

# **INDEPENDENT COMPLAINTS MECHANISM (ICM)**

## **Preliminary Review Report**

2 February 2023

**DEG and PROPARCO Complaint 21-001**  
**FirstRand Bank (financial intermediary)**  
**South Africa / Liberia**

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Recipients:

**Complainants**

**DEG**

**Proparco**

**FirstRand Bank**

**Bea Mountain Mining Corp**

This Report is based on information provided to the Independent Expert Panel (IEP) by the complainants, the lenders, the client company and other relevant stakeholders. This document is not given, and should not be taken, as legal advice, and is not intended to be used as proof for its content in a court of law.

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## About the Independent Complaint Mechanism (ICM)

The Independent Complaints Mechanism (ICM) aims to provide complainants with an effective, fair and credible tool to facilitate the resolution of disputes. At the same time, it assists the Dutch Entrepreneurial Development Bank (FMO), Deutsche Investitions- und Entwicklungsgesellschaft (DEG) and PROPARCO in implementing and adhering to its own Environmental and Social (E&S) policies and procedures.

The ICM is supported by an Independent Expert Panel (IEP). The IEP is fully independent from DEG, FMO and PROPARCO. It reviews complaints from communities and individuals who allege that they have been affected by DEG-, FMO- and/or PROPARCO-financed operations and decides whether a complaint is admissible. In case a complaint is admissible, the IEP processes the complaint in line with the ICM procedures and reports on the outcome of such process.

For more information about the ICM, please visit:

- DEG's website: [www.deginvest.de/icm](http://www.deginvest.de/icm)
- FMO's website: [www.fmo.nl/icm](http://www.fmo.nl/icm)
- PROPARCO's website: [www.proparco.fr/icm](http://www.proparco.fr/icm)

## 1. Summary

On 25 February 2021, the Complaints Offices of FMO, DEG and PROPARCO (collectively, “the DFIs”) received a complaint containing allegations of harm caused by the New Liberty Gold Mine (“Complaint”), an open pit mine located in Western Liberia and operated by Bea Mining Mountain Corporation (BMMC or “the Company”), a 100% owned subsidiary of Avesoro Resources Inc. The Complaint states that the DFIs are exposed to the Mine through their financial intermediary investment in the South African FirstRand Bank which in turn financed the New Liberty Gold Mine.

The Complaint was filed by community leaders of five complainant communities living in towns and villages nearby the mine (“Complainants”). The Complaint documents were prepared and filed with the assistance of five NGOs acting as Advisors to the Complainants: the NGO Coalition of Liberia, National Civil Society Council of Liberia, Inclusive Development International (IDI), The Centre for Research on Multinational Corporations (SOMO), and Oxfam Novib.

The Complaint raises a broad range of allegations of harm caused by the New Liberty Gold Mine. In particular, it alleges that the Mine caused forcible resettlement of residences that were located in the open pit and blasting zones, river diversion, land acquisitions and restrictions on land use such as farming and artisanal mining, increased cost of living, as well as environmental and health impacts caused by the release of harmful chemicals between December 2015 and June 2016. The Complaint further alleges that the Company failed to provide certain community benefits that were agreed upon, such as upgrading a 16-km road, building a school and health clinic, provision of scholarships and construction of water and sanitation facilities.

BMMC presented its response to the Complaint to the Independent Expert Panel (“IEP” or “the Panel”) during the Panel’s visit in Liberia in August 2022. BMMC has specifically requested that its response be published in the ICM’s report. In response to the Complaint, BMMC argues that it has been fully compliant with IFC Environmental and Social Standards. Additionally, BMMC contends that many of the issues were more complex than presented in the complaint. BMMC explained that it has a strong and positive relationship with the communities, contrary to the impression created by the complaint.

