12 June 2026

Via electronic mail to reclamation@afd.fr

Attn: Agence Française de Développement (AFD)
5 rue Roland Barthes
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FRANCE

RE: Civil Society Comments on the New Draft Rules of Procedure of the AFD Environmental & Social Complaints Mechanism

Introduction

Thank you for the opportunity to submit comments on the draft Rules of Procedure (Rules) of the Agence Française de Développement (AFD) Environmental & Social Complaints Mechanism (CM). As civil society organisations (CSOs) dedicated to supporting communities impacted by development projects to use independent accountability mechanisms (IAMs) to safeguard their human rights and the environment, we have a keen interest in ensuring that the CM effectively facilitates the remediation of harm. Our ongoing work surveying and benchmarking the growing field of IAMs contributes to the periodically updated Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms.

Although the draft Rules includes some improvements, it still greatly falls short of good practice at peer IAMs. We therefore jointly submit the following comments and policy language amendments for strengthening the policy.

While we acknowledge the unique governance structure of AFD as compared to multilateral development banks (MDBs), particularly its comparative weakness in terms of independent institutional oversight, this makes a strong CM all the more important to ensure accountability within a public bilateral development finance institution (DFI) and public development bank. In particular, the AFD Board of Directors, composed of representatives from government Ministries and the Parliament, subject area experts, and AFD staff, has a more distant role at AFD than at MDBs. In this respect, we have highlighted, where relevant, relevant language from the new policy of the Independent Complaints Mechanism (ICM) of Proparco, an AFD Group subsidiary dedicated to private sector investments, which came into effect in March 2026 following public consultation.[1] Given the similar governance structure of Proparco (and DEG and FMO), the ICM's language offers a viable, improved alternative that reflects the unique governance reality of AFD as a public, bilateral development institution.

[1] The ICM is also shared with DEG and FMO.

I. Consultation Process

Preliminarily, we commend AFD for subjecting this important review and revision process to public consultation, particularly given that the previous Rules revisions were conducted without public consultation. The exclusion of external stakeholder inputs not only undermines the legitimacy of the policy review and revision processes and of the CM itself, it is contrary to standard practice at most IAMs.

The CM Secretariat and/or the Ethics Advisor should have the power to recommend a policy review to the Board for approval, regardless of whether it has been five years since the last review. The Secretariat under the supervision of the Ethics Advisor, rather than the AFD CEO as the Rules currently stipulate, should conduct the review and Rules amendment process independently.

Further, this current consultation is only 25 business days long, with the English translation of the Rules and high-level summary table of policy improvements published 4 business days after the commencement of the consultation. This is too short for stakeholders to fully digest the Rules and provide meaningful feedback.

We therefore urge the CM to enshrine the commitment to public consultation and a minimum length of 40 business days for the consultation on every future revision process in the "*Amendment and impact of the Rules*" section in section 17 of the Rules.

Recommended edits:

17. **MISCELLANEOUS PROVISIONS**

Amendment and impact of the Rules. ~~The Rules of Procedure may be amended by AFD's Chief Executive Officer, who reports thereon to the Board of Directors.~~ In the event of any inconsistency between the Rules and any other AFD document, and unless otherwise expressly stipulated, the Rules shall prevail. The Rules are reviewed every 5 years and whenever the Board~~Committee~~ deems it necessary at the recommendation of the Secretariat or the Ethics Advisor. Each review will include a public consultation with external stakeholders for a period of no less than 40 business days.

II. Independence

The independence of an IAM from the financial institution's management is key to its legitimacy. Project-affected communities and CSOs are less likely to use the mechanism if they perceive that it is beholden to or unduly influenced by management, when it is meant to either investigate management's alleged noncompliance with institutional policies or facilitate conciliation dialogues as a neutral party.

The CM differs from most IAMs in that its secretariat does not have distinct teams of staff for its compliance audit and conciliation functions, and instead entirely rely on outside consultants to conduct eligibility assessments, act as conciliation or compliance experts, and conduct monitoring and reporting.

The thin staffing presence of the CM secretariat makes it even more important that the Rules contain robust safeguards to ensure the independence of the Ethics Advisor and the Head of the CM Secretariat. Unfortunately, the current governance structure, reporting line and decision-making powers of the CM casts doubt on the CM's independence on paper and in practice.

We urge the CM to:

- Create a direct reporting line to the AFD Board, rather than the Steering Committee, and entrust the Board with the approval of the CM budget;
- Introduce conflict of interest guidelines on the hiring or subsequent employment or engagement of the Ethics Advisor and the Head of the CM secretariat within AFD;
- Make the CM Secretariat (under the supervision of the Ethics Advisor), not the Eligibility Committee and Closure Committee, the ultimate adjudicator of eligibility and closure decisions; and
- Allow external stakeholders, including civil society representatives, to provide input, including on the hiring and performance of CM leadership.

1. <u>Direct reporting line to, and budget approval powers for, the Board</u>

While the CM reports annually to the Board at a high level and more recently opted to report to the Risk and Audit Committee with an independent external chair, it is the Steering Committee that is responsible for setting guidelines, approving annual reports and supervising the day to day running for the CM. The Steering Committee, however, is made up solely of representatives of internal AFD departments.

This creates an obvious conflict of interest and compromises the legitimacy and credibility of the CM. In particular, this puts the CM's remedy mandate at risk as AFD departments are not incentivised to support the CM's efforts to develop and implement stronger, more remedy-focused remedial action plans, thus creating a hostile and partial environment for the CM to operate in. The remedial action plans are instruments of public accountability that prescribe time-bound actions for AFD operational teams to carry out corrective actions that address non-compliance and harm. Therefore, it is essential that they be supervised and approved by the relevant governing bodies to ensure fulfillment of AFD's remedy mandate. The current draft Rules fail to establish a clear and transparent authorisation process by the relevant governing bodies in line with their competences in the AFD governance structure.

