17 October 2025

Via Electronic Mail

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RE: Comments for Public Consultation on the Draft Independent Complaints Mechanism Policy

Introduction

We submit these comments as civil society organizations committed to improving the effectiveness of independent accountability mechanisms (IAMs) to hold development finance institutions (DFIs) accountable to their environmental and social responsibilities, and to facilitate remedy for unintended adverse impacts. Our respective case experience working alongside communities seeking redress for harm through IAMs informs the periodically updated Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, which compiles model provisions from existing IAM policies to assess good practice and emergent norms of IAM policies.

Our comments are rooted in the critical importance of safeguarding the independence of the *Independent* Complaints Mechanism (ICM) and enabling full accountability and responsiveness on the part of institutions it is charged with holding to account. It is also worth reiterating that the unique governance structures of FMO, DEG and Proparco as compared to multilateral development banks (MDBs), particularly their comparative weakness in terms of oversight, make a strong ICM all the more important. In particular, the Management Boards are part of the respective DFI and the Supervisory Boards have a markedly different and more distant role in the DFI than the Boards of Directors of MDBs. Further, the Supervisory Boards' terms of reference are not publicly known and their mandate to have effective oversight over the DFIs is not clear. Having a strong and independent ICM is thus an important element of the governance structure of the DFIs.

Preliminarily, we commend policy changes that position the ICM to be more effective for communities who may seek its services. In particular, the draft policy stands to enhance:

- **Independence**. By establishing a Panel Chair position with overall responsibility to develop ICM policy, oversee the budget, and recruit and manage operational staff (paras. 2.10, 9.13), trusting the ICM with access to sensitive information and allowing it the discretion to reference non-public information when necessary (paras. 11.1-11.2, 12.1).

- **Legitimacy.** By (a) equipping the ICM with a strong independent secretariat that operates a discrete website that eliminates the need to route complaints through bank servers and grants the ICM sole responsibility over the maintenance of a complaints registry (paras. 6.3, 6.9); (b) underpinning an expectation that relevant information on the ICM is made available to

communities at the project level by requiring clients to guarantee the ICM access to project areas in order to carry out its various roles, including outreach (para. 11.2); (c) clearly naming access to remedy as core to the mandate of the ICM, and underpinning that objective with a duty of bank management and staff to fully cooperate with the mechanism and requirements for management action plans to address issues raised in compliance review reports (paras. 4.1, 6.81, 11.1); (d) providing the ICM with an explicit mandate to monitor and report on the implementation of Dispute Resolution agreements (paras. 6.55-6.57) and management action plans, allowing it recommend additional actions to resolve unaddressed instances of non-compliance and facilitate remedy for harm (paras. 6.89-6.90); and (e) requiring ICM Panel members to recuse themselves from cases if there is a conflict of interest (para. 9.9).

- **Accessibility.** By committing to accommodate the language of Complainants (para. 10.4-10.5).

- **Predictability.** By establishing clear timelines setting an expectation of response times and opportunities for comment (paras. 6.7, 6.8, 6.11, 6.29, 6.37, 6.39, 6.49, 6.53, 6.54, 6.76, 6.77, 6.79, 6.81, 6.86). However, we do recommend that the ICM develop a visual chart of timelines that Complainants can easily reference.

- **Equitability.** By (a) permitting all parties to a complaint a simultaneous opportunity to comment on draft compliance review reports (para. 6.77); (b) giving all parties equal access to final compliance review reports (para. 6.80); and, (c) applying a principled approach to Dispute Resolution, which includes intentionality to address power imbalances between the parties, such as access to information and their ability to take part effectively (para. 6.41).

- **Transparency.** By expressly articulating an outreach function that allows the ICM to share information about its purpose, function, and activities (para. 4.4).

- **Opportunities for Institutional Learning.** By expressly articulating an advisory function to help improve environmental, social, and human rights performance (para. 4.4).

- **Rights Compatibility.** By providing greater detail on the measures that the ICM may take to minimize the risk of retaliation and protect the safety of Complainants (paras. 3.3, 6.2).

Nevertheless, these commendable improvements risk being undermined by shortcomings in good practice. Most concerning are provisions articulated by the draft policy that appear to allow bank management to influence the scope of oversight and consideration of remedial measures to address harm. Other important issues relate to policy provisions that in practice would hinder the ICM's utility in helping to prevent future harm, hold the banks accountable to their biodiversity and climate commitments, underpin responsible exit policies, and ensure the delivery of remedy. Additionally, there are numerous ways that the unique structure of the shared mechanism can be improved to benefit predictability and transparency, which incidentally can improve its perceived legitimacy and actual use by project affected people.

Accordingly, we have divided our comments into three sections:

1. Management interference with an IAM's processes and findings is entirely inappropriate, and revisions are needed to ensure that Management is responsive to– and not in control of– the ICM;
2. Misalignments with good practice should be addressed to satisfy that the ICM is equipped to deliver accountability effectively and efficiently;
3. Further improvements on transparency, predictability and accessibility of the ICM are essential and can be achieved through more comprehensive case reporting requirements for the complaints registry, streamlining the approach to Financial Intermediary Complaints and greater information disclosure of Financial Intermediary investments.

Section 1: Management interference with an IAM's processes and findings is entirely inappropriate, and revisions are needed to ensure that Management is responsive to– and not in control of– the ICM.

Good IAM processes promote management engagement, not management influence, otherwise the perceived legitimacy and actual effectiveness of the mechanism are at stake. In apparent contradiction to the affirmative statement that "the ICM has been structured to function independently from the DFIs' Management" (para. 2.10), we have identified several opportunities for unhealthy management influence within the draft policy that should be addressed:

1. <u>The draft policy does not expressly enable the mechanism to independently draft and update its operational procedures.</u>

Preliminarily, to eliminate any doubt that might prompt an unjustified political fight in the future, we urge including express language that provides the ICM with independent discretion to draft and update operational procedures to effectuate policy updates resultant from this review. The ability to independently draft and update operational procedures without preemptive intervention from DFI leadership and staff ensures the actual and perceived integrity of an accountability framework. Honouring the ICM's independence in this way will help build trust in the accountability framework and avoid a perception that the DFIs have unduly limited the extent that it is willing to be held accountable.

Recommended edits:

13.2. The ICM will **~~solicit DFI input and~~ independently** develop **operational** procedures to enable a smooth transition from the former ICM Policy to this ICM policy**, soliciting input from the DFIs and external stakeholders interested in promoting the effectiveness of the mechanism**.

2. <u>The draft policy seems to inappropriately ask the ICM to base its interpretation of Environmental, Social, and Human Rights performance on the perspective of DFI Management.</u>

While it is entirely reasonable and important for the ICM to have open communication with relevant management teams to better understand why certain actions were taken or not, the interpretation of policy, including operation-level requirements and obligations between DFIs and their Clients, should be trusted entirely to the ICM's independent discretion. Including policy language that requires the ICM to specifically "consider the views of DFI Management" with regard to their interpretation of the Environmental, Social and Human Rights Requirements, opens up a real and perceived possibility that

management may exert pressure to ensure favorable findings. For the sake of building an equitable process, Complainants and DFI Management personnel equally should defer to the independent discretion of the ICM.

