

# AFRICAN DEVELOPMENT BANK GROUP



## THE INDEPENDENT REVIEW MECHANISM



### Operating Rules and Procedures

January 2015

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## **I. Introduction**

The Compliance Review and Mediation Unit ('CRMU'), headed by a Director (the "Director CRMU"), is the focal unit of the Independent Review Mechanism (the "IRM") established by the Boards of Directors of the African Development Bank (the 'Bank') and the African Development Fund (the 'Fund'). Initially established pursuant to Resolutions B/BD/2004/9 - F/BD/2004/7 and B/BD/2004/10 adopted by the Boards of Directors on 30<sup>th</sup> June 2004 (collectively the 'Enabling Resolution'), the Enabling Resolution has since been amended twice, with the latest amendment being adopted pursuant to Resolution B/BD/2015/03 – F/BD/2015/02 adopted on 28 January 2015.

The Amended Enabling Resolution establishes the IRM's authority and these Operating Rules and Procedures ('Rules') to provide detail to the operational provisions of that Resolution. The text is based on the Amended Enabling Resolution.

### ***a. Purpose***

The IRM was established for the purpose of providing people adversely affected by a project financed by the Bank, the Fund, the Nigeria Trust Fund and other Special Funds administered by the Bank (collectively the 'Bank Group') with an independent mechanism through which they can request the Bank Group to comply with all its own policies and procedures. The mechanism is, therefore, available when two or more affected persons believe that the Bank Group has failed to comply with any of its policies and procedures and that this failure has, or threatens, to adversely affect them.. CRMU will disseminate information about the IRM to Bank staff, civil society organizations, affected communities and the general public. The Bank Management shall mainstream information about the IRM in Bank policies and procedures and project documents.

### ***b. Functions***

The role of the IRM is to perform problem-solving, compliance review and advisory functions.

The problem-solving and the compliance review functions of the IRM will be triggered when CRMU receives a request for compliance review and/or problem solving. CRMU will conduct a preliminary review of the complaint to determine whether the case is more appropriate for problem-solving or compliance review while respecting the requestor(s) preference. CRMU will facilitate and undertake problem-solving exercises while compliance reviews will be conducted by a Panel of IRM Experts.

The problem-solving function, described below in Section VI, will be carried out by CRMU and used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. These techniques will include independent fact-finding, mediation, conciliation, dialogue facilitation taking into consideration best customary practices for handling complaints. CRMU will submit its problem-solving reports to the Boards of Directors of the Bank and Fund (collectively the 'Boards') on approved projects or to the President of the Bank Group (the 'President'), on projects under consideration for financing by the Bank Group. This report shall contain any remedial action that should be taken following the problem solving exercise. CRMU shall monitor the implementation of agreements reached by parties in a problem-solving exercise.

Through its compliance review function undertaken by the IRM Experts described below in Section VII, the IRM will focus on issues of non-compliance by an institution within the Bank Group with any of its operational policies and procedures in respect of the design, implementation or supervision of such project. CRMU and the IRM Experts will submit the compliance review reports to the Boards of Directors of the Bank and Fund (collectively the 'Boards') on approved projects or to the President of the Bank Group (the 'President'), on projects under consideration for financing by the Bank Group.

CRMU and the IRM Experts shall monitor the implementation of action plans prepared by Management based on recommendations made by Review Panels and approved by either the Boards or the President, as the case may be, following the completion of a compliance review report.

The advisory function, described below in Section VIII, will be carried out to provide independent opinions on systemic issues, technical advice on any projects and programs of the Bank Group, and to support efforts of staff and Management to strengthen the social and environmental impact of projects funded by the Bank Group. The function will be triggered:

- (a) Upon receipt by CRMU of a request for advice or technical opinion from the President and/or the Boards; or
- (b) Upon approval by the President and/or the Boards of a proposal submitted by the Director of CRMU for such advisory service.

The Advisory function will consist of advisory services by CRMU and Spot-check advisory reviews of project compliance by the IRM Experts. The Director of CRMU will submit reports on advice and technical opinions provided to the President and/or the Boards, as the case may be.

***c. Composition of the IRM***

The Director assisted by professional and support staff heads the CRMU. The CRMU will maintain a roster of three (3) experts ('Roster of Experts') appointed by the Boards on fixed, non-renewable 5 year terms. The CRMU shall provide administrative and technical support to compliance review panels when undertaking compliance reviews.

***d. List of Policies and Procedures***

CRMU shall work with Bank Group Management to establish, maintain and update a list of operational policies and procedures of the Bank Group relevant to the work of the IRM.

## **II. Subject Matter of Requests**

***a. Scope***

1. CRMU is authorized to accept requests for review ('Request(s)') from two or more persons with a common interest ('Requestors') who allege that an actual or threatened material adverse effect on the affected persons' rights or interests arises directly from an act or omission of a member institution of the Bank Group as a result of the failure by the said institution to follow any of its own operational policies and procedures during the design, appraisal and/or implementation of a Bank Group-financed project.