The Independent Expert Panel found the complaint admissible for DEG and PROPARCO, and inadmissible with respect to FMO. With respect to DEG and PROPARCO, the Panel found a sufficient link between the subject of the complaint and a DEG- and PROPARCO-financed operation. A series of credit agreements with FirstRand Bank constitutes an ongoing financial relationship between DEG/PROPARCO and FirstRand Bank. DEG and PROPARCO provided “ringfenced” credit lines which did not encompass the financing of the New Liberty Gold Mine. However, the credit agreements required the application of IFC Performance Standards to all FirstRand Bank’s investments with high environmental and social risks, including the New Liberty Gold Mine. With respect to FMO, the Panel found that FMO lacked an active financial relationship with FirstRand Bank and thus concluded that the Complaint is inadmissible for FMO. The Panel notified the DFIs and the Complainants of the admissibility decision, and an

Admissibility Notice was subsequently published on DEG's and PROPARCO's ICM webpages on 2 July 2021.<sup>1</sup>

At the time of the filing of the Complaint and throughout their engagements with the Panel during the admissibility phase, the Complainants requested confidentiality due to fear of retaliation. In line with its Non-Retaliation Approach,<sup>2</sup> the ICM refrained from disclosing any identifying information of the Complainants, including the name of the investment and its location, in its Admissibility Notice. In the meantime, the Complainants reported that retaliation risks have significantly reduced, and have themselves published the details of their Complaint. This Preliminary Review Report thus contains relevant information about the Complaint, the admissibility process and the concerned investment in the interest of transparency in accordance with paragraph 2.2.1 of the ICM Policy.

Following discussions with the Panel in the context of its preliminary assessment, both the Complainants and BMMC expressed their willingness to participate in a Dispute Resolution Process (DRP). DEG and PROPARCO expressed their commitment to support the process. Accordingly, the Panel commenced preparations for a Dispute Resolution Process. In particular, the Panel completed the selection of a suitable Expert Mediator and obtained both parties' confirmation of the Mediator and engaged the parties in consultations on the framework and the TOR for the DRP.

This Preliminary Review Report provides an overview of the issues raised in the Complaint and the process thus far as well as the Panel's current assessments and next steps.

## **2. Procedural History**

### **2.1. The Complaint**

On 25 February 2021, the Complaints Offices of the DFIs received a complaint containing allegations of harm caused by the New Liberty Gold Mine, an open pit mine located in Western Liberia ("Complaint") and operated by Bea Mining Mountain Corporation (BMMC or "the Company"), a subsidiary of Avesoro Resources Inc. The Complaint was filed by community leaders of five complainant communities living in towns and villages nearby the mine ("Complainants"), with support of five NGOs acting as Advisors. The Complaint was accompanied by an Annex prepared by the Advisors, setting out the alleged harms, the financial links between the project and the DFIs through FirstRand Bank, allegations of non-compliances and the Complainants' sought outcome.

### **2.2. Admissibility of the Complaint**

The Panel's admissibility decision was communicated to the parties and subsequently published on DEG's and PROPARCO's ICM webpages on 2 July 2021.

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<sup>1</sup> <https://www.proparco.fr/en/icm>; <https://www.deginvest.de/%C3%9Cber-uns/Verantwortung/Beschwerdemanagement/index-2.html?redirect=408704>

<sup>2</sup> Non-Retaliation Statement Independent Complaints Mechanism, <https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/ICM-Non-Retaliation-Statement.pdf>

The ICM Panel assesses admissibility of complaints based on the criteria laid out in paragraph 3.1.4 of the ICM Policy. For a complaint to meet the admissibility criteria, the ICM Policy requires that: (1) the DFIs must have or will have an active financial relationship with the Client; (2) the External Party (the Complainant) must be affected or is likely to be affected by a DFIs- Financed Operation; (3) there must be an indication of a relationship between the DFIs- Financed Operation and the subject of the complaint; and (4) the complaint must contain allegations of (potentially) substantial and (in)direct and adverse impacts or risks.