Recommended edits:

6.71. In carrying out the ICM mandate, the IEP ~~**may be required to interpret DFI**~~ **is expected to exercise non-biased judgment when interpreting relevant DFI policies, including those that contain** Environmental, Social and Human Rights Requirements and their application to the particular Complaint. ~~**The IEP will consider the views of DFI Management with regard to their interpretation of the Requirements.**~~

3. <u>The draft policy inappropriately asks the ICM to filter recommendations on remedial measures through the perspective of DFI Management.</u>

The ICM's compliance review function should be impartial in every way; from ensuring the safety of Complainants, to the assessment of facts and policy adherence, to identifying potential noncompliance, to making recommendations regarding prevention and remediation of harms and noncompliance. Concerningly, certain language in the draft imposes a condition that the ICM's recommendations be "feasible" considering the perspective of management. This once again fails to respect the ICM's independent discretion, and it risks creating a perception that the ICM may be unduly influenced by management. As a result, intended users of the ICM may apprehend that achievable remedies will never be fully responsive to harm they have experienced. Setting a low expectation like that could yield a less trusted and less used mechanism, therefore diminishing the ICM's benefit to the DFIs.

Further, where findings of non-compliance are identified, the IEP must take into consideration not just DFI management's views on the recommendations to be included in the Compliance Review Report, but also the Complainants' input on whether the recommended remedial measures are adequate to address the actual or potential harm.

Recommended edits:

3.3. The ICM will seek to minimize the risk of Retaliation in the implementation of its mandate, and will:

(f) ~~**The ICM may r**~~**R**equest the DFI to take ~~**feasible and appropriate**~~ measures to prevent or reduce the risk of Retaliation ~~**in specific cases**~~ **when appropriate**.

6.75. Where the IEP finds non-compliance with the DFI's Environmental and Social Policies and related contribution to Harm, the IEP will make recommendations in the Compliance Review Report for consideration by the DFI in the development of its Management Action Plan. ~~**The IEP will seek to make recommendations that are feasible and proportionate.**~~

6.78. Where findings of non-compliance are identified, the Panel will take into consideration DFI Management views in relation to the recommendations to be included in the Compliance Review Report **as well as the Complainants' feedback on their adequacy in remediating and addressing**

all instances of non-compliance.

4. The draft policy risks limiting the ICM's ability to ensure that management action plans (MAPs) effectively provide remedy.

While we applaud the effort to orient the ICM policy to facilitating remedy, we caution that the ICM's monitoring mandate is not fully equipped to the task. Whereas IAMs should be enabled to monitor cases until all instances of non-compliance are remedied, the draft policy sets the ICM up to monitor only instances of non-compliance that management addresses specifically through their action plans.

Management may very well choose to prioritize their responses to findings of non-compliance, but the ICM should still be able assess and provide feedback on whether those responses were effective in addressing all findings of non-compliance and to the satisfaction of Complainants. This is particularly important in circumstances where the MAPs are prepared by DFI Management and approved by Management Boards without the benefit of inputs from the Supervisory Boards who only receive copies for information. There are therefore no external checks on the adequacy of MAPs in addressing all non-compliance findings.

Accordingly, we urge your reconsideration of the issue as it is presented by the ICM Panel in the draft policy (*see,* p. 30). It is insufficient for the IAM to monitor only the implementation of a given MAP, because that risks disregarding the ICM's role in ensuring full compliance with relevant policies. We urge that monitoring instead focus on correcting all instances of non-compliance in addition to remedies for harm caused by noncompliance.

Recommended edits:

6.89. ~~**The scope of ICM's compliance monitoring will be based on the Management Action Plan.**~~ **The ICM will monitor whether and how all non-compliance identified in the Compliance Review Report is addressed, including the fullfillment of commitments made in Management Action Plans to address harm caused by non-compliance.**

5. The draft policy seems to grant management final say over the adequacy of the ICM's budget and the sufficiency of its resources.

While it is good that the draft policy clarifies that the ICM does not report hierarchically to the Management Boards, it is concerning that it seems to grant the Management Boards influence over the disbursement of resources that bear on the ICM's effectiveness.

Specifically, the draft policy states that the Management Board will provide the ICM with "adequate" budgetary resources (*see*, para. 9.5), albeit based on the annual budget presented by the ICM and individual case-related budget estimates. We caution that conditioning the distribution of the budget on adequacy could result in Management Boards feeling entitled to withhold funds based on a disagreement of need or in the worst case a desire to limit oversight.

Equally concerning is vague language that the ICM will be supported by "adequate" operational staff (*see*, para. 9.8). This language again seems to provide the Management Board with leverage to potentially limit the ICM's ability to do its job. Accordingly, we support the comment of ICM Panel that the policy expressly requires and allot a budget for a minimum number of full-time operational staff to assist with the needs it has identified (*see*, p. 34).

Recommended edits:

9.5. The Management Boards of DEG, FMO and Proparco jointly will provide ICM with ~~**adequate**~~ budgetary resources to **fully** execute the mandate and functions set out in this Policy. The ICM will operate in a reasonable and efficient manner, within the timelines outlined, based on the annual budget presented by the ICM and individual case-related budget estimates.

9.8. The ICM is supported by ~~**adequate,**~~ **a minimum of three** dedicated **full-time** operational staff who report to the Panel Chair **and offer representation in each of the three DFIs to reflect the tripartite arrangement**.

Section 2: Misalignments with good practice should be addressed to satisfy that the ICM is equipped to deliver accountability effectively and efficiently.

While we do appreciate that many aspects of the draft policy offer functional improvements, there are certain notable regressions and policy provisions that fall short of good practice. We identify these below.

1. The reliance of the ICM policy scope on each DFI's E&S framework risks weakening its mandate and furthering divergence amongst DFIs.

The draft policy defines the applicable policy scope by reference to each of DEG, FMO and Proparco's Environmental and Social Policies, with the applicable policy being the one in effect at the time of the signing of the financing agreement for the relevant project to which the complaint relates. It suggests that the IFC Performance Standards and UN Guiding Principles on Business and Human Rights are applicable but only insofar as they are incorporated as parts of the DFI's E&S policies.

This approach risks the weakening of the ICM's mandate if a future policy update by one of the DFIs causes an erosion of standards and divergence from the other institutions. Accordingly, we support and amplify the ICM Panel's comment that the ICM Policy scope should explicitly state all applicable standards, policies and requirements.