***b. Limitations***

2. CRMU is not authorized to receive Requests relating to:
  - (a) Any procurement by the Bank Group or its borrowers from suppliers of goods and services financed by or expected to be financed by the Bank Group under a loan or grant agreement, or from losing tenders for the supply of such goods and services which shall continue to be addressed under other existing procedures. These are handled by another unit within the Bank Group;
  - (b) Fraud or corruption since they are handled by another unit within the Bank Group;
  - (c) Matters before the Administrative Tribunal of the Bank;
  - (d) Matters before other judicial review or similar bodies;
  - (e) Frivolous, malicious, or anonymous complaints;

- (f) Complaints motivated by an intention to gain competitive advantage;
  - (g) 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;
  - (h) Actions that are the sole responsibility of other parties, including the borrower or potential borrower, and which do not involve any action or omission on the part of the Bank Group;
  - (i) The adequacy or unsuitability of Bank Group policies or procedures; and
  - (j) Alleged Human Rights violations, other than those involving social and economic rights alleging any action or omission on the part of the Bank Group.
- c. *Statute of Limitation***
3. CRMU shall not handle complaints filed more than 24 months after the physical completion of the project concerned or more than 24 months after the final disbursement under the loan or grant agreement or the date of cancellation of the disbursement amount, whichever comes first.

### **III. Preparation of a Request**

4. CRMU's operational proceedings begin when a Request is received. This section of the Rules is primarily designed to give further guidance to potential Requestors on what facts and explanations they should provide. CRMU may provide potential Requestors with a simplified version of these procedures in order to facilitate accessibility to the IRM.
- a. *Advice on Preparation of a Request***
5. People or entities seeking advice on how to prepare and submit a Request may contact CRMU, which will provide information or may meet and discuss the requirements with potential Requestors.
- b. *Who can file a Request?***
6. CRMU has authority to receive Requests that complain of a violation of the Bank Group's policies and procedures from the following people or entities:
- (a) 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 or interests have been, or are likely to be, adversely affected in a direct and material way. They may be an organization, association, society or other grouping of individuals;
  - (b) A duly appointed local representative acting on explicit instructions as the agent of adversely affected people,
  - (c) In exceptional cases, referred to in paragraph 16 below, a foreign representative acting as agent of adversely affected people, or
  - (d) The Boards of Directors of the Bank Group.

**c. Contents of a Request**

7. In accordance with the Enabling Resolution, Requests should contain, to the extent possible, the following information:
- (a) A reference to the project, stating all the relevant facts including the harm suffered by or threatened to the affected parties;
  - (b) How the parties have been or are likely to be materially and adversely affected by the Bank Group's act or omission and what rights or interests of the parties were directly affected;
  - (c) When requesting a compliance review, an explanation of how Bank Group policies, procedures or contractual documents were violated;
  - (d) An indication if there has been any previous communication between the affected parties and the Bank Group concerning the issue (s) raised in the Request ;
  - (e) In Requests relating to matters previously submitted to the CRMU, a statement specifying what new evidence or changed circumstances justify revisiting the issue; and
8. If some of the above information cannot be provided, an explanation should be included.

**d. Form of Request**

*Format*

9. No specific format is necessary. The requirements for submission of requests will be interpreted with flexibility with the view to allowing affected people and communities to use the means at their disposal to submit complaints. In instances where requests are made orally, CRMU will assist Requestors in submitting them in writing.
10. All Requests must be submitted in writing, dated and signed by the Requestors and contain their names, contact addresses and an address to which correspondence shall be sent (if different from the Requestors' address (es)). The Requestors and any other interested persons may, however, request that their identities be kept confidential, and if so, the reasons for such confidentiality.

*Confidentiality*

11. If the Request contains a demand for confidentiality under paragraph 10 above, the Director shall respect such a request and shall agree the terms of proceeding with the Requestors and other interested persons. However, if in the opinion of the Director, after consultation with the Requestor, the compliance review process cannot proceed with the requested confidentiality being maintained, the Requestors and other interested persons shall be notified accordingly and the Director will terminate the process.

*Language*

12. The working languages of the IRM shall be the official languages of the Bank (i.e. English and French). Requests may be submitted directly by affected people themselves in their local language if they are unable to obtain a translation. Where Requests are not in either English or French, the time needed to translate and ensure an accurate and agreed translation may delay acceptance and consideration of the Request.

13. CRMU will endeavor to respond to Requests in the language of submission, where practicable, but will in any event respond in either of the official languages of the Bank Group with which the Requestors are most comfortable.

*Representatives*

14. Where the Requestors are entities representing affected people, they shall attach to the Request written signed proof that they have authority to act on behalf of the affected people.
15. If a non-affected representative submits the Request, he or she must provide evidence of representational authority, which shall consist of original signatures, the names and contact addresses of the affected parties.
16. In addition, in cases of non-local representation, CRMU should require clear evidence that there is inadequate or inappropriate representation in the country or countries where the project is located or has a direct and material impact.

*Documents*

17. The following documents should be attached to the Request:
  - (a) Relevant correspondence with Bank Group staff; if any;
  - (b) A description of the location of the affected parties or area affected by the project; and
  - (c) Any other evidence supporting the Request.
18. If some of the information listed cannot be provided an explanation should, to the extent possible, be included in the Request.

*e. Delivery of Request*

19. Requests must be sent to the CRMU at the Bank Group's principal office by any suitable means or to any of the Bank Group field offices. In the latter case, the Bank Group's resident representative shall, after issuing a receipt to the Requestors, promptly and without reviewing the content of the request forward it to the Director of CRMU and inform the Director of CRMU by email, fax or telephone about the receipt and forwarding of the Request to CRMU.