The Panel found that the first condition is met with respect to DEG and PROPARCO, but not with respect to FMO. Both DEG and PROPARCO provided a series of loans of significant amounts to FirstRand Bank, which is the Client of DEG and PROPARCO in this case. Two DEG/PROPARCO joint loan agreements are still active, and thus an active financial relationship exists between DEG and PROPARCO on the one hand and FirstRand Bank on the other. At the time of receipt of the complaint, an active financial relationship also existed between FirstRand Bank and BMMC.

In relation to the second and third conditions, the Panel found that there is sufficient link between the alleged harms and the Financed Operation. The Panel considered the investment of DEG and PROPARCO into FirstRand Bank as the “DFIs- Financed Operation”. The loans that were provided to FirstRand Bank are all ringfenced, and the financing of mines is not within the funding purpose of the ringfence. However, in line with the European Development Finance Institutions (EDFI) Harmonized E&S Procedures and Standards for Financial Institutions,<sup>3</sup> DEG and PROPARCO require most financial intermediaries which receive funding from them, that they conduct Environmental and Social Impact Assessments for all category A projects in their portfolio. These Environmental and Social Impact Assessments need to comply with IFC Performance Standards and applicable World Bank Group Environmental and Health Standard Guidelines. These requirements apply to the financial intermediary’s portfolio as a whole and not only to “eligible subprojects” under a ringfenced loan. DEG and PROPARCO agreed with FirstRand Bank to pursue such a portfolio-wide approach in application of IFC Performance Standards for category A projects. Indeed, the credit agreements between DEG and PROPARCO and FirstRand Bank require the application of IFC Performance Standards to all FirstRand Bank’s investments with high environmental and social risks.

The New Liberty Gold Mine is an open-cast mine and is thus a Category A Project. Therefore, IFC Performance Standards apply to transactions between FirstRand Bank and BMMC. The subject of the complaint relates to alleged environmental and social harms that should be subject to IFC Performance Standards. The requirement to apply IFC Performance Standards and the possibility of a violation of these standards is an indication of a relationship between the DEG/PROPARCO Financed Operation and the alleged harms. Therefore, the Complainants could be affected through the potential non- or only partial application of the IFC Performance Standards.

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<sup>3</sup> The EDFI Harmonized E&S Procedures and Standards for Financial Institutions are referred to in the following public websites and publications: [https://www.actiam.com/49dbe2/siteassets/6\\_fondsen/impact-investing/actiam-fmo-sme-finance-fund-i/smeff-responsibility-impact-report-2019-public.pdf](https://www.actiam.com/49dbe2/siteassets/6_fondsen/impact-investing/actiam-fmo-sme-finance-fund-i/smeff-responsibility-impact-report-2019-public.pdf); [https://www.fmo.nl/en/library/download/urn:uuid:5c15b2d9-dba1-4c44-b969-67a9aa6747b6/annex+6\\_environmental+and+social+management+framework\\_disclosure+v11+%2828+may\\_01\\_42%29.pdf](https://www.fmo.nl/en/library/download/urn:uuid:5c15b2d9-dba1-4c44-b969-67a9aa6747b6/annex+6_environmental+and+social+management+framework_disclosure+v11+%2828+may_01_42%29.pdf); <https://www.government.nl/binaries/government/documents/reports/2020/11/19/evaluation-of-the-fmo-massif-fund-2015-2019/EvaluationoftheFMO-MASSIFFund2015-2019.pdf>; <https://www.fmo.nl/project-detail/58342>.

The fourth admissibility criteria, requiring an adverse impact on the complainant, is met, as the Complaint contains a broad range of allegations of substantial direct impacts and potential impacts. In light of the above, as all four admissibility criteria were met, the Panel concluded that the Complaint is admissible for DEG and Proparco.

The Panel emphasises that, in its admissibility decision, it does not assess whether there have been non-compliances with IFC Performance Standards and thus does not take a position on whether these standards have been violated. The Panel only establishes whether the admissibility criteria laid out in paragraph 3.1.4 of the ICM Policy are met.

