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Injecting justice into climate finance: Can the Independent Redress Mechanism of the Green Climate Fund help?

Vanessa Richard[*]

A quick overview of the climate finance landscape

According to the latest annual report of the Climate Policy Initiative, in 2013 climate-related financial flows totalled approximatively USD 331 billion; 42% of these financial flows originated in public actors and intermediaries and 58% in private investment.[1] Almost three quarters of climate financial flows are invested in their country of origin and this figure is significantly higher as regards private investment (90%),[2] which essentially concerns the energy sector.[3] As regards public financial flows, mostly originating in development finance institutions,[4] they represent some 38% of total climate finance flows and come from national development assistance institutions (USD 70 billion in 2013), multilateral institutions (USD 42 billion) and bilateral institutions (USD 14 billion). It is important to be aware that financial flows originating in public entities irrigate both public and private investment.

Even when focusing on public finance only –which represents less than half of total financial flows–, the profusion of institutions which operate in the climate finance landscape is striking. Most of these public institutions are just beginning to create monitoring and accounting systems for the climate finance they generate. Each institution has its own standards and indicators in this regard; harmonizing the methods for climate finance tracking is therefore a crucial challenge. Together with the International Development Finance Club (IDFC) –a network of national and sub-regional development

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[*] PhD, CNRS Researcher, Centre for International and European Studies and Research (CERIC), Joint Research Unit DICE no. 7318 CNRS/ Aix-Marseille Université; Principal Investigator of the International Grievance Mechanisms and International Law & Governance (IGMs) project. The research leading to these results has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP/2007-2013) / ERC Grant Agreement no. 312514.

[1] B. Buchner, M. Stadelmann, J. Wilkinson, F. Mazza, A. Rosenberg, D. Abramskiehn, *Global Landscape of Climate Finance 2014*, November 2014, http://climatepolicyinitiative.org/wp-content/uploads/2014/11/The-Global-Landscape-of-Climate-Finance-2014.pdf, p. IV (last visited 3 May 2016.)

[2] *Ibidem*.

[3] *Ibid*., p. 10; OECD, *Scaling-up Finance Mechanisms for Biodiversity*, Paris: OECD, 2013, p. 112 ; C. Clapp, J. Ellis, J. Benn, J. Corfee-Morlot, *Tracking Climate Finance: What and How?*, Discussion paper prepared for the Climate Change Expert Group (CCXG), Global Forum on the New UNFCCC Market Mechanism and Tracking Climate Finance, March 2012, Paris: OECD/International Energy Agency, Doc. COM/ENV/EPOC/IEA/SLT(2012)1, http://www.oecd.org/env/cc/50293494.pdf (last visited 3 May 2016.)

[4] Development finance institutions have committed USD 126 billion in 2013; direct contributions of governments totalled 6 to 12 USD billion. This figure does not cover the climate-related public budgets which are purely internal to each country.

banks– the main multilateral, regional and national lenders adopted *Common Principles for Climate Mitigation Finance Tracking*[5] in June 1015 and common principles for climate adaptation are currently being developed.[6] Arguably, failing effective and efficient tracking systems, in some cases it is very difficult to know where finance climate flows finally end up and thus to assess their environmental, social, economic or cultural impacts. The fact that climate finance may follow convoluted paths makes the task even more difficult: imagine for example the situation when a development finance institution lends to a governmental agency, which uses these funds to finance public projects but also the banking sector, so that domestic banks can finance private investments in energy saving…

International climate finance and the access to remedies

The Paris Agreement recognizes "*that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it.*"[7] The issue of the adverse impacts of climate policies and finance is not just a distant possibility. A growing corpus of research and NGOs studies show that the Clean Development Mechanism (CDM) and probably the REDD+[8] mechanism can support projects that do not benefit communities, not to mention cases when populations are worse-off after the project is approved and implemented.[9] Some CDM hydro-electricity projects in Guatemala and Panama have for example triggered issues of serious violations of human rights and indigenous people rights, along with biodiversity concerns.[10] Though the CDM or the REDD+ are supposed to be made-to measure mechanisms for the fight against climate change and are part of the UN legal framework in this respect, they show exactly the same potential flaws in the implementation of environmental and social safeguards that those witnessed in the framework of any other large

[5] Common Principles for Climate Mitigation Finance Tracking, Version 2, 15 June 2015 http://www.worldbank.org/content/dam/Worldbank/document/Climate/MDB%20IDFC%20Mitigation%20Finance%20Tracking%20Common%20Principles%20-%20V2%2015062015.pdf (last visited 3 May 2016.)

[6] See http://www.worldbank.org/en/news/feature/2015/04/03/common-principles-for-tracking-climate-finance (last visited 3 May 2016.)

[7] Paris Agreement, Preamble, *in* UNFCCC, Report of the Conference of the Parties on its twenty-first session, Doc. FCCC/CP/2015/10/Add.1.

[8] Reducing Emissions from Deforestation and Forest Degradation.

[9] See *inter alia* P. Bond, K. Sharife, F. Allen, B. Amisi, K. Brunner, R. Castel-Branco, D. Dorsey, G. Gambirazzio, T. Hathaway, A. Nel, W. Nham, "The CDM cannot deliver the money to Africa. Why the Clean Development Mechanism won't save the planet from climate change, and how African civil society is resisting", 2012, EJOLT Report No. 2, http://www.ejolt.org/wordpress/wp-content/uploads/2013/01/121221_EJOLT_2_High.pdf (with 6 case studies in 8 African countries, last visited 3 May 2016); M. Poudyala, B. S. Ramamonjisoab, N. Hockleya, O. Sarobidy Rakotonarivoa, J. M. Gibbonsa, R. Mandimbiniainab, A. Rasoamananab, J. P.G. Jonesa, "Can REDD+ social safeguards reach the 'right' people? Lessons from Madagascar", *Global Environmental Change*, 2016, Vol. 37, pp. 31-42.

[10] On the Santa Rita dam in Guatemala see S. Dasgupta, "'Green hydropower dam fuels charges of gross human rights violations", 27 May 2015, http://news.mongabay.com/2015/0527-dasgupta-santa-rita-dam-human-rights.html; Carbon Market Watch, "Campaigns: Santa Rita – Large hydro power project, Guatemala", http://carbonmarketwatch.org/category/santa-rita-large-hydro-power-project-guatemala/. On the Barro Blanco dam in Panama, see Earthjustice, "UN asked to investigate human rights violations caused by Panama's Barro Blanco dam", 18 June 2013, http://earthjustice.org/news/press/2013/un-asked-to-investigate-human-rights-violations-caused-by-panama-s-barro-blanco-dam# (last visited 3 May 2016.)

project financed by development finance institutions, whether at the design, approval, implementation or monitoring stage.[11]

Large climate-related development projects, whether the construction of collective transportation networks to reduce the use of individual cars, of hydroelectric dams –hydroelectricity still being considered a green energy despite the ghastly environmental track-record of large dams in this respect–,[12] of wind farms but also, more broadly, of facilities with systems that reduce greenhouse gases (GHG) emissions, entail taking into account a series of considerations such as the identification of affected people, information, consultation and/or participation of the public, environmental and social impact assessments, protection of natural habitats, respect of indigenous people's rights, involuntary resettlement, and due diligence of the financing institution which must make as sure as possible that projects address all the above consideration adequately. Given the stakes, the ability of development finance institutions to assess funding applications and to monitor the impacts of the projects they finance is far from ideal. A recent reports shows that the extent to which the fight against climate change is taken into account, both in the decision to approve loans and in the monitoring of impacts, is rather poor.[13] Moreover, besides the financing of 'real' projects –for example the construction of a public transportation network– an important share of the funds flow through 'development policy lending',[14] technical assistance to borrowers/clients[15] and financial intermediaries.[16]