*f. Effect of Filing a Request*

20. Notwithstanding any other provision in these Rules, the filing, assessment, registration or processing of a Request or the carrying out of a compliance review or problem-solving exercise shall not have the effect of suspending processing of, or disbursements in respect of, the relevant Bank Group-financed project. If at any time during the processing of a Request, the Director or the Review Panel is of the opinion that serious, irreparable harm shall be caused by the continued processing or implementation of the Bank Group-financed project, the Director and/or the Review Panel may make an interim recommendation to suspend further work or disbursement. Such recommendation shall be considered in light of any contractual obligation or other relevant policies of the Bank Group and the decision concerning such recommendation shall be made:
  - (a) By the relevant Bank Group officer or body vested with the power to make such a decision; and
  - (b) Only if the Bank Group has the right to suspend or cancel in accordance with the terms of any applicable loan and/or investment and/or other agreement.



#### **IV. Procedures on Receipt of a Request**

21. When CRMU receives a Request, the Director shall within fourteen (14) business days of receipt of the Request, conduct a preliminary review on the basis of the information contained in the Request to determine if the Request contains a *bona fide* allegation of harm arising from a Bank Group-financed operation and thereafter either register the Request, or ask for additional information or find the Request outside the IRM's mandate.
22. The Requestors' preference for problem solving exercise or compliance review or both shall be granted subject to the Request meeting the requirement for registration. Where the Requestors have not expressed a preference, the Director of CRMU will determine the best course of action in consultation with the Requestors.
  - a. **Registration**
23. If a Request falls within the mandate of the IRM and contains the information listed in Paragraph 7 above (Content of the Request), the Director shall, while respecting the preference of Requestor, register the Request in the register of Requests (the 'Register'), and promptly notify the Requestors, the Boards and the President of the registration and transmit to the Boards and/or the President, as the case may be, a copy of the Request with any accompanying documentation requesting that Management provide a response to the allegations contained in the Request.
  - b. **Handling of Request**
24. After receiving the Management response to the Request, the Director shall within 5 business days, while respecting the preference of the Requestors, make a determination on whether the Request should be handled through: (i) a problem-solving exercise, (ii) compliance review or, (iii) both problem solving and compliance review. In the latter case, the sequencing will be problem solving followed by compliance review.
25. Once this determination is made, the Director shall promptly notify the Requestors, the Boards and the President of the proposed remedial course of action and the reasons thereof.

##### *Contents of Notice*

26. The notice of registration shall:
  - (a) Record the date of registration of the Request;
  - (b) Include the name of the project, the country or countries where the project is located, the names of the Requestors unless confidentiality is requested, and a brief description of the Request;
  - (c) notify the Requestors that all communications in connection with the Request will be sent to the address stated in the Request, until another address is indicated to CRMU; and
  - (d) Request the Bank's Management to provide CRMU, within twenty-one (21) business days after receipt of the notice and Request, with written evidence that it has complied, or intends to comply with the Bank Group's relevant policies and procedures. The notice shall specify the due date of the response.

**c. *Request Additional Information***

27. If the Director finds the contents of the Request or documentation on representation insufficient, he or she may ask the Requestors to supply further information.
28. The Director shall send a written acknowledgment to the Requestors, and specify if additional information is required, within five (5) business days of receipt of a Request.
29. The Director may decline to register a Request until sufficient information and documentation is filed.

**d. *Outside Scope***

30. If the Director finds that the matter is without doubt manifestly outside the IRM's mandate, he or she shall notify the Requestors of his or her refusal to register the Request and of the reasons supporting that refusal. This will include, without limitation, Requests that:
  - (a) Are clearly outside the IRM's mandate including those listed in Section II(b) Paragraph 2 of these Operating Rules and Procedures;
  - (b) Are from a single individual or from a non-authorized representative of affected parties; and
  - (c) Are manifestly frivolous, absurd or anonymous.

***Records***

31. The number of such Requests and communications received shall be noted in the Register on a quarterly basis and the yearly total included in an annual report prepared by the CRMU (the 'Annual Report').

**e. *Need for Review***

32. Where additional information is required, or where it is not clear whether a Request is manifestly outside the IRM's mandate, the Director may request an IRM Expert to review the Request and advice on whether it meets the requirements for registration.

**f. *Revised Request***

33. If the Requestors receive significant new evidence or information after the initial Request was submitted, they may consider whether or not it is significant enough to justify the submission of a revised Request. The revised request should be received by CRMU within three (3) months from the date of submission of the initial Request.
34. If a revised Request is submitted, the time period for Management's response, the CRMU or the Panel's recommendation, as the case may be, will begin again from the time such revised Request is registered.

**g. *Extension of Time Periods***

35. Any time period referred to in these Rules may be extended by the Director for as long as it is strictly necessary to ensure full and proper investigation, assessment, review and initiative. Any such extension shall be promptly notified to the Requestors and posted on the Register.

**V. *Management's Response***

36. Within twenty-one (21) business days after being notified of the Registration of a Request, Management shall provide CRMU with a Management Response or evidence that it has

complied or intends to comply with the Bank Group's relevant policies and procedures. After CRMU receives Management's response, it shall promptly enter the date of receipt in the Register. A copy of the Management Response shall be sent to the Requestors for information.

37. If there is no response from Management within twenty-one (21) business days, CRMU shall notify the Boards and the President accordingly and send a copy to the Requestors.

