

**Annual Report**  
**Independent Complaints Mechanism**

**DEG / FMO / Proparco**

**January – December 2022**

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## Definitions

<i>Client</i>	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.
<i>Complaints Office</i>	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.
<i>Compliance Review</i>	The process to determine whether DEG/FMO/Proparco have complied with the policies that may be relevant for an admissible complaint.
<i>DFI</i>	Development Finance Institution
<i>Dispute Resolution Process</i>	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.
<i>DEG/FMO/Proparco-Financed Operation</i>	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).
<i>IAM</i>	Independent Accountability Mechanism
<i>Independent Expert Panel/IEP</i>	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.
<i>Mechanism/ICM</i>	Independent Complaints Mechanism

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## 1. Introduction

### 1.1 Establishment and Purpose of the ICM

As part of their commitment to accountability and to act transparently, DEG and FMO established in 2014 the Independent Complaints Mechanism (ICM or Mechanism). This Mechanism gives individuals, groups, communities, or other parties who believe that they have been adversely affected by a DEG and/or FMO-Financed Operation the right to raise complaints with both institutions.

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 improved version of its ICM Policy. Proparco joined the ICM in February 2019. People who allege that they have been harmed by either a DEG, FMO or Proparco-Financed Operation can file complaints with either one or several of these Development Finance Institutions (DFIs).

The ICM started at a time when complaint handling and remedy mechanisms were becoming increasingly 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 development 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 a recent OECD Guidance describing and explaining human rights due diligence in general and for specific sectors.<sup>1</sup>

### 1.2 The Mechanism Today

The ICM consists of the Complaints Offices of DEG, FMO and Proparco and an Independent Expert Panel (IEP or Panel). 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 facilitates a Dispute Resolution Process in accordance with the ICM Policy. The ICM also monitors the implementation of measures agreed upon to bring a project into compliance or of agreed outcomes of a mediation process. The IEP is composed of three members. The IEP members have relevant expertise in human rights, in senior management of international Development Finance Institutions, in Environmental and Social Policy of Development Finance Institutions, and in investigation proceedings. The three members of the IEP are:

- Inbal Djalovski
- Dr. Arntraud Hartmann
- Michael Windfuhr

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<sup>1</sup> See, OECD Guidelines for Multinational Enterprises, 2011, <https://mneguidelines.oecd.org/mneguidelines/>; OECD Due Diligence Guidance for Responsible Business, 2018, <https://www.oecd.org/corporate/mne/due-diligence-guidance-for-responsible-business-conduct.htm>.

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 eighth Annual Report of the Mechanism. It covers the activities of the ICM from 1 January 2022 until 31 December 2022. The ICM 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 or, in the case of Proparco, to the Risk and Audit Committee which is a sub-committee of the supervisory board.

## 2. Overview of Key Activities

This section provides an overview of the key activities of the ICM that took place during the reporting period from 1 January until 31 December 2022.

### 2.1 Operational Activities

During the reporting period, the ICM received five new complaints. One of these complaints was declared admissible: a complaint concerning a project in Ghana. This complaint is currently in the preliminary assessment phase. Three complaints, relating to projects in Kenya and Uzbekistan, were declared inadmissible as not all admissibility criteria laid out in para. 3.1.4 of the ICM Policy were met. In one other complaint, the Panel found that all admissibility criteria were met but decided to make use of the discretionary deferral procedure provided by the ICM Policy in para. 3.1.4. This complaint concerned a project in Bangladesh. Following a successful deferral process, in which the ICM Panel monitored the progress of FMO's Operational Team in addressing the complaint, the case was closed in the end of 2022.

