Strengthening Accountability in Climate Finance

An Agenda for Change

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Table of contents

LIST OF ABBREVIATIONS ..............................................................................................................III

1 INTRODUCTION ...................................................................................................................... 1

1.1 Object and Purpose ............................................................................................................... 1

1.2 Limitations and Methodology .............................................................................................. 3

1.3 Structure ............................................................................................................................... 5

2 CURRENT FINANCE ARCHITECTURE .............................................................................. 7

2.1 Introduction .......................................................................................................................... 7

2.2 The principle of differentiation and its relation with climate finance .............................. 7

2.3 Definition of climate finance ............................................................................................... 8

2.4 Climate Finance Actors ....................................................................................................... 11

2.5 Current climate finance structure ....................................................................................... 14

   2.5.1 Multilateral Funds ........................................................................................................ 14

   2.5.2 Bilateral funds .............................................................................................................. 18

3 THE PRINCIPLE OF TRANSPARENCY UNDER CLIMATE FINANCE ....20

3.1 Introduction .......................................................................................................................... 20

3.2 The significance of transparency and the role of reporting as a means towards transparency ......................................................................................................................... 20

   3.2.1 GEF Trust Fund Reporting Policies ............................................................................. 22

   3.2.2 LDCF/SCCF Reporting Policies ............................................................................... 25

   3.2.3 AF Reporting Policies .............................................................................................. 26
4 THE PRINCIPLE OF ACCOUNTABILITY UNDER CLIMATE FINANCE. 29

4.1 Introduction .................................................................................................................. 29

4.2 The significance of accountability and the means towards accountability .......... 30
  4.2.1 General accountability provisions .............................................................. 31
  4.2.2 M&E Policies ............................................................................................. 34
  4.2.3 Fiduciary Standards ............................................................................... 37
  4.2.4 Grievance mechanisms and climate change related cases ...................... 38

5 CRITICAL OVERVIEW OF THE CURRENT ACCOUNTABILITY FRAMEWORK .................................................................................................................. 53

5.1 Introduction ............................................................................................................. 53

5.2 Issues of effectiveness of the current accountability system ............................ 53

5.3 Proposals for changes ......................................................................................... 56

6 CONCLUDING REMARKS ....................................................................................... 62

7 TABLE OF REFERENCES .......................................................................................... 64
### List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<td>AF</td>
<td>Adaptation Fund</td>
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<td>AFB</td>
<td>Adaptation Fund Board</td>
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<td>AfDB</td>
<td>African Development Bank</td>
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<td>AM</td>
<td>Accountability Mechanism</td>
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<td>AMAT</td>
<td>Adaptation Monitoring and Assessment Tool</td>
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<td>CAO</td>
<td>Compliance Advisor and Ombudsman</td>
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<td>CDM</td>
<td>Clean Development Mechanism</td>
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<td>CERs</td>
<td>Certified Emissions Reductions</td>
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<td>CIFs</td>
<td>Climate Investment Funds</td>
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<td>CMP</td>
<td>COP serving as the Meeting of the Parties under the Kyoto Protocol</td>
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<td>COP</td>
<td>Conference of the Parties</td>
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<td>CRC</td>
<td>Conflict Resolution Commissioner</td>
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<td>CRMA</td>
<td>Climate Risk Management and Adaptation Strategy</td>
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<td>CRMU</td>
<td>Compliance Review and Mediation Unit</td>
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<td>CRP</td>
<td>Compliance Review Panel</td>
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<td>CTF</td>
<td>Clean Technology Fund</td>
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<td>EAs</td>
<td>Executing Agencies</td>
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<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>FAO</td>
<td>Food and Agriculture Organization</td>
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<td>FIP</td>
<td>Forest Investment Program</td>
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<td>GEF</td>
<td>Global Environment Facility</td>
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<td>GCF</td>
<td>Green Climate Fund</td>
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<td>GNI</td>
<td>Gross National Income</td>
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<td>IADB</td>
<td>Inter-American Development Bank</td>
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<td>IAs</td>
<td>Implementing Agencies</td>
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<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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ICIM  Independent Consultation and Investigation Mechanism
ICSID  International Center for the Settlement of Investment Disputes
IDA    International Development Association
IFAD   International Fund for Agricultural Development
IFC    International Finance Corporation
IPCC   Intergovernmental Panel on Climate Change
IRM    Independent Review Mechanism
KP     Kyoto Protocol
LDCF   Least Developed Countries Fund
LDCs   Least Developed Countries
MDBs   Multilateral Development Banks
M&E    Monitoring and Evaluation
MIGA   Multilateral Investment Guarantee Agency
MoU    Memorandum / Memoranda of Understanding
NAPAs  National Adaptation Programmes of Action
NIEs   National Implementing Entities
ODA    Official Development Assistance
ODI    Overseas Development Institute
OECD   Organization for Economic Co-operation and Development
PCM    Project Complaint Mechanism
PPCR   Pilot Program for Climate Resilience
REDD   UN Reducing emissions from deforestation and forest degradation
RBM    Results Based Management
SCCF   Special Climate Change Fund
SCF    Strategic Climate Fund
SPF    Special Project Facilitator
SREP   Scaling-Up Renewable Energy Program for Low Income Countries
UNCITRAL United Nations Commission on International Trade Law
UNDP   United Nations Development Programme
UNEP   United Nations Environment Programme
<table>
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<th>Abbreviation</th>
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<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<td>WAGP</td>
<td>West African Gas Pipeline</td>
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<td>WB</td>
<td>World Bank</td>
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<td>WRI</td>
<td>World Resources Institute</td>
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1 Introduction

1.1 Object and Purpose

Climate change constitutes one of the most pressing problems facing the international community, and States have a responsibility to collectively tackle this phenomenon. The first legally binding endeavor towards this direction was the conclusion of the United Nations Framework Convention on Climate Change (UNFCCC), which provided for the importance of climate finance and established a financial mechanism for this purpose. The Global Environment Facility (GEF) Trust Fund was the first climate fund established under the UNFCCC followed by the establishment of four more funds under the guidance of the Conference of the Parties (COP). Apart from these funds falling within the scope of UNFCCC, there are other multilateral and bilateral ones with a significant contribution to both climate change mitigation and adaptation.

One of the distinctive aspects of climate finance is that it demonstrates a highly complex procedure implicating a wide variety of actors, vested interests and stages.¹ In particular, funds are channeled through the operation of a proliferated system, while manifold climate finance initiatives are being continuously established towards combating climate change, as developed States realize the significance and necessity of climate finance to achieve higher capacity and development levels. The climate finance complexity is also reflected in the absence of a definition of climate finance, as demonstrated under Section 2.3.

Progress has been made in 2015 through the increasing disbursement of funds for new projects, whereas reporting on this disbursement is still limited calling for the need of more ‘flexible and risk-tolerant’ finance.² The fragmented nature of the current climate finance system requires the need to strengthen the ‘core democratic principles of transparency and

accountability’ from the mobilization of funds to the administration and disbursement of the financial resources.\(^3\) In that respect, developed States have put pressure on strengthening the monitoring of the project-cycle management to ensure that the resources they invested in the UNFCCC mechanism will be effectively used.\(^4\)

This thesis aims to determine the following research question:

**How can the Funds under the UNFCCC and the development institutions responsible with the administration and disbursement of their resources be held accountable for not complying with their reporting obligations and what are the safeguards and mechanisms in place to ensure accountability?**

In particular, it analyzes the adequacy and effectiveness of the current accountability means under the GEF Trust Fund, the Special Climate Change Fund (SCCF), the Least Developed Countries Fund (LDCF), and the Adaptation Fund (AF). This thesis concludes the lack of effectiveness of the existing accountability system, detects its deficiencies and provides potential recommendations towards the enhancement of accountability and compliance under the Funds and their partner institutions.

Even though most reports and reviews deal with the necessity and effectiveness of tracking climate finance, this thesis refers to the need for tracking only as a means to allow holding accountable the financial institutions involved in climate finance. Scholars and research institutions have stressed the need to strengthen and revise the current reporting system. However, apart from deficiencies in reporting, there are even greater deficiencies in compliance and enforcement that need to be covered, if States want to prevent more dangerous levels of greenhouse gas emissions.

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\(^3\) Schalatek (2012), p. 951.
In that respect, this thesis concludes that even though accountability standards and mechanisms are in place and efforts have been made to reinforce transparency in the flow of capitals, there is, nevertheless, an urgent need for strengthening the already existing accountability framework. More specifically, the scope of the current resolution mechanisms is very narrow, and as a result, these mechanisms can only be activated in cases of non-compliance of the implementing agencies (IAs) with their environmental and social policies. Consequently, this implies that these mechanisms are not efficient enough and adequate to cover situations of non-compliance of the Funds and their partner entities with the rest of their obligations, such as the reporting ones which are of great significance. Additionally, this thesis recommends two proposals for changes and scaling up of the climate finance accountability framework.

1.2 Limitations and Methodology

Climate finance constitutes a very broad topic referring to both mitigation and adaptation. In addition, it involves many stakeholders varying from States to financial institutions and the civil society. Funds are being channeled on a global scale, which indicates the absence of geographical limitations and the existence of numerous climate funds, operating on both multilateral and bilateral basis. Apart from various actors, it also involves multiple phases, namely: the fund mobilization, the fund administration and the fund disbursement and implementation. Because of the broadness of the climate finance concept, the first step was to limit the research in terms of finance resources and funding flows, and then to analyze the collected information.

Due to the highly fragmented nature of climate finance, this thesis focuses only on the current finance architecture of four multilateral funds under the aegis of the UNFCCC, namely the GEF Trust Fund, the Special Climate Fund (SCCF), the Least Developed

5 Schalatek and Bird (2015).
Countries Fund (LDCF), and the Adaptation Fund (AF). Even though the Green Climate Fund (GCF) has been designated as the second operator of the UNFCCC financial mechanism\(^6\) and therefore, also operates under the UNFCCC, it will not be a subject of examination under this thesis. The reason why I have decided not to refer to the GCF function is because this thesis analyses the standards applied by the above climate funds and their collaborating entities at the fund administration and disbursement phase, whereas the GCF has so far confined its role in approving projects, but not disbursing funds.\(^7\) As a result, there is limited practical information on the GCF’s performance under these two phases in terms of transparency and accountability.

Furthermore, this thesis does not distinguish between public and private sources of finance, whereas it examines climate finance only as a means to assist developing countries to adapt to climate change. Adaptation has been defined by the Intergovernmental Panel on Climate Change (IPCC) as the ‘adjustments in practices, processes or structures which can moderate or offset the potential for damage or take advantage for opportunities created by a given change in climate’.\(^8\) The above Funds are dedicated to financial support for adaptation purposes and as a result, they constitute the main channels contributing to adaptation.

Moreover, due to the complexity and diversity of actors involved in the climate finance procedures, this thesis will only examine the relationships and obligations on an institutional level with a focus on accountability provisions. More specifically, it will examine the reporting obligations of the above mentioned Funds and their collaborating entities with a limitation to the fund administration and disbursement phases and a focus on the accountability means established towards a transparent governance of the financial flows.

The above present the limitations of my thesis. Furthermore, the main objective of this

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\(^6\) Kato, Ellis and Clapp (2014), p. 11; see below Section 2.5.1.
thesis is to answer how the Funds and their partner entities involved in climate finance should be held accountable for not complying with their obligations, and whether the safeguards and mechanisms in place are adequate to ensure such accountability. The method I have chosen to answer this legal issue is mainly based on the legal instruments and documents established under both the Funds under examination and their collaborating entities. In particular, firstly, I examined the legal frameworks, policies and standards provided by the four Funds in terms of transparency and accountability. In addition, I analyzed and relied upon decisions and compliance review reports under the conflict mechanisms of the IAs, in order to answer my research question. The reason why I cite in my thesis mainly institutional legal instruments and documents is because these are the main legal sources regulating the obligations of the financial institutions in their role as climate change actors and their compliance with these obligations. More specifically, in the absence of a consolidated system of reporting and accountability, the sole reliable source of law is the documents, policies and standards established by the Funds and the financial entities themselves and the good will of the latter to comply with the decisions indicating their deficiencies and negligent actions.

