

November 2, 2020

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1750-003

Lisbon, Portugal

CC: AfDB Boards of Directors; President Akinwumi Adesina; Mr. David Simpson, CRMU

Dear Review Team:

Thank you for the opportunity to provide comments on the Revised Draft Report on the Third Review of the African Development Bank's (AfDB) Independent Review Mechanism (IRM). As civil society organizations from Africa and around the world that support communities affected by AfDB and other development financing, we have a strong interest in ensuring that the AfDB has a robust accountability framework that results in meaningful remedy for affected communities and institutional learning for the AfDB.

The IRM is one of the only avenues available for African communities to raise their voices about impacts of AfDB projects. The effectiveness of the complaint process depends not only on the IRM but also on the AfDB Board, management, and staff. The report makes clear that there are significant challenges to overcome at every level before communities can trust that their complaints will be handled fairly and their harms remedied. We welcome the report's honest and holistic analysis of the AfDB's accountability framework and endorse most of its recommendations. Several of the signatories to this submission co-authored the "Best of Independent Accountability Mechanisms" report, and appreciate the references in the report to our recommendations based on best practices in the independent accountability mechanism field.

Among those findings and recommendations in the report with which we agree, we would highlight the following that we consider to be most urgent:

- **Role of management:** We agree with the review team's recommendation that management should create a focal point to act as a liaison between management and IRM and that the common objectives of the IRM and management should be championed. We also agree that although project-level grievance redress mechanisms (GRMs) can address certain community grievances, they are not a substitute for the IRM.<sup>1</sup> We further recommend that the Bank require regular independent audits of clients' GRMs to ensure that they are functioning according to the UN Guiding Principles' effectiveness criteria.<sup>2</sup>

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<sup>1</sup> Review Report, para. 78.

<sup>2</sup> Review Report para. 260. GRMs should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, U.N. Doc. HR/PUB/11/04 (2011),

Principle 31, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf#page=38](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf#page=38).

- **Board oversight:** The Board must be supportive and responsive to the IRM, and the report’s recommendations for the Board – particularly its recommendation regarding a revised CODE TOR that requires more constructive engagement by the Board – should be fully implemented.<sup>3</sup> We also call on the Board to publish information on the composition of CODE so that stakeholders can be in touch with the relevant Board offices on the mechanism.<sup>4</sup>
- **Retaliation procedures:** The report includes important recommendations for the IRM to develop a protocol to address threats and instances of reprisals to complainants and all others associated with the complaint process (such as complainants’ family members, NGOs, translators, drivers, etc.). Importantly, the AfDB should also issue a zero-tolerance policy with procedures to prevent and address retaliation towards human rights defenders and anyone that raises their voices concerning AfDB projects.<sup>5</sup>
- **Consultations on management action plans:** The key outcome of a complaint process should be remedial actions that address communities’ grievances and restore livelihoods. One key flaw of the current complaint process, as highlighted by the report,<sup>6</sup> is that complainants are not given an opportunity to comment on the action plans developed by management to address the mechanism’s findings of non-compliance. Management must be required to engage meaningfully with complainants to find mutually agreeable ways to address the IRM’s findings. Consulting with complainants on the action plan is essential to ensuring that the measures will satisfactorily address their grievances and redress harms they have suffered.

There were several items, however, where we felt the report’s analysis dictated a more specific or sharper recommendation:

- **The IRM should be restructured:** We recommend that the IRM be restructured, eliminating its roster model in favor of a senior-level director whose sole responsibility is to oversee dispute resolution, compliance, and advisory functions, and a team of permanent staff. The IRM’s structure is not similar to its peers. There is currently no other independent accountability mechanism at a multilateral development bank that has a roster model.<sup>7</sup> Unlike the IRM, the other independent accountability mechanisms with

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<sup>3</sup> Review Report paras. 255-256

<sup>4</sup> The [World Bank Group](#) and [Asian Development Bank](#) regularly update this information on their websites.

<sup>5</sup> For additional recommendations on preventing and addressing retaliation see Uncalculated Risks: Threats and Attacks Against Human Rights Defenders and The Role of Development Financiers pp. 99-101 (May 2019), <https://rightsinddevelopment.org/wp-content/uploads/2019/06/Uncalculated-Risks-Full-report-cmpr-h.pdf#page=99>.

<sup>6</sup> Review Report para. 69

<sup>7</sup> The comparison to the Inter-American Development Bank’s mechanism in the review report is not apt. The MICI used to have a roster of experts, similar to the AfDB’s model, but eliminated it in the last policy review in favor of an office led by a senior director who manages staff in charge of dispute resolution and compliance review. The roster referenced on the MICI website is for consultants, like mediators, who are hired for their specific expertise.

an expert panel mentioned in the review report have a chairperson who works full-time at their institution. Our recommendation would bring IRM's structure in line with the Independent Project Accountability Mechanism at the European Bank for Reconstruction and Development, the Independent Consultation and Investigation Mechanism of the Inter-American Development Bank, and the Compliance Advisor Ombudsman of the International Finance Corporation. This recommendation also responds to other findings in the report, including the need for IRM staff to have the same or higher grading as the management staff with which they engage,<sup>8</sup> the challenges in recruitment of Roster Experts because of the uncertain and unpredictable time commitment,<sup>9</sup> and the need to elevate the stature of the IRM.<sup>10</sup> Importantly, this restructuring of the mechanism should be accompanied by a marked increase in resources for the mechanism to carry out its mandate.<sup>11</sup>

- **The independence of the mechanism should be preserved throughout all complaint stages:** We have concerns with the recommendation that the IRM and management consult to clarify facts, particularly prior to registering a complaint.<sup>12</sup> The registration process is simply a preliminary review to ensure that the complaint concerns a *bona fide* allegation - management interference at this stage could not only unduly limit accessibility to the mechanism but could disadvantage communities who have less access to relevant information. Moreover, any opportunity given to management to comment on IRM reports should also be given equally to complainants to ensure the fairness of the complaint process.
- **Dispute resolution should be primarily for complainants and the AfDB client, with Bank management and other interested parties participating, as needed.** The IRM procedures seem to envision dispute resolution to be a dialogue process between complainants and Bank management, yet the role of the client is critical. An IAM provides a voluntary service for the benefit of project-affected communities and AfDB clients to resolve their conflicts with the aid of dispute resolution specialists. If successful, the process can restore confidence and communication between the community and the client that will outlast the Bank's involvement.
- **AfDB's accountability system should provide for remedy:** One of the central objectives of the current review is “to undertake a thorough assessment of the extent to which IRM has been an effective *recourse* mechanism for people affected by a project” (emphasis added).<sup>13</sup> The report highlighted several barriers to effective remediation to

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<sup>8</sup> Review report para. 202

<sup>9</sup> *Id.* para. 197

<sup>10</sup> *Id.* para. 254

<sup>11</sup> *Id.* para. 285

<sup>12</sup> Review Report para. 288 (“opportunities should be sought to clarify facts before registration or the issuance of Reports by both IRM and Management. Both sides should undertake appropriate due diligence in order to ensure that facts are correctly presented.”)

<sup>13</sup> *Id.* para. 5i

grievances, including a lack of constructive engagement by management.<sup>14</sup> Furthermore, the report recognized the evolving discussion on addressing these and other systemic obstacles to effective remedy.<sup>15</sup> The recent review of the IFC/MIGA/CAO accountability framework went a step further, recommending the establishment of “mechanisms to provide financial support for remedial action.”<sup>16</sup> These recommendations are equally applicable to the AfDB and IRM. The AfDB should establish a mechanism or mechanisms for proactively reserving resources to remedy environmental and social harms identified through IRM processes. A public consultation process should be commenced to develop such a remedy fund or funds, which could take a number of forms and appropriately divide financial responsibility between the AfDB and clients.

- **AfDB clients should be required to disclose the availability of the IRM to project-affected communities:** The report rightly notes that outreach is not just the job of the mechanism.<sup>17</sup> AfDB management also has an important role to play in conducting effective outreach, and we echo the report’s assertion that management’s involvement must significantly improve, including in disclosing information about the IRM.<sup>18</sup> Reinforcing the report’s finding, a review of all AfDB projects approved in 2019 found that project documents did not disclose information about the IRM, thereby hindering accessibility.<sup>19</sup> To further bolster the effectiveness of outreach, the AfDB should require clients to disclose information about the IRM as well, from the beginning of the project cycle, and in languages and formats that are available to local communities. Clients have logistical advantages for conducting effective and efficient outreach to local communities about project-related information, including information about the IRM. Instructing clients to disclose information about the IRM would create minimal additional obligations considering their preexisting information disclosure responsibilities. The report notes that requiring clients to disclose information about IAMs is considered a best practice among MDBs.<sup>20</sup> An increasing number of international financial institutions have recently codified this practice, including the Inter-American Development Bank and the U.S. International Development Finance Corporation.<sup>21</sup>

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<sup>14</sup> *Id.* para. 83

<sup>15</sup> *Id.* paras. 25-27

<sup>16</sup> External Review of IFC/MIGA E&S Accountability, including CAO’s Role and Effectiveness: Report and Recommendations, para. 333, pp. 77-78; see paras. 334-339, pp. 78-79 (2020),

<http://pubdocs.worldbank.org/en/578881597160949764/External-Review-of-IFC-MIGA-ES-Accountability-disclosure.pdf>.

<sup>17</sup> Review report para. 125

<sup>18</sup> *Id.* paras. 75, 79, 136

<sup>19</sup> International Accountability Project, *In Practice: Information Disclosure at the African Development Bank* (forthcoming publication in November 2020). This analysis reviews disclosure practices for AfDB projects approved in 2019 against criteria to advance community-led development.

<sup>20</sup> *Id.* para. 140

<sup>21</sup> Board Resolution - Independent Accountability Mechanism for the U.S. International Development Finance Corporation para. 5,

[https://www.dfc.gov/sites/default/files/media/documents/BDR%2820%2945\\_IndependentAccountabilityMechanism.pdf#page=3](https://www.dfc.gov/sites/default/files/media/documents/BDR%2820%2945_IndependentAccountabilityMechanism.pdf#page=3); Inter-American Development Bank, Environmental and Social Policy Framework, Environmental and

- **Restrictions concerning parallel proceedings should be removed:** The mechanism is currently restricted from receiving complaints related to “[m]atters before other judicial review or similar bodies,” which restricts its accessibility.<sup>22</sup> The IRM should always be able to undertake a compliance review, regardless of other ongoing processes, because no other forum has the mandate or authority to assess the AfDB’s compliance with its own policies and provide recommendations to strengthen practice at the institution. Additionally, if the parties are willing to engage in a dispute resolution process, the IRM should facilitate such a process, notwithstanding the presence of other processes.