### **2.3. Addressing Risk of Reprisals**

On 1 February 2021, the ICM published its [Non-Retaliation Statement](#). In all its cases, the ICM is committed to assessing, preventing and addressing risk of reprisals relating to its processes to the best of its ability, out of deep understanding that such risk undermines the effectiveness of the ICM as a fair and credible mechanism as well as DEG and PROPARCO's ability to enhance its environmental and social outcomes. The ICM's Approach to Addressing Risk of Reprisals is based on best practices in the field and on accumulated experience of other IAMs.<sup>4</sup>

The ICM endeavours to work together with the parties and especially in continuous consultation with the complainants to ensure that it does not create or increase any risks to complainants as a consequence of its processes. It also strives to communicate transparently with complainants and affected parties its limitations in providing protection from reprisals. Consistent with its Approach, the ICM has incorporated into its operations – as a matter of routine – practices designed to continuously identify, assess and mitigate risks, starting at the early stages of the ICM procedure.

For this purpose, the ICM has engaged with the parties in this case, including the Complainants through their Advisors, to identify risk factors and appropriate measures that can be taken to address them. Based on reported reprisal risks, the Panel has so far refrained from disclosing any identifying details of the Complainants, including the name of the investment, its location or even the intermediary finance institution.

In recent months, the Panel was informed by Complainants and their Advisors that retaliation risks have subsided. Additionally, the Complainants and their Advisors have in the meantime published identifying information about the Complaint, the investment and its location. The Panel thus sees no reason to continue in keeping this information confidential.

Nevertheless, conscious that the situation on the ground is dynamic and fragile, the Panel will continue to assess and monitor risk of reprisals throughout the next phases of the case, to identify whether any risks arise and whether mitigating measures may be necessary.

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<sup>4</sup> See, e.g., Guidelines for Addressing Risk of Reprisals in Complaint Management, Independent Consultation and Investigation Mechanism (MICI), IDB Group (2019); Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations, Office of the Compliance Advisor Ombudsman, IFC/MIGA.

## 2.4. Representation

Following the Admissibility Decision, two of the Advisors NGOs – National Civil Society Council of Liberia and Inclusive Development International (IDI) – were formally appointed as representatives to the Complainants via a signed representation agreement. Having faced significant technical difficulties in remote communications with the Complainants, the Panel welcomed this representation agreement as a useful means to facilitate the productive management of the case.

## 3. The DEG- and PROPARCO- Financed Operation

DEG and PROPARCO provided a series of credit lines to FirstRand Bank. The latest of which are: (1) joint 2016 senior credit line by DEG, PROPARCO and OeEB (Austrian DFI), with DEG acting as lead arranger, of a total 90 million USD to support SMEs in South Africa, out of which 30 million USD financed by PROPARCO and 40 million by DEG;<sup>5</sup> and (2) DEG and PROPARCO's joint 2016 senior credit line of a total of 100 million USD to support SMEs in South Africa, of which 50 million USD financed by PROPARCO and 50 million by DEG.<sup>6</sup>

In addition, in 2019, PROPARCO provided a 50 million USD senior credit line to FirstRand Bank aimed to support agriculture transformation as part of FirstRand Bank's Black Economic Empowerment program.<sup>7</sup>

At the time of receipt of the Complaint, an active financial relationship also existed between FirstRand Bank and BMMC.

## 4. Overview of the Issues raised in the Complaint

The Complaint raises a broad range of allegations of harm caused by the New Liberty Gold Mine, affecting communities in five towns and villages. It alleges that the Mine caused forcible resettlement of residences that were located in the open pit and blasting zones, river diversion, land acquisitions and restrictions on land use such as farming and artisanal mining, increased cost of living, as well as environmental and health impacts caused by the release of harmful chemicals between December 2015 and June 2016.