*Clarification*

38. In order to undertake a problem-solving exercise and/or make an informed recommendation, CRMU or the Panel, as the case may be, may request clarification from Management in the light of Management's response, request more information from the Requestors; and provide relevant portions of Management's response for comment. A time limit for receipt of the information requested shall be specified; and

- (a) Whether or not such clarification or information is received within the time limit, undertake and conclude the problem-solving exercise and/or make its recommendation to the Boards or the President as hereinafter provided or otherwise terminate the process within twenty-one (21) business days of receipt of such clarification or information, or at the expiry of the time limit for the receipt, of Management's clarification; or
- (b) In the event that it is not possible for the Requestors to provide the information quickly, the CRMU, or the Panel, as appropriate may advise the Requestors to submit an amended Request; the Boards and Management will be notified that the process will recommence when the amended Request is received.

## **VI. Problem-Solving**

*a. Problem-Solving Exercise*

39. In considering whether a problem-solving exercise should be undertaken, the Director shall take into consideration:

- (a) Whether the Requestors and any interested persons are amenable to such problem-solving exercise;
- (b) Whether the problem-solving exercise is appropriate and may assist in addressing undue, incidental effects resulting from Bank Group-financed project;
- (c) Whether the problem-solving exercise is likely to have a positive result;
- (d) Whether the Bank Group has or continues to have sufficient leverage to influence change;
- (e) Whether the conduct of a problem-solving exercise may interfere with the conduct of a compliance review, if any;
- (f) Whether the problem-solving exercise may duplicate, or interfere with, or may be impeded by, any other procedure actively considered by a court, arbitration tribunal or review body (such as an equivalent mechanism at another co-financier) in respect of the same matter or a matter closely related to the Request; and
- (g) Any other relevant matters.

40. If, as provided in paragraph 39 above, the Director determines that a Request may be handled through a problem-solving exercise, he or she shall invite all the relevant parties, namely the Requestors, Management representatives and other interested persons to participate in the exercise.
  41. The objective of a problem-solving exercise is to restore an effective dialogue between the Requestors and any interested persons with a view to resolving the issue or issues underlying a Request, without seeking to attribute blame or fault to any such party. A problem-solving exercise may be conducted only if the Request has been registered in accordance with paragraph 23, but regardless of whether a compliance review is or will be conducted.
  42. In undertaking the problem-solving exercise, the Director may use a variety of problem-solving techniques, including independent fact-finding, mediation, conciliation and dialogue facilitation including use of best customary practices.
- b. *Problem-Solving Report***
43. The Director shall prepare a problem-solving exercise report ('Problem-Solving Report') within thirty (30) business days of the conclusion of the problem-solving exercise and shall include:
    - (a) The facts underlying the Request;
    - (b) The considerations on which the conclusions and recommendations, if any, are based ;
    - (c) Any relevant comments from the Requestors and any interested persons; and
    - (d) If necessary, any issues to be referred for compliance review.
  44. The Director may also decide to provide interim reports to the Boards and the President on the progress of a problem-solving exercise, for information.

*Successful Problem-solving Exercise*

45. If the problem-solving exercise is successful, the Director will include in the Problem-Solving Report the solution agreed upon by the Requestors, Management and any interested person. The Problem-Solving Report shall be provided to all parties in the problem-solving exercise and to the President and the Boards for consideration.

*Monitoring of the implementation of agreement(s)*

46. CRMU shall monitor the implementation of the solution agreed upon in a problem-solving exercise. This will include meeting with the affected communities to ascertain that the problem solving exercise worked as intended and the Bank Group has met its commitments. Where the project forming the subject matter of the Request has not yet been presented to the Boards for their approval, the Director shall submit the monitoring report to the President and, as and when the project is submitted for Board approval, to the Boards. Any report to the President shall be immediately copied to the Boards.

*Unsuccessful Problem-Solving Exercise*

47. If the problem-solving efforts are not successful, either within a period of three (3) months from the commencement of the problem-solving exercise or by common consent of the parties, the Director will declare the problem-solving exercise unsuccessful, and include in the Problem-Solving Report a description of the efforts made, the reasons for their failure and make recommendations on steps the Bank Group could take to deal with the unresolved

issue(s). The Problem-Solving Report should be submitted to the parties in the problem-solving exercise, and to the President and the Boards for consideration.

48. The President, in cases where the project that is the subject matter of the Request has not yet been submitted for Board approval, and the Boards, in cases where the project that is the subject matter of the Request has already been approved, will decide whether to accept or reject the Director's recommendations for remedial action. If the President or Boards decide to reject the recommendation, they will inform all participants in writing of their reasons for doing so. A summary of the decision and the Problem-Solving Report shall, subject to the Bank Group's Disclosure and Access to Information Policy and any requests for confidentiality, be published on the Bank Group's website.

*c. Conversion of a Problem-Solving Exercise to Compliance Review*

49. Where at the conclusion of a problem-solving exercise, whether or not successful, the Director determines, as provided in paragraph 51 below, that a compliance review is warranted, the Director may include in the Problem-Solving Report a recommendation that the project undergo a compliance review. Such a recommendation will be submitted to the President or Boards, as the case may be, for ratification in accordance with paragraph 53 below.

## **VII. Compliance Review**

*a. Eligibility*

50. The Compliance review process will be initiated with a joint determination of the eligibility of the request by the Director of CRMU and the IRM Experts. In case of a deadlock in determining the eligibility of the request, the Director of CRMU shall make the final decision.

