

Review of the IRM, findings and recommendations

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I started developing interest in accountability mechanisms almost accidentally. Way back in 1999 when I was still based at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) at the University of Lund in Sweden, an excellent idea was floated around that we organize a seminar on the Inspection Panel of the World Bank to which we would invite the Inspection Panel, Board members, senior management and staff of the World Bank, to come and make presentations in order to share ideas and exchange experiences on the Inspection Panel vis-à-vis accountability of the Bank. At the time, the Inspection Panel was still considered in academic circles as a major breakthrough in as far as the public face of the World Bank was concerned. Most staff and students of the RWI welcomed the initiative but were disappointed when told the Inspection Panel did not extend to accountability for human rights violations. The then World Bank General Legal Counsel Egyptian Ibrahim Shihata, one of the senior Bank Staff members that attended the Lund Seminar and made a presentation had previously addressed the issue of human rights in the World Bank when he addressed concerns by academics, politicians and NGO activists who have suggested that the Bank should recognise the relevance and importance of political rights and democracy when he argued: 'In my official opinions in the Bank, I have taken the view that the Bank is not authorized in principle to interfere in the political relationship between a member country and its citizens. However, an extensive violation of individual political rights which takes pervasive proportions could impose itself as an issue in the Bank's decisions. This could be the case if the violation had significant direct economic effects or if it led to the breach of international obligations relevant to the Bank.....' (Ibrahim F.I. Shihata, *The World Bank and Human Rights*, in International Commission of Jurists, Report of a Regional Seminar on Economic, Social and Cultural Rights, Abijan, 1998 (1999) at 145). This, of course, is contradicted, among others, by Gudmundur Alfredsson cited below who thought the Bank should just embrace human rights since it is an international principle. Nevertheless, the seminar proved to be hugely successful. I presented a paper on: Access to the Panel – The Notion of Affected Party, Issues of Collective and Material Interest, in the Inspection Panel of the World Bank: A Different Complaints Procedure, 143-166 (G. Alfredson & Rolf Ring eds, *Kluwer Law International*, 2001). Ironically, this (access to the IRM) happens to be one of the main challenges at the IRM. As indicated here, this paper was later published in a book and has since become subject of various scholarly and activist comments.

ACRONYMS

AfDB	African Development Bank
ADB	Asian Development Bank
CRMU	Compliance Review and Mediation Unit
CSOs	Civil Society Organisations
IRM	Independent Review Mechanism
NGOs	Non-Governmental Organisations

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1. Executive Summary

Two thousand and nine marks three years since the operational effectiveness of the independence compliance review and problem solving mechanism (IRM) by the AfDB. In the past three years, the institutions of the IRM, namely, the Roster of Experts and the CRMU, have been established and become operational.

The IRM provides a robust mechanism for persons adversely affected by a project financed by a Bank Group entity either by themselves or through their representatives to submit a request pleading that their rights and interests have been or are likely to be directly affected by the failure of the relevant Bank Group entity to comply with its relevant policies and procedures. This applies both to sovereign guaranteed projects financed by the Bank Group entities and to private sector non-sovereign guaranteed projects though in the case of the latter, only in relation with the social and environmental policies and safeguards.

Besides setting up the institutions of the mechanism, the first three years have largely been a steep learning curve for all involved in the exercise. However, four requests have already been received from representatives of affected parties. One of these has completed the compliance review cycle, one other request is registered for compliance review while the other two have been registered for problem-solving. Therefore, though still in its infancy, the mechanism has slowly started to operate and it is quite opportune to review it against its experiences the past three years and in the light of expectations.

A major finding of the review is not to change fundamentally most of what the IRM provides because it has just started to operate and, therefore, most of its rules are yet to be tested. Nevertheless, the review provides an opportunity to reexamine the mechanism in the hope to improve on what exists.

2. Methodology

This study was mainly conducted through desk research, interviews and discussions in a comparative and analytical perspective. Most of the information used was procured through sources from the internet especially the Bank Group Website, IRM Website, Websites of various accountability mechanisms, Bank Group Information Centre and Library at the Bank temporary location in Tunis, Tunisia.

During his first visit to the temporary location in August 2009, the Consultant conducted a series of interviews and discussions with senior Bank officials. Some of the people the Consultant interviewed include Vice Presidents, Executive Directors representing several members of the Bank, Advisors, Senior Members of Management and Staff, IRM Experts, Director of CRMU and his staff. Simultaneously, he consulted selected government officials from member states of the Bank Group, officials of Non-Governmental Organizations (NGOs), professionals, students and participants from the University of Pretoria Centre for Human Rights and from other universities, private individuals, etc.

After receipt of comments on the first draft from the IRM Experts and the CRMU Staff, the Consultant undertook his second visit to the Bank in September 2009. This visit was to engage with the Board of Directors in an informal Board discussion. The results of the various consultations form the basis of this revised draft which will be unveiled to the public especially to the stakeholders for their comments. Based on that, the Consultant will prepare the final report.

The Terms of Reference for the review, *inter alia*, are:

- Access of the IRM to project affected people and communities;
- Requirements for preparing and submitting a request/complaint;
- Protection of requesters, e.g. Whistle blowing policy applicability;
- IRM Outreach, including information in project documents;
- The scope of the Chairmanship of the Roster of Experts, and the Chairman's role in reviewing complaints rejected by the Director of CRMU;
- The policies of the Bank Group subject to compliance review;
- Presentation of Review Panel's review reports and Management's action plans to the Boards of Directors or the President;
- The composition of Review Panels, etc;
- Terms and conditions of service of CRMU staff and IRM Experts, and the recruitment and selection process of Experts

3. Main recommendations

1. The Boards should come up with a strategy to instill a sense of ownership of Bank-financed projects in the minds of local communities in project areas
2. The IRM instruments should be reviewed to make the mechanism user-friendly, more efficient and effective
3. A Clarification or amending Resolution should be adopted to define the terms used in the mechanism
4. The Bank Group should invest more resources in the work of the Outreach programme under the CRMU
5. Relevant Bank Group policies and procedures should be made effectively available and accessible to project affected parties and communities
6. Paragraph 11 of the enabling Resolution should be reviewed to liberalise the right of standing to submit requests including Executive directors in prescribed conditions, state entities like local government, etc.
7. Paragraph 16 of the enabling Resolution should be reviewed to allow the CRMU to receive requests submitted in different forms i.e. oral complaints, complaints by email, etc
8. IRM instruments should provide a time line stating when Management would submit action plans to the Boards in response to the Review Panel Report findings and recommendations
9. The Boards should review the CRMU in its capacity as the focal unit of the IRM to make it truly independent from Bank Management
10. The Outreach programme should be specifically provided for in the enabling Resolution and the IRM Operating Rules and Procedures
11. The three (3) Experts on the Roster should be given more roles in the IRM process including participation in determination of eligibility of requests while all of them take part in Review Panels
12. Paragraph 13 of the enabling Resolution read with Paragraph 20 should be reviewed to emphasise problem-solving function, define more precisely the principles underlying the various techniques and when to use them and to provide for traditional African dispute resolution techniques
13. Paragraph 23 of the enabling Resolution should be deleted

4. General introduction

Based on Bank Management Proposals on the Establishment of an Inspection Function,² as well as from member countries of the Bank and international trend,³ the African Development Bank (AfDB) adopted the Independent Review Mechanism (IRM) on 30 June 2004.⁴ This followed a precedent set by the World Bank when it created its Inspection Panel in 1993.⁵ Maarjte van Putten, stitched together a splendid account of the background towards the establishment of the Inspection Panel.⁶ The World Bank's unprecedented initiative triggered a flurry of similar activities across the international banking and financial terrain. These include the then Inspection Function of the Asian Development Bank (ADB),⁷ Independent Investigation Mechanism (IIM) of the Inter-American Development Bank (IDB),⁸ Independent Recourse Mechanism (IRM) of the European Bank for Reconstruction and Development,⁹ Compliance Advisor Ombudsman of the International Finance Corporation,¹⁰ etc.

The rationale for establishing an Inspection Function independent of Bank Management is to give people a voice to speak out their situations when adversely affected by Bank financed projects.¹¹ This is against the

² . This is laid out in the second paragraph of the preamble to the IRM enabling Resolution which reads: 'CONSIDERING Management's Proposals on the Establishment of an Inspection Function, contained in Document ADB/BD/WP/2004/60 – ADF/BD/WP/2004/66, and the recommendations contained therein, as well as the Study on an Inspection Function for the African Development Bank Group dated 24 November 2003'.

³ . Some of the people interviewed tended to ascribe the IRM as the result of the demands by Western countries in the AfDB so as for the latter to be in line with international trend.

⁴ . African Development Bank African Development Fund Boards of Directors, resolution B/BD/2004/9-F/BD/2004/7, Adopted at the 608th Meeting of the Board of Directors of the Bank and the 539th Meeting of the Board of Directors of the Fund, on 30 June 2004.

⁵ . Resolution No. IBRD 93-10, Resolution No. IDA 93-6. The World Bank Inspection Panel, September 22, 1993, as amended by Review of the Resolution Establishing the Inspection Panel 1996 Clarification of Certain Aspects of the Resolution, www.worldbank.org/WBSITE/EXTERNAL/EXINSPECTIONPANEL/0,,content...2009/0807

⁶ . Maarjte van Putten, Policing the Banks, accountability mechanisms for the financial sector. McGill Queens University Press Montreal, Canada, December 2008 see chapter 4 page 73. Maarte is one of the three IRM Experts. On background of the World Bank Inspection Panel, see also, www.inspectionpanel.org

⁷ . The Asian Development Bank Inspection Function, 12 December 2003, Bank Information Centre, Updated August 7, 2003. The Inspection Function of the ADB was established in December 1995, see: Review of the Inspection Function, First Draft Working Paper: 3 May 2002, Asian Development Bank

⁸ . Independent Investigation Mechanism, Inter-American Development Bank (IDB) Annual Report for 1 January 2008 to 31 December 2008, www.iadb.org/mecanismo

⁹ . Now known as Project Compliant Mechanism (PCM), www.ebrd.com

¹⁰ . International Finance Corporation and Multilateral Investment Guarantee Agency (IFC/MIGA) Compliance Advisor and Ombudsman, see

¹¹ . According to the Inspection Function of the Asian Development Bank (ADB), the rationale for establishing an Inspection Function includes (a) encouraging transparency and accountability in banking; (b) to allow greater public access to Bank documents and publication as well as the increased emphasis on beneficiary participation in the formulation and implementation of projects; (c) to permit a fair hearing of the views of the affected group; (d) to help educate the public at large about the variety and complexity of issues involved in development programs in the region; and (e) to foster greater confidence in and support for the Bank and its operations, see: www.adb.org/Documents/Policies/Inspection/insp200.asp?p=inspdocs

background in which by the terms of their founding treaties and international law, these institutions enjoy unprecedented immunity from legal recourse whether at national or international level.¹² This leaves people affected by Bank-financed projects effectively stranded when faced with situations that call for Bank accountability. Besides providing a forum for discussing the human and natural impact of a Bank-financed project, an independent accountability mechanism that is transparent increases the confidence people have in the Bank as a tool for their emancipation.