1.3 Structure

This paper consists of four main parts. The first part introduces climate finance and its current structure on an international basis. The second part provides an overview of the significance of the principle of transparency in climate finance and suggests reporting as one of the main means towards transparency. In addition, it elaborates on the reporting obligations of the Funds under examination and their partner institutions. The third part of this paper analyzes the principle of accountability and the means established under the Funds and the international financial institutions qualifying as their implementing agencies towards accountability. It introduces the compliance mechanisms established by the financial institutions to ensure accountability, and seeks to identify the key features of these mechanisms and to detect climate change related cases brought before them.
The fourth and final part of the thesis provides a critical overview of the current accountability means and legal frameworks. It concludes that even though there are compliance mechanisms and standards under the Funds and their partner entities, these are not adequate to ensure transparency and accountability in the climate finance process. In that respect, it suggests two proposals in order to enhance the effectiveness of climate funds.
2 Current Finance Architecture

2.1 Introduction

This chapter focuses on the current climate finance structure. It starts by providing the legal basis of climate finance and by indicating the existing debate in literature associated with the difficulty of defining climate finance. Moreover, it attempts to detect the key components of climate finance and to give an overview of the numerous actors and relations implicated in the climate finance process. Finally, it concludes with an overview of the current climate finance architecture on both a multilateral and bilateral basis by providing the main characteristics and roles of the respective Funds.

2.2 The principle of differentiation and its relation with climate finance

Before analyzing the architecture of climate finance, it is essential to refer to one of the fundamental principles characterizing the UNFCCC structure, namely the principle of common, but differentiated responsibilities and respective capabilities. This principle comprises two principal aspects: (i) ‘the common responsibility of States for the protection of the environment’ and (ii) the need to differentiate between States in accordance to their ‘contributions to the cause of a particular environmental problem’.\(^9\) In terms of climate change, it implies a distinction between Annex I and Annex II Parties of the Convention, which is even more conspicuous in the Kyoto Protocol (KP). In particular, according to UNFCCC Art. 4.3, developed States have an obligation to take the lead in combating climate change and therefore, provide financial support to those developing States incapable of addressing climate change. This principle is very important in terms of climate finance, because it qualifies as the basis for financial assistance directed to the developing States.

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UNFCCC Art. 11 qualifies as the legal basis of financial support and establishes a financial mechanism for this purpose. UNFCCC Art. 21 designates the GEF as the operator of this financial mechanism. Furthermore, Art. 11 of the KP to the UNFCCC also refers to the operation of a financial mechanism as a means to implement and promote climate change adaptation. In addition, the need for climate finance is also stressed out in the Paris Agreement concluded in December 2015. This Agreement refers to the principle of differentiation in relation to climate finance. It relates it to the mobilization of financial resources and it urges developed States to assist developing States in mitigating and adapting to climate change.10

2.3 Definition of climate finance

One of the challenges characterizing climate finance is that there is no common and internationally recognized definition on what constitutes climate finance.11 Even though developed States have pledged to deliver 100 billion USD of climate finance per year by 2020, there are no systematic guidelines on what type of financial support shall be counted and included in this joint commitment.12

A lot of debate has been raised due to the ambiguity surrounding the climate finance definition. In particular, there is a lot of controversy on which are the sources of climate finance—public and/or private-, what are its objectives and beneficiaries, how to define the additionality of the funds, and finally, how to ensure that States are providing ‘their fair share’ of climate finance.13

12 Clapp, Ellis, Benn and Corfee-Morlot (2012), p. 10; Decision 1/CP. 16, para. 98.
UNFCCC Art. 4.3 prescribes the need for developed States to ‘provide new and additional financial resources’ to developing States, so that the latter can ‘meet the agreed full incremental costs’ of climate change. Moreover, this article emphasizes the ‘need for adequacy and predictability in the flow of funds and the importance of appropriate sharing among the developed country Parties’. As mentioned under Section 2.2, this Article constitutes the legal basis for climate finance. Even though it does not provide a clear and sufficient definition of climate finance, it does, nevertheless, articulate two of its determinant aspects, that is that climate finance refers to (i) the mobilization of ‘new and additional’ financial resources to (ii) assist developing States meeting the ‘incremental costs’ of climate change.\(^{14}\)

Attempts to define ‘additionality’ have not led to a unified definition, but they have provided for alternatives and guidelines on how to assess the additionality of the funds. The rationale behind the ‘new and additional’ requirement was to ensure that the already existing Organization for Economic Co-operation and Development (OECD) Official Development Assistance (ODA)\(^{15}\) funds would not be ‘diverted’ to fund climate change related obligations.\(^{16}\) Nonetheless, further guidance has not been given by the COP because of challenges in designating ‘new and additional’ due to the technical difficulty in defining the baseline and in ‘collecting financial data from numerous government departments and international organizations’.\(^{17}\)

In particular, with respect to the language and wording used in the COP decisions, the latter indicate as a baseline the ‘funds provided in the context of the implementation of the UN-

\(^{15}\) ODA is defined as: ‘those flows to countries and territories on the DAC List of ODA Recipients and to multilateral institutions which are provided by official agencies, including state and local governments, or by their executive agencies; and each transaction of which a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and b) is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent). For more information: <http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm>.
\(^{17}\) Ibid., p. 276.
FCCC’. This means that climate finance will be additional, if it is provided on levels higher than those provided under the Convention.\textsuperscript{18} In general, UNFCCC or the KP do not provide clarity on how to define ‘new’ and ‘additional’, but it has been supported that the term ‘new’ indicates the fact that ‘the funds should represent an increase over past and existing climate-related funds’, while the term ‘additional’ refer to the notion that such climate related funds should not ‘substitute or divert funding from other economic and social development objectives’.\textsuperscript{19}

Countries have followed different approaches in defining additional funding. The differing feature under these approaches is related to the baseline used to define additionality.\textsuperscript{20} Some countries have chosen the increase in their levels of climate finance as a baseline to determine additionality, whereas others have chosen the OECD ODA levels as their baseline.\textsuperscript{21} The predominant definitions of additionality include the following: (i) ‘climate finance classified as aid, but ‘above the donor government 0.7% of Gross National Income (GNI) target for ODA’\textsuperscript{22}, (ii) ‘increase on 2009 ODA levels spent on climate actions’, (iii) ‘rising ODA levels that include climate change finance but where it is limited to a specified percentage’, and (iv) ‘increase in climate finance not connected to ODA’.\textsuperscript{23}

All the above definitions imply some technical and political considerations and difficulties.\textsuperscript{24} The first definition has been supported by many stakeholders, but there has, however, been a difficulty on behalf of developed States in meeting the 0.7% target of the ODA.\textsuperscript{25} In addition, one of the concerns and debates linked to measuring additionality in terms of ODA flows is to ensure, despite the inclusion of climate finance into general development aid, that development objectives will be achieved ‘without a strong link to climate

\textsuperscript{18}Decision 7/CP.7, para. 1(a); Decision 10/CP.7, para. 1(a); Yamineva and Kulovesi (2012), p. 197.
\textsuperscript{19}Ballesteros and Moncel (2010), p. 1.
\textsuperscript{20}Ibid.
\textsuperscript{21}Ibid.
\textsuperscript{22}Brown, Bird and Schalatek (2010), p. 3.
\textsuperscript{23}Ibid., p. 2.
\textsuperscript{24}Ibid., p. 5.
\textsuperscript{25}Kuramochi et al. (2015), p. 41.
change’. A lot of approaches have been recommended and various reports have suggested the lack of a climate finance definition, but no consensus definition has been endorsed.

Furthermore, despite the absence of an operational definition of ‘agreed full incremental costs’ in the UNFCCC, the GEF has provided the definitions and criteria for these terms in its 1996 policy papers on incremental costs. In particular, it defined ‘agreed incremental costs’ as ‘the additional costs associated with transforming a project with national benefits agreed upon in advance between the GEF and the recipient into one with global environmental benefits’. In addition, the term ‘full’ refers to the need for an overall assessment and identification of the incremental costs, and not only of the most significant ones. Moreover, as explained by the GEF to COP-3, ‘the incremental costs of a project are the difference in costs between doing a project that achieves national goals but does not give global environmental benefits and doing one that does. In cases where the baseline involves ‘no national action’, the total costs of a project equal the incremental costs’.

To conclude with, even though some attempts have been made to clarify the climate finance definition, these are still not collective, precise and adequate. There is still a lot of controversy surrounding the key components of climate finance calling for the need of a consensus definition.

### 2.4 Climate Finance Actors

Another challenge and complexity of climate finance is that it involves a ‘multi-level structure’ with international, regional and national actors and intermediaries. As prescribed in UNFCCC Art. 4.3 and the KP, the legal mandate for providing financial resources remains

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26 Ibid., p. 5.
27 UNFCCC Handbook (2006), p. 115; GEF/C.7/Inf.5; see also [https://www.thegef.org/gef/node/1225](https://www.thegef.org/gef/node/1225).
30 Ibid., p. 281.
to Annex II Parties, whereas the developing States are the main resource beneficiaries of the financial assistance.\textsuperscript{32} Moreover, the recipient of the funds can either be the government of a developing State, or it could also be a national institution authorized by the government, such as a Ministry or a national development bank or a local commercial bank.

What is not clarified under this article and has given rise to a long debate is whether climate finance should also comprise private apart from public finance. So far the private sector has played a significant role towards climate resilience and several suggestions have been made for the inclusion of both international and private finance in the definition of climate finance.\textsuperscript{33} However, it remains an open discussion and a matter of interpretation whether to include the private sector in the definition of climate finance.

Furthermore, apart from the two main actors provided by UNFCCC Art. 4.3, there are multiple intermediaries with a pivotal role in the climate finance process. Multilateral, bilateral and national funds have been established with the key role of receiving all the money deriving from the developed States (see below Figure 1). The cases where the financial resources are directly conveyed from the Funds to the recipient beneficiaries remain limited. In that respect, the AF has been innovative to allow National Implementing Entities (NIEs) nominated by the developing States to have ‘direct access’ to finance, in case of going through an accreditation process and meeting the minimum fiduciary standards under the Funds.\textsuperscript{34} However, at the vast majority of the cases, the Funds collaborate with diverse multilateral and regional financial institutions responsible for the administration and disbursement of climate resources. The reason why such institutions are chosen as intermediaries is because they have the capacity and expertise to administer big size programmes in comparison with the Funds’ limited capacity. Finally, under certain circumstances and when it is considered appropriate in terms of regional familiarity and effectiveness, these

\textsuperscript{32} Yamin and Depledge (2006), pp. 267 and 272.
\textsuperscript{34} Watson, Nakhooda and Caravani (2012), p. 6; Eight NIEs have been accredited to date, including NGOs and some ministries.
financial resources may also be channeled through more than one institutions or Funds before being conveyed to the recipient (see below Figure 1).

Figure 1: Financial Flows and Relationships between the stakeholders in climate finance.
2.5 Current climate finance structure

One of the main characteristics of the global climate finance is that it refers to a dynamic structure ‘constantly evolving’.35 There is no consolidated finance system, but rather this system is fragmented into several financing mechanisms. As a result, funds flow through various channels, both multilateral and bilateral. Meanwhile, regional and national funds and channels have been established in developing States to receive climate finance.36

2.5.1 Multilateral Funds

The GEF has been designated as the first operating entity of the financial mechanism established under UNFCCC Art. 11 in 1991.37 In addition, one of the outcomes of the Cancun agreements was the GCF designated by the Parties as the second operating entity of the UNFCCC financial mechanism.38

To begin with, the GEF focuses and disburses funds on multiple focal areas, one of which is climate change.39 The function of the GEF consists of replenishment cycles. These cycles are being renewed every four years and they reflect the commitment of developed States to deposit money for the needs of developing countries.40 In the sixth replenishment period (2014-2018), 30 donor countries pledged USD 4.43 billion over all focal areas of the GEF, from which USD 1.1 billion will support the climate change focal area.41 The GEF Trust Fund has been established under the GEF and consists of the contributions of the developed States.42 Its funding is available to the recipients in accordance to the eligibility

36 Ibid.
38 Ibid., p. 11.
39 See <https://www.thegef.org/gef/Areas_work>.
criteria set out by the COP and for activities falling within the scope of the UNFCCC. The primary entities entrusted with the operation of the GEF Trust Fund are the World Bank (WB), the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP), referred to as the implementing agencies of the GEF.