### **Process for the Review**

We commend the AfDB’s commitment to public consultation participation in the review of the mechanism, as the mechanism can only be effective if it is shaped by the stakeholders who could potentially use it. We understand that the next round of public consultation will include a revised version of the report, as well as proposed amendments to the 2015 Operating Rules and Procedures. We request that the revised report include tracked changes so that stakeholders will know how the report has changed. The proposed amendments of the procedures should be embedded in a new version of the procedures so that the stakeholders will have an understanding of the policy language and where it sits in the larger context of the policy.

As mentioned above, we appreciate that the review is not just of the mechanism but also of “the context in which it operates and the relationships it harbors with a wide spectrum of stakeholders who are part and parcel of the accountability system and process in the institution.”<sup>23</sup> The response to the report, then, must be broader than the revised Operating Rules and Procedures and Resolution. The Board should request that AfDB management publish and consult on work plans to implement the recommendations.

It is crucial that this review results in a mechanism and accountability framework that is not just “at par with international accountability standards and procedures,”<sup>24</sup> as the review mentions, but a mechanism that effectively delivers on its mission to provide redress to those harmed by AfDB-financed activities. As the report states, the review is coming during a time when development finance institutions globally have received much scrutiny about the impacts of their projects and their role in ensuring accountability and remedy for project harms.<sup>25</sup> Independent accountability mechanisms, such as the IRM, remain a pragmatic, cost-effective, and timely alternative to litigation, and the AfDB should ensure that the mechanism – and the institutional

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Social Performance Standard 1, para. 39, pp. 42-43,

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=2131049523-13>.

<sup>22</sup> 2015 procedures para. 2(d); Review report para. 101

<sup>23</sup> Review report para. 7

<sup>24</sup> Review report para. 6

<sup>25</sup> Review Report paras. 19-28

response to its work – is as strong as possible. We hope that our comments and our attached redline of the 2015 procedures and Boards Resolution – with edits to align it with the recommendations in the “Best of IAMs” report – will inform your revision of the report and drafting of the new policies governing the mechanism.<sup>26</sup>

Sincerely,

*African Organizations*

1. Abibinsroma Foundation – Ghana
2. ACAT Tchad – Chad
3. Action Paysanne Contre la Faim – Democratic Republic of the Congo
4. Africa Development Interchange Network (ADIN) – Cameroon
5. Alliance for Empowering Rural Communities – Ghana
6. Association Tunisienne de Droit du Développement – Tunisia
7. Association Talassemiane pour l'Environnement et Développement (ATED) – Morocco
8. Bank Information Center – Côte d'Ivoire
9. Buliisa Initiative for Rural Development Organisation (BIRUDO) – Uganda
10. Catholic Relief Services – Nigeria
11. Centre de Recherche sur l'Anti-Corruption – Democratic Republic of the Congo
12. Centre for Human Rights and Civic Education – Kenya
13. Community Outreach for Development and Welfare Advocacy (CODWA) – Nigeria
14. Conseil Régional des Organisations Non Gouvernementales de Développement – Democratic Republic of the Congo
15. Espace de Solidarité et de Coopération de l'Oriental – Morocco
16. Foundation for Environmental Rights, Advocacy & Development (FENRAD) – Nigeria
17. Foundation for the Conservation of the Earth – Nigeria
18. Friends with Environment in Development – Uganda
19. Global Rights – Nigeria
20. Green Advocates International – Liberia
21. Hawana Center of Education – Côte d'Ivoire
22. Institute of Sustainable Development – Malawi
23. Jamaa Resource Initiatives – Kenya
24. Lumière Synergie pour le Développement – Senegal
25. Nature Tropical ONG – Benin

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<sup>26</sup> Several signatories to this submission also submitted comments during the last review of the mechanism in 2014. This letter and the redlined policies include several recommendations that were not addressed in the previous review that should be adopted during this review. See CSO Comments on the Second Review of the of the AfDB's Independent Review Mechanism (Aug. 30, 2014), <https://www.accountabilitycounsel.org/wp-content/uploads/2017/07/CSO-Comments-Second-AfDB-Review.pdf> and Comments on the Second Review Report of the Independent Review Mechanism of the African Development Bank (Aug. 29, 2014), <https://www.accountabilitycounsel.org/wp-content/uploads/2017/07/AC-AfDB-IRM-Comments.pdf>.

26. Observatoire d'Etudes et d'Appui a la Responsabilité Sociale et Environnementale (OEARSE) – Democratic Republic of the Congo
27. ONG PAFED – Togo
28. Organisation pour les Libertés d'Information et d'Expression OLIE-HATIM – Morocco
29. Peace Point Development Foundation (PPDF) – Nigeria
30. Rotab /PWYP – Niger
31. Success Capital Organisation – Botswana
32. Sustainable Holistic Development Foundation (SUHODE) – Tanzania
33. Uganda National Users'/Consumers' Organization – Uganda
34. Université Cheikh Anta Diop – Senegal
35. Water Governance Institute – Uganda

*International Organizations*

36. Accountability Counsel – United States
37. Accountability Lab – United States
38. Arab Watch Coalition – United States
39. Association For Promotion Sustainable Development – India
40. Both ENDS – Netherlands
41. Center for International Environmental Law (CIEL) – International
42. Centre for Research on Multinational Corporations (SOMO) – Netherlands
43. Christine Harris Therapy – Ireland
44. CLEAN (Coastal Livelihood and Environmental Action Network) – Bangladesh
45. Community Resource Centre – Thailand
46. Gender Action – Global
47. Inclusive Development International – United States
48. International Accountability Project (IAP) – Global
49. Mendel University in Brno/CSO Uganda – Czech Republic
50. New Wind Association – Finland
51. Project HEARD – Netherlands
52. Recourse – Netherlands
53. Rencontres Citoyenneté Numérique – France
54. urgwald e.V. – Germany

## AFRICAN DEVELOPMENT BANK GROUP



### THE INDEPENDENT REVIEW MECHANISM



### Operating Rules and Procedures

January 2015

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## I. Introduction

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

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

### a. Purpose

The IRM was established for the purpose of providing people adversely affected by a project financed by the Bank, the Fund, the Nigeria Trust Fund and other Special Funds administered by the Bank (collectively the 'Bank Group') with an independent mechanism through which they can request the Bank Group to comply with all its own policies and procedures and receive redress for their grievances. The mechanism is, therefore, available when an individual or a group of two or more affected persons believe that the Bank Group has failed to comply with any of its policies and procedures and that this failure has, or threatens, to adversely affect them. The IRM will also ensure institutional accountability and continuous improvement especially regarding AfDB compliance with relevant policies and avoidance of social and environmental risks and impacts of AfDB-supported projects. T h e IRMCRMU will disseminate information about the IRM to Bank staff, civil society organizations, affected communities and the general public. The Bank Management shall mainstream information about the IRM in Bank policies and procedures and project documents. AfDB clients and sub-clients (for financial intermediary projects) shall be required to disclose the existence of the IRM to project-affected communities in a culturally appropriate, gender sensitive, and accessible manner.

The IRM will ensure that the complaint process is culturally appropriate, gender responsive, and equally available to all.

**Commented [CSO1]:** One of our key recommendations for the review is a change in the structure of the mechanism from a roster of experts model supported by the CRMU to a unified mechanism with permanent, professional staff conducting the mechanism's functions and work. Our edits below are in accordance to this structural change. For simplicity's sake, we are referring to this restructured mechanism as "the IRM".

**Commented [CSO2]:** There is no correlation between the existence of harm and the number of complainants. Even just one complainant should have the right to seek redress for harm.

**Commented [CSO3]:** Language is based on para. 5 of the U.S. International Development Finance Corporation's IAM Resolution

### b. Functions

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

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

The problem-solving function, described below in Section VI, is the authority to review and attempt to resolve conflicts between affected stakeholders and clients relating to environmental and/or social aspects of projects. It will be carried out by IRM CRMU and used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. These techniques will include independent fact-finding, mediation, conciliation, dialogue facilitation taking into consideration best customary practices for handling complaints. IRMCRMU will submit its problem-solving reports to the Boards of Directors of the Bank and Fund (collectively the 'Boards') on approved projects or to the President of the Bank Group (the 'President'),

on projects under consideration for financing by the Bank Group. This report shall contain any remedial action that should be taken following the problem solving exercise. The IRMCRMU shall monitor the implementation of agreements reached by parties in a problem-solving exercise.

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

TCRMU and the IRM Experts shall monitor the implementation of action plans prepared by Management based on recommendations made by IRMReview Panels and approved by either the Boards or the President, as the case may be, until such time that any non-compliance has been addressed.

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

- (a) Upon receipt by the IRMCRMU of a request for advice or technical opinion from the President and/or the Boards; or
- (b) Upon approval by the President and/or the Boards of a proposal submitted by the Director of CRMU for such advisory service. At the discretion of the IRM Director regarding lessons learned from IRM's problem solving and compliance review roles or systemic and critical issues relating to IRM's casework.

The Advisory function will consist of advisory services on lessons learned and insights gained from handling Requests and from good international practices by CRMU and Spot-check advisory reviews of project compliance by the IRM Experts. The IRM Director of CRMU will submit reports on advice and technical opinions provided to the President and/or the Boards, as the case may be.