We have seen other IAMs with reporting lines to management-led supervisory committees fail consistently to deliver remedy due to those management committees siding with the operational teams' preference for weaker, less extensive remedial action plans in the case of disagreements between management and the IAM. We are therefore concerned that despite an improved remedy mandate, the CM will in effect be restrained in its ability to follow through on the findings and outcomes of Compliance Audit and Conciliation reports and actually deliver remedy to project affected communities.

The solution to these issues is more direct and regular reporting to, and supervision by, the Board. The Board should receive regular and substantial information updates about case progression that would allow it to directly supervise the CM process, including the implementation of remedial actions.

Further, an IAM's budget should not be dependent on the financial institution's management whose action it reviews. Otherwise, the institution may have undue influence over its ability to process complaints. As the number and complexity of complaints might exceed the mechanism's initial budget estimate, the mechanism should also be able to call on additional funds if necessary. We urge the Board to commit sufficient resources to support a robust and effective CM.

Recommended edits:

> 16. **EVALUATION AND ACCOUNTABILITY**
>
> **Accountability of the Mechanism**. The activities and operations of the Mechanism are presented to AFD's Board of Directors as necessary and at least every three (3) ~~years~~months.
>
> 17. **MISCELLANEOUS PROVISIONS**
>
> **Mechanism budget.** The Secretariat shall propose a budget adequate for delivering its mandate, performing its functions and carrying out its activities in a timely manner and as per the provision of these Rules. ~~AFD provides the Secretariat with sufficient financial resources to complete all activities authorised by these Rules.~~ The Secretariat prepares and manages the budget. The AFD Board of Directors shall approve the CM budget under a separate budget line.

2. Conflict of interest guidelines

Safeguards around the hiring and subsequent employments of IAM leadership and staff play a role in preserving the perceived and actual objective independence of the mechanism. We commend the CM for existing safeguards of its independence, including through the supervisory role of the Ethics Advisor. We note that the Ethics Advisor is appointed for 3-year terms and not bound by performance evaluations nor any KPI obligations.

However, the CM lags beyond standard practice amongst peer IAMs on conflict of interest guidelines. We recommend (1) introducing cooling off periods between serving within the institution and serving on the CM for, at a minimum, the Ethics Advisor and Head of the CM secretariat, (2) entrusting the Board of Directors, rather than Executive Management, with the power to select and appoint both positions, and (3) setting a maximum term limit for both positions, e.g. a non-extendable 3-year term or a 3-year term which may be extended once up to 3 more years. Additionally, the Ethics Advisor and Head of the CM secretariat should be prevented from seeking employment at AFD after their tenure for at least five years, if not permanently. This has widely proven effective in instilling trust in the integrity of the mechanism.

Recommended edits:[2]

1. **DEFINITIONS**

Ethics Advisor: Appointed by the Board of Directors~~Executive Management~~ for a non-extendable term of up to 3 years and assigned a status that guarantees his/her independence, AFD Group's Ethics Advisor supervises the Environmental and Social Complaints Mechanism, which is managed by the Mechanism Secretariat in liaison with the mandated independent Experts and relevant AFD departments. At the end of their term, or after removal, the Ethics Advisor should not be eligible to perform remunerated work or services for AFD for the following five years.

3. Eligibility and closure decision making

The Secretariat, under the supervision of the Ethics Advisor and advised by external experts carrying out eligibility, conciliation, compliance audit, monitoring and reporting functions as contracted by the Secretariat on a need-to basis, is the definite expert on case facts and progression. The Eligibility Committee and Closure Committee, on the other hand, are made up solely of internal AFD department representatives. The Committees do not possess the expertise, nor the independence required to objectively evaluate whether complaints are eligible to proceed through the full CM process and whether all agreed remedial actions have been carried out to

[2] Similar language should be added to Section 13, which describes the role of the Secretariat.

warrant case closure. Mere supervision of the Committees by the Ethics Advisor unfortunately in no way guarantees the independence of the decisions as the Ethics Advisor can not influence the consensus (or failing that, the majority) vote.

As an independent oversight body, the Secretariat should therefore be the ultimate adjudicator of eligibility and closure decisions. Leaving the decision to AFD management risks compromise and conflicts of interest

4. <u>External stakeholder input</u>

External stakeholder input in leadership hiring decisions and performance of the CM can improve trust in its independence.

As is the practice of leadership selection for several IAMs, including the International Finance Corporation's Compliance Advisor Ombudsman (IFC CAO) and Asian Development Bank's Special Project Facilitator and Compliance Review Panel (ADB SPF CRP), integrating input from external stakeholders can provide honest insight as to whether leadership would indeed be a trusted and effective liaison between project-affected communities and the bank.

Additionally, allowing external stakeholders to provide periodic input on the performance of IAM staff and leadership, and satisfaction with case handling, would also be helpful to evaluate trust in the CM. This sort of feedback could be relatively easy to attain through complainant interviews or surveys at the close of every case, and through general public surveys intended to reflect on awareness and overall performance of the CM. We encourage transparency on this type of feedback through the AFD CM's annual reports.

More broadly, external stakeholder input could also be obtained through a formalised advisory council. African Development Bank's Independent Recourse Mechanism (AfDB IRM), for instance, draws knowledge and policy recommendations from a Stakeholder Advisory Council made up of representatives from civil society, private sector, governments and academia.[3]

III. Mandate

All AFD operations should be subject to accountability and within the scope of the CM, as environmental and social harm is not limited to certain types of projects. The draft Rules currently exclude several categories of AFD support from the CM's scope. We address some of these exclusions below, but urge the removal of all of the exclusions listed in the policy.