#### ICM Complaints received in 2022:

Complaint number	Date of complaint	Receiving complaints office	Business sector	Country of DFI Client	Status	Phase
22-001	25.01.2022	FMO	Finance	Bangladesh	Resolved by FMO after deferral	closed
22-002	17.02.2022	FMO	Energy	Kenya	Non-admissible	closed
22-003	04.08.2022	FMO	Energy	Kenya	Non-admissible	closed
22-004	02.12.2022	FMO	Agri	Ghana	Admissible	Preliminary Assessment
22-005	13.12.2022	DEG	Finance	Uzbekistan	Non-admissible	closed

The ICM has six ongoing cases on which it made significant progress during the reporting period. The IEP issued a Compliance Review Report concerning the Lomé Container Terminal in Togo and a third Monitoring Report on the complaint against the Barro Blanco hydropower project in Panama. Furthermore, the Panel conducted a monitoring visit to the Sendou coal powerplant in Senegal to obtain insights for its second Monitoring Report.

Significant progress was made for cases which entered Dispute Resolution Processes. In the case relating to the Nyamagasani I and II project in Uganda, the IEP successfully completed the Dispute Resolution Process and issued a Report on the Conclusion of the Dispute Resolution Process.

In August 2022, the IEP conducted a site visit in Liberia and engaged with the parties in the complaint concerning a goldmine in Liberia which was declared admissible in July 2021. The goldmine received loans from FirstRand Bank, a Client of DEG and Proparco. Due to COVID-19 travel restrictions, a site visit was not possible earlier. Subsequently, the ICM launched a Dispute Resolution Process in this case. An Expert Mediator was selected and preliminary dialogues on the framework for the mediation is presently underway.

Progress was also made in the Dispute Resolution Process concerning the “Plantations et Huileries de Congo SA” (PHC) palm oil plantations in Congo. The IEP conducted several meetings with the parties and with experts with a view to reaching common grounds to start the dialogue on the issues at the core of the complaint. The IEP, together with the Expert Mediator, visited both affected locations and agreed with the different stakeholder groups on the composition of two mediation roundtables which will be convened in March 2023.

#### Overview of ICM cases:

Complaint Number	Date of Complaint	Receiving Complaints Office	Business Sector	Country of DFI Client	Status	Completed Activities in 2022
14-001	05.05.2014	DEG and FMO	Energy	Panama	Closed	<u>Oct '22</u> : Completion of the 3 <sup>rd</sup> Monitoring Report
16-001 / 16-002	09.05.2016 15.07.2016	FMO	Energy	Senegal	Monitoring	<u>Sept '22</u> : Site Visit for 2 <sup>nd</sup> Monitoring report
18-001	22.08.2018	DEG and FMO	Logistics	Togo	Monitoring	<u>Sept '22</u> : Issuance of Compliance Review Report
18-002	05.11.2018	DEG	Agriculture	Congo	Dispute Resolution	<u>May '22</u> : Launch of Dispute Resolution Process
20-001 / 20-003	18.05.2020 06.07.2020	FMO	Energy	Uganda	Monitoring	<u>March '22</u> : Issuance of Report on the Conclusion of Dispute Resolution Process

Complaint Number	Date of Complaint	Receiving Complaints Office	Business Sector	Country of DFI Client	Status	Completed Activities in 2022
						<u>March-Dec '22:</u> continuous monitoring
21-001	25-02.2021	DEG and Proparco	Finance	South-Africa	Dispute Resolution	<u>Aug '22:</u> Site visit in Liberia for preliminary assessment <u>Dec '22:</u> Start of Dispute Resolution Process
22-001	15.01.2022	FMO	Finance	Bangladesh	Closed	<u>Aug-Dec '22:</u> Deferral to FMO and monitoring of the progress by the IEP. Case closed in December.

## 2.2 Institutional Activities

As presented in section 2.1, the ICM caseload has grown significantly since the establishment of the Mechanism in 2014. To ensure that the ICM can handle this increasing workload, some additional capacity has been created by establishing the position of a Secretary for the ICM (see section 6). In addition, a Policy Review and Institutional Assessment have been completed to prepare possible adjustments in the institutional framework and in the ICM Policy (see section 5).