The Complaint further alleges that the Company failed to provide community benefits that were agreed upon, such as upgrading a 16-km road, building a school and health clinic, provision of scholarships, construction of water and sanitation facilities, and creating livelihood training program and employment opportunities.

According to the Complaint, the five complainant communities are: Kinjor and Larjor, Jikando, Jawaje Marvoh, Jenneh Brown, and Gold Camp. In the town of Kinjor and Larjor, the Complainants raise a series of issues concerning the resettlement of the 2,000 residents. They argue that, while the Company purchased land and constructed replacement housing, both temporary and

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<sup>5</sup> <https://www.proparco.fr/en/carte-des-projets/firstrand-bank-2016?origin=/en/rechercher?query=FirstRand+Bank>

<sup>6</sup> <https://www.proparco.fr/en/carte-des-projets/firstrand-bank-2018>; <https://deginvest-investments.de/portfolio/firstrand-bank-limited>

<sup>7</sup> <https://www.proparco.fr/en/carte-des-projets/firstrand-bank-2019-agri-transfo?origin=/en/rechercher?query=FirstRand+Bank>



permanent houses were not adequate in terms of size and quality and that Community members were not provided with deeds to the land. Further, they claim that the Company underestimated the amount of land required to ensure that resettled residents would have access to agricultural land. While the Company provided some compensation for lost trees and crops, the compensation was inadequate as it disregarded lost farmland and expected future yields. In addition, the Complainants assert that restrictions on small scale and artisanal mining meant that many community members lost their livelihood, while the Company's support for alternative livelihoods has been ineffective. The Complainants also allege that the Company-constructed school and clinic are inadequate for the population, as they are under-equipped, under-staffed and their charges are beyond the means of the community.

In Jikando, a town of 125 residents located just 3km from the mine, residents allege that they suffer impacts from blasting resulting in serious vibrations and damage to houses and buildings at risk of collapsing. The Complainants further assert that they suffered environmental damage, such as a cyanide spill which they reported in 2016 when they saw hundreds of dead fish in the river. The spill also caused health conditions to some community members, and resulted in water shortage. The Company provided cartons of fish to the community for four months and installed three water pumps. However, according to the Complaint, these efforts were insufficient to address the harms, particularly as the Company failed to maintain the pumps. In addition, it is alleged that the Company has taken some farmland without compensation and restricted hunting, fishing and artisanal mining.

In Jawaje Marvoh, a 400 residents town located 4km upstream from the mine, the Complainants allege similar harms to those experienced by Jikando residents, such as impacts from blasting and the chemical spill in 2016, lost farmland and restrictions on access to land and resources. The Complainants also argue that the river diversion has had a negative impact on traditional fishing activities. In addition, they allege that construction activities of the Company destroyed more community farmland and possibly caused water pollution.

In Jenneh Brown, a 1,200 residents town located 16km from the mine, Complainants allege that they suffer similar negative impacts to other Complainant communities, and specifically blasting impacts, loss of artisanal mining, as well as increased prices of food and other goods. They also stress the lack of alternative livelihood support by the Company and other social benefits and infrastructure improvements promised by the Company but not delivered.

In Gold Camp, a town located 40km away from the New Liberty Gold Mine but near its satellite deposit Ndablama, Complainants argue that they suffer from restrictions to farmland, restrictions on artisanal mining without compensation. According to the Complainants, while the Company's 2018 Stakeholder Engagement Plan anticipated that drilling would start at the Ndablama site in 2019, it failed to appropriately identify impacts of the Gold Camp community. Additionally, the Complainants allege that although the Company started construction activities around the site, it has not conducted meaningful consultations with the Gold Camp community regarding environmental and social impacts.

In their Complaint, the Complainants requested the ICM to undertake both dispute resolution and a compliance review.

## 5. BMMC's Response

BMMC presented its response to the Complaint to the Panel during the Panel's visit in Liberia in August 2022. BMMC has specifically requested that its response be published in the ICM's report.