*c. Composition of the IRM*

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

*d. List of Policies and Procedures*

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

## II. Subject Matter of Requests

*a. Scope*

1. IRMCRMU is authorized to accept requests for review ('Request(s)') from an individual or group of two or more persons with a common interest ('Requestor(s)') who allege that an actual or threatened material adverse effect on the affected persons' rights or interests arises directly from an act or omission of a member institution of the Bank Group as a result of the

**Commented [CSO4]:** Language is based on para. 4.3 of the IFC CAO's procedures.

**Commented [CSO5]:** We agree that the use of spot-checks should be reduced to only narrow circumstances. We also believe that this should more resemble a mechanism-initiated compliance review, as seen at the Green Climate Fund's Independent Redress Mechanism and the International Finance Corporation's Compliance Advisor Ombudsman. We have accordingly provided further recommendations below.

failure by the said institution to follow any of its own operational policies, and procedures, and project requirements, and project requirements during the design, appraisal and/or implementation of a Bank Group-financed project.

b. **Limitations**

2. IRMCRMU is not authorized to receive Requests relating to:
  - (a) Any procurement by the Bank Group or its borrowers from suppliers of goods and services financed by or expected to be financed by the Bank Group under a loan or grant agreement, or from losing tenders for the supply of such goods and services which shall continue to be addressed under other existing procedures. These are handled by another unit within the Bank Group;
  - (b) Fraud or corruption since they are handled by another unit within the Bank Group;
  - (c) Matters before the Administrative Tribunal of the Bank;
  - (d) Matters before other judicial review or similar bodies;
  - (e) Frivolous, malicious, or anonymous complaints;
  - (f) Complaints motivated by an intention to gain competitive advantage;
  - (g) Matters over which the IRM CRMU, a Panel, the President or the Boards has/have already made a recommendation or reached a decision after having received and reviewed a Request, unless justified by clear and compelling new evidence or circumstances not known at the time of the prior request;
  - (h) Actions that are the sole responsibility of other parties, including the borrower or potential borrower, and which do not involve any action or omission on the part of the Bank Group; and
  - (i) The adequacy or unsuitability of Bank Group policies or procedures; and  
(j) Alleged Human Rights violations, other than those involving social and economic rights alleging any action or omission on the part of the Bank Group.

**Commented [CSO6]:** The IRM should always be able to undertake a compliance review, regardless of other ongoing processes, because no other forum has the mandate or authority to assess the AfDB's compliance with its own policies and provide recommendations to strengthen practice at the institution. Additionally, if the parties are willing to engage in a dispute resolution process, the IRM should facilitate such a process, notwithstanding the presence of other processes.

c. **Statute of Limitation**

3. CRMU shall not handle complaints filed more than 24 months after the physical completion of the project concerned or more than 24 months from the date the Requestor becomes aware of the adverse impacts after the final disbursement under the loan or grant agreement or the date of cancellation of the disbursement amount, whichever comes laterfirst.

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**Commented [CSO7]:** Non-compliance with environmental and social safeguards often takes the form of human rights abuses, and the negative impacts of projects can include both violations of both economic and social rights as well as other human rights. Complaints brought before the IRM often touch upon a variety of rights violations, and this should not preclude their eligibility. This limitation is in tension with the UN Guiding Principles on Business and Human Rights, which hold AfDB member states responsible for protecting internationally recognized human rights, including rights beyond social and economic rights.

**Commented [CSO8]:** The full implementation of applicable environmental and social standards – and the realization of their objectives – are sometimes only achieved after the physical completion of the project. Pinning time eligibility to a certain time period after the final disbursement of the loan may not provide communities sufficient time to file grievances if implementation of the project is delayed.

**Commented [CSO9]:** Language is based on para. 23 of the Green Climate Fund Independent Redress Mechanism's procedures.

### III. Preparation of a Request

4. IRMCRMU's operational proceedings begin when a Request is received. This section of the Rules is primarily designed to give further guidance to potential Requestors on what facts and explanations they should provide. IRMCRMU may provide potential Requestors with a simplified version of these procedures in order to facilitate accessibility to the IRM.

a. **Advice on Preparation of a Request**

5. People or entities seeking advice on how to prepare and submit a Request may contact IRMCRMU, which will provide information or may meet and discuss the requirements with potential Requestors.

**b. Who can file a Request?**

6. IRMERMU has authority to receive Requests that complain of a violation of the Bank Group's policies and procedures and project requirements from the following people or entities:

- (a) Any individual or group of two or more people in the country or countries where the Bank Group- financed project is located who believe that as a result of the Bank Group's violation, their rights or interests have been, or are likely to be, adversely affected in a direct and material way. They may be an organization, association, society or other grouping of individuals;
- (b) A duly appointed local or foreign representative acting on explicit instructions as the agent of adversely affected people,

(e) In exceptional cases, referred to in paragraph 16 below, a foreign representative acting as agent of adversely affected people, or

(d)(c) The Boards of Directors of the Bank Group.

**c. Contents of a Request**

7. In accordance with the Enabling Resolution, Requests should contain, to the extent possible, the following information:

- (a) A reference to the project, stating all the relevant facts including the harm suffered by or threatened to the affected parties;
  - (b) How the parties have been or are likely to be materially and adversely affected by the Bank Group's act or omission and what rights or interests of the parties were directly affected;
- (e)(a) When requesting a compliance review, an explanation of how Bank Group policies, procedures or contractual documents were violated;
- (d) An indication if there has been any previous communication between the affected parties and the Bank Group concerning the issue (s) raised in the Request;
- (e)(c) In Requests relating to matters previously submitted to the IRMERMU, a statement specifying what new evidence or changed circumstances justify revisiting the issue; and

8. If some of the above information cannot be provided, an explanation should be included.  
Requestors can also choose to provide the following information:

- (a) When requesting a compliance review, an explanation of how Bank Group policies, procedures or contractual documents were violated;
- (b) An indication if there has been any previous communication between the affected parties and the Bank Group concerning the issue (s) raised in the Request.

**d. Form of Request**

*Format*

8.9. No specific format is necessary, and the IRM can receive a Request through email, online form,

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**Commented [CSO10]:** This requirement removes requestors' agency by placing an unnecessary restriction on requesters' ability to make their own choices about who represents them and creates an additional eligibility hurdle for communities who may already be working with nonlocal partners and wish to use those trusted partners as their representatives in the IRM process.

phone hotline, postal mail, and text message through SMS, Whatsapp, Viber, WeChat, etc. The requirements for submission of requests will be interpreted with flexibility with the view to allowing affected people and communities to use the means at their disposal to submit complaints. A complaint form and a model complaint letter will be available, including online, in multiple languages. In instances where requests are made orally, IRMCRMU will assist Requestors in submitting them in writing.

**Commented [CSO11]:** Language adapted from para. 25 of UNDP SECU's policy.

**9.10.** All Requests must be submitted in writing, dated and signed by the Requestors and contain their names, contact addresses and an address to which correspondence shall be sent (if different from the Requestors' address (es)). The Requestors and any other interested persons may, however, request that their identities be kept confidential, and if so, the reasons for such confidentiality.

#### *Confidentiality and Safety*

**10.11.** If the Request contains a demand for confidentiality under paragraph 10 above, the Director shall respect such a request and shall agree the terms of proceeding with the Requestors and other interested persons. The IRM will also undertake, in consultation with Requestors, a risk analysis to: identify and monitor potential risks of retaliation, including emerging risks; and plan and adopt preventative measures to address and reduce these risks. However, if in the opinion of the Director, after consultation with the Requestor, that a e problem solvingcompliance review process cannot proceed with the requested confidentiality being maintained, the request will be transferred to compliance review. Requestors and other interested persons shall be notified accordingly and the Director will terminate the process.

**Commented [CSO12]:** Language based on the Inspection Panel's Guidelines to Reduce Retaliation Risks

#### *Language*

**11.12.** The working languages of the IRM shall be the official languages of the Bank (i.e. English and French). Requests may be submitted directly by affected people themselves in their local language if they are unable to obtain a translation. Where Requests are not in either English or French, the time needed to translate and ensure an accurate and agreed translation may delay acceptance and consideration of the Request. CRMU The IRM will endeavor to respond to Requests in the language of submission, where practicable, and but will in any event respond in either of the official languages of the Bank Group with which the Requestors are most comfortable.

#### *Representatives*

**12.13.** Where the Requestors are entities representing affected people, they shall attach to the Request written signed proof that they have authority to act on behalf of the affected people.

**13.14.** If a non-affected representative submits the Request, he or she must provide evidence of representational authority, which shall consist of original signatures, the names and contact addresses of the affected parties.

**14.** In addition, in cases of non-local representation, CRMU should require clear evidence that there is inadequate or inappropriate representation in the country or countries where the project is located or has a direct and material impact.

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#### *Documents*

**15.** The following documents should be attached to the Request:

- (a) Relevant correspondence with Bank Group staff, if any;
- (b) A description of the location of the affected parties or area affected by the project; and

- (c) Any other evidence supporting the Request.
16. If some of the information listed cannot be provided an explanation should, to the extent possible, be included in the Request.

**e. Delivery of Request**

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

**f. Effect of Filing a Request**

18. Notwithstanding any other provision in these Rules, the filing, assessment, registration or processing of a Request or the carrying out of a compliance review or problem-solving exercise shall not have the effect of suspending processing of, or disbursements in respect of, the relevant Bank Group-financed project. If at any time during the processing of a Request, the Director ~~or the Review Panel is of the opinion that serious, irreparable harm shall be caused by the continued processing or implementation of the Bank Group-financed project, the Director and/or the Review Panel~~ may make an interim recommendation to suspend further work or disbursement. Such recommendation shall be considered in light of any contractual obligation or other relevant policies of the Bank Group and the decision concerning such recommendation shall be made:

- (a) By the relevant Bank Group officer or body vested with the power to make such a decision; ~~and~~
- (b) ~~Only if the Bank Group has the right to suspend or cancel in accordance with the terms of any applicable loan and/or investment and/or other agreement.~~

**Commented [CSO13]:** This deletion is provided in anticipation of a restructuring of the mechanism that replaces the Review Panel with permanent staff. If this restructuring does not occur, the Review Panel should still have the opportunity to recommend a suspension of the project.

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

19. When IRM ~~the Director~~ receives a Request, IRM ~~the Director~~ shall within fourteen (14) business days of receipt of the Request, conduct a preliminary review on the basis of the information contained in the Request to determine if the Request contains a *bona fide* allegation of harm arising from a Bank Group-financed operation and thereafter either register the Request, or ask for additional information or find the Request outside the IRM's mandate.
20. The Requestors' preference for problem solving exercise or compliance review or both shall be granted subject to the Request meeting the requirement for registration. Where the Requestors have not expressed a preference, the IRM ~~the Director of CRMU~~ will discuss the options with them and process the complaint in accordance with their decision, determine the best course of action in consultation with the Requestors.

**Commented [CSO14]:** Consistent with the review report's recommendation to streamline some of the Director's responsibilities, we are making some of the tasks in the procedures more general to the IRM.

- a. Registration**
21. If a Request falls within the mandate of the IRM and contains the information listed in Paragraph 7 above (Content of the Request), the IRM ~~Director~~ shall, while respecting the preference of Requestor, register the Request in the register of Requests (the 'Register'), and promptly notify the Requestors, the Boards and the President of the registration and transmit to the Boards

and/or the President, as the case may be, a copy of the Request with any accompanying documentation requesting that Management provide a response to the allegations contained in the Request.