## 3. Overview of Admissible Complaints

### 3.1 Monitoring – Barro Blanco (14-001, 14-002 / FMO and DEG)

**The Complaint.** On 14 April 2014 and on 5 May 2014, complaints were received by the Complaints Offices of DEG and FMO respectively. The complaints related to the Barro Blanco Hydroelectric Project (“BBHP”), a 28.56 MW hydroelectric project located on the Tabasara River in the district of Tolé in the Chiriqui Province of Western Panama. The project has been developed and built by Generadora del Istmo S.A. (GENISA), a Honduran company established in 2006 and registered in Panama. The complainants argue that DEG and FMO should have ensured that the project respects the rights of the Indigenous Ngäbä people, in particular the right to “free, prior and informed consent”.

**ICM Procedural History.** On 29 May 2015, the IEP issued a Compliance Review Report in which it made several findings of non-compliance in relation to FMO and DEG applicable policies. These non-compliances concerned inadequacies with regards to i) land acquisition and use; ii) quality of the consultations with affected communities; iii) inundations of cultural heritage; and, iv) biodiversity and

ecosystem impacts. 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. On 4 October 2022, the IEP issued its third and final Monitoring Report on this complaint. In this Report, the Panel noted that most issues of the project remain in non-compliance. The Panel recommended DEG and FMO to continue to actively engage with GENISA to search for acceptable environmental solutions of the remaining impacts on the shoreline. Furthermore, it recommended the former lenders to continue in their efforts to ensure good communication between the community and GENISA regarding the flood levels and water quality management. The Report also recommended that the banks should publicly recognize that the project has had unintended impacts and formulate a public apology to the affected communities, including a recognition that they have ignored concerns raised by the communities since the inception of the project. Moreover, the Panel recommended that the lenders could provide funds to finance remedial actions which would mitigate impacts on the Indigenous Peoples and their community, with a particular focus on those who are directly affected.

**Status of the Complaint.** Closed

### 3.2 Monitoring – Sendou I (16-001, 16-002 / FMO)

**The Complaint.** On 9 May 2016 and 15 July 2016, the ICM received two complaints on the FMO-project Sendou I, a 125 MW coal-fired powerplant project near the town of Bargny in Senegal. The IEP decided to treat the two complaints as one case. The complainants allege harms with respect to resettlement, air pollution, health impacts, marine impacts, and community consultation. Of particular concern are the loss of land rights and the right to continue fish drying activities of a large community of vulnerable women in an area adjacent to the coal-based powerplant. The complaints object to the establishment of a coal-based powerplant in a densely populated area in the immediate vicinity of a major town.

**ICM Procedural History.** On 12 October 2017, the Panel issued a Compliance Review Report. The Report made non-compliance findings with regards to the Environmental and Social policies applicable to FMO-Financed Projects. It found significant environmental and health impacts which are not in compliance with the IFC Performance Standards as well as non-compliances with resettlement policies and possible violations of land rights. On 27 January 2020, the Panel issued a Monitoring Report, which assessed actions taken to bring the project into compliance. The Report found substantial outstanding non-compliance issues regarding (i) impacts on drinking water; (ii) the lack of a marine impact assessment; (iii) impacts of coal transportation from the harbor to the plant; (iv) air quality; (v) economic displacement impacts on fish-drying women, and (vi) land title issues. A second monitoring visit, originally planned for 2021, had to be postponed due to COVID-19 travel restrictions and was conducted in September 2022. Following the visit, the Panel will publish a Monitoring Report in early 2023.