In the present institutional and decisional setting, people affected by the adverse impacts of development projects funded by climate finance have precious few possibilities to trigger the legal responsibility of the executive agencies though which climate finance is channelled. Some of them are even international organizations –the multilateral development banks (MDBs)– who as such benefit

[11] For the sole World Bank Group: on the environmental impacts of the projects it finances see Bruce Rich, *Foreclosing the Future: The World Bank and the Politics of Environmental Destruction*, 2013; Washington/Covelo/London: Island Press; see also Human Rights Watch, *At Your Own Risk. Reprisals against Critics of World Bank Group Projects*, June 2015, http://www.hrw.org/sites/default/files/reports/worldBank0615_4Up.pdf; also, a series of articles of the International Consortium of Investigative Journalism (ICIJ), "Evicted and Abandoned. The World Bank's Broken Promise to the Poor", http://www.icij.org/project/world-bank (last visited 3 May 2016.)

[12] See *inter alia* IUCN and the World Bank Group, *Large Dams: Learning from the Past, Looking at the Future*, 1997, IUCN: Gland/Cambridge, UK and the World Bank Group: Washington, DC.

[13] H. Mainhardt, N. Sinani, "MDB Climate Change Scorecard: Do the MDBs Pass the 2 Degree Test?", Bank Information Center and Sierra Club, December 2015, http://www.bankinformationcenter.org/wp-content/uploads/2015/10/MDB-Climate-Change-Scorecard-formatted.pdf, pp. 3-4; see also J. Redman, A. Durand, M. C. Bustos, J. Baum, T. Roberts, "Walking the Talk? World Bank Energy-Related Policies and Financing 2000-2004 to 2010-2014", Joint briefing from Brown University's Climate and Development Lab and the Institute for Policy Studies, October 2015, http://www.ips-dc.org/wp-content/uploads/2015/10/Walking-The-Talk.pdf (last visited 3 May 2016.)

[14] Loans aiming at reforming entire sectors of a country's economy; development policy lending replaces structural adjustment loans and sectoral adjustment loans.

[15] For example a loan that finances a study on the opportunities and impacts of the privatization of the energy distribution sector, or else studies on the legal reform of land titles etc.

[16] According to Investopedia: "*A financial intermediary is an entity that acts as the middleman between two parties in a financial transaction. While a commercial bank is a typical financial intermediary, this category also includes other financial institutions such as investment banks, insurance companies, broker-dealers, mutual funds and pension funds. Financial intermediaries offer a number of benefits to the average consumer including safety, liquidity and economies of scale*": http://www.investopedia.com/terms/f/financialintermediary.asp (last visited 3 May 2016.)

from jurisdictional immunity. It is therefore important that these people can voice their concerns and have a way to hold development finance institutions accountable when they do not live up to their own environmental and social standards. Grievance mechanisms allowing affected people to complain might also play a significant feed-back role to international and national institutions on the effectiveness of mitigation and adaptation measures.

Since 1993 and the creation of the Inspection Panel for the public projects the World Bank funds, the idea of creating non-judicial grievance mechanisms in multilateral and national development banks has flourished. The World Bank Group has two IAMs, the Inspection Panel created in 1993 for public projects supported by the International Bank for Reconstruction and Development (IBRD) and the International Development Agency (IDA), and the Compliance Advisor Ombudsman (CAO) created in 1999 for private projects supported by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA); the Interamerican Development Bank (IDB) created an Independent Inspection Mechanism in 1994, replaced in 2010 by the Independent Consultation and Investigation Mechanism (MICI, for *Mecanismo Independiente de Consulta e Investigación*); the Asian Development Bank (ADB) created an Inspection Function in 1995, replaced with the Accountability Mechanism (AM) since 2003; the European Bank for Reconstruction and Development (EBRD) created the Independent Recourse Mechanism in 2003, replaced with the Project Complaint Mechanism (PCM) in 2010; the African Development Bank (AfDB) created the Independent Review Mechanism (IRM), entrusted to a Compliance Review and Mediation Unit (CRMU) in 2004; the European Investment Bank (EIB) created its Complaints Mechanism in 2008… Let us add to this non-exhaustive list the combination of the Social and Environmental Compliance Unit (SECU) with the Stakeholder Response Mechanism (SRM) freshly created by the United Nations Development Programme (UNDP) in late 2014, the Japan Bank for International Cooperation's (JBIC) creation in 2003 of the Examiner for Environmental Guidelines, the Nippon Export and Investment Insurance's (NEXI, Japan's export credit agency) creation in 2003 of the Objection and Consultation Procedures on Guidelines of Environmental and Social Considerations in Trade Insurance, the Overseas Private Investment Corporation's (OPIC, the United States' development finance institution) creation in 2005 of the Office of Accountability…

Nowadays it seems that providing access to an accountability mechanism has become good practice in international development institutions. One of the roles of the existing international accountability mechanisms (IAMs) of development banks is to assess, upon request of people affected or likely to be affected by the bank's activities, whether the bank has complied with its own internal standards –for example its policies or procedures on information disclosure, impact assessment, indigenous peoples… These policies and procedures do not apply to borrowing States or private clients but to the bank's staff (Management) and they define standards of conduct in the decisional

process leading to the approval, implementation and monitoring of loans and grants. In the event the IAM finds that the bank did not comply with some internal standards, it doesn't result in any legal responsibility attributable to the bank. IAMs aim at giving an opportunity to adopt corrective measures so that the project can be implemented in a better way. The purpose is therefore not to record wrongful acts under international law. One of the core features of IAMs is that accountability is not polarized on the violation of a norm but on harm, whether it has already occurred or might occur. The logic of the IAMs' accountability process is thus not rights-based but rather wrongs-based. For this reason, except for the Inspection Panel for the public projects supported by the World Bank Group,[17] all other IAMs articulate a problem-solving procedure with a compliance control procedure. Generally speaking, their role is threefold:

- To assess, upon request of the people affected—or likely to be affected—by the bank's activities, the compliance of the Management of the bank with its own internal rules, that is to say with its policies and procedures for instance related to the disclosure of information, environmental and social assessment, indigenous people rights… If the Management is found not compliant, it does not result in the legal implication of the bank but it is expected to adopt corrective measures;
- To offer redress for negative environmental and social impacts, based on a problem-solving approach tailored to the needs of the requesters, using techniques such as fact-finding, mediation, consultation, negotiation… Except for the IRM and the MICI,[18] the latest being the less accessible of all IAMs, access to problem-solving (sometimes called dispute resolution or consultation phase) is not conditioned by the fact claimants allege a breach of the bank's standards and;
- To provide the bank with lessons learned from the cases, including recommendations related to changes in MDBs' policies and procedures that would be needed to prevent future noncompliance situations. In this respect, the CAO used to be the only IAM whose mandate expressly includes direct "*advice to the President and IFC/MIGA on broader environmental and social issues related to*

[17] The 2014 review of the Inspection Panel's Operating Procedures has introduced a highly controversial 'pilot approach to support early solutions' that aims at facilitating dialogue between Management and the complainants before registering the complaint. Though it is not supposed to prevent complainants to access the compliance control procedure if this dialogue fails, the first attempt resulted in some of the complainant seeing the compliance control path barred. See Inspection Panel, 2014 Updated Operating Procedures, http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf; Inspection Panel, *Nigeria: Lagos Metropolitan Development and Governance Project* (Pilot - Not Registered), Case 91, Complaint received 30 September 2013, http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=94; Amnesty International, "World Bank: Investigate Inspection Panel's Pilot Approach to Early Solutions and Its Application in Badia East, Lagos, Nigeria", 2 September 2014, https://www.amnesty.org/download/Documents/4000/afr440202014en.pdf (last visited 3 May 2016.)

