



ACCOUNTABILITY RESOURCE GUIDE

Tools for Redressing Human Rights &
Environmental Violations by
International Financial Institutions,
Export Promotion Agencies &
Private Corporate Actors

ACCOUNTABILITY COUNSEL
www.accountabilitycounsel.org

ACCOUNTABILITY RESOURCE GUIDE*

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Violations by International Financial Institutions,
Export Promotion Agencies, & Private Corporate Actors

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A C C O U N T A B I L I T Y C O U N S E L

Accountability Counsel is a non-profit organization based in San Francisco, California. We work toward environmental and human rights accountability in international finance and development through:

Trainings and Claim Support

We conduct trainings about the mechanisms available to hold international financial institutions and corporations to their social and environmental project commitments.

Policy Advocacy

We advocate for stronger existing accountability mechanisms and creation of new complaint systems so that banks, corporations and institutions are held to the norms and standards to which they have agreed.

Our Mission

Accountability Counsel defends the environmental and human rights of communities around the world by creating, strengthening, and using accountability systems. We specialize in non-judicial grievance procedures related to international finance and development.

We accomplish our mission by: (1) raising awareness and providing legal support to facilitate community complaints to accountability mechanisms, and (2) providing expert policy advice to advocate for new avenues of redress, and for reforms so that existing mechanisms are accessible, robust, and effective tools for justice.

To learn more, please visit us at www.accountabilitycounsel.org or contact us:

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Introduction: How To Use This Guide

The purpose of this Guide is to provide information for people who are, or who may be, harmed by projects sponsored by:

- **international financial institutions,**
(such as the World Bank, the International Finance Corporation (IFC) and regional development banks)
- **export promotion agencies, or**
(such as the U.S. Government's Overseas Private Investment Corporation (OPIC) and the Japan Bank for International Cooperation (JBIC))
- **private multi-national corporations.**
(such as Chevron, Rio Tinto, and Shell)

Examples of the types of projects causing harm where this Guide may be useful are: mines; oil and gas extraction, production and pipeline facilities; water privatization projects; agricultural projects (such as palm oil); and forestry projects.

This Guide is intended to assist community leaders, lawyers, and non-governmental organizations in determining what rights they have and how they may access accountability mechanisms when those rights have been or may be violated. Communities working with Accountability Counsel will be encouraged to meet together to discuss the following questions before deciding on an advocacy strategy:

Question 1: What is the Source of the Harm? When a community is attempting to identify the source of the harm it has already experienced or that is feared in the future, the harm may be caused by the agency or corporation implementing the project, but it also may be necessary to look to the financing institutions investing in the project. Often, there is more than one actor involved. For example, the source of the harm in an oil project may be the oil company operating on the ground *and* project sponsors such as the World Bank Group's International Finance Corporation (IFC) and other commercial banks that have financed the investment.

Information about which actors are involved in a project may be available through the project company itself, through a local or
Accountability Resource Guide

WHEN TO USE THESE TOOLS

- A community may seek solutions to problems by using the tools in this Guide for harm that has already happened or harm that is feared in the future.
- These tools may be used where a project is harming people directly (such as through involuntary displacement), or through impacts on the resources they depend on (such as through water pollution).

national government agency, through the websites of financing institutions, or through media reports. If a community is not able to find out who is causing harm, or if fear of retribution is a concern during the process of looking for information about a particular project, it may be necessary to seek research assistance from Accountability Counsel, or regional, national or international NGOs for that purpose. For further discussion of this, including the information disclosure policies of some institutions and other strategic considerations, see Part I below.

Question 2: What Are Your Rights? The second step is to determine which rights the harmed community has under international law, domestic laws, or the rights created at the project level by the policies of project financiers (such as the World Bank).

Question 3: Enforcing Your Rights. If any of these rights are threatened or violated, claims or complaints may be brought through the applicable mechanisms discussed in this Guide as well as others that may apply in the local context.

This Guide discusses what accountability mechanisms are, how they function, and how to initiate a claim or complaint under each mechanism. The term “accountability mechanism” in this Guide means an office in an institution that has been given the authority by that institution to try to resolve a dispute or determine compliance with policy of that institution. Accountability mechanisms may resolve the dispute formally or informally, and mechanisms use a variety of tools to resolve the dispute, including investigations or formal legal proceedings.

ACCOUNTABILITY MECHANISMS:

- receive complaints from project-affected people about harm caused, or that is likely to be caused, by an institution;
- determine whether the project-affected people are eligible to complain; and then, if they are found eligible, they
- investigate whether the institution’s policies or procedures have been violated by the institution and whether those violations have caused or are likely to cause harm to people or the environment.
- Finally, the accountability mechanism issues a public report with their findings of the investigation and recommendations, if any.
- The institution’s Board of Directors has the final say about what will be done about the project.

Attached to this Guide is an Appendix of Materials which includes links to the relevant policies and procedures for the institutions discussed here, brochures from the mechanisms themselves, and other guides similar to this one. The Appendix should be read along with the Guide for each of the mechanisms discussed below.

Please contact Accountability Counsel for a hard

copy of the Appendix if needed.

Part I of this Guide discusses strategic considerations that should be addressed before using any of the mechanisms described in this Guide.

Part II presents information about international and regional development bank accountability mechanisms. These mechanisms may be useful for those who have been, or are likely to be, negatively affected by a project financed by one or more of these institutions. Generally speaking, a person or organization may complain to an accountability mechanism if the institution has violated, or is likely to violate, one of its own policies and procedures in the planning, design or implementation of a project. Those harmed must usually be able to explain how the policy violation caused or may cause them harm. If a project is financed by more than one of the institutions, complaints may be submitted simultaneously to more than one of these mechanisms.

Part III provides information about export promotion agencies. Export promotion agencies, some of which are known as “export credit agencies” are departments of national governments that support domestic corporations by giving them insurance or financing (such as loans) for exports or projects abroad. The agencies are only just beginning to create accountability mechanisms.

Part IV discusses the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (which include standards on the environment, labor rights, human rights, corruption and other issues) and the National Contact Point (NCP) system that exists to hear complaints about “specific instances of conduct” by multinational companies that have violated the Guidelines.

Part V addresses the Equator Principles, a set of norms adopted by private banks that do not yet have a formal accountability mechanism, but may soon.

ALLOWING YOUR VOICE TO BE HEARD DESPITE LIMITS

- The mechanisms discussed in this Guide are a limited selection of the tools that may be used to assert your rights.
- While there are limitations to each mechanism, they can provide a way for project-affected people to raise concerns regarding human rights and environmental violations.
- These mechanisms are still relatively new and are developing. Some are more independent and effective than others. At a minimum, they provide a forum to raise disputes when there is often no alternative way for your voice to be heard.

PART I STRATEGIC CONSIDERATIONS

Before using any of the mechanisms below, you may wish to discuss the following issues with your community. While you may not be able to resolve all of these issues before moving forward with the chosen strategy, it may make action easier if these issues are addressed in advance.

- **Who is affected by the project?** What is your definition of community? Some groups of people may be *directly* affected, while others may be *indirectly* affected. The group of people affected may be wider than those in your traditional “community.”
- **Community relations:** Are there community divisions that could become worse depending on the course of action chosen? Will community divisions undermine the effort to address the harm? Or can divisions be overcome so that the efforts are cooperative?
- **Who will speak for and lead the group?** Will there be a spokesperson? Will the group operate by consensus, by a majority vote, or by another method?
- **What is the end goal?** What does the community hope to accomplish? While reaching a consensus in the community about goals is important, possible goals may conflict and could include conflicting ideas about the project itself. For example, the community’s goal could be to simply raise awareness locally, nationally or globally about a project affecting the community, or it could be to halt the project, or any goal in between. If forced resettlement is causing harm, there may be disagreement about the most desirable form of compensation. It may help to be aware of differing ideas and try to negotiate a common position before any action is taken.
- **What are realistic expectations for possible outcomes?** The results of a formal complaint to a mechanism (or a lawsuit) may or may not be effective. Depending on the situation, a realistic outcome may simply be that attention is brought to the community’s issue and a factual record is created; or it may be realistic to expect compensation for harm. This will vary from case to case. In those cases where only a record of the harm is created, the community may be able to use this record to press for change through informal avenues – like use of the media, NGO or political campaigns. In some cases, despite all efforts, it is important to be aware that there may be no positive outcome as a result of engaging with one or more of the mechanisms described in this Guide.
- **How much time and what resources are available?** Some mechanisms require that a claim or lawsuit be brought within a certain time period. In addition, the entire process of bringing a claim may be slow and could be expensive. It may be possible to receive assistance from local or international non-governmental organizations (NGOs) or foundations to cover expenses.
- **Awareness of the available tools:** Often, many tactics working together are needed to make change. Claims to the mechanisms discussed in this Guide will be

only *part* of an effective campaign. Some additional tools and strategies to consider are:

- Mobilizing a local grassroots coalition to support all aspects of the campaign – filing a claim to one of the mechanisms described below has often served as an organizing tool;
 - Making use of contacts within government to put pressure on the people or institutions causing the harm (*i.e.* lobbying or advocacy);
 - If appropriate, attempting to negotiate with the institution or corporation causing the harm;
 - Engaging with the media to cover your issue;
 - Filing claims to one of the accountability mechanisms if they have taken part in the project harming your community;
 - Filing a “specific instance of conduct” complaint with the OECD National Contact Point regarding specific corporate misconduct;
 - Filing a lawsuit in a local, foreign or international court against those who participated in the project that caused harm.
- **Which tools will be used and in what order?** A community may first try to directly negotiate with the corporation or institution causing the harm. If that does not work, it may develop a media and grassroots campaign, and the campaign may culminate in a complaint filed to one of the mechanisms described in this Guide. Some of the mechanisms require contacting an implementing agency or financier directly before submitting an official complaint. The order of the tools used may vary case by case.
 - **Information disclosure tools:** Many of the institutions discussed in this Guide have policies regarding information disclosure that give project-affected people the right to certain types of information about specific projects or bank policies. The information disclosure policies are based on the “presumption of disclosure” – that is, unless there is an important reason not to disclose information, the staff of the institutions below will be directed to disclose the information. Part II, below, describes the information disclosure policies for institution that have adopted these policies. In addition, the NGO Bank Information Center (BIC) has a “Toolkit for Activists” containing detailed advice about access to information at the institutions. To access their Toolkit, please visit BIC’s website at <http://www.bicusa.org/en/Page.Toolkits.aspx>.
 - **Safety issues:** Confidentiality may not always be maintained and retaliation by those who disagree with you could be a real danger. You may want to consider having others speak on your behalf if you feel unsafe speaking out. However, even if you coordinate a campaign with international allies to act on your behalf, this will not guarantee safety from retaliatory abuse.

- **Other considerations:** Asserting your rights, regardless of the tools chosen, can be long, drawn out and frustrating. However, if expectations are realistic and it seems reasonable to engage one of the mechanisms nonetheless, it may be worth the time and effort.

Because of the length of time that may be involved in bringing a complaint, it may be wise to develop short-term strategies for how you and your community will be able to cope with or address the issues you are experiencing.

Make A Record. Once these issues are discussed and the community determines that it will pursue using one or more of the mechanisms discussed in this Guide, it is important to record all the information you have about the harm you are experiencing. If possible, take pictures, record events or places on video, take notes and tape or video record interviews with those harmed. This evidence may be crucial in demonstrating the harm you are experiencing or that you expect.

In addition, it is crucial that you take detailed and accurate notes and keep records of all steps you have taken to resolve your problem, which may include: notes of meetings with local officials, representatives of corporations or institutions; copies of letters you have sent regarding the issues affecting you; records of phone calls you have made, etc. Remember to keep these records with the recognition that they may be reviewed by others years later.

Contact Allies For Support. If you need assistance formulating your strategy or would like more information about any of the issues discussed above, please contact Accountability Counsel at natalie@accountabilitycounsel.org. Accountability Counsel may be able to put you in touch with communities that have made these decisions in the past and/or organizations that have helped them through the process. It may be valuable to speak to local, national or international groups that have used these mechanisms in order to learn from their experiences.

THE IMPORTANCE OF FOLLOW-UP

Once a complaint has been filed with one of the mechanisms in this Guide, it is important to continue to provide the mechanism with updated information about your complaint. It is also important to monitor your complaint to ensure that the accountability mechanism is following its own procedural rules.

PART II THE INTERNATIONAL FINANCIAL INSTITUTIONS (IFIs)

If you have been harmed or believe that you will be harmed as a result of a project, you may be able to have your voice heard through filing a request for inspection or a complaint to an IFI accountability mechanism. In order to determine whether there is a mechanism through which you can complain, the first step is determining who is causing or is expected to cause the harm. This section of the Guide helps you to make this determination and decide where to complain.

While this Guide provides information about IFI accountability mechanisms, additional background information about the IFIs themselves may be helpful and is available online. The organization Bank Information Center (BIC) in Washington, D.C. has a detailed website that compiles information about many of the international and regional development banks.¹ BIC, a particularly useful resource, is an “independent, non-profit, non-governmental organization that advocates for the protection of rights, participation, transparency, and public accountability in the governance and operations of the World Bank Group and regional development banks.” Providing information about the IFIs to affected people is one of BIC’s central functions.

WHAT TO EXPECT AFTER SUBMITTING A COMPLAINT

- At a minimum, if you file a complaint, your voice will be heard on an international level.
- It is possible that the filing of a complaint may only result in creation of a record of the harm.
- Sometimes, however, projects are changed or people are compensated as a result of filing a complaint.

A number of individuals and organizations provide free advice and support to people concerned about harm from projects financed from abroad. Please contact the Accountability Counsel at info@accountabilitycounsel.org for more information.

¹ See <http://www.ifitransparency.org/> and <http://www.bicusa.org/en/Page.Toolkits.aspx>.

The World Bank Inspection Panel

What is the World Bank?

The mandate of the World Bank Group is poverty alleviation. The World Bank Group is made up of 184 member countries and consists of five different institutions, the:

- International Bank for Reconstruction and Development (**IBRD**),
- International Development Association (**IDA**),
- International Finance Corporation (**IFC**),
- Multilateral Insurance Guarantee Association (**MIGA**), and
- International Centre for Settlement of Investment Disputes (**ICSID**).

The World Bank is also one of the three implementing agencies of the Global Environment Facility (**GEF**), which finances projects to address environmental problems. The **IBRD**, **IDA** and **GEF** give grants and loans to the public sector. When people talk about the ‘World Bank’, they are usually referring to the **IBRD** and **IDA**. These two institutions provide low-interest loans directly to governments for specific projects or initiatives.

The **IFC** supports private sector investment in developing countries through loans, advisory services and other financial tools. **MIGA** provides insurance to private corporations investing in developing countries.

ICSID is like a commercial court and it is used only to settle investment disputes between governments and foreign investors – it cannot be used directly by people who have been harmed by World Bank projects.

INSPECTION PANEL QUICK SUMMARY

Submit a complaint to the World Bank Inspection Panel if:

- You are part of a group of two or more people (or their representative) who live in an area affected by a World Bank-financed project;
- You’ve been harmed or are likely to be harmed by a project financed by the Bank’s public-sector institutions, **IBRD** or **IDA**;
- The harm has been or will be caused by the Bank’s failure to fully comply with its own operational policies and procedures;
- You have already attempted to resolve the issue with Bank management; and
- The Bank loan is less than 95% disbursed.

If your complaint is eligible, the Panel will investigate the Bank’s compliance, the Panel will issue a public report to the Bank’s Board, and Bank management will respond with an action plan to address any findings of non-compliance. The Bank’s Board decides what to do in the end.

What is the World Bank Inspection Panel?

The Inspection Panel was the first accountability mechanism of its kind and began operations in 1994. The Panel receives Requests for investigation directly from people harmed, or who believe they are likely to be harmed, by World Bank projects or programs as a result of the World Bank's failure to comply with its own policies or procedures.

The Panel consists of three Panel members and a small staff. To ensure independence, Panel members cannot have worked for the Bank in any capacity for the two years before they work for the Panel, and can never work for the Bank again after their five-year term as a Panel member is complete.

The Panel may only investigate projects financed by the public sector branches of the World Bank Group: the IBRD, IDA, and GEF. Requests for Inspection should describe the harm or expected harm to project-affected people or the environment as a result of the World Bank's failure to comply with its own policies or procedures.

How Does the Panel Operate?

Once the Panel receives a Request, it notifies the Requesters that it has received the Request and sends a copy of the Request to World Bank Management. Management has 21 days to respond to the allegations in the Request. The Panel then has another 21 days to determine whether the Request is eligible and merits an investigation.

The Panel's determination of eligibility will usually involve a visit to the project site and meeting with project-affected people. The Panel submits an eligibility report to the World Bank Board of Directors, which includes the Panel's independent assessment of the merits of the Request, its analysis of Management's response to the Request, and its recommendation to the Board of Directors about whether the Request should be investigated.

The Board of Directors reviews the Panel's report and, if the Board approves a Panel investigation, the Panel may visit the project site again. In full investigations, the Panel gathers further information, talks with affected people, reviews all relevant documents, interviews people who participated in the project (including Bank staff at headquarters in the U.S. and in the project area) and may hire experts to conduct independent analysis of the issues raised in the Request.

When a Panel investigation is complete, the Panel submits its final report to the Board of Directors and to Bank Management regarding whether the Bank is in compliance with its own policies and procedures. Bank Management is then given six weeks to submit its own recommendations to the Board on what actions the Bank should take in response to the Panel's findings.

Based on the Panel's report and Bank Management's recommendations, the Board of Directors then decides what to do next. There is no right to appeal the Board's decision. Two weeks after the Board considers the Panel and Management's final reports, the reports and the decision of the Board of Director are made public.

Submitting a Request to the World Bank Inspection Panel

The next sections of this Guide describe how to determine whether your Request is eligible for an Inspection Panel investigation and the information you should include in your Request for Inspection if you believe you have an eligible Request.

The Inspection Panel has published a brochure with information about the Panel and instructions on how to file a Request with the Panel. The brochure can be found on the Inspection Panel website in twelve languages.² In addition, please refer to the *Strategic Guide* and *A Citizen's Guide to the World Bank Inspection Panel*, which contain detailed instructions on how to file a Request with the Panel.³

Determining the Eligibility of Your Request

Several criteria must be met in order for a Request to be eligible for an Inspection Panel investigation.

1. Project-affected people – or their representatives – must first make an effort to resolve the issues with Bank staff. You may contact the World Bank staff in the office nearest you. If Bank staff's response has not been satisfactory, a Request may immediately be submitted to the Inspection Panel.
2. The Inspection Panel only has the ability to investigate Requests arising from projects financed by the Bank's public sector institutions, IBRD or IDA (see above). The private sector institutions have their own complaint mechanism – the Compliance Advisor/ Ombudsman – which is described below.
3. The Inspection Panel can only investigate when the amount of the loan or credit funding the project has been less than 95% disbursed.⁴
4. The Inspection Panel cannot investigate problems related to procurement.

The Contents of a Request for Inspection

Requests to the Inspection Panel may be submitted in any language. Generally, Requests are written in the form of a letter. Requests should include the following information:

- **Identity of Affected People:** The Request must include the names of two or

² See The World Bank Inspection Panel Brochure “*We can make your voice be heard?*”, available online at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20205105~menuPK:434366~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html>.

³ See Dana L. Clark, *A CITIZEN'S GUIDE TO THE WORLD BANK INSPECTION PANEL* (2nd Ed. CIEL 1999) (available online at <http://www.ciel.org/Publications/citizensguide.pdf>) and Dana L. Clark, “Strategic Guide” (Friends of the Earth and the International Accountability Project 2004), available online at http://www.accountabilityproject.org/downloads/strategic_guide.pdf. For these issues generally, the International Accountability Project (IAP) is an important source of information, experience and advice. Visit the IAP online at <http://www.accountabilityproject.org/>.

⁴ See the World Bank Inspection Panel Operating Procedures §I,(2).

more affected people, or the name of the organization bringing the Request on their behalf. If a representative of the affected people files the Request, the Request must include the name of the representative and proof that the organization has authorized the representative to act as an agent on their behalf. Affected people may request that the Inspection Panel keep their names confidential if they fear that they will be harmed as a result of speaking out.

- **Description of the Project at Issue:** The Request should include the name and description of the World Bank (IBRD, IDA or GEF) project or program, if known.
- **Description of Harm:** Describe the harm that the project has already caused, the harm the project is currently causing, or the harm that is expected as a result of the project. Harm may be to people, to the resources they depend on, or to their environment.
- **Describe Why the World Bank is Responsible for the Harm:** In order to investigate your Request, it should be evident how the World Bank (IBRD, IDA or GEF) has caused or may cause harm by violating its own policies and procedures. If possible, describe which policies or procedures you believe have been or are being violated. If you cannot identify specific policies or procedures, you may simply explain why you believe the World Bank is responsible for the harm.
- **Describe Steps You Have Taken to Address the Problem:** The Inspection Panel may not investigate a Request until the project-affected people have taken steps to raise their concerns about the project with World Bank staff. Your Request must describe the steps you have taken to contact World Bank staff with your concerns, and a description of the Bank's response (if any), and why the response did not resolve the problem.
- **Attach Relevant Documents or Other Evidence to Your Request:** Along with your letter containing the information above, the Request to the Inspection Panel should include copies of any evidence that you believe supports your Request. For example, you may include photographs of the project site, statements from affected people, or copies of letters sent to the Bank and their response(s), if any.

World Bank Policies and Procedures

Two types of World Bank policies that may apply in submitting a Request for Inspection are Bank Procedures (BPs)⁵ and Operational Policies (OPs).⁶ As the World Bank describes:

⁵ See World Bank "Bank Procedures" at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:4564187~pagePK:64719906~piPK:64710999~theSitePK:502184,00.html>.

- **Bank Procedures (BPs)** – “explain how Bank staff carry out the policies set out in the OPs. They spell out the procedures and documentation required to ensure Bank-wide consistency and quality.”
- **Operational Policies (OPs)** – “are short, focused statements that follow from the Bank's Articles of Agreement, the general conditions, and policies approved by the Board. OPs establish the parameters for the conduct of operations; they also describe the circumstances under which exceptions to policy are admissible and spell out who authorizes exceptions.”⁷
 - The OPs that are most relevant to reviewing projects for social and environmental issues are found on the World Bank’s website⁸ and include:
 - 4.01-Environmental Assessment
 - 4.04-Natural Habitats
 - 4.10-Indigenous Peoples
 - 4.12-Involuntary Resettlement
 - 4.20-Gender and Development
 - 4.36-Forests
 - 13.05-Project Supervision
- **A Note about OP/BP 4.00, Country Systems** – In 2005, the Bank began a pilot program to test the “Country Systems” approach, which substitutes use of the Bank’s Operational Policies on such topics as environment, resettlement and indigenous peoples with the borrowing country’s standards. Country Systems is described in OP/BP 4.00, *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects*.⁹ OP 4.00 states that Country Systems will only be used where national policies are “equivalent” to Bank standards and “acceptable” to the Bank. Thus, the Bank determines whether the country’s “national, subnational, or sectoral implementing institutions and applicable laws, regulations, rules and procedures,”¹⁰ or its plans

⁶ See World Bank “Operational Policies” at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:4564185~pagePK:64719906~piPK:64710996~theSitePK:502184,00.html>.

⁷ See World Bank Definitions at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20249090~menuPK:64701643~pagePK:64141683~piPK:64141620~theSitePK:502184,00.html>.

⁸ See World Bank Table of Contents <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:64701637~pagePK:51628525~piPK:64857279~theSitePK:502184,00.html>

⁹ See the World Bank’s description of Country Systems and a link to OP/BP 4.00 (March 2005) at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20266649~menuPK:538163~pagePK:41367~piPK:51533~theSitePK:40941,00.html>.

¹⁰ See the World Bank’s description of Country Systems and a link to OP/BP 4.00 (March 2005) at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20266649~menuPK:538163~pagePK:41367~piPK:51533~theSitePK:40941,00.html>.

to create such standards, are equivalent to the Bank's. This highly controversial approach¹¹ is still in test phase, but is expected to be used increasingly in coming years. Concerns include:

- (1) lack of capacity and/or political will on the part of borrowers to implement national standards;
- (2) Bank staff conflict-of-interest and difficulty in assessing equivalence of national standards;
- (3) that Country Systems may provide less protection for people and the environment than Bank policies and procedures, and;
- (4) a weakening of the Inspection Panel because it will not be able to determine compliance with substantive safeguard policies when Country Systems are used. The Panel's mandate under Country Systems is only to determine whether the Bank's supervision policy was violated and whether "Management's assessment of the equivalence of the relevant Bank policies and procedures with the country system"¹² is correct.

The World Bank policies and procedures that most often arise in Inspection Panel Requests are those on Involuntary Resettlement, Environmental Assessment, Information Disclosure, Indigenous Peoples, Natural Habitats, and Project Supervision. Apart from problems relating to procurement, all World Bank policies and procedures may be the subject of an Inspection Panel Request.

The World Bank policies and procedures that apply to a project are those that were in effect when the loan agreement was signed between the World Bank and the country in which the project is taking place (the "borrower").

The policies themselves change periodically. The most recent versions of the policies should be available on the Internet.¹³ Please refer to pages 14-15 of the *Strategic Guide* in the Appendix, which contains descriptions of commonly raised policies. Another important resource, *A Citizen's Guide to the World Bank Inspection Panel*, contains detailed instructions on filing a Request for Inspection with the Panel, and has an appendix of World Bank Safeguard Policies and Procedures that may assist Requesters in identifying violations.

¹¹ For a critique of the Country Systems policy, see Bank Information Center (BIC) & the Center for International Environmental Law (CIEL), *Country Systems Approach to World Bank Social and Environmental Safeguards: Concerns and Challenges* (Dec. 1, 2004), available online at: <http://www.bicusa.org/en/Article.1775.aspx>.

¹² See World Bank, *Expanding the Use of Country Systems in Bank-Supported Operations: Issues and Proposals*, Operations Policy and Country Services, March 4, 2005 at ¶ 39, available online at: http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&siteName=WDS&entityID=000012009_20050407110752.

¹³ See World Bank Operations Manual at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:64142516~pagePK:64141681~piPK:64141745~theSitePK:502184,00.html>.

The World Bank's Information Disclosure Policy

The World Bank Group's Information Disclosure Policy¹⁴ was updated in March 2005. The policy requires that the public have access to:

- Strategy documents, such as:
 - Country Assistance Strategies (CASs), which “provide the framework for Bank assistance to a given country over a period of time”¹⁵,
 - Poverty Reduction Strategy Papers (PRSPs), which “are prepared by the country concerned, and among other things, summarize the country’s objectives, policies and measures for poverty reduction”¹⁶, and
 - Sector Strategy Papers (SSPs), “that review Bank experience in a given sector and set out the Bank’s strategy for future work in the sector.”¹⁷
- World Bank Group Operational Policies (OPs) and Bank Procedures (BPs)
- Information about meetings of the Board of Directors (“minutes”) such as who attended, when the meeting took place and a list of the issues discussed and actions taken, but *not* information about the content of the meetings.
- Information about particular loans, investments, grants and guarantees, such as:
 - Environmental Assessments (EAs),
 - Indigenous Peoples’ Plans & Indigenous Peoples’ Development Plans (IPDPs),
 - Integrated Safeguard Data Sheets (ISDSs),
 - Loan Agreements,
 - Project Appraisal Documents (PADs),
 - Project Information Documents (PIDs), and
 - Resettlement Plans.