5. Access of the IRM to project affected parties and communities

Access to project affected parties and communities is at the core of the IRM.¹³ There is no point in having the IRM or any mechanism of accountability for that matter if the people it is intended for in the end cannot access it. Unfortunately, most accountability mechanisms maintain conditions that make access difficult if not impossible.¹⁴ As presently constituted, the structure of the IRM does not encourage access. Rather, it discourages potential Requesters from approaching the mechanism. This probably explains the slow rate of response from affected people. In three years of its operations, the mechanism has received only four requests from beneficiaries.¹⁵ Two of these requests complain about Bank-financed dam projects in one country and the other two from two different countries which means no request has come from fifty-one countries making up the AfDB. One of the main reasons behind

¹² . This, of course, does not include in-house accountability mechanisms. Each Bank would have such as internal supervision mechanism, audit system, staff evaluation, Ombudsman, Tribunal and in the case of the AfDB the Anti-Corruption Unit. Some of these mechanisms, however, have limited jurisdiction often not extending to the general public.

¹³ . Access is a generic concept. Generally, in the physical sense, access means the right or opportunity to enter a place such as the country office of the World Bank in a given member state to complain a situation or to enter the CRMU offices at the temporary relocation agency of the Bank Group in Tunis. In the non-physical sense, access may be used to mean to use something like the IRM in order to complain to Bank Group's failure to comply with its applicable policy which results or may result in a harm or injury. But the term may also be used to mean the capacity to obtain necessary information. This may be information on the AfDB website about the IRM. According to Longman Dictionary of Contemporary English, New Edition, 'access' means 'to find information especially on computer'. Therefore, accessible means 'easily reached, understood, seen or used'. It is a broad concept encapsulating a whole lot of issues.

¹⁴ . Hansungule, Michelo. **Access** to the Panel – The Notion of Affected Party, Issues of Collective and Material Interest, in the Inspection Panel of the World Bank: A Different Complaints Procedure, 143-166 (G. Alfredson & Rolf Ring eds, Kluwer Law International, 2001)

¹⁵ . The four Requests are: 1. RQ 2007/1 – Uganda: Bujagali Hydropower Project and Bujagali Interconnection Project; 2. RQ 2009/1 – Ethiopia: Gibe 111 Hydroelectric Power Project; 3. RQ 2009/1b – Ethiopia: Gibe 111 Hydropower Project; and 4. RQ 2009/2 – Egypt: Nuweiba Combined Cycle Power. 'www.afdb.org/irm Again, slow public response to new mechanisms is not a feature of IRM. In its initial stages, the Inspection Panel of the World Bank was not 'flooded' with cases the minute it opened its doors to the public. Information on the Inspection Panel website shows Requests only picked up later in subsequent years. Similarly, we see the same feature in human rights protection mechanisms. The African Court of Human and Peoples' Rights, for instance, established in 1998 pursuant to a protocol to the African Charter on Human and Peoples Rights and which started operating in 2004 to date has not received a single case. In fact, some of the early judges on the Court have since retired on the expiry of their terms without having to 'sit' on and preside over a case!

the underutilization of the IRM mechanism by the public could be the restrictive conditions governing access to the mechanism.

The slow rate of Requests is a feature of all mechanisms.¹⁶ The first Request for Inspection under the then ADB's Inspection Function came only in 1997, two years following the establishment of the mechanism.¹⁷ After the *Korangi Wastewater Management Project Request*, it took up to 2001, six years after establishment, for the Inspection Function to receive the third Request.¹⁸ Similarly, the World Bank Inspection Panel established in 1993 only registered the first Request a year later in 1994,¹⁹ followed by three in 1995.²⁰ The World Bank operates across the globe and, therefore, has greater potential to inflict harm to communities more than any other mechanism.

Nevertheless, sight should not be lost of the need to balance wider access with broader interests. It is important that the increased flow of requests does not result in an inefficient system. In human rights protection mechanisms, for instance, it has happened that a reform of the complaint mechanism resulting in more complaints from the public affects the efficiency of the complaint handling and resolving system because it does not have enough capacity to respond positively to the reforms. Therefore, there should be a synergy between reform of the system governing the making of requests and the institutions of IRM. Second, it has been suggested that while recognizing the right to request compliance review, the wider interests of society to ensure development should not be lost sight of. While this is important, in fact IRM is the key to ensuring this balance. IRM will ensure development based on previously agreed policies and, therefore, development that balances the interests of affected parties and that of the wider public.

¹⁶ . Apparently, the slow rate of Requests is not limited to the IRM. It, in actual fact, characterizes virtually all mechanisms. For instance, the Asian Development Fund Donor's Report (November 2000) observed: 'Donors noted, with some concern, a paucity of requests for inspection and the absence of instances of the actual inspection approved by the Board of Directors since the establishment of ADB Inspection Function, apart from the Korangi Wastewater Management Project in Pakistan, which was reviewed by the Board Inspection Committee. Although Donors noted that the ADB's two projects co-financed by the World Bank had been subject to the latter's Inspection examination they expressed concern about the need for the wider and more effective dissemination of information regarding the Inspection function. Donors also felt that there is a need for review of procedures for making requests for inspection. In that regard, Donors noted and welcomed the Management plans, in full consultation with the Board of Directors, to strengthen the Inspection Function of ADB. Donors recommended a strengthened and more independent Inspection Function, and the Function should have oversight of private sector projects'.

¹⁷ . The Request was in relation to the Korangi Wastewater Management Project, a sewage treatment plant and network to service the Korangi/Landhi area of Karachi, Pakistan, Loan 1539-Pak: Korangi Wastewater Management Project, approved on 18 September 1997. However, the Request was later declared ineligible on the grounds that the Requester – Citizen's Alliance in Reforms for Efficiency and Equitable Development (CREED) had failed in its Request to cite specific policies that the ADB was said to have violated.

¹⁸ . Loan 1410-THA: Smut Prakarn Wastewater Management Project (Supplementary), request submitted by the Mayor of Klong Dam and two Klong Dam Villagers.

¹⁹ . Nepal: Arun 111 Proposed Hydroelectric Project and Restructuring Credit (1994)

²⁰ . Ethiopia: Compensation for Expropriation and Extension of IDA to Ethiopia (1995); Tanzania: Power 1V Project (1995) and Brazil: Rondonia Natural Resources Management Project (1995)

Nevertheless, more could be done to facilitate increased flow of Requests under the IRM. It is vitally important that the IRM policy does not restrict access by potential complainants. Every effort should be made in the mechanism to facilitate rather than discourage those who want to access the IRM process and get their voices heard. Some of the factors behind the underutilization of the IRM include the following:

- Intimidating, vague and restrictive legal jargon and general conditions governing the IRM
- Lack of relevant Bank Group policies and procedures in project areas;
- Limited knowledge of Bank policies and procedures both by the general public in project areas and sometimes even by Bank Management and Staff
- General lack of awareness of the IRM again by the public in project areas and Bank Management
- Limited or no interest of IRM opportunity among the general public, etc.

5.1 Lack of awareness

There is a glaring lack of awareness of IRM in Africa. The fact that it is a new instrument compounds the problem. Most people in project areas are not aware of the opportunity created by IRM to request an investigation into Bank compliance with its own policies hence the instrument remains underutilised. However, CRMU has started an aggressive Outreach programme precisely to address this particular problem. This will require a lot of efforts and resources to ensure to really market the concept around and to address the issue of lack of awareness.

5.2 Use of vague notions, intimidating and restrictive technical jargon

The tendency by IRM and other mechanisms to use intimidating technical jargon and often vague notions compounds the problem. Words like ‘Requesters’, ‘adversely affected’, ‘directly affected people’, ‘frivolous’ ‘adequate steps’, etc., serve to keep away rather than encourage potential complainants to use the mechanism. Most ordinary people do not have capacity to understand such complicated technical wording. Unless defined or put in as ordinary and user-friendly terms as possible, there is no way ordinary people can make use of the mechanism.

5.3 Absence of Bank Group policies in project areas

The main thrust of the IRM is about seeking to promote Bank Management compliance with relevant Bank policies. Reality, however, is that Bank policies are not readily available even in Bank project areas. It is being naïve for the IRM to expect ordinary people to have in their possession relevant policies let alone know which ones to apply in a specific case and proceed to interpret and apply them in a given situation.

Recommendations

1. The enabling Resolution and the IRM Rules should be amended to define or simplify a number of technical terms in the IRM instruments or the instruments should be subjected to 'clarifications' like under the Inspection Panel of the World Bank.
2. The CRMU should be provided with more capacity for their Outreach education campaigns especially in project communities alone and jointly with other CSOs/NGOs, governments, Bank Group entities, etc. Given limited resources, campaigns could deliberately target communities with high risk projects.
3. Without prejudice to recommendation 1, above, there is need to review the entire spectrum of the IRM Rules and Procedures governing access to make them simple, user-friendly and practical.
4. Some of the IRM Rules of Procedure need to be re-written, for example, to make the paragraphs easy to use by re-numbering them
5. In pursuance of the foregoing, all vague notions and legal jargon should be made certain and words provided in as ordinary language as possible
6. Bank policies and procedures must be disseminated especially to affected parties and communities in project areas where possible in national language and the language (s) of affected people and community
7. Affected parties and communities should be provided with basic information on the IRM and helped to understand steps needed to be taken to access it in the event of situations

6. Requirements for preparing and submitting a Request/Complaint

The modus operand of preparing requests and the process of submitting the same to the CRMU needs to be simplified and made easier. At present, this is one of the major problems affecting the use of the IRM.