Recommended edits:

5.1. This ICM Policy **and the ICM mandate** applies to all DFI Financed Operations**.** ~~**governed by the Environmental and Social Policies of the FDIs:**~~ **In executing its mandate, the ICM may consider all:**

~~a) in the case of DEG, the DEG Guideline for Environmental and Social Sustainability and the DEG Exclusion List;~~
~~b) in the case of FMO, the FMO Sustainability Policy and Position Statements;~~
~~c) in the case of Proparco, the E&S Policy of AFD Group.~~
a) relevant international environmental, social and human rights policies, standards and guidelines adopted by the DFI, including IFC's Performance Standards, OECD Guidelines for Multinational Enterprises, the United Nations Guiding Principles on Business and Human Rights (UNGPs), and the EDFI Principles for Responsible Financing of Sustainable Development.
b) any approved environmental, social and human rights policies, standards and position statements; and
c) social, environmental and human rights requirements as defined in contractual obligations between the DFI and the Client.

2. More can be done to improve anti-retaliation measures.

Beyond the welcomed commitments to deliver a safe process for Complainants (*see,* sect. 3), those aspirations must be reinforced with dedicated financial support for preventative measures, emergency measures in case of acute situations as well as potential remedial actions at the ICM's ready. In order to contribute to the safety of Complainants who are at risk of physical harm and/or criminalization, the policy should instruct that the ICM will establish clear protocols when risks and instances of retaliation present themselves, and those protocols should include developing a directive for staff and hiring expertise to adequately respond to retaliation and threats of reprisal. To consistently administer protocol, the ICM should establish an ex officio duty to carry out investigation of allegations of reprisals. This necessitates allocating resources to support the capacity development and implementation of the directive.

Remedial actions to reprisals should be determined by affected Complainants and their representatives, and followed through by the bank and its clients in a timely and just manner. Finally, the ICM should produce systematic yet sensitive documentation of reprisals, disclosing statistical information and disaggregated data on the cases of reprisals they encountered and their response.

Recommended edits:

3.1. The ability of Complainants and other stakeholders to safely engage with the ICM without fear of Retaliation is an essential pre-requisite for the ICM to fulfil its mandate. The DFIs and the ICM take Retaliation or threats of Retaliation against Complainants or any other persons engaged with the ICM very seriously and have no tolerance for any form of Retaliation, real or perceived.

3.2. The ICM is committed to assessing, preventing and addressing risk of Retaliation relating to its processes to the best of its ability. In particular, the ICM takes the safety of Complainants and others who engage in its processes seriously and seeks to respond appropriately and in a timely manner to threats or incidents of Retaliation. **The ICM acknowledges, in particular, the risks faced by marginalized populations, such as women, children and youth, peoples with disability, and Indigenous Peoples.**

3.3. The ICM will **devote adequate financial support from its allocated budget** ~~**seek**~~ **to identify,**

monitor and minimize the risk of Retaliation **and identify appropriate responses if Retaliation occurs** in the implementation of its mandate, and will:

a) Respect requests for confidentiality and protect identities, keeping information that could directly or indirectly lead to identification confidential.
b) Obtain informed consent from concerned individuals before taking action against Retaliation.
c) Assess the contextual risk of Retaliation throughout the case, consulting DFI Management as needed.
d) Identify and implement preventive measures tailored to the country and specific case context, in consultation with Complainants and their representatives (if any), stakeholders involved in ICM outreach, and DFI Management.
e) Develop protocols for ICM staff in cases of actual Retaliation and allocate sufficient resources for staff training on protocol implementation.
g) Investigate allegations of Retaliation and, if proven, w~~W~~ork closely with concerned persons to plan appropriate responses to Retaliation, particularly where security concerns exist.
h) The ICM may request the DFI **and the Client** to take feasible, **timely** and appropriate measures to prevent or reduce the risk of Retaliation **and/or remediate the harm of actual instances of Retaliation** in specific cases.
i) The ICM shall publish disaggregated data regularly on each documented case of Retaliation, including the allegation, the findings from any investigations conducted, any preventive, mitigating or remedial measures taken by the ICM, the measures the ICM recommends the DFI and the Client to take, and their responses and actions taken.

3.4. While the ICM will execute its mandate in a manner that maximizes its ability to respond appropriately to Retaliation, neither the ICM nor the DFIs are enforcement or protective bodies. They do not have the direct ability to physically protect or otherwise safeguard Complainants or other concerned persons from the consequences of engaging with the ICM. Neither the ICM nor the DFIs can replace national or international judicial bodies, protective services, or law enforcement agencies whose functions include public protection.

3. <u>The draft policy falls short in envisioning and equipping the ICM to prevent avoidable harm</u>.

While there is commendable language addressing how the ICM should act to prevent risks of reprisal after a Complaint is filed, and to make recommendations within a compliance review report to prevent future recurrences of harm, the draft policy falls short of good policy by failing to position the ICM as a way for communities to convey early warning of credible risks of harm potentially overlooked by environmental and social assessments.

When communities learn of a project's expected impacts before the project is approved, they sometimes seek quick action to prevent anticipated harm. Early invention in this regard is a hugely beneficial financial and reputational risk mitigation tool, especially because of the significant leverage DFIs have during the negotiation stage of the project financing. Accordingly, most development finance institutions articulate harm prevention as a specific purpose of their respective IAMs. It is also a stated purpose of the ICM, i.e., "ICM's Mandate is to . . . Address Complaints from people *who may be affected* by DFI-Financed Operations and, where relevant, provide access to remedy" *(see*, para. 4.1 [*emphasis added*]).

In furtherance of that purpose, the ICM should be equipped to accept Complaints before the project approval stage, offering an opportunity for dialogue that enables communities to influence approval decisions to prevent harm. We urge reconsideration of the now express language that would make Complaints concerning projects not yet approved ineligible, as doing so unnecessarily hinders the ICM's potential to help facilitate constructive dialogue to prevent unnecessary harm. Again, this would be in keeping with good policy exercised by the accountability mechanisms of peer development institutions.[1]

Keeping Complaints concerning projects not yet approved would enable transparency vis-a-vis the ICM's Complaints registry, and that transparency can serve to improve responsiveness to Complainant concerns, as it has done at other institutions (*see, e.g.*, the Green Climate Fund's Independent Redress Mechanism case C0006, "Nicaragua",[2] and the United Nations Development Programme's Social and Environmental Compliance Unit case SECU 0010 "Integrated Protected Area Land and Seascape Management in Tanintharyi,"[3] both which allowed the institutions to avoid irreparable harm to the rights and sovereignty of Indigenous Peoples by halting the disbursement of project funds).

Recommended edits:

6.13. The IEP will deem a Complaint eligible if it alleges:
- a) adverse environmental, social and/or human rights impacts;
- b) the impacts are connected to a~~n active~~ DFI-Financed Operation **which the DFI is funding or actively considering funding, or where the DFI ceased having a financial relationship with the Client for less than 24 months;** and
- c) the Complainant is or is likely to be affected by the adverse impacts raised in the Complaint.