The documents above should be available on the World Bank Group website www.worldbank.org and at Public Information Centers around the world.¹⁸ If you have trouble accessing a document that should be public, the World Bank has a Disclosure Help

¹⁴ World Bank Information Disclosure Policy 2002, available online at

<http://www1.worldbank.org/operations/disclosure/documents/disclosurepolicy.pdf>.

¹⁵ World Bank Information Disclosure Policy 2002., at ¶ 7, available online at

<http://www1.worldbank.org/operations/disclosure/documents/disclosurepolicy.pdf>.

¹⁶ World Bank Information Disclosure Policy 2002, at ¶ 10, available online at

<http://www1.worldbank.org/operations/disclosure/documents/disclosurepolicy.pdf>.

¹⁷ World Bank Information Disclosure Policy 2002, at ¶ 13, available online at

<http://www1.worldbank.org/operations/disclosure/documents/disclosurepolicy.pdf>.

¹⁸ To locate the nearest Public Information Center, visit

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTPIC/0,,menuPK:64156620~pagePK:64156679~piPK:64156642~theSitePK:439948,00.html> and <http://www.worldbank.org/disclosure>

Desk that you may email for assistance at disclosure@worldbank.org. For additional information, please see the Bank Information Center (BIC) Toolkit for Activists.¹⁹

Limits to Use of the World Bank Inspection Panel

Like the other IFI accountability mechanisms discussed in this Guide, the World Bank Inspection Panel is not a court of law – the Panel can submit findings to the Board of Directors, but the Board has the final say on how it will act once the Panel issues its report. The Panel may only investigate Requests dealing with World Bank policy violations – not misconduct of a government or a private actor where there was no alleged wrongdoing on the part of the Bank.

Furthermore, the Panel may only investigate compliance with Bank policy; it does not have a dispute-resolution system, which many other IFI mechanisms have. Many people find this “compliance only” approach less helpful in addressing immediate community concerns.

Examples of Inspection Panel Requests

The Cambodia Forest Conservation and Control Project²⁰

The Inspection Panel received a Request to investigate the Cambodia Forest Conservation and Control Project (the “Forest project”) from forest-dependent communities in Cambodia in 2005. The Requesters wanted to maintain confidentiality and asked that the NGO Forum on Cambodia act on their behalf. The Requesters claimed that the Forest project, financed by an IDA Credit, violated the World Bank’s policies on environmental assessment (OP/BP 4.01), forestry (OP/BP 4.36), and indigenous peoples (OD 4.20), among others. The Requesters claimed that the project benefited loggers with track records of illegal logging of the forest upon which the Requesters depend for their livelihood. The Requesters argued that the World Bank’s failure to follow policies, including failure to consult with local people and conduct a proper environmental assessment, *would cause* harm to the forest and their livelihoods.

The Inspection Panel determined that the Request was eligible and conducted a full investigation. The Inspection Panel’s March 2006 Report found violations of World Bank policies, including that the project had failed to “take on the key objective of using the potential of forests to reduce poverty.”²¹

¹⁹ See BIC’s Toolkit for Activists, Section 3: Access to Information at the World Bank Group, available online at <http://www.bicusa.org/en/Page.Toolkits.aspx>.

²⁰ For details about this project and access to the Inspection Panel documents, visit <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:20978477~pagePK:141137~piPK:141127~theSitePK:293856,00.html>.

²¹ Cambodia Forest Conservation and Control Project Investigation Report at xvi, available online at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/CAMBODIAFINAL.pdf>.

World Bank Management responded to the Inspection Panel's Report in March of 2006. Management acknowledged policy violations and proposed corrective actions to be taken. The Bank has also issued "lessons learned" for project design and implementation.

The Bank now claims to be working with civil society groups in the region to address the forestry sector issues raised in the Request. However, because the loan for the project has closed (and the Bank claims to no longer have control over the project), the Bank states that nothing can be done to change the problems raised in the complaint. Therefore, the people negatively affected by the Cambodia Forest Project may not themselves see the benefit of having brought the Request, but they may have had a positive impact on the way World Bank forestry sector projects are carried out in Cambodia in the future.

The India: NTPC Power Generation Project²²

In 1997, a group of subsistence farmers from the Singrauli region of central India filed a Request for Inspection with the Panel. The people were among 370 families that had been involuntarily resettled by the National Thermal Power Corporation (NTPC) to make way for World Bank-funded power plants and associated works. The Requesters claimed that past projects in Singrauli had caused serious environmental damage, and forced resettlement had left the poorest people in the region without homes and without their livelihoods. According to the Request, the World Bank had failed to remedy these problems, and the current project was making the damage to people's livelihoods and the environment even worse.

Bank Management responded to the Request with a plan to take corrective action to address the Requesters' concerns and broader issues with the project. Meanwhile, people in Singrauli were still suffering from forced removal from their homes and intentional crop destruction. The Panel recommended that the Bank Board of Directors authorize a full investigation, but the Board authorized only a limited investigation from Washington D.C. Because the Panel was not able to visit the project site again, it had to rely on secondary sources of information during its investigation. Nevertheless, the Panel found serious violations of the involuntary resettlement and environmental assessment policies. The violations were partially due to the fact that the loan had been pushed forward too quickly, and without sufficient time to identify and plan for environmental damage and involuntary resettlement of hundreds of families. The Panel also found that supervision policies had been violated, especially in regard to the resettlement and rehabilitation components of the project, and that there had been a shortage of qualified staff working on these aspects of the project both within the Bank, and even more so, within NTPC. Despite past failures, NTPC had failed to develop the capacity to comply with its obligations to the communities affected by its projects in Singrauli.

The Board of Directors decided that an action plan prepared by Bank Management to correct some of the problems raised in the Request should be implemented and the Board agreed to review its progress. The Board also took the unprecedented step of appointing a group of Indian experts, called the Independent Monitoring Panel, to oversee

²² India: NTPC Power Generation Project Report on Investigation, available online at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/NTPCInvestigationReport.pdf>.

implementation of a new resettlement and rehabilitation plan. Some components of the new resettlement plan were implemented, and significantly, some families did receive better compensation packages than offered before, including small plots of land rather than one-time only cash payments, as a result of the Inspection Panel Request. Requesters also believed the Inspection Panel's visit halted the use of force by NTPC authorities.²³ However, other aspects of the resettlement plan were never implemented despite the Panel's report and the work of the Monitoring Panel. Many families in Singrauli still suffer from a lower standard of living than they had before the project.

As with many Requests to the Inspection Panel, these examples illustrate the mixed results for project-affected people that can come from bringing such Requests. Some of the problems with the projects were addressed, and others were not. Nonetheless, the Requests may have assisted the communities in getting their voices heard.

How to Contact the World Bank Inspection Panel

Requests can be sent via mail or fax directly to the Panel, or to the nearest World Bank country office, which will forward the Request to the Panel. Requests may *not* be submitted via email.

The Request should be addressed to:

Executive Secretary
The Inspection Panel
1818 H Street NW, MSN MC10-1007
Washington, D.C. 20433, U.S.A.
Fax: (202) 522-0916

You may address questions via email to ipanel@worldbank.org or via telephone to: (202) 458-5200.

²³ Interview of Requesters Conducted by Tess Bridgeman, January 2004 (Singrauli, India).

The Compliance Advisor/ Ombudsman (CAO)²⁴

What is the Compliance Advisor/ Ombudsman (CAO)?

The CAO receives complaints about projects financed by the IFC or MIGA, the branches of the World Bank Group that provide loans and guarantees to the private sector. The CAO has three functions:

- **The Ombudsman Function** – The Ombudsman is a problem-solving mechanism that seeks to resolve disputes in a mutually agreeable and flexible way without finding fault. The goal of the ombudsman is to improve social and environmental outcomes on the ground. Project-affected people may bring complaints to the Ombudsman.
- **The Compliance Function** – The CAO may oversee audits of IFC and MIGA social and environmental performance to ensure that IFC and MIGA have complied with their policies, procedures and guidelines. Compliance audits are undertaken only at the request of IFC or MIGA staff, at the CAO's discretion, or in response to concerns raised in a complaint to the Ombudsman.
- **The Advisor Function** – The CAO gives advice to the President of the World Bank Group and staff of IFC and MIGA about particular projects or policies through the Advisor function.

The CAO considers the Ombudsman function its primary and most important responsibility. The Ombudsman function was designed to respond to complaints from people who are affected by projects, using a flexible, problem-solving approach to resolve the issue.²⁵

CAO QUICK SUMMARY

Submit a complaint to the CAO if:

- You are a person, group or organization (or their representative);
- And you have been affected by the social or environmental aspects of an IFC or MIGA project.

The CAO will first determine whether your complaint is eligible. If it is, the Ombudsman conducts an assessment of the issues in the complaint, the positions of the parties, and the best method to address the dispute.

The Ombudsman works with the parties to address the issues in the complaint with the goal of reaching a mutually agreeable solution.

If no agreement is possible, Compliance conducts an audit to determine compliance with social and environmental aspects of IFC and MIGA policy. Compliance audit reports are made public and the CAO monitors changes until the project is in compliance.

²⁴ See <http://www.cao-ombudsman.org/>.

²⁵ *CAO Operational Guidelines*, April 2007, at 4-5.

How to File a Complaint with the CAO²⁶

Unlike many of the other mechanisms described in this Guide that require two or more people to file a request, “Any individual or community directly impacted by an IFC/MIGA project or likely to be” may bring a complaint to the CAO.²⁷

As with the other mechanisms, representatives may file a complaint on behalf of those affected by a project, provided they submit proof of the representation.

The complaint must relate to an aspect of the planning, implementation or impact of an IFC or MIGA project. Complaints must demonstrate that the affected person or people that have brought the complaint have been, or are likely to be, affected by actual or potential social or environmental impacts on the ground.

In general, the same type of information that should be included in an Inspection Panel request should be included in a complaint to the CAO. This includes:

- the identity of the complaining individual or group,
- details about the project,
- the harms caused or expected,
- the IFC and/or MIGA policies believed to have been violated (if any – and this is not required for a CAO complaint),
- a description of steps already taken to resolve the problem, and
- any evidence that supports the complaint.

Unlike the Inspection Panel, which accepts requests for projects only until 95 percent of a loan is disbursed, a complaint may be filed with the CAO even after the entire amount of the loan has been paid out. However, the CAO, IFC and MIGA will have less ability to correct a problem once the entire loan has been distributed.

A sample CAO complaint letter is available online.²⁸ The CAO Operational Guidelines are also available online.²⁹

²⁶ The CAO website contains information on how to bring a complaint. See <http://www.cao-ombudsman.org/howwework/filecomplaint/>. In addition, the Center for International Environmental Law (CIEL) has written *A Handbook on the Office of the Compliance Advisor Ombudsman of the International Finance Corporation and Multilateral Investment Guarantee Agency* (Discussion Draft September 2000), available online at <http://www.ciel.org/Publications/CAOhandbook.pdf>.

²⁷ The CAO website contains information on how to bring a complaint. See <http://www.cao-ombudsman.org/howwework/filecomplaint/>.

²⁸ See <http://www.cao-ombudsman.org/howwework/filecomplaint/documents/Complaintlettertemplate.pdf>.

²⁹ See <http://www.cao-ombudsman.org/howwework/filecomplaint/documents/EnglishCAOGuidelines06.08.07Web.pdf>.

How Does the CAO Operate?

The CAO website³⁰ provides a clear summary of the CAO process. The CAO's summary of how to file a complaint is quoted here as follows:

Who can make a complaint?

Any individual, group, community, or other party can make a complaint to CAO if they believe they are, or may be, affected by an IFC or MIGA project(s). Complaints may be made on behalf of those affected by a representative or organization.

What are the criteria for making a complaint?

CAO has 3 simple eligibility criteria for a complaint to qualify for assessment:

1. Complaint relates to an IFC or MIGA project (including projects under consideration)
2. Complaint relates to social and/or environmental issues associated with that project(s)
3. Complainant believes they are, or may be, affected by the social and/or environmental issues raised

What types of complaints are not accepted?

- CAO cannot accept complaints that do not meet the 3 eligibility criteria. If complaints relate to other financing institutions (i.e. not IFC or MIGA), CAO endeavors to direct the complainant to the right office.
- Complaints with allegations of fraud and corruption are referred to the World Bank Office of Institutional Integrity. CAO also cannot review complaints related to IFC and MIGA procurement decisions.
- CAO does not accept complaints that are malicious, trivial, or generated to gain competitive advantage.

Do I need supporting evidence to make my claim?

No, you do not need to submit supporting evidence to make a complaint. However, if you wish to submit additional material to support your case, it is welcome.

Can I request confidentiality?

Yes. CAO takes confidentiality extremely seriously and, if requested, we will not reveal the identity of complainants. Where confidentiality is requested, a process for handling the complaint will be agreed jointly between CAO and the complainant. In addition, materials submitted on a confidential basis by the complainant will not be released without their consent.

Once I file a complaint, what happens next?

CAO will acknowledge receipt of your complaint in the language in which it was submitted. Within 15 working days (not counting time required for translation of complaints and supporting documents), CAO will inform you whether the complaint is eligible for further assessment. If eligible, you will receive information explaining how CAO will work with you to help address the issues of concern, and a CAO specialist will contact you personally.

³⁰ See <http://www.cao-ombudsman.org/howwework/filecomplaint/>.

CAO summary of how to file a complaint continued...

How does the complaint handling process work?

CAO follows a specific procedure for every complaint and is committed to addressing complaints in a timely manner. If a complaint meets CAO's 3 eligibility criteria:

- CAO Ombudsman first works with the complainant, project sponsor, and other local stakeholders to determine whether the parties together can reach a mutually agreeable solution to the issues raised.
- If the parties are unwilling or unable to reach agreement on how to resolve an issue, CAO Compliance undertakes an appraisal of IFC/MIGA's compliance with relevant social and environmental policies and guidelines to determine whether an audit is warranted. See CAO's Operational Guidelines for details on the process and timeline.

How does the CAO Ombudsman work on a complaint?

CAO Ombudsman conducts an assessment of the situation, and assists the parties in determining the best alternatives for resolving a complaint. The Ombudsman does not make a judgment about the merits of a complaint, nor does it impose solutions or find fault. Our specialists work together with the parties to identify alternative approaches and strategies for addressing the issues. This could involve joint fact-finding, facilitating discussions between key stakeholders, mediating disputes between parties, or establishing a dialogue table or joint monitoring program. CAO specialists are trained in Alternative Dispute Resolution (ADR) with expertise in conflict assessment, mediation, and multiparty facilitation. We work with independent mediators who have country-specific experience and who specialize in facilitation and consensus building around development projects. Browse Our Cases to see examples of our work.

What is the role of CAO Compliance?

If resolution of a complaint is not possible with our Ombudsman, CAO Compliance takes over the case. The rationale for this "compliance check" is to assess whether issues raised in the complaint raise questions about IFC or MIGA's social and environmental due diligence on the relevant project. CAO conducts an appraisal and, if an audit is necessary, an independent panel is convened to conduct an investigation of the issues. Findings are publicly disclosed and CAO monitors implementation of recommendations until the project is back in compliance. Importantly, compliance audits focus on IFC and MIGA - not the project sponsor (the private sector client that received support from IFC/MIGA).

How and where do I file my complaint?

Complaints must be submitted in writing and may be in any language. Complaints can be sent by e-mail, fax, mail/post, or delivered to the Office of the CAO in Washington, DC. For guidance on how to write a complaint, see the 'Compliant Letter Template' [at <http://www.cao-ombudsman.org/howwework/filecomplaint/documents/Complaintlettertemplate.pdf>]

IFC & MIGA Policies and Procedures That May Apply in CAO Complaints³¹

Although the CAO may investigate a complaint even if no IFC or MIGA policy violations are described in the complaint, provisions of the following policies may apply. If the complaint does include complaints that these policies have been violated, a compliance audit may result.

- **IFC Performance Standards on Social & Environmental Sustainability (“Performance Standards”):** The IFC’s eight Performance Standards cover the IFC’s rules on social and environmental assessment and management systems (PS1), labor and working conditions (PS2), pollution prevention and abatement (PS3), community health (PS4), land acquisition and involuntary resettlement (PS5), biodiversity and resource management (PS6), indigenous peoples (PS7), and cultural heritage (PS8).³² Beyond these specific rules, “clients must comply with applicable national laws, including those laws implementing host country obligations under international law.”³³
- **IFC Policy on Environmental & Social Sustainability (the “Sustainability Policy”):** This policy applies to all IFC operations and to both the IFC and its clients (those who receive financial support from the IFC), and describes how they should implement the Performance Standards described above. For example, this policy describes how IFC projects should be categorized (“A” for significant impacts; “B” for limited impacts; and “C” for minimal or no impacts).
- **IFC Environment & Social Review Procedure (the “ESRP”):** The ESRP is an IFC staff policy for screening, defining, classifying and categorizing projects. This policy gives instructions for how the staff should ensure environmental and social sustainability of projects. The policy tells staff how to determine the environmental and social criteria that apply in the IFC’s lending to private corporations, banks and other entities.
- **IFC Sectoral Guidelines:** The IFC has 28 sector-specific environmental health and safety Guidelines that cover such topics as electric power transmission, hazardous materials management, pesticide handling and roads & highways. The IFC also uses environmental guidelines in the Pollution Prevention and Abatement Handbook.³⁴ The Guidelines are currently being revised and new Guidelines should come into effect in Spring 2007.
- **MIGA’s Environmental Assessment Policy:** This policy describes the MIGA policies and procedures for how environmental assessments must be carried out

³¹ The policies are included in the Appendix to this Guide and are available online at: <http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards>.

³² Performance standards are available online at: http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability+Sustainability+Framework/.

³³ IFC Performance Standards on Social and Environmental Sustainability, Introduction, ¶ 3 (April 30, 2006).

³⁴ IFC Environmental Health and Safety Guidelines and the Pollution Prevention and Abatement Handbook, <http://www.ifc.org/ifcext/sustainability.nsf/Content/EHSGuidelines>.

for MIGA projects.

The IFC is in the midst of a revision of its policies (Spring of 2010). Please check back to the Accountability Resource Guide page of the Accountability Counsel website in the future for a new version of the Guide that will discuss new IFC policies when they are released.

The IFC's Information Disclosure Policy

The IFC revised its Disclosure Policy in April 2006. The Policy entitles the public to the following information, as summarized on the IFC website at the links below:³⁵

- Environmental & Social Review Summaries
- Summaries of Proposed Investments
- Annual Reports
- Country Assistance Strategies (prepared jointly with the World Bank)
- Minutes from meetings of the Board of Directors
- Policy & Performance Standards on Social & Environmental Sustainability
- Strategic Directions Paper
- Sustainability Reports and Annual Reports
- Compliance Advisory/Ombudsman Reports
- Information not normally disclosed *if*, in “exceptional circumstances”, there is a strong case that such information would serve the public interest (see paragraph 10 of the IFC Disclosure Policy).

The information above is available on the World Bank's InfoShop website³⁶ and may also be accessed through the World Bank Public Information Centers. You may search for information about specific projects online at <http://www.ifc.org/projects>.

In addition, you may submit a “Request for Disclosure of Information” online at <http://www.ifc.org/ifcext/corresmanage.nsf/frmInformationRequest?OpenForm>, or you may call or fax the IFC for information at phone: (202) 473-3800, fax: (202) 974-4384.

The IFC has a Disclosure Policy Advisor³⁷ to ensure that IFC disclosure rules are followed. If you feel that you have been wrongly denied information, you may contact the Advisor through the contact information or the online form described above. The Advisor “will review the complaint and endeavor to respond to the requester within thirty calendar days of receipt of the complaint, unless additional time is required because of the scope or complexity of the complaint. The Disclosure Policy Advisor will advise the requester and

³⁵ What IFC Discloses, online at: http://www.ifc.org/ifcext/disclosure.nsf/Content/What_IFC_Discloses. See also BIC's Toolkit for Activists, <http://www.bicusa.org/en/Page.Toolkits.aspx>.

³⁶ See The World Bank InfoShop online at: <http://www.worldbank.org/infoshop>.

³⁷ See

http://www1.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/ifc+projects+databas e/projects/aips+added+value/projectdisclosurepolicyadvisor.

IFC of his/her conclusions in writing and will explain the reasons for such conclusions.”³⁸

Example of a CAO Complaint

In April 2005, MIGA provided \$13.3 million of political risk insurance to Canadian company Anvil Mining for their operation of a the Dikulushi Copper-Silver Mining Project in the Democratic Republic of Congo (DRC). Prior to MIGA’s involvement, Anvil had provided logistical support to the Congolese army during their take over of a town near where Anvil exported their materials. According to the CAO summary of the case, during the takeover, “the armed forces of the DRC allegedly killed civilians, including by summary execution, looted, and carried out other crimes including extortion and illegal detention.”³⁹ After an investigation through its compliance audit function, the CAO found that MIGA’s due diligence “did not address whether the project might either influence the dynamics of conflict or whether security provision for the project could indirectly lead to adverse impacts on the local community.”

The CAO also found that MIGA’s “follow-through on some social aspects was weak” and that “MIGA did not fully understand the implications for its client of implementing the Voluntary Principles on Security and Human Rights (as required by the Management Response to the Extractive Industries Review), nor did it assess whether its client had the capacity to properly implement them.” Finally, the CAO noted that MIGA did, for the first time, take steps to “engage with NGOs at the project level and to include provisions in the Contracts of Guarantee to reinforce the potential local benefits.”⁴⁰

This example again shows that complaints to the accountability mechanisms in this Guide can lead to mixed results for project-affected people. While the CAO did make recommendations about how MIGA should be implementing its policies differently, there was no change in practice on the ground as a result of the filing of this claim. The claim brought attention to the issue, but the CAO – with its limited mandate – did not have the authority or ability to bring the perpetrators of this massacre in the Congo to justice.

How to Contact the Office of the CAO

Complaints to the CAO should be submitted to the following mailing address, or sent via email or fax:

Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue, NW
Washington, DC 20433, USA
Tel (202) 458-1973; Fax (202) 522-7400
Email: cao-compliance@ifc.org

Complaints in any language are accepted, although complaints in English are preferred if possible.

³⁸ IFC Policy on Disclosure of Information, ¶ 37.

³⁹ See http://www.cao-ombudsman.org/cases/case_detail.aspx?id=94.

⁴⁰ See http://www.cao-ombudsman.org/cases/case_detail.aspx?id=94.

The Inter-American Development Bank's Independent Consultation and Investigation Mechanism (MICI)

What is the Inter-American Development Bank (IDB)?

The IDB is one of the regional development banks. It provides loans, grants and guarantees to both the public and private sector in the 26 Latin American and Caribbean borrowing countries. Three institutions make up the IDB Group:

- the Inter-American Development Bank,
- the Inter-American Investment Corporation, and
- the Multilateral Investment Fund.

What is the Independent Consultation and Investigation Mechanism (MICI)?⁴¹

The IDB approved the new Independent Consultation and Investigation Mechanism (MICI) became on February 17, 2010. It is designed to address grievances from people who are or who might be negatively affected by IDB-financed operations. The MICI has a dispute-resolution role and a compliance review function with regard to IDB's environmental and social policies.⁴²

Before filing a claim, affected people must first seek to resolve their concerns about a project with IDB Management.⁴³

MICI QUICK SUMMARY

You may submit a complaint if you:

- are one or more people, a group, organizations, or their representative;
- live in the country receiving IDB project support (unless the person submitting is a representative); and
- have been directly and materially harmed by the project as a result of the IDB's failure to follow its policies in the design or implementation of an IDB project.

During the *Consultation Phase*, the Project Ombudsperson will determine eligibility of the complaint then will conduct an assessment. The Consultation Phase concludes with the filing of a report distributed to the stakeholders, Board and public, and may include monitoring.

After Consultation, an independent Panel will determine eligibility for *Compliance Review*. If eligible, the Panel will investigate whether the Bank has violated its own Operational Policy. A compliance report is issued, and the report is given to the parties and made public.

The Board will decide on any necessary action to address non-compliance, and the Panel may monitor any actions that result if requested by the Board.

⁴¹ The mechanism is commonly referred to as MICI for its Spanish translation "El Mecanismo Independiente de Consulta e Investigación."

⁴² See Policy Establishing the Independent Consultation and Investigation Mechanism (Feb. 17, 2010), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35074768>.

⁴³ See Policy Establishing the Independent Consultation and Investigation Mechanism 5 (Feb. 17, 2010) available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35074768>.

How Does the MICI Operate?

The MICI accepts claims from project-affected people. There are two phases: the Consultation phase, which is conducted by a Project Ombudsperson who assesses and attempts to resolve issues through consensus-based processes, and the Compliance Review phase, which is carried out by an Expert Panel appointed by the Board and entails an investigation into whether the Bank violated its own policies. If the request asks for both Consultation and Compliance Review, the Consultation phase is conducted first – requesters cannot go directly to the Compliance Review Phase.

During the Consultation Phase, the MICI Project Ombudsperson first determines eligibility and then conducts an assessment. If the Project Ombudsperson makes a determination of ineligibility, the Requester will have an opportunity to amend their Request. The Project Ombudsperson may use any number of methods to work with the parties to resolve the dispute. This phase concludes with the Ombudsperson’s report, which is given to the President and the Board and then made public.

If an agreement is reached at the conclusion of the Consultation Phase, the Project Ombudsperson may conduct (or hire a third party to conduct) monitoring of the implementation of the agreement. If there is no agreement reached or if the parties do not agree to cooperate with the Consultation Phase, the chair of the Panel will determine eligibility for the Compliance Review Phase.

On the Compliance Review side, a request will be considered if the Consultation Phase has been terminated or concluded, or if the request was deemed not eligible for the Consultation Phase. Once in the Compliance Review Phase, the Chairperson of the MICI Expert Panel will determine whether the complaint is eligible. If so, an investigation panel of the Chairperson and two other experts will be formed to gauge whether the IDB has complied with its own Policies. The Compliance Review Panel will develop draft terms of reference (TORs) for the compliance review, including objectives, criteria for the investigation, an anticipated budget and timeline, and anticipated use of consultants. The TORs will be shared with the requester and management who will have twenty (20) business days to provide comments, although the comments will not be binding on the Panel.

