DETAILED METHODOLOGY

The data for this report were gathered through an elaborate and collaborative process. The data collection and analysis consisted of several components:

1. Quantitative analysis of the complaints filed to IAMs and the stages they reach, using a database consisting of all complaints filed to all 11 IAMs.
2. Qualitative process evaluation of the IAMs and the administering DFIs, using an assessment framework based on the United Nations Guiding Principles on Business and Human Rights (UNGPs) effectiveness criteria for Non-Judicial Grievance Mechanisms (NJGMs).
3. Qualitative outcome evaluation of the IAMs and their administering DFIs based on case studies of complaints that have closed or reached a result (i.e. a settlement reached in problem-solving or a publicly disclosed compliance review report) during the period 1 July 2014 to 30 June 2015.
4. Review by mechanisms and experts.

Below, the methods used are explained in more detail. First, section 1 describes the overall research approach. This is followed by an overview of: 2) the methods used for the quantitative analysis; 3) the assessment framework used to systemically evaluate IAM/DFI policy and practice; 4) the case study methodology to evaluate IAM/DFI outcomes; 5) the review process; and 6) an explanation of the limitations of the study.

1. APPROACH

COLLABORATION The report is the result of collaboration among CSOs that advocate for greater accountability at DFIs and improved remedy for complainants, and academic institutes with a research interest in this topic. The collaboration included shared data collection, online sharing of results and analysis, written contributions, and peer reviews. CSOs and academic institutions contributed to the research in three different ways: 1) as members of the core drafting group; 2) as respondents to calls for information; and 3) as reviewers.

The core drafting group was established to collect and analyse the data, discuss and review the findings along the way, and compile a high-quality report. Each member of the core drafting group took responsibility for the development of a specific component of the report (e.g. specific IAM/DFI, case study, quantitative analysis, etc.). The core drafting

group comprised of members of the following organisations, of which many have experience using and assessing IAMs/DFIs:

- Accountability Counsel
- Both ENDS
- Center for International Environmental Law (CIEL)
- Central and Eastern European Bankwatch Network
- Center for Human Rights and Global Justice, New York University School of Law[1]
- Centre for Research on Multinational Corporations (SOMO)
- Counter Balance
- Foundation for the Development of Sustainable Policies (FUNDEPS)
- Inclusive Development International (IDI)
- Natural Justice
- Program on International & Comparative Environmental Law, American University Washington College of Law[2]

The core drafting group made use of an online, private platform to exchange templates, data and draft texts and comment on each other's work. Regular conference calls were scheduled to discuss progress and issues that arose during the process.

SCOPE OF REVIEW This report seeks to analyse publicly available data on complaints filed to all IAMs.[3] Consequently, this research includes all IAMs that post public information about complaints received. This has resulted in a list of 11 IAMs, excluding those that have not made their complaints public or that have not received any complaints yet.[4] Thus, this report assesses the following IAMs and corresponding DFIs:

- The Independent Review Mechanism (IRM) of the African Development Bank (AfDB)
- The Accountability Mechanism (AM) of the Asian Development Bank (ADB)
- The Canadian Office of the Extractive's Sector's Corporate Social Responsibility Counsellor (Canadian CSR Counsellor)[5]
- The Independent Complaints Mechanism (ICM) of the Dutch Development Bank (FMO) and German Development Bank (DEG)
- The Project Complaint Mechanism (PCM) of the European Bank for Reconstruction and Development (EBRD)
- The Complaints Mechanism (CM) of the European Investment Bank (EIB)
- Independent Consultation and Investigation Mechanism (MICI) of the Inter-American Development Bank (IDB)
- The Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)
- The Examiners for the Guidelines of the Japan International Cooperation Agency (JICA) and the Japan Bank for International Cooperation (JBIC)
- The Office of Accountability (OA) of the US Overseas Private Investment Corporation (OPIC)
- The Inspection Panel (IP) of the World Bank (WB).