~~**6.16. In the event a Complaint relates to a potential DFI-Financed Operation where there is not yet an active financial relationship between the DFI and the Client, the IEP will deem the Complaint ineligible. The IEP will inform the Complainant of their options to:**~~

~~**a transfer the Complaint to the relevant DFI Management., and**~~

~~**b Re-submit the Complaint to the ICM if, at a later stage, an active financial relationship is created between the DFI and the Client.**~~

4. <u>The draft policy fails to equip the ICM to deliver accountability and institutional learning and improvement on responsible exit</u>.

The full implementation of applicable environmental and social standards – and the realization of their objectives – are sometimes only achieved after project loans have been fully disbursed and the "main"

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[1] *See, e.g.*, the Procedures of the Independent Redress Mechanism of the Green Climate Fund, para. 20 ("*A grievance or complaint can be submitted to the IRM by a person or group of persons or community who has/have been or who may be affected by adverse impacts of a GCF funded project or programme.*[1]

[fn 1] GCF funded project or programme includes a project or programme being actively considered for funding by the GCF").

[2] *Available at* https://irm.greenclimate.fund/case/c0006#details.
[3] *Available at* https://secu.info.undp.org/case/secu0010.

project activities (e.g., infrastructure construction) have been completed. Moreover, an activity's social and environmental impacts may only be felt after the financial institution is no longer involved. Thus, IAMs should be enabled to accept Complaints throughout the project lifecycle and for a period of time after the project is closed.

The argument for allowing the ICM to consider Complaints relating only to projects actively being financed primarily focuses on the ICM's restricted ability to facilitate remedy after a financial relationship concludes. We disagree with this premise. While active contractual relationship between a DFI and the Client ceases to exist after full loan repayment, the DFI continues to exert influence on the Client through various post-exit contractual obligations that the Client remains bound by and could indirectly facilitate remedy through the conduct of an ICM case. Moreover, the DFIs may be involved with Clients on other projects, or Clients may wish to engage with the DFIs on future projects. In both situations, there is leverage to be had to encourage the delivery of remedy for harm.

The above argument also does not consider how the ICM's processes can be leveraged to prevent similar instances of harm from occurring in the future. The purpose of the ICM goes beyond the strict delivery of remedy to include the delivery of institutional learning on issues such as responsible exit, particularly now that it has an explicit advisory mandate. The only way for the ICM to facilitate accountability for responsible exit commitments is for it to accept Complaints concerning adverse impacts caused by exits.

Accordingly, we support the comment by ICM Panel that "the ICM Policy should allow for a limited window of time after the end of the financial relationship ('post-exit')" (*see*, p. 14). The ICM should be able to consider not only Complaints relating to projects actively being financed, but also those within two years from the termination of the financial relationship between the DFI and the Client. The timeframe of two years post exit allows an appropriate amount of time for considering shorter and longer-term impacts of exit. It is also in keeping with good policy exercised by peer development institutions.[4]

Recommended edits:

6.13. The IEP will deem a Complaint eligible if it alleges:
- d) adverse environmental, social and/or human rights impacts;
- e) the impacts are connected to a~~n active~~ DFI-Financed Operation **which the DFI is funding or actively considering funding, or where the DFI ceased having a financial relationship with the Client for less than 24 months;** and
- f) the Complainant is or is likely to be affected by the adverse impacts raised in the Complaint.

5. <u>Parallel judicial or other IAM proceedings should not affect the admissibility of cases under the ICM's jurisdiction</u>

It is good policy for an IAM to be able to undertake a compliance review, regardless of other parallel judicial or other proceedings, because no other forum has the mandate or authority to assess a financial institution's compliance with its own policies. In the current ICM policy, a Complaint at another IAM or a

[4] *See, e.g.*, the Procedures of the Independent Redress Mechanism of the Green Climate Fund, para. 23 (*"The IRM shall not process a grievance or complaint regarding a GCF funded project or programme submitted to the IRM on or after whichever is the later of the following two dates: [a] within two [2] years from the date the complainant became aware of the adverse impacts referred to in paragraph 20 above or [b] within two [2] years from the closure of the GCF funded project or programme"*).

domestic judicial proceeding can affect admissibility on a case-by-case basis with respect to FMO and DEG cases, and does render the Proparco cases inadmissible.

It is unfortunate that the draft policy has resulted in no discernable improvement from the current ICM policy and leaves scope for potential regression by allowing parallel proceedings to be considered in determining whether to complete a full Compliance Review, without setting any guidelines. The ICM should therefore remove parallel proceedings from the list of considerations and allow Compliance Review cases even if there are other present or past judicial or non-judicial Dispute Resolution processes.

Recommended edits:

6.73. In addition, the ICM will consider the following in determining whether to complete a full Compliance Review:
~~**a) The relevance of any pending, ongoing or concluded judicial or non-judicial Dispute Resolution process regarding the subject matter of the Complaint; and**~~
~~**(b)**~~ …

6. <u>The draft policy fails to leverage self-initiation of Compliance Review as a vital way to ensure accountability for climate and biodiversity commitments</u>.

We commend steps taken to equip the ICM with an ability to recommend investigation on its own accord in the absence of an eligible Complaint. Threats of reprisals and lack of information disclosure are real barriers to accountability and demonstrate that banks should not rely on Complaints from affected people as the only way to prevent or stop harmful project impacts.[5]

Nonetheless, we urge you to make effective use of the proposed accountability enhancement by ensuring that the alternative methods for initiating compliance review can be used as a tool for delivering authentic accountability for the DFIs' biodiversity and climate commitments. Insofar as the draft policy requires that Complaints come from people who are or are likely to be affected by the adverse impacts raised in the Complaint (*see,* para. 6.13[c]), Complaints raising legitimate concerns about biodiversity impacts, for example, stand to be found ineligible if Complainants cannot articulate how the harm or risks to nature also affect them personally.

Policies that enable IAMs to consider harm primarily related to biodiversity and environmental impacts are to the benefit of nature-positive development outcomes.[6] We therefore strongly urge taking up the recommendation of the ICM Panel that calls for an extension of the self-initiation power to not just cases of reprisal and systemic non-compliance, but also purely environmental issues without direct harm to communities (*see*, p. 25).

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[5] *See*, Gregory Berry and Leo Lou, *Why Every IAM Should Have The Power to Self-Initiate Investigations*, ACCOUNTABILITY CONSOLE NEWSLETTER (1 Oct 2024), *available at* https://accountabilityconsole.com/newsletter/articles/why-every-iam-should-have-the-power-to-self-initiate-investigations/.

[6] *See*, Gregory Berry, *Upholding Banks' Biodiversity Responsibilities*, ACCOUNTABILITY CONSOLE NEWSLETTER (7 May 2024), *available at* https://accountabilityconsole.com/newsletter/articles/upholding-banks-biodiversity-responsibilities/.

Further, the policy should eliminate the opportunity for Management to refuse an investigation into credible concerns about harm to biodiversity or human rights. As is proposed, the Independent Expert Panel has a limited power of self-initiation subject to approval by the DFI Management Board or Supervisory Board (*see*, para. 6.63). As we have stressed in section one of this comment, the ICM's independent discernment should be honored, and its independence protected. At a minimum, the IEP's recommendation to initiate a Compliance Review, including its full rationale, should be made publicly available. If the DFI Management Board or Supervisory Board refuses such a recommendation, the reason for such refusal should also be published.