[3] *See https://irm.afdb.org/en/page/independent-recourse-mechanism-irm/irm-stakeholder-advisory-council*

1. Expertise or Technical Assistance Funds and Guarantees

Technical assistance support and other advisory services can be crucial for the advancement of development initiatives and should be subjected to accountability. IAMs have received many complaints regarding this type of support, and the CM should be no different. Likewise, IAMs have also received many complaints about guarantees, which facilitate investments and projects in risky contexts, and AFD guarantees should fall under the scope of the CM.

2. Projects Financed By Proparco

We understand that some projects are excluded from the CM's mandate because they are financed by Proparco. If that is the case, the Rules should add language that indicates that these projects are financed by Proparco and thus subject to the Proparco ICM. Additionally, the Rules should commit to forwarding all complaints concerning these projects to the ICM directly.

Good IAM policy:

U.S. International Development Finance Corporation (DFC) Independent Accountability Mechanism Terms of Reference PARA. 36 "Complaints may relate to environmental and social harm regarding any aspect of the planning, implementation, or impact of a Project or Sub-Project.

IV. Accessibility

We recognise the improvements in accessibility of the CM, including by (1) allowing resubmission of inadmissible complaints due to conditions for registration not being met but which could be fixable and (2) qualifying the requirement for complainants to have prior engagement with project-level grievance mechanisms to exclude when they are not operational or incapable of fulfilling its function.

There remains, however, a number of key barriers for project-affected communities that could prevent the CM from being a viable (and often the only) grievance avenue.

1. Parallel judicial or other proceedings

The CM currently excludes complaints which either (1) have been or are currently the subject of parallel proceedings, namely any "judicial/extra-judicial mediation or procedure, through arbitration or an alternative dispute resolution procedure", or (2) are or were filed or accepted by a co-financier's IAM. Both exclusions should be deleted. 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. AFD ought to be able to instigate its own internal institutional learning of systemic shortcomings of AFD policies and their implementation as part of its continuous improvement mandate, even if parallel proceedings in judicial forums or at a peer IAM have resolved the complaint and delivered remedies to complainants.

Many peer IAMs allow complaints despite parallel proceedings and/or the same case being filed at a co-financier's IAM, including the World Bank Inspection Panel, The International Climate Initiative (or Internationalen Klimaschutzinitiative)'s Complaints Mechanism (IKI CM), Inter-American Development Bank's Independent Consultation and Investigation Mechanism (IDB MICI), AfDB IRM, ADB SPF CRP and others.

While many of these IAMs are simply silent on the topic and omit parallel proceedings as an exclusionary criteria for case admissibility, the IDB MICI notably excluded cases on the basis of parallel arbitral or judicial review proceedings until July 1, 2021. However, in 2021, this provision was repealed by the IDB Board in response to the IDB Office of Evaluation and Oversight's review of MICI's effectiveness which found that this exclusion eliminated the possibility of addressing cases of noncompliance and adverse impacts of IDB investments, leaving liabilities unaddressed and possibly resulting in reputational risks for the IDB Group.[4]

Other IAM policies such that the Green Climate Fund's Independent Redress Mechanism (GCF IRM) and AfDB IRM include provisions on cooperation and collaboration with peer IAMs on similar grievances being filed to both IAMs to ensure they are addressed expeditiously and efficiently in a cost-effective manner while still allowing each institution to consider non-compliance with their own operational policies and procedures.

Good policy from peer IAMs:

GCF IRM Procedures and Guidelines
84. The IRM will cooperate and collaborate with the accountability and/or grievance mechanisms of AEs in the discharge of its functions, as follows: (a) The IRM on the one hand, and the accountability and/or grievance redress mechanisms of the respective AEs on the other, will each perform their duties and exercise their powers and functions, in accordance with the policies and procedures applicable to them. To this end, the respective AEs and the GCF shall promote cooperation between the IRM and the accountability and/or grievance redress mechanisms of the respective AEs and provide them with reasonable assistance in carrying out their functions.

[4] See more on page xi and at paras 2.4, 2.5, 3.15 and 3.16 of Sembler, J. I. and co (2021). *Corporate Evaluation: Evaluation of the Independent Consultation and Investigation Mechanism (MICI)* 2021.

(b) A complainant affected by a GCF funded project or programme may file a grievance or complaint with the IRM and/or the accountability and/or grievance redress mechanism of an AE. In such a situation, the IRM and the accountability and/or grievance redress mechanism of the AE will handle the grievance or complaint as follows:

I. The IRM will handle a grievance or complaint pertaining to action or inaction by the GCF and/or an alleged non-compliance with GCF operational policies and procedures;
II. The accountability and/or grievance redress mechanisms of the AEs will handle a grievance or complaint regarding non-compliance with the AE's operational policies and procedures; and
III. In the event of a similar grievance or complaint being submitted by the same complainant or different complainants to the IRM and to one or more accountability or grievance redress mechanisms of AEs, the IRM and the accountability or grievance redress mechanisms of the AEs may come to working arrangements on how to address those grievances or complaints expeditiously and efficiently in a cost-effective manner.

IKI CM Policy

3.7. The complaint mechanism will consider identical claims already being processed by comparable accountability mechanisms or courts (members of the Independent Accountability Mechanisms Network) on a case-by-case basis so as not to duplicate work already done or impede ongoing proceedings. This will not affect eligibility.

2. Complaints relating to Pre-approval projects

The draft Rules falls short of good policy by failing to allow communities to convey early warning of credible risks of harm potentially overlooked by environmental and social assessments relating to projects currently being considered for financing.