The GCF was also established under UNFCCC Art. 11. The Fund is purported to dedicate resources for both mitigation and adaptation. The WB has been designated as the interim trustee of the GCF with the responsibility of the operation and administration of the fund. The Paris Agreement has also noted the significance of the GCF and in its preamble recognizes both the GCF and the GEF as the operators of the financial mechanisms under the Convention. During COP 21 States pledged to contribute significant funding, using the GCF as the centerpiece of the financial mechanism of the new agreement. In particular, States have agreed to jointly mobilize 100 USD billion per year by 2020. The initial resource mobilization process for the GCF raised USD 10.2 billion. The GCF will follow the same ‘pattern’ with GEF in expanding its cooperation with multilateral and regional financial institutions. Additionally, one of its innovations is that countries can access the Fund’s resources not only through Multilateral Development Banks (MDBs) and UN agencies, but also directly through accredited National, Regional and Sub-National Implementing Entities. The latter will be responsible for the domestic management and supervision of the GCF disbursed funds. Throughout 2015, 20 Implementing Entities were accredited and in November 2015, the GCF approved its first eight projects for USD168 million. So

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43 Ibid., Art. I.9(a) and (c).
44 See <https://www.thegef.org/gef/gef_agencies>.
45 Decision 1/CP. 12, para. 102; Decision 3/CP. 17, para. 3..
46 Decision 1/CP. 12, paras. 104-107.
47 Decision 1/CP. 21, para. 59.
52 Cui, Zhu, Springmann and Fan (2014), p. 3.
far several projects have been approved, but no funds have been disbursed for their implementa-
tion under the GCF.\textsuperscript{54}

Moreover, according to the COP’s decision in Marrakesh in 2001, States decided to establish three specialized funds, namely the SCCF and LDCF, under the Convention\textsuperscript{55} and the Adaptation Fund (AF), under the KP\textsuperscript{56}. All these Funds operate under the aegis of the UNFCCC.

The LDCF and the SCCF ‘hold the largest and most mature portfolios of adaptation projects in the developing world’.\textsuperscript{57} The SCCF was established in order to complement the GEF Trust Fund in financing the climate change focal area and is operated by one of the implementing agencies administering the financial mechanism under the Convention.\textsuperscript{58} Its main focus priority is on adaptation, but it also disburses funds for other areas, such as technology transfer and forestry.\textsuperscript{59}

Under the same decision, States have also established the LDCF, a fund also guided by the COP and operated by the entrusted entities under the GEF Trust Fund.\textsuperscript{60} The LDCF focuses mostly on adaptation finance and has been established in favor of the special needs of Least Developed Countries (LDCs). Its work is based on the national adaptation programmes of action (NAPAs), as a process for LDCs to identify priority activities that respond to their urgent and immediate needs to adapt to climate change.\textsuperscript{61} Its resources mainly derive from voluntary contributions from the donor countries.\textsuperscript{62}

\textsuperscript{54} See <http://www.climatefundsupdate.org/listing/green-climate-fund>.
\textsuperscript{55} Decision 7/CP. 7, para. 1.
\textsuperscript{56} Decision 7/CP.7, para. 1.
\textsuperscript{57} See <https://www.thegef.org/gef/adaptation> .
\textsuperscript{58} Decision 7/CP. 7, para. 3.
\textsuperscript{60} Decision 7/CP. 7, para. 6.
\textsuperscript{61} Ibid.; see also <http://unfccc.int/national_reports/napa/items/2719.php>.
Another multilateral fund established under the KP is the AF.\textsuperscript{63} Similarly with the LCDF and the SCCF, the AF operates under the guidance of the COP serving as the Meeting of the Parties (CMP) and its operator is an entity entrusted with the operation of the financial mechanism under the UNFCCC.\textsuperscript{64} Its main innovation is that the resources of the AF mainly derive from a ‘share of proceeds on the clean development mechanism (CDM) project activities’.\textsuperscript{65} In particular, it is financed through a ‘2\% levy on the sale of emission credits from the CDM as well as through contributions by developed countries’.\textsuperscript{66}

All the climate funds demonstrated above constitute multilateral funds established under the UNFCCC. However, there are also other multilateral funds which do not operate under the UNFCCC, but serve nonetheless the same purpose, that is mitigation and adaptation of climate change. Some of these funds are the Climate Investment Funds (CIFs).

The CIFs were established in 2008. The WB serves as the trustee of the CIFs through the International Bank for Reconstruction and Development (IBRD).\textsuperscript{67} Its main responsibility is making commitments and transfers of CIF resources to the MDBs.\textsuperscript{68} Moreover, it reports regularly on the financial status of the funds comprising the CIF – the Strategic Climate Fund (SCF) composed of the Pilot Program for Climate Resilience (PPCR), the Forest Investment Program (FIP), and the Scaling-Up Renewable Energy Program for Low Income Countries (SREP)\textsuperscript{69}, and the Clean Technology Fund (CTF) - to the CTF and SCF Trust Fund Committees.\textsuperscript{70} The WB as a trustee is ‘accountable to the Trust Fund Committees for its performance’.\textsuperscript{71} The CIF resources are being disbursed under MDBs including: the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank

\textsuperscript{63} Decision 10/CP. 7, para. 1.
\textsuperscript{64} Ibid., para. 4.
\textsuperscript{65} Ibid., para. 2.
\textsuperscript{67} See <https://www-cif.climateinvestmentfunds.org/about/governance>.
\textsuperscript{68} Ibid.
\textsuperscript{69} Nakhooda, Watson and Schalatek (2015), p. 2.
\textsuperscript{70} See <https://www-cif.climateinvestmentfunds.org/about/governance>.
\textsuperscript{71} Ibid.
for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IADB).\textsuperscript{72}

Another climate fund oriented towards combating deforestation is the UN Reducing emissions from deforestation and forest degradation programme (REDD+). The UN-REDD became operational in 2008 and ‘brings together UNDP, UNEP, and the Food and Agriculture Organization (FAO) to support REDD+ activities, with the governance structure giving representatives of civil society and Indigenous People’s organizations a formal voice’.\textsuperscript{73}

### 2.5.2 Bilateral funds

Apart from the significant contribution of the multilateral funds, an important share of climate finance derives from bilateral funds. ‘Several developing countries have established regional and national channels and funds with a variety of forms and functions, resourced through international finance and/or domestic budget allocations and the domestic private sector’.\textsuperscript{74} Some of the biggest bilateral climate funds are Germany’s International Climate Initiative, UK’s International Climate Fund and Norway’s International Forest Climate Initiative.

\textsuperscript{72} Ibid.

\textsuperscript{73} Nakhooda, Watson and Schalatek (2015), p. 2.

\textsuperscript{74} Ibid.
As presented above, the climate finance architecture entails various complexities varying from the diversity of stakeholders to the proliferation of the climate Funds in accordance with the finance needs. These complexities have contributed to the fragmentation of the climate finance architecture into diverse multilateral and bilateral Funds all serving the same objective, that is climate resilience. This fragmentation has caused further difficulties in terms of reporting of the climate financed activities by both the Funds and the financial institutions disbursing the resources to the beneficiaries, as prescribed by the following chapter.

**Figure 2:** Climate finance architecture under the UNFCCC.
3 The principle of transparency under climate finance

3.1 Introduction

This chapter will focus on the principle of transparency as one of the fundamental principles for the effectiveness of climate finance. It will elaborate on the applied means to ensure transparency with a focus on reporting as the main means towards transparency.

In particular, climate finance is a very complex process. Apart from various actors, it also involves multiple phases, namely the fund mobilization, the fund administration and the fund disbursement and implementation. All these phases involve different and manifold entities and raise various transparency issues. Reporting refers to all these stages and its role is significant in keeping an accurate record of how much money has been spent and whether it has been spent for the right use.

This chapter focuses only on the fund administration and implementation phases and examines and analyzes the legal frameworks regulating transparency issues on an institutional basis. In terms of reporting obligations, this chapter covers the reporting obligations of the Funds themselves for the activities undertaken with the money deposited from the developed States. Additionally, it covers the reporting obligations of the financial institutions administering the Funds for the projects approved and the financial resources disbursed for the implementation of these projects.

3.2 The significance of transparency and the role of reporting as a means towards transparency

Transparency can play a significant role in the promotion of adequacy and effectiveness of funding flows. Transparency has been interpreted by the World Resources Institute (WRI) as the ‘methodologies, processes and procedures to estimate financing and the sources of information identified to facilitate the checking of information’. In addition, Transparency International has defined transparency as a ‘characteristic of governments, companies, organizations and individuals of being open in the clear disclosure of information rules, plans, processes and actions’.

With respect to climate finance, transparency requires the disclosure of information through detailed reporting on a project-level. Such reporting allows for the examination of whether the funds have been used as planned, and whether their use has been effective. Because of the increasing commitments of developed States towards climate finance by 2020, great consideration has been taken in developing a ‘transparent, comparable and accurate’ climate finance framework. There is a general recognition that transparency is essential to gather information and ‘improve understanding’ of the actors benefiting from climate financing, how resources are being used and whether they meet the needs and objectives of climate finance. Moreover, transparency is a necessary means to ensure accountability, as it constitutes a precondition and prerequisite to safeguard accountability of the climate finance entities for their actions.

In order to ensure transparency and predictability in the flow of climate funding, it is necessary to establish mechanisms, which enable the review of transparent action and guarantee for the effectiveness of the system. Reporting is fundamental for the enhancement of

79 Transparency International (2009), p. 44.
81 Kuramochi et al. (2015), p. 1. The Bali Action Plan of 2007 further affirms the need to monitor report and verify support for the nationally appropriate mitigation action, as well as the implementation of those actions.
effectiveness and the achievement of transparency in climate finance.\textsuperscript{84} Reporting policies on resource mobilization and allocation and project-cycle management developed by the Funds and their implementing entities provide for a tracking system that allows the above entities to keep a record, and report all the information relevant to climate finance.

The Funds under discussion in this thesis and the respective IAs have an obligation to report periodically manifold information related to their financial activities. These reporting obligations are necessary to achieve transparent outcomes, and be able to hold accountable the relevant actors for not complying with their obligations. Below are analyzed the reporting policies under each Fund and their IAs.

3.2.1 GEF Trust Fund Reporting Policies

The reporting under the GEF Trust Fund indicates two layers of obligations. The first refers to the reporting obligations of the Fund itself and its organs. The second layer illustrates the reporting obligations of the IAs of the Fund separately. This distinction between different layers of reporting is justified due to the diversity of entities involved in the climate finance process. Capitals flow through various channels and this constitutes the collaboration between the various actors and the tracking of the flows even more demanding and necessary, in order to secure the effectiveness and accountability of the Fund.

The main legal instrument providing for the operation and functions of the GEF is the ‘Instrument for the establishment of the GEF’. According to the GEF Instrument, the GEF is governed by three organs: the Assembly, the Council and the Secretariat including an independent evaluation office.\textsuperscript{85}

\textsuperscript{84} Bours, McGinn and Pringle (2015), p. 129.
\textsuperscript{85} GEF Instrument, Art. III.11.
The GEF itself does not have the competence to administer the GEF Trust Fund. Therefore, it has delegated the WB to be the Trustee to the Fund. As the Trustee, the WB constitutes the ‘legal owner’ of the Fund, ‘holding in trust the funds, assets and receipts’ under the Fund.\(^86\) In its capacity the Trustee shall also ‘manage and use the funds under the GEF’ only for the purposes of the Fund by ‘keeping them separately from all of its other assets and accounts’.\(^87\)

The Trustee has the right to expand its cooperation with other national or international entities in order to enhance the administration and the financial management of the Fund.\(^88\) The GEF Instrument designates as the IAs of the Fund the WB, the UNDP and the UNEP.\(^89\) The relationship between the IAs and the GEF are governed by interagency agreements.\(^90\) In addition, these Agencies shall facilitate the cooperation with other institutions, organizations and executing agencies (EAs) in order to promote the objective and goals of the GEF.\(^91\) In that respect, apart from the main organs of the GEF and its IAs, the Fund has also developed a second level of partnerships with EAs under the policy of expanded opportunities.\(^92\) Seven additional Agencies have joined the GEF partnership and share common responsibilities with the initial three IAs - project supervision and/or execution – and these include the AfDB, ADB, EBRD, FAO, IADB, International Fund for Agricultural Development (IFAD) and United Nations Industrial Development Organization (UNIDO).\(^93\) In addition to these EAs, other entities can become GEF partners by applying for accreditation, as long as they satisfy both the Minimum Environmental and Social Safeguard Standards and the Fiduciary Standards, as prescribed below.\(^94\)

\(^{86}\) Ibid., Annex B, Art. 1.
\(^{87}\) Ibid.
\(^{88}\) Ibid, Annex B, Art. 7.
\(^{89}\) Ibid, Art. III.22.
\(^{90}\) Decision 12/CP. 2, paras. 12 and 22, and Annex D.
\(^{91}\) GEF Instrument, Art. VI.28.
\(^{92}\) GEF/C.12/10.
\(^{93}\) GEF/C.41/06/Rev.01, Box 1.
\(^{94}\) GEF/C.33/Inf.6.
The relationship between the GEF Council and the COP has been clarified by a Memorandum of Understanding (MoU) concluded between these two Parties under decision 12 of the COP 2. This decision sets out the main competences of the COP over the GEF Council. Particularly, the Council has to conduct its performance and take its decisions in approving the GEF work programs ‘in conformity with the guidance of the COP’, and also to report annually to the COP on the activities carried out by the Fund. The Council bases the reporting to the COP on the relevant data and information received by the implementing and executing agencies administering the Fund’s resources. The Council’s annual report to the COP shall include three types of information: (i) information of compliance of the GEF with the COP’s guidance and decisions, ‘policies, programme priorities and eligibility criteria’, (ii) a synthesis of the GEF climate-financed projects and the financial resources dedicated for supporting these projects, and (iii) monitoring and evaluation reports of the implemented projects within the GEF climate change focal area.