[18] MICI Policy 2014, para. 24: "*The objective of the Consultation Phase is to provide an opportunity to the Parties to address the issues raised by the Requesters related to Harm caused by the failure of the Bank to comply with one or more of its Relevant Operational Policies in the context of a Bank-Financed Operation*"; IRM Operating Rules and Procedures 2014, paras. 1 and 6. Note that in the case of the IRM, the combination of paras. 7c) ("*When requesting a compliance review,* [the request should contain] *an explanation of how Bank Group policies, procedures or contractual documents were violated*") and 41 ("*The objective of a problem-solving exercise is to restore an effective dialogue between the Requestors and any interested persons with a view to resolving the issue or issues underlying a Request, without seeking to attribute blame or fault to any such party*") reveals that though formally the Operating Rules and Procedures require that the requesters "*allege that an actual or threatened material adverse effect on the affected persons' rights or interests arises directly from an act or omission of a member institution of the Bank Group as a result of the failure by the said institution to follow any of its own operational policies and procedures*" (para. 1), the question of breach is not considered during problem-solving exercises.

policies, standards, guidelines, procedures, resources, and systems established to improve the performance of IFC/MIGA projects."[19] The recent revision of the AfDB's IRM has given the CRMU the possibility to propose advisory services to "[bring*] about systemic improvements in environmental and social policies,* (…) *Improv*[e] *on the social and environmental impact of projects* (…) [help] *the Bank Group to understand how the environmental and/or social obligations contained in Bank Group policies and procedures may be met more effectively by Regional Member Countries to safeguard development impacts and* (…) *provid*[e] *information and recommendations on emerging trends arising from the experience of the CRMU*."[20]
As for the other IAMs, this 'lessons learned' function is part of their compliance review and/or problem-solving roles.[21]

The reality and the legitimacy of the control the IAMs operate are conditioned by three main factors: the standards of the bank must be robust and must clearly define what are the responsibilities of the bank and what are the responsibilities of the borrower; the problem-solving and compliance control procedures must be formulated in an accessible language and must be predictable, transparent and as wide open as possible; the people who work for IAMs must be independent.[22]

The creation of the Independent Redress Mechanism of the GCF

It is therefore unsurprising that the Green Climate Fund (GCF) is setting up its own grievance mechanism. The GCF was created in Durban in 2011 with the aim of providing additional financing to "*promote the paradigm shift towards low-emission and climate-resilient development pathways by providing support to developing countries to limit or reduce their greenhouse gas emissions and to adapt to the impacts of climate change, taking into account the needs of those developing countries particularly vulnerable to the adverse effects of climate change*."[23] The Governing instrument for the Green Climate Fund annexed to Decision 3/CP.17 stipulates that "*The Board will establish an independent redress mechanism that will report to the Board. The mechanism will receive complaints related to the operation of the Fund and will evaluate and make recommendations*."[24] The ground for this Independent Redress Mechanism (IRM) was mainly laid during two GCF Board meetings in 2014. Adopted at the 6th Meeting of the Board in Bali (Indonesia, 19-21 February 2014), Decision B.06/09 (Annex V) endorses the terms of reference of the different control mechanisms of the GCF:

[19] CAO Operational Guidelines 2013, para. 5.1.1.
[20] IRM Operation Rules and Procedures, 2015, para. 71.
[21] PCM Rules of Procedure 2014, para. 44 a); MICI Policy 2014, para. 61; CAO Operational Guidelines 2013, para. 1.2; Accountability Mechanism Policy 2012 paras. 128 vii), 128 viii), 131 xiii).
[22] Along the same line see C. Daniel, K. Genovese, M. van Huijstee, S. Singh eds., *Glass Half Full? The State of Accountability in Development Finance*, Amsterdam: SOMO, January 2016, http://grievancemechanisms.org/resources/brochures/IAM_DEF_WEB.pdf (last visited 3 May 2016.)
[23] Decision 3/CP.17 "Launching the Green Climate Fund", Annex "Governing Instrument for the Green Climate Fund", para. 2.
[24] *Ibid*., para. 69.

the Independent Evaluation Unit –for periodic assessments of the GCF's operations–, the Independent Integrity Unit – for fraud and corruption–, and the Independent Redress Mechanism –complaint mechanism. It provides that

"*1. The Governing Instrument mandates the Board to establish "an independent redress mechanism that will report to the Board. The mechanism will receive complaints relating to the operation of the Fund and will evaluate and make recommendations". The independent redress mechanism (IRM) is not intended to be a court of appeals or a legal mechanism.*

2. The IRM is a mechanism within the Fund that will:

(a) Address the reconsideration of funding decisions in accordance with paragraphs 6 to 10 of the Arrangements between the Fund and the Conference of the Parties, and

(b) Address the grievances and complaints by communities and people who have been directly affected by the adverse impacts through the failure of the project or programme funded by the Fund to implement the Fund's operational policies and procedures, including environmental and social safeguards."[25]

At the 7th meeting in Songdo (South Korea, 18-21 May 2014), the Board adopted Decision B.07/02[26] which provides for the 'Fiduciary standards' and the 'Interim environmental and social safeguards' applied by the GCF. A third set of standards, the Gender Policy, was adopted at the 9th GCF Board Meeting in March 2015.[27]

The IRM is taking shape. Even if many of its features are still unclear, it is nonetheless possible to distinguish the outlines of its functioning terms (1) and to discuss the adequacy of the standards it is expected to control compliance with (2.) Finally, the wider issues the IRM raises illustrate the need of a clear vision which must contextualize public action and climate finance (3.)

The following developments are based on a research made in the framework of the International Grievance Mechanisms and International Law & Governance (IGMs) project, funded by the European Research Council, which questions the purpose and explores the practice of the IAMs of MDBs. It allows for a thorough comparative analysis of the IRM's functioning terms and standards applied with both the procedures of existing IAMs of MDBs and the standards they assess compliance with. Furthermore, the questioning on the purpose and effectiveness of mechanisms such as the IRM is nourished by an empirical study consisting in more than sixty interviews with people who've been substantially involved in the creation of MDBs' accountability mechanisms, people who work or used to work in these mechanisms, and complainants.

[25] Decision B.06/09, Annex V, "Terms of Reference of the Independent Redress Mechanism."
[26] Decision B.07/02, "Guiding Framework and Procedures for Accrediting National, Regional and International Implementing Entities and Intermediaries, Including the Fund's Fiduciary Principles and Standards and Environmental and Social Safeguards."
[27] 9th Meeting of the Board, Songdo (South Korea), 24-26 March 2015, Decision B.09/11, Annex XIII, "Gender Policy for the Green Climate Fund."

