

Annual Report
Independent Complaints Mechanism

DEG / FMO / Proparco

January – December 2020

February 15th, 2021

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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>Dispute Resolution</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>Independent Expert Panel</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</i>	Independent Complaints Mechanism
<i>Panel</i>	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 agreed upon to bring a project into compliance or agreed as outcome of a mediation process. The IEP is composed of three members:

- Inbal Djalovski
- Dr. Arntraud Hartmann
- Michael Windfuhr

Former IEP member Steve Gibbons stepped down from the IEP in March 2020, and Ms Inbal Djalovski has been appointed as new IEP member as of 1 April 2020. 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 sixth annual report of the Mechanism. It covers the activities of the ICM from January 1, 2020 until December 31, 2020. 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 had a significant impact on the ICM's activities. CoViD-19 restrictions on travelling and gatherings have precluded the Panel from conducting certain planned activities such as site visits and in-person consultations, which could not be performed in 2020. 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 as described below, CoViD-19 restrictions led to delays in handling and monitoring of cases.

The ICM informed all complainants about adjustments of its work that were necessary to comply with CoViD-19 restrictions. DEG, FMO and Proparco have placed a notification on their websites, accordingly.

1.4 Complaint-related activities

During the reporting period, the following complaint-related activities took place:

- Regarding DEG complaints:
 - The ICM consulted with the complainants and postponed the start of the mediation with PHC, a company based in the Democratic Republic of the Congo, due to travel restrictions that were caused by, at first, Ebola and, then, CoViD-19.
 - The ICM assessed the admissibility of two complaints and declared one inadmissible.
- Regarding FMO complaints:
 - The ICM published a Monitoring Report regarding two complaints related to the Sendou I project in Senegal.
 - The ICM assessed the admissibility of several complaints received between May and November 2020 in relation to Nyamagasani I and Nyamagasani II HPP and declared them admissible. The ICM conducted its Preliminary Review phase via remote communications and published its Preliminary Review Report on 9 February 2021. Based on the parties' agreement, the Panel recommended a Dispute Resolution process to be set up initially via remote communications by selecting a qualified mediator and agreeing on ground rules for mediation. The parties will then need to decide whether they would like to continue the mediation remotely or wait for restrictions to be lifted before continuing to the next stages of the process.
- Regarding FMO and DEG joint complaints:
 - In the Barro Blanco case, the ICM had scheduled a monitoring visit to Panama in March 2020, which had to be cancelled due to the CoViD-19 outbreak. The ICM started to look into alternative ways of monitoring.
 - In January 2020, the ICM published a Preliminary Review Report related to Lomé Container Terminals (LCT) in Togo. Due to CoViD-19 related travel restrictions, a site visit was postponed. The Panel started to conduct a Compliance Review.
- Regarding Proparco and FMO joint complaint:
 - The ICM is processing the admissibility review at the time of this report redaction.

2 Overview of complaints

2.1 Complaints received in the reporting period

In the reporting period, five new complaints have been lodged.

Complaint number	Date of complaint	Receiving complaints office	Business sector	Country of DFI client	Status	Phase
20-001*	18.05.2020	FMO	Energy	Uganda	Complaint admissibility confirmed	Preliminary Review
20-002	03.07.2020	DEG	Finance	Lebanon	Complaint admissibility denied	Closed (inadmissible)
20-003*	06.07.2020	FMO	Energy	Uganda	Complaint admissibility confirmed	Preliminary Review
20-004	12.08.2020	DEG	Finance	Ethiopia	Complaint admissibility denied	Closed (inadmissible)
20-005	12.11.2020	FMO, PROPARCO	Finance	Sierra Leone	To be determined	Admissibility review

*) The ICM treats complaints number 20-001 and 20-003 as one case. Both complaints relate to the same FMO-Financed Operation. Complaint number 20-003 consists of several complaints.

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 the actions committed to by FMO and DEG. The Panel issued two Monitoring Reports in August 2016 and November 2017. The following two commitments (out of the original five) undertaken by FMO and DEG continue to require further monitoring:

- Seek, together with the client, an acceptable environmental solution for the remaining small fraction of the total shoreline where access is still under discussion.
- Ensure that explanation efforts related to flood levels continue and that water quality management and monitoring remain of significant importance and therefore subject to the Lenders' ongoing reviewing of the project.

Through 2017-2020, the IEP continued to maintain contact with the complainants, FMO and DEG. The IEP also reviewed new documents made available by both institutions. Recognizing that there are significant differences of views on progress made and outstanding issues, the IEP decided that a site visit would be necessary to gather information relevant for a third Monitoring Report. However, due to the CoViD-19 pandemic, the panel had to cancel the site visit scheduled for March 2020. The ICM started to investigate alternative ways of monitoring, e.g. by involving local consultants.