Under the second layer of obligations, the GEF Instrument provides the general guidelines for the GEF Agencies reporting obligations. In particular, the GEF Council shall require all the Implementing and Executing Agencies to disclose information related to the GEF-financed activities and on how ‘the guidance and decisions of the COP’ have been applied in their work. A report shall be prepared by the GEF Secretariat including information on the overall activities of the GEF, a list of projects submitted for consideration, the projects approved and funded, and their outcomes, and shall be ‘conveyed to the COP’. The relevant information provided to the GEF by the above agencies shall be gathered in accordance to the agencies’ rules on reporting.

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95 Decision 12/CP. 2, paras. 4 and 5.
97 Decision 12/CP.2, para 7.
98 Ibid., para. 6.
99 Ibid., para. 7.
100 GEF Instrument, Art. VIII.31.
With respect to the reporting obligations of the EAs, these have signed MoU with the GEF Secretariat regulating their roles and responsibilities as GEF partners.\(^{102}\) These MoU share common provisions. In particular, the main role of the WB is to ensure that the EAs cooperating with the GEF conduct their activities in conformity with ‘the GEF mandated policies and procedures’.\(^{103}\) The EAs shall report to the WB ‘on a semi-annual basis’ regarding the activities undertaken and the ‘progress of the projects’.\(^{104}\) The reporting shall be conducted in accordance to EAs’ policies and procedures, ‘taking into account any concerns the Council may raise during its annual review of project implementation progress, as these are communicated to the EAs by the WB’.\(^{105}\) The above reports shall comprise the (i) ‘annual work plan and budget estimate of administrative costs, both of which will be included in the project proposals submitted to the Council’, (ii) ‘quarterly financial reporting’, (iii) ‘project appraisal documents’, (iv) ‘project execution or completion/evaluation reports, (v) project audits’, and (vi) ‘the audits of the GEF fund administered by the EAs’\(^{106}\)

### 3.2.2 LDCF/SCCF Reporting Policies

Despite the fact that both the LDCF and SCCF constitute distinct Funds from the GEF Trust Fund, they also operate under the GEF and they share common reporting policies and procedures with the GEF Trust Fund. First of all, the GEF shall report annually to the COP on the adaptation activities undertaken by the LDCF and the SCCF.\(^{107}\) Moreover, the WB has been designated as the Trustee of the Funds.\(^{108}\) The WB in its role as the Trustee shall be responsible for the management of the Funds and the ‘regular reporting to the Council’ on the status of the Funds’ resources.\(^{109}\) In particular, the WB shall report to the Council

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\(^{102}\) See <https://www.thegef.org/gef/mou-gef-agencies>.

\(^{103}\) MoU (2004), Art. IV.27.

\(^{104}\) Ibid., Art. IV.25.

\(^{105}\) Ibid.

\(^{106}\) Ibid., Art. IV.26.

\(^{107}\) Decision 10/CP. 20, para. 9; GEF/C.19/6, para. 3.

\(^{108}\) GEF/C.19/6, para. 12.

\(^{109}\) Ibid., para. 30.
information on the fund ‘contributions and allocations’ and additionally, on the transfer of funds to its IAs.\textsuperscript{110}

As mentioned above, the WB collaborates with IAs in order to benefit from their knowledge and expertise in adaptation finance.\textsuperscript{111} The LDCF/SCCF partner agencies are obliged to report on the project outcomes and ‘project and programme implementation’ and submit these reports to the GEF Secretariat, in order to prepare an annual monitoring report for the Council.\textsuperscript{112} In particular, the IAs shall prepare implementation reports periodically during the project implementation on an annual basis\textsuperscript{113}, whereas in case of ‘full sized projects’ a ‘mid-term review’ is required as well\textsuperscript{114}. The preparation of the above reports is facilitated by a tracking tool established under these two Funds, namely the ‘LDCF/SCCF Adaptation Monitoring and Assessment Tool’ (AMAT).\textsuperscript{115}

### 3.2.3 AF Reporting Policies

The CMP in its meeting in Marrakesh in 2002 decided that the AF shall be ‘operated and managed by an entity entrusted with the operation of the UNFCCC financial contribution’ and be guided by the CMP.\textsuperscript{116} Further guidance on the function and operation of the AF has been given by subsequent CMP decisions, such as the Decision 28/CMP.1 that provided the ‘Initial guidance to the operator of the Adaptation Fund’.

\textsuperscript{110} GEF/C.24/12, para. 39.
\textsuperscript{111} Ibid., para. 49.
\textsuperscript{112} Guidance Document, p. 24.
\textsuperscript{113} Accessing resources under the SCCF, para. 22; Accessing resources under the LDCF, para. 18.
\textsuperscript{114} Accessing resources under the SCCF, para. 24; Accessing resources under the LDCF, para. 19.
\textsuperscript{115} Accessing resources under the SCCF, para. 22; Accessing resources under the LDCF, para. 18; Climate Change Adaptation - LDCF/SCCF Adaptation Monitoring and Assessment Tool.
\textsuperscript{116} Decision 10/CP.7, para. 4.
The operating entity of the AF is the Adaptation Fund Board (AFB)\(^{117}\) and it is responsible for the supervision and management of the AF under the authority and guidance of the CMP.\(^{118}\) Some of its main functions are (i) the development of strategies, policies and guidelines submitted to the CMP for adoption, (ii) the reporting of such guidelines to the CMP, (iii) the development of criteria in order to ensure the quality of work of the implementing and executing entities, (iv) the regular monitoring and review of performance reports, and (v) the reporting of its own activities at each session of the CMP.\(^{119}\)

The WB has been designated as the Trustee of the AF on an interim basis.\(^{120}\) As a trustee, the WB is responsible and competent to manage the AF in accordance to the operational principles and modalities stipulated in the COP decisions.\(^{121}\) More specifically, the WB shall ‘hold in trust the funds, assets and receipts that constitute the Fund’, manage and use them only for the purposes indicated by the COP, and keep them separately from its own funds.\(^{122}\) One of its main responsibilities is the monetization of the 2% over the certified emissions reductions (CERs) deriving from the CDM. Therefore, transparency is required in terms of the Trustee’s main task, that is the monetization of CERs deriving from the CDM.\(^{123}\) Such transparent performance shall be ensured through regular reporting of the financial activities conducted by the Trustee. In terms of the monetization of the CERs, in order for the Trustee to perform in a transparent manner, it shall ‘report to the Board on CER sales annually’.\(^{124}\) According to the Trust Fund management, the Trustee has an obligation to hold records and provide periodic financial reports.\(^{125}\)

\(^{117}\) Decision 1/CMP.3, para. 3.
\(^{118}\) Ibid., para. 4.
\(^{119}\) Ibid., para. 5.
\(^{120}\) Ibid., para. 23.
\(^{121}\) Ibid., para. 20.
\(^{122}\) Ibid., para. 21.
\(^{123}\) Ibid., para. 28.
\(^{124}\) AFB/B.3/3, para. II.12.
\(^{125}\) Ibid., para. II.13(iii).
In addition, apart from this levy on the CERs, donor countries can contribute and deliver funds to the AF for climate adaptation purposes. Such funds are administered by the WB and other IAs collaborating with the WB. At a project level, the IAs shall go through three reporting phases. The first is the project design phase, where a fully developed proposal shall be submitted demonstrating the alignment of the project with the Fund’s strategic results. For the establishment of such alignment seven indicators have been developed in order to ensure that the project is in line with the Fund’s long term objectives.\textsuperscript{126} The second phase comprises the project implementation stage reporting. In particular, during this stage IAs are required to submit an annual project performance report after the first year of inception of the project implementation.\textsuperscript{127} Finally, a completion report shall be prepared six months after the completion of the project followed by a final evaluation report and a final audited financial statement. All these reports are prepared by the IAs in conformity with their internal regulations and they are submitted to the Secretariat. The latter evaluates the reports and in case of further recommendation regarding the adequacy of funds, it refers to the AFB.\textsuperscript{128}

It is apparent that all Funds under examination have developed reporting frameworks in order to enable the review and effectiveness of the activities carried out under the Funds’ resources by the COP. In addition, they also require the agencies with which they collaborate to establish reporting policies. Such policies ensure that the assessment of the agencies’ activities by the Secretariat will be facilitated and transparent information will be delivered by the Council to the COP.

\textsuperscript{126} Remaury (2015), p. 13 and 18.
\textsuperscript{127} Ibid., p. 18 and 25.
\textsuperscript{128} Ibid., p. 25.
4 The principle of accountability under climate finance

4.1 Introduction

Accountability is defined as ‘the process of holding actors responsible for their actions’. In particular, it represents the notion that ‘individuals, agencies and organizations (public private and civil society) are held responsible for executing their powers according to a certain standard’. It is generally acknowledged that the concept of accountability comprises both the responsibility to ‘provide information and justification about the relevant actions’ and ‘enforceability’ as the possibility to impose sanctions.

Transparency and accountability are not vague notions, but rather they are linked to a concrete aim. In the case of climate finance this aim is the achievement of climate resilience. More specifically, these two concepts constitute two interconnected principles. Scrutiny and transparency increase accountability with respect to the administration and disbursement of climate finance. In that respect, disclosure of information and monitoring are required to hold accountable an entity for not complying with its reporting obligations.

This chapter examines all the means towards accountability under each Fund and its partner agencies. It attempts to identify what are the standards and mechanisms developed provisions in order to hold the entities involved in climate finance accountable for not complying with their reporting obligations in the fund administration and disbursement stages. Moreover, it analyzes the structure and function of compliance and grievance mechanisms set in place under the IAs for addressing accountability issues, and cases brought before these mechanisms related to climate change claims.

130 McGee et al. (2010), p. 4; Goetz and Jenkins (1999).
4.2 The significance of accountability and the means towards accountability

One of the main functions of a financial mechanism is to ensure accountability through the ‘monitoring and evaluation of project and portfolio performance’ and the ‘review and inspection of problematic projects’. In order for climate finance to achieve its objectives, the financial institutions burdened with the administration and disbursement of the financial resources must be ‘legitimate’. The institutional legitimacy refers to whether decisions are taken in a ‘transparent and accountable manner’ and it is assessed on the basis of the institution’s decision making process, reporting and its effectiveness. In that direction, the entrusted entities with the administration of the funds have the responsibility to exercise the power directed to them for the purposes of the overall objective under UNFCCC and ensure that the Funds’ resources are used ‘effectively’. In order to ensure that institutions exercise the above power ‘responsibly’, standards and mechanisms shall be in place to push for greater accountability. The importance of the principles of transparency and accountability has also been stressed out by the IAs, which committed to safeguard and apply these principles through the implementation of projects and programmes.

There are several means that can contribute to safeguard accountability of the climate finance actors. Such means are (i) monitoring and evaluation (M&E) policies as one of the essential means for the achievement of effectiveness and accountability, (ii) fiduciary standards, and (iii) managing environmental and social risk through the establishment of grievance mechanisms.

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132 Ibid.
133 Ibid., pp. 262-3.
134 Ibid., p. 266.
135 Ibid., p. 267.
136 Decision 12/CP. 2, Annex D, paras. 4 and 5.
4.2.1 General accountability provisions

The MoU between the GEF Council and the COP provides that the former is directly accountable to the COP for its compliance with its responsibilities. Moreover, at the performance of its duties, the WB as the Trustee is accountable for the performance of its responsibilities to the GEF Council. In particular, its responsibilities refer to the ‘mobilization of resources for the Fund’, the ‘financial management of the Fund’, the ‘maintenance of records and accounts of the Fund’, and the ‘monitoring of the projects’ and the use of Fund’s resources in order to ensure that the latter are used in accordance to the Council’ decisions.