*b. Recommendation for a Compliance Review*

51. If, as provided in paragraphs 23, 38 or 49 above, the Director and the IRM Experts determine that there is prima facie evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures, they shall within thirty (30) business days of such determination submit a report recommending a compliance review of the project at issue to the (a) President, with a copy to the Boards, if the Request relates to a Bank Group-financed operation that has not been approved by the Boards, or (b) Boards if the Request relates to a Bank Group-financed operation that has been approved by the Boards.
52. The compliance review recommendation shall include draft Terms of Reference which shall set out the scope and time frame for the compliance review and shall provide an estimate of the budget and a description of additional resources required to complete the review. The IRM Experts shall conduct compliance reviews with administrative and technical support from CRMU.
53. In considering the recommendation for a compliance review, the Boards or the President, as the case may be, may:
  - (a) Approve the recommendation(s) on a 'non-objection' basis; or
  - (b) Remit the Request to the Director and the IRM Experts to reassess the recommendation regarding the draft Terms of Reference for the compliance review, with a new recommendation, if any, being submitted to the President or the Boards as the case may be.

54. Any decision made by the President pursuant to paragraph 53 in respect of an operation that has not been approved by the Boards shall be immediately copied to the Boards. Subject to the provisions of the Bank Group's Disclosure and Access to Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the recommendation for a compliance review and the decision made by the President or the Boards, as the case may be, pursuant to paragraph 53 shall be promptly communicated to the Requestors and any other interested person, and a summary of the decision and the recommendation for a compliance review shall be published on the Bank Group's website.

**c. Denial of a Compliance Review**

55. Where the Boards do not authorize a compliance review, the Director of CRMU shall inform the Requestors accordingly.

**d. Conduct of a Compliance Review**

56. The Panel shall conduct the compliance review in accordance with the relevant approved Terms of Reference and within the required time frame. The Panel shall take any appropriate steps required to conduct the compliance review, and in particular may:

- (a) Solicit additional oral or written information from, or hold meetings with, the Requestors and any interested party;
- (b) Undertake site visits to the project(s) at issue;
- (c) Retain additional expertise in accordance with paragraph 93 below; and
- (d) Take any other action as may be required to complete the compliance review within the required time frame.

57. Prior to taking such steps, the Panel shall take into account the budget implications and administrative requirements of such steps.

**e. Panel Deliberations**

58. The IRM Experts should aim to reach a consensus of opinion on all decisions. If a consensus cannot be reached, all the opinions shall be reported to the Boards. This should enable the Boards to take into account all the views expressed on the matter by the IRM Experts..

**f. Compliance Review Report**

*Contents*

59. Within thirty (30) business days of the completion of its investigations, the Panel shall:

- (a) Prepare a draft compliance review report containing the Panel's findings and recommendations and circulate it to the Bank Management for review and comments on factual matters only. The Bank Management shall submit its comments to CRMU/IRM within twenty-one (21) business days from the date of receipt of the draft report from CRMU/IRM; and
- (b) Upon receipt of comments from Bank Management, the Panel shall finalize its report ("Compliance Review Report"), which shall:
  - (i) Include a summary discussion of the relevant facts, the respective positions of interested party in relation to the subject matter of the Request, areas of

disagreement, if any, between the IRM Experts and Management and the steps taken to conduct the compliance review;

- (ii) Set out the findings of the Panel which, unless otherwise provided in the Terms of Reference, shall be limited to determining whether or not any action by the Bank Group, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies in accordance with paragraph 1;
- (iii) If it concludes that any Bank Group action, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies in accordance with paragraph 1, recommend:
  - a. Any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;
  - b. Any remedial changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements already committed to by the respective Bank Group institution or any other relevant party in existing project-related agreements; and/or
  - c. Any steps to be taken to monitor the implementation of the changes referred to in (i) and (ii) above, and the person in charge of such monitoring (who shall be the Director of CRMU and one of the IRM Experts so appointed unless the Boards or the President, as the case may be, decide otherwise); and
- (iv) Attach a copy of the original Request, the Management response and a list of supporting documents relied upon in the compliance review.

#### *No Award of Compensation*

60. The Compliance Review Report may not recommend the award of compensation or any other benefits to the Requestors or any other person, entity or government beyond that which may be expressly contemplated in a relevant Bank Group policy.

#### *Impartiality*

61. Recommendations and findings of a Compliance Review Report shall be based only on the facts relevant to the Request under consideration and shall be strictly impartial.

#### *Submission*

62. The Panel shall submit the Compliance Review Report for consideration and decision to:
- (a) The President, with a copy to the Boards for information, if the relevant Bank Group-financed project has not been approved by the Boards at the time the Compliance Review Report is ready for submission, or
  - (b) The Boards, if the Boards have approved the relevant Bank Group-financed project at the time the Compliance Review Report is ready for submission.

#### *Communication of the Compliance Review Report*

63. Subject to the provisions of the Bank Group's Disclosure and Access to Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the Compliance Review Report shall be made available to the Requestors at the same time as it is submitted for consideration and decision in accordance with paragraph 62.