Conditions governing the processing of requests have real potential to frustrate the flow of complaints.

6.1 Requests shall be in writing

For example, Paragraph 16 of the enabling Resolution provides that:

‘Requests shall be in writing and shall state all the relevant facts including the harm suffered by or threatened to affected parties by the alleged act or omission of the Bank Group entity in contravention of the applicable policies and procedures.....’.

This is echoed in the IRM Operating Rules and Procedures. Relevant parts of Paragraph C (6), of the Rules provide: ‘All Requests must be submitted in writing, dated and signed by the Requesters and contain their names, contact addresses to which correspondence shall be sent....’.²¹ The key precondition for making Requests is that they should be in writing. This, however, may not be practical for the majority of potential Requesters. While keeping the requirement, it is important to leave the possibility for the CRMU to entertain complaints which are other than in writing.

6.2 Confidentiality

Confidentiality is an important part of complaint procedure. Paragraph 16 states: ‘The Requesters and any other interested persons may, however, request that their identities be kept confidential, and if so, the reasons for such confidentiality’.²² Therefore, confidentiality is not a right but something that may be requested for and which may be granted by the CRMU Director at his discretion. In instances where it may be rejected, this could cause a problem. It is suggested that this part of the rules be amended to provide for a guaranteed right to confidentiality in other words it should automatically be granted once requested. While identity is important particularly for problem solving and in order to undertake an investigation, the rules should be amenable to anonymous requests.²³

²¹ . Virtually all other mechanisms reiterate the condition for the Requests to be in writing which is fine if the beneficiaries can write. But it could amount to discrimination on the ground of status if a complaint raised by a community that cannot read or write as most people in Africa is rejected on the grounds that it was not submitted in writing. It is important this aspect of eligibility is loosened to allow the mechanism simply to aim at getting the problem and not compliance with technical requirements.

²² . IRM Operating Rules and Procedures, C. (6)

²³ . There is a suggestion that under the Asian Development Bank, anonymous requests are allowed, see: Asian Development Bank, Information Centre: Monitoring....., www.bicusa.org/en/Article.472.aspx

6.3 Two or more people i.e. ‘standing’ to submit a Request

With regards to the capacity to file requests, Paragraph (a) (4) of the IRM Operating Rules states that:

‘any group of two or more people in the country or countries where the Bank Group financed project is *located* who believe that as a result of the Bank Group’s violation, their rights and interests have been, or are likely to be adversely affected in a direct and material way can file a Request’.

This echoes Paragraph 11 of the enabling Resolution.²⁴ In turn, it is copied, with some minor modifications, from Paragraph 12 of the 1993 Resolution of the World Bank Inspection Panel, the basis of the entire IRM concept.

Hansungule²⁵ has questioned the rationale behind the curious requirement that complaining should be limited to two or more people, never that of an individual. This is a rendition of the similar rule under the Inspection Panel which also limits the right to submit requests to more than one person.²⁶

6.4 Project location

Similarly, the issue of *location* raises several interpretational difficulties. Again, like other rules and principles in IRM, the ‘location rule’ is a transplant of the World Bank Inspection Panel which is even more equivocal about it than the IRM.²⁷ It was modified in Paragraph 12 of the ADB Inspection Function as follows: ‘Under the Inspection Procedures,

²⁴ . Paragraph 11 of the Resolution states that ‘The IRM shall receive requests from persons adversely affected by a project financed by a Bank Group entity. Such requests shall be presented to the CRMU by two or more persons (such as, community of persons, an organization, association, society or other grouping of individuals (‘Requesters’) or by a qualified representative of the affected persons (as defined in the Operating Rules and Procedures) who demonstrate that their rights or interests have been or are likely to be directly affected by the failure of the relevant Bank Group entity to comply;’. Paragraph 12 of the Inspection Panel provides that” the panel shall receive requests for inspection presented to it by an affected party in the territory of the borrower which is not a single individual (i.e. a community of persons such as an organization, association, society or other grouping of individuals), or by the local representative of such party or by another representative in the exceptional cases where the party submitting the request contents that appropriate representation is not locally available and the Executive Directors so agree at the time they consider the request for inspection. Any such representative shall present written evidence that he is acting as agent of the party on behalf of which the request is made.....’.

²⁵ . Note 10

²⁶ . See: www.inspectionpanel.org It is also interesting that in human rights frameworks, the problem is in fact the other way round. Most often, human rights systems do not admit complaints initiated by groups. Rather, there is a preference to individual-based complaints, group complaints being an exception. Given that the right to complain is an individual human right guaranteed by the constitutions of the RMCs, and reiterated in article 8 of the Universal Declaration of Human Rights (UDHR) which guarantees the right to an effective remedy, it must be affirmed in the IRM for both the individual complainant and for groups as the mechanism currently states.

²⁷ . Relevant parts of Paragraph 12 of the World Bank’s Inspection Panel provide: ‘The Panel shall receive requests for inspection presented to it by an affected party *in the territory* of the borrower which is not a single individual.....’.

the following parties can request an inspection regarding an ADB-financed project: (ii) Similar groups residing in another member country adjacent to that country if the group is affected or likely to be affected by the project’.

6.5 Demonstrating compliance failure

The Requester’s submission is required to demonstrate failure by the Bank Group entity to comply with the ‘operational policies and procedures’ in order for the Request to be eligible.²⁸ Obviously, this would be possible only where policies are readily available and accessible to the Requester who should also know which one is applicable in a particular case and how to interpret them. For most beneficiaries, this is simply not possible. It is not possible for the majority of beneficiaries to identify the relevant policy or policies applicable in a particular case let alone to use them to demonstrate Bank Group failure to comply.

Again, the ADB seems to have found the right template in case of the above situation. It appears it is now possible under the ADB Inspection Function to file complaints without necessarily citing policy violations. This is in addition to the possibility to file complaints anonymously and in any national language, etc.²⁹ ADB function has now been extended to private sector operations’.³⁰

6.6 Representative capacity

The rules provide for Requests by representatives, local or not. Relevant parts of Paragraph 11 of the enabling Resolution provides: ‘The IRM shall receive requests from persons adversely affected by a project..... Such a request shall be presented to the CRMU by two or more personsor by a qualified representative of the affected persons.....’.

First, there is need to define the terms ‘adversely affected’, ‘qualified representative’ and ‘affected persons’, among others. This is important to make it practical. Second, there is animated discussion on this on the role especially of international non-governmental organizations to use the instrument. The main argument is whether it is fair for an organization living very far away from Africa to complain against a Bank-financed project? On the other hand, it is argued that since the rules provide for it,

²⁸ . Paragraph 11 (i) and (ii) of the enabling Resolution (2004); Paragraph (b) 5. (b) (c) and (d) of the IRM Rules; Paragraph 12 of the Resolution establishing the Inspection Panel (1993)

²⁹ . ADB Review

³⁰ . Asian Development Bank Inspection Function, 12 December 2003, Updated August 7, 2003, Bank Information Centre, www.bicusa.org/en/Article.427.aspx, date of accession: 9/4/2009

there is nothing wrong with an organization to represent affected people. Second, it is also argued that local or affected people may lack the capacity to use the instrument and hence the need for any organization which can come to the aid of such people. The operative word in the present arrangement, however, is that such organization whether local or international should be ‘qualified’ to represent the affected parties and until now this means it must prove possession of the consent of affected people to represent them. While taking cognizance of the importance of affected people submitting requests by themselves, sight cannot be lost of the fact that in most situations, local or affected people often lack capacity to represent themselves. Consequently, there is a case for representation by others subject, however, to proof of consent from affected parties. In one or two instances, there may be a fair case for *actio popularis* requests, citizen complaints, Executive Director’s requests, even request by government entity, etc. While keeping the safeguards against abuse, a more open instrument seems practical in the context of African conditions.

6.7 ‘Steps taken’

Paragraph 16 of the IRM enabling Resolution states that ‘All Requests shall explain the steps already taken to deal with the issue, as well as the nature of the alleged actions or omissions and shall specify the actions taken to bring the issue to the attention of Management and Management’s response to such actions’. This is equivalent to the rule in human rights requiring the complainant to exhaust local remedies first before submitting the complaint to international adjudication. In other words, under human rights, there is no international remedy where the victim has not approached domestic jurisdiction first before seeking international remedy.

But it should not be made mandatory. Again, in human rights, the rule is subject to exceptions. For instance, local remedies that are unavailable or are available but ineffective need not be exhausted. Similarly, there is no obligation to exhaust local remedies that are unduly prolonged. If there are no remedies at local level at all, then the rule does not apply. In accountability mechanisms, the best way to provide for this condition is to shift the burden to Management. Rather than denying jurisdiction to the Request on the grounds of failure to demonstrate steps taken to amicably resolve the issue, Management and not Requesters should be the ones to bear the burden to demonstrate steps taken to address the problem. As alluded to above, this is how it is provided for in human rights the rationale being that between the State and the victim of a

human rights abuse, it is the State that is likely to know the available remedies the victim could appeal to for redress.

6.8 Frivolous or malicious

In terms of Paragraph (11) (b) (2) (v)(vii)(viii) of the IRM Rules, CRMU has no jurisdiction to receive complaints which are frivolous or malicious, which have been subject of recommendation or decision even if the harm complained of has not been addressed as well as complaints filed more than 12 months after the physical completion of the project. It is important that frivolous or malicious requests are not entertained. But to avoid possible abuse in trying to determine which is and is not irreceivable, there is need to define what amounts to *frivolous* or *malicious* complaints. Second, while there must be finality of efforts to resolve requests and bearing in mind the principle of *res judicata*, CRMU should have jurisdiction on a case by case basis in respect of complaints already subject of recommendation or decision as well as to those subject to the 12 months rule. However, in both cases, jurisdiction should vest only if the harm complained of has not yet been redressed.

Recommendations:

1. The enabling Resolution and the IRM Rules should be reviewed to empower CRMU to receive Requests submitted Orally subject to subsequent verification of Requestor
2. Subject to the above recommendation on verification, CRMU should receive Requests submitted by means of telephone, email, fax and by other means feasible
3. Burden of proof to establish steps taken with Management for a possible amicable settlement should be borne by the Management, not the Requestor
4. Complaints that are deemed frivolous or malicious, etc., should be defined
5. CRMU should be empowered to receive complaints relating to private sector or other non-sovereign guaranteed projects without exception
6. CRMU should be empowered to receive complaints submitted by any organization international or local whether based in the project area or not. However, it is essential that representatives whether local or international secure prior consent of the affected parties or communities where this is practical and provided in the case of the latter they submit proof that it is not practical.