With respect to the IAs, these are directly accountable to the GEF Council for ‘the preparation and cost-effectiveness of the GEF projects and for the implementation of the operational policies, strategies and decisions of the Council’.

The accountability relationship between the IAs and the EAs stemming from the collaboration of the two agencies in the fund administration and disbursement has been determined by the GEF Council in its ‘Review of Experience with EAs under Expanded Opportunities’ conducted in November 2003. The Council stated that accountability shall be based on ‘memoranda of agreement between the two agencies specifying their roles and the scope of the IA’s accountability’. This scope has already been delineated by the Council at its meeting of November 2003, where it ‘limited the IA’s accountability for EA activities under expanded opportunities to conducting the due diligence review to ensure compliance of the EAs with the policies and procedures of the GEF’. In particular, the Council clarified that ‘once such compliance was assured, the EA would be solely accountable for fulfilling

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139 GEF Instrument, Annex B, Art. 2.
140 Ibid., Annex B, Art. 4.
141 Ibid., Art. III.22.
142 GEF/C.22/12, para. 9.
143 Ibid., para. 11.
the policies and procedures and assuring the quality, implementation and financial integrity of their GEF projects.\textsuperscript{144}

The GEF Secretariat has also signed standard MoU with the EAs on direct access to GEF resources. These Memoranda between the Secretariat and the ADB, AfDB, EBRD, and IADB share some common key provisions. Art. V of the above Memoranda provides for the exclusive responsibility of the EAs for the ‘administration of the GEF funds made available to them and in conformity with their regulations and procedures.’\textsuperscript{145} Moreover, EAs are fully accountable to the Council for the appropriate use of funds, the ‘preparation and cost-effectiveness of GEF-projects, the implementation of the operational policies, strategies and decisions of the Council with respect to such activities’,\textsuperscript{146} and finally, reporting to the Secretariat.\textsuperscript{147}

The LDCF and the SCCF share common accountability provisions with the GEF Trust Fund, as ‘their governance is outsourced to the GEF Council’\textsuperscript{148} which acts under the guidance of and is accountable to the COP.\textsuperscript{149} Accordingly, the LDCF/SCCF Council – in practice it is the GEF Council meeting for the specific purposes under the two Funds - is annually accountable to the COP for the activities financed under the Funds\textsuperscript{150}, while the IAs responsible for the management of the Funds’ financial resources are accountable to the Council for complying with their obligations in accordance with their internal accountability provisions.\textsuperscript{151} The relationship between the IAs and the EAs collaborating with the former in the disbursement of the funds is developed as prescribed above.

\textsuperscript{144} Ibid.
\textsuperscript{145} MoU (2004), Art. V, Section 5.01.
\textsuperscript{146} Ibid, Section 5.02.
\textsuperscript{147} Ibid, Art. VII, Section 7.01.
\textsuperscript{149} Decision 12/COP 2, Annex, para. 2.
\textsuperscript{150} Transparency International (2014), p. 25.
\textsuperscript{151} Ibid., p. 33.
In terms of the AF, the WB serving as the Trustee of the Funds is accountable to the AFB for the performance of its responsibilities in accordance with the guidance provided by the AFB. These responsibilities include its two core functions, that is (i) the monetization of the CERs for the AF, and (ii) the trust fund management, including ‘financial management of the recourses under the Fund, investment management, accounting and financial reporting’. The above functions shall be performed in consistency with the WB’s ‘Articles of Agreement, by laws, policies and procedures’.

In its role as a Trustee, the liability of the WB is limited to its core responsibilities, as prescribed above, and the tasks that these responsibilities entail, in accordance with the Terms and Conditions of the WB. Moreover, Decision 1 of the CMP indicates that the Trustee is solely responsible for the performance of those duties and responsibilities ‘specifically and expressly set forth in the Terms and Conditions’ and therefore, it is not subject to any duties or obligations without limitation. In case of a conflict arising between the CMP and the Trustee, this shall be submitted to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The IAs are ‘fully’ accountable to the AFB for the preparation and implementation of projects in accordance with the ‘principles and modalities applied to the operations of the AF’. Regarding the executing entities, these shall ‘carry out specific tasks related to the preparation and execution of adaptation activities, such as the preparation of project documents, procurement of services and contract administration’. In that respect, they are ‘accountable to the AFB for oversight of management, operation and use of funds approved

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153 Ibid., paras II.7 and 8.  
154 Ibid., para. II.8.  
155 Ibid., para. IV.22.  
156 Decision 1/CMP 4, Appendix, para. 9.  
157 Ibid., para. 30.  
158 Ibid., paras 6 and 11.  
159 Ibid., para. 12.
by the AFB.¹⁶⁰ Both of the above entities are required to submit annual reports on all the activities financed by the AF.¹⁶¹

4.2.2 M&E Policies

The M&E policies serve as a means to ensure that the information reported by the partner agencies of the Funds will be monitored and evaluated by the Funds. The GEF has developed a M&E Policy in 2006, which has been revised in 2009 for the needs of the GEF fifth replenishment phase¹⁶² and provides for more concrete reporting and monitoring obligations of the GEF Agencies. The main objective of this policy is the promotion of transparency and accountability within the Fund and the establishment of a results-based management (RBM) aiming to use the GEF activities’ outcomes as a means to improve the effectiveness of the Fund.¹⁶³ The M&E Policy defines monitoring as a ‘management instrument’ providing for ‘continuous or periodic function that uses systematic collection of data, qualitative and quantitative, for the purposes of keeping activities on track’.¹⁶⁴ It recognizes the multiplicity of stakeholders and capacities in the GEF partnership and provides for functions of continuous measuring, monitoring, assessment, review and reporting on progress towards the achievement of the desired results.¹⁶⁵

In accordance to the guidelines under the M&E Policy, GEF Agencies are responsible for preparing and providing the GEF Secretariat with ‘monitoring reports including project, program and portfolio implementation reports, GEF Agency overview reports and annual monitoring reports’.¹⁶⁶ The GEF Agencies shall ensure through their internal monitoring

¹⁶⁰ Ibid.
¹⁶¹ Ibid., para. 13.
¹⁶² The GEF Monitoring and Evaluation Policy in 2010.
¹⁶⁵ The GEF Monitoring and Evaluation Policy in 2010, para 7.
¹⁶⁶ Ibid., para 14.
systems the systematic and periodic assessment of the project and programme performance, and the adequate production and progress of outcomes in collaboration with the GEF Secretariat.167

All the above information shall be evaluated ‘in accordance with internationally recognized standards’ and ‘shared with the GEF Evaluation Office’.168 More specifically, regular evaluation reporting shall take place, in order to provide an assessment on the overall performance and impacts evaluation of the programme and project levels.169 All these reports after being addressed to the GEF Secretariat, they are evaluated by the GEF Evaluation Office in collaboration with the independent GEF Agencies evaluation offices and passed through to the GEF Council. Finally, in case that projects are jointly implemented by more than one Agencies, the M&E procedure followed by the institutions shall be agreed upon, so that duplication of evaluation and reporting will be prevented.170

The LDCF and the SCCF share the same M&E Policy with the GEF Trust Fund. This was decided by the GEF Evaluation Office in 2011, which indicated only four changes in the M&E Policy of the LDCF and SCCF associated with the focal areas, the global environmental benefits, the incremental cost, and the LDCF/SCCF results-based management framework.171 In conformity with the above decision, the LDCF/SCCF Council - being the main ‘governing body’ of the Funds and the main policy maker172 - asked the GEF Evaluation Office in collaboration with the GEF Secretariat to provide a guidance document on the operationalization of the monitoring and evaluation of these two Funds. In order for the LDCF and SCCF to comply with their monitoring and evaluation obligations, a tracking tool has been developed, namely the AMAT.173 The AMAT provides a framework based

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167 Ibid., para 56.
168 Ibid., para 57.
169 Ibid.
170 Ibid., para 58.
171 GEF/LDCF.SCCF.11/M/01.
173 Climate Change Adaptation - LDCF/SCCF Adaptation Monitoring and Assessment Tool.
on 14 indicators and ‘quantitative data’, which facilitate the ‘collection, aggregation, and 
communication of progress and outcomes across a large number of projects and pro-
grams’.\(^{174}\) Moreover, a RBM system has been developed under these Funds to assess 
whether the financed projects and programmes are on the ‘right track’.\(^{175}\)

In conformity with the guidance document, the LDCF/SCCF Council shall ensure that the 
policies and procedures, as well as the projects and work programmes of the Funds are 
‘monitored and regularly evaluated’.\(^{176}\) The GEF Secretariat prepares an annual monitoring 
report passed through to the Council based on the project outcomes and ‘project and pro-
gramme implementation reports’ submitted by the GEF Agencies acting as partner agencies 
of the LDCF and SCCF.\(^{177}\) These Agencies have their own regulations for monitoring and 
evaluation and they shall ensure regular reporting to and collaborating with the GEF Secre-
tariat.\(^{178}\) In addition, the Trustee of the Funds is also responsible for maintaining records 
and accounts on behalf of the Council.\(^{179}\) Finally, the GEF Evaluation Office shall inde-
dependently evaluate the institutional arrangements and the effectiveness of the Funds based 
on the monitoring information and data collected and in collaboration with the GEF Inde-
pendent Evaluation Units.\(^{180}\)

The AF has also applied an RBM approach aiming to the achievement of accountability 
through the ‘assessment of the performance of the Fund’s financed activities’ and the po-
tential improvement of the Fund’s policies through the knowledge learning process of this 
RBM concept.\(^{181}\) This approach operates at three main levels: (i) guidance from the CMP 
in terms of the Fund’s management, (ii) project level monitoring carried out by the IA fi-
nancing the project, and (iii) fund level monitoring undertaken by the AF Secretariat under

\(^{175}\) Ibid., ps. 10 and 21. 
\(^{176}\) Ibid., p. 22. 
\(^{177}\) Ibid., p. 24. 
\(^{178}\) Ibid., p. 25. 
\(^{179}\) Ibid. 
\(^{180}\) Ibid., p. 23. 
\(^{181}\) AFB/EFC/.6/4, p. 5.
the direction of the AFB. In addition, it sets out three main evaluation levels: (i) mid-term and final project level evaluations, (ii) implementing entities level evaluations of their ‘performance and effectiveness’, and (iii) AF level evaluations of the Fund’s management performance. The AFB monitors the project implementation and use of the Fund’s resources through reporting of the IAs and under the GEF Secretariat’s assistance, while it can order independent evaluations when deemed necessary. All the above ‘Evaluation Function’ of the AF is implemented by the GEF Evaluation Office in assessing the overall performance and effectiveness of the GEF.

### 4.2.3 Fiduciary Standards

The GEF Council does not have the authority to intervene the Agencies’ policies and procedures, but it can reassure that policies in conformity with the Fund’s standards are in place at the time of the accreditation of the Agency. For this purpose, the GEF Council has approved and adopted a ‘Policy on Fiduciary Standards’ aiming to ‘strengthen financial and programmatic accountability of the GEF by requiring that all GEF partner Agencies meet the agreed minimum fiduciary standards’. In particular, all the entities collaborating with the GEF shall satisfy the minimum fiduciary standards set out by the GEF Council. These standards include ‘independent oversight, audit and evaluation, and investigation functions; external financial audit; financial management and control frameworks; project-appraisal standards, including environmental assessments and other safeguard measures, as appropriate; monitoring and project-at-risk systems; procurement; financial disclosure;...

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183 AFB/EFC/.6/4, pp. 6-8.
184 Ibid., p. 10.
185 Ibid., p. 11.
187 Minimum Fiduciary Standards for GEF Partner Agencies, para. II.6.
188 Ibid., para. V.10.
hotline and whistleblower protection; and codes of ethics.\textsuperscript{189} The GEF minimum fiduciary standards apply to the IAs collaborating with the Funds operating under the GEF.