**b. Cooperation with Other Independent Accountability Mechanisms**

22. If the project at issue in an eligible request is subject to co-financing by other institutions, IRM will notify the accountability mechanism(s) of the co-financing institution(s) of the eligibility of the Request, and will encourage them to notify their respective management teams for awareness and consideration in their own project appraisals and/ or project implementation. If deemed necessary, IRM may also notify other IAMs of registered requests not subject to co-financing, but located in overlapping countries or territories of operation. If a similar request or grievance is submitted to the accountability mechanism(s) of other institution(s), in relation to the same project, and the substance of the requests is reasonably related, IRM may collaborate with that/those mechanisms in a manner that is consistent with this policy, to ensure that cases are handled efficiently, avoiding duplicative processes and excessive disruptions or disturbances to all Parties. When the IRM cooperates with other IAMs during joint cases, it shall ensure that proper protocols are in place to address joint Request processing issues, including (but not limited to): Requester confidentiality; the sharing of Requester, client and Bank information; Retaliation risk assessment and mitigation measures; and other issues as appropriate. If appropriate, the IRM will establish written cooperation agreements or Memoranda of Understanding with the accountability mechanism(s) of the co-financing institution(s) to address joint case processing issues. If a Request or grievance is submitted to a co-financing institution only, but it relates to an AfDB Client and IRM is made aware by the IAM of the co-financing institution, the IRM will brief Bank management – and if deemed necessary, the Board – as publicly available information on such cases becomes available.

**Commented [CSO15]:** Language based on para. 3.1(e)) of the EBRD IPAM policy.

**Handling of Request**

23. After receiving the Management response to the Request, the IRM Director shall, within (60) business days engage with the Requestor including but not limited to meetings at the place of the project is located so as to: (a) understand the issues in the Request; (b) provide further information regarding problem solving and compliance review; (c) ascertain whether the Requestor would like to pursue problem solving and/or compliance review; and (d) ensure that the complainant is able to make an informed decision. Within 5 business days, while respecting the preference of the Requestors, the IRM shall make a determination on whether the Request should be handled through: (i) a problem-solving exercise, (ii) compliance review or, (iii) both problem solving and compliance review. In the latter case, the sequencing can be problem solving followed by compliance review, compliance review followed by problem solving, or both processes can occur simultaneously. Once this determination is made, the IRM Director shall promptly notify the Requestors, the Boards and the President of the proposed remedial course of action and the reasons thereof.

**Commented [CSO16]:** Language is adapted from para. 36 of the Green Climate Fund Independent Redress Mechanism's procedures.

**Contents of Notice**

26. The notice of registration shall:

- (a) Record the date of registration of the Request;
- (b) Include the name of the project, the country or countries where the project is located, and the names of the Requestors unless confidentiality is requested. The complaint document will also be attached to the notice of registration and a brief description of the Request;
- (c) notify the Requestors that all communications in connection with the Request will be sent to the address stated in the Request, until another address is indicated to IEMCRMU; and

- | (d) Request the Bank's Management to provide IRMCRMU, within twenty-one (21) business days after receipt of the notice and Request, with written evidence that it has complied, or intends to comply with the Bank Group's relevant policies and procedures. The notice shall specify the due date of the response.

**23-24. Request Additional Information**

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

**24-25. Outside Scope**

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

*Records*

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

**Need for Review**

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

**25-26. Revised Request**

- 33-32. If the Requestors receive significant new evidence or information after the initial Request was submitted, they may consider whether or not it is significant enough to justify the submission of a revised Request. The revised request should be received by IRMCRMU within three (3) months from the date of submission of the initial Request.

- 34-33. If a revised Request is submitted, the time period for Management's response, the IRM CRMU or the Panel's decisionrecommendation, as the case may be, will begin again from the time such revised Request is registered.

**26-27. Extension of Time Periods**

- 35-34. Any time period referred to in these Rules may be extended by the IRMDirector for as long as it is strictly necessary to ensure full and proper investigation, assessment, review and

initiative. Any such extension shall be promptly notified to the Requestors and posted on the Register.

## V. Management's Response

36.35. Within twenty-one (21) business days after being notified of the Registration of a Request, Management shall provide IRMCRMU with a Management Response or evidence that it has complied or intends to comply with the Bank Group's relevant policies and procedures. After IRMCRMU receives Management's response, it shall promptly enter the date of receipt in the Register. A copy of the Management Response shall be sent to the Requestors for information posted in the Register.

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

### Clarification

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

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

## VI. Problem-Solving

### a. Problem-Solving Exercise

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

- (a) Whether the Requestors and any interested persons the AfDB's client are amenable to such problem-solving exercise;
- (b) Whether the problem-solving exercise is appropriate and may assist in addressing undue, incidental effects resulting from Bank Group-financed project;
- (c) Whether the problem-solving exercise is likely to have a positive result;
- (d) Whether the Bank Group has or continues to have sufficient leverage to influence change;
- (e)(d) Whether the conduct of a problem-solving exercise may interfere with the conduct of a compliance review, if any;

**Commented [CSO17]:** The main consideration of the IRM should be whether the parties wish to participate in the problem-solving exercise.

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(f) Whether the problem-solving exercise may duplicate, or interfere with, or may be impeded by, any other procedure actively considered by a court, arbitration tribunal or review body (such as an equivalent mechanism at another co-finance) in respect of the same matter or a matter closely related to the Request; and

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**Commented [CSO18]:** As discussed above, proceedings at other fora should not prevent access to the problem-solving function if parties are willing to participate in the exercise.

(g)(e) Any other relevant matters:

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40.39. If, as provided in paragraph 39 above, the IRM Director determines that a Request may be handled through a problem-solving exercise, if he or she shall invite all the relevant parties, namely the Requestors, the client, Management representatives, and any other interested persons to participate in the exercise.

41.40. The objective of a problem-solving exercise is to restore an effective dialogue between the Requestors, clients, and any interested persons with a view to resolving the issue or issues underlying a Request, without seeking to attribute blame or fault to any such party. A problem-solving exercise may be conducted only if the Request has been registered in accordance with paragraph 23, but regardless of whether a compliance review is or will be conducted.

41. In undertaking the problem-solving exercise, the IRM Director may use a variety of problem-solving techniques, including independent fact-finding, mediation, conciliation and dialogue facilitation including use of best customary practices. If the parties choose to undertake the problem-solving exercise through mediation, they shall agree on a neutral mediator or other facilitator as appropriate to conduct the exercise.

42. The problem-solving exercise should be particularly sensitive to the existence of considerable asymmetries between the negotiating parties so as not to undermine the possibility of reaching satisfactory results. Particular attention should be paid to asymmetries in availability of the information needed and in the capacity and ability of the parties to participate effectively in these processes. The IRM may propose capacity building exercises to facilitate the parties' effective and fruitful participation.

**Commented [CSO19]:** Language based on para. 3.7 of the IDB MICI's Consultation Phase Guidelines

b. **Problem-Solving Report**  
43. The Director shall prepare a problem-solving exercise report ('Problem-Solving Report') within thirty (30) business days of the conclusion of the problem-solving exercise and shall include:

- (a) The facts underlying the Request;
- (b) The considerations on which the conclusions and recommendations, if any, are based ;
- (c) Any relevant comments from the Requestors and any interested persons; and
- (d) If necessary, any issues to be referred for compliance review.

44. The Director may also decide to provide interim reports to the Boards and the President on the progress of a problem-solving exercise, for information. While considering confidentiality constraints, the IRM shall share institutional learnings and associated recommendations with Bank management, the President, and/or the Board, derived from the Request, the Problem Solving exercise, or its outcomes.

**Commented [CSO20]:** Language based on para. 2.4(e)(iv) of the EBRD IPAM's policy.

#### *Successful Problem-solving Exercise*

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

#### *Monitoring of the implementation of agreement(s)*

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

#### *Unsuccessful Problem-Solving Exercise*

**46.47.** The timeline for the problem-solving efforts will be flexible and shall continue as long as the parties are amenable to continued participation. If the problem-solving efforts are not successful, either within a period of three (3) months from the commencement of the problem-solving exercise or by common consent of the parties, the IRMDirector will declare the problem-solving exercise unsuccessful, and include in the Problem-Solving Report a description of the efforts made, the reasons for their failure and make recommendations on steps the Bank Group could take to deal with the unresolved issue(s). The Problem-Solving Report should be submitted to the parties in the problem-solving exercise, and to the President and the Boards for consideration.

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

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

**48.49.** Where At the conclusion of a problem-solving exercise, if whether or not successful or when there remain issues that are undressed by the problem-solving agreement, the complaint will be automatically transferred to the compliance function. Director determines, as provided in paragraph 51 below, that a compliance review is warranted, the Director may include in the Problem-Solving Report a recommendation that the project undergo a compliance review. Such a recommendation will be submitted to the President or Boards, as the case may be, for ratification in accordance with paragraph 53 below.

## **VII. Compliance Review**

#### *a. Eligibility*

**49.50.** The Compliance review process will be initiated with a joint determination of the eligibility of the request by the mechanism that there is prima facie evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures. In case of a deadlock in determining the

eligibility of the request, the Director of CRMU shall make the final decision.

**b. *Self-initiated Compliance Review* Recommendation for a Compliance Review**

51. Compliance reviews may also be triggered on IRM's own initiative or at the request of a Board member. When this occurs, disclosure of documents will occur in a manner similar to disclosure pursuant to complaint processes triggered by Requestors. IRM takes all reports of alleged breaches of social and environmental commitments seriously, and all allegations are assessed to determine whether an investigation is appropriate.

**Commented [CSO21]:** Language based on para. 24 of UNDP SECU's policy and paras. 2-4 of SECU's Guidelines on Proactive Investigations

52. Self-initiated compliance reviews are defined as investigations intended to identify and respond to significant potential or actual harm to an individual or community resulting from an existing (but yet unidentified) failure of AfDB to meet its social and environmental commitment. The ability to investigate matters without first having to receive a request is intended to:

- Allow IRM to respond to high risk projects before harm occurs to individuals or communities, as well as damage to project success and AfDB's reputation;
- Address the situation in which, for a variety of reasons (e.g. cultural, lack of knowledge, etc.) impacts are not likely to be reported;
- Serve as an effective deterrent to avoiding compliance with these commitments;
- Build a more comprehensive and balanced portfolio of compliance cases at the corporate level across regions and development sectors; and
- Strengthen AfDB's credibility with member states.