7. IRM should make provision for *action popularis* complaints as well as ‘citizen complaints’ in circumstances to be prescribed by CRMU
8. CRMU should have jurisdiction to entertain Requests on a case by case basis in respect of complaints already subject of recommendation or decision as well as to those subject to the 12 months *res judicata* rule but in which in both cases if the harm complained of has not yet been redressed.
9. In circumstances to be prescribed, CRMU should be mandated to receive and entertain Requests from an Executive Director of the Boards of the Bank Group
10. CRMU should be mandated, in prescribed circumstances, to receive and entertain complaints or Requests submitted by Government entity such as by local government

7. Protection of Requesters, Whistle blowing policies

Protection of Requesters is essential natural priority to the confidence of affected parties and communities to IRM. Similarly, a credible whistle blowing policy is essential prerequisite to successful IRM.

There are two types of whistleblowers i.e. internal and external. The former is a report an employee or officer would make in this case within the Bank Group in relation to the illegal practice or unacceptable behavior. External whistleblower on the other hand is reporting by outside persons or entities.

In order to strengthen the Bank Group’s system of integrity and the fight against corruption and similar offences, the Bank adopted the Whistle Blowing and Complaints Handling Policy in January 2007.³¹ The purpose of the Policy is to promote ‘highest possible standards of ethical and legal conduct within the Bank and in all Bank-funded projects, programs and business.....’. Some of the main features of this Policy include a definition of a whistleblower,³² protection of whistleblowers, dispute resolution in cases relating to retaliation against disclosures made in good faith, voluntary disclosure program, ‘channels and procedures for whistleblowing, as well as hotline facilities’.

³¹ . www.afdb.org/policy

³² . it states: ‘Whistleblower or complainant is any person or party who conveys or is proven to be about to convey a concern, allegation or any information indicating that Fraud , Corruption or any other Misconduct is occurring or has occurred in the Bank or in a Bank Project; with knowledge or good faith belief that the concern, allegation or information is true’. These include Bank staff, contractors, consultants, Government Officials, Officials in the Executing and Implementing Units, Professional Bodies and Non-Governmental Organisations, etc.

In relation to the IRM, however, Paragraph 14 (iv) of the enabling Resolution explicitly excludes complaints involving fraud or corruption from the remit of the mechanism. Based on this paragraph, the CRMU is forbidden to receive Requests alleging fraud or corruption. Again, Paragraph 2 (2.1) of the Whistle blowing Policy stipulates that ‘.....the main aims of the Policy are to provide an avenue for raising concerns related to Fraud, Corruption or any other Misconduct.....and to ensure that persons who disclose information relating to fraud, corruption or any other misconduct will be protected from Retaliation.....’.

While appreciating the jurisdictional differences between the IRM and the Integrity and Anti-Corruption Division in the Bank Group, it is not easy to appreciate why corruption or fraud which results in non-compliance with Bank policy should not be entertained by the IRM? Given the natural affinity between disclosure and complaint which triggers the IRM procedure, it is necessary to re-examine the enabling Resolution in the light of the 2007 Whistleblower Policy. Provided the Integrity and Anti-Corruption Division together with the CRMU can work out modalities for mutual intercourse between jurisdictions, it should be possible for the CRMU to receive whistleblower complaints which it can proceed to handle based on its IRM procedure or surrender them to the Anti-Corruption Unit and vice versa, as the case may be. At the moment, it can be argued that the Bank Whistleblower Policy may not apply to Requesters under the IRM and that Requesters are not to be treated as Whistleblowers in *strict sensu* and therefore may not enjoy the protection due to the latter under the Whistleblower Policy.

Recommendations

1. The Bank Group should produce a specific policy on the protection of Requesters
2. The Bank policy on Whistle blower should be disseminated and implemented in developing Bank-financed projects

8. IRM Outreach, including information in project documents

Given the lack of awareness of the AfDB and especially of the IRM in Africa, the IRM Outreach is a natural first priority.³³ The thrust of Outreach in the IRM is to bring the mechanism closer to the people.

Important as it is, however, Outreach is not provided for in the enabling Resolution. Paragraph 13 of the Resolution which describes the functions of the IRM merely states:

‘the IRM, with the CRMU as the focal unit, shall perform both compliance review and problem-solving functions.....’.

There is no indication of Outreach as a function of the IRM or its focal Unit, the CRMU. Yet, this legal back-up is essential not only because CRMU already expends Bank resources to undertake Outreach programmes but also due to the fact that information dissemination is an essential prerequisite for a successful IRM. Provision should be made in the enabling Resolution for IRM outreach.

However, the CRMU has already been playing an important role disseminating information³⁴ and sensitizing especially civil society groups on IRM. The CRMU Director and his staff have organized and participated in a number of conferences, seminars, workshops and training programmes especially for civil society, Bank Group Management and staff as well as government officials in selected RMCs.³⁵ Some of these activities took place in Egypt, Kenya, Madagascar, Morocco, Mozambique, Nigeria, Senegal, Zambia, etc.³⁶ In some cases, the CRMU was invited by local organizations to

³³ . In its literal sense, the word ‘outreach’ means ‘basing services closer to peoples’ homes to help those who cannot easily come to an office,’ Longman Dictionary of Contemporary English, New Edition

³⁴ . Besides participating in conferences, workshops and seminars, as a strategy to inform the public about the IRM, the CRMU operates an own website where it posts relevant information for the information of the general public. Of course, some things could be done better, for instance, to ensure that relevant Bank Group policies and procedures are posted and if possible separating the IRM website from the Bank Group website. The Bank website does not contain all policies. In particular, the Policy on Governance does not appear. Second, there is need for more work to simplify IRM documentation. Annual Reports, merely repeat the enabling Resolution though often inconsistently. This is not necessary. The language could be made much simpler and a lot easier to understand.

³⁵ . The Outreach programme has mostly focused on educating interested parties on the IRM. For instance, it has exposed participants to the IRM Website, Brochures, e-Newsletter, Information Kit, Staff brochure and other IRM information in relevant project documents. As indicated, some of the tools used include workshops, seminars, staff orientations, meetings, etc. Over 14 workshops have been conducted with Civil Society Organizations and NGOs. Similarly, more than 12 presentations have been made to Bank Staff.

³⁶ . IRM: Annual Reports 2008, 2007, 2006

participate.³⁷ In others, it was invited by international organizations.³⁸ Besides the collaborative processes such as those held jointly with local organizations, IRM/CRMU have participated in meetings of Principals of the Independent Accountability Mechanisms where they share experiences with other mechanisms.

Outreach programmes have been very useful in promoting the IRM. The interaction with CSOs has led to identifications of some of the challenges facing the mechanism.³⁹

- Identifying project affected communities
- Issue of language barriers
- Getting to understand cultural issues (e.g. community/tribal structures)
- Difficulties for civil society to access information about the Bank's projects and policies (e.g. internet)
- CSOs/NGOs lack of capacity to engage on accountability issues
- Reluctance of CSOs/NGOs and the Bank to engage in constructive dialogue
- Building trust in the IRM among affected communities and inside the Bank, etc.

Recommendations

1. Outreach should be formally recognized in the enabling Resolution;
2. CRMU should be given capacity to continue with Outreach programme;
3. All relevant policies should appear on the Bank website in original and simplified versions;
4. CRMU should produce a Staff Guide in simplified version of IRM for use by Management;

³⁷ . Participated in the Ghanaian Civil Society Organization (CSOs) organized workshop held in Accra, Ghana on 12 and February 2009.

³⁸ . On May 23, 2008, the CRMU was invited to present on the IRM during a seminar organized by the Compliance Advisor/Ombudsman, IFC and MIGA, the World Bank Group, held at Lusaka, Zambia. In addition, the CRMU Director took the opportunity to visit the Bank Field Office in Lusaka where he made a presentation on the IRM to Field Office Staff, attended by the Zambian government officials.

³⁹ . After every workshop attended, CRMU posts a summary brief to the website outlining basic information about it who attended, the host, the purpose, etc. This is followed by an invitation to the members of the public for comment Besides indicating lack of interest in the public, the issue of lack of awareness of the IRM among CSO/NGOs in particular and the general public prevents robust engagement of issues out of IRM outreach.

9. The scope of the Chairmanship of the Roster of Experts, and the Chairman's role in reviewing complaints rejected by the Director of CRMU;

The Chairman of the Roster of Experts is appointed by the Boards from the three Experts. Significantly, the Chairman is not appointed by his peers which would give a lot of credibility to the system. In terms of his role and functions, the Chairman enjoys very limited mandate. As indicated, his most explicit function is to review the Director's determination with regards to the eligibility of a Request the latter determines not to be eligible for compliance review. If he is identified by the Director to constitute a Panel, then he will also take part in the compliance review. But he does not automatically chair the Panel. In Bujagali case, the Chairman of the Roster was not the Chairman of the Panel. There were two Chairpersons, one for the Review Panel the other for the Roster, which created confusion.

With regards to the Chairman's role in reviewing complaints rejected by the Director of the CRMU, Paragraph 23 of the founding Resolution, which is *mutatis mutandis* echoed in Paragraph 48 of the IRM Rules, provides that:

'Where, following receipt and registration of a Request in which the Requestors have sought a compliance review and such request is not otherwise processed through a problem-solving exercise, the Director determines that the Request is not eligible for compliance review, the Request shall be referred to the Chairperson of the Roster of Experts who shall determine the eligibility or otherwise of the Request for compliance review within twenty-one (21) days of the Director's determination and inform the Boards accordingly'.

The rule would appear to aim at providing an important check on the Director's determination of the eligibility of a Request. However, in practice the rule has potential to create mistrust between the Director and the Chairperson and should be discontinued.

Recommendation

1. Paragraph 23 of the enabling Resolution indicated above should be expunged from the rules. Instead, it is recommended that all the Experts together with the Director participate jointly in determination of eligibility of Requests.