1. The IRM's mandate and functioning terms: between innovation, disappointment and indetermination

The IRM's terms of reference provide for two distinct kinds of recourse. The first is a novelty in the IAMs' landscape and allows "*a developing country that has been denied funding for a specific project or programme in that country by the Board*"[28] to file a request. The second kind of recourse – which, as mentioned above, is becoming a good practice in development finance–, is the complaint procedure that can be used by people affected by a project financed by the GCF.

1.1. The novelty: complaints of developing countries arising from a denial of funding

The cycle of proposal submission, approval and monitoring of projects financed by the GCF is described in Decision B.07/03, Annex VII: "Project and programme activity cycle". In short, the GCF Secretariat regularly issues calls for funding proposals as directed by the Board but National Designated Authorities (NDAs), implementing entities (IEs) and intermediaries can also submit spontaneous funding proposals to the Secretariat, which must be approved. First, the funding proposal must not give rise to any objection from the relevant NDA, as will be provided for by the no-objection procedure which hasn't be approved yet. Second, the Secretariat checks whether the full funding proposal complies with the GCF Interim environmental and social safeguards, Gender policy, Financial policies and any other policies promulgated by the Board.[29] A Technical Advisory Panel (TAP) then assesses the performance of the proposed project or programme against activity-specific criteria, taking due account of the report of the Secretariat on compliance with applicable standards.[30] The Secretariat's funding recommendation and the TAP's assessment are passed to the Board, which can either approve the funding proposal, or reject it, or provide an approval conditional to modifications to the project or programme design. The Secretariat informs the implementing agency or the intermediary, and the NDA of the decision. In case the funding is denied, the Secretariat informs the developing country that, in accordance with Decision B.06/09, it can request reconsideration of the funding decision before the IRM.

Annex V to Decision B.06/09 on the IRM's terms of reference does not provide much detail on the complaint process itself. Paragraph 3 stipulates that

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[28] Terms of Reference of the Independent Redress Mechanism, *op. cit.*, para. 3.

[29] A NGO notes that because the Secretariat has few employees, "*many of its tasks will likely be outsourced to consultants and implementing entities. In light of these operational limitations, the GCF may be exposed to contradictory demands from different stakeholders*": Both ENDS, "Feasibility report on the strengthening of citizen-based complaint review and referral mechanisms under the Green Climate Fund (GCF)", Briefing Paper, http://www.bothends.org/uploaded_files/inlineitem/120150528_Feasibility_report_TI.pdf, p.3 (last visited 4 May 2016.)

[30] 9th Meeting of the Board, Songdo (South Korea), 24-26 March 2015, Decision B.09/10, Annex XII: "Terms of reference of the Independent Technical Advisory Panel."

"*A request can be filed by a developing country that has been denied funding for a specific project or programme in that country by the Board, even though resources were available. Such a request will need to include a description of the project or programme that has been denied funding, and will need to substantiate the reasons why the developing country believes that the denial was inconsistent with the policies, programme priorities and eligibility criteria of the Fund, including those implementing guidance provided by the Conference of the Parties*."

The IRM then:

"*4. (a) Review*[s] *the request in an open and transparent manner; (b) Use*[s] *informal means, in the first instance, for addressing the request to bring about a satisfactory and amicable resolution of the request; (c) If informal means are not successful, determine*[s] *whether the Fund was inconsistent with its policies, programme priorities and eligibility criteria when denying funding to a specific project or programme; (d) Prepare*[s] *a report for the Board's consideration, including recommendation on possible remedial actions.*

5. The Board may consider the request in view of the report and take steps to implement the recommendation of the IRM."

The language of Paragraph 4 –"*may* (…) *take steps…*"– suggests the Board can totally or partially ignore the IRM's recommendations.

1.2. The rather disappointing affected people complaint procedure

If the GCF innovates with the opportunity offered to developing countries to file a request before the IRM, the complaint procedure for affected people –though it remains vague since many functioning details are still lacking– is often disappointingly restrictive. Indeed it does not reflect the recent evolutions of the procedures of similar complaint mechanisms, born from the lessons they have learned from their practice.

The IRM's terms of reference provide that "*a group of persons*" – probably meaning at least two persons– "*who have been directly affected by adverse impacts through the failure of the project or programme funded by the Fund to implement the Fund's operational policies and procedures, including environmental and social safeguards, or the failure of the Fund or its intermediaries and implementing entities to follow such polices*."[31] This provision is unduly restrictive and unclear.

First, it is unduly restrictive because all other international accountability mechanisms of MDBs, on the experience of which the IRM is expected to take stock, are open to both affected people and people **likely to be affected**. As a matter of fact, both the study of 151 cases[32] before the World Bank Group's, the EBRD's, the AfDB's, the ADB's and the IDB's IAMs and the interviews with people who work or have worked for IAMs show that the access to an IAM offered to people who are

[31] Terms of Reference of the Independent Redress Mechanism, *op. cit.*, para. 7.
[32] See the IGMs project's database of IAMs cases: http://www.igms-project.org/.

'only' potentially affected by a project amounts to raise a red-flag that should invite the bank to pay closer attention at the project it is getting involved in. In other words, it is a powerful tool to detect possible misconceptions at an early stage, when a larger choice of remedial moves can still be made.

Another restrictive choice is to condition access the whole of the procedure to the fact the complainants allege a failure to apply applicable standards. If the purpose of the accountability mechanism is to provide access to a remedy, to find solutions for the people who have been harmed by the projects the GCF supports, then the problem-solving stage of the procedure should be as accessible as can be and there is no reason to condition it to allegations of breach. For this reason, the IFC/MIGA's CAO, the EBRD's PCM, the ADB's AM, the EIB's CM do not condition access to the problem-solving stage to non-compliance allegations. This issue illustrates the lack of a clear vision/purpose in the design of the IRM, an issue that will be addressed below.

Second, Paragraph 7 is unclear because the language is confusing on whose non-compliance can be alleged. Similar accountability mechanisms are clear on the fact they control non-compliances of the bank's Management and not those of executive agencies or intermediaries because their purpose is to ensure the bank's accountability, not to investigate the client's. When issues arise from executive agencies' behaviour, complainants can 'only' hold the bank accountable for not having exercised due diligence and applied monitoring standards. In the case of the GCF and its particular relationships with implementing entities, the 'who is accountable for what and with what consequences' really needs to be clarified.