#### *Management Response and Action Plan*

64. After the President and the Boards receive the Compliance Review Report, the Bank's Management shall be required to:
- (a) Prepare a Response to the findings and an Action Plan based on the recommendations of the Compliance Review Report. This Response and Action Plan shall be submitted to the President, the Boards of Directors, CRMU and the Requestors within 90 business days. In case of co-financed projects, the Compliance Review Panel can grant the Management an adjustment to this timeframe on a case by case basis;
  - (b) Consult with CRMU to agree on a date for a joint presentation of the Compliance Review Report and the Management Response and Action Plan to the Boards of Directors at a meeting within a time period not normally exceeding 30 business days from the date on which the Action Plan is distributed to the Boards;
  - (c) Consult with CRMU no later than three (3) months from the date of the consideration by the Board of Directors of the Management Action Plan, and agree on the preparation and submission to the Board of any reports on the progress of implementation of any recommendations of the compliance review report that have been approved by the Board, and of the approved Management Action Plan; and
  - (d) Submit to CRMU copies of reports on the progress of implementation of the Management Action Plan submitted to the Board. The IRM Panel and CRMU (the IRM monitoring team) will review these reports, and provide, if necessary, an assessment of the progress achieved in the implementation of the Management Action Plan and submit a report to the Boards for consideration. The IRM monitoring team will share its findings with Management and the Requestors for clarification of issues before submitting its report to the Boards for consideration.

#### *Contents of Decision*

65. The Boards or the President, as the case may be, shall decide whether or not to accept the recommendations in the Compliance Review Report. Any decision made by the President in respect of a Bank Group-financed project that has not been approved by the Boards shall be immediately copied to the Boards.

#### *Publicity of Compliance Review decision*

66. Subject to the provisions of the Bank Group Policy on Disclosure and Access to Information (in particular those relating to the disclosure of confidential information and/or documents), the decision made by the Boards or the President, as the case may be, pursuant to paragraph 65 shall be promptly communicated to the Requestors and any interested party. Subject to the same provisions, such decision and the Compliance Review Report shall be published on the Bank Group's website.

#### *Monitoring of changes*

67. The persons in charge of monitoring the implementation of the changes referred to in subparagraph 59(b) (iii), and the Management Action Plan approved by the Board or the President, as the case may be, shall submit monitoring reports on such implementation to the



Board or the President, as the case may be, for consideration, as often as required and in any event not less than once a year. Any report to the President shall be immediately copied to the Board. The final monitoring report will conclude the compliance review process.

## **VIII. Advisory Function**

68. Under this function, the Advisory service will be carried out by CRMU, and Spot-check advisory reviews of project compliance by the IRM Experts.

### ***a. Advisory Services by CRMU***

69. Advisory services of CRMU will be triggered:

- (a) Upon receipt by CRMU of a request for advice or technical opinion from the President and/or the Boards; or
- (b) Upon approval by the President and/or the Boards of a proposal submitted by the Director of CRMU for such advisory service.

70. The scope of the advisory service will be:

- (a) Requests for advice must be consistent with the mandate of the CRMU and not be project-specific; and
- (b) Upon the submission of a request for advisory services, CRMU will prepare Terms of Reference that clearly outline the scope of the advice sought. These Terms of Reference will be attached to the Advisory Note to be sent to the President and/or the Boards, as the case may be.

71. The specific objectives of the advisory work of CRMU will depend on the nature of the request, but will typically include:

- (a) Bringing about systemic improvements in environmental and social policies, procedures, strategies and/or guidelines of the Bank Group by addressing deficiencies in systems, policies, procedures, strategies or guidelines;
- (b) Improving on the social and environmental impact of projects funded by the Bank-Group by advising the Bank Management on emerging, strategic, or systemic issues or processes based on lessons learnt and trends identified by CRMU during the handling of the requests through problem-solving exercises, compliance reviews or outreach activities;
- (c) Helping the Bank Group to understand how the environmental and/or social obligations contained in Bank Group policies and procedures may be met more effectively by Regional Member Countries to safeguard development impacts; and
- (d) Providing information and recommendations on emerging trends arising from the experience of the CRMU.

72. The Principles that underpin the advisory service of CRMU are that:

- (a) The advisory role must fall within the mandate of CRMU as defined in these Operating Rules and Procedures;
- (b) It will consist of independent opinions on systemic issues and technical advice on projects and programs of the Bank Group ;
- (c) The sole purpose shall be for institutional learning;
- (d) The advice is given formally in writing; and
- (e) The independence of CRMU will not be compromised.

**b. *Spot Check Advisory Reviews***

- 73. The main objective of the spot check exercise is to gather information, draw lessons from the experience of the IRM for the purpose of advising Management on the issues associated with high risk projects.
- 74. If in the process of a spot check exercise, a *bona fide* request is made on the same project, CRMU will separate the spot checking exercise from the investigation of the complaint. The investigation of the complaint will be undertaken with the support of outside expertise as may be approved by the Boards during the approval of the Terms of Reference (ToR) to undertake the compliance review.
- 75. The Spot-check advisory reviews of project compliance will be undertaken following the procedure below:
  - (a) At the beginning of each calendar year, CRMU will select not more than two (2) high-risk (environmental and social) on-going projects on which the IRM Expert will conduct spot-checks to assess the Bank Group's compliance with its policies and procedures; and
  - (b) Once the projects have been selected, CRMU will recommend the names of the projects to the Boards for approval. Such recommendation shall include the Terms of Reference, a time frame of not more than six months for each review, and the estimated budget for the advisory reviews.
- 76. Each year, one IRM Expert will be given the responsibility to undertake spot check activities. The IRM Expert assigned to such spot-check activities shall not be involved in undertaking any compliance review activity during that year. The other two IRM Experts will be responsible for undertaking all compliance review activities for the year.
- 77. **Transparency and information Disclosure:** The IRM shall carry out its advisory function in a transparent manner and ensure the disclosure of finalized Advisory Notes is subject to the provisions of the Bank Group Policy on Disclosure and Access to Information. In particular, where the advice is requested by the President and/or the Boards as part of an internal Bank Group deliberative process, the IRM will not disclose the advisory note. The IRM's Advisory role will not disclose any confidential information acquired by the IRM's problem-solving and Compliance review functions.