The AF has also established fiduciary standards.\textsuperscript{190} In particular, in order for an entity to be designated as an implementing agency of the AF, it is required to satisfy these standards.\textsuperscript{191} The main objective of these standards is to ensure that money under the Fund will be used for the right purpose and in an ‘efficient manner’.\textsuperscript{192} Implementing entities shall apply and go through an accreditation process.\textsuperscript{193} Their application will be reviewed by an Accreditation Panel, which will make its final decision on whether the entity satisfies all the standards of implementation.\textsuperscript{194} These standards require (i) competencies such as ‘financial integrity, requisite institutional capacity, and transparency and self-investigative powers’ and (ii) specific capabilities corresponding to each one of the competencies mentioned.\textsuperscript{195}

### 4.2.4 Grievance mechanisms and climate change related cases

In case of non-compliance issues, a redress mechanism can be established either directly under the Fund itself, or under the IAs’ internal regulations. With respect to the Funds analyzed under this thesis, it is only the GEF that provides for a conflict resolution mechanism. Apart from this mechanism, the IAs have also established mechanisms where local community concerns can be raised. The objective of such mechanisms is the management of the social and environmental risk of the financed projects and the protection of right of the injured parties to raise and resolve such claims.\textsuperscript{196}

\textsuperscript{189} Ibid., Annex I.
\textsuperscript{190} AFB/B.4/6.
\textsuperscript{191} AFB/B.4/6, para. 12.
\textsuperscript{192} AFB/B.6/4, p. 8.
\textsuperscript{193} Ibid., p. 10.
\textsuperscript{194} Ibid., pp. 10-11.
\textsuperscript{195} AFB/B.6/4, pp. 8-10.
\textsuperscript{196} Ballesteros, Nakhooda, Werksman and Hurlburt (2010), p. 306.
In particular, regarding the GEF, a Conflict Resolution Commissioner (CRC) has been established as an independent organ.\textsuperscript{197} In terms of the role and function of this mechanism, parties affected by the GEF-financed projects can bring disputes and complaints directly before the CRC at the GEF Secretariat.\textsuperscript{198} After the arising of the dispute, the Commissioner will address the dispute in cooperation with ‘the complainant, the GEF partner Agency, and the recipient country’.\textsuperscript{199}

Apart from the CRC mechanism under the auspices of the GEF, injured parties can also raise disputes before the resolution mechanisms provided by the GEF agencies. That is also the case with the LDCF, SCCF and the AF, as they all share the same entities acting as the Funds’ IAs. Such mechanisms are the WB Inspection Panel, the Compliance Advisor and Ombudsman (CAO) under the WB, the Independent Review Mechanism (IRM) under the AfDB, the Accountability Mechanism (AM) under the ADB, the Project Complaint Mechanism (PCM) under the EBRD and the Independent Consultation and Investigation Mechanism (ICIM) under the IADB.

Numerous cases have been brought before the above resolution mechanisms. Some of these disputes were partly related to climate change claims. After an examination of the disputes brought before these mechanisms since their establishment, thirteen cases where found to raise climate change concerns. Below some of these cases are selectively demonstrated, on the basis of their involving climate change substantive complaints and representing the compliance of the IAs with the respective decisions.

4.2.4.1 WB Inspection Panel

\textsuperscript{197} See \url{https://www.thegef.org/gef/conflict_resolution} .
\textsuperscript{198} \textit{Agency Minimum Standards on Environmental and Social Safeguards’}, para. VII.11.
\textsuperscript{199} Ibid.
The World Bank Group consists of five separate institutions: the IBRD, the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Center for the Settlement of Investment Disputes (ICSID).\textsuperscript{200} The WB Inspection Panel was established in 1993\textsuperscript{201} and has jurisdiction to review any project financed by either the IBRD or IDA.\textsuperscript{202} The Panel’s operational guidelines are being provided by the Operating Procedures as reviewed in 2014. According to the Panel’s eligibility criteria, an ‘affected party’ by a project is defined as ‘a community of persons such as an organization, association, society or other grouping of individuals’.\textsuperscript{203} One of the competences of the Panel is the authorization to ‘review the compliance of the WB with its operational policies and procedures’.\textsuperscript{204} The obligation of the recipient to conduct an environmental assessment and its review by the Bank constitutes one of the WB’s operational policies, which could raise climate change related claims.\textsuperscript{205} Such claims could also be related to the States’ obligation under the UNFCCC and the KP.\textsuperscript{206} The WB’s Pollution Handbook also refers to the above obligations and the Bank’s commitment to avoid activities inconsistent with these two legal instruments at an effort to internalize the carbon externalities.\textsuperscript{207}

The Panel process consists of four phases. In accordance to the first phase, in order for a process to be initiated, a request for inspection shall be received.\textsuperscript{208} A finding that the request satisfies all the eligibility criteria and therefore, is admissible would signify the issuance by the Panel of a notice of registration and its submission to the Board, the Management and the Borrower.\textsuperscript{209} This notice indicates the second phase of the overall process,

\textsuperscript{200} Gleason and Hunter (2009), p. 295.
\textsuperscript{201} WB Inspection Panel Resolution (1993).
\textsuperscript{202} Gleason and Hunter (2009), p. 295.
\textsuperscript{203} Review of the WB Inspection Panel Resolution, Eligibility and Access.
\textsuperscript{204} Gleason and Hunter (2009), p. 298.
\textsuperscript{205} WB Operational Policy 4.01, para. 8.
\textsuperscript{206} Gleason and Hunter (2009), p. 302.
\textsuperscript{208} Operating Procedures (2014), Section 3.1, para. 22.
\textsuperscript{209} Ibid., Section 3.2, para. 32.
namely the confirmation of technical eligibility and the Board’s approval or not of the Panel’s recommendation on whether to investigate.\textsuperscript{210} The approval of such recommendation would lead to the third phase of investigation proceedings and would be concluded with the issuance of an Investigation Report including all the relevant facts and information of the case and all the findings on ‘issues of harm and compliance’.\textsuperscript{211} According to the fourth and final phase of the process, following the Investigation Report and its submission to the Board, actions can be taken towards redress. Such actions are: (i) ‘remedial efforts by the Management taken on its own to address Bank failure’, (ii) a plan of action agreed between the Borrower and the Bank in consultation with the requesters to improve project implementation’, and (iii) a proposal for periodic progress reports on the implementation of the remedial efforts and/or plan of action.\textsuperscript{212}

One of the cases brought before the WB Inspection Panel is the \textit{WB Chad Cameroon pipeline} case. This case involves the partially finance by the WB of the Chad Cameroon oil project since 1996. The main objective of the project was the exploitation of the oil fields in the south of Chad and the construction of an oil pipeline between Chad and Cameroon to transport crude oil to its port of export.\textsuperscript{213} Several communities and inhabitants have filed complaints before the Panel related to the violation of various substantive and procedural rights. One of the violations entailed the deficiency in the WB’s evaluation to take into consideration the ‘impact of the combustion of the oil exploited in the project on climate change’.\textsuperscript{214} Therefore, the complainants requested the Panel to recommend the opening of further investigations in order to resolve the problem.

According to the following investigation, the concerns raised by the local communities regarding the gas flaring and the construction of a gas plant were considered by the Panel
to cause a ‘low probability of future harm due to air pollution’, but it nevertheless, ordered ‘periodic monitoring by the Management’. 215

In its report, the Management agreed with the Panel’s finding that ‘continued monitoring and implementation of commitments by the relevant Parties’ is required.216 In that respect, it authorized intensified supervision missions and reports of the Bank.217 The Management noted with respect to air pollution and climate change risks that despite the Panel’s satisfaction with the low future harm probability of the project, there is, nevertheless, a need of commitment towards continued monitoring through its own supervision efforts and independent monitoring.218

One more case also raised before the WB Inspection Panel involves a West African Gas Pipeline (WAGP) Project financed by both the IDA and MIGA. The rationale behind the WB’s involvement in this project was to contribute to the ‘introduction of private sector and financing and expertise into the economy sectors in the West African States’.219 The objective of the project was the delivery of gas from Nigeria through a long pipeline crossing 23 communities, in order to ‘substitute natural gas from Nigeria for alternate fuels used by power, industrial, mining and commercial sectors in Ghana, Togo and Benin Republic’.220 The requesters brought various complaints before the Panel. Among these complaints, they also stressed out the harm caused by the financed project to the atmosphere in terms of climate change due to the use of ‘associated gas’ (flared) as the source of the pipeline.221

216 Ibid.
217 Ibid., para. 45.
218 Ibid., Finding 17, p. 28.
220 Ibid.
221 Ibid., p. 8.
In the second phase of the investigation completion, the Panel assessed the Environmental Impact Assessment (EIA) and its compliance with the Bank’s policies and procedures. The Panel found some inconsistencies of the EIA with the Bank’s policies and particularly focused on the analysis of impacts of the project by reference to its potential to increase gas flaring. It concluded that despite the Management’s documentation ensuring that ‘the project impact on overall gas flaring would not be substantial’, the document content was highly ‘imprecise and suggestive of much larger benefit’ containing apparent inconsistencies with respect to the project’s ‘expected contribution of flaring reduction’. Finally, the Panel found the Management’s supervision inadequate, and as a result, noted the Management’s non-compliance with the Bank’s Policy on Supervision.

In its Management Report issued in 2008, the Management agreed with the Panel on the ‘importance of monitoring the impact of the project on gas flaring’. In that respect, it decided to take action by requesting the Government of Nigeria to ‘provide information about non-associated and associated gas supply for monitoring purposes for the project’ on an annual basis. Among the environmental mitigation measures taken by the Management, the latter has committed to ‘obtain annual data on the volumes of non-associated and associated gas’. By the issuance of the fifth and last progress report in 2014, the Management has successfully completed and complied with its commitment to compile the data mentioned above.

4.2.4.2 Compliance Advisor and Ombudsman (CAO)
The IFC and MIGA are the ‘private sector arms’ of the World Bank Group\(^\text{230}\) and separate, independent organizations within the WB Group\(^\text{231}\). Environmental and social complaints related to the projects financed under these two Institutions are addressed by the CAO. The CAO has three distinct roles: (i) the Ombudsman role, (ii) the compliance role, and (iii) the advisor role.\(^\text{232}\)

CAO’s Dispute Resolution function is eligible to people affected by the social and environmental impacts of the IFC/MIGA projects.\(^\text{233}\) The CAO in its Ombudsman role does not make any judgement about the merits of the complaint; neither does it accept cases related to fraud or corruption.\(^\text{234}\) On the other hand, it only facilitates the parties of the dispute to find a common solution by taking the leading role and directing the whole process.\(^\text{235}\)

Additionally, CAO in its compliance role ‘oversees and ensures compliance with the social and environmental policies and guidelines of the IFC and MIGA’.\(^\text{236}\) Compliance investigations are initiated either by request of the WB Group’s President or the CAO President, or by reference of a complaint from the CAO Ombudsman, in case that resolution is not possible.\(^\text{237}\) CAO Compliance focuses on the IFC and MIGA - not on their client - and whether its performance is in line with the relevant environmental and social provisions.\(^\text{238}\) The compliance role comprises a two-step approach, first the appraisal process, and second, the investigation process, if the appraisal criteria are met.\(^\text{239}\)

Finally, CAO in its advisory role ‘provides advice to the President of the WB Group and management of the IFC and MIGA’ focusing on ‘broader social and environmental con-

\(^{	ext{230}}\) Gleason and Hunter (2009), p. 303.
\(^{	ext{231}}\) Ibid.
\(^{	ext{232}}\) CAO Operational Guidelines (2013), Section 1.2.
\(^{	ext{233}}\) See \text{http://www.cao-ombudsman.org/howwework/ombudsman/index.html}.
\(^{	ext{234}}\) CAO Operational Guidelines (2013), Section 1.1.
\(^{	ext{235}}\) Ibid, Section 3.
\(^{	ext{236}}\) Ibid., Section 4.2..
\(^{	ext{237}}\) Ibid.
\(^{	ext{238}}\) Ibid., 4.1.
\(^{	ext{239}}\) Ibid., 4.2 and 4.3.
cerns and policies’. The main objective of this role is to improve the IFC/MIGA performance and to give advice relevant not to specific programmes, but instead to broader guidelines and procedures, deriving from CAO’s experience through its dispute resolution and compliance role.

One of the requests submitted to the CAO concern the Two pulp mills case. In particular, a complaint was filed in 2005 to the CAO by the Center for Human Rights and Environment in Argentina referring to the harm caused to the Uruguay River – an internationally protected natural resource – due to the negative impact of two projected related to the construction of a paper mill. Both of the above projects were based on IFC financing and involved two ‘European-based pulp mill production companies’ acknowledged for their ‘criminal record of using contaminating technology’ in the past. Among the complaints filed, the requesters have also stressed out the negative impact of the two projects to the atmosphere due to the harmful ‘atmospheric discharges’ caused.