**Status of the Complaint.** Monitoring Phase



### 3.3 Monitoring – Lomé Container Terminal (18-001 / FMO and DEG)

**The Complaint.** The complaint in relation to Lomé Container Terminal (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 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 Office of the Compliance Advisor Ombudsman (CAO) of the IFC in 2015. The CAO issued a Compliance Investigation Report on this complaint in August 2016.<sup>2</sup>

**ICM Procedural History.** The IEP issued a Preliminary Review Report on 23 January 2020 and decided to proceed with an investigation, but to focus its investigations on actions taken since the issuance of the CAO Investigation Report of 8 August 2016. The ICM thus took the findings of the CAO Compliance Investigation Report as a departure point for its own investigations. Such coordination with other well-established Accountability Mechanisms is provided for in para. 3.1.7 of the ICM Policy. The IEP has since completed an investigation on actions taken after the issuance of the CAO Compliance Investigation Report and issued its Compliance Review Report on 31 August 2022. The Report found non-compliances as the Study on the Causes of Coastal Erosion along the Togolese coast, intended to supplement the additional Environmental and Social Impact Assessments, which the CAO had called for in its 2016 Report to assess impacts of the LCT project on coastal erosion east of the port, had not been completed at the time the ICM completed its investigation. The ICM also asked for this additional Study to be shared to facilitate consultations with affected people. Since the issuance of the Compliance Review Report, the additional Study has been completed but not yet shared with affected people as there are government objections to the release of the Study. In the Compliance Review Report the ICM stated concerns about the delays in completing the Study as the financial relationships between DEG and FMO and LCT are to close in 2023, which will leave limited time for implementation of any remedial actions. FMO and DEG are presently preparing a Management Action Plan which lays out remedial actions. The Panel will monitor the progress and will issue a Monitoring Report in due course.

**Status of the Complaint.** Monitoring Phase

### 3.4 Dispute Resolution – PHC (Feronia) (18-002 / DEG)

**The Complaint.** 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

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<sup>2</sup> A second complaint regarding the 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.

minority shareholder. The complainants claim to have been negatively affected by the project, identifying multiple issues to be addressed by the ICM regarding (i) title and access rights to part of the plantation, (ii) treatment of community members, particularly by security forces, and (iii) lack of information provided to community. The complaint was filed with DEG as the leader of a consortium of DFIs including FMO and Proparco. DEG confirmed that the case was to be treated as a complaint to DEG only.

**ICM Procedural History.** On 22 November 2019, the IEP issued its Preliminary Review Report in which the Panel concluded that the complaint should proceed to a Dispute Resolution Process. 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 Process by mediation and received support from the PHC management board. After the change in ownership in 2020, the Panel agreed with the new leadership of the company that they would participate in the mediation process. 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 selected an Expert Mediator 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 and 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.

In May 2022, the Panel could travel again to DRC. The IEP and the Expert Mediator met with the company and the complainants in separate meetings in Kinshasa. The parties adopted a Code of Conduct, known as Ground Rules, for the Dispute Resolution Process. The parties agreed to standards of communication and actions that would not undermine the mediation process. Additionally, they agreed not to be involved in actions that might risk the security of persons or could put other stakeholders at risk. They also agreed to not take retaliatory actions.

In August 2022, the IEP and the Expert Mediator conducted two site visits at the PHC plantations where the communities represented in the complaint reside. In both locations agreements could be reached with stakeholders on the selection and appointment of community and stakeholder representatives who will participate in the mediation roundtables. To this end, the IEP and the Expert Mediator explained the established common ground rules for the mediation at both locations and conducted a first training for all selected mediation participants on rules of mediation and mediation techniques. The mediation roundtable dialogue will take place in March 2023 at the two sites.

**Status of the Complaint.** Dispute Resolution Process

### 3.5 Dispute Resolution – Nyamagasani I and II (20-001, 20-003 / FMO)

**The Complaint.** Between May and November 2020, the ICM has received a total of eight complaints, comprising of 50 individual cases of alleged harms caused by FMO-Financed Operations Nyamagasani I and II run-of-the-river hydro powerplants. The powerplants are located on the Nyamagasani river in the Kasese District, Western Uganda. The complaints raise 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.