Communities sometimes seek quick action to prevent anticipated harm or mitigate and stop ongoing harm before the project is approved by a financial institution. While the physical project construction might not have commenced, there might already be demonstrable harm from inadequate consultation during the project design and resettlement process, or failure to acquire Free, Prior and Informed Consent of Indigenous Peoples. Early intervention in this regard is a hugely beneficial financial and reputational risk mitigation tool for development institutions, especially because of the significant leverage they hold over Beneficiaries during the negotiation stage of the project development. Accordingly, most institutions articulate harm prevention as a specific purpose of their respective IAMs.

In furtherance of that purpose, the CM 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. While the AFD operations, investment, risk and compliance teams should certainly be part of the dialogue, they themselves cannot be a neutral adjudicator for whether their own operations and decision-making had resulted in noncompliance with AFD policies and harm. The CM, however, is built with the independence and neutrality required for exactly this purpose. The ability of communities to file a complaint with the CM enables it to facilitate constructive dialogue that might not be able to take place without it being in the room.

Again, this would be in keeping with good policy exercised by IAMs of peer DFIs, including the Proparco ICM, who amended its draft Policy to allow pre-project approval cases following the public consultation last year, in part due to civil society advocacy. We therefore urge expansion of the definition of "Project" to include those actively under consideration but not yet approved.

Good policy from peer IAMs:

Proparco ICM Policy

DFI Financed Operation means any activity or any asset of the Client that is or is going to be financed by DFI funds or from funds managed, in whole or in part, by the DFI where the Environmental and Social Policies of the DFI apply, and where Exit has not occurred. A very small proportion of DFI investments and activities are not defined as DFI Financed Operations, and are not covered by the DFI's Environmental and Social Policies. These investments and activities are, short-term, and/or are non-operational. B-Loans are also excluded, as the DFI has no direct contractual relationship with the client.

6.14 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 DFI Financed Operation where Exit has not taken place; and
c) the Complainant is or is likely to be affected by the adverse impacts raised in the Complaint.

GCF IRM Procedures and Guidelines
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.

Recommended edits:

1. DEFINITIONS

Project: A project financed or actively being considered for financing by AFD in a Foreign Country, whether through a loan or grant and which falls within the scope of AFD's environmental and social risk management approach. The term "Project" can designate a specific project, a programme comprising different projects or a sub-project.

3. Requirement for prior engagement with project-level mechanisms

The draft amended Rules added a qualification of the requirement for complainants to have exhausted or successfully mobilised project-level mechanisms, such that it will no longer be required if the complainant can prove that they could not mobilise it in good faith, or the mechanism is not operational or incapable of fulfilling its function.

While the policy comparison table provided by the CM suggests that this eliminates the requirement for prior recourse to the project-level grievance mechanism altogether, the requirement still in effect exists, and it is not clear whether the requirement would be waived if the complainant chooses not to seek recourse through project-level mechanisms due to a risk of retaliation.

We urge the CM to delete the requirement for prior recourse altogether, particularly as it is already mandatory to describe all prior recourse attempted and the details of any reason why they could not be (including due to a risk of retaliation) as a part of the complaint. At a minimum, the Rules must make clear that a description of the actual or feared risk of retaliation would satisfy the requirement.

Recommended edits:

6. **REGISTERING E&S COMPLAINTS**

f. Registration conditions

The Secretariat will not register the Complaint, particularly in the following cases:
…

- ~~If the Complainant has not exhausted or unsuccessfully mobilised other avenues of non-judicial dispute resolution provided by the Beneficiary, unless the Complainant proves that his/her/its good-faith use of such avenues could not be mobilised, or if the project-level complaints mechanism is not fully operational and capable of fulfilling its function.~~

OR

- If the Complainant has not exhausted or unsuccessfully mobilised other avenues of non-judicial dispute resolution provided by the Beneficiary, unless the Complainant proves that his/her/its good-faith use of such avenues could not be mobilised (e.g. because of a risk of retaliation), or if the project-level complaints mechanism is not fully operational and capable of fulfilling its function.

4. Malicious, futile complaints

The Rules exclude from the Conciliation and Compliance Audit processes any complaints "filed for clearly futile or malicious purposes" or those where the complainant "is acting in a self-interested manner in order to obtain an undue financial gain or to satisfy a personal agenda or animosity".[5] However, it is unclear how such malice, self-interest and animosity would be evaluated and proven.

In this regard, we note that eligibility decisions are ultimately made by the Eligibility Committee which is composed of representatives from various AFD departments. While we understand that these provisions seek to exclude complaints without demonstrable environmental and social harms that solely concerns the appropriateness of the project, we note that such cases would have failed the admissibility test set out in section 6(f) of the Rules and not have been registered at all.

Therefore, we are concerned that these provisions run the risk of being interpreted by management staff on the Eligibility Committee to in practice exclude complaints with demonstrable harms filed by legal representatives or CSOs on behalf of communities, on the basis that the representatives or CSOs are arbitrarily deemed malicious or self-interested. Any complaints with real alleged E&S impacts that have been registered ought to be properly handled by proceeding to either a Conciliation or Compliance Audit process - any perceived animosity, malice or self-interest should be irrelevant. We strongly urge that any such reference be deleted from the eligibility criteria.

Recommended edits:

7. **DETERMINING THE ELIGBILITY OF COMPLAINTS**

j. Eligibility criteria excluding a Conciliation or Compliance Audit

A Complaint is not eligible for Conciliation or a Compliance Audit if:
~~- it is filed for clearly futile or malicious purposes;~~
~~- it reveals that the complainant is acting in a self-interested manner in order to obtain an undue financial gain or to satisfy a personal agenda or animosity;~~
- its main objective is to gain a competitive advantage from the Complaint by obtaining access to information or delaying the execution of the Project;
- it concerns the obligations of a third party other than AFD and its Beneficiary (financing from another financial institution).

[5] *See* section 7(j) of the CM Rules.