If the Panel believes serious, irreparable harm may occur if processing or activities are not ceased, it may recommend to the President, Board, or Donors Committee to do so. The Board will ultimately make a determination regarding what actions are “appropriate or necessary.” The Ombudsperson or the Panel will release semi-annual, public monitoring reports for as long as they deem necessary.

How to File a MICI Claim

The MICI may receive requests from “one or more persons, groups, associations, entities or organizations, residing in the country(ies) where the Bank-Financed Operation is or will be implemented.”⁴⁴ Like with the World Bank Inspection Panel, if a request for

⁴⁴ See Policy Establishing the Independent Consultation and Investigation Mechanism 5 (Feb 17, 2010) available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35074768>.

investigation is submitted by a representative of an affected party – not by the affected party directly – the representative must submit evidence of written permission for the representation.⁴⁵ Complaints must be filed within twenty-four (24) months of the last disbursement in Bank-Financing Operations. Guidelines regarding how to file a complaint to the MICI are available online.⁴⁶

Claims may be submitted to the MICI orally (“subject to subsequent receipt of a signed communication”⁴⁷) or in writing (including by text message to the contact information below). They must state all relevant facts and must attach all available evidence regarding the allegations. Claims must also state the steps already taken to resolve the issue with IDB Management and what response, if any, was received.⁴⁸ The claim also must contain a description of what the project-affected community views as the harm that will result – or has resulted - from the IDB’s failure to follow their policies. The IDB refers to this harm as “material adverse effects.”⁴⁹ The claim must also not be currently subject to “arbitral or judicial review by national, supranational or similar bodies” – in other words, you may not use the MICI if you are involved in a lawsuit in a court about the same issue.

Policies That May Apply in Claims to the MICI

This mechanism pertains to all “Relevant Operational Policies.” Such policies include “Board-approved environmental and associated safeguards, equality in gender, and information disclosure policies,” also the ones related to “design, appraisal, analysis and/or implementation of Bank-Financed Operations, as well as those relating to the enforcement of compliance with a borrower/recipient’s obligations required by such policies.”⁵⁰

The IDB policies that apply to projects are: General Operational Policies,⁵¹ Sectoral Policies,⁵² and Procurement of Goods and Services policy.⁵³ The Sectoral Policies are more likely to be the subject of a claim to the MICI and include policies such as the Environment and Safeguards Compliance Policy, the Forestry Development Policy, the Mining Policy, and the Involuntary Resettlement Policy. IDB’s lending program is also guided by “strategies,” or broader statements that seek to give guidance for how to carry out the Board’s mandates.

The IDB’s “Best Practices” take the form of case studies and papers incorporating “lessons learned” from a variety of sources, including projects financed by the IDB.

⁴⁵ IDB MICI Rules of Procedure §3.3, available online at <http://www.iadb.org/cont/poli/mecanism.pdf>.

⁴⁶ See generally <http://www.iadb.org/MICI/index.cfm?artid=7328&lang=en>.

⁴⁷ See Policy Establishing the Independent Consultation and Investigation Mechanism 32 (Feb 17, 2010) available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35074768>.

⁴⁸ IDB MICI Rules of Procedure §4.1, available online at <http://www.iadb.org/cont/poli/mecanism.pdf>.

⁴⁹ IDB MICI Rules of Procedure §4.2, available online at <http://www.iadb.org/cont/poli/mecanism.pdf>.

⁵⁰ See Policy Establishing the Independent Consultation and Investigation Mechanism 4 (Feb 17, 2010), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35074768>.

⁵¹ See <http://www.iadb.org/en/about-us/general-operational-policies,6235.html>.

⁵² See <http://www.iadb.org/aboutus/howweareorganized/index.cfm?id=6194>.

⁵³ See <http://www.iadb.org/aboutus/howweareorganized/index.cfm?id=6251>.

The IDB's Information Disclosure Policy⁵⁴

The most recent IDB policy is effective as of January 1, 2011. The new Policy expands the information available to the public regarding the activities of the Board, creates a right to independent review of denial of access to information, and increases the information available on current projects. The IDB discloses information such as:

- Operational and Sector Policies
- IDB Country Strategies
- Economic Situation and Perspective Documents (known as “SEP” documents)
- Country and Sector Analytic Work
- Project Documents
- Environmental Impact Assessments
- Environmental and Social Strategies and Environmental and Social Management Reports
- Poverty Reduction Strategy Papers
- Selected notes from Board of Directors meetings
- Loan Agreements, Guarantee Agreements and Technical Cooperation Agreements

You may order hard copies or electronic versions of the documents above at the IDB's Public Information Center in Washington, DC, or through regional Public Information Center Field Offices.⁵⁵ The Center's contact information is phone: (202) 623-2096, fax: (202) 623-1928, e-mail: pic@iadb.org.

Example of a MICI Complaint

On October 4, 2010, the MICI received a complaint regarding the Estrada Nova Watershed Sanitation Program (PROMABEN) in Belem, Brazil. The IDB had provided a \$68,750,000 loan for PROMABEN, aimed at financing the urban and environmental restoration of the Estrada Nova watershed through drainage, water supply and landfill improvements.⁵⁶ The project entailed the resettlement of 1,100 families. The complaint detailed adverse impacts as a result of failures on the part of the IDB to fully comply with its operational policies, notably through its inappropriate execution of the resettlement component of the program.

On December 17, 2010, the MICI Project Ombudsperson deemed the request eligible for the Consultation Phase. The Project Ombudsperson subsequently pursued a solution-seeking dialogue between the complainant and his family and the executing agency, which resulted in an agreement regarding information disclosure and adherence to PROMABEN's resettlement plan. The MICI was unable to facilitate the formal transfer of

⁵⁴ IDB Disclosure of Information Policy (Feb. 10, 2011), *available at*

<http://www.iadb.org/aboutus/howweareorganized/index.cfm?lang=en&id=6110>.

⁵⁵ See <http://www.iadb.org/aboutus/howweareorganized/index.cfm?lang=EN&id=6554>.

⁵⁶ See <http://www.iadb.org/en/mici/complaint-detail,1804.html?id=BR%20MICI002/2010>.

rights agreement, however, because a third party filed a legal petition claiming rights to the same piece of property.⁵⁷ Additionally, MICI and IDB's Environmental and Safeguards Group suggested the creation of a Local Grievance Mechanism in order to provide a mechanism for parties to submit questions and concerns at the project level and improve responsiveness to any future complaints.

This case provides another example of both the possibilities and the limits of accountability mechanisms. The MICI Project Ombudsperson was able to help facilitate an agreement between the requestor and the executing agency, and the mechanism and the IDB used the case to try to proactively address future problems. On the other hand, the MICI did not have the authority to facilitate the formal transfer of rights agreement once a third party legal petition had been filed.

How to Contact the MICI

Independent Consultation and Investigation Mechanism Office
Inter-American Development Bank
1300 New York Ave., N.W.
Stop E-1205
Washington, DC 20577
United States of America
Tel. 202-623-3952
Fax: 202-312-4057
E-mail: mecanismo@iadb.org

⁵⁷ See *PROMABEN Assessment and Consultation Report BR MICI002/2010*, MICI (May 2011), available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=36231535>.

The Asian Development Bank (ADB) Accountability Mechanism

What is the Asian Development Bank (ADB)?

Founded in 1966 and headquartered in Manila, Philippines, the ADB is a multilateral development bank that is owned by 67 member countries—of which 48 are from Asia, and 19 are from outside Asia. The ADB’s mission is to alleviate poverty in Asia and the Pacific through loans, technical assistance, grants, guarantees (insurance) and investments intended to create economic growth in its developing member countries.⁵⁸

What is the ADB’s Accountability Mechanism?

The ADB’s current Accountability Mechanism went into effect on May 24, 2012.⁵⁹ The Mechanism consists of two functions:

- **The Problem Solving Function**, run by the Special Project Facilitator (SPF); and
- **The Compliance Review Function**, run by the Compliance Review Panel (CRP).

All complaints go to the Complaints Receiving Officer (CRO). The CRO then forwards them to either the Office of the Special Project Facilitator (OSPF) or the Office of the Compliance Review Panel (OCRCP), according to the preference of the complainant.

Eligibility

For both functions, two or more people who are “directly, materially, and adversely affected by an ADB-assisted project” can file a complaint to the ADB Accountability Mechanism. Additionally, a local

ADB QUICK SUMMARY

You may file a complaint to the ADB Accountability Mechanism if:

- You are part of a group of two or more people; and
- You have been directly harmed or are likely to be harmed by an ADB-supported project.

The Complaints Receiving Officer (CRO) will respond to your complaint and forward it to the function of your choosing (*Compliance Review* or *Problem-Solving*). The appropriate function will determine eligibility and conduct investigations.

The Special Project Facilitator (SPF) will determine eligibility, attempt to facilitate an agreement among all the parties involved that addresses the problems you are facing, and monitor the implementation of this agreement. You can walk away from this process at any time and request a *compliance review*.

The Compliance Review Panel (CRP) will determine eligibility, conduct an investigation, and decide whether or not the ADB has complied with its own policies and procedures. The CRP also requires complainants to show that the harm they allege is caused by the ADB’s failure to comply with their own policies, and that the noncompliance was serious. You will get to comment on the CRP’s draft report before it is finalized and sent to the ADB Board for a decision. Once you begin the *compliance review* process, you cannot then go back and use the *problem solving* function for the same issues, unless the CRP finds your complaint ineligible.

⁵⁸ See <http://www.adb.org/about/overview>.

⁵⁹ The current Accountability Mechanism Policy replaces the previous 2003 Accountability Mechanism Policy, which expired on May 23, 2012.

representative can file on behalf of a project-affected group if the project-affected people are clearly identified, and it can be shown that the representative has the authority to represent them. According to ADB policy, in special cases where local representation is unavailable and the SFP or CRP agree, a nonlocal representative may file on behalf of a project-affected group, however it is currently unclear how the ADB is determining in practice whether nonlocal representatives can file complaints. In addition to representatives and project-affected people, ADB Board members may file a complaint for Compliance Review.

There is a list of exclusions that will disqualify a complaint. Exclusions for both functions include complaints made about actions not related to ADB's actions, about projects in which two or more years have passed since the grant or loan closing date, and complaints which did not first make a good effort to solve the problem with the Operations Department. The good faith effort is required with the Operations Department, but not with the local grievance mechanisms, although the ADB will encourage complainants to first address problems with project-level redress processes.

Additional eligibility and requirements and exclusions specific to each function are described in detail below.

How to File a Complaint

All complaints, with either the Problem Solving function or the Compliance Review function, go through the CRO, and must contain the following information:⁶⁰

- The identity and contact information for the two or more people filing the complaint;
- The identity and contact information for any representative a complainant chooses to work with, along with proof that the representative is authorized to represent the complainant;
- Whether the people filing the complaint choose to keep their identities confidential;
- Whether the complainants wish to go through *Problem Solving* with the OSPF or the *Compliance Review* with the CRP;
- A brief description of the ADB-assisted project, including the name of the project and location;
- A description of the direct and material harm that has been, or is likely to be, caused to the people submitting the complaint;
- A description of the good faith efforts to address the problems first with the relevant operations department, and the results of these efforts; and
- If, in a complaint requesting *Compliance Review*, the complainants have already tried to address the concerns through *Problem Solving* through the OSPF, the complaint must also describe the efforts and the results of the efforts to resolve

⁶⁰ See ADB Accountability Mechanism Policy 2012 , ¶ 150-51.

matters with the OSPF.

The complaint may also include the following optional information:⁶¹

- An explanation of why the complainants believe the direct harm has been or will be caused by the ADB's failure to follow its policies and procedures;
- A description of the policies and procedures that have not been followed;
- A description of efforts to address the problems with the project-level grievance mechanisms concerned, and the results;
- The desired outcome or remedies; and/or
- Any other relevant information with supporting documents.

Process Once a Complaint is Filed

Once the CRO has received a request, the CRO will register the complaint on the website and will inform the SPF, CRP Chair, and the Operations Department involved within two days. The CRO will acknowledge receipt of the complaint to the complainants, and will provide an information packet about the Accountability Mechanism within two days. In this correspondence, the CRO will let the complainants know that they have 21 days to change their mind regarding which function to use, and will ask for clarifications to the complaint if necessary.

The CRO will decide whether to forward the complaint to the SPF or CRP within five days of the complainants' deadline to change their minds on the function, and will inform all relevant parties within the Accountability Mechanism and ADB operations about the decision. The relevant parties then have three days to respond with objections or concerns about the CRO's decision. Within two days of forwarding the complaint, the CRO will provide complainants with information about the process, including the contact person and the next steps to take.

The Problem-Solving Function of the ADB Accountability Mechanism

The Problem Solving Function is designed to “assist people directly, materially, and adversely affected by specific problems caused by ADB-assisted projects through informal, flexible, and consensus-based methods with the consent and participation of all parties concerned.”⁶² The Problem Solving Function has a broader scope than the Compliance Review Function.

The Special Project Facilitator (SPF), hired by the President of the ADB with input from the Board, is the individual in charge of the Problem Solving function. The SPF works with project-affected people to solve specific problems with ADB projects in an informal manner using a variety of methods. The three staff members of the OSPF support the SPF in his/her work.

⁶¹ ADB Accountability Mechanism Policy 2012, ¶ 152.

⁶² ADB Accountability Mechanism Policy 2012, ¶ 126.

Complaint Process Using the Problem-Solving Function

The SPF has 21 days from the time the request is received to determine whether or not the request is eligible. In addition to meeting the general complaint eligibility requirements, the complainant(s) must convince the SPF that the SPF's involvement could be useful in resolving the dispute in order to be deemed eligible for problem solving. The SPF will generally assess whether their involvement will be useful through consultations with groups or individuals involved in the complaint. If the request is eligible, the SPF will conduct an investigation through interviews, review of documents, meetings with staff, and other techniques. The SPF reports the findings to, and requests comments from, the President, the complainants, the borrowers, and relevant Operations Departments. Upon consideration of the comments, the SPF will then decide whether to proceed with the problem-solving process.

Once the problem-solving goes ahead, the details of the process will vary according to the circumstances of each situation. Any party can leave the process at any time, which ends the problem-solving phase. When the process has been completed, the SPF will complete a report and deliver it to all parties involved, regardless of whether or not an agreement had been reached.

Once the problem-solving process has ended and there was no agreement or the agreement is in the implementation stage, the complainant can file with the Compliance Review function. The SPF will monitor the implementation, which typically will not go beyond two years. The SPF will complete a final report when the implementation is complete.

The Compliance Review Function of the ADB Accountability Mechanism

The Compliance Review function allows project-affected people to file requests for review where they believe the ADB has violated its own policies or procedures in ADB-assisted projects.⁶³ In this process, a member of the three-person Compliance Review Panel (CRP) conducts an investigation and determines whether the ADB is in compliance. The CRP examines “whether the direct and material harm alleged by the complainants is the result of ADB’s failure to follow its operational policies and procedures in the course of formulating, processing, or implementing an ADB-assisted project.”⁶⁴ There must be evidence that there is direct and material harm, noncompliance by the ADB, and that the Bank’s failure to comply with its policies caused the harm described.

Complaint Process using the Compliance Review Function

Within five days of receiving the complaint, the CRP will determine if it has the power or authority to handle the complaint. If so, the CRP will forward the complaint to Management, giving them 21 days to respond, and will also copy the Board Compliance Review Committee (BCRC), a standing committee made up of six Board Members,⁶⁵ on the

⁶³ See The ADB Compliance Review Panel Homepage at <http://compliance.adb.org/>.

⁶⁴ See The ADB Accountability Mechanism Policy 2012, ¶ 145.

⁶⁵ See <http://www.adb.org/about/board-compliance-review-committee>.

communications. Management may respond with evidence that the ADB has complied with all of its policies and procedures, or it may show that the ADB has not complied, but Management is taking steps to fix these problems and bring the project into compliance with ADB policies.

The CRP will then determine whether the complaint is eligible for Compliance Review within 21 days of receiving Management's response. This eligibility determination is based on whether the CRP believes there is enough evidence that the ADB's failure to follow its own policies caused harm to the complainants to warrant a compliance review. The CRP must also determine that the ADB's failure to follow its rules is serious enough for a full review by their office. Complainants are generally encouraged to submit all information and evidence they can to support their complaint to meet the CRP eligibility requirements. Additional exclusions for Compliance Review Function eligibility include: complaints related to actions that are the sole responsibility of another party or have to do with the member country's laws and do not relate to the ADB's compliance with its own policies; complaints that are currently being dealt with in the Problem Solving Function by the SPF; and complaints about matters already considered by the CRP.

The CRP will inform all parties involved when eligibility is determined. If the complaint is found to be eligible, the CRP will ask the Board to authorize a Compliance Review. The Board must make the decision to allow or not allow Compliance Review within 21 days. The CRP will then inform the complainants within seven days of the decision.

Once the Board has given approval for the compliance review, the CRP has ten days to create a plan for how it will investigate the claim. This plan must then be approved by the BCRC. Once the Board has approved an investigation and the BCRC has approved the plan, the CRP will begin such steps as meetings with relevant parties, reviews of pertinent documents, and visits to the site. The length of the investigation will depend on factors such as the complexity of the request, the project and scope of the alleged policy violations.

After the investigation is complete, the CRP will share its draft report with ADB management, the BCRC, the complainants, and the borrower of the ADB loan. All of the parties will then have 45 days to comment on the draft report. Within 14 days of receiving comment, the CRP will then issue its final report with its conclusions about whether the ADB violated its policies and caused harm as a result. This final report will be first sent to the Board and the BCRC for the Board's consideration before it is sent to anyone else. Within 28 days of the Board's receipt of the final report, it will be released to the complainants, Bank Management, and other parties involved.

If the report concludes that the ADB violated its policies and thus caused the complainants harm, Bank Management will submit a report to the Board with suggestions on ways to improve the project and fix the problems it has caused. The Board will then make a decision about the proposed suggestions and the future of the project. Any decisions about the suggested improvements or corrective measures will be released to the complainants and the borrower. The CRP will monitor the implementation of any improvements or corrective measures approved by the Board. The time frame for

monitoring will vary, but will generally not go past three years. A final report will be produced upon completion of the CRP's involvement in the case.

Policies and Procedures That May Apply in Claims to the ADB Mechanisms

The ADB has a set of policies that it is required to follow in its operations. If possible, these policies should be referenced in complaints if project-affected people believe the policies have been, or are likely to be violated. ADB policies include the Safeguard Policy Statement that covers the Environment, Involuntary Resettlement and Indigenous Peoples, and "Sector Policy Papers" on topics such as Energy, Forestry, and Water.⁶⁶ The ADB's "Operations Manual" contains more details instructions for bank staff on how to implement these various policies.⁶⁷

The policies that apply to proposed projects are those that were in effect when the complaint was filed. For existing projects, the policies that apply are those that were in effect when the ADB's Board of Directors approved the project. However, the only Accountability Mechanism policy that applies is the one that was in effect at the time the complaint was filed to the ADB.

For more information on ADB policies, please see NGO Forum and Bank Information Center's "Unpacking the ADB: A Guide to Understanding the Asian Development Bank."⁶⁸

The ADB's Information Sharing and Disclosure Policy

The ADB's Public Communications Policy of 2011⁶⁹ entitles the public to receive information about ADB-assisted activities, as well as provide feedback to the ADB about project design and implementation. Under this policy, people have the right to the following types of information, among other documents, in a timely and clear manner:

- Country Partnership Strategies and Regional Cooperation Strategies (CPS and RCS) and key supporting documents
- Project Data Sheets (PDS), including summary information on a project or program during processing and implementation
- ADB Safeguard Policies
- Project Safeguard Documents
- ADB Project or Program Information Documents (PIDs)
- Environmental Assessments in draft, review, and final stages, which includes Environmental Impact Assessments
- Resettlement Planning Documents

⁶⁶ See ADB Policies at <http://www.adb.org/Development/policies.asp>.

⁶⁷ See ADB Operations Manual at <http://www.adb.org/documents/operations-manual>.

⁶⁸ The BIC ADB Toolkits for Activists, including the Guide in five languages, is available for download from <http://www.bicusa.org/en/Article.1630.aspx>.

⁶⁹ See <http://www.adb.org/sites/default/files/pcp-2011.pdf>. See also BIC's ADB Toolkits for Activists, <http://www.bicusa.org/en/Article.1630.aspx>.

- Indigenous Peoples Plan (IPP) and/or Indigenous Peoples Planning Framework, and Indigenous Peoples Monitoring Reports
- Equivalence and Acceptability Assessments in draft, review, and final stages
- Initial Poverty and Social Assessments
- Technical Assistance Reports
- Report and Recommendation of the President (regarding Board approval of projects)
- Legal Agreements for Sovereign Projects
- Project Administration Memorandum
- Social and Environmental Monitoring Reports
- Loan Agreements and Project Agreements
- Schedule and Minutes of the Meetings of the ADB Board of Directors
- Information not normally disclosed *if* the public interest in disclosing the information outweighs the harm that the disclosure may cause (see paragraph 99 of the ADB Public Communications Policy).

Under the ADB's Public Communications Policy, there is a presumption in favor of disclosure, so long as the information requested doesn't compromise the Bank's decision-making process; contain private personnel details; pose a threat to financial markets or the ADB's legitimate financial interests; pertain to confidential material, such as information covered by a nondisclosure agreement or attorney-client privilege; contain details that could jeopardize someone's safety; or relate to allegations of misconduct or corruption.

The ADB provides public access to the information above through its Public Information and Disclosure Unit, known as the "InfoUnit." You may request information through the InfoUnit website, available through http://adb.org/email/17162/field_email or you may email the InfoUnit at disclosure@adb.org. You may also contact your nearest ADB Country Office to request information.⁷⁰

The InfoUnit's contact information is:

Public Information and Disclosure Unit (InfoUnit)
 Department of External Relations
 Asian Development Bank
 6 ADB Avenue
 Mandaluyong City
 1550 Metro Manila, Philippines
 Tel: + 632 632 4444
 Fax: + 632 636 2444
disclosure@adb.org

The InfoUnit has a two-stage appeals process that you may use if you believe that you have not been given information that you deserve. You may make a written request for

⁷⁰ A list of Country Offices is available at <http://www.adb.org/about/departments-offices>.

review to the Public Disclosure Advisory Committee (PDAC) at the address above. “The appeal will be acknowledged within 5 working days and a decision will be given no later than 20 working days from receipt of the appeal.”⁷¹

If the PDAC upholds the denial of your request, you may file a written appeal to the Independent Appeals Panel (“IAP”) within 90 days, alleging that the ADB violated its Public Communications Policy by restricting access to this information. Appeals should be in the form of a brief letter that describes the information originally requested, and why you think ADB policy or the public interest override requires its disclosure. Appeals may be addressed to the Independent Appeals Panel and submitted by mail, email, or fax to the Public Information and Disclosure Unit’s address above. The IAP is required to consider all appeals within 45 days of receiving a request. After reviewing the written appeal, the policy exceptions, and any statements made by the ADB or parties opposing disclosure, the IAP has the power to uphold or reverse the decision of the PDAC. The IAP’s decision is final.

Example of a Complaint to the ADB Accountability Mechanism

In 2002, the ADB approved a loan to Sri Lanka for construction of a highway that would cross four river basins, cut through 100 small and large wetlands and paddy fields, pass through numerous villages, and require the destruction of 1,300 houses. Altogether, it was estimated that 5,683 households would be affected by the project.⁷² In June 2004, a group of project-affected people filed a complaint to the ADB Accountability Mechanism with both the Special Project Facilitator (SPF) and the Compliance Review Panel (CRP) arguing that the project failed to comply with ADB policies on, among other things, the environment, land acquisition practices, lack of consultation, and involuntary resettlement.⁷³ The complainants argued that the project violated their human rights and caused a loss of homes and livelihoods. The complainants sought changes to the project planning and design, including that the ADB pay full compensation for resettlement, consider alternative routes for the road to minimize the need for resettlement, and fully consult with affected people after completion of the new assessment. Additionally, the complainants asked for the suspension of loan disbursements and the establishment of an independent committee to investigate the potential for an alternative placement of the road.

The SPF found the request for problem solving eligible 15 days after it was filed and arranged a series of meeting with the complainants and other stakeholders to take place over the course of the next several months. During the problem solving process, the SPF heard the complainants’ grievances about the inadequate and threatening consultations that had occurred, about the lack of proper resettlement compensation and aid, and the questionable impact assessments that did not properly document the impending harm to the environment and to cultural sites.

⁷¹ See <http://www.adb.org/site/disclosure/pcp-implementation/appeals>.

⁷² ADB-JBIC Funded Southern Transport Development Project, Sri Lanka: A Fact-finding Report on Status of Resettlement Implementation Plan, Prepared by Bank Information Center, NGO Forum on ADB and Center for Environmental Justice (June 2006).

⁷³ *Id.*

Following the conclusion of consultations in February 2005, the SPF released a final report in March 2005. The report included a series of findings favorable to the complainants, including that the consultations and information given to the project-affected people were insufficient, that the land acquisition process and resettlement plan had serious shortcomings, and that adverse environmental impacts would result from the project. However, the SPF concluded that halting disbursement of funds would actually hinder the problem solving process. The consultation period ultimately ended without the parties agreeing to any sort of mediated settlement, despite the involvement of an international mediator/facilitator.

At the time of the review and assessment, the SPF noted “all three parties seemed to have reached a point where they realized that their options were limited.” The international mediator likewise determined that “the complainants’ perceived grievances were incapable of resolution within the forum of a mediated settlement... [and] could only be effectively sanctioned within the judicial system.” Thus, the SPF concluded the problem solving process with a series of recommendations to increase the participation of project-affected people and conduct more extensive studies on the adverse impacts that would arise from the project. According to the report conducted by Bank Information Center, NGO Forum on the ADB, and Center for Environmental Justice, many of these recommendations have not been fully implemented and several problems remain outstanding.⁷⁴

After the ADB’s CRP determined the request was eligible, the Board of Directors authorized a compliance review and the CRP conducted an investigation. The CRP issued its findings and recommendations in its Final Report in June 2005. The CRP noted that the ADB had not complied with the environmental impact assessment requirements for the project, that no gender assessment had been done despite the project’s large impact on women, and that the plans for involuntary resettlement had been changed without public participation, which violated ADB policy. The CRP issued a series of recommendations to the ADB concerning how the project should be brought into compliance.

The Board approved the CRP’s recommendations in July 2005. Thereafter, the CRP took steps to officially monitor the ADB’s compliance with its recommendations. By August 2005, ADB Management prepared a “course of action” plan to implement the recommendations made by the CRP. The CRP’s monitoring report notes that ADB Management prepared the “course of action” without input from the complainants.⁷⁵ The CRP advised Management to consult with the complainants and return with a revised plan, which they did. The CRP’s monitoring efforts included review of ADB Management’s monitoring reports, a visit to the project site, and review of additional documents requested by the CRP. The CRP determined that while the ADB had complied with some of the CRP’s recommendations, they had only partially complied or not complied at all with many others.