**ICM Procedural History.** The complaints were declared admissible by the IEP in three Admissibility Notices issued on 20 June 2020, 27 July 2020, and 12 November 2020. 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.

On 31 March 2022, the IEP issued its Report on the Conclusion of Dispute Resolution Process in which it provided an overview of the mutual agreements reached during the Dispute Resolution Process and the agreed Implementation Plan. In line with the ICM Policy, the IEP committed to monitor the implementation of the agreements with the support of the Expert Mediator.

On 20 January 2023, the ICM published a Monitoring Report for the monitoring period of January to October 2022. This Report presents the Panel's observations in the context of its monitoring role on five issues that followed from the agreements reached between the parties during the Dispute Resolution Process. In the report, the Panel confirms full implementation of three issues, namely (i) the referred cases to the sub-county; (ii) cases found eligible for compensation; and (iii) the completion and ensuing actions with respect to the allegations of misconduct by company staff members. The Panel will continue to monitor the completion of two remaining pending actions: (i) the implementation of the revised project-level grievance mechanism, and (ii) the handling of the ICM complaints that were referred to the revised project-level grievance mechanism.

**Status of the Complaint.** Monitoring phase

### 3.6 Dispute Resolution – FirstRand Bank (21-001 / DEG and Proparco)

**The Complaint.** In November 2020, the ICM received five complaints, representing five communities from around the area of the New Liberty gold mine in Liberia. The gold mine is operated by Bea Mountain Mining Corporations (BMMC), a company that received extended loans by FirstRand Bank which is a Client of DEG and Proparco. The complainants allege that the gold mine caused multiple adverse impacts to neighbouring communities without any proper compensation or mitigation measures to the affected people.

**ICM Procedural History.** On 2 July 2021, the IEP declared the complaint admissible. In August 2022, the IEP conducted a site visit to Liberia to meet with the communities and the company. Based on the Preliminary Review of the complaint, the Panel recommended to initiate a Dispute Resolution Process to which both parties agreed. An Expert Mediator was appointed to facilitate the Dispute Resolution Process. The Dispute Resolution Process formally started in December 2022, with a visit of the Expert

Mediator who engaged the parties in framework discussions. On 2 February 2023, the IEP issued its Preliminary Assessment Report which provided an overview of the issues raised in the complaint, including the perspectives of the different parties on the issues. Furthermore, the Panel recommended to proceed with a Dispute Resolution Process in which the parties themselves ought to decide on a dialogue framework, with the guidance of an Expert Mediator, and provided an overview of this process thus far.

**Status of the Complaint.** Dispute Resolution Process

### 3.7 Deferral Procedure – Bangladesh (22-001 / FMO)

**The Complaint.** On 15 January 2022, the Complaints Office of FMO received a complaint related to a sub-project of a financial sector Client of FMO in Bangladesh. The complaint raised allegations of non-payment of salaries to employees by the sub-Client.

**ICM Procedural History.** After being informed of the complaint, the IEP referred the complaint to FMO's Operational Team and allowed it limited time to reach an early resolution of the issue raised in the complaint without taking a decision on the admissibility of the complaint at that stage. When the issue was not resolved in July 2022, the Panel started gathering information from both the complainant and FMO to decide on the admissibility of the complaint.

On 16 August 2022, the Panel issued a decision on the admissibility of the complaint. The Panel decided that the complaint meets the admissibility criteria, in the sense that it contains allegations of harm by affected individuals and that there is a relationship between the FMO-financed operation and the subject of the complaint. However, the Panel decided to make use of the discretionary admissibility criteria in para. 3.1.4 of the ICM Policy. In line with this provision, the Panel required that "other actions and consultations with relevant responsible parties to address or solve the complaint" would take place before the complaint is deemed admissible. The Panel specifically instructed the FMO's Operational Team to engage in consultations with relevant stakeholders and take the necessary steps to address and resolve the complaint. The Panel further requested FMO's Operational Team to provide monthly progress updates and decided that, if the complaint would not be resolved by mid-December 2022, the complaint will be declared admissible.