BMMC argues that it has been fully compliant with IFC Environmental and Social Standards. In line with international practice, BMMC used the services of independent international third-party consultants and experts on all relevant compliance matters, including planning and managing resettlement, livelihood restoration programs, blasting standards relating to frequency, intensity, distance from inhabited structures, and has likewise collected all the relevant data to monitor, avoid, mitigate and address impacts. Additionally, BMMC contends that many of the issues were more complex than presented in the Complaint, which lacked important context.

BMMC describes a strong and positive relationship with the communities, contrary to the impression created by the complaint. BMMC regularly meets with communities and addresses community grievances and complaints. BMMC further contends that several issues that were raised in the complaint are expected to be fully resolved through the outcomes of a mediation process that was initiated and led by the Liberian Government.

In addition, BMMC explained that over 1.5 million USD paid by BMMC has accumulated in a Community Development Fund Account. The Fund has not been utilized to benefit the communities due to prolonged disputes amongst community leaders and local government officials. However, in spite of fulfilling this obligation as required under section 15 of the Mineral Development Agreement (MDA), BMMC has worked with each clan in which it operates and established a Clan Development Fund as of April 2022, as a result from the Government-led mediation.

More specifically, with regards to claims concerning infrastructure and community facilities built by BMMC for several communities (such as roads, school, health clinic etc.), BMMC alleges it was under no obligation to provide or maintain these facilities and that much of its work to assist the communities was done above and beyond its compliance obligations. Furthermore, BMMC is of the view that at times the communities hold unrealistic expectations that BMMC could resolve issues for which the communities themselves or other stakeholders should be held responsible. Nonetheless, with a view to addressing the Complaint, BMMC contends that most of these claims can be resolved to the benefit of the communities by using the Community Development Fund established as part of the Government-led mediation.

With regards to the alleged cyanide/chemical spill of 2016, BMMC argues that it has always been in compliance with relevant international standards as well as with the regulations set by the Environmental Protection Agency of Liberia. In particular, BMMC stresses that all its wastewater is detoxed according to regulations. The Company further contends that the spill in 2016 was the result of an extremely rare and unusual weather event that led to the overflowing of its Tailing Storage Facility. Following IFC guidelines and guided by an independent consultancy firm, the Company conducted all necessary technical and health impact assessments and has made necessary technical improvements to prevent future spills. BMMC also supported the affected communities by providing rice, oil, water and protein sources to the affected villages for a full year, until it was advised to stop supplying the good in order to avoid communities' over-

dependence. With regard to allegations of pollution, the Company highlights that artisanal mining, which is still illegally practiced by some communities, is a possible source of pollution as it uses toxic chemicals, notably mercury, and has an extremely harmful environmental footprint.

On the issue of the resettlement of Kinjor and Larjor, BMMC states that a detailed and consultative process was followed for resettlement with support of a specialized consulting firm, including register of assets, homes and people, as well as strict adherence to international standards with regard to assets valuations, and adequate compensations for houses and crops. In relation to the allegation of inadequate farmland, BMMC argues that the Complaint lacks important information. While the matter is more complex, BMMC insists that it did not renege on its commitments to resettle those who had the right to farmland.

With regards to Jikando, BMMC contends that Jikando is not impacted by the project in any manner and thus should not be considered an affected community. Specifically, it argues that Jikando is too distanced from the project to be affected either by blasting or by health risks. It considers Jikando's request for resettlement unfounded.

Likewise, BMMC contends that both Jawajeh Marvoh and Jenne Brown are too distanced from the project to be affected by either blasting or health risk. Specifically, BMMC argues that, since Jawajeh Marvoh is located 4km upstream to the New Liberty Mine, any spillage effect or water contamination from the mine is physically impossible. BMMC argues that since Jenne Brown is 16km away from the New Liberty Mine it cannot be impacted by the project.