⁷⁴ *Id.*

⁷⁵ ADB Accountability Mechanism Compliance Review Panel, Annual Monitoring Report 2005-2006 to the Board of Directors on CRP Request No. 2004/1 on the Southern Transport Development Project in Sri Lanka (ADB Loan No. 1711-SRI[SF]) (July 11, 2006), available at [http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-MonitoringReport2006.pdf/\\$FILE/STDP-MonitoringReport2006.pdf](http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-MonitoringReport2006.pdf/$FILE/STDP-MonitoringReport2006.pdf).

As this case demonstrates, the ADB has made some efforts to bring the project into compliance *because of* the project-affected peoples' request to the SPF and the CRP, however several problems are outstanding and the results have not quite met the expectations of the complainants. With the continued monitoring role of the Accountability Mechanism, the complainants have a means of communicating continuing problems with the project to the ADB, yet many of their concerns related to resettlement and compensation have yet to be resolved. Although the ADB is still in violation of many of its policies, the reports of the SPF and the CRP have brought attention to deficiencies, and the ADB is now under pressure to make change.

Where to Submit a Complaint

Requests must be in writing and should be addressed to the Complaints Receiving Officer (CRO). The CRO accepts requests by mail, facsimile, electronic mail, or by hand delivery to the CRO at ADB headquarters:

Complaints Receiving Officer
Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
amcro@adb.org
Tel: + 63 2 632 4444
Fax: + 63 2 636 2444

Complaints will also be accepted by any ADB office such as a resident mission, regional office, or representative office, which will forward them unopened to the CRO.

The European Bank for Reconstruction and Development's (EBRD) Project Complaint Mechanism (PCM)⁷⁶

What is the EBRD?

The EBRD, formed in 1991, finances development projects and is the single largest investor in Central Europe and Central Asia. The EBRD invests mainly in the private sector, but often with public partnerships.

What is the EBRD's Project Complaint Mechanism?

The Project Complaint Mechanism ("PCM") is the EBRD's new accountability mechanism that came into force in March 2010 to replace its Independent Recourse Mechanism ("IRM"). The PCM provides people and civil society organizations⁷⁷ affected by EBRD-financed projects a means to raise complaints with the Bank. Complaints fall into one or both of the following categories:

- **Problem-Solving** – this function of the PCM is designed to create dialogue between the parties using methods of “fact-finding, mediation, conciliation, dialogue facilitation, investigation or reporting.”⁷⁸
- **Compliance Review**- this function of the PCM reviews complaints to determine whether the EBRD has complied with its own environmental, social, and information disclosure policies.

Once the complaint has been received, the PCM's Chief Compliance Officer and a PCM Expert determine whether the

EBRD QUICK SUMMARY

The EBRD's new Project Complaint Mechanism (PCM) came into force in March 2010 and is summarized as follows:

For a Problem-solving Initiative (PSI), you will be able to submit a complaint if you are an individual, group or civil society organizations, and you are either:

- located in an EBRD project area, or
- your livelihood may be impacted by an EBRD project.

For a compliance review, any person or organization may submit a complaint.

In both cases, you must have information that a project supported by the EBRD has caused, or is likely to cause, harm.

The PCM determines eligibility and proceeds with a PSI, a compliance review, or both.

The PCM issues public reports of findings, EBRD management responds, then the PCM monitors and publicly reports on any approved actions to correct noncompliance until there is compliance.

⁷⁶ For more information, go to <http://www.ebrd.com/pages/project/pcm.shtml>.

⁷⁷ See <http://www.ebrd.com/pages/project/pcm/about.shtml> (“Civil society organizations are able to request only compliance review under the PCM.”).

⁷⁸ See <http://www.ebrd.com/pages/project/pcm/about.shtml>.

complaint is eligible for “Compliance Review,” “Problem-Solving,” both, or neither.

When is the Earliest a Complaint May be Submitted?

For projects not yet approved, complaints may be brought only if the EBRD has made a “clear indication that it is interested in financing the Project”.⁷⁹

When is the Latest a Complaint May be Submitted?

Complaints must be brought while there is still a “financial interest in the project”.⁸⁰ In addition, the complaint must be filed within 12 months of the last disbursement of funds from the EBRD.

In addition, you may not submit a complaint unless you have already tried to resolve the dispute; this includes attempting to resolve the dispute with the local EBRD office or department in charge of the project and with the corporation(s) implementing the project with the EBRD.⁸¹

What to Include in the Complaint

The EBRD’s PCM Rules of Procedure detail the information required in a complaint.⁸² One of the criterion for a complaint to be eligible for a Compliance Review consists of the project-affected people’s complain relating to “more than a minor technical violation of a Relevant EBRD Policy unless such technical violation is alleged to have caused harm.”⁸³

A complaint to the EBRD’s PCM must include:

- **Identifying Information About the Requesters**
 - One or more individuals or organizations from a project-affected area may submit a complaint if it is “concerning a Project which allegedly has caused, or is likely to cause, harm.”⁸⁴
 - One or more individuals may submit a complaint for a Problem-solving Initiative if they are in an Impacted Area or have financial concerns in

⁷⁹ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 18 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁸⁰ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 18 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁸¹ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 18 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁸² See Appendix for a link to the EBRD’s PCM “Rules of Procedure” link.

⁸³ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 23 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁸⁴ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

such region.⁸⁵

- Prior to registration of complaint, it must identify the complainant including contact information,⁸⁶ and if petitioning for a Compliance review, also include presumed violation of Relevant EBRD Policy.⁸⁷
- List the language you would like to use (English, French, German, or Russian) with your communications with the EBRD's PCM, keeping in mind that languages other than English will require additional response time due to translation.⁸⁸

- **Confidentiality**

- Note that the PCM does not guarantee confidentiality. If you would like the names and addresses of the requesters or representatives to be kept confidential, you can submit information in your complaint about why you believe the information should be confidential, but the PCM Officer will ultimately determine whether or not your information is kept confidential.⁸⁹ If not, the PCM Officer will collaborate with the Complainant on whether or not to proceed.

- **Evidence of Efforts to Resolve the Problem**

- The complaint should include a description of the steps you have taken to resolve the problem with the EBRD department in charge of the project and the corporate project partner.⁹⁰
- The PCM also requires copies of correspondence with, or notes from meetings with, EBRD staff and other relevant parties about the problem, and any other supporting information.⁹¹

- **Information and Evidence Regarding Your Claim**

- EBRD project name, country in which the project is located, and description of the project.
- You should include all evidence you have describing the harm caused or likely to be caused by the project, including any drawings, photos, plans,

⁸⁵ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 1(2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁸⁶ Also include contact information of Authorized Representative if any.

⁸⁷ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 10 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁸⁸ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 6-7 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁸⁹ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 4 (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

⁹⁰ The duty to make a good faith effort to resolve can be waived if the Eligibility Assessors determine it would be dangerous or futile. PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 22 (2010),

⁹¹ See PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE (2010), available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

letters, taped interviews or other materials.

- If possible, the Complaint should describe why you think the EBRD has not followed its Environmental and/or Public Information policy on a project.
- If possible, describe how you would like the problem to be resolved – do you want a Compliance Review to determine whether the EBRD has followed its own policies and procedures? Or do you want a Problem-solving initiative that might include fact-finding, mediation, conciliation, dialogue facilitation, investigation or reporting?

The Problem-solving Process

If eligible and the PCM's Eligibility Assessors recommend conduct of a Problem-solving Initiative, the problem-solving process will not move forward unless the President of the EBRD approves the recommendation within ten (10) days. If approved, a Problem Solving Expert will conduct the Initiative and then issue a Problem-solving Completion Report. The Report will identify the need for any follow-up monitoring and reporting by the PCM Officer.

The Compliance Review Process

If eligible, a Compliance Review Expert will conduct the Compliance Review and issue a report. The report will either contain a finding of compliance, which will complete the review, or a finding of non-compliance that will include recommendations for how to achieve compliance and monitor implementation of changes.

Bank Management will have a chance to respond to a finding of non-compliance. The Management Action Plan (their response) and the Compliance Review Report will go to the complaining party for comments. The final Report, Action Plan and any comments will go to the complaining party, the President (if the project was not yet approved by the Board), or the Board, and will be made public.

The PCM Officer will monitor implementation of final recommendations.

Policies That May Apply in Claims to the PCM

The primary policy that guides the EBRD's project operations is the Environmental and Social Policy.⁹² The 2008 Environmental and Social Policy is a key document of the Bank, which details the commitments of the agreement establishing the Bank particularly for the "promotion of environmentally sound and sustainable development." The 2003 Environmental Policy has been revised in order to reaffirm and strengthen these commitments and also to enhance commitments to social issues and good governance. Country and sectoral strategies⁹³ also take into consideration environmental and social matters.

⁹² See <http://www.ebrd.com/pages/research/publications/policies/environmental.shtml>.

⁹³ See <http://www.ebrd.com/pages/about/policies.shtml>.

The EBRD's Public Information Policy

The Public Information Policy (PIP) sets out how the EBRD discloses information and consults with its stakeholders so as to promote better awareness and understanding of its strategies, policies and operations. At the same time, the PIP establishes clear lines of demarcation to distinguish the information that is made publicly available (either on a routine basis or upon request) from information that may not be disclosed on the grounds of being confidential.⁹⁴

The EBRD Public Information Policy entitles the public to information including:

- Sectoral Policies
- Country Strategies
- The EBRD Environmental Policy
- Project Summary Documents (PSDs)
- Environmental Impact Assessments (EIAs)
- Public Sector Project Board Reports (after Board approval, available upon request)

To access any of the information above not available on the EBRD website, contact the EBRD's Head of Civil Society Engagement Unit, Biljana Radonjic Ker-Lindsay, at phone: +44 20 7338 7912, fax: +44 20 7338 6102, or email: csu@ebrd.com. You may also use the EBRD's online information request form: <http://www.ebrd.com/pages/about/contacts/form.shtml>. Additionally, you can send a request for information by fax :+44 207 338 6102, or regular mail to the Bank's Communications Department at One Exchange Square, London, EC2A 2JN, United Kingdom.

If a request for information is rejected, you can appeal by submitting a letter to the Secretary General at One Exchange Square, London, EC2A 2JN, United Kingdom, by e-mail to SecretaryGeneral@ebrd.com, or by fax: +44 207 338 6488 within 30 working days of the receipt of the decision which is the subject of the appeal.

Example of a Case Brought to the PCM

Because this mechanism only began operating as a substitute for the previous mechanism (the IRM) in 2010, there is to-date only one completed case.

On April 27, 2010, the EBRD approved a loan of up to \$250 million for the design, build, finance and operation of portions of the "D1 Motorway Phase 1" roadway project in the Slovak Republic. On June 7, 2010, the Priatel'ia Zeme – CEPA and SOS BirdLife Slovensko organizations jointly filed a complaint with the PCM seeking compliance review concerning inadequate assessment of the project's environmental impacts and consequential

⁹⁴ See Public Information Policy, European Bank for Reconstruction and Development (July 2011), available at <http://www.ebrd.com/pages/research/publications/policies/publicinfo.shtml>.

harm to protected areas and habitats of community importance.

The PCM determined the request was eligible for a compliance review to “assess whether and – if so – which EBRD policy or policies may have been violated and if harm has been caused due to action or inaction on the part of the Bank.”⁹⁵ On September 2, 2010, the newly elected Government of the Slovak Republic chose not to proceed with the project following delays in financing deadlines and negotiations with the European Commission over environmental concerns raised by civil society. The PCM nonetheless opted to move forward with compliance review in order to address outstanding questions regarding EBRD compliance with its own safeguard policies.

The PCM conducted an investigation and issued its findings in its Compliance Review Report in March 2011, which was also submitted to the EBRD Board of Directors. Despite finding significant deficiencies in the initial study assessing expected project impacts, the PCM independent expert concluded that no non-compliance had occurred as a result of subsequent due diligence conducted by EBRD identifying and stipulating appropriate mitigation measures.⁹⁶

This case demonstrates the limits of compliance review, which is aimed solely at determining whether a bank is in compliance with its own policies. As demonstrated by this case, even a deficient initial study may not lead to a finding of non-compliance.

Where to Submit a Complaint

A Sample Complaint is available on the website. File your complaint with supporting information to your local EBRD office, or via mail, e-mail or fax to:

Project Complaint Mechanism
Attn: PCM Officer
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Phone +44 20 7338 7813; Fax +44 207 338 7633
Email pcm@ebrd.com

According to the EBRD, “Complaints submitted by email should contain the Complainant’s or Authorised Representative’s scanned signature; if emailed without a scanned signature, a signed version of the Complaint must be sent by fax, post or hand delivery to the PCM Officer or one of the Bank’s Resident Offices as soon as possible after the email submission.”⁹⁷

⁹⁵ Project Complaint Mechanism Eligibility Assessment Report, Complaint: D1 Motorway Phase 1, Slovak Republic 7 (Aug. 2010), *available at*:

http://www.ebrd.com/downloads/integrity/Eligibility_Assessment_Report.pdf.

⁹⁶ Project Complaint Mechanism Compliance Review Report, D1 Motorway Phase 1, Slovak Republic 7 (May 2011), *available at*:

http://www.ebrd.com/downloads/integrity/Compliance_Review_Report_D1_Slovakia_FINAL.pdf.

⁹⁷ PROJECT COMPLAINT MECHANISM: RULES OF PROCEDURE 8 (2010), *available at*

<http://www.ebrd.com/downloads/integrity/pcmrules.pdf>.

The African Development Bank's (AfDB) Independent Review Mechanism (IRM)

What is the AfDB?

The AfDB is part of the AfDB Group, established in 1964. The AfDB's headquarters are currently located in Tunis, Tunisia. As of November 2010, the AfDB consists of 53 African member countries and 24 non-African member countries. As of the end of 2009, AfDB's capital (the amount it may disburse in loans or grants) was US \$22.12 billion. The AfDB's mission is to "contribute to the sustainable economic development and social progress of its regional members, individually and jointly."⁹⁸

What is the AfDB Independent Review Mechanism?

The African Development Bank's Independent Review Mechanism ("AfDB IRM") was created in 2006. The AfDB IRM applies to both private- and public-sector AfDB operations. The AfDB IRM has both compliance review and problem-solving functions. The IRM may choose to employ one function or the other, both (simultaneously or sequenced), or neither.

The AfDB IRM is housed in the AfDB's Compliance Review and Mediation Unit ("CRMU"). The CRMU is the Operations Evaluation Organizational Unit of the AfDB and reports directly to the AfDB Boards of Directors.

The AfDB IRM was reviewed in 2009 and a revised IRM policy was published in

AFDB QUICK SUMMARY

Two or more people may submit a complaint to the AfDB's IRM if:

- you are located in a country where an AfDB project is located; and
- your rights or interests have been, or are threatened to be, directly, adversely and materially affected by an AfDB project.

The Director of the AfDB's IRM will conduct a review within 14 days and either register the complaint, reject it, or request more information. The Director decides whether a complaint will be dealt with as a problem-solving initiative or compliance review. AfDB management must respond to a complaint within 21 days.

If the Director recommends a compliance review, the AfDB Board or the President must approve the review before it can go forward. They must approve terms of reference for a problem-solving initiative.

The Board or President must approve the findings and recommendations by the end of the process. The CRMU will monitor any measures implemented as the result of either process.

⁹⁸ See <http://www.afdb.org/en/about-us/>.

June 2010.⁹⁹

What Type of Complaints May Be Submitted?

The AfDB's IRM accepts requests that allege an actual or threatened material adverse effects from the failure of any institution of the African Development Bank Group to follow any of its own operational policies and procedures in the design, appraisal or implementation of a Bank Group-financed project.¹⁰⁰ This provision applies to projects that fund both the public and private sectors.

What Are the Requirements for Filing a Complaint?

In order to be eligible, a complaint must:

- be filed by two or more people in a country where a Bank-supported project is located;
- include the names and addresses of the requesters;
- state that as a result of the Bank-supported project, the requester's rights or interests have been or are likely to be directly, adversely and materially affected;
- describe the project and the harm that has happened or is expected to happen as a result of the Bank operation;
- describe the steps taken to resolve the problem with Bank staff and why the Bank staff's response was inadequate; and
- be submitted in writing and is signed and dated by the requesters.

Where possible, the complaint should explain how Bank policies were violated and how an act or failure to act by the Bank led or may lead to the policy violation. Requesters should also include copies of all relevant correspondence or notes of meetings with Bank Group staff.

An authorized local representative, or in extreme circumstances, a foreign representative, may represent the adversely affected people. Complaints submitted by authorized representatives must contain original written, signed proof of authority for the representation. Foreign representation is permitted where there is "evidence that there is no adequate or appropriate representation in the country or countries where the project is located or has a direct and material impact."¹⁰¹

The CRMU will meet with requesters and will give advice regarding preparation of a request.

⁹⁹ African Development Bank Group's The Independent Review Mechanism Operating Rules and Procedures (2010), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/IRM%20Operating%20Rules%20and%20Procedures%20-%2016%20June%202010.pdf>.

¹⁰⁰ *Id.* at 2.

¹⁰¹ *Id.* at 6, ¶ 13.

Confidentiality

While requesters may request confidentiality, the Director of the CRMU will determine whether confidentiality is warranted. If it is warranted, all reasonable efforts will be used to keep the requesters' identities confidential; and if confidentiality cannot be maintained, the Director will discuss whether the requesters are willing to go forward; if not, the Director will terminate the process.

What Happens After a Complaint is Filed

a. Procedures on Receipt of Request

Within fourteen business days of receiving a complaint, the Director of the CRMU will conduct a preliminary review to make the threshold determination of whether the complaint alleges harm resulting from a Bank-financed operation. At that point, the Director will register the complaint, reject it, or request more information.

Once registered, the Director, with “due consideration of the Requestors,”¹⁰² will determine whether the complaint is to be dealt with as a problem-solving initiative or should be further considered for a compliance review. The requesters are then notified of the decision, as are the President and/or Board, who receive copies of the complaint.

b. Management Response

AfDB Management is then notified of the complaint and must submit a response within twenty-one days stating whether they have complied or intend to comply with Bank policy and procedure. A copy of the Management Response report, or notice that Management failed to respond within the time frame, is sent to the Requestors. Note that this provision appears to apply even if a complaint alleges harm from a Bank-financed project with no policy violation, and requests problem-solving and not compliance review.

The CRMU may request clarification of the issues from Management, provide relevant portions of Management's response for comment (presumably to the requesters), ask that requesters respond to the Management's clarification, and must then “undertake and conclude the problem-solving exercise and/or make its recommendation to the Boards or the President.”¹⁰³ If the requesters cannot provide information to the CRMU in response to Management's clarification quickly, the CRMU may require that the requesters submit an amended request and the entire process must begin again.

c. The Problem-Solving Process

In determining whether a complaint is eligible for a problem-solving exercise, the Director of the CRMU must consider whether the problem-solving exercise will help in addressing harm, whether the parties are amenable to the exercise, whether the Bank has sufficient leverage to affect change, and whether the exercise might interfere with a

¹⁰² *Id.* at ¶ 20.

¹⁰³ *Id.* at ¶ 33(a).

compliance review. There is no time limit at this stage.

If a complaint is eligible for a problem-solving exercise, the Director will invite the Requestors, Management, representatives, and other interested parties to participate in the process, which could entail “independent fact-finding, mediation, conciliation and dialogue facilitation.”¹⁰⁴

Within thirty days of the completion of the problem-solving exercise (as determined by the Director), the Director must complete a Problem-Solving Report. The Report describes facts underlying the issue, the result reached, recommendations if any, and any comments from the relevant parties and interested persons. If the exercise was successful, the Report will also include the agreement reached and will be submitted to the Board and President. If unsuccessful, within three months or by the consent of the parties, the Director will report on the unsuccessful result in the Problem-Solving Report and will submit the Report to the requesters, President and Board.

The President or Board, as applicable, will then decide whether to accept or reject the Director’s recommendations for remedial measures, if any. If recommendations are rejected, the parties are informed and told the reason for the rejection. A summary of the result of the exercise is then posted on the AfDB IRM website.

d. The Compliance Review Process

At the conclusion of a problem-solving exercise, the Director’s Problem-Solving Report may recommend that a compliance review be initiated if there is evidence that harm has resulted from violations of Bank policy. Although the Director must issue a report recommending compliance review within thirty days of making a determination, there is no provision regarding when the determination itself must be made. The report, which includes draft terms of reference for the compliance review, is submitted to the Board for consideration where it is a Board-approved project at issue, or the President if it is not.

If the Director determines that the Request is not eligible for a compliance review, the Request is referred to the IRM Experts who make their own determination on compliance review within twenty-one days of the Director’s determination. The IRM Experts inform the Boards or the President of their determination and at that point may submit a recommendation with Terms of Reference to the Boards or to the President for compliance review.

The President or Board determines whether or not to accept the terms of the compliance review on a non-objection basis or to remit the issue to the Director or an Expert for reassessment. The recommendation for a compliance review and the President or Board’s decision are communicated to the requester and any other relevant person, and a summary is published on the AfDB Website.

A compliance review is conducted by IRM Experts with “administrative and

¹⁰⁴ *Id.* at ¶ 36-7.

technical support from CRMU”; the Director is no longer on the compliance Review Panel.¹⁰⁵ A compliance review follows the terms of reference approved by the President or Board. Within thirty days of the completion of the review, the Panel submits its report to the President or Board which includes a summary of the facts, a description of the positions of the parties, the findings of compliance or non-compliance and recommendations, if any, for remedial changes to Bank systems, the project, and/or steps needed to monitor the implementation of changes.

The compliance review report is submitted to the requesters and other relevant parties at the same time it is sent to the President or Board for consideration (to the Board where it is a Board-approved project at issue, or the President if it is not). The President or Board then decides whether or not to accept the findings and recommendations in the report. The decision is promptly communicated to the requesters and is published on the website.

After the President and the Boards receive the Compliance Review Report, the Bank’s Management is required to prepare a Response and an Action Plan based on the findings of the Compliance Review Report. This Response and Action Plan must be submitted to the President, the Boards of Directors, CRMU, and the Requestors within ninety days. Management is also required to 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 days from the date on which the Action Plan is distributed to the Boards.

Ultimately the Boards or the President, as the case may be, shall decide whether or not to accept the findings and recommendations in the Compliance Review Report.

Timeline for Processing of Complaints

In the case of a recommended problem-solving initiative, and within the same twenty-one days of the registration, the CRMU may request clarification of the issues from management, provide relevant portions of management’s response for comment, ask that requesters respond to the management’s clarification, and must then “undertake and conclude the problem-solving exercise and/or make its recommendation to the Boards or the President”.¹⁰⁶ There is no time limit for the determination of eligibility for either a problem-solving exercise or compliance review.

Once the problem-solving exercise is complete, as determined by the Director, the Director must complete a Problem-Solving Report within thirty days. The Director must issue a report recommending compliance review within thirty-days of making the determination that the complaint is eligible for a compliance review. There is no provision regarding when the determination itself must be made. If delays in any of these time periods are required, the Director may extend the time period with prompt notification to the

¹⁰⁵ *Id.* at ¶ 45.

¹⁰⁶ African Development Bank Group’s The Independent Review Mechanism Operating Rules and Procedures (33), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/IRM%20Operating%20Rules%20and%20Procedures%20-%2016%20June%202010.pdf>.

requesters and all interested persons per AfDB IRM Rule of Procedure Paragraph 30.

In summary, while there are limits by which the complaint must be registered, there are no time limits regarding the conduct of eligibility decisions, problem-solving exercises, and compliance reviews. Within thirty days of the completion of problem-solving exercises and compliance reviews, reports regarding those completed exercises are due.

Monitoring and Reporting

If monitoring is an element of completion of a successful problem-solving exercise, the CRMU is responsible for the monitoring. The monitoring report shall be presented to the President and copied to the Board. In the case of monitoring of implementation of changes after a compliance review, the Director and an Expert are responsible for the monitoring unless the President or Board decides otherwise.

Information Disclosure

According to the AfDB's 2005 Policy on Disclosure of Information ("Policy"),¹⁰⁷ a number of documents are to be made public.

a. Project Documents

Perhaps most important for Requesters' purposes is the "Prospective Project Brief (PPB) on public and private sector projects" (Policy at 4.14). The PPB is:

a Bank Group document designed to make project information available to interested parties while a project is still under preparation will be published. It is intended that the PPB will facilitate consultation with peoples who would be affected by Bank Group operations at an early stage in the project cycle. The PPB will provide a brief factual summary of the main elements of an evolving project: objectives; expected or probable components; costs and financing; environmental category and environmental and other related issues such as financing and procurement arrangements; studies to be undertaken; prospective implementing agency; and relevant points of contact. It will clearly indicate that its contents are subject to change and that the components described may not be included in the final project. For sector and structural adjustment operations, which do not finance physical investments, PPBs will identify the areas being examined.

According to the Section 4.15 of the Policy, "all PPBs will be available in their original language through the [Public Information Center] at least six (6) months prior to presentation of the project to the Boards of Directors. Public disclosure of PPBs will only be done after consultation with the government concerned by the Country/ Sector Directors."

¹⁰⁷ See African Development Bank Group Policy on Disclosure Information (2005), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000004-EN-THE-AFRICAN-DEVELOPMENT-BANK-GROUP-POLICY-ON-DISCLOSURE-OF-INFORMATION.PDF>.

Project Appraisal Reports (“PARs”) are also important documents. A PAR “describes the project, and outlines the Bank’s appraisal and assessment of the feasibility of, and justification for the project. Once a project has been approved by the Boards of Directors, the PAR will become available to the public. Summary documentation on any subsequent substantial change to a project approved by the Boards of Directors will also be made publicly available routinely after Board approval.” Policy at 4.18.

Environmental information about a project is disclosed in Environmental and Social Impact Assessments (ESIAs). According to the Policy at 4.24, “Local populations shall be informed of the results of the ESIA and their opinions about proposed recommendations solicited.” Furthermore:

Before the Bank Group proceeds to an appraisal mission for Category 1 projects, available ESIA studies shall be released in the borrowing country project area at some public place accessible to potential beneficiaries, affected group and local CSOs. Once the ESIA is released in the borrowing country and submitted officially to the Bank Group, it will be made available to the public through the PIC, website and the field offices where such offices are in place. If the borrower objects to the broader release of the ESIA outside the borrowing country, staff will not continue with the processing of the project. For Category 4 projects involving Financial Intermediaries (FI), the FI shall ensure that the sub-projects that require ESIA undergo the same information disclosure process as Category 1 projects funded by the Bank Group.

Policy at 4.25. Executive Summaries of ESIA (Policy at 4.26-.27), and Environmental and Social Management Plans (Policy at 4.28-.29) are also documents required for public disclosure.

b. Operational Policy Documents

In order to identify which policies apply to an AfDB project, the AfDB discloses Operations Policy Papers, which include Sectoral Policy Papers and Guidelines, and which “will be publicly available on request through the PIC and the Bank Group’s field offices and on the Bank’s website within two weeks of their approval by the Boards of Directors. Draft policy papers will be released through the Internet and the Bank website at least 50 days prior to formal Board discussion.” Policy at 4.20.