The CAO in its Ombudsman function noted that the IFC failed to conduct a comprehensive assessment of cumulative impacts, while the EIAs did not take into account the ‘broader cumulative impacts beyond environmental emissions’. In that respect, the CAO decided to conduct a compliance audit of the adequate application of the IFC policies on the two pulp mill projects.

The key finding of the CAO in its compliance audit was the lack of IFC’s due diligence in assessing the cumulative impacts of the two projects. In particular, the CAO considered the documentation provided by the IFC inadequate in terms of addressing the cumulative im-

240 Ibid., 5.1.1.
241 Ibid., 5.1.2.
242 Complaint document, Section I, p. 4.
243 Ibid., Section VI, p. 6.
244 Ibid.
245 Ibid., Section IX.A.d), p. 12.
246 Ibid., p. 9.
247 Ibid., p. 12.
pacts of the two projects and systematically providing for a complete EA. The CAO Compliance reached a conclusion indicating the IFC’s non-compliance with its public disclosure requirements related to the two pulp plants and closed the case in 2006. IFC has taken into consideration the CAO Compliance audit and it endeavored to take a well-informed decision based on the improvement of social and environmental outcomes.

In 2009 the CAO received a second complaint concerning only one of the two pulp mill projects, Orion, ‘raising concerns about the environmental monitoring of the project and its credibility regarding odors and air emissions emanating from the plants, water pollution, impacts to community health, and trans-border issues’. Furthermore, ‘complainants argued that what they feared as potential impacts are currently being manifested and experienced across the international boundary’. In 2010 CAO issued and disclosed its appraisal report on the case. In accordance to this Report, IFC has sufficiently complied with its policy requirements on monitoring and reporting emissions. As a result, the CAO decided that no further investigation was needed and closed the case.

This case illustrates the significance of the CAO mechanism in both assessing ‘issues involving cumulative emissions of greenhouse gases’ and contributing in ‘raising climate-related concerns in other fora’.

4.2.4.3 Independent Review Mechanism (IRM) under the AfDB

The IRM functions under similar operational guidelines to those provided under the CAO. In particular, the main objective of the mechanism is to provide people affected by projects

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248 Ibid., p. 25.
251 Ibid.
financed by the AfDB Group to request the compliance of the Bank Group with its policies and procedures. The mechanism was established in 2004 and consists of a Compliance Review and Mediation Unit (CRMU) and a roster of experts. The IRM has three main functions: (i) the problem solving, (ii) the compliance review, and (iii) the advisory. According to the problem solving function, it shall be used when alternative problem-solving techniques, such as mediation and conciliation, can assist in solving complaints or grievances. The compliance review function shall be undertaken when a prima facie observation of the complaint indicates apparent evidence of caused harm to the Requestor due to the Bank’s non-compliance with its procedures. Finally, the advisory function shall be ‘authorized’ when the ‘accumulated experience of the IRM’ can benefit the policies and procedures followed by the Bank Group.

In September 2010 the CRMU received a request for compliance review by two complainants concerned with the Medupi Power Project. This project has been financed by the AfDB with a loan granted in 2009 and involved the construction of a coal-fired power plant. Eskom, the operator of the project, conducted in 2007 an EIA in conformity with the AfDB’s environmental and social assessment procedures. This case is important because it raised issues related to the project’s impact on climate change. In particular, with regard to climate change, the main concerns expressed by the requestors were (i) ‘the Bank’s compliance with the promotion of a ‘clean sustainable energy sector’’, (ii) ‘the adequacy of the social and environmental studies done regarding the assessment of cumulative impacts’, and (iii) the linkages between this project and the Bank’s and Borrower’s approaches to climate change’. The Panel examined thoroughly all these concerns to which it made recommendations.

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256 Ibid., para. 15.
257 Ibid., para. 16; IRM Operating Rules and Procedures (2015), VII.b.51.
In accordance to the first concern, the Panel referred to the Bank’s policies and stressed out the Bank’s priority of ‘increasing access to clean energy’ under the Bank’s Clean Energy Investment Framework. Nevertheless, it also noted the Bank’s tension to finance projects with a harmful potential to the environment, whereas simultaneously recognizing the urgent need for clean energy. Such a tension has not been addressed by any of the Bank’s policies and as a result, the Panel found that in terms of a complex project like the Medupi the Bank only ‘partially complied with its applicable policies’. The Panel recommended the inclusion of an ‘environmental specialist’ in all future supervision missions, in order to ‘ensure progress on safeguard measures’, and additionally, the revision of the Energy Sector Policy.

According to the second concern, the Policy on the Environment contains the obligation of the development of an EIA that shall take into consideration the cumulative impacts of a project. Even though the Bank has applied the policies on EIAs, the Panel found, nonetheless, that it avoided to ‘undertake a more thorough approach’ that would have taken into account the ‘regional and trans-border effects’ of the project loan on the environment. The Panel’s recommendation to this finding was the inclusion by the Bank’s Management in its supervision of ‘close monitoring of economic, social and environmental changes in the air quality around Medupi’.

According to the last concern, the requestors emphasized the likely harm caused by the project loan to the detriment of South Africa’s climate change obligations to reduce its carbon emissions and scale up the renewable energy investments. The Panel found that the

\[\text{(261) Ibid., p. 6.} \\]
\[\text{(262) Ibid., p. 7.} \\]
\[\text{(263) Ibid., p. 8.} \\]
\[\text{(264) Ibid.} \\]
\[\text{(265) Ibid., p. 11.} \\]
\[\text{(266) Ibid.} \\]
\[\text{(267) Ibid.} \]
Bank failed to comply with its policies in regard to climate change, and most significantly, with the ‘Climate Risk Management and Adaptation Strategy’ (CRMA). In particular, it indicated that the Bank neither mentioned in the potential significance of the project in reducing emissions, or its potential contribution to transboundary harm, so that cross-country collaboration and monitoring should have been pursued. The Panel recommended that ‘strong monitoring of the project’ under the policies of the CRMA, in order to achieve climate change resilience.

4.2.4.4 Accountability Mechanism (AM) under the ADB

Similar to the functions of the CAO and the IRM, the AM also conducts two functions: (i) a problem-solving, and (ii) a compliance review. The problem-solving function is ‘led by the Special Project Facilitator (SPF)’ and it focuses on assisting and finding sufficient solution for any harm or problem caused by ADB-financed projects. The compliance review is exercised by the ‘Independent Compliance Review Panel (CRP)’ and it focuses on whether the Bank has complied with its operational policies and procedures towards the avoidance of cause of adverse effects to local people. The AM comprises two separate offices, the Office of the SPF, and the Office of the CRP, which jointly operate for enhancing the transparency of activities and accountability of the Bank.

A complaint was filed in May 2011 to the CRP by the local community concerning the financing by the ADB of the Visayas Base Load Project in Philippines. The project involved the ‘construction, operation, and maintenance of a 200-Megawatt coal-fire power plant. The complaint referred to the failure of the ADB to comply with its own policies and

269 Ibid.
270 Ibid.
271 See <http://www.adb.org/site/accountability-mechanism/overview>.
272 Ibid.
273 Ibid.
One of the key elements was related to the emission of greenhouse gases as a result of the operation of the project causing respiratory illnesses and contributing to the global warming. The complainants requested the CRP to remedy the harm caused by the project.

In its response to the above CRP Request, the CRP found that the ADB did not comply with its Environment Policy, Public Communications Policy and Energy Policy, as it failed to ‘exercise rigorous due diligence in complying with its safeguard policies when it implemented the project’. The CRP recommended the ADB, with respect to the air pollution aspect, to undertake ‘a comprehensive air dispersion study that includes the key pollution sources in the project’s area of influence and validate its predictions with actual air emissions and ambient air quality monitoring data’. In its third and last Monitoring Report conducted in 2015, the CRP found that the ADB partially complied with the above recommendation and made further suggestions to the Bank for the achievement of a full implementation.

All the above mechanisms share certain common features. First of all, they share common roles and functions, that is the compliance review and problem-solving roles. Secondly, their main objective is to provide direct access to people affected by financed projects. Thirdly, their remedies include public reporting and, in some cases, using the IAs’ own leverage to force change in the project. These mechanisms may not have the legal force of the remedies available to courts, but they do, nevertheless, constitute important means for locally affected people to ‘raise concerns at an international level’.

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275 Ibid., p. 2.
277 Ibid., para. 50.
279 Ibid.
280 Ibid.
The most important commonality, though, among these resolution mechanisms is that they can only review the activities of the respective financial institutions in terms of its own environmental and social policies. This means that a procedure is initiated before these mechanisms once a claim related to the Bank’s Environmental and Social Policies is submitted.

All the above mentioned constitute the main means towards the achievement of accountability existing under the Funds examined in this thesis and their partner agencies. Moreover, the cases analyzed in this chapter illustrate complaints brought before the existing compliance mechanisms under the MDBs implying the Banks’ non-compliance with their environmental and social policies. The following chapter provides a critical analysis on the current accountability framework and suggests solutions for its improvement.

4.2.4.5 Project Complaint Mechanism (PCM) under the EBRD

The PCM was established in 2003 under the EBRD. It has - similarly to the previously mentioned mechanism - two functions, comprising (i) a problem-solving initiative aiming to ‘restore a dialogue between the complainant and the client and resolve the underlying issue without attributing blame or fault’, and (ii) a compliance review function seeking to ‘determine whether or not the EBRD has complied with its policies in respect of an approved project’.

4.2.4.6 Independent Consultation and Investigation Mechanism (ICIM) under the IADB

The ICIM was established in 1994. It is an independent body and operates under the leadership of the ICIM Director. The ICIM consists of two phases: (i) the Consultation phase managed by the Consultation Phase Coordinator, and (ii) the compliance review phase, managed by the Compliance Review Phase Coordinator. The main objective of the mechanism is to ensure conformity with the fundamental principles of transparency and accountability on which the operation of the IADB is based.

5 Critical overview of the current accountability framework

5.1 Introduction

This chapter provides a critical overview of the current accountability framework under the Funds and their IAs. It elaborates on the adequacy and effectiveness of this framework based on reports published concerned with the effectiveness of the Funds’ policies and also on a comparative analysis of the findings under Chapters 3 and 4. Moreover, it concludes the lack of effectiveness of the existing system due to the deficiencies related to accountability and provides potential recommendations towards the enhancement of accountability and compliance under the Funds.

5.2 Issues of effectiveness of the current accountability system

Based on the above analysis of the existing reporting frameworks in terms of transparency and the current accountability framework, one could assume that the current accountability system under the four Funds and their IAs is not adequate to ensure the compliance of the Funds and their partner agencies with their reporting obligations.

Firstly, the M&E policies established under both the Funds and the IAs refer to the monitoring by the Funds of the information reported by the IAs related to the administration and disbursement of the Fund’s resources. In addition, they involve the evaluation of such information by independent evaluation offices established under the Funds in collaboration with the internal evaluation offices under the IAs. The objective of these evaluations and of the development of RBM approaches is the Funds to gain knowledge on potential gaps and deficiencies in their function. As a consequence, such policies aim to strengthen effectiveness by detecting errors through the reporting process. However, they leave the case of a finding of non-compliance with reporting obligations by the Funds and the IAs unanswered.
Secondly, the fiduciary standards set the guidelines of collaboration of the Funds with financial institutions. The main objective of these standards is to prevent cooperation with institutions whose policies do not align with the ones under the Funds, and therefore, to strengthen accountability. However, even though they determine distinct standards for the regulation of corruption and fraud and protection of individuals, they do not have standards to safeguard that the accredited entities will have accountability mechanisms in place to ensure compliance with their reporting obligations. The fact that institutions are currently accredited with the tolerance of the Funds of the lack of internal compliance mechanisms in terms of reporting indicates the negligence of the Funds to consistently serve their objective.

Thirdly, the grievance mechanisms established are not adequate and appropriate to ensure accountability. In particular, such mechanisms are developed only under the IAs, whereas there is no such provision with respect to the Funds. Only the GEF has developed the CRC, but in practice all the claims arising out of the IAs’ financed projects are mainly brought under the IAs’ mechanisms. In addition, even though the internal regulations of the IAs provide for mechanisms holding accountable the Banks for non-compliance issues, these mechanisms are not effective enough, as they regulate a very limited scope of relationships and rights. In particular, the gaps of these mechanisms are the following:

1. They receive and accept requests related to harm caused by the financed project to the local communities and residents. This means that disputes arising between the IAs, and the Funds, and between the Funds and the COP are left out of the scope of these mechanisms.