5. Language requirement

Finally, it is helpful that the CM allows complaints in the official languages of the country from which the project operates / the complainants are from, However, we note that the primary language used by communities in usually remote, culturally and ethnically diverse regions is often not one of the official languages of the country. Translation into the country's official languages, English or French would usually require assistance from CSOs or other legal representatives, which may not be accessible to them.

To remove systemic barriers of access and encourage the use of the CM regardless of the complainants' access to civil society or legal support, the CM should make allowance for submission in any language and prepare all correspondence with the Complainant and its representatives in both French/English and the language of the complaint. In this regard, we find the Proparco ICM policy to be reflective of good practice amongst peer IAMs.

Good policy from peer IAMs:

Proparco ICM Policy 10.5. Complainants may submit a Complaint to the ICM in any language, and the ICM's correspondence and engagement with the Complainant and its representatives will be in both the language of the Complaint and English. The ICM will be responsible for translating the Complaint and all supporting documentation into English.

Recommended edits:

5. **HOW TO FILE AN E&S COMPLAINT?** d. Language for submitting a Complaint Complaints may be submitted in any language~~French, English or one of the official languages of the Foreign Countries in which AFD operates~~. All correspondence from the Mechanism Secretariat to the Complainant or Representative will~~can~~ be written in both the language of the Complaint and either of French or English. If necessary, the CM will be responsible for translating the Complaint and all supporting documentation into English or French and translating any correspondence from English or French into the language of the Complaint in order to facilitate communication between the Mechanism and the Complainant or his/her/its Representative~~, such correspondence may be translated into a third language (official language of the Foreign Country where the Project subject of the Complaint is located)~~. Complaints not filed in English or French may require longer response times due to the need for translation. ~~Only the French version is binding.~~

V. Self-Initiation of complaints

Even if an IAM addresses systemic accessibility barriers to enable true access to the IAM for communities, threats of reprisals for coming forward and a general lack of information disclosure about the investment chain and/or the existence of the IAM remain real barriers to accountability. DFIs therefore should not solely rely on Complaints from affected people as the only way to prevent or stop harmful project impacts.[6]

We urge AFD to afford the CM, under the supervision of the Ethics Advisor, the discretionary power to initiate compliance reviews on its own accord, particularly in the following cases: (1) project affected communities may be subject to, or fear, reprisal, preventing them from coming forward, (2) there is clear indication of systemic non-compliance related to issues raised in a previous complaint regardless of whether that complaint had been resolved satisfactorily from the perspective of the complainants through a conciliation process, and (3) adverse impacts have been caused to biodiversity, the climate, the environment or other global public goods without resulting in any direct harm to one particular person or group.

Policies that enable IAMs to consider harm primarily related to biodiversity and environmental impacts, in particular, are to the benefit of nature-positive development outcomes.[7] We therefore encourage the CM to follow suit of peer IAMs, including the Proparco ICM, which has a limited self-initiation power (subject to Board approval) in relation to two of the above three scenarios.

Good policy from peer IAMs:

Proparco ICM Policy

6.64. The IEP may 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) Affected Persons may be subject to, or fear, reprisals, preventing them from lodging a Complaint with the ICM; or
d) 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.

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[6] *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/.

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

VI. Procedural Improvements to Conciliation and Compliance Audit processes

1. Allow AFD to participate in or observe Conciliation processes

AFD is currently explicitly excluded from being a party to conciliation processes.[8]

Our case experience, however, shows that when invited by the parties, financial institutions can play a constructive role in conciliation processes. By observing or participating, financial institutions can better understand the issues related to their projects, exercise leverage over clients, incentivize and support the constructive engagement of the beneficiary in the process, contribute to enabling remedial actions, and learn lessons for future projects.

We therefore urge the CM to allow the AFD's participation in conciliation as an observer or a party if invited by the parties.

Good policy from peer IAMs:

> **Proparco ICM Policy**
>
> 6.47. Where appropriate and with the agreement of the Parties, DFI staff may be invited to participate in the Dispute Resolution process or act as observers. The DFI will respond to invitations on a case-by-case basis.

Recommended edits:

> 1. **DEFINITIONS**
>
> **Conciliation**: A structured process aimed at amicably resolving differences between the Parties to the dispute. Based on the Parties' responsibility and autonomy and on the confidentiality of exchanges, the Conciliation process calls on assistance from a neutral, impartial, independent third party who has no decision-making power. AFD may participate in or be an observer~~is never a Party~~ to the Conciliation process at the invitation of the other parties.
>
> 3.3. Main functions
>
> The Mechanism fulfils three main functions:
>
> - The Conciliation process involves proposing the intervention of a neutral, independent, and impartial third party to help find an Agreement between the Complainant or his/her/its Representative and the Beneficiary and, where relevant, other concerned parties (in~~ex~~cluding the AFD at the invitation of the other parties).

[8] *See* section 3.3 and the definition of "conciliation" in the Rules.

2. Allow Complainants to Comment on Draft Compliance Audit Reports

While compliance audit processes focus on issues of compliance with institutional policies, they should still center the delivery of remedy as the key objective and therefore involve complainants and keep them informed at each step. This is not only so they have input to ensure factual correctness of the compliance investigations and audit findings, but also so that the proposed recommendations of remedial actions indeed address their grievances and provide adequate and effective remedy.

The Rules currently give the relevant AFD departments the opportunity to comment on the draft compliance audit report but do not give the same opportunity to the complainants. We further understand that AFD does not plan to disclose the Compliance Audit reports in full to the complainants at all, even after the conclusion of the process, on account of legal risks. This is not only unfair and risks skewing the accuracy and strength of the compliance audit, but also a harmful approach which deprives project affected communities of basic information about the processes, considerations and outcomes of their complaints. This significantly departs from standard practice and is detrimental to the CM's credibility as a transparent, rights-compatible mechanism. We urge the CM to disclose the Compliance Audit reports in full to complainants and allow them the opportunity to comment on the draft reports at the same time as AFD departments.