CASE UNIVERSE The quantitative analysis of the complaints in Chapter 2 pulls from a database containing all publicly-reported cases filed with IAMs. To ensure the qualitative evaluation relates to recent practices, the cases for more in-depth analysis (i.e. case studies, analysis of reasons for case closure without reaching substantive phase, case boxes) were drawn from the one-year period prior to publishing this report: 1 July 2014 to 30 June 2015. [6]

SOURCES OF INFORMATION This report aims to evaluate the IAMs/DFIs from a users' perspective. Accordingly, information that would not be available to users (such as information internal to the IAMs or the DFIs) is not used in this report. The data were collected solely from publicly available information, or directly from the users of the mechanisms. When the IAMs provided supplementary information during the review period, this is made explicit in the report text and/or footnotes.

EXPERT INPUT Because one of the main aims of the current report is to provide a user-centred evaluation of IAMs and their corresponding DFIs, an important element in each of the research stages was to seek input from those with experience in using the mechanisms, supplementing the experience of members of the research team. This input was solicited at several stages in the research process and on several subjects, by means of requests distributed through existing networks of CSOs working on DFIs and IAMs. The following calls for expert input were made:

- Call for verification of and additions to the list of cases within the case universe;
- Online questionnaire assessing the functioning of each mechanism and the corresponding DFI;
- Call for description of active cases and cases closed without reaching a substantive stage within the case universe.

2. QUANTITATIVE ANALYSIS OF THE MECHANISMS

The quantitative analysis of the mechanisms provided in Chapter 2 is based on a database with information on complaints filed at all IAMs since their establishment through to 30 June 2015.[7] Information on the cases was collected from the mechanisms' websites and their annual reports or similar publications produced by the mechanisms themselves, and included data per mechanism on the type of complaint, the stage of the complaint process and the results, if any.

A few methodological points related to the overall quantitative analysis of this report bear emphasising. First, the pool of cases analysed in Chapter 2 was often limited to 'concluded' cases. 'Concluded' cases are those that are either closed or in monitoring. This limitation was imposed to balance simplicity, clarity and completeness. By restricting the analysis to cases closed or in monitoring, the analysis avoids inaccuracies resulting from including active cases that have not had a chance to reach certain stages of the process. Additionally, including cases that are still in monitoring, rather than limiting the analysis to only closed cases, ensures that some of the most successful cases at IAMs – those that have produced a result needing to be monitored – are included in the analysis.

Second, the quantitative analysis frequently references complaints that reach a 'substantive' phase of the process. In such instances, a 'substantive' phase refers to either problem-solving or compliance review. What is being measured is simply how often a dialogue process or a full compliance investigation was initiated, not how often they were actually completed. Moreover, complaints that may have technically entered a mechanism's problem-solving or compliance review process, but ended prior to initiation of a dialogue or a full investigation, were not counted as reaching a substantive phase. For example, complaints that ended at the appraisal stage of compliance review were not counted as having reached compliance review.

Third, in this analysis, a 'result' was counted in any case that produced a settlement reached in problem-solving and/or a publicly disclosed compliance review report. Where possible, the analysis attempted to report only those settlements involving substantive agreements on issues raised in complaints, excluding settlements that concerned only procedural agreements regarding the conduct of the dialogue process or minor agreements about interim issues. However, detailed information about settlements was usually not available, and data concerning settlements was based on information reported by the IAMs themselves. This means that, where the IAM and the complainants disagree over what constitutes a settlement in their case, inaccuracies may result. Since, for this part of the research, researchers did not follow up with complainants to determine their perspective, it is important to note that recording a case as involving a settlement did not entail a judgement on the quality or acceptability of that settlement. It simply means that, based on information provided by the IAM involved, a substantive (non-procedural) agreement appears to have been reached.

In some calculations involving the percentage of cases reaching problem-solving or compliance review, or achieving a result (an outcome that relies on a complaint first reaching a substantive phase), the analysis controlled for cases that were filed at a mechanism that did not offer both functions or were restricted to compliance review because of the type of filer.[8]

Finally, the quantitative analysis includes data regarding the types of organisations and actors that file or otherwise support complaints. For these purposes, a filer is a party that formally signs the complaint or is formally identified in the complaint as a representative of complainants. Filers are also usually reported as such by IAMs. An organisation supporting a complaint is generally not named in the complaint, or is named in a supporting capacity only. While some of the information on supporting organisations is publicly available, much of it is not. Therefore, the data collected regarding supporting

organisations relied heavily on self-reporting from CSOs themselves. This was the only aspect of the quantitative analysis that did not rely exclusively on publicly available information.