Recommended edits:

6.62. The ICM may initiate Compliance Review in these instances:

a) as the outcome of Preliminary Review of a Complaint;

b) following a transfer from Dispute Resolution; or

c) in response to a request from a DFI Management Board **or** ~~**, including in response to a suggestion of**~~ the Supervisory Board, regarding a DFI Financed Operation.

6.63. The IEP may **initiate** ~~**recommend initiating**~~ a Compliance Review ~~**to the DFI Management Board or Supervisory Board**~~ in exceptional cases, when:

a) There is strong prima facie evidence of Harm connected to a DFI Financed Operation;

b) The Harm appears to be severe; and

c) **At least one of the following criteria is met:**
i) Affected persons may be subject to, or fear, reprisals, preventing them from lodging a Complaint with the ICM;

ii) the ICM receives information from a credible source that a DFI Financed Operation has adversely impacted or may impact the environment, biodiversity or other global public goods without causing clearly defined harm to one particular person or group; or

~~**d**~~ **iii)** If there is a clear indication that there is systemic non-compliance related to issues raised in a previous Complaint, even if those issues were resolved to the satisfaction of the Complainant in Dispute Resolution.

7. Provisions that describe decisions to defer Complaints presently fail to protect the agency of Complainants.

We appreciate that the draft policy lists important considerations intended to guide decisions to defer Complaints to Management and Clients as a way of facilitating early resolutions (*see,* para. 6.28). We caution, however, that the deferral scheme should not in practice make prior engagement with Management a precondition of allowing each Complaint to proceed, which would pose an undue burden on Complainants, particularly where there is a risk of reprisal. Principled guardrails around decisions to

defer are needed considering reasonable apprehensions that Complainants may have about connecting directly with the vested interests of a given project.

We also take note that the draft policy omits language found in the current policy that infomed potential Complainants of the expectation that the Clients of the DFIs will have effective grievance mechanisms in place to ensure that sensitive issues are handled with care and attention. To ensure the success of deferral decisions, Complainants must know enough about the outside problem solving processes to be able to trust them.

Accordingly, deferral of an otherwise eligible Complaint should be exercised only if requested by one or more of the Complainant, Client or DFI Management, and with the informed consent of Complainants; mere consultation as is envisioned by the draft policy is not enough.

Recommended edits:

6.25. The IEP will assess the potential for deferral of ~~each~~ **an** eligible Complaint **if requested by the Complainants, Clients or DFI Management, in consultation with each of these parties**. The purpose of deferral is to allow the opportunity for early resolution of Complaints ~~by the Client and DFI Management working with the Complainant,~~ wherever possible.

6.26. The IEP may defer a Complaint during the Preliminary Review Phase.

6.27 To inform its deferral decision, the IEP will consult with the Complainant and DFI Management, and may consult other stakeholders.

6.28. The IEP will consider the following factors in deciding whether to defer a Complaint:
a) the views of the Complainant on deferral;
b) the likelihood of resolution of the Complaint during a deferral;
c) prior efforts by the Complainant, the DFI's management, and/or the Client to resolve the issues raised in the Complaint;
d) the severity and/or materiality of the alleged Harm;
e) potential Environmental and Social Policy compliance issues raised by the Complaint;
f) whether an unsuccessful effort to resolve the Complaint during Deferral may cause delays in the processing of the Complaint later on;
g) Retaliation risks; and
h) other information considered relevant to the deferral decision by the IEP.

6.29. **The ICM will not defer eligible Complaints without the informed consent of Complainants. Both DFI Management and Complainants can terminate the Deferral at any time by sending a written request to the ICM.** When the ICM defers a Complaint, it will:
a) **determine (in consultation with ~~inform~~** DFI Management and the Complainant**)** ~~**of**~~ the duration of the deferral, typically between 2 months and 6 months, and the frequency of periodic updates to be provided by the DFI Management on its effort to address the Complaint during the deferral period; and
b) indicate in the case registry that the case has been deferred and the duration of the deferral period.

8. Limitations imposed on compliance review following Dispute Resolution compromise the ICM's ability to deliver full accountability.

Preliminarily, as a matter of good policy, Complainants should be afforded agency to choose which functions they would like to access to achieve accountability and remedy. Better accountability outcomes are to be had if compliance review and Dispute Resolution functions complement each other. Unfortunately, while the draft policy retains some scope of the flexible sequencing that was available under the old policy, there has been notable regression. A transfer from Dispute Resolution to Compliance Review now requires no or only partial resolution of issues through the Dispute Resolution process, excluding circumstances where all issues are fully resolved. However, even where disputes are fully resolved, the ICM should still be afforded discretion to investigate compliance issues during or after Dispute Resolution to help prevent potentially recurring issues due to systemic non-compliance and harm by the DFI.

We encourage more flexible sequencing within the policy, as has been embraced by peer developments institutions.[7] Accordingly, we support and amplify the comment of the ICM Panel that, "even if the Parties have reached agreements, in exceptional cases, it may be justified to conduct a Compliance Review following a Dispute Resolution process when: (i) there are indications of systemic noncompliance at the DFI-level which could be associated with severe harms, or (ii) Parties fail to implement agreements. Such reviews aim to prevent recurrence of harm in DFI operations beyond the specific case and to facilitate access to remedy."

We also call for language that would (a) allow for the possibility for the ICM to proceed with a Compliance Review contemporaneously with a Dispute Resolution Process in the circumstance that parties agree not to include certain compliance-related issues in the Dispute Resolution process, and (b) expressly offer the possibility of the ICM facilitating Dispute Resolution as a component of a management action plan following a Compliance Review.

6.34. In determining the outcome of the Preliminary Review, the IEP will consider:

(c) the interest of the Complainant, the Client, and any other relevant stakeholders in engaging in Dispute Resolution **prior to, alongside, or as an alternative to a Compliance Review**;

6.49. The IEP will commence Dispute Resolution**, Compliance Review, or both** as soon as is reasonably possible after conclusion of the Preliminary Review~~, and~~. **With respect to Dispute Resolution, the IEP** will seek to complete its activities within 12 months of commencing the ~~**Dispute Resolution**~~ process. The IEP will determine whether to extend Dispute Resolution for another 12 months, to a maximum of 24 months, in the event the Parties wish to continue and the IEP determines that sufficient progress is being made to address the issues raised.

[7] S*ee, e.g.*, the policies of the Social and Environmental Compliance Unit (SECU) and Stakeholder Response Mechanism of the United Nations Development Program, para. 33 of SECU Investigation Guidelines (*"If both processes are applicable, the Complainant will be informed that both are applicable, and be given the choice to proceed with compliance review, stakeholder response [dispute resolution], or both*"); the policy of the Independent Complaints Mechanism of the Internationale Klimaschutzinitiative [International Climate Initiative], para. 4.2.1(h) (*"The complaint mechanism allows for flexibility in conducting a compliance review after a problem-solving process, and vice versa"*).