Further, communities should be consulted on any action plan developed in response to findings of non-compliance to ensure that the proposed remedies actually address the harm.

Good policy from peer IAMs:

Proparco ICM Policy

6.81. The IEP will circulate the draft Compliance Review report to the DFI Management, the Client, and the Complainants for factual review and comment for a period of 21 Business Days.

6.82. Where findings of non-compliance are identified, the Panel will take into consideration DFI Management, Client, and Complainant's views in relation to the recommendations to be included in the Compliance Review report.

6.83. Taking into account factual feedback received, the IEP will finalize the Compliance Review report within 15 Business Days of the end of the factual review period.

6.84. The IEP will submit its final Compliance Review report to the DFI Management Board, and to the Supervisory Board for information. The IEP also will share the final Compliance

Review report with the Complainant and Client, and publish it on the ICM website within 5 Business Days of finalization.

Recommended edits:

10. **IMPLEMENTATION OF A COMPLIANCE AUDIT**

If the Expert concludes that AFD complied with its E&S Risk Management Procedures, the Secretariat submits the draft Compliance Audit report to the relevant AFD departments, the Beneficiary and the Complainants for comments within a reasonable timeframe (6 weeks). The Expert then produces a final Compliance Audit report, including an executive summary of his/her conclusions. The Secretariat then closes the Complaint file.

If the Expert finds that AFD did not comply with its E&S Risk Management Procedures, a) The Secretariat submits the draft Compliance Audit report to the relevant AFD departments, the Beneficiary and the Complainants for factual review and comments on the recommended remedial actions within a reasonable timeframe (6 weeks). The report includes a precise list of the non-conformities and proposes recommendations that can be implemented within the framework of the Project. b) After receiving the comments, the Expert has thirty (30) working days to submit a final version of the Compliance Audit report. The Expert can amend any factual inaccuracies and adapt his/her draft recommendations ~~but not the proven factual findings~~. He/she then sends the final Compliance Audit report to the Secretariat, who forwards it to AFD's Executive Management.

3. Monitoring

According to the Rules, the monitoring of remedial actions will be "ensured by the Secretariat and the project teams". However, in practice, we understand that they are exclusively being carried out by operational teams, partly because AFD has close to 90 field offices in countries of operation, providing operational teams with the proximity and capacity needed for regular monitoring. However, even if the Secretariat does not have the capacity and resources to carry out regular monitoring of remedial action plan implementation in all cases, it should still oversee the monitoring as the independent accountability office.

Specifically, the Secretariat should require regular updates from operational teams and initiate regular monitoring check-ins with complainants to elicit their feedback on the progress of remedial actions. It also ought to be the Secretariat, not operational teams themselves, who independently determine whether remedial actions carried out by the Beneficiaries and AFD operational teams have been completed to warrant the end of monitoring activities. In this respect, we note that the Proparco ICM takes a similar approach of leaving close supervision of remedial action implementation to the financial institution's management teams, but giving the ICM a mandate to receive progress reports, conduct site visits and other monitoring activities, and decide on when to end the monitoring.

Good policy from peer IAMs:

Proparco ICM Policy

6.95. DFI Management will be responsible for supervising implementation of the MAP and will submit progress reports to the ICM on its implementation at such intervals as agreed between the ICM and the DFI Management Board. DFI Management will respond to findings and recommendations from IEP Monitoring in its progress reports. DFI Management may amend the MAP in response to new information.

6.96. 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.

6.97. With regard to specific items that the IEP has been monitoring, where the IEP determines there is no reasonable expectation of further progress, the IEP may end the monitoring of those items.

Recommended edits:

11. **IMPLEMENTATION OF A COMPLIANCE AUDIT**

The Secretariat will prepare regular monitoring r~~R~~eports of~~monitoring~~ the implementation of the action plan, taking into account regular monitoring updates from the operational team and feedback from complainants on the progress and adequacy of remedial actions. ~~are prepared by~~ T~~t~~he operational teams shall conduct site visits as necessary and provide the Secretariat with regular monitoring updates until the time when the Secretariat deems that they are no longer necessary. These reports are sent to the Executive Management for information and published on the website.

VII. Remedy

We are encouraged by the explicit mention of remedy as the purpose and mission of the AFD CM in para 3.1 of the Rules. However, despite citing the definition of remedy from UNEP Finance Initiative's human rights toolkit and the UN Guiding Principles to list out the various forms that remedy can take, AFD repeatedly excluded the provision of both monetary and nonmonetary compensation as a possible remedy the CM process could offer complainants. It further attributed the responsibility of implementing remedial actions and Conciliation Agreements solely to the Beneficiaries.

This explicit exclusion of compensation as a remedy and of AFD's role in delivering any remedy significantly departs from standard practice and is incompatible with human rights requirements. While AFD should rightfully play a crucial role in using their leverage over Beneficiaries to facilitate the delivery of remedial actions by Beneficiaries directly, its ultimate role is to enable and ensure remedy. This could and should include directly remedying harms which it has caused or directly or indirectly contributed to, especially if the Beneficiary is not participating constructively in grievance redress and remedial actions. AFD is not the only development institution who is exposed to legal liability, yet other development institutions, including its own private investment arm Proparco, effectively manage such risks without preemptively excluding certain forms of remedy or ruling out delivering remedy themselves.

Further, throughout the history of IAM processes, compensation has been provided in several cases.[9] While remedy is not limited to compensation, experience demonstrates that compensation is appropriate in some cases and that providing it is feasible for development institutions. The explicit exclusion of compensation is therefore inappropriate and limits the ability of IAM processes to facilitate effective remedy.