2. The Chairman of Roster of Experts should be appointed by peers, not by the Boards
3. It is recommended that the Chairman of the Roster automatically assumes Chairmanship of the Compliance Review Panel.
4. Similarly, when the IRM meets to deliberate on eligibility as recommended below, the Chairman of the Roster should chair the proceedings.

10. Policies of the Bank Group subject to compliance review;

10.1 Over the years, the AfDB has been developing a number of policies, procedures and rules designed to guide its operations. After the introduction of the IRM, these policies became subject of compliance review if there is an indication of non-compliance.

10.2 Some of the most important Bank policies relevant to the IRM include:⁴⁰

- Bank Group Policy on Environment (2004)⁴¹
- Strategic Impact Assessment Guidelines (SIA) and the Integrated Environmental and Social Assessment Guidelines, (2004)
- Involuntary Resettlement Policy, November 2003⁴²

⁴⁰ . www.afdb.org/en/documents.policy-documents/ There is no policy on indigenous peoples. This is a very important subject given the nature of the African society and in view of the recent United Nations Declaration on the Rights of Indigenous Peoples. The Bank's policies are not only hard to come by, which they are, there is confusion on the website and other internet sites regarding which ones are current. Different sites contain different policies on the same theme, for example, on environment. On the other hand, many people visiting the AfDB site have complained that the Good Governance Policy is 'impossible' to find. It is a daunting task for a researcher to find the relevant Bank policies for use in IRM processes.

⁴¹ . According to this policy, the main objective of Bank Group lending and non-lending operations is 'to promote environmentally sustainable development in Africa'. It has two main goals: (a) to help improve the quality of life of the people of Africa (b) to preserve and enhance the ecological capital and life-supporting systems across the continent of Africa. The rationale for the development of the policy is said to be based on the recognition and acceptance of sustainable development as the dominant paradigm for the 21st century. Besides, it is also based on the need for a greater focus on pro-poor growth policies and programmes to counter unacceptable impoverishment rates, etc. This, of course, will require a major paradigm shift from the old era where 'development' did not need to be sustainable.

⁴² . According to the policy, 'The primary goal of the involuntary resettlement policy is to ensure that when people must be displaced they are treated equitably, and that they share in the benefits of the project that involves their resettlement'. Ensuring equitable treatment of displaced people is a very important outcome to poor people if it was implemented in practice. Particularly important though not explained in the policy document itself is the proposal that displaced people should 'share in the benefits of the project that involves their resettlement'. For example, it is the case in most countries that rural people in Africa are often displaced off their land to give way to electricity power-lines taking power to the city. Though sourced from their land, rural poor people often do not benefit from the power which is meant for the rich and powerful urban constituencies. The AfDB resettlement policy enjoins the borrower with the primary responsibility not just to borrow but to plan, monitor and implement resettlement issues. Consequently, the borrower is required to prepare a full resettlement plan for any project that involves a significant number of people according to the policy if people that are likely to be affected number to 200 or more. Even if the affected people, or people likely to be affected, falls below 200, the borrower, nevertheless, has a duty to plan for them and the two plans will be posted to the Bank website.

- Integrated Environmental and Social Impact Assessment (IESIA) Guidelines (2003)⁴³
- African Development Bank Group Policy on Good Governance, 2000⁴⁴
- Gender Mainstreaming Checklist for the Health Sector,⁴⁵ January 2009
- African Development Bank Group Policy on Disclosure of Information,⁴⁶ December 2005

10.3 As indicated, policies constitute the yardstick against which to measure the conduct of Management and Staff during planning, design and implementation of Bank-financed projects. Gudumundur Alfredson⁴⁷ has underscored the importance of implementing these policies both at national and international domain. He argued that given the influence and the resources at their disposal, international banks and financial institutions could help ensure respect for human rights and good governance in their countries of operations and hence bring about political and economic stability. In fact, an example of policy shift towards implementation of policies is the unprecedented letter written by then World Bank President James Wolfensohn addressed to the President of Indonesia over the

⁴³ . The Guidelines, which are primarily for the Staff of the Bank, are working tools intended for use in the implementation of the Bank's Environmental and Social Assessment Procedures. This makes the policies practical.

⁴⁴ . This policy claims that it 'reflects the views of RMCs, NGOs, CSOs and CBOs and other development partners that participated in the workshop on good governance organized by the Bank organized on March 19-20, 1999'. This aspect alone (getting all stakeholders agree on such a radical document) marks a major paradigm shift. The objective of the policy is stated as 'to mainstream good governance into the Bank's operations in a manner consistent with its Charter, mandate and current development priorities of accelerating economic growth, promoting Countries resource development and reducing poverty in its RMCs. The document calls for the provision of a solid legal basis for incorporating good governance considerations and activities in the Bank's operations.

⁴⁵ . Gender Mainstreaming Checklist for the Health Sector is one of the latest policies to be adopted by the Bank Group. The Checklist provides 'Bank staff as well as consultants with a tool to facilitate effective analysis and identification of the gender issues in the health sector, to design appropriate gender sensitive strategic/components, allocations of resources and definition of monitoring indicators through all stages of the project/program cycle'.

⁴⁶ . This policy was first approved by the Boards of Directors in December 1997. The present document (October 2005) follows extensive revisions made to the 1997 document. The revisions have two primary objectives i.e. to expand the scope and type of information the public can access and to incorporate new documents to be subject to disclosure that were not included in the 1997 policy. This led to broader stakeholder participation in the Bank operations and activities. The most important aspect of the policy is that it contains procedures and a description of the types of information that in the absence of competing reasons calling for confidentiality can be released to the public, which makes it practical. According to the policy, the rationale of the Bank Group's Policy on Disclosure is to strengthen the effectiveness and promote sustainability of projects and programmes supported by the Bank Group. The hallmark of the policy is that based on criteria of selectivity in line with the guiding principles described above, Bank staff and populations affected by Bank operations share information. Besides promoting effective development, this policy enables public engagement in Bank activities and more importantly, it allows interested members of the public to monitor the outcomes of specific Bank Group investments and in the process ensure that benefits reach the intended beneficiaries.

⁴⁷ . Alfredson, A.; Introduction – Broadening the Scope of Applicable Standards, in The Inspection Panel of the World Bank, A Different Complaints Procedure; G. Alfredson and Rolf Ring eds. Kluwer International, 2001. Professor Alfredson is one of the academics that have been urging especially the World Bank to embrace United Nations policies on human rights which contradicts the Bank's long-term view that issues of governance and human rights are out of bounds to the World Bank. Former Senior Vice President and General Legal Counsel of the World Bank Ibrahim Shihata was behind this line of argument absolving the Bank from concern itself with what he called 'every and all human rights'. See: Ibrahim F.I. Shihata, The World Bank and Human Rights, in International Commission of Jurists, Report of A Regional Seminar on Economic, Social and Cultural Rights, Abidjan 1998, 145

question of violence in East Timor.⁴⁸ Equally unprecedented is the adoption by the AfDB Group of the Policy on Good Governance, especially its commitment towards respect for human rights.

10.4 Environmental policy, of course, is probably the most important of policies in relation to the IRM. Among other things, this is partly due to the cross-cutting nature of issues around environment.⁴⁹ Of course the policy on Involuntary Resettlement is also important particularly given the nature of the African land tenure systems in which the majority of people holding so-called customary titles to traditional land in fact do not have recognized let alone justiciable rights in national legal process. Underling most of these policies is the need to promote meaningful participation. Most policies including gender, environmental and social, involuntary resettlement, governance, etc., emphasise the importance of participation and, therefore, meaningful consultation.

Some of these policies provide a very good framework. However, implementation or compliance has been a problem. One way to promote policy compliance is to make the policies part of agreements between the Bank Group and the borrowers. If not enshrined in these agreements, it becomes difficult to expect borrowers to ensure them. Of course the problem is that a borrower if forced to take on Bank policies a borrower may decide to look elsewhere for the loan which could disadvantage the Bank. The next problem is that policies often are simply not available to the beneficiaries. Communities whose protection the policies are meant for would often not have them or know how to use them. Based on the assumption that borrowers have rules and regimes to regulate private sector operations, most policies do not apply to Bank agreements with the private sector, which is wrong. The language in which they are available is often not user-friendly to the beneficiaries. Some critical areas like the issue of indigenous peoples in Bank-financed project areas have no specific policy (s) to regulate them. This, however, is a very controversial issue. Though the United Nations has in 2008 adopted the Declaration on the Rights of Indigenous Peoples, contestations around this issue continues. In respect of most Bank-financed projects, however, the issue of indigenous peoples seems inescapable.

⁴⁸ . Views of the President of the World Bank, Letter to President of Indonesia, 8 September 1999, in Henry J. Steiner & Philip Alston, eds., *International Human Rights in Context*, Second Edition, 2000, Oxford University Press, 1340

⁴⁹ . The most serious challenge raised by NGOs when conducting environmental assessments is how to address the perception that assessments are carried out by Bank Staff and Management who are seen as part of the Bank Group and who, therefore, are more likely to support the Bank and its project than to oppose it or approach it objectively (from discussion with an NGO involved in implementation of IRM, August 2009).

Recommendations

1. The Bank Group should ensure effective availability and accessibility of the relevant Bank policies and procedures especially to affected communities also as recommended by the IRM Review Panel in the Bujagali Review Report.
2. Private sector or non-sovereign guaranteed projects should be subject to similar relevant policies as apply to guaranteed sovereign projects.
3. The Bank should develop a deliberate programme to train Management in interpretation and application of relevant policies and procedures
4. Where necessary, the Bank Group should make relevant policies available in local tongue (s) of the beneficiaries

11. Presentation of Review Panel's review reports and Management's action plans to the Boards of Directors or the President;

Paragraph 29 of the enabling Resolution provides that:

‘The Panel shall report its findings and recommendations within thirty (30) days of the conclusion of a compliance review to the Boards or to the President where the Request relates to a project that has not been approved by the Boards’.