~~**Case Transfer from Dispute Resolution to Compliance Review**~~ **Performing Compliance Review Contemporaneously With or After Dispute Resolution**

6.59. The IEP may ~~**transfer a Complaint to Compliance Review**~~ **perform a Compliance Review of certain issues during or** following a Dispute Resolution process, if: a) **some issues are decidedly not up for discussion during a Dispute Resolution process; (b)** transfer **from Dispute Resolution to Compliance Review** is requested by the Complainant**(s);** and ~~**b)**~~ **(c) either i)** the Dispute Resolution process was terminated with no agreement reached, ~~**or**~~ with partial agreements that do not resolve material issues**, or with full agreement which subsequently fails to be implemented, or ii) there is evidence of severe harm caused by systemic noncompliance by the DFI Financed Operation.**

6.66. When Compliance Review follows Dispute Resolution, the scope of the Compliance Review will generally be limited to issues not **considered or** resolved in Dispute Resolution, except as noted in paragraph 6.63d.

6.82. In response to findings of non-compliance and related Harm, the Management Action Plan will include time-bound actions to address, as necessary:

(a) changes to policies, systems, procedures or guidance of the DFI to avoid situations of non-compliance;

(b) actions to bring the DFI Financed Operation back into compliance; and

(c) actions to facilitate remedy of Harm to Complainants**, including recommendations for the ICM to facilitate Dispute Resolution if the process has not yet occurred and parties consent**.

9. <u>The draft policy imposes overly strict limitations on Dispute Resolution that risk disempowering Complainants</u>.

The draft policy allows for the termination of the Dispute Resolution process by the IEP under two circumstances: (1) if the process exceeds 24 months, or 12 months if the IEP determines that sufficient progress has not been made to address the issues raised (*see*, para. 6.49), and (2) if it determines that the process is no longer likely to lead to a positive outcome or has ceased to constitute an efficient use of resources (*see*, para. 6.52). In both cases, termination could occur on the unilateral decision of the IEP despite the Parties still being engaged and wishing to continue.

This departs significantly from good policy. There should not be a maximum time limit on the Dispute Resolution process. There have been many examples of processes that took longer than 24 months and reached a satisfactory resolution.

At a minimum, the IEP must consult with the parties under either circumstances with regards to their view on whether the process has been productive and whether it is likely to lead to a positive outcome.

Recommended edits:

6.49. The IEP will commence Dispute Resolution as soon as is reasonably possible after conclusion of the Preliminary Review, and will seek to complete its activities within ~~12~~ **24** months of commencing the Dispute Resolution process. The IEP will ~~**determine whether to**~~ extend Dispute Resolution ~~**for another 12 months, to a maximum of 24 months,**~~ in the event the Parties wish to continue ~~**and the IEP determines that sufficient progress is being made to address the issues raised**~~.

6.52. ~~**The Dispute Resolution process may be terminated by the IEP if its view is that Dispute Resolution is no longer likely to lead to a positive outcome, or Dispute Resolution has ceased to constitute an efficient use of resources, in which case the IEP will notify all parties in writing.**~~ Because they are voluntary, Dispute Resolution processes may ~~**also**~~ be terminated by the Complainants or the Client.

10. <u>The draft policy seems to overly restrict the ICM's ability to conduct site visits for a more effective and engaging process</u>.

Equipping IAMs with the ability to perform site visits upon receiving a Complaint and throughout a Complaint process yields positive benefits. Site visits help make mechanisms more accessible and "real" to communities and can provide valuable insight into what Complainants are actually experiencing. Based on that insight, IAMs should be empowered to recommend immediate actions to help prevent any imminent and serious harm.

Unfortunately, the draft policy allows the ICM to perform site visits expressly during a Compliance Review Stage and not necessarily during the initial eligibility and assessment phases or even during Dispute Resolution and Monitoring. While it is good that the draft policy affords the ICM access to project documents with reasonable notice to the Clients (*see*, section 11), the same should be true of affording the ICM with access to view actual on-the-ground conditions to verify the seriousness of Complaints, accommodate Dispute Resolution, and ensure the effective implementation of remedial actions.

Recommended edits:

6.12. The IEP may request information, as necessary for its eligibility assessment, from the Complainant, DFI Management, and the Client. **It may also conduct site visits to verify the seriousness of risks or harm alleged.**

6.33. During the Preliminary Review the IEP will, inter alia, interact with the Complainant, the DFI Management, and the Client. **Interaction may entail in-person visits to project sites.**

6.44. Where necessary, the IEP may provide or facilitate capacity-building activities to support meaningful engagement, such as training **at the preferred locations of Complainants**.

6.56. The IEP's monitoring role is determined by the IEP on a case-by-case basis. Monitoring will normally focus on a mutually agreed implementation program and timelines**, ensuring that agreed-to remedies are actually provided**.

6.92. The IEP will issue Monitoring Reports based on its independent monitoring activities, **which may**

include site visits, at a minimum on an annual basis. The IEP will provide its monitoring reports to the DFI Management Board and Supervisory Board, and will post them on its Website. The IEP will annex DFI Management progress reports to its monitoring reports.

11. Trust in the integrity of ICM Panel members can be bolstered by improving the selection process.

Including external stakeholders in the selection of IAM leadership serves to legitimize the hiring process and build trust in the independence and integrity of the individuals selected. Likewise, legitimacy can be protected by minimizing opportunities for management to pick the persons who will hold them accountable. We therefore urge making the selection process of the panel members more transparent and considerate of input from external expert stakeholders. Ideally, hiring will be conducted transparently by an external consultancy to minimize management influence over the process.[8]

Recommended edits:

9.10. To ensure ICM's independence, credibility and integrity, IEP candidates must be external to the DFIs and may not have been employed by the DFIs in any capacity, including as consultants, for at least four years prior to their appointment. IEP candidates must be persons with integrity and credibility, strong collaboration skills, sound judgement and a proven track record of respected leadership on environmental, social and governance issues. IEP members will be unable to work for any DFI in any capacity for a period of five years after serving as an IEP member.

9.11. Any vacancy for the Panel will be published online.

9.12. A**n independent and transparent** selection committee**, chaired by an external consultant, ~~with equal representation~~ will seek to integrate** equal **~~representation of~~ perspective from** the IEP**, ~~and~~ DFIs, as well as representatives from the business communities and civil society. The committee** will be responsible for screening candidates and reaching consensus on the final recommendation that will be presented to the Supervisory Boards.

Section 3: Improvements on transparency, predictability and accessibility of the ICM through more comprehensive case reporting requirements for the Complaints registry, streamlining the approach to Financial Intermediary Complaints and greater information disclosure of Financial Intermediary investments.