Notes on regression analysis: Chapter 2 of the report includes a regression analysis assessing the effect that CSO involvement has on a complaint's odds of eventually achieving results. Only concluded, eligible complaints were included in this analysis.

The regression performed was a binary logistic regression. The dependent variable tracked whether or not a result was achieved in a given complaint. It was coded 1 for 'result achieved' and 0 for 'no result'. To analyse the effect of CSO involvement on the odds that complaints achieved results, dummy variables were created that tracked complaints that were filed by individuals or local community organisations without the support of a CSO (this was the omitted dummy variable), complaints that involved only a domestic CSO, and complaints that involved an international CSO, either alone or in conjunction with a domestic CSO. 'Involvement' of a CSO includes involvement as either a complaint filer or supporter.

Dummy variables were also included, as control variables, for the IAM at which complaints were filed. Although all IAMs were included as dummy variables, except for the ADB AM (this was the omitted dummy variable), some of the variables for the smaller IAMs were omitted because they predicted success or failure perfectly. However, only ten observations were lost due to these omissions.

Table 1 shows a detailed summary of regression analysis results.

TABLE 1: REGRESSION OF CSO INVOLVEMENT ON WHETHER COMPLAINTS ACHIEVED RESULTS

Number of observations: 210
Pseudo r^2: 0.2486

INDEPENDENT VARIABLE	ODDS RATIO	95% CONFIDENCE INTERVAL
International CSO involved	2.725	[1.173, 6.33]
Domestic CSO only	1.389	[0.646, 2.985]
IRM-AfDB	0.556	[0.068, 4.580]
CAO-IFC/MIGA	0.219	[0.057, 0.846]
CSRC-GoC	(omitted)	
IRM-EBRD	0.332	[0.032, 3.500]
PCM-EBRD	1.484	[0.125, 17.556]
CM-EIB	0.014	[0.002, 0.099]
ICM-FMO/DEG	(omitted)	
IP-WB	0.931	[0.200, 4.330]
Exs.-JBIC	(omitted)	
Exs.-JBIC/JICA	(omitted)	
Exs.-JICA	(omitted)	
MICI-IDB	0.467	[0.084, 2.590]
OA-OPIC	(omitted)	
constant	2.772	[0.737, 10.425]

3. QUALITATIVE PROCESS EVALUATION OF THE IAMs/DFIs

The qualitative assessment of the functioning of the IAMs and the corresponding DFIs is a core aspect of the present research. For this purpose, an assessment framework was developed on the basis of the effectiveness criteria for Non-Judicial Grievance Mechanisms (NJGM) described in Principle 31 of the UNGPs. The effectiveness criteria apply to all State-based and non-State-based grievance mechanisms, and to both adjudicatory and dialogue-based mechanisms. Although intended for use in the business and human rights arena, the authors consider the effectiveness criteria – that a grievance mechanism be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning – to be relevant to a broader context and generally consistent with criteria used by CSOs prior to the development of the UNGPs.

The assessment framework can be found in Annex 2. The assessment framework includes each of the UNGPs criteria, and for each criterion several indicators were developed. These indicators guided the researchers in their assessment and provided consistency in

interpretation of the criteria. The framework assesses the mechanism and DFI separately. In this way, the research acknowledges that the effectiveness of a mechanism is also dependent on the functioning of its administering DFI. Furthermore, the assessment framework distinguishes between the policies and practices of both IAM and DFI, in order to capture potential differences between the two.

The policy-related assessment is based on publicly available information, mainly from the websites of the IAMs and DFIs. The data collected were enriched by feedback from the mechanisms (see further below). The practice-related assessment is based on an online questionnaire distributed through the authors' existing networks to CSOs with experience using the mechanisms (see Annex 3). This online questionnaire resulted in 27 responses from CSOs, unevenly distributed across IAMs/DFIs. It should therefore not be considered as a survey tool that delivered quantifiable data, but as a method to systematically gather qualitative information about actual experiences.

In addition to this systemic, qualitative, overall assessment of the IAMs and their corresponding DFIs, an effort was made to collect information on both active and rejected cases per mechanism within the research period. The information on active cases was solicited through an online call for input, using a simple Word template for CSO experts involved in active cases to fill out. The limited data this delivered is included in text boxes in Chapters 3 and 4.