The terms of reference further provide that, after reviewing the eligibility of the complaint, the IRM uses informal means "*such as problem solving and mediation to bring about a satisfactory and amicable redress of the grievance or complaint.*"[33] If the facilitation of a negotiated solution fails, the IRM determines "*if project-affected communities or people encountered impacts because of a failure to follow the Fund's operational policies and procedures, including environmental and social safeguards*."[34] On the basis of its findings, the IRM makes recommendations to the Board on remedial actions. The terms of reference further specify that "*The IRM may also make recommendations to the Board to make changes to operational policies and procedures*."[35] The Board then decides on remedial actions "*on recommendation of the IRM, following the investigations.*"[36] As regards the monitoring of the implementation of remedial actions decided by the Board, the terms of reference are not entirely clear: on the one hand, the IRM "*Monitor*[s] *whether the decisions taken by the Board following IRM recommendations have been implemented; and* (…) *Prepare*[s] *and submit*[s] *periodic*

[33] Terms of Reference of the Independent Redress Mechanism, *op. cit.*, paras. 8 a) and c).
[34] *Ibid*., para. 8 d); see also para. 14: "…*Only in those cases where such informal resolution of problems is not possible, the subsequent phase of investigation and determination will be invoked*."
[35] *Ibid*., paras 8 d) and e).
[36] *Ibid*., para. 10d).

progress reports to the Board, as and when required, and an annual report that will also be disseminated to the public";[37] on the other hand, "*The Board will be responsible for* (…) [m]*onitoring the implementation of the decisions taken*."[38] These two provisions are actually not incompatible if one considers the IRM monitors in detail the state of implementation of the recommendations approved by the Board while the Board is the ultimate authority who decides on whether it is satisfied with the implementation or the IRM must continue to report on it because outstanding issues remain.

The powers given to the IRM blend a restrictive conception of access to the compliance control function with extensive powers of the IRM once the compliance review stage has been reached.

Access to the compliance review stage is doubly conditioned: first, a problem-solving stage is obligatory and second, it is only if it fails that a compliance review will be performed. As regards the obligatory problem-solving stage, all existing MDBs' IAMs which offer this twofold procedure have dropped this condition when it existed in the first place. Even the CAO who has historically been much more focused on problem-solving than compliance control has suppressed this condition in the last version of its Operational Guidelines[39] and so have the ADB's Accountability Mechanism in 2012[40] and the IDB's MICI in late 2014.[41] Experience has indeed shown that 'forcing' complainants to go through this stage is useless. They are usually willing to find a negotiated solution when the circumstances allow; when they want a compliance review from the very beginning or there is too much mistrust, then imposing a problem-solving stage makes no sense. Besides, complainants should be able to make an informed choice on the kind of procedure they want to trigger and there is no reason not to respect their will. Concerning the condition that problem-solving must be unsuccessful to trigger a compliance review, it is counterproductive in the light of one of the main purposes of mechanisms such as the IRM: to increase development finance effectiveness and generate lessons learned for the institution. Best practice in this respect is that whatever the outcome of the problem-solving exercise, if complainants express the will that there is a compliance review too, there should be one. In addition, the practice of existing IAMs show that in a number of cases the problem-solving exercise was only partly successful and left some of the complainants unheard or unsatisfied with the negotiated solution.[42] Besides, conditioning the triggering of a compliance review to the fact the first phase is unsuccessful results in depriving the institution of a fair and independent assessment of projects' deficiencies and more broadly of institutional systemic issues.

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[37] *Ibid*., paras. 8f) and g).
[38] *Ibid*., para. 10e).
[39] CAO Operational Guidelines, 2013, para 4.2.1.
[40] Accountability Mechanism Policy, 2012, OM Section L1/BP, para. 38.
[41] Policy of the Independent Consultation and Investigation Mechanism, 2014, paras. 7 and 14.
[42] Among many examples see for instance AM Compliance Review Panel, *Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*, Request for compliance review, 28 August 2012, paras. 80-85; CAO, *Indonesia / Wilmar Group-03/Jambi*, Assessment, July 2012, p. 3.

In contrast, once the compliance review stage has been reached, the IRM has been entrusted extensive powers. First, it is the IRM that makes recommendations on remedial measures, based on its findings.[43] Second, it's been given the power to monitor the implementation of remedial measures. All of the 18 persons who have contributed to the creation or revision of IAMs, have worked for or are working for an IAM, interviewed in the framework of the IGMs project, emphasized that monitoring was a major role of IAMs, that made their work more legitimate and efficient.

1.3. The unresolved issue of articulation with existing IAMs

The terms of reference of the IRM provide that:

> "*18. The Fund's IRM should closely cooperate with the relevant departments or units of implementing entities and intermediaries.*
>
> *19. The relationship between the IRM and the corresponding body of implementing entities or intermediaries will be covered in agreements which will be entered into by the Fund with these implementing entities or intermediaries which will require these to cooperate with the Fund's IRM, where required.*"[44]

Decision B.06/09 thus mentioned that there was a need to delineate the role and responsibilities of the IRM from those of the accountability mechanisms of implementing entities and intermediaries. There is still no answer today to the question of articulation. One contemplated option was to let the grievance mechanism of the implementing entity/intermediary examine complaints in the first place, with the IRM as a kind of appeal accountability mechanism. Such option gives rise to many questions on the consistency of compliance control. Potential non-compliances of implementing entities would probably be assessed against their own environmental and social standards, as examined during the accreditation process by the GCF. For example, the Asian Development Bank was accredited on the basis of the compatibility between its standards with the Fiduciary Standards, the Interim ESS and the Gender Policy of the GCF. The IAM of the ADB can for its part only review compliance of the bank with its own standards. What happens if a complaint contains allegations of breach by the bank of the three sets of GCF standards? Such allegations would not be covered by the ADB's IAM mandate. Unless a verification method comparable to the one the Inspection Panel applied when faced with a case involving the country-system of the World Bank is set up. The so called country-system consists in validating the functional equivalence of the normative framework in force in a country with the World Bank's conditionalities. In the *Eskom* case, this led the Inspection Panel to operate a twofold control: the control of the bank's compliance with its own standards and the control of the way

[43] Recently, the ADB's AM Compliance Review Panel lost its power to make recommendations. It can only make findings and it is the Management who is in charge of defining which remedial actions are appropriate: Accountability Mechanism Policy, *op. cit.*, paras. 79 and 83.

[44] Terms of Reference of the Independent Redress Mechanism, *op. cit.*

equivalence between South Africa laws and regulations was approved, in order to distinguish areas where the South Africa norms were failing and therefore the bank should have favoured its own environmental and social standards…[45] Brought back to the situation of the double layer of standards of the accredited entity and the GCF, accountability mechanisms of accredited entities would have to control the standards of their entity and the way compatibility with those of the GCF were assessed, which is beyond their remit. In the event that the IRM be an appeal mechanism, timeframes would also be too distant to hope for timely, efficient remedial measures.

Besides, accredited entities and the GCF sign at the time of the accreditation a legal agreement –a private law contract for private entities, an agreement subject to public international law for public entities–[46] called the Accreditation Master Agreement (AMA). The AMA includes provisions under which the Fiduciary Standards, the Interim ESS and the Gender Policy must be complied with by the accredited entity. In the event a significant violation of an environmental or social standard by an accredited entity is alleged for a project supported by GCF financing, in all likelihood there will be both a violation of a standard of this entity and a violation of the ESS of the GCF, which are legally binding upon the accredited entity. Would it trigger two cases, one before the accountability mechanism of the concerned accredited entity, the other before the IRM? One can estimate that is would make more sense and would be less costly that all complaints about projects supported by the GCF be sent to the IRM, whatever the concerned accredited entity.[47]

2. Applicable standards and potential shortcomings

The strength of mechanisms such as the IRM also depends on that of the standards against which the behaviour of development finance institutions is assessed. Generally speaking, NGOs claim that the standards of development finance institutions and specific climate mechanisms are failing in the way they are applied, whether from the point of view of the fight against climate change or the protection of affected people.[48]