1. *Developing a Centralized and Comprehensive Complaint Registry to Improve Trust and Communications*

[8] *See, e.g.*, the policy of the Compliance Advisor Ombudsman (CAO) to the International Finance Corporation and Multilateral Investment Guarantee Agency, para. 15 ("*To maintain the independence of the CAO [Director General (DG)], a selection committee will be established to conduct an independent, transparent, and participatory selection process that involves stakeholders from diverse regional, sectoral, and cultural backgrounds, including civil society and business communities. CAO, IFC, and MIGA will solicit nominations for the selection committee from stakeholders and forward them to the CODE Chair and Vice-Chair for their consideration. The CODE Chair and Vice-Chair will appoint six people to form the selection committee, including two Executive Directors, two senior representatives from the global business community, and two senior representatives from the civil society community, and appoint one of these Executive Directors as chair of the selection committee"*).

We fully support the policy directive to develop a discrete website that will centralize ICM case reporting and information. For the sake of accessibility and efficiency, we want to see it succeed. Accordingly, and per our first recommendation to enable the ICM to independently draft and update operational procedures, we urge the draft policy to set principled expectations as to the development of the website and its Complaints registry, and leave the specifics to the ICM.

Presently the draft policy states that "[t]he IEP will post a registry of Complaints received every quarter on the ICM website" (para. 6.9); however, that prescriptive language risks creating a Complaints registry system that is clunky, hard to navigate, and potentially unhelpful. More helpful would be to set an expectation based on principles of promoting transparency and predictability, protecting the safety of Complainants, respecting requested confidentiality, and ensuring completeness and consistent maintenance.

Maintenance of a Complaint registry is critical not only to ensure project-affected people timely information about the developments in their own Complaints, but to help all stakeholders understand the IAM's timeframes and reasoning on claims to promote transparency and predictability in the overall system. A good policy would accomplish this by requiring, or at least not preventing, the ICM from developing a registry that includes pending, completed, and closed cases, including ineligible Complaints, with links to Complaint letters (redacted if Complainants request confidentiality), decisions on Complaint admissibility, assessment reports, Dispute Resolution reports and agreements, terms of references for compliance review investigations, investigation reports, management responses and proposed remedial actions, monitoring reports, conclusion reports, and other relevant documentation.[9] All public materials should be provided in full, not merely in summarized form and posted online as they become available and remain there indefinitely, not for a limited period of time.

We stress the need to ensure that the ICM Complaints registry disclose reasoned ineligibility determinations, as doing so would be in the service of transparency and predictability especially with respect to the application of the Financial Intermediary approach. Equally important is transparent disclosures regarding decisions to terminate a compliance review early upon a finding of no preliminary, or prima facie, evidence of non-compliance (*see* paras. 6.72-73). Existing and prospective Complainants deserve a thorough explanation as to why concerns are considered or disregarded. A simple statement that a Complaint is determined to be ineligible does nothing to advance trust in a mechanism.

Finally, considering that timelines of the ICM process exist throughout the policy, and appreciating the complexity of accountability processes, we encourage the ICM to develop user-friendly documents intended to improve accessibility and understanding. The policy should therefore direct the ICM to

[9] *See, e.g.*, the policy of the African Development Bank's Independent Recourse Mechanism, para. 106, (*"The IRM shall maintain a transparent and comprehensive online Register. The information posted on the Register shall include pending, completed and closed cases and all relevant documentation relating to Complaints processing, including Complaints with links to complaint letters [redacted if Complainant(s) request confidentiality], decisions on Complaints eligibility, assessment reports, Problem-Solving report and agreements, terms of reference for Compliance Review reports, monitoring reports and final monitoring reports. All material shall be provided in full and posted online as they become available and remain there indefinitely"*).

advance a model Complaint letter, online Complaint form, and a visual chart of the envisioned process and its timelines to help prospective Complainants decide whether to engage with the mechanism.

Suggested edits:

6.9. The IEP will **regularly and timely update its** ~~**post a**~~ registry of Complaints ~~**received every quarter**~~ on the ICM website. The DFI Management will be notified quarterly of all Complaints received.

6.21. If the IEP deems the Complaint ineligible, its decision will be indicated **with a reasoned explanation** in the Complaint registry published on the ICM website~~**; no identifying details of the Complaint will be published**~~.

6.72. The IEP will terminate the Compliance Review process within 50 Business Days of initiating the Compliance Review, if it finds that there is no preliminary, or prima facie, evidence of non-compliance. **Reasons for early terminations shall be clearly explained in the Complaint registry.** Specifically, ICM will consider the following factors in determining whether to terminate or continue the Compliance Review:

(a) Preliminary indications that the DFI has complied with its Environmental and Social Policies in relation to the DFI Financed Operation that is the subject of the Complaint;

(b) Preliminary indications that Harm has occurred or is likely to occur; and

(c) Preliminary indications that any non-compliance has contributed to, or may contribute to Harm.

6.95. At case closure, the IEP will issue a final Monitoring Report, circulate it to the Complainant, DFI Management and the Client for information, and publish it on the ICM website.

10.2. The ICM will publish information on its Website, including:

(a) ~~**a means to submit Complaints with explanation**~~ **an online Complaint form, and instruction on other means to submit Complaints along with a model Complaint letter**;

(b) a register of ~~**eligible**~~ Complaints with **regularly and timely updated information documenting** status and outcomes ~~**updates**~~;

(c) annual reports and other ICM reports;

(d) relevant case related information;

(e) the ICM Policy; and

(f) communication tools that facilitate understanding and awareness raising regarding the ICM and its mandate and functions, **including visual charts**.

2. ***Streamlining the approach to Financial Intermediary Complaints and ensuring better information disclosure around Financial Intermediary investments in order to improve accessibility and predictability.***

We appreciate that the draft policy directly addresses the question of Financial Intermediary Complaints, as that is a gap in the current policy. Moreover, it is notable and to be commended that the draft policy recognizes the role that the DFIs play when they use a Portfolio Approach in their Financial Intermediary lending, and that Complainants will be able to hold the DFIs to account in such circumstances.[10]

Nevertheless, we fear that the draft policy sets up an overly complicated structure for Financial Intermediary Complaints that is hard to understand and that will inappropriately exclude some categories of Complaints that are typically eligible under good practice. Specific changes to the draft policy could be made to streamline the approach and bring it in line with good practice. Moreover, without a stronger and more explicit commitment to information disclosure regarding Financial Intermediary investments, it will be extremely difficult if not impossible for potential Complainants to know whether their Complaint is likely to be eligible and, if so, to which ICM functions they will have access.