We therefore urge any mention of the exclusion (on pages 9 and 21 and in footnote 2) be deleted from the Rules. Further we recommend the deletion of any language that indicates that remediation is solely the responsibility of the Beneficiary (Sec. 10). Additionally, as discussed above, complainants should be consulted on any action plans developed in response to findings of non-compliance.

VIII. Transparency

Transparency is key to building stakeholder trust in an IAM and gaining understanding of the implementation of the IAM policy and the delivery of remedy. The CM case registry, as currently envisioned in the draft Rules, contains insufficient information and significantly departs from standard practice.

Maintenance of a case 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 cases to promote transparency and

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[9] Accountability Counsel, *Accountability in action or inaction? An Empirical Study of Remedy Delivery in IAMs* (2025) p. 21, https://aconsole-static.s3.amazonaws.com/media/public/cases/accountabilityinactionorinaction.pdf.

predictability in the overall system. A good policy would accomplish this by requiring, or at least not preventing, the CM from developing a registry that includes pending, completed, and closed cases, including ineligible complaints.

The registry should include the following information in full:

- pending, completed, and closed cases, including ineligible complaints, with links to complaint letters (redacted if complainants request confidentiality)
- decisions on complaint admissibility, assessment reports, conciliation reports and agreements
- terms of references for compliance audit investigations, audit reports, management responses and proposed remedial actions
- monitoring reports, conclusion reports, and other relevant documentation.

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.

IX. Retaliation

Assessment of retaliation risks, prevention and response in the draft AFD Rules of Procedure

The draft Rules represent a step forward in addressing the risk of retaliation. The concept is explicitly defined, referenced at multiple procedural stages, and linked to international standards. **However, the provisions on retaliation are insufficient. vague and general,** in a way that seriously undermines the effective protection of complainants and project affected people.

1. The draft does not establish any criteria or guidelines to regulate how the risk assessment will be carried out.

The Rules describe when the risk of retaliation will be assessed, but say almost nothing about how these risks will be assessed. Section 7 establishes that the assessment of the risks of retaliation in the context of the eligibility assessment is "based on the factual elements available, on the local context and the information gathered from the Parties concerned" without providing concrete assessment criteria or risk indicators, the methodology that will guide the assessment, or minimum procedural safeguards for the participation and protection of the complainants during the assessment.

It is important that the Rules clearly establish the criteria and procedures that will be applied for the assessment of the risk of retaliation, ensuring the meaningful and safe participation and consultation of potentially affected individuals and organizations.

We recommend incorporating a minimum methodological framework for the assessment of retaliation risks, including a non-exhaustive list of risk indicators (e.g., history of violence against human rights defenders in the country, previous incidents related to the project, history of retaliation by project implementers, the context of restrictions on civic space existing in the country and project implementation area).

2. The assessment of retaliation risks should be carried out proactively during the initial registration stage, without being conditional on the complainants statement.

Section 5 c establishes that “in the event that the Complainant(s) declare(s) a risk of retaliation, the Secretariat will provide specific measures to ensure that his/her/their identity remains confidential.” At this stage, the only preventative measure is confidentiality, and it is contingent upon the complainant declaring a risk of retaliation.

Those who file complaints in high-risk contexts may be unaware of the risk of retaliation or may not feel safe disclosing it. This shifts the responsibility for identification directly onto the most vulnerable party.

The risks of retaliation must be proactively assessed in the context of all complaints, based on a contextual analysis, regardless of any statements made by the complainants. It is important that this analysis be conducted as early as the registration phase, a period in which complainants may be equally vulnerable.

We recommend establishing the obligation of the Secretariat to conduct a preliminary and contextualized assessment of the risk of retaliation for all complaints, which must be documented.

3. During the eligibility stage, the retaliation risk assessment should also be carried out in all cases

Paragraph 7, applicable to the eligibility stage, states that “in the context of this assessment, the Secretariat or Expert mobilized also assesses, if necessary and when possible, the risk of retaliation against the Complainant.”

The text conditions the assessment of the risk of retaliation on it being carried out “if necessary and when possible.” The phrase “when possible” is particularly concerning, as it implies that the assessment can be omitted for reasons that are not even made explicit in the document. Beyond some specific limitations that may arise in particular cases, hindering the acquisition of certain relevant information, there is no situation in which assessing the risk of retaliation is impossible. Regarding the criterion of necessity, we believe that in practice, an assessment cannot be deemed unnecessary before procedures designed to evaluate the risks have been applied.

We recommend replacing the phrase " if " necessary and when " possible " and state clearly that reprisal risk assessment is mandatory for all cases.

4. No specific, adequate measures are established to respond effectively to cases of retaliation or risk of retaliation in the context of complaints

Section 7 also states that “This risk assessment aims to determine whether specific measures can be envisaged, such as greater confidentiality measures, more secure communication channels or any other adapted processing arrangements, in line with the precautionary principle and the Complainant's informed consent, as well as within the limits of the Mechanism's operational capabilities.”

While these measures are necessary in order to prevent risks, they are clearly insufficient to respond to situations with a high risk of retaliation, or to cases in which retaliations have already occurred.

We recommend making it clear that there is no “one size fits all” approach when it comes to protection action plans, and ensure that any action plan to prevent and respond to reprisals is situated in the specific realities that the complainant(s) face. We strongly recommend incorporating a list of possible concrete actions that may be adopted in order to respond to reprisal risks, decided in dialogue and with the consent of the complainants and victims of reprisals.