## **IX. Administration of the CRMU**

### ***a. Term of Director***

78. The Director shall be selected by a panel composed of a Board member, a representative of Management and an independent external advisor. He shall be appointed by the President with the concurrence of the Boards, for a five (5) year term that may be renewed only once for a successive five (5) year period. The Director shall not have worked for the Bank Group in any capacity whatsoever for the period of at least five (5) years prior to his or her appointment and shall not be entitled to work for the Bank Group in any capacity whatsoever following the expiry of his or her appointment. The Director may only be removed from his/her position through the same process as was followed for his/her appointment.

### ***b. Responsibilities of the Director***

79. The Director shall have overall responsibility for the day-to-day operations and external relations of the IRM, which shall include, but not be limited to:

- (a) Arranging for the selection of Experts for the Roster as required upon resignation or expiration of an Expert's term of appointment in accordance with the Bank Group's procurement rules, as applicable to the selection of consultants and preparing the President's recommendation and reports to the Boards concerning the appointment and removal of Experts;
- (b) Establishing such administrative procedures and guidelines necessary for the proper functioning of the CRMU and the Roster;
- (c) Overseeing the establishment and maintenance of the Register open to the public on the Bank Group's website, which shall contain significant data concerning the delivery and registration of Requests, as well as the conduct and outcome of problem-solving exercises and compliance reviews;
- (d) Maintaining a documentary record for each Request, as well as a library of all materials relevant to the functioning of the IRM;
- (e) Sending out notices of registered Requests to all interested persons; noting the progress of each Request on the Register and, if required by the circumstances, providing additional updates on such progress to the Requestors and other interested persons; responding to requests for information from Requestors and other interested persons in respect of a particular Request;
- (f) Dealing with any requests for information about the IRM; publicizing and being the spokesperson of the IRM;
- (g) Ensuring that all timeframes are met and approving any extensions in accordance with paragraph 35; liaising with other CRMU staff and the Experts, and ensuring that such CRMU staff and Experts fulfill their responsibilities generally and in accordance with any applicable Terms of Reference;
- (h) Without prejudice to the powers of the Boards and the President under these Rules, taking any steps required to ensure the integrity of CRMU processes, including the replacement of any Expert whose impartiality or independence in any compliance review is in doubt;

- (i) Arranging for any translations of Requests, reports or other documents that may be required;
- (j) Providing administrative and technical support to other CRMU staff and the Experts, including without limitation, making and supervising arrangements for meetings, site visits and IRM proceedings in the Bank Group's principal office or elsewhere;
- (k) Administering the budgetary allocations for the CRMU;
- (l) Overseeing the establishment and maintenance of one or more databases of consultants, researchers, technical experts, mediators, conciliators, facilitators, translators, interpreters, etc., whose services may be called upon in connection with compliance reviews and problem-solving exercises;
- (m) Providing advice and technical opinion to the President and/or the Boards, as may be approved by the Boards under the advisory services of CRMU.
- (n) Undertaking any other tasks that may be necessary or incidental to the administration of the CRMU and/or the Roster.

**c. *Delegation by Director***

80. In his or her absence, the Director may delegate his or her authority to members of staff in his or her office in accordance with the Bank Group's Delegation of Authority Manual as may be amended from time to time.

**d. *Appointment of Experts to Roster***

*Roster*

81. The Roster shall comprise three (3) individuals 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 paid a daily honorarium (fee) when called upon to work for the IRM and be guaranteed a minimum of 12 days of work per annum. The honorarium (fee) shall be equivalent to the remuneration paid by other multilateral development banks for similar officials as adjusted by the Board of Directors from time to time. The Experts shall be reimbursed for their travel and other expenses on the basis provided in the Bank's Travel policy for senior management staff.
82. On the President's recommendation, after consultation with the IRM Experts, the Board of Directors shall appoint one of the members of the Roster of Experts as the Chairperson of the Roster each time a new member of the Roster is appointed.

*Selection Criteria*

83. The Experts shall be nationals of member countries of the Bank or State participants in the Fund and shall be selected on the basis of their knowledge of and exposure to developmental issues in Africa, their experience, expertise, integrity and ability to act independently. In making these appointments, the Board and the President shall pay due regard to maintaining a reasonable degree of diversity of expertise, nationality, gender, and experience particularly in economic, legal, social, environmental and related fields.

*Term of Experts*

84. The Experts shall be appointed to the Roster for a non-renewable term of five (5) years. If an Expert is engaged in a compliance review at the time the Expert's term expires, the term shall be extended for such period as may be necessary, but in any event by not more than six (6)

months to enable the Expert to complete writing the compliance review report, unless the Boards remove the Expert in accordance with paragraph 90.

*Restriction on Bank Group employment*

85. Executive Directors, Alternate Executive Directors, Senior Advisers and Advisers to Executive Directors, any Officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster of Experts at the end of their service with the Bank. 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, Elected Officer, Senior Adviser or Adviser to an Executive Director or Consultant) after the expiry of his or her term.