If, as provided in paragraphs 23, 38 or 49 above, IRM the Director and the IRM Experts determine that there is prima facie evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures, it they shall approve the request within thirty (30) business days of such determination submit a report recommending a compliance review of the project at issue to the (a) President, with a copy to the Boards, if the Request relates to a Bank Group-financed operation that has not been approved by the Boards, or (b) Boards if the Request relates to a Bank Group-financed operation that has been approved by the Boards.

50-53. IRM The shall develop compliance review recommendation shall include draft Terms of Reference which shall set out the scope and time frame for the compliance review and shall provide an estimate of the budget and a description of additional resources required to complete the review. The criteria for assessing compliance will include AfDB policies, standards, guidelines, environmental and social assessments, project requirements, host country legal and regulatory requirements, and international standards. The IRM Experts shall conduct compliance reviews with administrative and technical support from CRMU.

51. In considering the recommendation for a compliance review, the Boards or the President, as the case may be, may:  
(a) Approve the recommendation(s) on a 'non-objection' basis; or  
(b) Remit the Request to the Director and the IRM Experts to reassess the recommendation regarding the draft Terms of Reference for the compliance review, with a new recommendation, if any, being submitted to the President or the Boards as the case may be.

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**Commented [CSO22]:** The IRM should have the sole authority, without need of Board approval, to determine whether to conduct a compliance investigation. A decision to conduct a compliance review should be an objective one based on clear criteria taken by an entity without conflicts of interest. AfDB Board members may have a conflict of interest if the complaint originates in their country or relates to the actions of its government. Involving the Board in approving a recommendation to investigate unduly politicizes what should be a reasoned decision.

and any other interested person, and a summary of the decision and the recommendation for a The eligibility decision and terms of reference for compliance review shall be published on the Bank Group's website.

*e. Denial of a Compliance Review*

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

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*d.c. Conduct of a Compliance Review*

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

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

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

*e.d. Panel Deliberations*

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

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*f.e. Compliance Review Report*

*Contents*

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

- (a) Prepare a draft compliance review report containing the Panel's findings and recommendations and circulate it to the Bank Management and Requestor(s) for review and comments on factual matters only. The Bank Management and Requestor(s) shall submit theirs comments to CRMU/IRM within twenty-one (21) business days from the date of receipt of the draft report from CRMU/IRM; and
- (b) Upon receipt of comments from Bank Management and the Requestor(s), the mechanismPanel shall finalize its report ("Compliance Review Report"), which shall:
  - (i) Include a summary discussion of the relevant facts, the respective positions of interested party in relation to the subject matter of the Request, areas of disagreement, if any, between the IRM Experts and Management and the steps taken to conduct the compliance review;
  - (ii) Set out the findings of the IRM Panel which, unless otherwise provided in the Terms of Reference, shall be limited to determining whether or not any action by the Bank Group, or failure to act, in respect of a Bank Group-financed project

| has involved one or more ~~material~~ violations of policies in accordance with paragraph 1;

- | (iii) If it concludes that any Bank Group action, or failure to act, in respect of a Bank Group-financed project has involved one or more ~~material~~ violations of policies in accordance with paragraph 1, recommend:
- a. Any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;
  - b. Any remedial changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements already committed to by the respective Bank Group institution or any other relevant party in existing project-related agreements; and/or
  - c. Any steps to be taken to monitor the implementation of the changes referred to in (i) and (ii) above, and the person in charge of such monitoring (who shall be the Director of CRMU and one of the IRM Experts so appointed unless the Boards or the President, as the case may be, decide otherwise); and
- (iv) Attach a copy of the original Request, the Management response and a list of supporting documents relied upon in the compliance review.

*No Award of Compensation*

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

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*Impartiality*

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

*Submission*

60.59. The IRMPanel shall submit the Compliance Review Report for consideration and decision to:

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

*Communication of the Compliance Review Report*

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

*Management Response and Action Plan*

62.61. After the President and the Boards receive the Compliance Review Report, the Bank's Management shall be required to:

- (a) Prepare a Response to the findings and an Action Plan based on the recommendations of the Compliance Review Report. The draft Action Plan shall be provided to the IRM, Requestors, and client, giving them a minimum of ten (10) business days to comment. Additionally, management shall hold a consultation on the draft action plan with Requestors. The revised Response, and Action Plan, and comments received shall be submitted to the President, the Boards of Directors, CRMU and the Requestors within 90 business days. In case of co-financed projects, the IRMCompliancee Review Panel can grant the Management an adjustment to this timeframe on a case by case basis;
- (b) Consult with IRMCRMU to agree on a date for a joint presentation of the Compliance Review Report and the Management Response and Action Plan to the Boards of Directors at a meeting within a time period not normally exceeding 30 business days from the date on which the Action Plan is distributed to the Boards;
- (c) Consult with IRMCRMU no later than three (3) months from the date of the consideration by the Board of Directors of the Management Action Plan, and agree on the preparation and submission to the Board of any reports on the progress of implementation of any recommendations of the compliance review report that have been approved by the Board, and of the approved Management Action Plan; and
- (d) Submit to IRMCRMU copies of reports on the progress of implementation of the Management Action Plan submitted to the Board. The IRM Panel and CRMU (the IRM monitoring team) will review these reports, and provide, if necessary, an assessment of the progress achieved in the implementation of the Management Action Plan and submit a report to the Boards for consideration. The IRM monitoring team will share its findings with Management and the Requestors for clarification of issues before submitting its report to the Boards for consideration.

(d)62. The IRM Director will communicate to the Board, whether, in IRM's view, the commitments identified in the final Management Action Plan adequately address the findings and recommendations of the Compliance Review Report.

Commented [CSO23]: Language adapted from para. 2.7.1(f) of the EBRD IPAM policy.

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#### *Contents of Decision*

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

#### *Publicity of Compliance Review decision*

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

#### *Monitoring of changes*

The IRM shall persons in charge of monitoring the implementation of the changes referred to in subparagraph 59(b) (iii), and the Management Action Plan approved by the Board or the President, as the case may be. The IRM, shall submit monitoring reports on such implementation to the Board or the President, as the case may be, for consideration, as often as required and in any event not less than once a year until all non-compliance has been remedied. The methodology for monitoring shall

Commented [CSO24]: Language based on para. 194 of the ADB Accountability Mechanism's policy.

include (i) consultations with the complainants and the client; Management; and staff; (ii) a review of documents; and (iii) site visits. The IRM shall also consider any information received from the Requestors and the public regarding the status of implementation. The IRM shall report to the Board any cases of which it becomes aware where a final action plan, or any part thereof, cannot be or is not being implemented. Where the IRM recommends improvements to a final action plan, management shall take appropriate steps to amend such final remedial action plan. Any report to the President shall be immediately copied to the Board. The final monitoring report will conclude the compliance review process.

## VIII. Advisory Function

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

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### a. Advisory Services by IRM-CRMU

66. Advisory services of IRMCRMU will be triggered:

67-65. Upon receipt by IRMCRMU of a request for advice or technical opinion from the President and/or the Boards; or

(a) Upon approval by the President and/or the Boards of a proposal submitted by the Director of CRMU for such advisory service. At the discretion of the IRM Director, regarding lessons learned from IRM's problem solving and compliance review roles or systemic and critical issues relating to IRM's casework.

Commented [CSO25]: Language based on para. 5.2.1 of the IFC CAO policy.

(a)

68-66. The scope of the advisory service will be:

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

69-67. The specific objectives of the advisory work of IRMCRMU will depend on the nature of the request, but will typically include:

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

- (d) Providing information and recommendations on emerging trends arising from the experience of the IRMCRMU.

70.68. The Principles that underpin the advisory service of IRMCRMU are that:

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

b. Spot Check Advisory Reviews

71.69. The main objective of the spot check exercise is to gather information, draw lessons from the experience of the IRM for the purpose of advising Management on the issues associated with high risk projects.

72. If in the process of a spot check exercise, a *bona fide* request is made on the same project, CRMU will separate the spot checking exercise from the investigation of the complaint. The investigation of the complaint will be undertaken with the support of outside expertise as may be approved by the Boards during the approval of the Terms of Reference (ToR) to undertake the compliance review.

73.70. The Spot check advisory reviews of project compliance will be undertaken following the procedure below:

- (a) At the beginning of each calendar year, CRMU will select not more than two (2) high-risk (environmental and social) on-going projects on which the IRM Expert will conduct spot checks to assess the Bank Group's compliance with its policies and procedures; and
  - (b) Once the projects have been selected, CRMU will recommend the names of the projects to the Boards for approval. Such recommendation shall include the Terms of Reference, a time frame of not more than six months for each review, and the estimated budget for the advisory reviews.
74. Each year, one IRM Expert will be given the responsibility to undertake spot check activities. The IRM Expert assigned to such spot check activities shall not be involved in undertaking any compliance review activity during that year. The other two IRM Experts will be responsible for undertaking all compliance review activities for the year.

75.71. **Transparency and information Disclosure:** The IRM shall carry out its advisory function in a transparent manner and will post the Advisory Notes on the IRM's website. The IRM shall ensure the disclosure of finalized Advisory Notes is subject to the provisions of the Bank

**Commented [CSO26]:** As discussed above, the spot-check function should be moved out of the advisory section.

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Group Policy on Disclosure and Access to Information. In particular, where the advice is requested by the President and/or the Boards as part of an internal Bank Group deliberative process, the IRM will not disclose the advisory note. The IRM's Advisory role will not disclose any confidential information acquired by the IRM's problem-solving and Compliance review functions.

## IX. Administration of the IRMCRMU

### a. Term of Director

76-72. The IRM Director shall be selected by a panel composed of a Board member, a representative of Management and an independent external advisor. He or she shall be appointed by the President with the concurrence of the Boards, for a five (5) year term that may be renewed only once for a successive five (5) year period. The Director shall not have worked for the Bank Group in any capacity whatsoever for the period of at least five (5) years prior to his or her appointment and shall not be entitled to work for the Bank Group in any capacity whatsoever following the expiry of his or her appointment. The Director may only be removed from his/her position for cause through the same process as was followed for his/her appointment.