This paragraph was complied with by the Review Panel in the only completed Bujagali case. However, the Management took rather long to respond with its action plans to the Boards, to close to ten months. The delay raised a lot of discussion in the Bank with the IRM eventually causing a formal letter to the Boards.⁵⁰ A number of officials interviewed felt the delay should have been avoided. However, it is not entirely Management's fault that its response was delayed. Partly this was due to the fact that Bujagali was not solely an IRM case. Besides the IRM, Requesters had also approached the Inspection Panel with the same complaint and at the time of the IRM Review Panel's Report to the Boards, the outcome of the process at the Inspection Panel was still being awaited. Based on the need for the two mechanisms even though they are based on different instruments to collaborate in cases such as this, Management decided to await the outcome of the Inspection Panel

⁵⁰ . Formal complaint by the IRM against management in a letter addressed to the President and the Boards, dated 31 March, 2009.

process partly to avoid duplication. Second, Bujagali was a first learning experience to all stakeholders Management included. Third, Management may have delayed the response for purposes of ensuring quality and not responding for the sake of it. Fourth, it would be wrong to fault Management for the 'delay' given that the IRM enabling Resolution is silent as to the time line on when from the Review Report Management should respond. This latter point raises a structural problem with regards to the IRM instruments. On the other hand, the Inspection Panel Resolution has addressed the matter. Paragraph 23 of the 1993 Inspection Panel provides:

'Within six weeks from receiving the Panel's findings, Management will submit to the Executive Directors for their consideration a report indicating its recommendations in response to such findings'.

The IRM does not have a similar clause and the same should be provided for. While Management is expected to act with due diligence, a specific timeline within which Management should respond to the Review Panel, of course taking account of inevitable logistics like time for translation, is too important to be ignored in the Resolution.

Nevertheless, opinion as to when the Management response should be submitted to the Boards or the President following the Panel Review Report is polarized. Whereas most people interviewed would prefer to have both the two reports submitted simultaneously to allow for balanced and fair discussion, a minority argued in favour of what prevailed during the Bujagali case, with the caveat against prolonged delay. Considering the two reports simultaneously in case of the Inspection Panel has led to acrimonious and unhelpful debates. The challenge is to come up with balanced procedure taking all aspects into account.

Recommendation

1. There must be a time line in the enabling Resolution within which Management must react to the Panel Review Report Findings with its action plans;
2. A three months time line within which Management should respond to the Review Panel findings and recommendations would seem reasonable taking account of logistics and also the interests of fair administrative justice Requesters expect

12. The composition of Review Panels, etc;

Composition of Review Panels is governed by Paragraph 22 of the Resolution by which where the Director determines that there is a prima facie evidence⁵¹ of harm or threat with harm of affected people due to failure to follow the relevant policies, he shall cause a recommendation to the Boards for approved projects or the President for projects yet to be approved as the case may be recommending compliance review and the Boards must authorize the review. This can raise issues of independence of the compliance review process particularly where the Boards do not authorize the review. A possibility would be to consider authorizing the CRMU Director and/or the IRM Experts to make the ultimate decision based on eligibility report for the IRM to embark on compliance review.

In this case, the paragraph states, inter alia, that the Director ‘shall include draft Terms of Reference and shall identify two Experts to constitute a compliance review panel (‘Panel’) with the Director to undertake the compliance review’. Similarly, Paragraph 45 of the IRM Rules which states that the Director of CRMU ‘shall identify two Experts from the Roster (*one of whom shall chair the Panel*), who shall constitute, together with the Director, a Panel to conduct the compliance review’. There is no criterion given on how the Director will identify the two Experts from the Roster of the three. As indicated below, this could cause friction among and between Experts and the Director. The Expert not included may feel discriminated against.

Recommendations

1. The consultant recommends the possibility to consider authorizing the CRMU Director and/or the IRM Experts to ultimately decide on a compliance review
2. The consultant recommends that all the three Experts compose the Review Panel, without the Director of CRMU to ensure independence of compliance review and inclusiveness. Without prejudice to the above, the consultant recommends reconstituting the Review Panel to include all the three Experts together with the Director of the CRMU or to maintain the current arrangement

⁵¹ . The term *prima facie evidence* describes a situation which is based on what seems to be true even though it may later be disproved.

13. Terms and conditions of service of CRMU staff and IRM Experts, and the recruitment and selection process of Experts

13.1 Terms and conditions of service of CRMU Staff

Based on Paragraph 3 of the Resolution, the CRMU ‘shall be an Organisational Unit of the Bank.....’. Consequently, the terms and conditions of service of CRMU staff are governed by the Terms and Conditions of Service of the Bank Group in general. Ipso facto, CRMU Staff do not enjoy separate terms and conditions from the rest of the Bank staff. The terms and conditions of CRMU staff including that of the Director are not different from those of the rest of Staff and Management of the Bank. There is a general perception from this is that since by the terms of Paragraph 3 of the Resolution, the CRMU is the ‘focal Unit of the IRM’, the latter is not independent of the Bank Group.

Currently, CRMU is a small unit comprising the Director who is assisted by the Principal Compliance Officer and the Senior Compliance Officer. These are supported by a Team Assistant and a Secretary.

The Director is appointed by the President in consultation with the Boards from among persons who may not have served the Bank at least two years prior to the appointment. At the Inspection Panel, the Executive Secretary who is the Chief Executive of the Panel is identified by the Bank President from among Bank Staff and appointed by the Board. Compared to the Executive Secretary of the Panel, the CRMU Director enjoys a lot of power and influence over the IRM. For instance, currently, the CRMU Director is automatic Member of the Review Panel something the Executive Secretary is not. In order to emphasis his independence, the general view was that the Director should be appointed by the Boards and not ‘by the President in consultation with the Boards’ as in present rules. In practice, of course, this will mean nothing from the present practice as the President is Chairperson of the Boards. However, it would go a long way in addressing perceptions of dependence by the Director on the President who is also the head of Management. According to the IRM rules, the Director cannot work for the Bank after termination of his contract. This is to ensure his independence and to address the problem of ‘revolving door’. However, it also has potential to deprive the Bank especially the IRM of experience the Director acquires over the years and it is different from the rules of similar function of other accountability mechanisms.

As alluded to above, CRMU Staff, besides the Director, are generally appointed by the Bank through the Human Resources Department. CRMU Staff may have worked with the Bank in other capacities prior to appointment in the CRMU. However, IRM Staff should not have worked with the Bank in any capacity for two years prior to be eligible to the post of Director. This is important for the independence of IRM. However, besides depriving the Bank and IRM in particular of the experience garnered by these officers, it has potential to stagnate officers in their positions. While they are important in guaranteeing IRM's independence, the rules do not provide an environment for the career prospects of the officers within the IRM. Given the current rules on career progression within the IRM, stagnation is a real possibility.

The CRMU is housed on the 6th and 10th floors in the EPI building at the Bank premises. At the time of this report, the 6th floor had three offices while the 10th had two including the Director's. The third office on the 6th was taken away by the Bank while the review was underway leaving only two. There was a general indication, however, that the IRM and CRMU would soon be allocated offices on the same floor. Generally, the physical location of an accountability mechanism is an important measure of its independence or lack thereof. On the other hand, occupying offices on separate floors has impact on operational efficiency but more especially of an environment that promotes confidentiality which is the hallmark of IRM. Confidence is an important characteristic of an independent IRM. IRM involves a lot of communications with outside people especially Requesters which by its nature is confidential.

CRMU is reasonably provided with office equipment like computers to discharge the work of IRM. But it does not have its own website. Currently, IRM and CRMU use the Bank website. This is not good for visibility of IRM and also its independence. Also, even though IRM through its focal unit may accept requests in local African languages, the Bank languages are English and French. IRM documents are either in English or French. Staff is encouraged to speak both the two Bank languages. It is important to have a Francophone speaker at the level of Compliance Officer or above who should be a man for the purposes of gender balance.

13.2 Translation of IRM documents

A general issue cross-cutting the entire IRM and CRMU as focal unit of IRM is efficiency. Efficient discharge of IRM process is important in building confidence in stakeholders in the instrument. Currently, IRM has

been efficient. However, translation of some of its documents has potential to subject it to prolonged delays. CRMU does not have its own translation resources and uses Bank translators. The Bank should facilitate CRMU to employ its own translators.

13.3 Budget issues

IRM is adequately budgeted for by the Bank. Resource constraint often is a major problem affecting the efficiency and effectiveness of most institutions. CRMU does not seem to have this problem yet. However, there is no contingent fund to cater for unexpected requests or developments. Contingent fund is important in the nature of the IRM and it must be provided to be able to respond to all requests without delay.

13.4 Terms and conditions of service of Experts

The rules provide for three Experts elected by the Boards based on procurement rules of the Bank. Paragraph 3 of the enabling Resolution which defines the three IRM Experts on the Roster provides that the Experts shall be 'selected in accordance with the Bank's procurement rules applicable to the selection of consultants and appointed by the Boards on the recommendation of the President'. Significantly, the only stated qualification is that Experts should be 'nationals of the member states of the Bank or State Participants in the Fund selected on the basis of their knowledge and experience of the Bank Group's operations'. Except for the first three, Experts are appointed on non-renewable five-year terms. The Chairman of the Roster is appointed by the Boards. Executive Directors, Bank staff and consultants are banned from serving on the Roster till after two years following expiry of their service to the Bank. Conversely, an Expert upon the expiry of their term are banned from rendering service to the Bank in any capacity till after two years from the expiry of his or her term. Experts can be dismissed 'for cause', which is vague and could compromise independence.

There has been discussion on whether to raise the number of Experts, for instance, to five from the present three. In support of this is that the IRM could benefit from a raised number through increased diversity. However, it has also been argued that this will have resources implications and in any case that it may not be necessary at the moment given the small number of Requests.

Paragraph 8 provides for payment of a retainer to the three Experts. In return, they are 'expected to work on a full-time basis when appointed to

work on a compliance review panel'. The 'retainer' is a flat yearly fee. In addition, when Experts are appointed to serve on a compliance review panel, they are entitled to 'remuneration' to compensate for work done on full-time basis'. There are different views as to whether Experts should be paid a 'retainer' or not? Experts attend a one week seminar per year to appraise them of Bank work which is also another reason for paying them a retainer. But it has also been argued that the retainer is too small to ensure Experts are available when their services are needed by the IRM.

Of course IRM Experts are not Bank employees, which is important for IRM independence. They are independent none full-time officials. This is unlike the Inspection Panel members whose chairman is full-time. However, functionally, they are officials of the Bank. Paragraph 9 states that 'in the performance of their functions, Experts shall be officials of the Bank enjoying the privileges and immunities accorded to Bank officials. Besides the duty to disclose any conflict of interest an Expert might have in the hearing and investigation of any request, Experts are expected to abide by the duty to demonstrate 'the exclusive loyalty to the Bank'. Similarly, like other Bank officials and staff, Experts are forbidden from 'interfering in the political affairs of member states'.