*Capacity of Experts*

86. When performing IRM functions, Experts shall serve in their individual, personal capacity and shall be subject to the same privileges and immunities, relevant Code of Conduct provisions, conflict of interest rules and confidentiality provisions as officials of the Bank Group. Experts shall be required to act impartially, independently and with integrity. They shall not solicit requests and shall not participate in a compliance review of any Request related to a matter in which they have or had a personal interest or significant involvement in any capacity. Experts shall not interfere in the political affairs of members of the Bank nor shall they be influenced in their deliberations or decisions by the political character of the member(s) concerned. Experts shall immediately disclose to the Director:

- (a) Any circumstances which might be deemed to affect their impartiality or independence in the discharge of their IRM functions; and
- (b) Any attempt to interfere with or improperly influence the discharge of their IRM functions.

*No communications by Experts*

87. Except as authorized by the Boards or the President, as the case may be, Experts shall refrain from making any statement, whether private or public, to parties other than the Requestors and any interested person on matters under consideration by the IRM. Nothing in this paragraph shall prevent an Expert from undertaking any type of public consultation that he or she considers necessary as part of a compliance review.

*Training of Experts in Bank Group matters*

88. Experts shall be required to attend meetings organized by the Director for at least five days in each calendar year to enhance their knowledge of the Bank Group's policies, procedures and operations and to discuss the functioning of the IRM. The Director shall notify the Experts of any such meetings and shall set the agenda.

*Access to documentary records*

89. The Experts shall have full access to such documentary records maintained pursuant to subparagraph 79(d). Whenever an Expert obtains additional materials in the course of a compliance review, the Expert shall immediately provide a copy of such material for safekeeping in the documentary record.

*Replacement of Experts*

90. If a Panel Member conducting a compliance review resigns or is 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.

### *Removal of Experts*

91. The Boards may remove Experts from the Roster at any time for cause.

## **X. Conduct of IRM Proceedings**

### **a. *Proceedings generally***

92. All IRM inquiries, assessments, reviews and exercises shall be carried out as expeditiously as possible without compromising the integrity or comprehensiveness of such process. The Director and Panels shall take due account of the need to include any Bank staff, Requestors and any other interested persons who may have relevant information. The Director and Panels shall take care to minimize the disruption to the daily operations of all involved parties.

### **b. *Additional expertise***

93. The Director and/or a Review Panel shall be entitled to seek additional expertise to assist with an inquiry, assessment, review or exercise, if this is necessary for the successful performance of their duties and responsibilities. To avoid a conflict of interest, or an appearance of a conflict of interest, the expertise must be sought externally, provided that the selection and appointment of any consultants, researchers, interpreters, translators and/or other technical experts shall:

- (a) Be made, to the extent possible, with due regard to the Bank Group's procurement rules regarding the selection and appointment of consultants and in consideration of the short time periods within which tasks requiring external expertise are to be completed;
- (b) Be made under the supervision of the Director; and
- (c) Be subject to the availability of the necessary budgetary resources.

### **c. *Access to Bank Group staff and information, and confidentiality***

94. When conducting any inquiry, assessment or review for a problem-solving exercise or a compliance review, the Director or a Review Panel shall have full access to relevant Bank Group staff and files, including electronic files, cabinets and other storage facilities and Bank staff shall be required to cooperate fully with them. However, the access to, and use and disclosure of, any information gathered by the Director or a Review Panel during any such process shall be subject to the Bank Group's Disclosure and Access to Information Policy, any requests by an interested person for confidentiality and any other applicable requirements to keep sensitive commercial information confidential (such as a confidentiality agreement). No CRMU staff, Expert, Bank staff member, consultant, researcher, interpreter, translator and other technical expert employed by the CRMU may release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who has provided such document.

### **d. *Legal matters***

95. The General Counsel shall, upon request, provide all legal information and advice needed in respect of the Bank Group's policies and procedures and the Bank Group's rights and obligations in respect of the Bank Group-financed project to which a Request relates, as well as such advisory opinions and interpretations on points of law as the President or the Board of Directors shall determine.

## **XI. General Provisions**

### ***a. Annual report***

96. The Director shall prepare the Annual Report describing the activities of the IRM during the preceding year, including a discussion of any identifiable trends relating to the activities of the Bank Group that have emerged from the IRM's problem-solving exercises and compliance reviews, and lessons that the IRM has learnt about the impacts and challenges in implementing the Bank Group's operating policies and procedures.
97. The Annual Report shall be prepared in consultation with all the Experts on the Roster and shall be submitted to the Boards and the Boards of Governors for information, and shall be published on the Bank Group's website.

### ***b. Budget***

98. The Bank Group shall provide such budgetary resources as shall be sufficient to allow all of the activities permitted by these Rules to be carried out. The Director shall prepare an annual budget indicating the level of resources required to carry out its mandate.

### ***c. Business Days***

99. Any reference to 'business days' in these procedures shall be deemed to be a day on which the Bank Group is open for business in its principal office.

### ***d. Immunities and Privileges***

100. Nothing contained in these Rules shall be deemed to be a waiver by the Bank or the Fund of the immunities and privileges conferred by the Agreement establishing the African Development Bank, the Agreement establishing the African Development Fund, the Agreement establishing the Nigeria Trust Fund and the agreements establishing any other Special Funds administered by the Bank.

### ***e. Amendment and effect of the Rules***

101. The Boards may amend these Rules. These Rules shall prevail in the event of any inconsistency between these Rules and any other Bank Group document and in the absence of an express provision to the contrary.