According to Policy Section 4.21, “Prior to submission of operational and sectoral policy papers to the Boards of Directors, staff may discuss such papers in draft form, as appropriate, with institutions and individuals outside the Bank Group with specialized knowledge of specific issues (in particular, relevant and competent NGOs and specialized agencies of the United Nations) and may share such drafts with them.”

c. Other Strategy and Sectoral Documents

Others notable AfDB documents that must be disclosed include:

- Economic and Sector Work reports, which include “economic, and sector studies, reviews and strategy papers” (available to the public after distribution to and/or consideration by the Board). Policy at 4.1;
- “Poverty Reduction Strategy Papers (PRSPs) and Interim PRSPs (I-PRSPs) are prepared by the country concerned and among other things, summarize the country’s objectives, policies, priorities and measures for poverty reduction. Once a PRSP (or I-PRSP) has been disclosed in-country, the Bank Group will make it publicly available after distributing it to the Boards of Directors.” Policy at 4.2;
- Country Strategy Papers, drafts of which “will be released via the Bank Group website at least 50 days prior to formal Board discussion.” Policy at 4.3; and
- Country Governance Profiles (Policy at 4.6), Country Dialogue Papers (Policy at 4.8), Policy Based Loans (Policy at 4.9), Highly Indebted Poor Country (HIPC) Initiative documents (Policy at 4.13).

d. AfDB CRMU Documents

In terms of the information the AfDB CRMU is required to disclose, the AfDB website has a page dedicated to the Independent Review Mechanism.¹⁰⁸ The website contains a registry of complaints, information about the Roster of Experts, annual reports, IRM Reports, and news and events. The register contains a summary of each milestone in the process and the date it was reached. The AfDB IRM policy mandates publication of Problem-solving Reports, and Compliance Review Reports. There is no provision for the publication of monitoring reports following-up on the implementation of changes. In practice, the AfDB IRM is more transparent than its policy requires.

Policies That May Apply in Claims to the AfDB CRMU

The AfDB’s Social and Environmental Policy framework consists of: Environmental review procedures for private sector operations of the AfDB, Environmental and Social Assessment Procedures for AfDB Public Sector Operations, Environmental and Social Assessment Procedures, Integrated Environmental and Social Impact Assessment Guidelines, Bank Group Climate Risk Management and Adaptation Strategy, and an Environmental Safeguards Policy.¹⁰⁹

Example of an AfDB IRM Complaint

Since it began operating in 2006, the AfDB IRM has registered six complaints. The first relates to the Bujagali Hydropower and the Bujagali Interconnection Projects in Uganda. The project implicated the Bank’s policies relating to the social, cultural, environmental, hydrological and economic aspects of the Bujagali Projects. After a site visit

¹⁰⁸ See <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/>.

¹⁰⁹ All documents are available for download at <http://www.afdb.org/en/documents/policy-documents/>.

during the eligibility stage, the complaint was accepted for compliance review. Because the World Bank Inspection Panel received a similar complaint regarding the same project, the CRMU signed a Memorandum of Understanding with the Inspection Panel regarding the sharing of information and expert consultants. Following a joint fact-finding mission to the project area with the Inspection Panel and an internal investigation, the AfDB IRM completed its Compliance Review Report.

The AfDB IRM Panel found both compliance and non-compliance with AfDB policy. The Board approved the Panel's findings, two action plans, and a continued monitoring role for the AfDB IRM. Monitoring reports were issued in August 2009 and again in September 2010.^{110]}

How to Submit a Complaint

Complaints may be sent to the AfDB's CRMU "by any reasonable means"¹¹¹ which includes fax, and email. While complaints must be submitted in writing and signed, the procedures say that there is "no specific format" required and "requests will be interpreted with flexibility with the view of allowing affected people and communities to use the means at their disposal to submit complaints."¹¹² Complaints may be sent to:

Compliance Review and Mediation Unit (CRMU)
P.O. Box 323-1002
12th Floor, EPI-B, African Development Bank Group
Tunis-Belvedere, Tunisia
Tel: +216 71 10 20 56 and +216 71 10 29 56
Fax: +216 71 83 56 99
Email: crmuinfo@afdb.org
Website: <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/>

¹¹⁰ African Development Bank, Request Register, <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/requests-register/>.

¹¹¹ African Development Bank Group's The Independent Review Mechanism Operating Rules and Procedures ¶ 16 (2010). See more specific instructions at: <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/compliance-reviewmediation-request/>. Contact form is also available at <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/independent-review-mechanism-irm-contacts/>.

¹¹² *Id.*

The European Investment Bank's (EIB) Complaints Mechanism

What is the EIB?

The European Investment Bank (“EIB”) was created in 1958 and lends money to the public and private sectors in the area of EU convergence, and provides support for small and medium-sized enterprises, environmental projects, research, transport and energy. In 2007, 13 percent of the EIB’s lending went to projects in Africa, the Caribbean, the Pacific, South Africa, Asia and Latin America. In 2007, this amounted to 6.4 billion Euros of projects in those regions with another 7.8 billion Euros of projects approved and in the pipeline.

What is the EIB’s Complaints Mechanism?

The EIB has the newest of the IFI accountability mechanisms, having released its Complaints Office policy in 2008, and revised versions in February 2010 and April 2012.¹¹³ The EIB Complaints Mechanism takes a flexible approach; it conducts compliance reviews, problem-solving, gives “advice and recommendations to EIB Management” and reviews implementation of corrective actions.¹¹⁴ The Complaints Office applies to both private- and public-sector EIB operations.

What May Be the Subject of a Complaint?

The EIB has the widest scope of any of the IFI accountability mechanisms. It may accept complaints from *any person* alleging operational “maladministration”¹¹⁵ by the EIB.

EIB QUICK SUMMARY

Any person or group may submit a complaint to the EIB Complaints Mechanism Office if you believe the EIB has failed to act according to:

- applicable law,
- EIB policy,
- fails to respect the principles of good administration, or
- violates human rights

The Office will respond within 10 days acknowledging receipt of the complaint. This may include, or be followed by, a decision as to whether the complaint will be processed. If so, the Office will conduct an investigation using a flexible approach, which may include compliance review and/or problem-solving. Note: complainants may expressly request problem-solving in their complaint.

The Office concludes its work with an recommended corrective actions and issues a Conclusions Report.

If you are not satisfied with the result, within one year, you may appeal to the European Ombudsman. This is the only IFI accountability mechanism that has an appeal process.

¹¹³ See Revised Policy EIB Complaints Mechanism (Apr. 2012) at <http://www.eib.org/infocentre/publications/all/complaints-mechanism-policy.htm>.

¹¹⁴ EIB Complaints Mechanism Policy, ¶ II. 3.1.

¹¹⁵ EIB Complaints Mechanism Policy, ¶ II. 1.2.

The EIB Complaints Mechanism Policy defines “maladministration” as occurring “when a member of the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights.”¹¹⁶ Instances of maladministration may also concern “environmental or social impacts” of the EIB Group’s activities.¹¹⁷ The EIB gives examples of such failures, as determined by the European Ombudsman, as: “administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, unnecessary delay.”¹¹⁸

Who May Complain?

Complaints may be submitted to the Complaints Office by “any person or group” alleging maladministration of a member of the EIB Group due to an EIB action or omission.¹¹⁹ The complaining party may be “any person or group that is or feels affected by alleged environmental, developmental or social impacts of the EIB Group’s activities.”¹²⁰

Furthermore, any member of the public who feels “affected by the activities of the EIB Group but who [is] not aware of the rules, regulations, policies or procedures applying to the Group may also submit complaints.”¹²¹ Thus, in terms of standing to file a complaint, the EIB offers the widest access of any of the mechanisms.

Language of the Complaint

Complaints must be filed in any of the official EU languages. If a complaint is filed in a local language, the complainant will be asked to have the complaint translated into an EU language.¹²²

What to Include in the Complaint

The complaint must provide the contact information, including mailing address, of the complainant; the description of the maladministration complained of; the desired outcome of the process; and it must attach all relevant documentation.¹²³ A complaint submission form is available online at: <http://www.eib.org/infocentre/complaints-form.htm>.

¹¹⁶ EIB Complaints Mechanism Policy, ¶ II. 1.2.

¹¹⁷ EIB Complaints Mechanism Policy, ¶ II. 1.2.

¹¹⁸ EIB Complaints Mechanism Policy, ¶ II. 1.2.

¹¹⁹ EIB Complaints Mechanism Policy, ¶ IV. 2.1.

¹²⁰ EIB Complaints Mechanism Policy, ¶ IV. 2.1, n.5.

¹²¹ EIB Complaints Mechanism Policy, ¶ IV. 2.2.

¹²² EIB Complaints Mechanism Policy, ¶ IV. 3.2.

¹²³ EIB Complaints Mechanism Policy, ¶ IV. 6.

Confidentiality

Unlike the other accountability mechanisms where requesters must affirmatively request confidentiality, the EIB Complaints Mechanism Policy treats all information confidentially unless the complainant has waived that right.¹²⁴

What Happens After a Complaint is Filed

Once the complaint is received, the EIB Complaints Office has ten days in which to acknowledge receipt of the complaint. The acknowledgement may include the Complaints Office's decision as to whether the complaint is admissible and will inform the complainant when EIB's official reply can be expected.¹²⁵

If the complaint is admissible, the Complaints Office will conduct an inquiry that includes reviewing documents and when judged necessary, holding meetings with the relevant internal and external stakeholders.¹²⁶ In a blend of both compliance and problem-solving roles, the Complaints Office “will focus on fact-finding and whenever appropriate will use dispute resolution techniques such as mediation, conciliation and dialogue facilitation, thus ensuring to give the adequate emphasis to problem solving.”¹²⁷ The Complaints Office may conduct site visits, request oral or written submissions from the parties, meet with local and international organizations, and may rely on expert research.¹²⁸ The Complaints Office may also propose corrective actions and improvements to EIB policy.

At the end of an inquiry, the EIB Complaints Office will prepare a “Conclusions Report” and formulates corrective actions and recommendations. Corrective actions will include an implementation plan with a detailed timeframe.¹²⁹

If Unsatisfied, Opportunity to Appeal to the European Ombudsman

Unlike any of the other accountability mechanisms discussed above, if the requester is not satisfied with the decision from the EIB Complaints Office, that decision may be appealed to an independent higher authority. Procedures for appeal to the European Ombudsman are in Section V of the Revised Complaints Mechanism Policy.¹³⁰

¹²⁴ EIB Complaints Mechanism Policy, ¶ IV. 13.

¹²⁵ EIB Complaints Mechanism Policy, ¶ IV. 7.1.

¹²⁶ EIB Complaints Mechanism Policy, ¶ IV. 7.6.

¹²⁷ EIB Complaints Mechanism Policy, ¶ IV. 7.7.

¹²⁸ EIB Complaints Mechanism Policy, ¶ IV. 8.

¹²⁹ EIB Complaints Mechanism Policy, ¶ IV. 7.14-17.

¹³⁰ See Revised Policy EIB Complaints Mechanism at <http://www.eib.org/infocentre/publications/all/complaints-mechanism-policy.htm>.

a. Timing of Steps Taken Before An Appeal

According to the EIB Complaints Office rules, “A complaint must be lodged within two years from the date of acknowledgement of the facts on which the complaint is based.”¹³¹

b. Scope of European Ombudsman Investigations

Appeals may be brought to the European Ombudsman if there is a concern that the EIB Complaints Office failed to deal with the complaint in a “timely and/or correct manner.”¹³²

The goal of the European Ombudsman’s procedure is to find a satisfactory resolution of the issue. The European Ombudsman may make a finding that the EIB has committed maladministration and make recommendations if appropriate.

If the EIB fails to accept the European Ombudsman’s recommendations, the European Ombudsman may make a special report to the European Parliament.¹³³

Policies That May Apply in Claims to the EIB’s Complaints Mechanism

EIB has a set of environmental policies and strategies, including EIB’s Statement of Environmental and Social Principles.¹³⁴ The Statement outlines the standards that the Bank requires of the projects that it finances, and the responsibilities of the various parties. It provides a sense of urgency about the problems of climate change, gives greater recognition to the importance of biodiversity, and expands the section on the social dimensions of sustainable development.

The EIB adopted a Transparency Policy on 2 February 2010. The new Transparency Policy replaces the Public Disclosure Policy (2007) and the Transparency Policy (2004). The new transparency policy fully takes into account the Lisbon Treaty on the functioning of the EU.¹³⁵

How to Submit a Complaint

Written complaints to the EIB may be submitted through email, the complaint form on the EIB website, by mail to the below address, by fax or delivered directly to the EIB Complaints Office, any EIB local representation office or any EIB staff.¹³⁶

¹³¹ EIB Complaints Mechanism Policy, ¶V, 5.1.

¹³² EIB Complaints Mechanism Policy, ¶ V. 1.1.

¹³³ EIB Complaints Mechanism Policy, ¶ V. 6.2.

¹³⁴ See <http://www.eib.org/infocentre/publications/all/environmental-and-social-principles-and-standards.htm>.

¹³⁵ See <http://www.eib.org/infocentre/publications/all/eib-transparency-policy.htm>.

¹³⁶ EIB Complaints Mechanism Policy, ¶ IV. 3.1

Secretary General
100 boulevard Konrad Adenauer
L-2950 Luxembourg
Phone: (+352) 43 79-1
Fax: (+352) 43 77 04
www.eib.org
Email: complaints@eib.org
Online Complaint Form: <http://www.eib.org/infocentre/complaints-form.htm>

The Brazilian Development Bank (Banco Nacional de Desenvolvimento Econômico e Social (BNDES))

What is the Brazilian Development Bank (BNDES)?

BNDES is a state-owned development bank that is the main source of financing for infrastructure and expansion of industry projects in Brazil and the region. In 2009, BNDES disbursed over R\$135 billion, roughly US\$80 billion, to companies headquartered in Brazil and working around the world. They have rapidly been globalizing, opening offices in Montevideo and London. BNDES has also opened its own Export-Import Bank that is exclusively dedicated to the foreign trade sector.

What is the BNDES Ombudsperson?

BNDES created the position of Ombudsperson within the Bank in 2003. They receive suggestions, reports of misconduct, and complaints, from both the “external and internal public (employees and collaborators).” They aim to “[guarantee] the principles of ethics, efficiency and transparency in the relationships between the government and citizens.” The Ombudsperson can assist in resolving disputes between citizens and BNDES by “issuing clarifications and trying to strengthen the bonds between the BNDES, its clients and the general public.” The Ombudsperson also makes suggestions for necessary improvements to Senior Administration.¹³⁷

Using the Mechanism

There is currently little information available about the functioning of the Ombudsperson mechanism of BNDES. We have heard that it can be challenging to use, with limited transparency and indecisive results. BNDES does not currently have a disclosure policy regarding complaints. More information about the operation of the BNDES Ombudsperson is forthcoming.

How to Contact the BNDES Ombudsperson or Make a Complaint

The BNDES Ombudsperson can be contacted via a form on the website: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Navegacao_Suplementar/Ouvidoria/formulario.html

They can also be contacted at the following address:

BNDES Ombudsperson / Ouvidoria
Avenida República do Chile,
100 - 19º andar 20031-917
Rio de Janeiro - RJ – Brazil
Phone: +55 21 2172-7447
Fax: +55 21 2172-7117

¹³⁷ See the BNDES Ombudsperson website, available at http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Navegacao_Suplementar/Ouvidoria/.

PART III EXPORT PROMOTION AGENCIES

Export promotion agencies, some of which are called export credit agencies, are government-run institutions that give loans, grants, and insurance to domestic corporations doing business abroad. The stated goal of such support is to promote domestic companies and to contribute to development abroad. Put together, these agencies fund and support more private sector projects than any other type of financial institution.¹³⁸ Only a few of the export promotion agencies around the world have accountability offices. The agencies created by the Japanese, Canadian and American governments are discussed below.

The Japan Bank for International Cooperation's (JBIC) Examiner for Environmental Guidelines

What is the Japan Bank for International Cooperation (JBIC)?

JBIC is the export credit agency of the Japanese Government. JBIC promotes Japanese exports, imports and economic activities overseas.

What is the JBIC Examiner for Environmental Guidelines?

JBIC's Examiner for Environmental Guidelines was designed to ensure JBIC's compliance with its own Guidelines.

The Examiner may review "projects in which the Bank provides funding and in which substantial damage has actually been incurred or is likely to be incurred in the future, due to the Bank's non-compliance with the Guidelines."¹³⁹

Who Can Submit a Complaint?

In order to submit a complaint to the Examiner, there are several requirements:

- The requesters must be two or

¹³⁸ For a critique of the ECAs, visit the ECA Watch Website at <http://www.eca-watch.org/eca/index.html>.

¹³⁹ See

http://www.jica.go.jp/english/operations/social_environmental/archive/jbic_archive/procedures/pdf/objecti on.pdf.

JBIC QUICK SUMMARY

Two or more people may complain to the JBIC Examiner when:

- they live in a country where JBIC has financed a project;
- they have suffered or are likely to suffer harm from the JBIC project;
- the harm has resulted from JBIC's failure to follow its own Guidelines; and
- you have made efforts to address your problem with both the project sponsor and JBIC's operational department before filing a complaint.

The Examiner conducts an eligibility phase and then decides whether or not to investigate. The Examiner may also attempt to mediate the dispute through a dialogue phase. Within 3 months, the Examiner will issue a report with a finding regarding JBIC compliance. The operational department must respond, and the JBIC Board decides what action to take, if any.

more people;

- The requesters must live in a country where JBIC has funded a project;
- The requesters must have either suffered harm from JBIC’s policy violation with regard to a specific project, or they must be likely to suffer such harm.

Another person may file a complaint on your behalf (your agent), but you must authorize the person to act on your behalf and the requesters must still be identified in the complaint.

When May A Complaint Be Filed?

The timing of when requesters may submit a complaint depends on the type of funding that JBIC has given to a project.

In the case of an Official Development Assistance or “ODA” Loan, or JBIC’s Yen loan under its Overseas Economic Cooperation Operations, requesters must submit a complaint:

- After JBIC has appraised a project, but before the loan has been fully disbursed.
- However, even after the entire amount of the loan has been given out, a requester may submit a complaint if JBIC is still monitoring the project under its Guidelines.

In the case of any other type of JBIC funding, requesters must submit a complaint:

- After the loan agreement is executed and before the loan has been fully disbursed.
- However, even after the entire amount of the loan has been given out, a requester may submit a complaint if JBIC is still monitoring the project under its Guidelines.

If the Examiner receives a complaint too early – before the project appraisal or before the loan agreement has been signed – JBIC’s Examiner will send the complaint to JBIC’s Operational Department. The Operational Department will then respond to the complaint and will report to the JBIC leadership.

Steps that Must Be Taken Before Filing a Complaint

There are two groups that the requester must try to contact before filing a complaint: (1) the Project Sponsor and (2) the JBIC Operational Department.

- (1) **Contacting the Project Sponsor.** A requester may only bring a complaint to the Examiner after the requester has attempted to resolve the issue with the

Project Sponsor or “Project Proponent”.¹⁴⁰ The Project Sponsor is generally the corporation or group actually constructing or creating the project at issue.

- (2) **Contacting JBIC’s Operational Department.** The requester must also communicate the concerns to JBIC’s Operational Department before filing a complaint. In order to communicate your issues with the JBIC Operational Department, send a description of your issues to the closest JBIC office with a request that the complaint be forwarded to the Operational Department. There are 27 JBIC offices around the world.¹⁴¹

In both cases, the requester should take detailed notes regarding any telephone calls made to these groups and should keep copies of any letters, facsimiles or e-mails sent to these groups regarding their complaints. If any meetings are scheduled or conducted, the requester should make a record of when and where the meeting took place and who attended. It is important that the requester have at least two people present at any in-person meeting. The requester should also keep a record of the response received from the Project Sponsor or JBIC’s Operational Department, if any.

What to Include in the Complaint

The complaint may be submitted in English, Japanese, or your country’s official language.

The following information must be included in the complaint:

- The names and contact information for the requesters;
- If an agent is filing the complaint on behalf of the requesters, include information about the agent and proof that the agent is authorized to act on behalf of the requesters (for example, a signed letter from the requesters giving the agent authority to act on the requesters’ behalf);
- Information about the project at issue, including:
 - the name of the country where the project is located,
 - the specific location of the project, and
 - a short description of what the project is, including information about the Project Sponsor;
- A description of the harm that the requesters have suffered (or are likely to suffer in the future) as a result of JBIC’s failure to follow its own Guidelines;
- Relevant provisions of the JBIC Guidelines that the requesters believe have been violated;

¹⁴⁰ See

http://www.jica.go.jp/english/operations/social_environmental/archive/jbic_archive/procedures/pdf/objection.pdf.

¹⁴¹ For the nearest JBIC office, please visit <http://www.jbic.go.jp/en/about/office/index.html>.

- Facts supporting the requesters' belief that JBIC Guidelines have not been followed;
- Facts to explain why the JBIC failure to follow the Guidelines has caused the harm (or expected harm) to the requesters;
- A description of how the requesters think the issue should be resolved. For example, explain the:
 - type of compensation required,
 - changes that must be made to the project, or
 - mitigation of environmental impacts needed;
- Facts describing how the requesters first tried to resolve the issues with the Project Sponsor and the JBIC Operational Department.
 - Here, the requesters should describe and include copies of records of any phone calls made, any letters, facsimiles or e-mails sent, or any in-person meetings conducted with the Project Sponsor or JBIC's Operational Department.
 - The requesters should describe what happened as a result of those communications (describe any response) and why the response or lack of response did not resolve the issue.

Please see the Appendix of Materials for a sample JBIC Examiner request form.

Steps in the JBIC Examiner Process

The Examiner will notify the requesters that the request has been received within 5 business days of receipt of the request. There are at least four stages in the Examiner's process, described below.

- (1) **The Eligibility Stage.** The Examiner will first verify that the requesters have submitted all the required information (see above). The Examiner may check the facts in the complaint or interview the requesters at this point to make sure that the requester or agent is qualified to bring a complaint. The Examiner should complete the Eligibility Stage within one month after the Examiner's acceptance of a complaint.
- (2) **The Examiner's Decision to Investigate, Not Investigate, or Wait.** If the Examiner decides to continue at this point with an investigation of the issues raised in the complaint, the Examiner will notify the requesters, JBIC management, the Project Sponsor and other lenders involved. If the Examiner decides not to investigate, the Examiner will notify the JBIC management and the requesters. As a third possibility, the Examiner may decide to wait to make a decision if the issues raised in the complaint are the subject of a lawsuit in either Japan or the requesters' country. In that case, the Examiner will notify the requesters of this decision.

- (3) **The Investigation Stage.** The Examiner’s investigation of the issues in the complaint may include interviews with the requesters and members of JBIC’s Operational Department staff, and inspection of documents or other relevant materials. The Examiner may also interview other residents of the project area who are not requesters, the Project Sponsor, or local or national governmental officials.
- (4) **The Dialogue Stage.** The Examiner may attempt to mediate the dispute by encouraging dialogue. The Examiner may conduct individual interviews as part of this process.

Within three months of receiving the complaint from the requesters, the Examiner must issue a report that will describe the results of the investigation into compliance with the JBIC Guidelines and will recommend how to bring a project into compliance if violations are found.

The Examiner will send the report to the requesters and other interested parties as soon as it is completed. The requesters and other parties are then invited to send their comments on the report to the Examiner, who will take them into consideration and may respond to them.

One month after the Examiner’s report has been completed and sent to the parties, the Operational Department must issue its written opinion of the report and measures that need to be taken to ensure compliance with JBIC Guidelines.

The JBIC Directors will use the Examiner’s report, the response from the Operational Department, and their recommendations to decide what action, if any, to take. The Operational Department will then be directed to implement any changes.

Confidentiality

The requesters must give their real names and contact information to the Examiner in the complaint. However, if the requesters do not want the project sponsor (the corporation or group running the project) to know their identity, the requesters may request confidentiality in their complaint. It is important to note that there is no guarantee of confidentiality in this process.

Policies That May Apply in Claims to the JBIC Examiner

JBIC has established “JBIC Guidelines for Confirmation of Environmental and Social Considerations (Environmental Guidelines)”, which set out the guiding policy and procedures for confirming that the borrowers or project proponents have taken appropriate steps for environmental and social considerations.¹⁴²

¹⁴² See <http://www.jbic.go.jp/en/about/environment/guideline/confirm/index.html>.

JBIC makes available to the public information on environmental and social considerations in regard of a project proposed for JBIC financing, including category classification of the project when it is in the screening process and results of its environmental review.¹⁴³ JBIC is currently working on the revision of the Guideline for Confirmation of Environmental and Social Considerations and makes its process public.

Where to Submit the Complaint

4-1, Ohtemachi 1-chome
Chiyoda-ku, Tokyo 100-8144, Japan
Examiner for Environmental Guidelines
Japan Bank for International Cooperation
FAX : +81-3-5218-3946
email: sinsayaku@jbic.go.jp

Information About JBIC Projects

While JBIC's website may be the best source of information regarding JBIC projects, see <http://www.jbic.go.jp/english/environ/joho/>, the NGOs Friends of the Earth Japan,¹⁴⁴ Mekong Watch¹⁴⁵ and JACSES¹⁴⁶ are other important sources of information if you are considering submitting a request for investigation by the JBIC Examiner.

¹⁴³ See <http://www.jbic.go.jp/en/about/environment/guideline/projects/index.html>.

¹⁴⁴ See <http://www.foejapan.org/en>.

¹⁴⁵ See <http://www.mekongwatch.org/english>.

¹⁴⁶ See <http://jacses.org/en>.

The Nippon Export and Investment Insurance (NEXI) Examiner for the Guidelines on Environmental and Social Considerations in Trade Insurance

What is Nippon Export and Investment Insurance (NEXI)?

NEXI is an incorporated administrative agency of the Japanese Government with the role of providing trade and investment insurance to Japanese companies.¹⁴⁷

NEXI has committed to confirming that project sponsors and other relevant parties implement appropriate environmental and social considerations in their projects. In order to fulfill this commitment, NEXI has established Guidelines on Environmental and Social Considerations in Trade Insurance (“Guidelines”), which set out the guiding policy and procedures for confirming that the borrowers or project proponents have taken appropriate steps for environmental and social considerations.¹⁴⁸

What is the NEXI “Examiner”?