Recommendations

1. While safeguarding IRM independence, restrictions on CRMU Staff terms and conditions of service should be reviewed with the view to enable them be guaranteed their career prospects and the Bank to benefit from their experiences;
2. The Bank should allocate adequate office facilities to CRMU staff in conditions that guarantee confidentiality in dealing with their mandate
3. The consultant recommends for a separate IRM website.
4. To serve its purpose, the retainer fee payable to Experts could be reviewed;
5. Reference to 'State participants' in the Fund in relation to qualification for appointment as Expert should be deleted.
6. Removal of Experts by the Boards 'for cause' should be clarified.
7. Chairman of Roster should be appointed by peers and not by the Boards
8. CRMU should be authorized to have separate translation facilities
9. Provision should be made in IRM budget for contingent fund

14. Spiritual/cultural issues in development

As frequently demonstrated especially in most water projects in Africa, issues to do with spiritual and cultural issues cannot be overlooked. Culture and tradition are still deeply entrenched in Africa. In fact, as Muna Ndulo⁵² demonstrated, most African people especially those in rural areas still live by their cultures and traditions. Consequently, the development concept the majority of African people can relate themselves to is the one which while spearheading development accords equal respect to their cultures and traditions including their spirituality. This, it must be pointed out, is not just an African feature of development. Development world-wide is meaningful when it is based on the community's value-based system rather than against it.

Within this context, the United Nations in 2008 adopted the Declaration on Indigenous Peoples.⁵³ Even though still controversial, the Declaration marks the first natural step towards encapsulating the traditional cultural beliefs, practices, values, institutions and systems into the paradigm of development. Therefore, development becomes so when pursued in tandem with respect for peoples' basic aspirations including cultures and traditions. As culture is dynamic concept, it is unlikely that pursuing culture could obstruct development because the two aim at achieving the same purpose. Culture and development are synonymous terms which can be likened to one driving on the right the other driving on the left but both reaching the same destination. Also for sustainability of the development, it is important that positive local cultures including spirituality are made integral part of that development process. Therefore, if properly focused, reference to culture in the development model and process should not contradict the wider interests of the community or country as a whole. Conceptually, there is no dichotomy between the interests of cultural/spiritual believers and those of the wider public.

Recommendations

1. To ensure sustainable project development, it is important that implementation of Bank-financed projects are pursued consistent with local evolving cultural, spiritual beliefs and usages

⁵² . Muna Ndulo, Mining Rights in Zambia (NECZAM, 1987) Lusaka

⁵³ . Declaration on Indigenous Peoples, www.unhchr.org

2. Though still controversial, it is important to give attention to the need to work towards adopting a policy on indigenous peoples

15. Consultations

One of the cross-cutting issues in most accountability mechanisms is the need for adequate or meaningful consultations with local people as essential prerequisite to equitable and effective development process. In fact, consultation, if embarked at project conception, is one of the best ways to prevent conflict out of a project. The other, of course, is to ensure quality in project conceptualization, design and implementation.

Consultation which means taking a population centric approach is *sine qua non* to successful project development. If people are taken on board at the earliest point in project development, their fears allayed, their interests taken into account and, in particular, they are made to participate in the process, there is no reason why the project should not succeed. In other words, the recommended model in project development is the 'bottom-top' rather than 'top-bottom' approach. Some of the projects that have failed to have done due to the application of the 'top-bottom' approach which ignores people until a problem arises by which time it is usually too late to fix the damage. The 'bottom-top' approach, on the other hand, insists on getting people take ownership of the project before it is laid out so that they and not officials whether of the borrower or bank become its drivers and not officials. Bottom-top consultations models not only ensure development in peace but the critical sense in local people's attitudes that the project belongs to them and therefore they must make sure it succeeds.

Recommendations

1. Adequate and meaningful consultations with affected parties and communities at the earliest point of project development should be an obligatory feature of Bank-financed projects
2. To avoid IRM, bottom-top approach should characterize project development processes.
3. Based on 'population centric' approach, it is important to impart a sense of ownership of the project in local people.

16. Problem solving on outstanding post-compliance review issues

IRM establishes two essential techniques to support the review mechanism, namely, compliance review and problem solving. Based on the present rules, problem solving is normally resorted to at the commencement of the review process generally as a kind of initial possibility to solve the problem amicably. Based on his initial review of the request, the CRMU Director can determine whether a request is amenable for problem solving or not. In addition, requesters can indicate preference to problem solving. But there is another stage that could benefit from problem solving besides this early stage.

Post compliance review brings out a number of findings and recommendations from the Review Report. These would usually be subject of proposed actions by Management action plan. Under the IRM, a monitoring process is initiated to try and follow up on the legacy issues brought out of the Review Report. It is here suggested that besides this, problem solving could also be made a possibility to ensure redress of some of the identified issues. CRMU could be mandated to undertake problem solving in respect of those issues that are amenable to amicable resolution.

Recommendations

1. Problem solving could be given an expanded role in IRM than at present
2. CRMU could be mandated to invoke problem solving at post-compliance review stage in respect of issues out of the Review Report and more especially recommendations which are amenable to amicable settlement.

17. African traditional problem solving techniques

IRM should benefit from ancient African civilization on conflict solving techniques. Given that it operates in Africa, there is no reason why IRM should not be made to encapsulate the conflict solving 'wisdom' current in Africa today from ancient civilization. While acknowledging the importance of modern problem solving techniques set out in IRM instrument, due regard should be accorded to African-based traditional conflict resolving techniques as well which are known and practiced by Africans and, therefore, enjoy the confidence of the communities. Some

of the unique features these entail include emphasis on substance rather than procedure, inclusiveness of participation, freedom of speech of all participants drawn from the community, transparency which allows meetings to take place under a tree enabling any adult member of the community whether affected party or not easy access to attend, etc.

It is important, therefore, that ‘problem solving’ in IRM is developed to include African-based traditional conflict resolution methods. This can be elaborated further in a distinct clarifying instrument either as complementary to or in addition to compliance review and ‘problem solving’ as presently provided in the IRM instrument.

Recommendations

1. IRM should introduce traditional African problem resolving techniques complimentary to or distinct from the existing techniques.
2. CRMU should develop rules to elaborate the traditional African problem solving techniques

18. Conclusion

The IRM is a novel development which presents communities affected by Bank financed projects to air their voices against the Bank and participate in the activities of the latter. This is important in governance development towards sustainable development. However, a lot needs to be done to make the mechanism more efficient and truly effective. The suggestions above are intended to provoke discourse on how the mechanism could be made more effective.

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Annex 1

AFRICAN DEVELOPMENT BANK AFRICAN DEVELOPMENT FUND BOARDS OF DIRECTORS

Resolution B/BD/2004/9 – F/BD/2004/7

Adopted at the 608th Meeting of the Board of Directors of the Bank and the 539th Meeting of the Board of Directors of the Fund, on 30 June 2004

Independent Review Mechanism

THE BOARDS OF DIRECTORS,

HAVING REGARD to the:

(i) Agreement Establishing the African Development Bank (the "Bank"), in particular Articles 1 (Purpose), 2 (Functions), 4 (Structure), 8 (Special Fund), 13 (Ordinary and Special Operations), 32 (Board of Directors: Powers), 52 (Judicial Proceedings) and 53 (Immunity of Assets and Archives);

(ii) Agreement Establishing the African Development Fund (the "Fund") in particular Articles 2 (Purpose), 14 (Use of Resources), 26 (Board of Directors: Functions), 31 (Relationship with the Bank), 43 (Legal Process), 44 (Immunity of Assets) and 45 (Immunity of Archives); and (iii) Agreement Establishing the Nigeria Trust Fund (the "NTF") in particular Articles I (Establishment and Purpose), II (Utilization of Resources), III (Administration of the Fund); IV (Operating Principles); XV and (Immunities, Exemptions and Privileges);

CONSIDERING Management's Proposals on the Establishment of an Inspection Function, contained in Document ADB/BD/WP/2004/60 – ADF/BD/WP/2004/66, and the recommendations contained therein, as well as the Study on an Inspection Function for the African Development Bank Group, dated 24 November 2003;

NOTING the importance of establishing a mechanism through which persons adversely affected by projects financed by the Bank, the Fund and the NTF and other Special Funds administered by the Bank (the "Bank Group") can request the Bank Group to comply with its own policies and procedures;

COGNISANT of the need to provide detailed rules governing the establishment, procedures and administration of such a mechanism in order to ensure its effective performance;

HEREBY RESOLVE AS FOLLOWS:

Establishment

1. There is established an independent compliance review and problem solving mechanism (hereinafter called the "Independent Review Mechanism") which shall have the powers and shall function as stated below.

Composition of the Independent Review Mechanism

2. The Independent Review Mechanism (IRM) shall consist of a Compliance Review and Mediation Unit ("CRMU") and a roster of experts (the "Roster of Experts").

3 The CRMU shall be an Organizational Unit of the Bank to be established in accordance with a Resolution of the Board of Directors of the Bank, and shall be the focal Unit of the IRM. The activities of the CRMU shall be managed by an Organizational Unit Head designated as the 'Director, CRMU' (the "Director") who shall be appointed by the President, in consultation with the Boards of Directors (the "Boards").

4 The Roster of Experts shall comprise three (3) individuals (the "Expert(s)") selected in accordance with the Bank's procurement rules applicable to the selection of consultants and appointed by the Boards on the recommendation of the President. The Experts shall be nationals of the member states of the Bank or State participants in the Fund selected on the basis of their knowledge and experience of the Bank Group's operations.

5. The Experts shall be appointed to the Roster of Experts for a non-renewable term of five (5) years, with the exception of the first three (3) Experts who shall be appointed by lot as follows: one for three (3) years, one for four (4) years and one for five (5) years. If an Expert's terms expires, at the time the Expert is engaged in a compliance review, the Expert's terms shall be extended for such period as may be necessary to complete the compliance review unless the Boards decide otherwise. The Boards shall appoint a Chairperson of the Roster of Experts from amongst the Experts and the Chairperson shall serve in such capacity for the duration of his/her appointment unless otherwise determined by the Boards.