The list should include, among others, the following actions:

- Consultation with the complainants and project-affected people about possible actions to prevent and respond to reprisals.
- With the consent of the people affected by reprisal risks, the Secretariat may recommend immediately suspending projects and disbursements until the reprisals have ceased.
- With the consent of the people affected by reprisal risks, the Secretariat may request the Bank to use its leverage to address reprisal risks directly with the Bank’s client.
- With the consent of the people affected by reprisal risks, the Secretariat may request the Bank may raise the incidents of reprisals publicly.
- With the consent of the people affected by reprisal risks, the Secretariat may discuss with protection orgs what the Bank could/should do.
- The Secretariat will document and create a register of all cases of reprisals suffered by complainants or project-affected people.
- The Secretariat may request from the Bank the provision of emergency assistance resources necessary to improve the security of the victims of reprisals.
- With the consent of the people affected, the Secretariat will communicate all cases of reprisals to members of the Board of Directors, with the consent of the people affected.

With the consent of the defenders, the policy should make sure that key prevention and mitigation measures – such as encouraging complainants to think about their physical and digital security and psychosocial wellbeing, issuing public statements expressing support for anyone’s right to voice concerns about AFD projects, and providing information on protection mechanisms at all levels, to name a few – figure in all prevention plans.

5. Risk of closure for complainants affected by retaliations

Article 12 states that the possibility to close a complaint when "the Secretariat has received no answers to its questions from the Complainant within 6 months."

There is no explicit exception or procedural safeguard for cases where the complainant's silence is due to retaliation or intimidation. People silenced by threats or reprisals could have their complaints dismissed for lack of response, precisely the intended outcome of the retaliation. The Rules should require that, before closing a complaint for lack of response, the Secretariat must assess whether the silence can be attributed to retaliation and document its conclusion.

6. No specific system for monitoring or reporting retaliation is established.

The annual report and capitalization report described do not specifically require data on retaliation incidents or implemented protective measures. Without systematic monitoring and publication of this data, which can be anonymized in cases where affected individuals require confidentiality, it is impossible to assess whether the retaliation prevention framework is effective.

We recommend requiring that both reports include a specific section on retaliation risk management, including, among other data, cases where retaliation risk was determined, number and type of retaliation identified, number of cases in which protection measures were activated and types of measures deployed, among others.

7. The annual report should also include complaints that were not registered or considered inadmissible.

The policy states that the eligibility assessment and the Eligibility Committee's decision are published on the mechanism's page on the AFD's website only when the complaint is considered eligible, and when both the beneficiary and the complainant have expressed their consent.
To ensure transparency and accountability in the interpretation and application of the admissibility criteria established in this policy, it is important to publish all complaints, including those not registered or deemed inadmissible. The only exception should be the lack of explicit consent from the complainants.

8. The rules should make specific provisions with regards to marginalized groups affected by reprisal risks

The rules should establish different measures aimed at identifying specific risks for discriminated groups, which may cause a project-affected person to be more at risk of retaliation, or which may expose the person to differentiated risks, such as women, people with disabilities, Indigenous Peoples, and LGBT groups. It should also explain what steps will be taken when groups marginalized by local practices in decision-making are raising issues.

9. The policy should take into consideration reprisals suffered by project-affected people, applying a comprehensive approach, looking beyond individual complainants.

It would be good to clarify that often other people directly affected by the project but not directly connected to the complaint are victims of reprisals when they speak out about the project. Any attack on affected people who criticize the project is also a threat that prevents others, including the complainants, from raising their voices. The policy should acknowledge the chilling effect that fear of reprisals can have on project-affected people and complainants by making explicit reference to the project-affected people, their allies and supporters, when defining reprisals, and when it indicates the information that should be taken into consideration during the assessment of reprisal risks.
Any reprisal risk assessment and subsequent action plan and/or remedies must take into account and address the potential impacts that the collective of people affected by the project may face, either when the complainant is a collective (e.g. grassroots community, civil society organization or association, network, trade union, etc.) or when the complainant is an individual, or a group of individuals, who belongs to a collective.

10. **As part of its prevention and mitigation measures, the Secretariat should compile a list, divided by countries, of organizations that complainants could reach out to for help or support once risks of reprisals have been identified.**

Having a pre-established list of trusted organizations and contact details with the mandate and support skills needed to assist at-risk complainants would be a small but impactful way of helping complainants and would take the guesswork out of figuring out what organizations could be of help.

11. **The policy should strengthen its measures to raise awareness about the mechanism and adopt specific measures to ensure the participation of IPs**

The policy should state that awareness raising and understanding of the mechanism's mandate, functions, and procedures among employees of AFD and external stakeholders and on AFD's safeguards should start from the earliest stages of project conception and planning. When project affected people include IPs, they should be conducted in Indigenous languages, and with full cultural sensitivity. More importantly, AFD management and the borrower/client should be liable to ensure that the project affected communities know about AFD financing, the applicable safeguards and the accountability mechanism as an avenue for voicing concerns. That can be undertaken such as by installing public signages in local languages at construction sites and across the impact area of the project. Further, they should effectively engage Indigenous Peoples' communities and their representatives since the design of the project itself.

12. **The policy should establish the participation of project affected people in the definition of the action plan adopted to remedy the harms.**

The policy should ensure that after wrongdoing and non- compliance with AFD policies has been established, project affected people participate and engage in the discussion of the specific actions and measures that will be adopted to remedy the harms.

The draft rules acknowledge the risk of retaliation and the need to assess these risks in the context of complaints. However, the operational framework for translating this acknowledgment into effective protection remains too vague, reactive, and discretionary to adequately protect complainants. The gap between the stated principle and operational rules constitutes a significant shortcoming of the draft.

X. Conclusion

We appreciate the efforts that AFD have taken thus far to promote an independent review and consultation process, and urge the adoption of the above proposed amendments intended to bring policy and practice in line with the accountability offices of peer institutions.

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

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