The IRM controls compliance with three set of standards: the Initial Fiduciary Principles and Standards,[49] the Interim Environmental and Social Safeguards (ESS)[50] and the Gender Policy.[51] Many

[45] Inspection Panel, *South Africa: Eskom Investment Support Project*, Case 65, Investigation Report, 21 November 2011.
[46] 9th Meeting of the Board, Songdo (South Korea), 24-26 March 2015, Annex XI: "Considerations for legal and formal arrangements with accredited entities."
[47] Both ENDS, "Feasibility report on the strengthening of citizen-based complaint review and referral mechanisms under the Green Climate Fund (GCF)", Briefing Paper, http://www.bothends.org/uploaded_files/inlineitem/120150528_Feasibility_report_TI.pdf (last visited 3 May 2016.)
[48] For an overview of the standards of the Global Environmental Fund (GEF), the REDD+ and the CDM, see A. Johl, Y. Lador, "A Human Rights-based Approach to Climate Finance, International Policy Analysis", Friedrich-Ebert-Stiftung, http://www.ciel.org/Publications/ClimateFinance_Feb2012.pdf, pp. 7-13 (last visited 3 May 2016); on the robustness of the climate-related standards and strategies of MDBs, see "MDB Climate Change Scorecard", *op. cit*.
[49] 7th Meeting of the Board, Songdo (South Korea), 18-21 May 2014, Decision B.07/02 "Guiding Framework and Procedures for Accrediting National, Regional and International Implementing Entities and Intermediaries, Including the Fund's Fiduciary Principles and Standards and Environmental and Social Safeguards", Annex II.
[50] *Ibid.*, Annex III.

elements are still missing in order to operationalize in particular the ESS, and the exploration of the practice of IAMs leads to identify potential shortcomings that do not seem to have been taken into account so far.

2.1. Overview of applicable standards

The first set of standards, the Initial Fiduciary Principles and Standards, relate to good practices regarding fiduciary governance and management, and are built on a twofold structure. The 'basic standards' cover matters related to the general capacity of an entity to maintain its accounts and to apply good governance, which includes considerations of sound organizational structure, transparency, reporting, information, internal oversight, use of indicators, efficiency, use of recognized accounting standards, track record of budget, external and internal audits, ethics…[52] The 'specialized fiduciary standards' apply to applicant entities for a specific project or programme. These standards relate to their capacity to design, "*examine and incorporate technical, financial, economic and legal aspects as well as possible environmental, social and climate change aspects, and relevant assessments thereof, into the funding proposal at the appraisal stage*," manage, monitor and assess the implementation of a project or programme, ensure the transparency and reliability of the grant award procedure…[53] Supplementary standards for on-lending[54] and blending[55] will apply to intermediaries and implementing entities which want to use these types of financial tools with GCF resources.

The second set of standards is the Interim Environmental and Social Safeguards.[56] Pending the elaboration of its own environmental and social standards, the GCF has provisionally adopted the IFC's Performance Standards on Environmental and Social Sustainability (2012), including associated Guidance Notes. There are 8 IFC Performance Standards: Performance Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts; Performance Standard 2 on Labor and Working Conditions; Performance Standard 3 on Resource Efficiency and Pollution Prevention; Performance Standard 4 on Community Health, Safety, and Security; Performance Standard 5 on Land Acquisition and Involuntary Resettlement; Performance Standard 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources; Performance Standard 7 on Indigenous

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[51] 9th Meeting of the Board, Songdo (South Korea), 24-26 March 2015, Decision B.09/11, Annex XIII.
[52] Decision B.07/02, Annex II, *op. cit*.
[53] *Ibidem*.
[54] Financial Times Lexicon: "*When an organization lends money that they have borrowed from another organization or person*": http://markets.ft.com/research/Lexicon/Term?term=on_lending (last visited 4 May 2016.)
[55] Blending, or blended finance, "*combines concessional public finance with non-concessional private finance and expertise from the public and private sector, special-purpose vehicles, non-recourse project financing, risk mitigation instruments and pooled funding structures. Blended finance instruments including public-private partnerships serve to lower investment-specific risks and incentivize additional private sector finance across key development sectors led by regional, national and subnational government policies and priorities for sustainable development*": UNGA, Resolution 69/313, "Addis Ababa Action Agenda of the Third International Conference on Financing for Development", 27 July 2015, pp. 24-25.
[56] Decision B.07/02, Annex III, *op. cit*.

Peoples; Performance Standard 8 on Cultural Heritage.[57] Although not tailored to the specificities of climate-related projects or the UN legal framework in this matter, provisional recourse to the IFC Performance Standards can appear like a sound choice as they are generally considered as cutting edge international environmental and social standards. They are inspired by the World Bank policies and procedures but go further and are more detailed, they are intended to apply to private clients but can also apply to public entities and the Equator Principles,[58] a set of voluntary principles which private banks can adopt, were inspired by them.

The third set of standards is inscribed in the Gender Policy.[59] Under this policy, the Fund

> "*commits to contributing to gender equality* (…) [to u]*nderstand the sociocultural factors underlying climate change-exacerbated gender inequality, and the potential contribution of women and men to societal changes in order to build resilience to, and the ability to address, climate change;* [to a]*dopt methods and tools to promote gender equality and reduce gender disparities in its climate funding; and* [to m]*easure the outcomes and impacts of its activities on women and men's resilience to climate change*."[60]

Applicant entities are required to comply with the policy and "*will also be required to have policies, procedures and competencies in place with which to implement the Fund's gender policy*."[61]

2.2. Lacks and shortcomings in the light of the IAM's practice

As regards the provisional recourse to the IFC Performance Standards, at least one significant lack and one significant shortcoming may be identified.

First, although the stringency of the ESS requirements that applicant entities are required to meet depends on the categorization of the proposed project/programme, standards on categorization still remain to be drafted. To date all we know is that categorization will range from Category A ("*Activities with potential significant adverse environmental and/or social risks and/or impacts that are diverse, irreversible, or unprecedented*") to C ("*Activities with minimal or no adverse environmental and/or social risks and/or impacts*") and, for activities involving financial intermediation, from Category I1 ("*When an intermediary's existing or proposed portfolio includes, or is expected to include, substantial financial exposure to activities with potential significant adverse environmental and/or social risks and/or impacts that are diverse, irreversible, or unprecedented*") to I3 ("*When an intermediary's existing or proposed portfolio includes financial exposure to activities*

[57] See http://www.ifc.org/performancestandards (last visited 4 May 2016.)
[58] Equator Principles III, 4 June 2013, http://www.equator-principles.com/ (last visited 4 May 2016.)
[59] Decision B.09/11, Annex XIII, *op. cit*.
[60] *Ibid*., para. 9.
[61] *Ibid*., para. 12.

that predominantly have minimal or negligible adverse environmental and/or social impacts".)[62] Categorization is a crucial issue, since the cases brought before IAMs show that incorrect categorization at the beginning of a project is not uncommon and results in significantly higher occurrences of non-compliances and harm.[63]