During the deferral period, FMO's Operational Team provided the Panel with monthly progress updates, and ultimately – together with the Client - was successful in resolving the issues raised in the complaint. On 22 December 2022, the Panel issued a Notice of Case Closure in which the Panel determined that the complaint no longer met the admissibility criteria. In its decision, the Panel considered that the alleged harms have been remediated except for a single outstanding disputed amount of one individual. Therefore, the Panel found that the complaint did not amount anymore to a systemic labor issue nor to an allegation of substantial harm.

**Status of the Complaint.** Closed

## 4. Lessons Learned

The ICM experienced a significant increase in complaints and now has several years of experience with complaint handling. Experiences accumulated over the years and interactions with other Independent Accountability Mechanisms which work on similar cases, allow the IEP to point out some systemic issues and some key “lessons learned” which are presented below. These lessons learned focus on (i) the importance of strengthening implementation of remedial actions if a compliance investigation found non-compliances and related harm, (ii) the importance of assuring adherence to agreed Environmental and Social policies also in cases where there is an early exit by one party from the financial relationship; (iii) the benefits of Dispute Resolution; (iv) the benefits of early resolution by operational departments for selected complaints; and (v) the importance of adjusting the ICM Policy to align it with established international good practice.

**(i) Non-compliances and related harm require effective remedial measures.** Monitoring of the Barro Blanco and the Sendou complaints show continuing non-compliances even after several years of monitoring (see section 3.1 and section 3.2). The challenge of achieving effective remedial actions is not unique to the ICM. Most Independent Accountability Mechanisms (IAMs) find ensuring implementation of remedial actions a major challenge as remedial actions are mostly implemented by the Client and not the DFI. In order to increase the likelihood of achieving remedial actions, operational time-bound remedial measures should be agreed upon with the Client and subsequently be monitored. The DFIs will need to use their leverage to help ensure that projects are brought into a compliance status. Experiences have shown that early actions are important. When the project cycle is advanced and nears the closing of a financial relationship, such leverage becomes limited. In the Compliance Report in the LCT complaint, the IEP also stated concerns about delayed actions and the limited timeframe available before the financial relationship closes (see section 3.3).

**(ii) Early exits pose particular challenges.** In a number of ICM cases, such as Barro Blanco and PHC, early exits took place and financial relationships ended prematurely as either the Client repaid the loan prematurely or FMO and DEG terminated the financial relationship. If such ‘early exits’ lead to disregard of Environmental and Social safeguards, affected people can be left worse off compared with the pre-project situation and then cannot turn to the DFIs to address their grievances. The IEP recommends that DEG, FMO and Proparco might consider establishing ‘Early Exit policies’ where principles of adherence to Environmental and Social safeguards for such early exits are laid out.

**(iii) Dispute Resolution Process as an instrument to reach agreement on remedies.** The ICM has facilitated the successful completion of a Dispute Resolution Process in the Nyamagasani complaints (see section 3.5) and has two ongoing Dispute Resolution Processes in the PHC and the FirstRand Bank case (see section 3.4 and section 3.6). If parties agree to pursue a Dispute Resolution Process, that can be more effective in achieving remedial actions than Compliance Review Processes which are typically lengthy and where parties often take defensive positions which can undermine agreements on remedial actions. Where appropriate, and depending on the wishes of complainants, the ICM encourages complainants and the Clients to consider a Dispute Resolution Process. When facilitating Dispute Resolution Processes, the Panel is guided by the following principles: neutrality and independence, voluntary participation, parties-led process, confidentiality of dialogue discussions,

and inclusivity. It is important to note that in the framework of a Dispute Resolution Process, the IEP does not make any findings on non-compliance, because it does not consider this to be conducive to the process. Rather, the Panel plays an important role in facilitating the process. Particularly in selecting a suitable mediator, in helping the parties to establish a suitable mediation framework, and in ensuring that agreed frameworks are followed. The Panel found that in Dispute Resolution Processes, in the interest of achieving resolutions and facilitating a parties-led process, the ICM must allow a degree of flexibility for the parties in defining the scope of the issues to be addressed through the process and not strictly limit the process to the issues raised originally in the complaint.