The Examiner is an office within NEXI established to hear complaints regarding violations of the Guidelines. NEXI describes the Examiner as “an organ working under the direct control of the Chairman & CEO” but “independent” of the NEXI Departments in charge of underwriting projects.¹⁴⁹ The Examiner conducts investigations to determine whether or not NEXI has complied with the Guidelines, and reports the results Chairman & CEO. The Examiner is made up of a maximum of two people who are appointed by the Chairman & CEO for a two-year term.¹⁵⁰

NEXI QUICK SUMMARY

Two or more people may submit an objection the NEXI Examiner when they:

- live in a country where NEXI has financed a project;
- have suffered or are likely to suffer harm from that project;
- show that the harm has resulted from NEXI’s failure to follow its own Guidelines; and
- have previously made efforts to address the issue with both the project sponsor and the relevant NEXI Department.

The Examiner determines eligibility of a Request and then decides whether or not to proceed with a Formal Investigation. The Examiner may also attempt to mediate the dispute during a dialogue stage. Within 3 months, the Examiner will issue a report with a finding regarding compliance. The relevant NEXI department must respond, and the NEXI Chairman & CEO decides what action to take, if any.

¹⁴⁷ NEXI, About Us, <http://www.nexi.go.jp/en/corporate/>.

¹⁴⁸ NEXI, Guidelines on Environmental and Social Considerations in Trade Insurance (2009) http://nexi.go.jp/en/environment/social/pdf/ins_kankyuu_gl-e.pdf.

¹⁴⁹ The relevant Department could be the Underwriting Department, Structured and Trade Finance Insurance Department or the Environmental Group of Financial Risk Management Department.

¹⁵⁰ NEXI, Procedures for Submitting Objections on Guidelines of Environmental and Social Considerations in Trade Insurance (2003), pg 1, 9, http://nexi.go.jp/en/environment/objection/pdf/08b_1.pdf.

Who Can Submit a Request?

Complaints about a project's compliance with the Guidelines are referred to as "Requests" or "objections." In order to submit a Request to the Examiner, there are several requirements:

- The Requesters must be two or more people who live in a country where a NEXI-promoted project is being implemented;
- The Requesters must have either suffered actual direct damage or are likely to suffer damage in the future from NEXI's policy violation with regard the project; and
- The Requesters must have previously made efforts to address the issue with both the project sponsor and the relevant NEXI Department.

Another person may file a Request on your behalf (your agent), but you must show evidence that it is necessary due to the circumstances of the "Project Country" and also that the agent is authorized to act on your behalf. The Requesters must still be identified in the Request.

When May A Request Be Filed?

Requesters may submit their Request any time after the conclusion of the insurance contract and before the completion of the supply of funds. However, even after funding has been disbursed, a Requester may submit an objection alleging NEXI's non-compliance with the monitoring provisions of the Guidelines.

If the Examiner receives a Request too early – before the conclusion of the insurance contract – NEXI's Examiner may send the Request to the section of NEXI in charge of underwriting business. This section may be asked by the Examiner to respond to the Request and will report to the NEXI Chairman.

Steps that Should Be Taken Before Filing a Request

There are two groups that the Requester should try to contact before filing a complaint: (1) the Project Sponsor, and (2) the relevant NEXI Department in charge of underwriting the business.

The Requester should take detailed notes regarding any telephone calls made to these groups and should keep copies of any letters, facsimiles or e-mails sent to these groups regarding their Requests. If any meetings are scheduled or conducted, the Requester should make a record of when and where the meeting took place and who attended. The Requester should also keep a record of the response received from the Project Sponsor or the NEXI Department, if any.

What to Include in the Request

The Request may be submitted in English, Japanese, or your country's official language. The following information must be included in the Request:

- The names and contact information for the Requesters (if the Requesters do not want their personal information disclosed, they should state that in the Request);
- If an agent is filing the Request on behalf of the Requesters, include information about the agent and proof that the agent is authorized to act on behalf of the Requesters (for example, a signed letter from the Requesters giving the agent authority to act on the Requesters' behalf);
- Information about the project at issue, including:
 - the name of the country where the project is located,
 - the specific location of the project, and
 - an outline of what the project is, including information about the Project Sponsor;
- A description of the harm that the Requesters have suffered (or are likely to suffer in the future) as a result of NEXI's failure to follow its own Guidelines;
- Relevant provisions of the NEXI Guidelines that the Requesters believe have been violated;
- Facts supporting the Requesters' belief that NEXI Guidelines have not been followed;
- Facts to explain why the NEXI failure to follow the Guidelines has caused the harm (or expected harm) to the Requesters;
- A description of how the Requesters think the issue should be resolved. For example, explain the:
 - changes that must be made to the project, or
 - mitigation of environmental impacts needed;
- Facts describing how the Requesters first tried to resolve the issues with the Project Sponsor and the NEXI Department or what "unavoidable reasons" prevented them from engaging;
 - Here, the Requesters should describe and include copies of records of any phone calls made, any letters, facsimiles or e-mails sent, or any in-person meetings conducted with the Project Sponsor or the relevant NEXI Department.
 - The Requesters should describe what happened as a result of those communications (describe any response) and why the response or lack of response did not resolve the issue.

Steps in the NEXI Examiner Process

The Examiner will notify the Requesters that the Request has been received within 5 business days of receipt of the Request. Note that if Requests are submitted in a language other than Japanese or English, the Request will first be translated. There are eight stages in the Examiner's process, described below.

- (1) **The Preliminary Investigation.** The Examiner will first verify that the Requesters have submitted all the required information and may ask the Requesters for additional information if necessary. The Examiner may check the facts in the Request or interview the Requesters at this point to make sure that the Requester or agent is qualified to bring a Request. The Examiner will also consider whether the Request was submitted in good faith and does not constitute an "abuse" for example intending to delay the project, damage the Sponsor's reputation, or obtain undue compensation all without good cause. The Examiner should complete the Preliminary Investigation within one month after the Examiner's acceptance of a Request unless there are circumstances that prevent it from doing so.
- (2) **The Examiner's Decision to Commence the Procedure.** If the Examiner decides to continue at this point with a Formal Investigation of the issues raised in the Request, the Examiner will notify the Requesters, NEXI's Chairman, the Project Sponsor and other parties involved. If the Examiner decides not to investigate, the Examiner will notify the NEXI and the other parties concerned of its decision and provide reasoning for rejecting the Request. As a third possibility, the Examiner may decide to wait to make a decision if the issues raised in the Request are the subject of a lawsuit in either Japan or the Requesters' country. In that case, the Examiner will notify the Requesters of this decision.
- (3) **The Formal Investigation.** The Examiner's investigation of the issues in the Request may include interviews with the Requesters and members of the relevant NEXI Department's staff, and the inspection of all documents or other relevant materials used by NEXI in confirming the environmental and social consideration of the project. The Examiner may also interview other residents of the project area who are not Requesters, the Project Sponsor, or local or national governmental officials.
- (4) **The Encouragement of Dialogue.** The Examiner may attempt to mediate the dispute by encouraging dialogue. The Examiner may conduct individual interviews as part of this process and must listen to the opinions of the persons involved in a "well-balanced manner." The Examiner may suspend the Formal Investigation in order to encourage productive dialogue in other dispute resolution proceedings. The Examiner must notify the parties of the decision to suspend the Formal Investigation and shall recommence the investigation if the alternate dispute resolution proceedings fail.

- (5) **Report to the Chairman & CEO.** Within three months of receiving the Request from the Requesters,¹⁵¹ the Examiner must issue a report to the Chairman & CEO. The report should include the results of the investigation, the results of any dialogue between the parties, including an agreement reached, if any, and determinations of compliance with the NEXI Guidelines. The report may also include recommendations on how to bring a project into compliance if violations are found.

The Examiner will send the report to the Requesters and other interested parties as soon as it is completed.

- (6) **Response from the NEXI Department.** One month after the Examiner's report has been completed and sent to the parties, the NEXI Department responsible for underwriting the project must issue its written opinion of the report and measures that need to be taken to ensure compliance with NEXI Guidelines. The response is sent to the Examiner, who will forward a copy to all parties concerned. The Requesters and other parties are then invited to send their comments on the Report and the Department's opinion. All Reports and opinions shall be disclosed on the NEXI website to the extent that they are allowed to be disclosed by law.
- (7) **Decision of the Chairman & CEO.** The NEXI Chairman & CEO will use the Examiner's report, the response from the Department, and the opinions of the other parties concerned to decide what action, if any, to take. The Department will then be directed to implement any changes.
- (8) **Examiner Follow-Up.** The Department is responsible for reporting to the Examiner on its progress in implementing the changes required by the Chairman & CEO. The Examiner reports back to the Chairman & CEO in the annual report. This information will be disclosed to the public on the NEXI website.

Confidentiality

The Requesters must give their real names and contact information to the Examiner in the Request. However, if the Requesters do not want the project sponsor (the corporation or group running the project) to know their identity, the Requesters may ask for confidentiality in their Request. It is important to note that there is no guarantee of confidentiality in this process.

Where to Submit the Request

Chiyoda First Building 3rd Floor 3-8-1, Nishikanda,
Chiyoda-ku Tokyo 101-8359, Japan
Nippon Export and Investment Insurance
Examiner: Mr. Kazuo Matsushita

¹⁵¹ The Examiner may request additional time and the Chairman & CEO may allow an additional period of up to two months.

E-mail: kankyosinsayaku@nexi.go.jp
Fax: +81-3-3512-7660

Information About NEXI Projects

While NEXI's website¹⁵² may be the best source of information regarding NEXI projects, the NGOs Friends of the Earth Japan,¹⁵³ Mekong Watch¹⁵⁴ and JACSES¹⁵⁵ are other sources of information if you are considering submitting a Request to the NEXI Examiner.

¹⁵² NEXI, <http://www.nexi.go.jp/en/>.

¹⁵³ See <http://www.foejapan.org/en>.

¹⁵⁴ See <http://mekongwatch.org/english>.

¹⁵⁵ See <http://jacses.org/en>.

Export Development Canada's (EDC) Compliance Officer

What is Export Development Canada (EDC)?

Export Development Canada (EDC) is Canada's export credit agency. It provides risk management and financial support to Canadian exporters and Canadian companies investing abroad.¹⁵⁶ The EDC has a framework of environmental policy documents that guide their operations and the requirements of their clients.¹⁵⁷

What is the EDC Compliance Officer?

EDC's Compliance Officer provides a mechanism for resolving complaints and also "recommends compliance audits to determine if EDC is following its corporate social responsibility practices and policies."¹⁵⁸ The Compliance Officer position began in 2001.

Who May Submit a Complaint?

"Any individual, group, community, entity or other party affected or likely to be affected by EDC's corporate social responsibility policies and initiatives can submit a complaint."¹⁵⁹ These corporate social responsibility policies include those regarding public disclosure of information, environmental reviews, human rights and business ethics.

"If a complaint is being made on behalf of another party, that group should be identified and evidence of authority to represent that group provided."¹⁶⁰

What to Include in the Complaint

According to the EDC website, the "complaint must be in writing, or submitted electronically via our Request for Review Form however it does not need to follow a specific

EDC QUICK SUMMARY

Any individual or group may complain to EDC's Compliance Officer when they have been, or are likely to be, affected by EDC's policies on public disclosure of information, environmental reviews, human rights and business ethics.

Within a "reasonable" amount of time, the Compliance Officer will let you know whether your complaint is eligible. If eligible, the Officer will use a preliminary assessment to determine which method to use to handle the complaint (such as dialogue, facilitation or negotiation).

If the problem is not solved, the Compliance Officer can make a recommendation to EDC's Board of Directors about future action that should be taken to address the concerns raised.

¹⁵⁶ See <http://www.edc.ca/english/corporate.htm>.

¹⁵⁷ See http://www.edc.ca/english/social_environment.htm.

¹⁵⁸ See http://www.edc.ca/english/docs/compliance_officer_e.pdf#search=%22Environment,%20Development%20Canada's%20Compliance%20Officer%22.

¹⁵⁹ See http://www.edc.ca/english/compliance_guidelines.htm.

¹⁶⁰ See http://www.edc.ca/english/compliance_guidelines.htm.

format. It does, however, help to speed up the process if we receive the following details:

- Your name, address and other contact information such as phone and fax numbers, cell phone, email address.
- If you are representing a complainant, please provide contact information for yourself and the group/person you are representing.
- Background information on your complaint, including the names of any people you may have dealt with in an attempt to resolve the issue or raise your concerns.
- A clear statement outlining your opinion of the social, business or environmental impact of the problem.
- Your opinion on the desired result or outcome of an investigation (this way we have a clear understanding of what you expect from the process).
- What has been done to solve the problem, including any previous contact with EDC.¹⁶¹

Steps in the EDC Compliance Office Process

According to the Compliance Office website, upon submission of a complaint:

The Compliance Officer will contact you within a reasonable period of time to let you know if your submission falls within the office's mandate and to let you know how long the review may take.

You will receive periodic updates throughout the investigation.

If the Compliance Officer decides that your submission does not fall under the office's mandate, you will receive a letter explaining why this decision was made.

When the submission does fall within the office's scope, a preliminary assessment is done to determine how it should be handled. This 'call to action' looks at problem-solving techniques such as dialogue, facilitation or negotiation.

If it is felt that further investigation or problem-solving techniques will not resolve the problem to the satisfaction of either party, you will be advised in writing. When this happens, the Compliance Officer can make a recommendation to EDC's Board of Directors about future action to address the concerns raised.¹⁶²

At the end of this process, "as part of the resolution, the Compliance Officer will include a process for follow up monitoring and review. The Compliance Officer

¹⁶¹ *Id.*

¹⁶² See http://www.edc.ca/english/docs/compliance_officer_e.pdf.

can ask EDC to help ensure monitoring and follow up is done.”¹⁶³

Confidentiality

While anyone can request a review of EDC’s human rights or environmental practices, as with the other mechanisms, anonymous complaints are not investigated.¹⁶⁴ The Compliance Officer does, however, consider communication during the resolution process privileged and will not release confidential information without consent.¹⁶⁵

The EDC Disclosure Policy

The EDC Disclosure Policy¹⁶⁶ entitles the public access to information such as:

- Annual Reports
- Reports of EDC’s Insurance and Financing Activities
- Information about Category A projects financed, including Environmental Information
- General information about projects financed (see Reporting on Transactions, Individual Transaction Information at http://www.edc.ca/english/disclosure_9237.htm)
- Policies and Procedures such as EDC’s Environmental Review Directive and Codes of Conduct and Business Ethics

The information above is available through the EDC website at <http://www.edc.ca>. If you are unable to locate information on the EDC website, contact the EDC’s Glen Nichols at gnichols@edc.ca or contact EDC by phone: (613) 598-2500 or fax: (613) 237-2690.

Where to Submit the Complaint

The submission, in English or French, should be sent via mail, hand delivery, email or fax to:

Compliance Officer
Export Development Canada
151 O’Connor Street
Ottawa ON
K1A 1K3 Canada
Fax: 613-597-8534
Email: complianceofficer@edc.ca

Requests for review may be submitted electronically at:
https://www.edc.ca/edcsecure/eforms/csr/request_review_e.asp.

¹⁶³ See http://www.edc.ca/english/compliance_guidelines.htm.

¹⁶⁴ See http://www.edc.ca/english/docs/compliance_officer_e.pdf#search=%22.

¹⁶⁵ See http://www.edc.ca/english/docs/compliance_officer_e.pdf#search=%22.

¹⁶⁶ See The EDC Disclosure Policy at <http://www.edc.ca/english/disclosure.htm>.

U.S. Overseas Private Investment Corporation’s (OPIC) Office of Accountability

What is OPIC?

The Overseas Private Investment Corporation (OPIC) is an agency of the United States Government. While it is not technically an “export credit agency”, OPIC provides financing and insurance to U.S. businesses in their investments abroad and works to promote U.S. foreign policy through its private-sector support programs.

What is the OPIC Office of Accountability?

OPIC’s Office of Accountability has two functions, the:

- Problem-Solving Function, and the
- Compliance Review Function.

The Office of Accountability’s Problem-Solving function is similar to the CAO’s ombudsman function. According to OPIC, the Problem-Solving function is used to “review and attempt to resolve outstanding complaints of local communities, with or without allegations of non-compliance by OPIC. A problem-solving initiative may include independent fact-finding, dialogue facilitation or mediation.”¹⁶⁷

The Compliance Review function “assesses and reports on complaints regarding OPIC’s compliance with its policies related to environment, social impacts, worker rights and human rights under an OPIC-supported project.”¹⁶⁸

Who May Submit a Complaint?

As detailed more below, the requirements for submitting a complaint to the OPIC Office of Accountability are different depending on whether you are seeking problem-solving or compliance review. Requests to the Problem-Solving mechanism of the Office of

OPIC QUICK SUMMARY

Any individual or group may complain to OPIC about a project if they are located in the project area and have concerns about adverse impacts of an OPIC-supported project. For a problem-solving complaint, there is also a requirement that the complainant be from a local community that is or is likely to be materially, directly, and adversely affected by the project.

The Problem-Solving function addresses community complaints through methods such as independent fact-finding, dialogue facilitation or mediation.

The Compliance Review function assesses and reports on complaints regarding OPIC’s compliance with its policies related to environment, social impacts, worker rights and human rights.

¹⁶⁷ See <http://www.opic.gov/who-we-are/office-of-accountability>.

¹⁶⁸ See <http://www.opic.gov/who-we-are/office-of-accountability/compliance-review> (“These policies include sections 231 (n), 231A, 237(m), 239(g) and 239(i) of the Foreign Assistance Act of 1961, as amended, and OPIC’s Environmental Handbook - February 2004.”).

Accountability may be submitted by:

1. “member/s of the local community who are, or are likely to be, materially, directly, and adversely affected by an OPIC-supported project”,¹⁶⁹
2. an authorized representative of the affected community, or
3. the project sponsor (this is the US company that had received OPIC support for their project).

Compliance Review requests may be submitted by:

- People in the project area with “concerns about adverse environmental, social, worker rights or human rights impacts of an OPIC-supported project,”¹⁷⁰
- their authorized representative;
- OPIC’s President & CEO; or
- OPIC’s Board of Directors.

A local representative of those in the project area may file a request for Problem Solving or Compliance Review only if the representative clearly identifies the community they are representing and shows evidence of the community’s permission to allow the representation. Furthermore, OPIC’s Office of Accountability allows representation by non-local people only where “there is clear evidence that there is no adequate or appropriate representation in the country where the project is located”.¹⁷¹

What to Include in a Problem-Solving Complaint

As with the other mechanisms, the Office of Accountability requires that those filing a request include their identifying information – they do not accept anonymous requests. However, you may ask for confidentiality when you file the request, along with a reason why confidentiality is needed.

Only OPIC-supported projects are eligible for a Problem-Solving consultation. You may identify OPIC support for a project by looking to an OPIC-issued “commitment letter” between OPIC and the project sponsor, or to an insurance contract signed by OPIC and the project sponsor. Projects are no longer eligible for a Problem-Solving consultation when OPIC has disbursed the entire amount of the loan.

As with the World Bank Inspection Panel, prior to submitting a Problem-Solving request, the project-affected person or people must have “made good faith efforts to bring the problem to OPIC’s attention and/or to the attention of the sponsor or local community. The requester will need to show that s/he has worked with OPIC and/or the project sponsor or local community to try to address the problem.”¹⁷²

¹⁶⁹ See <http://www.opic.gov/who-we-are/office-of-accountability/problem-solving>.

¹⁷⁰ See <http://www.opic.gov/who-we-are/office-of-accountability/compliance-review>.

¹⁷¹ See <http://www.opic.gov/who-we-are/office-of-accountability/problem-solving>.

¹⁷² See <http://www.opic.gov/who-we-are/office-of-accountability/problem-solving>.

According to the OPIC Office of Accountability website, the request “must be written in English or the native language of the requesters and should include the following information:

- The requester’s identity and contact information.
- The identity, contact information and credentials of any representative, and evidence of the nature and scope of the representative authority.
- Whether the requester wishes his/her identity and/or information provided to the Office of Accountability to be kept confidential, giving reasons.
- The nature and location of the project that is the subject of the request for consultation, the identity of the project sponsor, and whether the project is supported by OPIC.
- A clear statement of the way in which the requesters have been or are likely to be affected by the project.
- A succinct statement of efforts to resolve the problem, including the identity of the parties involved in, and relevant times of, those efforts, and specifically any contact with the sponsor, OPIC or the government.
- A precise statement of how the requesters would like to see the problem resolved.
- Any other relevant facts (any supporting documents or relevant materials should be attached).¹⁷³

What to Include in a Compliance Review Complaint

As with the Problem-Solving function, anonymous requests for compliance review are not permitted. However, you may ask for confidentiality when you file the request, along with a reason why confidentiality is needed.

You may only file a request for Compliance Review if it relates “to a project for which OPIC has executed a financial agreement or insurance contract with the sponsor, and OPIC maintains a contractual relationship with the project.”¹⁷⁴

According to the Office of Accountability website, “Requests for compliance review must be written in English or the native language of the requesters and should include the following information:

- The requester’s identity and contact information.
- The identity, contact information and credentials of any representative, and evidence of the nature and scope of the representative authority.

¹⁷³ See <http://www.opic.gov/who-we-are/office-of-accountability/problem-solving>.

¹⁷⁴ See <http://www.opic.gov/who-we-are/office-of-accountability/compliance-review>.

- Whether the requester wishes his/her identity and/or information provided to the Office of Accountability to be kept confidential, giving reasons.
- The nature and location of the project that is the subject of the request, the identity of the project sponsor, and whether the project is supported by OPIC.
- A clear statement of evidence (or perceived risk) of adverse environmental, social, worker rights or human rights outcomes attributed to the project.
- If possible, identification of the OPIC statutes, policies, guidelines or procedures related to environmental, social, worker rights or human rights impacts that are the subject of the compliance review request.”¹⁷⁵

Steps in the OPIC Office of Accountability Process

The Problem-solving Process

After receiving a completed request, the Office of Accountability registers and acknowledges the request. Next the Director of the Office determines whether the request is eligible “guided by the following criteria:

- the Problem-solving Request is filed by: (a) member/s of the local community who are, or are likely to be, materially, directly and adversely affected by an OPIC-supported project and there is prima facie evidence of such material, direct and adverse effects, or (b) the project sponsor;
- any representatives’ authority to represent the local community or sponsor, and the extent of that authority, are documented and verified;
- the Problem-solving Requesters have made good faith efforts to resolve the issues with the other project stakeholders, whether sponsor or local community, and/or OPIC staff; and
- the Problem-solving Request relates to a project for which OPIC has clearly indicated interest in financing the project. Such interest would commence when a commitment letter or insurance contract is issued, and end with financial completion or final disbursement.”¹⁷⁶

The Director then notifies the requester that the request has either been accepted or rejected. If the request is accepted, the Director “conducts a preliminary investigation, including requesting relevant OPIC management” to provide relevant information.¹⁷⁷

The Office of Accountability then conducts the problem-solving consultation,

¹⁷⁵ See <http://www.opic.gov/who-we-are/office-of-accountability/compliance-review>.

¹⁷⁶ Administrative Order 05-02.1, OPIC Problem-solving & Compliance Review Procedures at 6.1.5 (July 1, 2005), on file with Accountability Counsel.

¹⁷⁷ See <http://www.opic.gov/sites/default/files/docs/problemSolvingChart.pdf>.

“which can include dialogue, mediation or further investigation.”¹⁷⁸ The Office may end the process at any time if after consulting the parties it is clear that the process is unlikely to lead to positive results.

Next, the Director reports the results and conclusions of the process to the OPIC President, CEO and the parties. The results and conclusions are then made public.

Afterward, the Office of Accountability “monitors any changes made in response to the problem-solving initiative.”¹⁷⁹

The Compliance Review Process

First, if the Office receives a complete request, they will register the request and acknowledge to the requester that it was received.¹⁸⁰

The Director makes an eligibility determination “guided by the following criteria:

- the Request is filed by: (a) member/s of the local community with concerns about adverse environmental, social, worker rights or human rights impacts of an OPIC-supported project, which may indicate a failure of OPIC to follow its relevant policies; (b) P&CEO; or (c) OPIC’s Board;
- any representatives’ authority to represent the local community, and the extent of that authority, are documented and verified; and
- the Compliance Request relates to a project for which OPIC has executed a financial agreement or insurance contract with the sponsor, and maintains a contractual relationship with the project.”¹⁸¹

Unlike other IFI accountability mechanisms, the Director determines whether to accept or reject the request for compliance review in consultation with the President and CEO of OPIC.¹⁸² The Director then notifies the requester and relevant parties of the decision.

The Office of Accountability then “conducts a preliminary investigation, referring to relevant OPIC management a request for comment and additional relevant information.”¹⁸³ The Office of Accountability then “examines whether OPIC has complied with relevant policies in the course of design or implementation of an OPIC-supported project”.¹⁸⁴ However, the Office Director does not make the final decision as to whether or not there has been compliance. Unlike the other IFI mechanisms where the compliance decisions are made by independent experts, here the President and CEO “determine whether there has

¹⁷⁸ See <http://www.opic.gov/sites/default/files/docs/problemSolvingChart.pdf>.

¹⁷⁹ See <http://www.opic.gov/sites/default/files/docs/problemSolvingChart.pdf>.

¹⁸⁰ See <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>.

¹⁸¹ Administrative Order 05-02.1, OPIC Problem-solving & Compliance Review Procedures at 6.2.5 (July 1, 2005), on file with Accountability Counsel.

¹⁸² See <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>.

¹⁸³ See <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>.

¹⁸⁴ See <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>.

been a failure to comply, and [whether] preventive or corrective action should be taken.”¹⁸⁵

Thereafter, a draft report is circulated to OPIC management and relevant departments within OPIC for review and comment. Those comments are due within 15 working days.

After that, the Director of the Office of Accountability reports the results of the compliance audit to the President and CEO of OPIC, notifies requesters of the results and they are made public on OPIC’s website.¹⁸⁶

Finally, the Office of Accountability monitors implementation of any recommendations made by the President and CEO “in response to the investigation, & reports to the President & CEO on an annual basis.”¹⁸⁷

Policies That May Apply in Claims to OPIC’s Office of Accountability

On October 15, 2010, OPIC adopted a revised Social and Environmental Policy Statement (ESPS).¹⁸⁸ The ESPS adopts the International Finance Corporation’s Performance Standards on Social and Environmental Sustainability and Industry Sector Guidelines. Additionally, the ESPS includes standards related to human rights and internationally recognized worker rights.¹⁸⁹

Confidentiality and Disclosure

“Subject to OPIC’s disclosure policy,¹⁹⁰ summaries of problem-solving reports and compliance review reports will be made publicly available. Annual reports on operations of the Office of Accountability, including requests received, consultations and audits conducted, and their results will also be available on-line.