Second, one can worry that the lessons learned by IAMs as regards financial intermediation might not be taken into account. Indeed, between Fall 2010 and Spring 2012, allegations of serious harm caused by Corporación Dinant –a palm oil and food company in Honduras to which the IFC was providing a corporate loan– were sent to the IFC and the CAO. These allegations included "*forced evictions*" "*violence against farmers on and around Dinant plantations … because of inappropriate use of private and public security forces under Dinant's control or influence*," and the fact that IFC had "*failed to identify early enough and/or respond appropriately to the situation of Dinant in the context of the declining political and security situation in Honduras*."[64] The CAO decided to trigger an investigation to verify "*whether IFC exercised due diligence in its review of the social risks attached to the Project; whether IFC responded adequately to the context of intensifying social and political conflict surrounding the project post commitment; and whether IFC policies and procedures provide adequate guidance to staff on how to assess and manage social risks associated with projects in areas that are subject to conflict or conflict prone.*"[65] In the course of its investigation, CAO discovered that Dinant was one of the largest borrowers of a Honduran bank, Banco Financiera Comercial Hondureña (Ficohsa), and that the Board of IFC had approved an equity and sub-ordinated debt investment in Ficohsa. Thus, IFC had a significant exposure to Dinant not only through its corporate loan to Dinant but also its equity stake in Ficohsa. This led the CAO Vice President (CAO's head) to trigger in December 2013 the first-ever investigation performed by a MDB's IAM on the degree of supervision exerted by a MDB over the environmental and social (E&S) risks attached to its investment in a financial intermediary.[66] This was besides in line with the CAO's sectoral audit on IFC's Financial Sector Investments released in February 2013.[67] What both the financial sector investments audit and

[62] Decision B.07/02, Annex I, "Initial guiding framework for the Fund's accreditation process", para. 4.1.
[63] See the IGMs project database of cases, http://www.igms-project.org/.
[64] CAO, *Honduras / Dinant-01/CAO Vice President Request*, CAO Appraisal for Audit, 13 August 2012, p. 5.
[65] *Ibid*., p. 8.
[66] Financial intermediaries (FIs) are financial entities such as banks, insurance companies, leasing companies, microfinance institutions and private equity funds. IFC investments in FIs constitute almost half of its portfolio. As put by the European Bank for Reconstruction and Development (EBRD)'s Performance Requirement 9 on Financial Intermediaries, para. 1., they are "*a key instrument … to promote sustainable financial markets and provide a vehicle to channel EBRD funding to the micro, small and medium-sized enterprise (SME) sector. Through its network of partner FIs, the EBRD can support economic development at a scale of enterprise that is smaller than would be possible through direct EBRD investment*." The policy of the Asian Development Bank on Financial Intermediation Loans specifies that these loans "*seek to help achieve a number of objectives: (i) furthering policy reforms in the financial and real sectors; (ii) financing real sector investments through market-based allocation mechanisms; (iii) strengthening the capacity, governance, and sustainability of participating financial intermediaries; and (iv) helping increase the outreach, efficiency, infrastructure, and stability of the financial system … FILs can be provided on a stand-alone basis, or as components of sector development programs or sector or project loans*" (paras. 2-3.)
[67] CAO Compliance Audit of IFC's Financial Sector Investments, 10 October 2012, released 5 February 2013, http://www.cao-ombudsman.org/newsroom/documents/FIAUDIT.htm (last visited 5 May 2016.)

the compliance investigation in the *Ficohsa 1* case reveal is that the environmental and social standards of IFC are ill-suited to the stakes of intermediation.[68]

> "*IFC does not have a methodology for determining whether its principle requirement on clients — the implementation of an environmental and social management system—achieves the core objective of 'doing no harm' or improving environmental and social outcomes at the subclient level. This means that IFC has no quantitative or qualitative basis on which to assert that its financial intermediation investments achieve such outcomes, which are a crucial part of its strategy and central to IFC's Sustainability Framework.*"[69]

In addition, opacity still rules despite the fact that IFC, following the work of CAO, has committed to disclose the sub-projects by private equity clients. It will thus be desirable that the GCF develops a made-to-measure framework for the assessment by intermediaries of the climate, environmental and social impact of their subclients.

3. The IRM and climate finance justice: considerations on purpose or vision

Adopted in Paris, Decision 7/CP.21 "*Urges the Board of the Green Climate Fund to operationalize the* (…) *Independent Redress Mechanism* (…) *as a matter of urgency and to make public the procedures Parties and affected individuals should follow when seeking redress until the Independent Redress Mechanism is operationalized.*"[70] After the 12th Meeting of the GCF Board in early March 2016, a number of unsolved questions remain and the IRM is not ready to work yet, both because applicable standards and the IRM's procedure still need to be complemented. The complexity of the technical issues that the creation of the IRM raises show the challenges related to external accountability –meaning accountability not between the different powers within the institution but *vis-a-vis* external stakeholders– in climate finance. It also highlights the lack of a clear, comprehensive vision on the purpose of public action.

Seen from the sole IRM standpoint, the terms of reference do not mention what is/are the 'big purpose(s)' of the mechanism. They mention what it is not –*"a court of appeals or a legal mechanism*"–[71] and two functions –the two complaint procedures– but there is no trace of a higher purpose such as "*is designed to (i) increase ADB's development effectiveness and project quality; (ii) be responsive to the concerns of project-affected people and fair to all stakeholders; (iii) reflect the*

[68] For an overview of these stakes, see Oxfam International, "Risky business intermediary lending and development finance", Oxfam GB, 2012, https://www.oxfam.org/sites/www.oxfam.org/files/ib-intermediary-lending-and-development-finance-180412-en.pdf (last visited 5 May 2016.)
[69] Overview of the CAO Compliance Audit of IFC's Financial Sector Investments, http://www.cao-ombudsman.org/newsroom/documents/FIAUDIT.htm (last visited 5 May 2016.)
[70] Decision 7/CP.21, "Report of the Green Climate Fund to the Conference of the Parties and Guidance to the Green Climate Fund", para. 20.
[71] Terms of reference of the Independent Redress Mechanism, *op. cit.*, para. 1.

highest professional and technical standards in its staffing and operations",[72] "*provides an opportunity for an independent review of complaints from one or more individual(s) or Organisation(s) concerning a Project which allegedly has caused, or is likely to cause, harm. The goal is to enhance the EBRD's accountability*",[73] or else "*Address complaints from people affected* (…) *in a manner that is fair, objective, and equitable; and Enhance the environmental and social outcomes of IFC/MIGA projects* (…). *In executing this mandate, the CAO process provides communities and individuals with access to a grievance mechanism that offers redress for negative environmental and/or social impacts associated with IFC/MIGA projects.*"[74]

It is important not to create such accountability mechanisms because 'that's what they do these days, we are expect to create one' or as an exercise of design technique but to keep in mind that it has no meaning if it is not first at the service of affected people. It must also serve the institution in the sense that it must contribute to improving development finance effectiveness and awareness of the institution.

Seen from the standpoint of the whole logic of climate finance, the Paris Agreement states that:

> "*This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, **in the context of sustainable development and efforts to eradicate poverty**, including by:* (…) *(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*."[75]

Besides, the Preamble acknowledges "*the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty*"[76] and that:

> "*climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity*"[77]

Two main contexts emerge from the Paris Agreement: that of sustainable development and that of rights.