2. The harm shall be caused due to the IA’s non-compliance with its Environmental and Social Policies. This indicates the lack of competence of such mechanisms to receive other types of claims related to non-compliance with the rest of the institutions’ obligations and policies, such as reporting obligations.

3. They cannot enforce the Bank to comply with the Panel’s decision, as they do not have the power of a legal court, but they rather solve disputes by facilitating the
Parties to find a solution. Even when the compliance function is activated, these mechanisms do not provide for sanctions and therefore, they do not have any punitive power over the respective Banks. As a consequence, they can only make recommendations, which, however, lack enforcement.

Finally, based on the analysis of the above cases and mechanisms under Chapter 4, it is noteworthy that all of the claims concerned the Banks’ non-compliance with their environmental policies. However, none of the projects causing harm was related to climate finance. On the other hand, most of the cases were concerned with projects financed by the IAs with a negative impact on climate change. In addition, these mechanisms have proven to be effective enough in terms of compliance of the Banks with the Panel’s decision, but they display some gaps in their substantive function.

First of all, they do not cover situations where a project has been financed by the IAs under the Funds’ resources, as in such cases the funds shall inherently be in conformity with the Bank’s environmental policies due to their objective of combating climate change. As a result, even though climate financed projects could violate the IAs’ social policies, it is the objective of the project itself that would prevent the Bank’s non-compliance with its environmental policies at the first place. In addition, the mechanisms examined under the previous chapter are restrictively and exhaustively activated only with respect to the Environmental and Social Policies of the IAs. Nevertheless, in cases of the Banks’ non-compliance with the rest of their obligations, and in particular, with their reporting obligations, there is no mechanism that could hold the Funds and their IAs accountable for such inconsistencies.

As a consequence, in accordance with the above argumentation the current framework does not suffice in dealing with cases of non-compliance of the IAs, and by extension of the Funds entrusting these IAs with their resources, with their reporting obligations under the fund administration and disbursement phase.
5.3 Proposals for changes

Numerous reports and reviews have emphasized the significance of reporting and monitoring in climate finance, while several of them have indicated the lack of transparency in reporting. In practice, so far a ‘lack of transparency, completeness, consistency and accuracy’ has been demonstrated in the reporting of the flow information by the Funds and IAs. The implication of multiple actors in climate finance and the ‘lack of co-ordination and collaboration’ contribute to the ‘lack of transparency and accountability in the climate finance flows’. Moreover, the ‘lack of regular and detailed information’ on the status of finance also causes difficulties in monitoring.

A review report conducted by the Overseas Development Institute (ODI) in 2014 with respect to the effectiveness of the current climate finance revealed that transparency is an essential element for effectiveness, and although progress has been noticed, there is still lack of reporting in terms of fund disbursement. The review indicated inconsistencies and lack of accuracy with respect to the disbursement information reported by the IAs of the GEF, LDCF, SCCF and AF. In particular, the funds disbursed for a considerable number of approved projects have been ‘unreported or unknown’. The review recognized the multitude of Funds and the substantive overlap of their activities, and concluded the need to ‘simplify and scale up’ climate finance through the inclusion of a consolidated climate finance architecture.

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289 Ibid.
290 Ibid.
291 Ibid., p. 73.
All the above challenges pose difficulties towards ‘reliability and comprehensiveness’ of the monitoring of climate finance. A lot of research has been dedicated and recommendations have been made for the enhancement of the current reporting and monitoring system by international financial and research institutions. However, the research initiatives on accountability remain limited. One such research project launched to strengthen accountability in adaptation finance through the identification of ‘institutional reforms’ is the Adaptation Finance Accountability Initiative (AFAI), whereas Transparency International has also conducted research on climate finance accountability and corruption. Even though all these initiatives have concluded the lack of accountability and the ineffectiveness of the current standards, no concrete innovative efforts have been made for the enhancement of the current system.

The reason why so much research has been conducted in favor of reporting could be attributed to the significance of reporting to achieve transparency and accountability. In addition, when it comes to climate finance and tackling climate change, principles such as the above mentioned gain even greater importance due to the urgent need to take action with respect to climate change. Nonetheless, accountability is equally significant for climate finance, as it guarantees the effectiveness of the system’s function. In that respect, this thesis recommends changes in the current accountability framework with the main objective of strengthening accountability between the Funds and their IAs and enhancing the efficiency of the Funds towards climate resilience.

In particular, two solutions are viable in order to strengthen the current accountability framework. The first and most ideal solution would be the establishment of a centralized

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Fund operating under the UNFCCC financial mechanism. This Fund will be responsible for the mobilization of the financial resources that developed States pledged to deliver per year by 2020. In addition, it will accredit and collaborate with multilateral, regional and national Banks for the administration and the disbursement of the financial contributions. Moreover, a redress mechanism with punitive power shall be established aiming to hold accountable the Funds themselves for not efficiently monitoring their partner agencies entrusted with the administration of their resources and for not reporting credible information to the COP/CMP.

It is apparent that climate finance involves manifold relationships between diverse actors. In practice, so far the proliferation of the Funds and the fragmentation of the climate finance system have made it difficult to achieve comprehensiveness within the system and the implicated actors. Under the centralized Fund system, the existence of only one Fund collaborating with financial institutions, and one compliance mechanism will allow for the development of a coordinated, robust and standardized climate finance framework and for the facilitation of the reporting and monitoring procedures.

Moreover, the existence of one redress mechanism under the Fund will enable the strengthening of the accountability framework in terms of the relations between the Fund and the COP. However, a set of rules shall also exist for holding accountable the partner agencies for not effectively monitoring the recipient beneficiaries and not reporting on the funds disbursed for various projects to the Fund. In that respect, the Fund’s mechanism will co-exist with the already existing resolution mechanisms under the financial Institutions in terms of the relations of the IAs and the Fund. As a result, there will be two layers of mechanisms addressing two different types of relations: one mechanism will operate under the centralized Fund and will address the relations between the Fund and the COP, and the IAs’ mechanisms will operate at a lower in hierarchy level addressing the relations and mutual obligation between the Fund and its partner agencies.
The establishment of a redress mechanism under the centralized Fund is not, however, adequate to strengthen accountability. Together with this establishment, the gaps already existing under the current IAs’ resolution systems as mentioned under Section 5.2 shall also be taken into consideration and addressed. Therefore, the following suggestions are being made:

1. With respect to the redress mechanism established under the one centralized Fund, this shall cover disputes related to the compliance of the Fund with its obligations towards the COP. The COP will be able to bring a dispute before this mechanism complaining about the non-compliance of the Fund with its obligations and the administration of the funds in conformity with the COP’s guidelines. Such obligations are the reliable reporting of the Fund to the COP for the Fund’s activities, the accreditation of agencies with a capacity and expertise to assist the Fund in administering its financial resources, and the monitoring and evaluation of the activities managed by the Fund’s partner agencies. Finally, in case that non-compliance of the Fund is found, sanctions will be enacted for ensuring that the Fund will address the problem and comply with the mechanism’s decision. This means that if the Fund does not provide an action plan for its compliance with the decisions, the latter can be enforced by imposing sanctions to the Fund and its organs.

2. With respect to the already existing resolution mechanisms under the IAs, these shall be strengthened and reinforced with rules and procedures of normative value. In addition, they should extend the scope of covered relations. First, they should not only address problems arising between the recipients and the local communities for harm caused by the financed projects. On the other hand, they should also address issues of non-compliance arising between the IAs and the Fund. This means that in case the IAs do not comply with their obligations towards the Fund, the latter can bring a case before these mechanisms and ask for the compliance of the IA. This way the IAs will also be held accountable for actions related with climate financed projects. In practice, it was difficult so far to bring disputes related to climate finance under these mechanisms for non-compliance with the IAs’ environmental
policies. Under the proposed changes, disputes other than those related with the IAs’ environmental and social policy will also be eligible under these mechanisms. Moreover, eligible disputes will be those concerning the IAs’ non-compliance with their reporting obligations to the Fund, their failure to effectively monitor the recipients, and their failure to properly assess and approve a financed project. Finally, it is important to ensure that sanctions will be regulated to reinforce the effectiveness of these mechanisms and strengthen accountability.

In all the above cases, it is required that the centralized Fund, the COP/CMP and the IAs will have the legal personality to bring a dispute before the mentioned mechanisms. While the case is simple when it comes to the IAs, the issue of legal personality becomes more complex in terms of the COP/CMP and the Funds established under the UNFCCC. Nonetheless, it is possible for entities with power delegated by States to have a ‘separate personality on the international plane’. More specifically, both the COP/CMP and the Funds are entities delegated by the UNFCCC member States with power to address climate change. In that respect, they shall be considered as actors with legal personality. In addition, the capacity of the CMP to bring a dispute before investment arbitration against the WB also indicates the willingness of the States to provide the CMP with legal personality.

Furthermore, it is essential that disputes concerning the fund administration and disbursement phase should be solved by a consolidated and robust mechanism with the knowledge and expertise of the climate finance function. This means that the implication of other fora shall be prevented for safeguarding the comprehensiveness of the system and the resolution of disputes shall rely upon experts specialized in climate finance issues.

Ideally, the centralized Fund prescribed above could be the GCF. The promising and progressive role of the GCF has been emphasized by a lot of scholars and institutions due to

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296 Brownlie (2012), p.120.
the innovative features that it incorporates. Apart from the direct access to financial resources and the equal representation of the developed and developing States, it also provides a redress mechanism responsible for accountability and compliance issues. A structure enabling robust accountable governance could indicate the collaboration of the GCF with the pre-existing financial institutions – both international and regional – and the channeling of the funds through these entities. The emergence of the GCF as the primary climate fund merging the rest of the funds could provide a more coherent system and prevent fragmentation and transparency complexities. Furthermore, the fact that funds have not yet been disbursed under the GCF and the Fund is still in its infancy enables a merging process and the establishment of a redress mechanism designed as to cover a broader scope of disputes.

In practice, climate finance reflects a slow functioning system and changes as the ones proposed above could be achieved in a long term perspective. Alternatively, the second solution, which is more realistic and viable and could be achieved in the short term, is to confine the strengthening of accountability to the already existing mechanisms under the IAs. In addition, redress mechanisms could be established under the already existing Funds. The relations and rules under these mechanisms would be developed as described above. The sole difference would be the existence of multiple Funds instead of one centralized Fund. Even though such a structure would make the overall function of the climate finance system more complex and less comprehensive, it would, however, regulate the complex relations developed under climate finance and provide a more robust accountability set of rules than the one already existing.

6 Concluding Remarks

Climate finance has been recognized as one of the most important means of achieving both climate mitigation and adaptation. Its significance has been acknowledged on an international plane, in order for States to meet their commitments under their Intended Nationally Determined Contributions (INDCs). States, financial institutions and private investors have pledged to scale up climate finance for purposes of both mitigation and adaptation.

In order for States to be able to achieve their commitments and for climate finance to properly function and generate the desired outcomes, safeguards shall be in place to promote the above objectives. Due to the challenges faced under climate finance, it is of utmost importance to ensure that the activities under the Funds and their partner agencies will be conducted in a transparent way. Moreover, it is also important to develop rules and mechanisms for guaranteeing accountability of the actors involved in these activities.

In that respect, this thesis focused on the accountability safeguards established to ensure transparency of the financial flows under the UNFCCC Funds. It examined whether there are mechanisms aiming to hold the climate finance stakeholders accountable for non-compliance purposes, and whether such mechanisms are adequately functioning. Its main conclusion is summarized in the lack of effectiveness and the weakness of the current accountability frameworks established under the UNFCCC Funds and their partner agencies to hold the latter accountable for their non-compliance with their obligations.

Two alternative solutions are proposed towards strengthening accountability and providing for a robust and coherent system. Both of these solutions aim to reinforce the effectiveness of the current climate finance system by acknowledging the significance of this system in assisting developing States to meet their own needs and promoting the objectives under UNFCCC.

Climate finance is not just a process of promoting financial interests. Most importantly it
poses an urgent need to protect the needs of the present generations, by not preventing the future ones of meeting their own needs. As Ban Ki Moon stated: ‘We are the first generation to be able to end poverty, and the last generation that can take steps to avoid the worst impacts of climate change. Future generations will judge us harshly if we fail to uphold our moral and historical responsibilities.’
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