**Commented [CSO27]:** We disagree with the review report's recommendation to limit the director's tenure to one term.

### b. Responsibilities of the Director

77-73. The Director shall have overall responsibility for the day-to-day operations and external relations of the IRM, which shall include, but not be limited to:

Arranging for the selection of Experts for the Roster as required upon resignation or expiration of an Expert's term of appointment in accordance with the Bank Group's procurement rules, as applicable to the selection of consultants and preparing the President's recommendation and reports to the Boards concerning the appointment and removal of Experts;

(a) Hiring IRM staff;

(a)(b) Establishing such administrative procedures and guidelines necessary for the proper functioning of the IRMCRMU and the Roster;

(b)(c) Overseeing the establishment and maintenance of the Register open to the public on the Bank Group's website, which shall contain significant data concerning the delivery and registration of Requests, as well as the conduct and outcome of problem-solving exercises and compliance reviews;

(e)(d) Maintaining a documentary record for each Request, as well as a library of all materials relevant to the functioning of the IRM;

(d)(e) Sending out notices of registered Requests to all interested persons; noting the progress of each Request on the Register and, if required by the circumstances, providing additional updates on such progress to the Requestors and other interested persons; responding to requests for information from Requestors and other interested persons in respect of a particular Request;

(e)(f) Dealing with any requests for information about the IRM; publicizing and being the spokesperson of the IRM;

(f)(g) Ensuring that all timeframes are met and approving any extensions in accordance with paragraph 35; liaising with IRM staff~~other CRMU staff and the Experts~~, and ensuring that such IRM staff~~CRMU staff and Experts~~ fulfill their responsibilities generally and in accordance with any applicable Terms of Reference;

(g)(h) Without prejudice to the powers of the Boards and the President under these Rules, taking any steps required to ensure the integrity of IRMCRMU processes, including the replacement of any Expert whose impartiality or independence in any compliance review is in doubt; Arranging for any translations of Requests, reports or other documents that may be required;

(h)(i) Providing administrative and technical support to other CRMU staff and the Experts, including without limitation, making and supervising arrangements for meetings, site visits and IRM proceedings in the Bank Group's principal office or elsewhere;

(h)(j) Administering the budgetary allocations for the IRMCRMU;

(h)(k) Overseeing the establishment and maintenance of one or more databases of consultants, researchers, technical experts, mediators, conciliators, facilitators, translators, interpreters, etc., whose services may be called upon in connection with compliance reviews and problem-solving exercises;

(h)(l) Providing advice and technical opinion to the President and/or the Boards, as may be approved by the Boards under the advisory services of IRMCRMU.

(h)(m) Undertaking any other tasks that may be necessary or incidental to the administration of the IRMCRMU and/or the Roster.

**c. Problem Solving and Compliance Review function Principals**

74. The IRM shall have dedicated principals in charge of the Problem Solving, Compliance Review, and Advisory Functions. These principals shall be selected by the Director, with the assistance of an external stakeholder, and shall not have worked for the Bank Group in any capacity whatsoever for the period of at least five (5) years prior to their hiring. They shall not be entitled to work for the Bank Group in any capacity whatsoever following the expiry of their work with the IRM. The Problem Solving and Compliance Review function managers shall only be removed for cause.

**e.d. Delegation by Director**

78-75. In his or her absence, the Director may delegate his or her authority to members of staff in his or her office in accordance with the Bank Group's Delegation of Authority Manual as may be amended from time to time.

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

*Roster*

79-76. The Roster shall comprise three (3) individuals selected in accordance with the Bank's procurement rules applicable to the selection of consultants and appointed by the Boards on the recommendation of the President. An independent external advisor shall also participate in the selection of Experts. Other than the Chairperson of the Roster, who shall be full-time, the Experts shall be paid a daily honorarium (fee) when called upon to work for the IRM and be guaranteed a minimum of 12 days of work per annum. The honorarium (fee) shall be equivalent to the remuneration paid by other multilateral development banks for similar officials as adjusted by the Board of Directors from time to time. The Experts shall be reimbursed for their travel and other expenses on the basis provided in the Bank's Travel policy for senior management staff.

80-77. On the President's recommendation, after consultation with The IRM Experts, the Board of Directors shall elect/appoint one of the members of the Roster of Experts as the Chairperson of the Roster each time a new member of the Roster is appointed.

**Commented [CSO28]:** We recommend replacing the Roster of Experts with permanent staff, which would mean that this section would be removed or replaced. However, we are also including a few edits to this section in case the roster model is maintained.

#### *Selection Criteria*

84-78. The Experts shall be nationals of member countries of the Bank or State participants in the Fund and shall be selected on the basis of their knowledge of and exposure to developmental issues in Africa, their experience, expertise, integrity and ability to act independently. In making these appointments, the Board and the President shall pay due regard to maintaining a reasonable degree of diversity of expertise, nationality, gender, and experience particularly in economic, legal, social, environmental and related fields.

#### *Term of Experts*

82-79. The Experts shall be appointed to the Roster for a non-renewable term of five (5) years. If an Expert is engaged in a compliance review at the time the Expert's term expires, the term shall be extended for such period as may be necessary, but in any event by not more than six (6) months to enable the Expert to complete writing the compliance review report, unless the Boards remove the Expert in accordance with paragraph 90.

#### *Restriction on Bank Group employment*

83-80. Executive Directors, Alternate Executive Directors, Senior Advisers and Advisers to Executive Directors, any Officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster of Experts at the end of their service with the Bank. If an Expert is called upon to work for the IRM during his or her term, the Expert shall not be entitled to work for the Bank or the Fund (either as staff member, Elected Officer, Senior Adviser or Adviser to an Executive Director or Consultant) after the expiry of his or her term.

**Commented [CSO29]:** Para. 282 of the review report recommends changing this ban to a cooling off period. We disagree.

#### *Capacity of Experts*

84-81. When performing IRM functions, Experts shall serve in their individual, personal capacity and shall be subject to the same privileges and immunities, relevant Code of Conduct provisions, conflict of interest rules and confidentiality provisions as officials of the Bank Group. Experts shall be required to act impartially, independently and with integrity. They shall not solicit requests and shall not participate in a compliance review of any Request related to a matter in which they have or had a personal interest or significant involvement in any capacity. Experts shall not interfere in the political affairs of members of the Bank nor shall they be influenced in their deliberations or decisions by the political character of the member(s) concerned. Experts shall immediately disclose to the Director:

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

#### *No communications by Experts*

85-82. Except as authorized by the Boards or the President, as the case may be, Experts shall refrain from making any statement, whether private or public, to parties other than the Requestors and any interested person on matters under consideration by the IRM. Nothing in this paragraph shall prevent an Expert from undertaking any type of public consultation that he or she considers necessary as part of a compliance review.

#### *Training of Experts in Bank Group matters*

86-83. Experts shall be required to attend meetings organized by the Director for at least five days in each calendar year to enhance their knowledge of the Bank Group's policies, procedures and operations and to discuss the functioning of the IRM. The Director shall notify the Experts of any such meetings and shall set the agenda.

#### *Access to documentary records*

87-84. The IRME~~s~~ experts shall have full access to such documentary records maintained pursuant to sub- paragraph 79(d). Whenever an Expert obtains additional materials in the course of a compliance review, the Expert shall immediately provide a copy of such material for safekeeping in the documentary record.

#### *Replacement of Experts*

88-85. If a Panel Member conducting a compliance review resigns or is unable to complete such assignment, the Director shall make a recommendation to the Boards through the President on a proposed course of action to ensure the prompt completion of the compliance review.

#### *Removal of Experts*

89-86. The Boards may remove Experts from the Roster at any time for cause.

#### *f. Conflict of Interest*

87. If an IRM staff or consultant has a conflict of interest in relation to a particular case, that person shall withdraw from involvement in that case.

## X. Conduct of IRM Proceedings

### a. Proceedings generally

90-88. All IRM inquiries, assessments, reviews and exercises shall be carried out as expeditiously as possible without compromising the integrity or comprehensiveness of such process. The Director and Panels shall take due account of the need to include any Bank staff, Requestors and any other interested persons who may have relevant information. The Director and Panels shall take care to minimize the disruption to the daily operations of all involved parties.

### b. Additional expertise

91-89. The IRM~~Director~~ and/or a Review Panel shall be entitled to seek additional expertise to assist with an inquiry, assessment, review or exercise, if this is necessary for the successful performance of their duties and responsibilities. To avoid a conflict of interest, or an appearance of a conflict of interest, the expertise must be sought externally, provided that the selection and appointment of any consultants, researchers, interpreters, translators and/or other technical experts shall:

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

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

92-90. When conducting any inquiry, assessment or review for a problem-solving exercise or a compliance review, the IRM~~Director or a Review Panel~~ shall have full access to relevant Bank Group staff and files, including electronic files, cabinets and other storage facilities and Bank staff shall be required to cooperate fully with them. Financing agreements between the~~the~~  
Bank and clients will include requirements for clients to disclose project-related information to IRM  
in connection with a Request, upon reasonable request by the Bank and subject to any applicable  
laws and regulations. However, the~~A~~ccess to, and use and disclosure of, any information  
gathered by the Director or a Review Panel during any such process shall be subject to the

Commented [CSO30]: Language based on para. 3.1(g) of the EBRD IPAM's policy.

Bank Group's Disclosure and Access to Information Policy, any requests by an interested person for confidentiality and any other applicable requirements to keep sensitive commercial information confidential (such as a confidentiality agreement). No IRMCRMU staff, Expert, Bank staff member, consultant, researcher, interpreter, translator and other technical expert employed by the IRMCRMU may release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who has provided such document. However, the IRM may refer generically to non-public information, following consultation with the relevant parties.

**d. Legal matters**

93-91. The General Counsel shall, upon request, provide all legal information and advice needed in respect of the Bank Group's policies and procedures and the Bank Group's rights and obligations in respect of the Bank Group-financed project to which a Request relates, as well as such advisory opinions and interpretations on points of law as the President or the Board of Directors shall determine. The Director may also seek external legal advice on a request, grievance or complaint -related matter or with regard to any matters concerning the IRM.

**Commented [CSO31]:** Language based on para. 100 of the GCF IRM's procedures

**XI. General Provisions**

**a. Annual report**

94-92. The Director shall prepare the Annual Report describing the activities of the IRM during the preceding year, including a discussion of any identifiable trends relating to the activities of the Bank Group that have emerged from the IRM's problem-solving exercises and compliance reviews, and lessons that the IRM has learnt about the impacts and challenges in implementing the Bank Group's operating policies and procedures.

95-93. The Annual Report shall be prepared in consultation with all the Experts on the Roster and shall be submitted to the Boards and the Boards of Governors for information, and shall be published on the Bank Group's website.

**b. Budget**

94. The Bank Group shall provide such budgetary resources as shall be sufficient to allow all of the activities permitted by these Rules to be carried out. The Director shall prepare an annual budget indicating the level of resources required to carry out its mandate. The budget shall be approved by the Boards and shall also include contingency funds.