4. QUALITATIVE OUTCOME EVALUATION OF COMPLAINTS

The last component of the research involves case studies of complaints that reached a result during the research period after going through either compliance review or mediation. This part of the research was designed to capture the ability of the mechanism and the DFI to provide remedy from the perspective of the rights-holders: the complainants, i.e. those adversely affected by the investments. Ultimately, the satisfaction of the complainants with the procedures and outcomes of the complaint processes is the most important indicator of the ability of the IAMs/DFIs to provide remedy, and one that is rarely captured.

In the research period (1 July 2014 – 30 June 2015) 12 cases had reached a result (i.e. one in which there has been a settlement reached in problem-solving and/or a publicly disclosed compliance review report) and thus qualified for a case study. While planning case studies for all 12 cases, the research team tried to reach complainants for only eight of these cases, because of resource constraints. This effort was successful in six cases. One case study that does not strictly meet the case selection criteria was added, because it seemed to match the criteria at first sight (for further information, see Section 4.2), bringing the total number of case studies to seven. The principal reasons for the difficulty in reaching complainants were: 1) anonymity of the complainants; 2) limited means of communication available to the complainants; 3) complainants' fear of retaliation for participating in the study.

For the cases in which the researchers were able to contact the complainants, interviews were conducted with one or more of the complainants. The interview questions were designed to measure satisfaction both with processes and outcomes. Again, the UNGP effectiveness criteria were used to design the interview questions. For each criterion, several in-depth questions were developed to measure the complainants' satisfaction. Also for this part of the assessment, specific attention was paid to evaluate the activities of the DFI and mechanism separately. The interviews were semi-structured. This means that all interviewers used the same questions to measure satisfaction, allowing for systematic data collection. However, the interviewers were also open to any additional comments from the complainants. This resulted in the collection of rich and detailed data. The interview questions are available in Annex 4.

The results of these interviews are presented as case studies in Section 4.2. In some case studies, when available, interview data was combined with secondary information on the case. Again, case studies were not conducted for all IAMs/DFIs, either because they did not have any cases that met our selection criteria in the research period, or because we were unable to contact the complainants.

The case studies should be read as inherently subjective assessments of the satisfaction of one or more of the complainants in the case. The assessments do not necessarily reflect the perspectives of all complainants in the case, as they could not all be reached. Nevertheless, these subjective assessments are an important indicator of the success of the mechanisms and the corresponding DFIs in providing remedy to people adversely affected by DFI-financed activities, since it is these same people for whom the IAMs/DFIs are expected to provide remedy.

5. REVIEW

All mechanisms mentioned in this research report have been given the opportunity to review and comment on a near-final draft of the full report. The review was intended not only to avoid inaccuracies but also served as a method to collect additional information from the IAMs that the research team was unable to collect from public sources. In cases where the mechanisms indeed provided such non-public information, we have clearly indicated this in the text. The authors of the report incorporated the comments as appropriate; however, they remain solely responsible for its contents.

In addition to a review by each of the mechanisms covered in this report, a draft version of the report was reviewed by a number of highly regarded experts with research experience in this field. Their comments considerably improved the report, and their contributions are noted in the acknowledgements.

6. LIMITATIONS OF THE STUDY

The present report includes experiences and perspectives of users in order to enrich the assessments of the policies of IAMs and DFIs. Furthermore, it includes case studies of concluded complaints based on complainant interviews to provide insights into their personal evaluation of the complaint process and outcomes, and identify critical issues therein. Inherent to this qualitative method, the study has a number of limitations.

First of all, the user experiences and perspectives captured in this study do not pretend to be representative of all IAM users, nor should they be interpreted as such. An effort was made to collect user data to inform the qualitative process evaluation of the 11 IAMs/DFIs (Annex 5-15). This data was collected by means of network distribution of questionnaires, implying that the respondents were 'self-selecting' (i.e., whoever wanted to respond, responded). Furthermore, the number of responses received to our data collection efforts were limited for each of the mechanisms assessed. For some mechanisms, there was no response at all.[9] So while an effort was made to collect experiences from users and a number of these experiences are captured in this report to illustrate and 'colour in' the IAM/DFI policy assessments that were based on desk studies, it by no means represents an exhaustive collection of all of the experiences and views held.