**(iv) Some complaints can be addressed expeditiously by operational departments rather than through the ICM process.** The IEP has gained positive experience with the discretionary deferral of the Bangladesh complaint for early resolution to the operational department (see section 3.7). The ICM Policy provides the Panel with the discretion to decide on whether to trigger the deferral option (see para. 3.1.4 of the ICM Policy). In selected cases, where early resolution seems feasible, admissible complaints can be referred for early resolution to operational departments. Resolution will need to be achieved within a defined limited period of time. The IEP will further test this approach for selected complaints where early resolution seems feasible and fits the nature of the complaint. Having the discretion to require regular updates from designated stakeholders and to declare the complaint admissible if necessary, proved to be effective and important in delivering a successful and efficient early resolution of a deferred complaint.

**(v) The ICM Policy should be adjusted to established good international IAM practice.** In several areas the ICM Policy is not consistent with evolving international good practice of IAM policies. A review of the ICM institutional framework and the ICM Policy has been completed and DEG, FMO and Proparco have expressed commitment to a process of ICM Policy revisions (see section 5).

## 5. ICM Policy Review

According to para. 3.6.1 of the ICM Policy, the ICM Policy needs to be evaluated at least every four years. To this end, the ICM initiated and completed a review process of its 2017 ICM Policy and the Mechanism's institutional set-up. A highly qualified external consultant was engaged in May 2022 to conduct this review. The objective of this first step of review was to benchmark the ICM Policy with established good international practice and to assess the effectiveness and efficiency of the present institutional set-up. Based on this first step, clarifications and amendments to the ICM Policy will be proposed, with a view to delivering a revision of the ICM Policy. DEG, FMO and Proparco are presently in an internal process to follow-up on the proposed changes in the ICM Policy and the institutional set-up of the ICM. The process will afterwards foresee public consultations which are expected to take place as per para. 3.6.2 of the ICM Policy.

## **6. Establishing New Capacity: The ICM Secretary**

To support the increasing workload of the IEP, the position of an ICM Secretary was established in July 2022. Ms. Annika van Kouterik was engaged for this position. The ICM Secretary supports the IEP and performs the following tasks: support complaint handling procedures, conduct background research and assist in record keeping, manage communications with ICM stakeholders, provide research assistance to the Panel, logistical preparation of site visits and occasional participation in site visits. The ICM Secretary is housed for administrative purposes in the Internal Audit Department of FMO but interacts regularly with all three DFIs (Proparco, FMO, DEG).

## **7. Learning, Networking and Outreach Activities**

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 in New York on 24 – 27 October 2022. Inbal Djalovski (IEP), Arntraud Hartmann (IEP), Nina Mertens (DEG Complaints Office) and Annika van Kouterik (ICM Secretary) participated in the conference on behalf of the ICM. IEP Member Arntraud Hartmann contributed to the IAMnet Annual Meeting as a speaker and facilitator in several sessions.

On 1 December 2022, the ICM Complaints Offices, the IEP and the ICM Secretary met during the ICM Annual Meeting. The meeting took place in Paris at Proparco premises. This was the first time in two years that the ICM held an in-person Annual Meeting. The day served as an opportunity to address important ongoing ICM matters, to assess lessons learned from recent ICM complaints, and to agree on priorities, joint approaches, and processes for complaint handling for 2023.

On 2 December 2022, the Panel presented the ICM's work to Proparco Management Team as well as Proparco staff in Paris. The Panel discussed issues related to the application of the ICM Policy, strategy issues, lessons learned from cases, and enhanced the Panel's connectivity with Proparco's senior management and relevant staff.