**c. Costs of Participation**

95. The IRM shall bear the costs of conducting problem solving, compliance review and monitoring as well as the costs of ensuring the meaningful participation of complainants, witnesses and stakeholders in problem solving, compliance review or monitoring. For purposes of the cost provisions, 'stakeholders' refers to a person, group of persons or community who is/are or may be directly affected by the implementation or outcome of an AfDB-funded project under consideration in a Request, and who is participating or has participated in problem solving, compliance review or monitoring in some manner other than as the complainant.

**Commented [CSO32]:** Language based on para. 91 of GCF IRM's procedures

**d. Information from IRM Requests**

96. When Bank management submits a newly proposed Project to the Board, it will first establish if the proposed client has ever been a party to a case reviewed by IRM, and determine, in conjunction with IRM, if this information, and the outcome of the request, must be included in the submission for consideration by the Board.

**Commented [CSO33]:** Language based on para. 2.2(g) of the EBRD IPAM policy

**e. Independent Accountability Mechanisms Network**

96-97. The IRM is a member of the global network of Independent Accountability Mechanisms (IAM).

**Commented [CSO34]:** Language based on para. 1.27 of the FMO/DEG/Proparco ICM policy

**f. External Advisory Group**

97-98. The IRM shall have an external stakeholder advisory group comprised of professionals from civil society, private industry, academia, and the field of mediation and conflict resolution to regularly provide strategic guidance, advice and feedback to ensure the effectiveness of the mechanism.

**Commented [CSO35]:** Language based on the IFC CAO description of its Strategic Advisors Group

**g. Outreach**

99. The IRM should update their outreach strategies regularly (for example, every 3 years). Gender issues will be taken into consideration when designing the outreach strategy. The IRM should undertake three kinds of outreach activities to achieve a positive culture change:

- Internal. This outreach should improve awareness and disseminate lessons to AfDB staff through workshops, training courses, and orientation sessions. The IRM should be included as part of regular staff training and Board member onboarding.
- External. The IRM should hold regular dissemination activities in AfDB's countries of operation. It should distribute simple, pictorial-based and user-friendly descriptions of the mechanism. In each resident mission, a staff member should be designated as a focal person for handling grievances caused by AfDB financed projects.
- AfDB staff, working with the client, will disseminate information early in the project cycle about the IRM and its availability as a recourse in case other mechanisms for dealing with harmful project effects are not successful.

**Commented [CSO36]:** Language based on ADB's AM procedures paras. 208-211.

**h. Retaliation**

100. The IRM does not tolerate retaliation against Requestors or any other individuals involved in the Request process and rejects any form of threat, intimidation, harassment, violence, or discrimination based on the fact that they have exercised their right to raise concerns. If IRM monitoring or other information indicates that Retaliation has occurred despite precautionary measures, the IRM will endeavor to communicate with the Requestors and Country Office to understand and corroborate the facts. The IRM then presents a Retaliation incident report to the President, Management, and the Board of Directors. The IRM and Management will then attempt to implement any planned response developed with the Requestors and Country Office (where possible).

**Commented [CSO37]:** Language based on AIIB PPM Procedures Attachment 4, para. 5

**i. Register**

101. The IRM shall maintain a transparent and comprehensive online register. The information posted on the register shall include pending, completed, and closed cases, including eligible complaints with links to complaint letters (redacted if requestors request confidentiality), decisions on request eligibility, assessment reports, problem solving reports and agreements, terms of reference for compliance review investigations, investigation reports, monitoring reports, conclusion reports, and other relevant documentation. All materials shall be provided in full and posted online as they become available and remain there indefinitely.

**e.j. Business Days**

98-102. Any reference to 'business days' in these procedures shall be deemed to be a day on which the Bank Group is open for business in its principal office.

**d.k. Immunities and Privileges**

99-103. Nothing contained in these Rules shall be deemed to be a waiver by the Bank or the Fund of the immunities and privileges conferred by the Agreement establishing the African Development Bank, the Agreement establishing the African Development Fund, the Agreement establishing the Nigeria Trust Fund and the agreements establishing any other Special Funds administered by the Bank.

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

100-104. The Boards may amend these Rules. These Rules shall prevail in the event of any

inconsistency between these Rules and any other Bank Group document and in the absence of an express provision to the contrary.The Board shall review the IRM every four (4) years, or as otherwise decided by the Boards, through a public consultation process.

## **AFRICAN DEVELOPMENT BANK GROUP**



### **THE INDEPENDENT REVIEW MECHANISM**



**Resolution**

**January 2015**

AFRICAN DEVELOPMENT BANK

AFRICAN DEVELOPMENT FUND

BOARDS OF DIRECTORS

**Resolution B/BD/2015/03 – F/BD/2015/02**  
**Amending Resolution B/BD/2010/10 – F/BD/2010/04**  
**concerning the Independent Review Mechanism**

Adopted at the 1001<sup>st</sup> of the Board of Directors of the Bank  
and the 924<sup>th</sup> Meeting of the Board of Directors of the Fund, on 28 January 2015

**THE BOARDS OF DIRECTORS,**

**HAVING REGARD** to the:

- (a) Agreement Establishing the African Development Bank (the "Bank"), in particular Articles 1 (Purpose), 2 (Functions), 4 (Structure), 8 (Special Fund), 13 (Ordinary and Special Operations), 32 (Board of Directors: Powers), 52 (Judicial Proceedings) and 53 (Immunity of Assets and Archives);
- (b) Agreement Establishing the African Development Fund (the "Fund") in particular Articles 2 (Purpose), 14 (Use of Resources), 26 (Board of Directors: Functions), 31 (Relationship with the Bank), 43 (Legal Process), 44 (Immunity of Assets) and 45 (Immunity of Archives); and
- (c) Agreement Establishing the Nigeria Trust Fund (the "NTF") in particular Articles I (Establishment and Purpose), II (Utilization of Resources), III (Administration of the Fund); IV (Operating Principles); XV and (Immunities, Exemptions and Privileges);

**CONSIDERING** Management's Proposals relating to the Second Review of the Independent Review Mechanism contained in Document ADB/BD/WP/2014/141/Rev.2 -ADF/BD/WP/2014/96/Rev.2 and the recommendations contained therein;

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

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

**HEREBY RESOLVE AS FOLLOWS:**

**Establishment of the IRM**

1. There is established an independent compliance review and problem-solving mechanism (hereinafter referred to as the "Independent Review Mechanism"). The IRM shall report to the Boards and its work shall be overseen by a Boards' committee. It shall have the powers and shall function as stated below.

### **Composition of the Independent Review Mechanism**

2. The Independent Review Mechanism (IRM) shall consist of a Compliance Review and Mediation Unit ("CRMU") and a roster of experts (the "Roster of Experts").
3. The CRMU shall be an Organizational Unit of the Bank established in accordance with a Resolution of the Board of Directors of the Bank Group, and shall be the focal Unit of the IRM. The activities of the ~~IRMCRMU~~ shall be managed by an Organizational Unit Head designated as the 'Director, ~~IRMCRMU~~' (the "Director"). The Director shall be selected by a panel composed of a Board member, a representative of Management, and an independent external advisor and shall be appointed by the President with the concurrence of the Boards of Directors (the "Boards") for a five year term renewable once. The Director shall not have worked for the Bank in any capacity for five (5) years prior to his/her appointment, and shall not work for the Bank in any capacity after the expiry of his/her term(s) of office.
4. The Roster of Experts shall comprise three (3) individuals (the "Expert(s)") selected in accordance with the rules applicable by the Bank and Fund to the selection of consultants and appointed by the Boards on the recommendation of the President. ~~An independent external advisor shall also participate in the selection of Experts.~~ The Experts shall be nationals of the member states of the Bank or State participants in the Fund selected on the basis of their knowledge of, and exposure to development issues in Africa and the operations of multilateral development banks as well their experience, expertise, integrity and ability to act independently.
5. The Experts shall be appointed to the Roster of Experts for a non-renewable term of five (5) years each. If an Expert's term expires at the time the Expert is engaged in a compliance review, the Expert's term shall be extended for such period as may be necessary, but in any event by not more than six (6) months, to enable the Expert to complete writing the compliance review report with which such Expert is engaged at the time of expiration, unless the Boards decide otherwise. ~~The On the recommendation of the President, in consultation with the members of the Roster of Experts, the Boards shall elect appoint~~ a Chairperson of the Roster of Experts each time a member of the Roster of Experts is replaced.
6. Executive Directors, Alternate Executive Directors, Senior Advisers and Advisers to Executive Directors, any Officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster of Experts at the end of their service with the Bank. If an Expert is called upon to work for the IRM during his or her term, the Expert shall not be entitled to work for the Bank or the Fund (either as staff member, Elected Officer, Senior Adviser or Adviser to an Executive Director or Consultant) after the expiry of his or her term.
7. An Expert shall disclose any conflict of interest or potential conflict of interest that may affect his or her participation in a matter before the IRM and shall be disqualified from participation in the hearing and investigation of any request related to a matter in which he/she has a personal interest in, or had significant involvement with, in any capacity either prior to or during his/her appointment to the Roster of Experts.
8. Experts on the Roster of Experts shall be remunerated for work carried out and shall be expected to work on a full-time basis when appointed to serve on a compliance review panel. ~~The Chairperson shall work full-time for the IRM.~~ They shall be guaranteed a minimum of 12 days of work per annum. Once they have been assigned an IRM matter, Experts shall receive remuneration at a level to be determined by the Boards, upon the recommendation of the President. The payment shall be the equivalent of what is paid by other MBDs for similar officials as adjusted by the Bank Group's Boards from time to time. They shall be reimbursed for their travel and expenses on the same basis as provided in the Bank Group's Travel Policy

**Commented [CSO1]:** One of our key recommendations for the review is a change of the structure of the mechanism from a roster of experts model supported by the CRMU to a unified mechanism with permanent, professional staff conducting the mechanism's functions and work. We would thus recommend deleting sections 4-10. For simplicity's sake, we are referring to this restructured mechanism as "the IRM." We are also providing a few edits to the sections referring to the IRM Experts in case the structure does not change.

**Commented [CSO2]:** Para. 282 of the review report recommends changing this ban to a cooling off period. To preserve the independence of the mechanism, we disagree.

for senior management staff.