In addition to these IAM/DFI- related questionnaires, an effort was made to reach out to complainants in recently concluded complaints, in order to capture their assessment of the complaint outcomes in dedicated case studies (the results of which can be found in Section 4.2). The purpose of this exercise was to capture the personal stories of complainants, which are inherently subjective. The research period was limited to 1 July 2014 to 30 June 2015 because the research team was seeking to capture recent experiences. The efforts to reach out to complainants resulted in seven case studies, unevenly distributed across mechanisms. This chapter should not be read as a comparison of the effectiveness between IAMs/DFIs, as it does not pretend to do so. It is an account of recent experiences of complainants in a non-representative set of recent complaints, from which to benefit when considering reforms to make the accountability system of development finance more responsive to the needs of rights-holders.

Furthermore, it should be acknowledged that the study assesses a heterogeneous group of IAMs: some attached to DFIs investing in public institutions and/ or reforms, others directly investing in the private sector only; some performing compliance review exclusively, others offering both problem-solving and compliance functions. And there are many more differences. Therefore, the study does not provide a ranking of the IAMs and their DFIs.[10]

A final word on the assessment framework used to assess IAM and DFI functioning, which is based on the effectiveness criteria in the UNGP. Even though the UNGP were developed to address duties and responsibilities associated with business-related human rights abuse, and not all mechanisms deal with these types of abuses, the effectiveness criteria are broadly applicable because they simply relate to due process. As for the 'rights-compatibility' criterion specifically, even though not all DFIs include human rights in their policies, the research team is of the opinion that both public and private finance bodies should seek to make rights-compatible investments, and thus rights-compatibility is regarded as an appropriate evaluation criterion.

NOTES

1   This report does not purport to represent the institutional views of NYU.

2   This report does not purport to represent the institutional views of American University.

3   By doing this, the report builds on Accountability Counsel's report. Accountability Counsel, Recent Trends in Accountability: Charting the Course of Complaint Offices (2014) [hereinafter Accountability Counsel Report].

4   Like the Ombudsperson of the Brazilian Development Bank, the Compliance Officer of Export Development Canada, the Examiner of Nippon Export and Investment Insurance, and the General Counsel of the Australian Export Finance and Insurance Corporation.

5   The Canadian CSR Counsellor is an anomaly in this list because it is not a DFI, but rather a state-based mechanism with jurisdiction over the Canadian extractives sector. It is included in this report because it has participated in the IAMs network, which this report aims to engage.

6   This period was chosen because it follows on the research period in Accountability Counsel Report supra note 3.

7   Because the EIB CM has a much broader mandate than other IAMs, the database excluded several EIB CM cases, including only some of the complaints regarding disclosure (those related to social and environmental disclosure issues) and all complaints directly relating to social and environmental issues. Complaints related to governance, procurement, human resources and customer and investor relations are not included because these generally did not relate to the impacts of EIB projects on local affected people. We note that this approach has likely artificially inflated the EIB CM's statistics as compared to other mechanisms, since some of the cases that other mechanisms reject as outside their mandate, such as those relating to procurement, would be within the EIB CM's mandate and therefore would not be rejected or found ineligible.

8   For example, the World Bank's Inspection Panel only offers compliance review and the CSR Counsellor only offers problem-solving. Additionally, cases filed at the CAO by the CAO VP or bank leadership and cases filed at the EBRD'S PCM by CSOs not representing directly affected people are only eligible for compliance review.

9   The number of responses received for each mechanism is mentioned in the introduction to each mechanism assessment (see Annexes 5-15).

10   In the quantitative analysis (Chapter 2), comparative analyses are controlled for the availability of functions where appropriate. In order to provide case statistics, it should be noted that case registries differ across mechanisms, and the coding of these cases involved making a number of judgement calls. These are elaborated on throughout the texts, and the research team stands ready to provide further explanations when needed. In the qualitative sections (Chapter 3 and Annexes 5-15), no one-to-one comparison is made between the mechanisms: each of the mechanisms is individually assessed. Chapter 3 provides a synthesis of these findings and draws some general trends and analyses. In Chapter 5, recommendations are provided across mechanisms, while acknowledging that some recommendations are not applicable to specific mechanisms (indicated with an 'X').