Specifically, we are concerned that subprojects financed under the Portfolio Approach are now granted only partial access to the ICM, even for Complaints in which the subproject falls within the use of funds. While such subprojects are eligible for Compliance Review, they face a blanket exclusion from Dispute Resolution, and Compliance Review would be confined to assessing whether the DFI adequately supported the Environmental and Social Risk Management System. These exclusions and limitations would occur despite these subprojects falling within a specific *de facto* ring fence and being financially traceable back to the DFI. Such limitations may make more sense in the context of Complaints regarding Portfolio Approach Financial Intermediary investments where the subproject falls outside the use of funds, because in such cases, assuming the use of funds restrictions are enforced, the DFIs funds could not have supported that subproject.[11] We cannot see any justification, however, for applying these limitations to Complaints regarding subprojects that are within the use of funds, considering that such Complaints would be about precisely the types of subprojects the DFI was aiming to support with its investment. These limitations represent a significant deviation from good practice.

Moreover, the current draft policy language regarding Financial Intermediary Complaints for investments under the Asset Class Approach is also unnecessarily confusing, as it is hard to understand the distinction is between the Asset Class Approach and the use of funds, and why a Complaint would have to fall within both categories in order to be found eligible.

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[10] That being said, it is a distinct loss for future complainants that they will no longer be able to access the Dispute Resolution function of the ICM under the draft policy. The ability to access Dispute Resolution as a result of bringing a Financial Intermediary Complaint concerning a Portfolio Approach investment was extremely valuable for Liberian complainants in the FirstRand Bank complaint.
https://www.deginvest.de/%C3%9Cber-uns/Verantwortung/Beschwerdemanagement/FRB/index-2.html

[11] Nonetheless, we note that money is fungible and also that allowing full access to the ICM in such circumstances would be a much better way to embrace the DFI's E&S commitments under the Portfolio Approach to Financial Intermediary lending.

A more straightforward way to handle Financial Intermediary Complaints, which would bring the policy in line with good practice, would simply be to allow all Financial Intermediary Complaints that are within the use of funds to have full access to both the Dispute Resolution and Compliance Review functions of the mechanism, regardless of which funding approach was used.

Additionally, it remains somewhat unclear whether there are additional categories of Financial Intermediary lending that remain unaddressed by the draft policy or which may be excluded from the scope of the ICM. To the extent that the DFIs engage in Financial Intermediary lending or disperse funds through other types of financial instruments that do not fall within the categories discussed in the current draft policy (e.g. that are not within the Portfolio Approach, the Asset Class approach, or an equity investment), than the policy needs to be revised to clarify what the approach will be to Complaints related to such projects.

Finally, the draft policy entirely fails to address access to information gaps that create significant barriers to accessibility and predictability. Under current disclosure practices, Complainants often cannot determine whether a DFI's Financial Intermediary project follows the Asset Class or Portfolio Approach, nor do they typically have access to information regarding any use of funds limits. Without access to such information, potential Complainants have no way of knowing whether a Complaint will be eligible, and if so, to which ICM functions they will have access. This risks disincentivizing Complaints, as well as potentially wasting everyone's time if Complainants must file Complaints simply to find out basic information about a Financial Intermediary project.

Further, the DFIs should require Financial Intermediary clients and sub-clients to disclose the existence of the ICM to project-affected communities during project consultation processes and through other appropriate means. Clients and sub-clients are often the primary source of information about a project for affected communities, and it is crucial that potential Complainants are able to easily see when a DFI has begun and ended a relationship with a Client so they can determine whether their concerns are eligible to be heard.

Accordingly, we call for a reconsideration of the current bifurcated approach to Financial Intermediary Complaints, which fails to reflect the responsibilities of the DFIs for all subprojects within a use of funds restriction. We recommend removing the confusing distinction based on whether the Asset Class or Portfolio Approach is applied, adopting a more straightforward policy that guarantees access to both Compliance Review and Dispute Resolution for all Financial Intermediary Complaints regarding subprojects that are within the use of funds, while also retaining access to the ICM for Complaints regarding Financial Intermediary investments where a Portfolio Approach has been applied. Moreover, the policy should address information disclosure practices, to ensure that the DFIs disclose information about use of funds restrictions, as well as disclosing when a Portfolio Approach is being applied.

Suggested edits:

6.12 The IEP may request information, as necessary for its eligibility assessment, from the Complainant, DFI Management, and the Client. **The ICM will direct DFI Management to promptly disclose a) the start and end date of active financial relationships between the DFI and Clients in relation to each DFI-Financed Operation and b) the type and details of financing approach (e.g.**

portfolio vs asset class approach, and the use of funds) for each Financial intermediary Client, to aid potential Complainants' determination of the eligibility of potential Complaints.

6.17. The ICM will deem a Complaint ineligible, if a Complaint is:
…https://docs.google.com/document/d/1LjlLR6W8Ce0OUiaOggKLyYJVHp2K7k1AxPAsW3V8YFE/edit?disco=AAABsWUdz7k
(e) related to a Financial Intermediary subproject that is not within the defined use of funds, if the DFI ~~**followed the Asset Class Approach and**~~ did not follow the Portfolio Approach with the Financial Intermediary Client.

6.35. If the subject of the Complaint is a subproject of a Financial Intermediary (FI), the IEP will apply the following guidelines in determining the outcome of Preliminary Review:

(a) If the Financial Intermediary sub-project is within a defined use of funds that has been designated in the contract between the DFI and the Financial Intermediary Client ~~**and where the DFI is applying the Asset Class approach, and the Complaint falls within the defined asset class,**~~ the Complaint will be eligible for both Compliance Review and Dispute Resolution.

(b) With the exception of subprojects that meet the criteria in (a) above, if the Complaint relates to a Financial Intermediary subproject where the Portfolio Approach has been applied in the contract between the DFI and the Financial Intermediary Client, the Complaint will be eligible for Compliance Review but not Dispute Resolution.

(c) Equity investments in the case of Financial Intermediaries: If a Complaint is received in a case where the DFI invested equity into a Financial Intermediary, the Complaint will be eligible for both Compliance Review and Dispute Resolution.

8.2. The ICM will develop an outreach strategy and an annual activity plan through which to promote awareness of the ICM's mandate, functions and case processes among DFI Management and staff, and external stakeholders. Outreach activities may involve collaboration with other IAM Network member institutions or other organizations as relevant. **The DFIs will assist the ICM in carrying out its outreach efforts, including requiring clients and subclients (for Financial Intermediary projects) to disclose the existence of the ICM to project affected communities in a culturally appropriate, gender sensitive, and accessible manner. The existence of the ICM and how to contact it will be included in appropriate project documents.**

Conclusion

While we encourage certain improvements proposed to enhance the ICM, we urge the adoption of the above proposed edits and amendments intended to bring policy and practice in line with the accountability offices of peer institutions. We appreciate the efforts that the DFIs have taken thus far to promote an independent review and consultation process, largely consistent with good practice for IAMs; however, with one shortcoming. In the future, we urge that they facilitate more informed consultations by publicly disclosing the reports and recommendations of external reviews undertaken, which provide an

independent insight into the effectiveness of the mechanism and would facilitate deeper consideration of the issues by the public.

Thank you for your consideration. If you would like to discuss any of the recommendations further, please contact Gregory Berry at gregory@accountabilitycounsel.org or Leo Lou at leo@accountabilitycounsel.org to coordinate.

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