Information identified by OPIC’s disclosure policy and/or by OPIC, a requester, a sponsor, co-financier or relevant government as confidential or sensitive may not be disclosed. Subject to OPIC’s disclosure policy and relevant legislation, such as the Freedom of Information Act, confidential information provided to the Office of Accountability in the course of mediation and investigations will remain confidential.”¹⁹¹

Requesters may ask that their identify remain confidential.¹⁹² If a Requesters wishes to keep his or her identify confidential, he or she should state that in the request and provide

¹⁸⁵ See <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>

¹⁸⁶ See <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>

¹⁸⁷ See <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>

¹⁸⁸ See http://www.opic.gov/sites/default/files/consolidated_esps.pdf.

¹⁸⁹ See <http://www.opic.gov/doing-business-us/OPIC-policies/worker-human-rights>.

¹⁹⁰ See <http://www.opic.gov/who-we-are/information-quality-guidelines>.

¹⁹¹ <http://www.opic.gov/who-we-are/office-of-accountability/confidentiality-disclosure>.

¹⁹² Administrative Order 05-02.1, OPIC Problem-solving & Compliance Review Procedures at 6.3.2 (July 1, 2005), on file with Accountability Counsel.

reasons.¹⁹³

Example of an Office of Accountability Complaint

In late 2010 and early 2011, three villages in Oaxaca, Mexico filed complaints with the OPIC Office of Accountability regarding the Cerro de Oro Hydroelectric Project. The complaints explain that the communities did not receive information about the Project and were not consulted before construction began. They detail impacts to Chinanteco indigenous groups that were not considered during the Project's design and reveal insufficient plans to address and mitigate social and environmental impacts, including destruction of important waterways that communities depend on for consumption, household use and fishing. Complainants also note problems with land acquisition and the absence of a required local grievance mechanism.

The communities participated in a successful dialogue process through OPIC's Office of Accountability ("OA"), and were able to reach an agreement in March 2011 which halted project construction and placed the future of an alternate design for the Project into the hands of the communities. In November 2011, the communities rejected the Company's alternative Project design. As of Summer 2012, the Project remains stopped.¹⁹⁴

In April 2012, OPIC's Office of Accountability determined in its Compliance Appraisal Report that a full compliance review to determine OPIC's compliance with its own policies in funding the Cerro de Oro Hydroelectric Project was not necessary in this case. While the Appraisal Report did not include formal compliance findings, it did generate several important recommendations for OPIC aimed at avoiding problems that arose in this case.¹⁹⁵

This case demonstrates that, under certain circumstances, communities can achieve significant results through the use of accountability mechanisms.

Where to Submit a Request

Requests should be submitted to OPIC headquarters in Washington, DC by mail, fax, e-mail or hand delivery. "If you fax or e-mail your request, you must still send an original copy with original signatures by mail."¹⁹⁶ The Office of Accountability may be contacted at:

Director, Office of Accountability
Overseas Private Investment Corporation
1100 New York Ave., NW
Washington DC 20527
Tel. 1-202-336-8543

¹⁹³ See <http://www.opic.gov/who-we-are/office-of-accountability/problem-solving>;
<http://www.opic.gov/who-we-are/office-of-accountability/compliance-review>.

¹⁹⁴ See <http://www.accountabilitycounsel.org/communities/mexico/>.

¹⁹⁵ See http://www.opic.gov/sites/default/files/042712-cerrodeoroappraisalreport-english_0.pdf.

¹⁹⁶ See <http://www.opic.gov/who-we-are/office-of-accountability/compliance-review>.

Fax 1-202-408-5133

E-mail: accountability@opic.gov

How to Locate Information About OPIC-Financed Projects

As an agency of the United States Government, OPIC must release information pursuant to the Freedom of Information Act (FOIA). For instructions on how to request information about OPIC through the FOIA process, visit <http://www.opic.gov/who-we-are/foia>.

PART IV THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (MNES)

OECD Guidelines for Multinational Enterprises – National Contact Points

What is the OECD?

The OECD is the Organization for Economic Cooperation and Development. The OECD is made up of thirty-two industrialized nations which host the majority of corporations and export credit agencies that finance and guarantee projects around the world.

The OECD Guidelines for Multinational Enterprises

The OECD's Guidelines for Multinational Enterprises (available online at <http://www.oecd.org/dataoecd/43/29/48004323.pdf>) establish standards on disclosure, human rights, labor, environment, bribery, corruption, consumer interests, science and technology, competition and taxation to which corporations operating in and from OECD countries should adhere. The Guidelines are "recommendations" to the thirty-two member countries of the OECD as well as nine non-member "adhering countries."¹⁹⁷

Although following the Guidelines is voluntary for corporations, because OECD member and adhering countries have endorsed the Guidelines, there is an expectation that the Guidelines will be followed.¹⁹⁸ In theory, all corporations operating in or from OECD member or adhering countries are expected to follow the Guidelines.

OECD NCP QUICK SUMMARY

Any individual or group may complain to an OECD National Contact Point (NCP) in the location where a multinational enterprise is based, or where it operates, and where an NCP has been established.

The complaint must detail how a "specific instance of conduct" has violated the OECD Guidelines for Multinational Enterprises.

Each NCP establishes their own process for how they address complaints. Final statements should be issued at the end of each process.

¹⁹⁷ The OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts, DAFE/IME (2000)20, at 25-26 [hereinafter OECD Declaration]. As of July 2010, the non-adhering countries are Argentina, Brazil, Egypt, Estonia, Israel, Latvia, Lithuania, Peru, and Romania. Please note that this information changes frequently.

¹⁹⁸ See OECD Watch, Guide to the OECD Guidelines for Multinational Enterprises Complaint Procedure (June 2006) at 6, available online at http://oecdwatch.org/publications-en/Publication_1664.

How Are the Guidelines Implemented? What are National Contact Points?

The Guidelines are implemented through National Contact Points (NCPs). The NCPs are run by national governments in the member and adhering countries. NCPs are responsible for encouraging national observance of the Guidelines.¹⁹⁹

NCPs are also charged with mediating disputes surrounding implementation of the Guidelines.²⁰⁰ If an NCP receives a complaint that a specific action by a corporation has violated the Guidelines (called a “specific instance of conduct”), the NCP must mediate the dispute between the group bringing the complaint and the corporation. Although given no enforcement authority, if an NCP is unable to successfully mediate a dispute, the NCP is directed to reach a “determination.”

As of June 2010, there had been 213 requests to NCPs to consider specific instances of conduct, “only 27% of [NGO filed] cases being accepted.” According to OECD Watch, as of June 2010, there had been 117 complaints filed by trade unions and 96 filed by non-governmental organizations.²⁰¹

Who May Bring a Complaint Through an NCP?

The NCPs are made available to the widest possible array of stakeholders: “Any person or organization may approach a National Contact Point to enquire about a matter related to the Guidelines.”²⁰²

Resources Regarding the OECD NCP Process

The organization **OECD Watch** has produced the comprehensive ‘Guide to the OECD Guidelines for Multinational Enterprises Complaint Procedure’ which describes the NCP complaint process and is available online at http://oecdwatch.org/publications-en/Publication_1664. OECD Watch has also published a new overview of the Guidelines entitled “The OECD Guidelines for Multinational Enterprises: A tool for responsible business conduct” and available online at http://oecdwatch.org/publications-en/Publication_3816.

If your community decides that a complaint to an NCP may be appropriate, it will be useful to review the OECD Watch Guide and contact OECD Watch for support in filing a complaint to an NCP. The next section provides a brief description of the NCP complaint process and what a complaint to an NCP should include.

¹⁹⁹ National Contact Points for the OECD Guidelines for Multinational Enterprises, *available at*: http://www.oecd.org/document/60/0,2340,en_2649_34889_1933116_1_1_1_1,00.html. See also OECD Declaration at 27.

²⁰⁰ National Contact Points for the OECD Guidelines for Multinational Enterprises, *available at*: http://www.oecd.org/document/60/0,2340,en_2649_34889_1933116_1_1_1_1,00.html.

²⁰¹ See OECD Watch, 10 Years On (June 2010) at 9, *available at*: http://oecdwatch.org/publications-en/Publication_3550.

²⁰² National Contact Points for the OECD Guidelines for Multinational Enterprises, *available at*: http://www.oecd.org/document/60/0,2340,en_2649_34889_1933116_1_1_1_1,00.html.

The NCP Process and ‘Procedural Guidance’ on NCP Operations

In order to file a complaint about a corporation that may have violated one or more of the OECD Guidelines, first determine which NCP is the most appropriate point of contact. It is best to file a complaint with the NCP in the country where the conduct occurred or where the corporation is headquartered. The complaint to the NCP should provide details about the “specific instance of business conduct” that is at issue and which OECD Guidelines were violated. The complaint should also discuss the harm caused by the violation.

While the OECD has adopted “Procedural Guidance”²⁰³ on how the NCPs should operate, these rules are vague and there are often disputes about how the NCPs should interpret the Guidance to mediate conflicts or reach determinations. In general, however, there are two stages to an NCP complaint: (a) the initial determination phase where the NCP decides whether or not to mediate a dispute, and (b) the dialogue or mediation phase.²⁰⁴

For details about what should be included in a complaint to an NCP, see the OECD Watch Guide to the Guidelines or contact Accountability Counsel for further information.

There are no specific guidelines about how NCPs should operate once the decision has been made to mediate a dispute. Although the organization OECD Watch has recommended guidelines for how NCPs should conduct mediations, they have not been adopted to date.²⁰⁵ As a result, cases brought under the NCP process have received varying treatment.

The current Procedural Guidance requires that NCPs take the following steps:²⁰⁶

1. The NCP first makes a determination about “whether the issues raised merit further examination” and then responds to the complaining party. If the matter did not merit further consideration, the NCP will issue a public statement that, at a minimum, describes the issues raised and the reasons for the NCP’s decision.

Note: this first step leaves factors in the determination of “merit” entirely to the NCP; there is no set of criteria given to the NCP to assist with the determination.

²⁰³ See OECD Guidelines for Multinational Enterprises at 71 (2011), available at: http://www.oecd.org/dataoecd/43/29/48004_323.pdf.

²⁰⁴ See OECD Watch, Guide to the OECD Guidelines for Multinational Enterprises Complaint Procedure (June 2006) at 14, available at: http://oecdwatch.org/publications-en/Publication_1664.

²⁰⁵ See OECD Watch Briefing Paper, Promotion of the Guidelines and the Role of National Contact Points in Handling Specific Instances (June 2006), available online at http://oecdwatch.org/publications-en/Publication_2996/.

²⁰⁶ See OECD Guidelines for Multinational Enterprises at 71 (2011), available at: http://www.oecd.org/dataoecd/43/29/48004_323.pdf.

2. The NCP then brings the parties together for meetings for the purpose of mediating the dispute. At this stage, the NCP may consult with other NCPs or seek advice from relevant authorities, the business community, experts and NGOs. The NCP might also consult with the OECD committee that oversees the NCP²⁰⁷ if it needs assistance interpreting the OECD Guidelines.
3. At the conclusion of the mediation, the NCP will make the results publicly available, “taking into account the need to protect sensitive business and other stakeholder information.” The statement issued by the NCP will vary depending on whether the mediation resulted in an agreement between the parties.
 - a. If an agreement is reached, the NCP will issue a report that “at a minimum describe[s] the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.”
 - b. If there is no agreement reached or when a party was unwilling to participate in the mediation, the NCP will make a statement that “at a minimum describe[s] the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the *Guidelines* as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.”

Note: There is no guidance on when and under what circumstances issuance of a statement or recommendations would be appropriate, and no guidance about what the statement or recommendations should contain. This is left entirely to the discretion of the NCP.
4. During the mediation, the proceedings will be confidential. If the parties fail reach an agreement, they can discuss the issues that were the subject of the mediation, but must keep confidential information and views provided by the other party during the mediation, “unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.”
5. If issues are raised that occurred in non-adhering countries, the NCP should “takes steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.”

Examples of Cases Brought Under the NCP Process and Outcomes

As with each of the mechanisms described above, there is no guarantee that filing a complaint with the NCP will result in a positive outcome. As with past cases filed with the

²⁰⁷ The Committee on International Investment and Multinational Enterprises (CIME).

NCP, you may be satisfied with the NCP's investigation and the negotiated solution to the specific instance of conduct; or at the other extreme, you may find that the NCP process was unfair, a waste of resources and resulted in no positive change in the situation. Here are examples of recent cases with varying results:

- An example of a case with a positive outcome is the case filed in 2005 by the NGO Forum for Environment and Development (ForUM) against a Norwegian company through the Norwegian NCP. The complaint argued that the company had breached Chapter 2, §2 of the OECD Guidelines by contributing to the Guantanamo Bay, Cuba prison system that abused international and human rights law. The NCP held meetings with the NGO and the company. After the meetings, the company pulled out of the Guantanamo project, although it cited losing a bid as the official reason. The NGO was pleased with the result.²⁰⁸
- NGOs Rights and Democracy and L'Entraide Missionarie were not satisfied with the result of a complaint they filed in 2005 against Canadian Anvil Mining Corporation before the Canadian NCP. The complaint concerned the October 2004 massacre of 100 people in the town of Kilwa in the Congo. The NGOs submitted a report on the massacre to the NCP and evidence from the company itself of its involvement in logistical support to the Congolese military who carried out the massacre. The company denied the allegations. The NCP rejected the NGOs' complaint in 2005, stating that they were "not able to carry out investigations of the type requested by the complainants."²⁰⁹

Additional Strategic Considerations Regarding Use of the NCP Process

In addition to the strategic considerations discussed in Part I of this Guide (which also apply here), before filing a complaint with an NCP about a specific instance of conduct, it may be useful to consider the following issues:

- Is there already a lawsuit or other proceeding in a court of law dealing with the same issue? If so, as has happened in the past, this may be a reason given by the NCP to either decline to mediate a case or to wait to mediate a case until the legal proceeding is complete.
- Because there is no set of procedures that has been developed for NCPs once they have received a complaint, the results of filing a complaint with an NCP are even more uncertain than with the mechanisms described above. Because of this uncertainty, some communities may decide that bringing a complaint to an NCP is not worth the effort.
- There may be a conflict-of-interest with the NCP and the project that is the subject of a complaint. Sometimes, a national government will give export-credit

²⁰⁸ See OECD Watch Newsletter, June 2006, available at http://oecdwatch.org/publications-en/Publication_3043/.

²⁰⁹ OECD Watch Newsletter, June 2006, available at http://oecdwatch.org/publications-en/Publication_3043/.

agency funding to a project or other forms of support. NCPs are also a part of national governments. Therefore, a national government may have had a role in a project and a role in hearing the complaint about the project at the NCP.

- There are no timelines in the OECD NCP process. Once a complaint is filed, it is up to the NCP itself to determine when it will respond to the complaint, if at all.

How to Contact the NCPs

A listing of all NCPs is available at:
<http://www.oecd.org/dataoecd/17/44/1900962.pdf>. Below is contact information for several of the NCPs.

The Argentine National Contact Point

The Argentine NCP may be contacted by telephone at (54-11) 4819 7602/8124 7607, by facsimile at (54-11) 4819 7566, by email at oejde@mrecic.gov.ar; mma@mrecic.gov.ar; or hjg@mrecic.gov.ar, or by mail:

Minister María Margarita Ahumada
National Contact Point of Argentina
Director of the OECD Co-ordination Unit

Ambassador. Hugo Javier Gobbi
Director of the Directorate of Special Economic Issues
National Direction of International Economic Negotiations (DINEI)
Ministry of Foreign Affairs, International Trade and Worship
Esmeralda 1212, 9th floor
Buenos Aires
Argentina

The Australian National Contact Point

The Australian NCP may be contacted by telephone at (61-2) 6263-3763, by facsimile at (61-2) 6263-2940, by email at ancp@treasury.gov.au, or by mail:

Australian National Contact Point for OECD Guidelines on MNE's
Foreign Investment Review Board
c/- The Treasury
Canberra ACT 2600
Australia

The Austrian National Contact Point

The Austrian NCP may be contacted by telephone at (43-1) 711 00 8316, by facsimile at (43-1) 71100 15101, by email at hendrik.zechner@bmwfi.gov.at, or by mail:

Director
Foreign Trade Policy and European Integration Unit
Federal Ministry of Economy, Family and Youth
Abteilung C2/5
Stubenring 1
1011 Vienna
Austria

The Belgian National Contact Point

The Belgian NCP may be contacted by telephone at (32-2) 277 72 82, by facsimile at (32-2) 277 53 06, by email at colette.vanstraelen@economie.fgov.be, or by mail:

Service Public Fédéral Economie
Potentiel Economique
Rue du Progrès 50
1210 Bruxelles
Belgium

The Brazilian National Contact Point

The Brazilian NCP may be contacted by telephone at (+5561) 3412 1910, by facsimile at (+5561) 3412 1722, by email at pcn.ocde@fazendagov.br; or isabela.andrade@fazenda.gov.br, or by mail:

Brazilian National Contact Point Coordinator
Secretariat for International Affairs
Ministry of Finance
Esplanada dos Ministérios, Bloco P, sala 224
70079-900 Brasília – Distrito Federal
Brazil

The Canadian National Contact Point

Canada's NCP may be contacted by telephone at (613) 996-0245, by facsimile at (613) 944-7153, by email at ncp.pcn@international.gc.ca, or by mail:

Canada's National Contact Point (BTS)
Foreign Affairs and International Trade Canada
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

The Chilean National Contact Point

The Chilean NCP may be contacted by telephone at 56 2 827 52 24, by facsimile at 56 2 827 54 66, by email at rmonardes@direcon.cl, or by mail:

Chef du Département OECD/DIRECON, Marcelo Garcia
Dirección de Relaciones Económicas Internacionales
Ministerio de Relaciones Exteriores de Chile
Teatinos 180, Piso 11
Santiago
Chile

The Czech Republic National Contact Point

The Czech Republic NCP may be contacted by telephone at +420 2 2485 2717, by facsimile at +420 2 2485 1560, by email at oeecd@mpo.cz or telickova@mpo.cz, or by mail:

Director
Multilateral and Common Trade Policy Department
Ministry of Industry and Trade
Na Františku 32
110 15 Prague 1
Czech Republic

The Danish National Contact Point

The Danish NCP may be contacted by telephone at (45) 72 20 51 00, by facsimile at (45) 33 12 13 78, by email at lfa@bm.dk, or by mail:

Deputy Permanent Secretary of State
Labour Law and International Relations Centre
Ministry of Employment
Ved Stranden 8
DK-1061 Copenhagen K
Denmark

The Dutch National Contact Point

The Dutch NCP may be contacted by telephone at (31) 70 379 8617, by facsimile at (31) 70 379 7221, by email at nep@minez.nl, or by mail:

Trade Policy and Globalisation Division
Ministry of Economic Affairs, Agriculture and Innovation
Alp. N/442, P.O. Box 20102
NL-2500 EC The Hague
Netherlands

The Estonian National Contact Point

The Estonian NCP may be contacted by telephone at 372-625 6350, by facsimile at 372-631 3660, by email at kaupo.sempelson@mkm.ee, or by mail:

National Contact Point
Economic Development Department
Ministry of Economic Affairs and Communication
Harju 11
15072 Tallinn
Estonia

The Egyptian National Contact Point

The Egyptian NCP may be contacted by telephone at +2 02-2405-5626/27, by facsimile at +2 02-2405-5635, by email at encp@investment.gov.eg, or by mail:

National Contact Point
Ministry of Investment
Office of the Minister
3 Salah Salem Street
Nasr City 11562 Cairo
Egypt

The Finnish National Contact Point

The Finnish NCP may be contacted by telephone at +358 50 396 4673, by facsimile at +358 0 604 8058, by email at jorma.immonen@tem.fi, or by mail:

National Contact Point,
Ministerial Counsellor
Ministry of Employment and Economy
PO Box 32
FI- 00023 GOVERNMENT
Helsinki
Finland

The French National Contact Point

The French NCP may be contacted by telephone at (33) 01 44 87 73 60, by facsimile at (33) 01 53 18 76 56, by email at remy.rioux@dgtresor.gouv.fr; Olivier.jonglez@dgtresor.gouv.fr; or fabrice.wenger@dgtresor.gouv.fr, or by mail:

M. Rémy RIOUX
Ministère de l'Économie, des Finances et de l'Emploi
Direction Générale du Trésor
Service des Affaires multilatérales et du Développement
Sous-direction des affaires financières multilatérales et du développement
139, rue de Bercy
75572 Paris cedex 12
France

The German National Contact Point

The German NCP may be contacted by telephone at (49-30) 2014 75 21, by facsimile at (49-30) 2014 50 5378, by email at buerovc3@bmwi.bund.de, or by mail:

Federal Ministry of Economics and Technology (BMWi)–
Auslandsinvestitionen VC3
Scharnhorststrasse 34-37
D-10115 Berlin
Germany

The Greek National Contact Point

The Greek NCP may be contacted by telephone at (+30) 210 328 62 42/31/43, by facsimile at (+30) 210 328 62 09, by email at g.horemi@mnec.gr, or by mail:

Unit for International Investments
Directorate for International Economic Developments and Co-operation
General Directorate for International Economic Policy
Ministry of Economy, Competitiveness and Shipping
Ermou & Kornarou 1
GR-105 63 Athens
Greece

The Hungarian National Contact Point

The Hungarian NCP may be contacted by telephone at (+36 1) 374 2562/79, by facsimile at (+36 1) 374 2885, by email at julianna.pantya@ngm.gov.hu; or orsolya.bercz@ngm.gov.hu, or by mail:

The Hungarian National Contact Point
Department of International and EU Affairs
Ministry for National Economy
H-1055 Budapest,
Honvéd u. 13-15.
Hungary

The Irish National Contact Point

The Irish NCP may be contacted by telephone at (353-1) 631 2605, by facsimile at (353-1) 631 2560, by email at Hympna_hayes@entemp.ie, or by mail:

National Contact Point
Bilateral Trade Promotion Unit
Department of Enterprise, Trade and Employment
Earlsfort House, 1 Lower Hatch Street
Dublin 2
Ireland

The Icelandic National Contact Point

The Icelandic NCP may be contacted by telephone at (+353) 545 8800, by facsimile at (+354) 511 1161, by email at postur@vrn.stjr.is, or by mail:

National Contact Point
Ministry of Business Affairs
Solvholsgotu 7 -
150 Reykjavik
Iceland

The Israeli National Contact Point

The Israeli NCP may be contacted by telephone at (972-2) 666 26 78/9, by facsimile at (972-2) 666 29 56, by email at ncp.israel@moital.gov.il, or by mail:

Trade Policy & International Agreements Division
Foreign Trade Administration
Ministry of Industry, Trade and Labour
5 Bank Israel Street
Jerusalem
Israel

The Italian National Contact Point

The Italian NCP may be contacted by telephone at (39-6) 47052561, by facsimile at (39-6) 47052109, by email at pcn1@sviluppoeconomico.gov.it, or by mail:

National Contact Point
General Directorate for Industrial Policy and Competitiveness
Ministry of Economic Development
Via Molise 2
I-00187 Rome
Italy

The Japanese National Contact Point

Japan's NCP may be contacted by telephone at (81-3) 5501 8348, by facsimile at (81-3) 5501 8347, by email at keikokukei@mofa.go.jp, or by mail:

Director, OECD Division
Economic Affairs Bureau, Ministry of Foreign Affairs
2-2-1 Kasumigaseki
Chiyoda-ku
Tokyo
Japan

The Korean National Contact Point

The Korean NCP may be contacted by telephone at 82-2-2110-5356, by facsimile at 82-2-504-4816, by email at fdikorea@mke.go.kr, or by mail:

Ministry of Knowledge Economy
Foreign Investment Policy Division
1 Jungang-dong, Gwacheon-si, Gyeonggi-do
Korea

The Latvian National Contact Point

The Latvian NCP may be contacted by telephone at +371 67016418, by facsimile at +371 67828121, by email at lvncp@mfa.gov.lv, or by mail:

Director
Economic Relations and Development Cooperation Policy Department
Ministry of Foreign Affairs of the Republic of Latvia
K.Valdemara Street 3
Rīga LV – 1395
Latvia

The Lithuanian National Contact Point

The Lithuanian NCP may be contacted by telephone at 370 5 262 9710, by facsimile at 370 5 263 3974, by email at andrius.stumbrevicius@ukmin.lt, or by mail:

Investment Policy Division
Investment and Export Department
Ministry of Economy of the Republic of Lithuania
Gedimino ave. 38/2
LT-01104 Vilnius
Lithuania

The Luxembourg National Contact Point

The Luxembourg NCP may be contacted by telephone at (352) 478-41 73, by facsimile at (352) 46 04 48, by email at marc.hostert@eco.etat.lu; or anne-catherine.lammar@eco.etat.lu, or by mail:

Secrétaire du Point de Contact national
Ministère de l'Economie
Secrétariat du Comité de Conjoncture
L-2914
Luxembourg

The Mexican National Contact Point

The Mexican NCP may be contacted by telephone at (52-55) 52296100 ext. 33426, by facsimile at (52-55) 52296507, by email at alejandra.cisnerosg@economia.gob.mx, or by mail:

Ministry of Economy
Directorate General for Foreign Investment
Insurgentes Sur #1940 8th floor
Col. Florida, CP 01030
México DF
México

The Moroccan National Contact Point

The Moroccan NCP may be contacted by telephone at 212 (05) 37 67 34 20/21, by facsimile at 212 (05) 37 67 34 17/42, by email at principes_directeurs@invest.gov.ma, or by mail:

L'AMDI assure la présidence et le secrétariat du Point de Contact National
32, Rue Hounaïne Angle Rue Michlifen Agdal
Rabat
Morocco

The Norwegian National Contact Point

The Norwegian NCP may be contacted by telephone at (47) 22 24 45 99/42 37, by email at her@mfa.no, or mban@mfa.no, or by mail:

OECD NCP Norway
Ministry of Foreign Affairs
P.O. Box 8114 – DEP
N-0032 OSLO
Norway

The New Zealand National Contact Point

The New Zealand NCP may be contacted by telephone at (64-4) 472 0030, by facsimile at (64-4) 499 8508, by email at oeecd-ncp@med.govt.nz, or by mail:

Trade Environment Team
Competition Trade and Investment Branch
Ministry of Economic Development
PO Box 1473 Wellington
New Zealand

The Peruvian National Contact Point

The Peruvian NCP may be contacted by telephone at 51 1 612 1200 Ext. 12 46, by facsimile at 51 1 442 2948, by email at jleon@proinversion.gob.pe, or by mail:

Mr. Jorge Leon Ballen
Executive Director
PROINVERSION – Private Investment Promotion Agency
Ave Paseo de la republica # 3361 Piso 9, Lima 27
Peru

The Polish National Contact Point

The Polish NCP may be contacted by telephone at (48-22) 334 9853, by facsimile at (48-22) 334 9999, by email at katarzyna.kosciesza@paiz.gov.pl; or oeecd.ncp@paiz.gov.pl, or by mail:

Polish Information and Foreign Investment Agency (PAIIZ)
Economic Information Department
Ul. Bagatela 12
00-585 Warsaw
Poland

The Portuguese National Contact Point

The Portuguese NCP may be contacted by telephone at (351) 217 909 500, by facsimile at (351) 217 909 593, by email at aicep@portugalglobal.pt; or felisbela.godinho@portugalglobal.pt, or by mail:

AICEP Portugal Global
Avenida 5 de Outubro, 101
1050-051 Lisbon
Portugal

The Romanian National Contact Point

The Romanian NCP may be contacted by telephone at 40 (021) 318 50 50, by facsimile at 40 (021) 311 14 91, by email at office@traderom.ro, or by mail:

Romanian Centre for Trade and Foreign Investment Promotion
17 Apolodor Street, district 5, Bucharest
Romania

The Slovakian National Contact Point

The Slovakian NCP may be contacted by telephone at 421-2 4854 1605, by facsimile at 421-2 4854 3613, by email at jassova@economy.gov.sk, or by mail:

Department of Strategic Investments
Strategy Section
Ministry of Economy
Mierová 19,
827 15 Bratislava
Slovak Republic

The Slovenian National Contact Point

The Slovenian NCP may be contacted by telephone at +386 1 400 3521/3533, by facsimile at +386 1 400 36 11, by email at nkt-oecd.mg@gov.si, or by mail:

Ministry of Economy
Directorate for Foreign Economic Relations
Kotnikova 5
1000 Ljubljana
Slovenia

The Spanish National Contact Point

The Spanish NCP may be contacted by telephone at (34) 91 349 38 60, by facsimile at (34) 91 349 35 62, by email at pnacional.sccc@comercio.mity.es, or by mail:

National Contact Point
Secretariat of State for International Trade
Ministry of Industry, Tourism and Trade
Paseo de la Castellana n° 162
28046 Madrid
Spain

The Swedish National Contact Point

The Swedish NCP may be contacted by telephone at (4608) 405 1000, by facsimile at (46-8) 723 1176, by email at ga@foreign.ministry.se, or by mail:

Swedish Partnership for Global Responsibility
International Trade Policy Department
Ministry for Foreign Affairs
103 33 Stockholm
Sweden

The Swiss National Contact Point

The Swiss NCP may be contacted by telephone at (41-31) 323 12 75, by facsimile at (41-31) 325 73 76, by email at nkp@seco.admin.ch, or by mail:

National Contact Point
International Investment and Multinational Enterprises Unit State Secretariat for
Economic Affairs (SECO)
Holzikofenweg 36
CH-3003 Bern
Switzerland

The Turkish National Contact Point

The Turkish NCP may be contacted by telephone at 90-312-212 5877, by facsimile at 90-312-212 8916, by email at murat.alici@hazine.gov.tr; zergul.ozbilgic@hazine.gov.tr; or candan.canbeyli@hazine.gov.tr, or by mail:

Mr. Murat Alici
Acting Director-General of DG on Foreign Investments,
Undersecretariat for Treasury
Hazine Müsteşarlığı YSGM
İnönü Blv. No: 36 06510
Emek-Ankara
Turkey

The United Kingdom National Contact Point

The United Kingdom's NCP may be contacted by telephone at (44-20) 7215 5756, by facsimile at (44-20) 7215 6767, by email at uk.ncp@bis.gsi.gov.uk, or by mail:

UK National Contact Point
OECD Guidelines for Multinational Enterprises
Department for Business, Innovation and Skills (BIS)
1-19 Victoria Street
London SW1H 0ET
United Kingdom

The United States National Contact Point

The United States NCP may be reached by telephone at (202) 647-5686, by facsimile at (202) 647-5713, by email at usncp@state.gov, or by mail:

U.S. National Contact Point
Bureau of Economic and Business Affairs
Rm. 4950, Harry S. Truman Building
U.S. Department of State
2201 C Street, N.W.
Washington, DC 20520
USA

PART V THE EQUATOR PRINCIPLES (EPS)

What are the Equator Principles?