Regarding the issues of loss of livelihood, BMMC states that it has undertaken numerous initiatives to restore community livelihoods. The initiatives were the result of a consultative visioning process with advisory of independent specialised firms. The Company acknowledges that results from an initial evaluation demonstrated mixed results. However, new initiatives are underway and aimed at correcting the problems identified. In addition, BMMC also explains that some of the reasons for the limited success were due to the communities' over-dependence. Furthermore, the Company states that expectations of employment at BMMC as livelihood restoration are not realistic.

## **6. Preliminary Review of the Complaint**

### **6.1. Objectives of the Preliminary Review**

According to the ICM Policy, the preliminary review phase starts as soon as a complaint has been found admissible. At the preliminary review phase, the Panel conducts an assessment of the issues that the complaint raises, evaluates their complexity and considers any additional circumstances relevant to the management of the case.<sup>8</sup>

Based on the preliminary review, the Panel will either conduct a Compliance Review or facilitate a Dispute Resolution Process if all parties are willing to participate in such a process. The Dispute Resolution Process and alternatively the Compliance Review are the core phases of the ICM

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<sup>8</sup> See, e.g., Preliminary Review Reports in previous ICM cases available on the [ICM webpage](#) on FMO's website.

procedure. The ICM offers the flexibility of conducting a Compliance Review after a Dispute Resolution process or vice versa.

The preliminary review thus requires the Panel, *inter alia*, to engage with the parties to gauge their interest and willingness to participate in a Dispute Resolution Process. Finally, in line with paragraph 3.2.3. of the ICM Policy, the preliminary review aims at providing the parties with information on the next steps and an indication of the timeline of the process.

## 6.2. Method of Review

As noted above, the Panel has issued an Admissibility Notice in this case on 2 July 2021, declaring the Complaint admissible under the admissibility criteria set out in the ICM Policy. Upon issuing the Admissibility Notice, the Panel commenced its preliminary assessment phase.

Due to COVID-19 travel restrictions, the case suffered significant delays as the Panel could not meet in person with the relevant stakeholders involved in this case until the summary of 2022. The Panel conducted many virtual meetings with the parties and involved stakeholders, but an in-person engagement proved to be necessary and essential. In August 2022, the Panel conducted a site visit. During the site visit, the Panel met in-person with the Company representatives, the Communities' representatives as well as with representatives of the NGO Advisors.

In addition, the Panel held video calls with representatives of DEG and PROPARGO and FirstRand Bank's representatives. Furthermore, the Panel conducted a desk review of project documentation received from DEG and Proparco operations team.

The Panel's conversations with the parties were dedicated primarily to discussing the possibility of engaging in a Dispute Resolution Process. The Panel explained the principles and objectives of such process, compared with a Compliance Review process. It further responded to questions and concerns raised by the parties with regard to entering a Dispute Resolution Process.

The Panel clarified that the ICM Policy does not require the existence of *prima facie* indications of non-compliances in order to initiate a Dispute Resolution Process. Rather, the only pre-condition for a Dispute Resolution Process to take place is that *at a minimum* the Complainants and the Company are willing to participate in such process.

## 6.3. The Panel's Assessment

Following extensive consultations, both the Complainants and the Company expressed their willingness to participate in a Dispute Resolution Process, albeit under certain conditions.

DEG and PROPARGO likewise communicated their commitment to support the process. Accordingly, the Panel commenced preparations for a Dispute Resolution Process. In particular, the Panel completed the selection of a suitable Expert Mediator and obtained both parties' confirmation of the Mediator. In December 2022, the Mediator engaged the parties in framework discussions as an initial step in setting up the mediation process.

In light of the parties' agreement to enter into a voluntary and collaborative Dispute Resolution Process, the Panel decided to refrain from making any *prima facie* factual or legal findings on the alleged harms or on DEG and PROPARGO's compliance with its environmental and social

obligations. The ICM Policy does not require, at the preliminary review stage, that neither harm nor non-compliance be established by the Complainants as a pre-condition to enter a Dispute Resolution Process.