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

Sendou I is a 125 MW coal-fired power plant project near the town 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 main conclusions of the Monitoring Report are as follows:

- The Panel is concerned about the very limited progress made.
- A key outstanding issue are unresolved land disputes and impacts on women drying fish adjacent to the plant.
- The Panel emphasized that, should the power plant return to operations, all non-compliance areas identified in the ICM report need to be addressed as a matter of urgency.

Due to CoViD-19, a site visit could not be scheduled in 2020. The Panel aims to continue monitoring as soon as site visits will become possible.

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 Panel issued a Preliminary Review Report in January 2020. The Panel 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 Panel 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.

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.

In 2020, the Panel conducted several interviews with relevant stakeholders as part of the compliance review, using remote communication means. Due to CoViD-19 travel restrictions, it postponed a site visit. The Panel will decide, in consultation with the complainants and other local stakeholders, whether the compliance review could be finalized without a site visit.

2.5 Dispute Resolution – PHC (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 – ultimately fund investors based in the U.S.A. - took over the majority of PHC's shares, while 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 Panel issued its Preliminary Review Report. The Panel concluded that the complaint should proceed to Dispute Resolution.

In February 2020, the Panel 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.

Before the panel can initiate a Dispute Resolution, it is necessary to address issues concerning appropriate participation and representation of all parties involved. The Panel intends to address the following items with all actors at the beginning and during the Dispute Resolution process: (i) who will be part of such a Dispute Resolution, (ii) who is accepted as representatives of communities, (iii) what issues should be discussed, and (iv) a development of an understanding about potentially good outcomes. A Dispute Resolution plan will define ground rules of engagement to secure an atmosphere of respect, security, and trust and to determine rules for public communication and confidentiality.

The Panel planned to do two to three site visits, select a mediation team and prepare the setting in order to start the formal mediation process later in 2020. Due to the outbreak of Ebola in one of the plantation sites, CoViD-19-related travel restrictions, and the restructuring of PHC / Feronia during 2020, it could not start the mediation as planned. Using remote communication techniques is technically very difficult in this specific case; also, it would be too early to use means of remote communication, because the mediation participants need first to be selected, and that will require much communication on the sites.

The Panel seeks to discuss a new timeframe with all stakeholders to start the mediation as soon as it will be possible again.

2.6 Preliminary Review - 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 Panel received a total of eight complaints comprising of 50 individual cases of alleged harms relating to the Nyamagasani projects. The complaints were declared admissible by the Panel 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 raise allegations of procedural irregularities and unfair treatment by the project’s grievance mechanism.

Following discussions with the Panel in the context of its preliminary assessment, all relevant parties have agreed to participate in a Dispute Resolution process. On 9 February 2021, the Panel issued its Preliminary Review Report, in which it set out the process and expected steps for the Dispute Resolution process. The first phase of the process, namely selecting a mediator, setting ground rule, and agreeing on a framework for the mediation, is expected to take place via means of remote communications. The parties will then decide whether they would like to continue the mediation remotely or wait for CoViD-19 restrictions to be lifted before continuing to the next stages of the process.

3 Other activities

3.1 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 23-24 September 2020. Among other topics, participants presented the results of their first practical experiences with processing complaints remotely by virtual means.

In September 2020, the Panel discussed DEG-related complaints and strategic priorities with DEG's management board. In October 2020, the Panel discussed FMO-related complaints and strategic priorities with FMO's management board and supervisory board. In December 2020, the Panel presented and discussed its work and strategic priorities with Proparco's Executive Committee.

DEG's Complaints Office presented the ICM during an online peer-to-peer workshop with representatives of German companies in December 2020. The workshop was organized by the German "Helpdesk Business and Human Rights" and focused on complaints mechanisms.

3.2 Non-Retaliation Statement

To address risk of reprisals related to ICM operations, DEG, FMO and Proparco developed a Non-Retaliation Statement. The ICM adheres to the following principles:

1. Zero-tolerance for reprisals: the ICM considers threats or incidents of reprisal related to its operations unacceptable.
2. Confidentiality: in line with its Policy, the ICM is committed to safeguarding individual identities and confidential information.
3. Participatory preventive approach: the ICM aims to systematically identify risk factors and prevent harm by implementing preventive measures based on a case-by-case analysis.
4. Collaborative response to threats or incidents of reprisals: the ICM will work closely with person(s) concerned to identify and implement appropriate measures when responding to threats or incidents of reprisals.
5. Transparent communication of the ICM's limitations: as the ICM is not an enforcement mechanism, it cannot physically protect complainants. The ICM strives to be realistic and transparent about the limitations of its mandate and capabilities.

4 Events after the reporting period

The following events took place after the reporting period:

- The Panel declared a DEG complaint (20-002) inadmissible.
- The Non-Retaliation Statement was published on 1 February 2021. It is available on the ICM's page in the respective institutions' websites. Translations in Spanish and French will follow.
- The Preliminary Review Report in the Nyamagasani case was published on 9 February 2021.