6. Executive Directors, Alternate Executive Directors, Advisers, Assistants, any Officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster of Experts until two (2) years have elapsed since the end of their service to the Bank or the Fund. If an Expert is called upon to work for the IRM during his or her term, the Expert shall not be entitled to work for the Bank or the Fund (either as staff member, Bank officer, Executive Director, Alternate Executive Director, Adviser, Assistant or Consultant) for a period of two (2) years after the expiry of his or her term.

7. An Expert shall disclose any conflict of interest and shall be disqualified from participation in the hearing and investigation of any request related to a matter in which he/she has a personal interest or had significant involvement in any capacity.

8. Experts on the Roster of Experts shall be paid a retainer and shall be expected to work on a full-time basis when appointed to serve on a compliance review panel. Once they begin work on a full-time basis, Experts shall receive remuneration at a level to be determined by the Boards, upon a recommendation of the President. They shall be reimbursed for their travel and expenses on the same basis as the judges of the Bank's Administrative Tribunal.

9. In the performance of their functions, Experts shall be officials of the Bank enjoying the privileges and immunities accorded to Bank officials, and shall be subject to the requirement about exclusive loyalty to the Bank and the prescription in Article 38 of the Agreement establishing the African Development Bank and Article 21 of the Agreement establishing the African Development Fund against interference in the political affairs of member states.

10. An Expert may be removed from the Roster of Experts at any time, by a decision of the Boards, for cause. If an Expert appointed to a compliance review panel resigns or is otherwise unable to complete such assignment, the Director shall make a recommendation to the Boards, through the President, on a proposed course of action to ensure the prompt completion of the compliance review.

Powers of the Independent Review Mechanism

11. The IRM shall receive requests from persons adversely affected by a project financed by a Bank Group entity. Such requests shall be presented to the CRMU by two or more persons (such as, community of persons, an organization, association, society or other grouping of individuals) ("Requestors") or by a qualified representative of the affected persons (as defined in the Operating Rules and Procedures) who demonstrate that their rights or interests have been or are likely to be directly affected by the failure of the relevant Bank Group entity to comply:

(i) in the case of a sovereign guaranteed project financed by any of the Bank Group entities, with any of its operational policies and procedures in respect of the design, appraisal and/or implementation of such project; and \

(ii) in the case of a private sector or non-sovereign guaranteed project financed by any of the Bank Group entities, with the social and environmental policies and safeguards of such projects. The alleged non-compliance may include situations where the Bank Group entity is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to the applicable policies and procedures.

12. The CRMU shall ensure that before a request for compliance review or problem-solving is treated, the request has been dealt with by the Management of the Bank and Management has failed to demonstrate that it has followed, or is taking adequate steps to follow the relevant policies and procedures. The CRMU shall also satisfy itself that the alleged violation of the relevant policies and procedures is not frivolous, and is of a material character.

Function of the Independent Review Mechanism

13. The IRM, with the CRMU as the focal unit, shall perform both compliance review and problem-solving functions. The problem-solving function shall be used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in resolving the underlying issues. Such problem-solving techniques may include independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting.

14. The IRM shall be activated when the CRMU accepts the complaint (the "Request") after it is satisfied that all requisite criteria have been fulfilled. In considering Requests under paragraph 11 above, the CRMU shall not receive:

(i) Complaints relating to actions which are within the responsibility of other parties, including the borrower or potential borrower, and which do not involve any action or omission on the part of the relevant Bank Group entity;

- (ii)
- (iii) Complaints against procurement decisions by the Bank Group or a borrower of a Bank Group entity from suppliers of goods and services financed by or expected to be financed by a Bank Group entity under a financing agreement, or from losing tenders for the supply of any such goods and services, which will continue to be addressed under existing procedures;
- (iv) Complaints about fraud or corruption;
- (v) Complaints about matters before the Administrative Tribunal of the Bank;
- (vi) Complaints about matters before other judicial review or similar bodies;
- (vi) Frivolous or malicious complaints, or complaints motivated by an intention to gain competitive advantage;
- (vii) Requests related to matters over which the CRMU, a Panel, the President or the Boards has /have already made a recommendation or reached a decision after having received and reviewed a Request, unless justified by clear and compelling new evidence or circumstances not known at the time of the prior Request;
- (viii) Complaints relating to the adequacy or unsuitability of Bank Group policies or procedures;
- (ix) Complaints relating to private sector or other non-sovereign guaranteed projects except in instances of an alleged breach of the agricultural, education, health, gender, good governance or environmental policies of the Bank Group.

15. The IRM shall seek the advice of the Bank's General Counsel and Legal Department on matters related to the Bank's rights and obligations with respect to a Request under consideration.

Procedures

16. Requests shall be in writing and shall state all the relevant facts including the harm suffered by or threatened to affected parties by the alleged act or omission of the Bank Group entity in contravention of its applicable policies and procedures. All Requests shall explain the steps already taken to deal with the issue, as well as the nature of the alleged actions or omissions and shall specify the actions taken to bring the issue to the attention of Management and Management's response to such action.

17. The Director shall conduct a preliminary review to determine the eligibility of a Request within fourteen (14) days of the receipt of the Request. The Director shall promptly inform the Boards and the President upon registering a Request that is determined to be eligible for either a compliance review or a problem-solving exercise.

18. Within twenty-one (21) days of being notified of a Request, Management shall provide the CRMU with evidence that it has, or intends to comply with the Bank Group's relevant policies and procedures. If there is no response from Management within twenty-one (21) days the CRMU shall notify the Boards and the President accordingly and send a copy to Requestors.

19. The CRMU may request clarification from Management on its response and set a time for the receipt of the additional information. Within twenty-one (21) days of receiving Management's additional response or the expiry of the time limit for receipt of the additional response, the CRMU shall undertake and conclude a problem-solving exercise and/or make its recommendation for a compliance review to the Boards or to the President where the Request relates to a project that has not been approved by the Boards.

20. If the Director determines that a Request may be handled through a problem-solving exercise, he or she shall invite all relevant parties to participate in the exercise. The Director may use a variety of problem-solving techniques in the problem-solving exercise including, without limitation, mediation, conciliation, dialogue facilitation, investigation and reporting.

21. If a problem-solving exercise is not successfully concluded within a period of three (3) months from commencement or by consent of the parties, the Director may recommend such remedial action as he deems appropriate to the Boards or to the President where the Request relates to a project that has not been approved by the Boards. Such recommendation may include the undertaking of a compliance review for the relevant project.

22. Where the Director determines, following the conclusion of a problem-solving exercise or otherwise, that there is prima facie evidence the affected parties have been harmed or/threatened with harm by a Bank Group-financed project due to the failure to follow the relevant policies and procedures of a member of the Bank Group, he or she shall, within thirty (30) days of such determination, submit a report recommending a compliance review of the relevant project to: (a) the Boards of Directors; or (b) the President, with a copy to the Boards, if the Request relates to a project that has not been approved by the Boards. The recommendation shall include draft Terms

of Reference and shall identify two Experts to constitute a compliance review panel ('Panel') with the Director to undertake the compliance review.

23. Where, following the receipt and registration of a Request in which the Requestors have sought a compliance review and such Request is not otherwise processed through a problem-solving exercise, the Director determines that the Request is not eligible for a compliance review, the Request shall be referred to the Chairperson of the Roster of Experts who shall determine the eligibility or otherwise of the Request for compliance review within twenty-one (21) days of the Director's determination and inform the Boards accordingly.

24. In considering a recommendation for a compliance review, the Boards of Directors or the President, as the case may be, shall either: (a) approve the recommendation(s) on a 'nonobjection' basis; or (b) remit the request to the Director or to an Expert to reassess the recommendation regarding the membership of the Panel and the draft Terms of Reference with a new recommendation, if any, being submitted to the President or the Boards as the case may be. Any decision by the President on the recommendations of the Director concerning a compliance review shall be immediately communicated to the Boards.

25. The Panel shall conduct the compliance review in accordance with the approved Terms of Reference. The Experts on the Panel shall each have one (1) vote and decisions of the Panel shall be taken by simple majority. The Director may participate in deliberations of the Panel but shall have a vote only in the event of a deadlock in the deliberations.

26. The Panel shall report its findings and recommendations to the Boards or to the President where the Request relates to a project that has not been approved by the Boards. The Boards, or the President as the case may be, shall decide whether or not to accept the findings and recommendations of the Panel. Any decision by the President shall be immediately copied to the Boards.

27. The findings and recommendations of the Panel shall be based only on facts relevant to the Request and shall be impartial. The Panel may not recommend the award of compensation or any other benefits to any person, entity or government beyond that which may be expressly contemplated in a relevant Bank Group policy.

Reports

28. The Director shall prepare, within thirty (30) days of the conclusion of the problem-solving exercise, a report on the exercise and its outcome and shall provide the report to the participants in the problem-solving exercise, to the Boards and to the President.

29. The Panel shall report its findings and recommendations within thirty (30) days of the conclusion of a compliance review to the Boards or to the President where the Request relates to a project that has not been approved by the Boards.

30. The CRMU, or the person(s) otherwise charged with the responsibility, may monitor the implementation of any solution agreed upon in a problem-solving exercise or any remedial changes to the relevant Bank Group's policies or procedures or to the implementation of the relevant Bank Group-financed project. Such persons shall submit the monitoring report to the Boards or to the President where the Request relates to a project that has not been approved by the Boards. Any monitoring report to the President shall be immediately copied to the Boards.

31. Subject to the provisions of the Bank Group's Disclosure of Information Policy, the reports of the CRMU and the Panel and the decisions of the Boards and the President on all Requests shall be communicated to the Requestor and all other interested parties and shall be made public by the Bank Group.

32. The Director shall prepare, in consultation with the Experts, an annual report describing the activities of the CRMU during the preceding year. The annual report shall be submitted to the Boards and to the Boards of Governors for information. The annual report shall be published by the Bank Group.

Review

33. The Boards shall review the experience of the IRM established by this Resolution after three (3) years from the date of the effectiveness of the IRM, which date shall be that of the appointment of the Director.

Operating Rules and Procedures

34. The Boards shall approve the Operating Rules and Procedures of the Compliance Review and Mediation Unit of the Independent Review Mechanism, which shall complement the operational provisions contained in this Resolution.