Furthermore, in a Dispute Resolution Process the parties themselves ought to decide on the framework and issues under discussion, and therefore it is not useful that the Panel present findings on harm or non-compliance. Suffice it to indicate at this stage that the issues raised in the Complaint, as detailed above, relate to the following applicable standards: IFC Performance Standard (PS) 1: Assessment and Management of Environmental and Social Risks and Impacts; PS 3: Resource Efficiency and Pollution Prevention; PS 4: Community Health, Safety and Security; and PS 5: Land Acquisition and Involuntary Resettlement.

In the Panel's assessment, the complexity of this case as anticipated in relation to a Dispute Resolution Process, derives primarily from the multiplicity of issues raised in the Complaint, covering a wide range of alleged harms. The alleged harms concern five communities. They vary in type, in the time of their occurrence as well as in their geographical locations along the project's area.

For a Dispute Resolution Process to successfully address the issues, preparatory work would be mandatory. In particular, the parties should agree on ground rules for the Dispute Resolution Process including defining the scope of the mediation process and its guiding principles and setting up the practical arrangements for communications between the parties, the Mediator, and the Panel. Additionally, the parties will have to agree on a framework by which the issues that fall within the agreed scope of the process will be structured and addressed in the mediation.

In a Dispute Resolution Process, the parties are in charge, through a collaborative and voluntary process, of shaping the process itself. The process will need to be designed to ensure that all participants have an opportunity to fully express their views and perspectives and that the discussions are informed by the most up-to-date accurate factual developments. Ultimately, a Dispute Resolution Process is aimed at finding mutually agreed resolutions that could address the participants' needs and interests.

The preparation work of developing the process itself is always an important step in a mediation, and all the more so in this case which involves a broad scope of issues and many stakeholders. The Panel considers the preparatory stage as an inseparable part of the Dispute Resolution Process, which should thus be guided by the Mediator.

As noted above, the preparation work is already underway. The Mediators and the parties have already engaged in framework discussions on the planning of the Dispute Resolution Process.

## **7. Next Steps**

In light of the above, the Panel recommends that this case will proceed to a Dispute Resolution Process under paragraphs 3.2.6 - 3.2.11 of the ICM Policy.

To provide clarity to the parties on the Dispute Resolution Process, the Panel sets out below the expected next steps. Importantly, in a Dispute Resolution Process, the procedures and the

solutions are in the hands of the parties and are subject to their mutual voluntary agreement. Therefore, the timeframes for the DRP are in the hands of the parties.

As indicated, the selection and appointment of a Mediator has already been completed. Currently the parties are engaged in framework discussions aimed at creating a mutually agreed upon structure and lay the foundation for the dispute resolution process to take place. The parties will then discuss Ground Rules for communication, practical arrangements, clarifying representation and participation issues, disclosure of information and confidentiality, etc.

Once the preliminary phase of setting the framework and the Ground Rules is achieved, the parties are expected to engage in facilitated dialogues. During this step, the Mediator will work with the parties to identify and effectively communicate their needs and interests. The parties, with the guidance of the Mediator, will explore ways to address those needs and negotiate possible settlements.

Any settlement agreement resulting from the dialogue between the parties should be captured in a written settlement agreement, which typically includes specific actions and commitments agreed upon by the parties, as well as targets for monitoring the implementation of the agreement and available measures in case of failure to implement the agreement.

Upon the conclusion of a settlement agreement, the Panel will commit to monitor the implementation of the agreement. The Panel will close the case and cease monitoring when it is satisfied that the agreed items have been implemented to the satisfaction of the parties.

The Panel expects that the Dispute Resolution phase of this case should conclude by October 2023. If, by that time, the parties have not reached an agreement, the Panel will conduct a reassessment of the case to determine whether additional time is required in order to achieve a resolution, or alternatively whether there is sufficient *prima facie* evidence of non-compliance and related harm to potentially proceed with a compliance review process as laid out in para. 3.2.12 of the ICM Policy.