Recourse to the notion of sustainable development as the wider context of climate finance may not actually be helpful to address the issue of the potential adverse impacts. 'Sustainable development' has usually been used for now more than twenty years as a catch-word with versatile meaning and

[72] Accountability Mechanism Policy, *op. cit.*, para. 3.
[73] PCM Rules of Procedure, *op. cit*., p. 3.
[74] CAO Operational Guidelines, *op. cit*., para. 1.1.
[75] Paris Agreement, *op. cit*., Article 2. Emphasis added.
[76] *Ibid*., 8th para. of the Preamble.
[77] *Ibid*., 11th para. of the Preamble.

more often than not has proved "*ill-suited to taking clear stances where there are tradeoffs between environmental, social and economic considerations, and to setting a few (instead of dozens of) strategic priorities for action*."[78] In this respect, the Rio+20 outcome[79] doesn't evidently reinforce the galaxy of sustainable development law. Some suggest turning instead to the notion of resilience as a better conceptual framework for decision-making;[80] this however does not shed in itself enough light on how to translate this into a climate policy and finance vision and how the fate of affected people will be taken into account in a resilience approach.

In addition, though the human rights aspects related to climate change were finally confined in the Preamble of the Paris Agreement, it is obvious that the regime complex[81] of human rights in all their variety – political, civil, economic, social, cultural human rights together with vulnerable groups rights, right to a healthy environment, right of information, participation and access to justice, rights to water, food, housing…– is mobilized and must be integrated in decision-making one way or another.[82] Human rights-based approaches nevertheless remain a logic that on the whole both multilateral development banks and the private sector do not often considerate as such (not to mention the issue of application), except may be as regards the rights of indigenous peoples. Strongly involved in the distribution of the international climate finance flow, MDBs apply their own environmental and social standards that do not often explicitly mention the respect of human rights.[83]

Another angle to address the issue of the adverse impacts of the projects funded by climate development finance is that of justice. In the existing literature on justice and climate change, the theme of climate justice is generally dealt with at State level (North/South divide, low emitters/high emitters divide, meaning and application of the Common But Differentiated Responsibilities principle…). The background research for this article shows that, except for the literature adopting a human rights approach, there are very few references to climate justice from the angle of the people

[78] J. E. Viñuales, "The Rise and Fall of Sustainable Development", *RECIEL*, 2013, 22:1, p. 7.
[79] UNGA, "The Future We Want", Res. A/RES/66/288, 11 September 2012.
[80] M. Harm Benson, R. Kundis Craig, "The End of Sustainability", *Society & Natural Resources: An International Journal*, 2014, 27:7, http://dx.doi.org/10.1080/08941920.2014.901467 (last visited 3 May 2016.)
[81] The expression was coined by K. Raustiala and D. G. Victor as an "*array of partially overlapping and non-hierarchical institutions governing a particular issue-area*": "The Regime Complex for Plant Genetic Resources", *International Organization*, 2004, Vol. 55, p. 279. A. Orsini, J.-F. Morin and O. Young propose an alternative definition of a regime complex as "*a network of three or more international regimes relating to a well-defined subject or problem that exhibit overlapping membership and that generate substantive, normative or operative interactions recognized as problematic, whether or not they are managed effectively*": "Regime complexes: A buzz, a boom, or a boost for global governance?", *Global Governance: A Review of Multilateralism and International Organizations*, 2013, 19:1, p. 2.
[82] See for example C. Cournil, A.-S. Tabau eds., *Politiques climatiques de l'Union européenne et droits de l'Homme*, 2013, Brussels: Bruylant; M. Burnham, C. Radel, Z. Ma, A. Laudati, "Extending a Geographic Lens Towards Climate Justice, Part 2: Climate Action", *Geography Compass*, 2013, 7:3, 228-238; M. T. Ladan, "Human Rights and Security Impacts of Climate Change and the African Climate Action Strategy", Paper presented at the Fourth seminar of the Association of environmental law lecturers in African universities, Nairobi, 14-17 December 2015, available at SSRN: http://ssrn.com/abstract=2702773, pp. 17-18; M. Burger and J. Wentz, "Climate Change and Human Rights", UNEP and Columbia Law School, December 2015, http://web.law.columbia.edu/sites/default/files/microsites/climate-change/climate_change_and_human_rights.pdf (last visited 3 May 2016.)
[83] For an interesting exercise of translation of the human rights invoked by the requesters into environmental and social standards than can be invoked before the IAM, see AM Compliance Review Panel, *Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*, Compliance Review Report, 14 January 2014, pp. 128-129.

who bear the impacts of the decisions taken at intergovernmental and governmental levels to tackle climate change mitigation and adaptation. This is however typically the kind of situation that Richard Stewart calls "*the problem of disregard in global regulatory governance*," that is to say the fact that "*the present structures and practices of global regulatory governance often generate unjustified disregard of and consequent harm to the interests and concerns of weaker groups and targeted individuals*."[84]

Beyond distributive justice aspects, if one adopts the viewpoint of a person whose house is going to be destroyed and whose livelihood might be about to change for the rest of his/her life because of the construction of a hydroelectric dam funded with climate finance money and with the green lights of an international development finance institution, then corrective justice considerations obviously arise, as well as procedural/participatory justice issues. 'Corrective justice' is understood here as "*defin*[ing] *injustice through reference to a causal agent – if injustice is perceived because somebody has done something to someone. In contrast,* (…) *"distributive justice"* (…) *focuses on the justness of an existing distribution, independent of who or what caused that distribution.*"[85] Participatory,[86] or rather, because the adjective seems more inclusive, procedural[87] justice refers to the quality of decision-making and relates to transparency in information, participation and accountability in climate finance. The procedural justice angle has obvious relationships with the notions of 'rule of law' and 'good governance.'

Considering all this, can the IRM of the GCF help injecting justice into climate finance? Given the profusion of climate finance flows and actors and the opacity of financial circuits, creating an accountability mechanism for quite a small portion of these flows looks like a mere drop in the ocean. But given that the ocean is made from water drops, it also looks like a sensible way to proceed! Hopefully, the IRM will contribute to creating a culture of accountability in climate finance and sending a signal that the adverse impacts of the political, legal and financial climate-related choices and decisions made at international and national levels can no longer be disregarded. It is also a mechanism that can help put climate-related projects back on the right track when generating money under climate pretences takes precedence over a comprehensive approach of climate-friendly development. Such a mechanism would indeed be quite useful in the framework of the CDM.

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[84] Richard B. Stewart, "Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness", *Am. J. Intl. L.*, 2014, Vol. 108, p. 211.

[85] A. Kaswan, "Climate Adaptation and Theories of Justice," *Archiv für Rechts- und Sozialphilosophie*, 2016 (forthcoming); Univ. of San Francisco Law Research Paper No. 2016-01, available at: http://ssrn.com/abstract=2689813 (last visited 3 May 2016.)

[86] *Ibid.*, p. 14: "*A critical question is who participates in and makes adaptation policy. Participatory justice in planning and political processes is an essential component of adaptation justice, both in international negotiations and in domestic decision-making. Substance and process are related: inclusive and empowering decision-making processes can provide information that leads to fairer outcomes, including better tailored and more appropriate substantive policies.*"

[87] C. G. Gonzalez, "Environmental Justice and International Environmental Law", *in* S. Alam, J. H. Bhuiyan, T. M. R. Chowdhury, E. Techera eds., *Routledge Handbook of International Environmental Law*, Routledge, 2013; Seattle University School of Law Research Paper No. 12-11, available at: http://ssrn.com/abstract=2011081, p. 4 (last visited 3 May 2016): "*Procedural justice requires open, informed and inclusive decision-making processes.*"