO report, and will not reassess compliance issues prior to 2016. Instead, the IEP focuses in its investigation on actions taken since the issuance of the 2016 CAO compliance investigation report. The ICM Policy provides that, in cases where complaints are filed with other recognized complaint mechanisms in the network of the Independent Accountability Mechanisms, the ICM will cooperate closely with the other institution to avoid duplication (see 3.17 ICM Policy). The ICM thus cooperates closely with CAO in the compliance review investigation.

In 2021, the IEP continued in its compliance review activities and conducted several interviews with relevant stakeholders using remote communication means. Due to ongoing CoViD-19 travel restrictions, a site visit to Togo continues to be impossible. In the circumstances of the case, the IEP decided that it would be preferable to finalize the compliance review without a site visit rather than to extend the investigation until such time when a site visit will become possible.

2.5 Dispute Resolution – PHC (formerly "Feronia") (18-002 / DEG)

On 5 November 2018, DEG's Complaints Office received a complaint about Plantations et Huileries du Congo SA (PHC), a palm oil producer based in the Democratic Republic of the Congo. PHC was a subsidiary of Feronia Inc., Canada. In 2020, the company's debt and ownership went through a restructuring process. Previous minority shareholders took over the majority of PHC's shares, while the Government of the Democratic Republic of the Congo remains a minority shareholder. The complaint was filed with DEG as leader of a consortium of development finance institutions including FMO. DEG confirmed that the case was to be treated as a complaint to DEG only.

In November 2019, the IEP issued its Preliminary Review Report. The Panel concluded that the complaint should proceed to Dispute Resolution. In February 2020, the IEP participated in a board meeting of PHC in The Hague. It presented the idea and the outline of the planned Dispute Resolution by mediation and received support from the management board.

On 19 March 2021, the IEP issued an Interim Report on the status of the case and the next steps in arranging and launching a Dispute Resolution Process. The IEP's activities focused on searching and selecting a suitable expert mediator to lead the dispute resolution process. A suitable Mediator was

[1] A second complaint regarding LCT project has been filed with the CAO in February 2018, which raises different concerns. A dispute resolution process under the framework of the CAO is presently ongoing with respect to this second complaint. The complaint filed with the ICM relates to issues raised with the CAO in the first complaint.

selected in October 2021. Initial engagement of the Mediator with the parties started in December 2021.

Due to CoViD-19-related travel restrictions, the IEP could not travel to the project's area. It conducted instead online meetings with stakeholders. However, remote communication is technically very difficult with some of the stakeholders in this case. In selecting the expert Mediator, the IEP has thus put a lot of emphasis on the Mediator's access to the affected area.

2.6 Dispute Resolution - Nyamagasani I and II (20-001, 20-003 / FMO)

Nyamagasani 1 and 2 HPP are two run-of-river hydro power plants located in Uganda. The IEP received a total of 61 complaints of alleged harms relating to the Nyamagasani projects. The complaints were declared admissible by the IEP in three Admissibility Notices issued on 20 June 2020, 27 July 2020, and 12 November 2020.

The complaints concern allegations of harm to properties – mainly houses, land, or crops – that were damaged or rendered unsuitable for living due to construction activities of the Nyamagasani projects. According to the complainants, adequate compensation or appropriate replacement housing were not provided. Moreover, the complainants raised allegations of procedural irregularities and unfair treatment by the project's grievance mechanism.

On 9 February 2021, the IEP issued its Preliminary Review Report, in which it set out the process and expected steps for the Dispute Resolution process. An expert Mediator was appointed to facilitate the Dispute Resolution Process, which was formally launched in June 2021. The Dispute Resolution Process included three roundtable dialogues in August 2021, September 2021, and December 2021. Through these discussions, the Dispute Resolution Process successfully led to mutual agreements signed by the participants, addressing all the issues raised in the Complaints. The agreements were signed by the participants on 25 October 2021 and on 14 December 2021.

3 Other activities

3.1 ICM's Non-Retaliation Statement

On 1 February 2021, the ICM published its Non-Retaliation Statement. It is available on the ICM's page in the respective institutions' websites. Translations of the Non-Retaliation Statement in Spanish, French, Russian, Arabic and Portuguese are available on FMO's website.

The ICM is committed to assessing, preventing and addressing risk of reprisals relating to its processes to the best of its ability. In particular, the ICM takes the safety of complainants and others who engage in its processes seriously, and seeks to respond appropriately and timely to threats or incidents of reprisals. In addressing the risk of reprisals, the ICM adheres to the following principles:

- Zero-tolerance for reprisals
- Confidentiality
- Participatory preventive approach
- Collaborative response to threats or incidents of reprisals
- Transparent communication of the ICM's limitations.

3.2 Learning, Networking, Outreach

The ICM is a member of the global Independent Accountability Mechanisms Network (IAMnet) which facilitates networking and exchange of good international practice. The IAMnet annual meeting took place virtually on 27-28 September 2021. IEP member Arntraud Hartmann contributed to the IAMnet annual meeting as a speaker and facilitator in several sessions.

In March 2021, the Panel presented the ICM's work to the members of DEG's supervisory board. In October 2021, the Panel discussed strategy issues and complaints cases with FMO's management board. Since 2021, PROPARCO's Complaints office reports on the monitoring of complaints to the Internal Control Committee and to the Audit Risk committee on a quarterly basis.

DEG's Complaints Office presented the ICM during an online peer-to-peer workshop with representatives of German companies in June 2021. The workshop was organized by the German "Helpdesk Business and Human Rights" and focused on complaints mechanisms.