The Equator Principles (EPs) are a voluntary set of standards for determining, assessing and managing social and environmental risk in project finance.²¹⁰ The EPs were originally created in 2002, revised in 2006, and are currently being updated (release expected 2012) with the participation of stakeholders, including clients, peer financial institutions, and interested non-governmental organizations.²¹¹ The EPs are based on the International Finance Corporation's (IFC) performance standards on social and environmental sustainability,²¹² and the World Bank Group's Environmental, Health and Safety general guidelines.²¹³

The Equator Principles Financial Institutions (EPFIs) are those banks involved in project finance that have adopted the EPs. A full list of EPFIs can be found on the Equator Principles website, <http://www.equator-principles.com>. There are currently 77 official EPFIs in 29 countries, covering over 70 percent of international project finance debt in emerging markets.²¹⁴

Where do the EPs apply?

The EPs apply to the private banks who have adopted the Principles, and who are engaged in project finance.²¹⁵ In particular, the EPs apply to all new project financings globally with total project capital of US\$10 million or more, across all industry sectors.

EQUATOR PRINCIPLES QUICK SUMMARY

The EPs are voluntary standards adopted by private banks involved in project finance, across all industry sectors.

While affected individuals and groups can bring a complaint to a participating bank through a required local-level grievance mechanism, there is no official EP accountability mechanism to challenge EP compliance at the level of the EP Association.

To complain about violations of the EPs at the international level, you may take action such as sending a letter to the relevant EP and to the EP Association, urging to de-list the EPFI for non-compliance with the Principles.

²¹⁰ The full text of the "Equator Principles" are available online at <http://www.equator-principles.com/index.php/the-eps-and-official-translations>.

²¹¹ See History of the Equator Principles, <http://www.equator-principles.com/index.php/history>.

²¹² See Part II, The Compliance Advisor/Ombudsman for the International Finance Corporation & Multilateral Investment Guarantee Agency, *supra* at p.22.

²¹³ The Environmental, Health, and Safety Guidelines are technical reference documents, referred to in Performance Standard 3 on Pollution Prevention and Abatement. See "Environmental, Health, and Safety General Guidelines," available online at

<http://www1.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES>.

²¹⁴ See About the Equator Principles, <http://www.equator-principles.com/index.php/about-the-equator-principles>.

²¹⁵ Project finance is defined as "financing of the construction of a new capital installation, or refinancing of an existing installation, with or without improvements. In such transactions, the lender is usually paid solely or almost exclusively out of the money generated by the contracts for the facility's output, such as the electricity sold by a power plant. The borrower is usually an SPE (Special Purpose Entity) that is not permitted to

How the EPs Matter in Projects on the Ground

There are three ways in which EPFIs are expected to incorporate and implement the EPs when financing a project:

1. Screen projects according to a common terminology established in the IFC Performance Standards. Borrowers planning projects receiving high and medium social and environmental risk ratings are required to establish a Social and Environmental Management System.
2. Based on the initial screening, all high-risk projects, and certain medium-risk projects, require the borrower to appoint an independent environmental and/or social expert, or require that the borrower retain qualified and experienced external experts, to review and verify the borrowers' Social and Environmental Assessments and Action Plans. Experts also review and verify borrower's independent monitoring and reporting information over the life of the loan. Borrower would send the participating EPFI these reports for review to ensure compliance with the EPs.
3. In loan documentation, EPFIs will require borrowers to comply with the social and environmental covenants included in their Action Plans. If borrower fails to comply within an agreed upon grace period, the EPFI has the right to remedy the situation as they consider appropriate.

In addition, the EPFI Best Practice Working Group has published two documents that provide guidance and best practices for implementation of the EPs.²¹⁶ Neither of the documents are required frameworks, but rather suggestions to assist EPFIs implement the principles when financing a project.

Finally, Principle 10 of the EPs requires a minimum of one annual report from each EPFI. The annual report should include implementation processes and experiences.²¹⁷

How the EPFIs are Governed

The Equator Principles Association manages and ensures the long-term viability of the EPs. The Steering Committee of the EP Association manages and coordinates between EPFIs, Working Groups, and EPFI management. The Governance Rules, updated in July 2010, provide guidance on the processes for the management, administration, and

perform any function other than developing, owning, and operating the installation. The consequence is that repayment depends primarily on the project's cash flow and on the collateral value of the project's assets." See Basel Committee on Banking Supervision, International Convergence of Capital Measurement and Capital Standards: A Revised Framework, November 2005, available online at <http://www.bis.org/publ/bcbs118.pdf>.

²¹⁶ EPFI Best Practice Working Group, "Guidance to EPFIs on Incorporating Environmental and Social Considerations into Loan Documentation," available online at http://www.equator-principles.com/resources/ep_loan_document_guidance_note.pdf, and "Guidance to EPFIs on Equator Principles Implementation Reporting," available online at http://www.equator-principles.com/resources/ep_implementation_reporting_guidance_note.pdf.

²¹⁷ See <http://www.equator-principles.com/index.php/reporting-requirements>.

development of the EPs.²¹⁸ The Governance Rules are meant to “formalize existing practices and procedures, increase the transparency of the Association, and will ensure that EPFIs meet their responsibilities such as public reporting on EP implementation.”²¹⁹

One important part of the Governance Rules that affected communities should be aware of is Rule 6(c)(iii), which states: “If the EPFI or Associate has not Reported Publicly within 18 months, it shall be “de-listed” without further notice – that is, the name of that EPFI or Associate shall be removed by the Administrator from the List of EPFIs and Associates on the Principles’ website and the relevant EPFI or Associate shall no longer be a member of this Association.”²²⁰ While de-listing could be a potentially useful tool around which to advocate, it is weakened by the next provision of the Governance Rules: “If an EPFI or Associate has been de-listed as stated in Rule 6ciii and it wishes to continue to be considered as an active and reporting EPFI or Associate, it will need to re-adopt the Principles in accordance with Rule 5f above.” Therefore, the only sanction on EPFIs by fellow EPFIs is very weak.

How to Complain About EP Violations

First, communities should be aware that the EPs contain requirements that local grievance mechanisms be established. For all high and certain medium risk projects, Principle 6 requires borrowers to establish a local grievance mechanism that “addresses concerns promptly and transparently, in a culturally appropriate manner, and is readily accessible to all segments of the affected communities.”²²¹ Communities can raise concerns about all aspects of a project, including consultation, disclosure, and community engagement.

In terms of holding an EPFI accountable for violations of the EPs, *there is no official mechanism at the international level to enforce EPFI compliance.* This is a major weakness that undermines the legitimacy and credibility of the Equator Principles.

Communities affected by projects financed by banks that have adopted the EPs may want to communicate directly with those institutions to request compliance, copying all communication to the EP Association. If non-compliance with the EPs includes failure to report, affected communities may want to write to the EP Association and request that the EP be “de-listed.”

Example of a Case Challenging EP Compliance

Advocacy around the Botnia Paper Mill project in Uruguay provides an illustrative example of how to request compliance from an EPFI. In the Botnia case, a coalition of

²¹⁸ For more information on management structure, see <http://www.equator-principles.com/index.php/about-ep/38-about/about/12>.

²¹⁹ EP Press Release: New Governance Rules Introduced for the Equator Principles, July 1, 2010, available online at <http://www.equator-principles.com/index.php/all-ep-association-news/ep-association-news-by-year/63-2010/68-new-governance-rules-introduced-for-the-equator-principles>.

²²⁰ See http://www.equator-principles.com/resources/ep_governance_rules_june_2010.pdf.

²²¹ See Principle 6, <http://www.equator-principles.com/resources/equator-principles.pdf>.

organizations wrote directly to the private banks providing financing for a controversial paper mill project near the Uruguay-Argentina border. The coalition first submitted an EP Compliance Complaint to ING Group, an EPFI since 2003, after which ING Group withdrew support for the project.²²² The coalition also submitted an EP Compliance Complaint to Calyon, another project financier and part of Crédit Agricole, a French bank and EPFI.²²³ While this strategy contributed to the withdrawal of support from ING Group, Calyon asserted that because the financial support was in the form of a general loan and not project finance, they were not obligated to follow social and environmental safeguards. However, they retain their EPFI label and claim to adhere to the EPs in their project finance work.

The Botnia Paper Mill case provides one example of how an EP Compliance Complaint can be structured and used as part of a larger accountability strategy.

How to Contact the EP Association and the EPFIs

The EP Association can be contacted through the EPFI Administrator:

Samantha Hoskins
EPFI Administrator/Secretariat
Equator Principles Association
Email: sam.hoskins@workethics.co.uk, secretariat@equator-principles.com
Tel: +44 1621 853 900
Fax: +44 1621 731 483

Most EPFIs can be contacted through a corporate social responsibility or sustainability representative within the institution. A link to the website of each participating EPFI is available on the EP website, and the relevant individual or office of many EPFIs is linked to in the Reporting section of the website.²²⁴

²²² ING Group did state that the reason for their withdrawal from the project was not due to the EP Compliance Complaint, though the bank was an early supporter of the EPs. The EP Compliance Complaint to ING Group is available online at <http://casopasteras.cedha.net/wp-content/uploads/2011/09/complaint-letter-to-ing-eng.pdf>. See also ING's Letter Announcing Pullout, available online at <http://casopasteras.cedha.net/wp-content/uploads/2011/09/ing-pullout-letter-april-12-2006.pdf>.

²²³ The EP Compliance Complaint to Calyon is available online at <http://casopasteras.cedha.net/wp-content/uploads/2011/08/Equator-Principles-Compliance-Complaint-to-CALYON.pdf>.

²²⁴ See <http://www.equator-principles.com/reporting.shtml>.

PART VI TRAININGS, CONSULTATIONS & MORE INFORMATION

It may help to use this Guide along with interactive trainings and/or consultations with Accountability Counsel. Communicating with Accountability Counsel may help you to determine which tools or strategies may be the most effective for your particular circumstances. Some of the tools discussed in this Guide are appropriate for some communities but may not be appropriate for others. Trainings or consultations may also enable you to:

- work in collaboration with local, regional or international organizations to gain from their experience and work with them in solidarity; and
- may assist others working on similar issues to be aware of your campaign.

To schedule a training session for your group or organization, for a consultation about particular issues, or for a referral to a local lawyer or organization with expertise, contact Accountability Counsel at info@accountabilitycounsel.org.



Glossary of Terms

ADB	Asian Development Bank
AfDB	African Development Bank
BPs	Bank Procedures (of the World Bank)
BIC	Bank Information Center
BCRC	Board Compliance Review Committee (of the ADB)
BNDES	Brazilian Development Bank
CAO	Compliance Advisor/ Ombudsman (for IFC & MIGA)
CEO	Chief Executive Officer
CRMU	Compliance Review and Mediation Unit (of the AfDB)
CRO	Complaints Receiving Officer (of the ADB)
CRP	Compliance Review Panel (of the ADB)
EIB	European Investment Bank
EBRD	European Bank for Reconstruction and Development
EDC	Export Development Canada
EPs	Equator Principles
EPFI	Equator Principle Financial Institution
ESRP	Environment & Social Review Procedure (of the IFC)
GEF	Global Environmental Facility
IBRD	International Bank for Reconstruction & Development
IAP	Independent Appeals Panel (of the ADB)
IDA	International Development Association
IDB	Inter-American Development Bank
IFC	International Finance Corporation
IFI	International Financial Institution

IPDP	Indigenous Peoples' Development Plan
IPP	Indigenous Peoples' Plan
IRM	Independent Recourse Mechanism (of the EBRD)
ISDS	Integrated Safeguard Data Sheet
JBIC	Japan Bank for International Cooperation
MICI	Independent Consultation and Investigation Mechanism (of the IDB)
MIGA	Multilateral Investment Guarantee Agency
MNE	Multinational Enterprises
NCP	National Contact Point (of the OECD Process)
NEXI	Nippon Export and Investment Insurance
NGO	Non-Governmental Organization
ODA	Official Development Assistance (a type of JBIC loan)
OECD	Organization for Economic Cooperation and Development
OPs	Operational Policies (of the World Bank)
OPIC	Overseas Private Investment Corporation
PAD	Project Appraisal Document
PCM	Project Complaint Mechanism (of the EBRD)
PDAC	Public Disclosure Advisory Committee (of the ADB)
PID	Project Information Document
PSD	Project Summary Document (of the EBRD)
PRSP	Poverty Reduction Strategy Paper
SPF	Special Project Facilitator (of the ADB)
SSP	Sector Strategy Paper

APPENDIX OF MATERIALS

These materials may be distributed in hard copy with this manual at trainings or upon request. For a hard copy of the materials contained in the electronic links in the Appendix, please contact Accountability Counsel (www.accountabilitycounsel.org).

I. MATERIALS RELATED TO IBRD AND IDA

The World Bank Group

<http://www.worldbank.org/>

Inspection Panel Brochure

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/EnglishBrochure.pdf>

World Bank (IBRD & IDA) Safeguard Policies

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html>

World Bank Information Disclosure Policy

<http://www1.worldbank.org/operations/disclosure/policy.html>

A Citizen's Guide to the World Bank Inspection Panel

<http://www.ciel.org/Publications/citizensguide.pdf>

Strategic Guide for Filing Complaints with IFIs

http://www.foei.org/en/resources/publications/economic-justice-resisting-neoliberalism/2000-2007/strategic_guide.pdf/view

II. MATERIALS RELATED TO IFC AND MIGA

The International Finance Corporation (IFC)

<http://www.ifc.org/>

Compliance Advisor/ Ombudsman Operational Guidelines

<http://www.cao-ombudsman.org/howwework/compliance/documents/EnglishCAOGuidelines06.08.07Web.pdf>

IFC Policy on Environmental and Social Sustainability

http://www1.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES

IFC Disclosure Policy

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_Disclosure2006/\\$FILE/Disclosure2006.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_Disclosure2006/$FILE/Disclosure2006.pdf)

IFC Environment and Social Review Procedure

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_ESRP2006/\\$FILE/ESRP2006.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_ESRP2006/$FILE/ESRP2006.pdf)

MIGA Policy on Social and Environmental Sustainability

http://www.miga.org/documents/environ_social_review_021507.pdf

III. MATERIALS RELATED TO THE INTER-AMERICAN DEVELOPMENT BANK

The Inter-American Development Bank

<http://www.iadb.org/>

The Inter-American Development Bank's Independent Consultation and Investigation Mechanism (MICI)

<http://www.iadb.org/en/mici/independent-consultation-and-investigation-mechanism-icim,1752.html>

The Inter-American Development Bank Environment & Safeguards Compliance Policy

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1481950>

Inter-American Development Bank Information Disclosure Policy

<http://www.iadb.org/en/about-us/information-disclosure-policy,6110.html>

IV. MATERIALS RELATED TO THE ASIAN DEVELOPMENT BANK

Asian Development Bank (ADB)

<http://www.adb.org/About/>

ADB Accountability Mechanism Policy 2012

<http://www.adb.org/sites/default/files/accountability-mechanism-policy-2012.pdf>

ADB's Office of the Special Project Facilitator

<http://www.adb.org/site/accountability-mechanism/problem-solving-function/office-special-facilitator>

ADB's Special Project Facilitator Complaints Registry

<http://www.adb.org/site/accountability-mechanism/problem-solving-function/complaint-registry-year>

ADB's Compliance Review Panel

<http://compliance.adb.org/>

ADB Toolkits for Activists

<http://www.bicusa.org/en/Article.1630.aspx>

ADB's Policies

<http://www.adb.org/Development/policies.asp>.

V. MATERIALS RELATED TO THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Project Complaint Mechanism: Rules of Procedure

<http://www.ebrd.com/downloads/integrity/pcmrules.pdf>

VI. MATERIALS RELATED TO THE AFRICAN DEVELOPMENT BANK

African Development Bank (AfDB)

<http://www.afdb.org/en/about-us/>

The Independent Review Mechanism—Operating Rules and Procedures

<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/IRM%20Operating%20Rules%20and%20Procedures%20-%2016%20June%202010.pdf>

AfDB's Policy on Disclosure Information

<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000004-EN-THE-AFRICAN-DEVELOPMENT-BANK-GROUP-POLICY-ON-DISCLOSURE-OF-INFORMATION.PDF>

VII. MATERIALS RELATED TO THE EUROPEAN INVESTMENT BANK

European Investment Bank (EIB)

www.eib.org

EIB's Complaints Mechanism

<http://www.eib.org/infocentre/publications/all/complaints-mechanism-policy.htm>

EIB's Environmental and Social Principles and Standards

http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

EIB's Transparency Policy

www.eib.org/attachments/strategies/transparency_policy_en.pdf

VIII. MATERIALS RELATED TO THE BRAZILIAN DEVELOPMENT BANK

Brazilian Development Bank (BNDES)

www.bndes.gov.br

BNDES Ombudsperson

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Navegacao_Suplementar/Ouvidoria/

IX. MATERIALS RELATED TO JBIC

Japan Bank for International Cooperation (JBIC)

<http://www.jbic.go.jp/english/>

Examiner for Environmental Guidelines Procedure

http://www.jbic.go.jp/en/about/environment/guideline/disagree/pdf/A04-02-05_b_Examiners%20for%20Environmental%20Guidelines.pdf

JBIC Guidelines for Confirmation of Environmental and Social Considerations

<http://www.jbic.go.jp/en/about/environment/guideline/confirm/index.html>

Friends of the Earth Japan

<http://www.foejapan.org/en>

Mekong Watch

<http://www.mekongwatch.org/english>

JACSES

<http://www.jacsces.org/en>

X. MATERIALS RELATED TO THE NIPPON EXPORT AND INVESTMENT INSURANCE

Nippon Export and Investment Insurance (NEXI)

<http://nexi.go.jp/en/>

Procedures for Submitting Objections to NEXI Examiner

http://nexi.go.jp/en/environment/objection/pdf/08b_1.pdf

NEXI Guidelines on Environmental and Social Considerations

<http://nexi.go.jp/en/environment/social/>

XI. MATERIALS RELATED TO EXPORT DEVELOPMENT CANADA

Export Development Canada (EDC)

<http://www.edc.ca/english/index.htm>

EDC's Compliance Office Brochure

http://www.edc.ca/english/docs/compliance_officer_e.pdf#search=%22Environment%20Development%20Canada's%20Compliance%20Officer%22

EDC's Environmental and Social Review Directive

<http://www.edc.ca/EN/About-Us/Corporate-Social-Responsibility/Environment/Documents/environment-social-review-directive.pdf>

XII. MATERIALS RELATED TO OPIC

The Overseas Private Investment Corporation (OPIC)

<http://www.opic.gov/>

OPIC Office of Accountability Brochure

http://www.opic.gov/sites/default/files/docs/accountabilitybrochure05_000.pdf

OPIC Environmental & Social Policies

http://www.opic.gov/sites/default/files/consolidated_esps.pdf

XIII. MATERIALS RELATED TO PROJECTS WITH OECD-MEMBER FUNDERS

The Organization for Economic Cooperation and Development (OECD)

<http://www.oecd.org/>

OECD Guidelines for Multinational Enterprises

<http://www.oecd.org/dataoecd/43/29/48004323.pdf>

OECD List of the National Contact Points

<http://www.oecd.org/dataoecd/17/44/1900962.pdf>

United States OECD National Contact Point Brochure

<http://www.state.gov/e/eb/rls/fs/2012/183067.htm>

OECD Watch: Guide to the OECD Guidelines for Multinational Enterprises Complaint Procedure

http://oecdwatch.org/publications-en/Publication_1664

XIV. MATERIALS RELATED TO THE EQUATOR PRINCIPLES

The Equator Principles (EPs)

<http://www.equator-principles.com/index.php/the-eps-and-official-translations>.

Environmental, Health, and Safety General Guidelines

<http://www1.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES>

XV. NON-GOVERNMENTAL ORGANIZATION (NGO) LINKS

Bank Information Center (BIC)

<http://www.bicusa.org/bicusa/index.php>

BIC “partners with civil society in developing and transition countries to influence the World Bank and other international financial institutions (IFIs) to promote social and economic justice and ecological sustainability. BIC is an independent, non-profit, non-governmental organization that advocates for the protection of rights, participation, transparency, and public accountability in the governance and operations of the World Bank, regional development banks, and IMF.”

Center for Human Rights and Environment / El Centro de Derechos Humanos y Ambiente (CEDHA)

<http://www.cedha.org.ar/>

CEDHA “is a non-profit organization which aims to build a more harmonious relationship between the environment and people. Our work centers on promoting greater access to justice and guarantee human rights for victims of environmental degradation, or due to non-sustainable management of natural resources, and to prevent future violations. To this end, CEDHA fosters the creation of inclusive public policy that promotes inclusive socially and environmentally sustainable development, through community participation, public interest litigation, strengthening democratic institutions, and the capacity building of key actors.”

Center for International Environmental Law (CIEL)

http://www.ciel.org/Intl_Financial_Inst/index.html

CIEL “is a nonprofit organization working to use international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society. We provide a wide range of services including legal counsel, policy research, analysis, advocacy, education, training, and capacity building.”

ECA Watch

<http://www.eca-watch.org/>

“ECA Watch is an organizing and outreach mechanism of the larger international campaign to reform Export Credit Agencies (ECAs). Organizations participating in the campaign include non-governmental organizations and bodies working on issues related to the environment, development, human rights, community, labor, and anti-corruption.”

International Federation for Human Rights (FIDH)

www.fidh.org

FIDH is a nongovernmental federation for human rights organizations with 164 member organizations in over 100 countries. Its mission is to “contribute to the respect of all the rights defined in the Universal Declaration of Human Rights.” It aims to make “effective improvements in

the protection of victims, the prevention of Human Rights violations, and the sanction of their perpetrators.” FIDH also publishes “A Guide for Victims and NGO’s on Recourse Mechanisms: Corporate Accountability for Human Rights Abuses.” The guide is available at:
<http://www.fidh.org/Updated-version-Corporate>

IFIWatchnet

<http://www.if-watch.net/>

“IFIwatchnet connects organisations worldwide which are monitoring international financial institutions (IFIs) such as the World Bank, the IMF, and regional development banks.” (This website compiles a list of other key organizations around the world that monitor the IFIs and provide resources to project-affected people).

International Accountability Project (IAP)

<http://www.accountabilityproject.org/>

IAP “is a public interest advocacy organization that offers legal support to a global network of people who are seeking to hold international financial institutions (IFIs) and multinational corporations accountable for violations of environmental and human rights. We also work to defend the rights of communities around the world threatened with displacement by international development projects.” (This website compiles a “list of some organizations working on the human rights and environmental impacts of large-scale development projects, or on accountability of international financial institutions and multinational corporations”).

International Rivers

<http://www.internationalrivers.org/>

“International Rivers Network protects rivers and defends the rights of communities that depend on them. IRN opposes destructive dams and the development model they advance, and encourages better ways of meeting people’s needs for water, energy and protection from damaging floods.”

OECD Watch

<http://www.oecdwatch.org/>

OECD Watch is an NGO made up of 60 member groups. OECD Watch produces useful publications, including a manual, that discuss the use of the National Contact Point process and cases brought under the NCP procedure. OECD Watch also conducts trainings regarding the OECD NCP procedure.