9. In the performance of their functions, Experts shall be officials of the Bank enjoying the privileges and immunities accorded to Bank officials, and shall be subject to the requirement about exclusive loyalty to the Bank and the prescription in Article 38 of the Agreement establishing the African Development Bank and Article 21 of the Agreement establishing the African Development Fund against interference in the political affairs of member states.
10. An Expert may be removed from the Roster of Experts at any time, by a decision of the Boards of Directors, for cause. If an Expert appointed to a compliance review panel resigns or is otherwise unable to complete such assignment, the Director shall make a recommendation to the Boards of Directors, through the President, on a proposed course of action to ensure the prompt completion of the compliance review.

#### **Powers of the Independent Review Mechanism**

11. The IRM's function shall be activated when requests are received from persons adversely affected by a project financed by a Bank Group entity. Such requests shall be presented to the **IRMCRMU** by any individual or a group of two or more persons (such as, community of persons, an organization, association, society or other grouping of individuals) ("Requestors") or by a qualified representative of the affected persons (as defined in the Operating Rules and Procedures) who demonstrate that their rights or interests have been or are likely to be directly affected by the failure of the relevant Bank Group entity to comply with any of its operational policies and procedures in respect of the design, appraisal and/or implementation of such project.
12. The alleged non-compliance may include situations where the Bank Group entity is alleged to have failed in its follow-up on the borrower's obligations under a financing agreement entered into with an entity of the Bank Group with respect to the applicable policies and procedures.
13. The Requestors' preference for problem solving exercise or compliance review or both shall be granted subject to the Request meeting the requirement for registration. Where the Requestors have not expressed a preference, the **IRMDirector of CRMU** will determine the best course of action in consultation with the Requestors.

**Commented [CSO3]:** There is no correlation between the existence of harm and the number of complainants. Even just one complainant should have the right to seek redress for harm.

#### **Function of the Independent Review Mechanism**

14. The IRM shall perform problem-solving, compliance review and advisory functions.
  15. The problem-solving function shall be undertaken by **IRMCRMU** and used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in resolving the underlying issues. Such problem-solving techniques may include independent fact-finding, mediation, conciliation, dialogue facilitation, and best customary practices.
- The compliance review function will be undertaken by the IRM **Panel of Experts** and will focus on issues of non-compliance by an institution within the Bank Group with any of its operational policies, and procedures, and project requirements in respect of the design, implementation or supervision of such project
16. The advisory function shall be authorized when the President, **IRM**, and/or the Boards feel that projects, programs, policies and procedures of the Bank Group can benefit from the accumulated experience of the IRM and support efforts of staff and Management to strengthen the social and environmental impact of the projects funded by the Bank Group. The advisory function will be carried out to provide independent opinions on systemic issues, and technical

advice on projects and programs of the Bank Group. The advisory function will consist of

Advisory services provided by IRM, CRMU and Spot check advisory reviews of project compliance by the IRM Experts.

17. The problem-solving and the compliance review functions of the IRM shall be activated when the IRMCRMU accepts the complaint (the "Request") after it is satisfied that all requisite criteria have been fulfilled. In considering Requests under paragraph 11 above, the IRMCRMU shall not receive:

- (a) Complaints relating to actions which are within the responsibility of other parties, including the borrower or potential borrower, and which do not involve any action or omission on the part of the relevant Bank Group entity;
- (b) Complaints against procurement decisions by the Bank Group or a borrower of a Bank Group entity from suppliers of goods and services financed by or expected to be financed by a Bank Group entity under a financing agreement, or from losing tenders for the supply of any such goods and services, which will continue to be addressed under existing procedures. These are handled by another unit within the Bank Group.;
- (c) Complaints about fraud or corruption since they are handled by another unit within the Bank Group;
- (d) Complaints about matters before the Administrative Tribunal of the Bank;
  - (e) Complaints about matters before other judicial review or similar bodies
  - (f)(e) Frivolous, malicious or anonymous complaints;
  - (g)(f) Complaints motivated by an intention to gain competitive advantage;
  - (h)(g) Requests related to matters over which the IRMCRMU, a Panel, the President or the Boards has already made a recommendation or reached a decision after having received and reviewed a Request, unless justified by clear and compelling new evidence or circumstances not known at the time of the prior Request;
  - (i) Complaints relating to the adequacy or unsuitability of Bank Group policies or procedures; and
  - (j) Complaints regarding Human Rights violations, other than those involving social and economic rights alleging any action or omission on the part of a Bank Group entity.

18. The IRM shall seek the advice of the Bank's General Counsel on matters related to the Bank Group's rights and obligations with respect to a Request under consideration. The IRM may also seek external legal advice on a request, grievance or complaint-related matter or with regard to any other matters concerning the IRM.

18-19.

#### **Statute of Limitation**

19-20. CRMU shall not handle complaints filed more than twenty-four (24) months after the physical completion of the project concerned or more than 24 months from the date the Requestor becomes aware of the adverse impacts whichever comes later, or more than twenty-four (24) months after the final disbursement under the loan or grant agreement or the date of cancellation of the disbursement amount.

**Commented [CSO4]:** We agree that the use of spot-checks should be reduced to only narrow circumstances. We also believe that this should more resemble a mechanism-initiated compliance review, as seen as the Green Climate Fund's Independent Redress Mechanism and the International Finance Corporation's Compliance Advisor Ombudsman. We have provided recommended language below.

**Commented [CSO5]:** The IRM should always be able to undertake a compliance review, regardless of other ongoing processes, because no other forum has the mandate or authority to assess the AfDB's compliance with its own policies and provide recommendations to strengthen practice at the institution. Additionally, if the parties are willing to engage in a dispute resolution process, the IRM should facilitate such a process, notwithstanding the presence of other processes.

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**Commented [CSO6]:** Non-compliance with environmental and social safeguards often takes the form of human rights abuses, and the negative impacts of projects can include both violations of both economic and social rights as well as other human rights. Complaints brought before the IRM often touch upon a variety of rights violations, and this should not preclude their eligibility. This limitation is in tension with the UN Guiding Principles on Business and Human Rights, which hold AfDB member states responsible for protecting internationally recognized human rights, including rights beyond social and economic rights.

**Commented [CSO7]:** The full implementation of applicable environmental and social standards – and the realization of their objectives – are sometimes only achieved after the physical completion of the project. Pinning time eligibility to a certain time period after the final disbursement of the loan may not provide communities sufficient time to file grievances if implementation of the project is delayed.

## **Procedures**

- 20.21. Requests shall be in writing and shall state, to the extent possible, all the relevant facts including the harm suffered by or threatened to affected parties by the alleged act or omission of the Bank Group entity in contravention of its applicable policies and procedures. The Requests should, to the extent possible, explain the steps already taken to bring the issue to the attention of the Bank Group, but there is no requirement that Requestors take preliminary steps as a precondition to filing the Request.
22. The IRMDirector shall conduct a preliminary review to determine whether a Request is a *bona fide* request within fourteen (14) business days of the receipt of the Request. The IRMDirector shall promptly inform the Requestor(s), the Boards of Directors, the President and the operational departments responsible for the project upon registering of the Request.
23. Within twenty-one (21) business days of being notified of the registration of a Request, Management shall provide IRMCRMU with evidence that it has complied, or complied or intends to comply with the Bank Group's relevant policies and procedures. If there is no response from Management within twenty-one (21) business days, the Director of IRMCRMU shall notify the Boards and the President accordingly and send a copy to Requestors.
24. IRMCRMU may request clarification from Management on its response and set a time for the receipt of any additional information sought. Within twenty-one (21) business days of receiving Management's additional response or the expiry of the time limit for receipt of the additional response, the IRMCRMU shall undertake and conclude a problem-solving exercise or together with the IRM Experts determine the eligibility of the -Request- for a compliance review. If the Request is found eligible, the Director and the IRM Experts shall make a recommendation for a compliance review to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards. In case of a deadlock in determining eligibility for compliance review, the Director of CRMU shall make the final decision.
- Commented [CSO8]: The IRM should have the ability to independently determine eligibility for compliance review and conduct compliance review.
25. If the IRMDirector determines that a Request may be handled through a problem-solving exercise, he or she shall invite all relevant parties namely the Requestors, the client, Management representatives, and any other interested persons to participate in the exercise. The IRMDirector may use a variety of problem-solving techniques including best customary practices in the problem-solving exercise including, without limitation, mediation, conciliation, dialogue and facilitation.
26. If a problem-solving exercise is not successfully initiated within a period of three (3) months from the date of registration of the complaint or if the parties decide to terminate the process for any reason, the IRMDirector may recommend such remedial action as he or she deems appropriate to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards. Such recommendation may include the undertaking of an assessment of eligibility for a compliance review of the relevant project by the IRMDirector and the Experts.
27. Where the IRMDirector determines, following the conclusion of a problem-solving exercise or otherwise, that there is prima facie evidence the affected parties have been harmed or threatened with harm by a Bank Group-financed project due to the failure to follow the relevant policies and procedures by a member institution of the Bank Group, the IRMDirector and the IRM Experts shall, within thirty (30) business days of such determination assess the eligibility of the Request for a compliance review. If determined eligible, they shall submit a report recommending a compliance review of the relevant project to: (a) the Boards of Directors; or (b) the President, with a copy to the Boards, if the Request relates to a project that has not

| been not been approved by the Boards. The recommendation shall include draft Terms of

~~Reference of the compliance review which shall be undertaken by the Panel comprising the IRM Experts, and if considered necessary, complemented with consultant specialists in the relevant fields of expertise.~~

28. In considering a recommendation for a compliance review, the Boards of Directors or the President, as the case may be, shall either: (a) approve the recommendation(s) on a 'no objection' basis; or (b) remit the request to the Director and the IRM Experts to reassess the recommendation regarding the draft Terms of Reference with a new recommendation, if any, being submitted to the President or the Boards as the case may be. Any decision by the President on the recommendations of the Director concerning a compliance review shall be immediately communicated to the Boards.
- 29-27. The IRMPanel shall conduct the compliance review in accordance with ~~the approved Terms of Reference that shall set out the scope and time frame for the compliance review and shall provide an estimate of the budget and a description of additional resources required to complete the review. The criteria for assessing compliance will include AfDB policies, standards, guidelines, environmental and social assessments, host country legal and regulatory requirements and international standards.~~. The Experts on the Panel should aim to reach a consensus of opinion on all decisions or report all positions to the Boards of Directors if a consensus cannot be reached. This should enable the Boards of Directors to take into account all the views expressed on the matter by the Experts. CRMU shall provide administrative and technical support to the Panel.
- 30-28. The IRMPanel shall report its findings and recommendations to the Boards of Directors, or to the President where the Request relates to a project that has not been approved by the Boards. The Boards of Directors, or the President, as the case may be, shall decide whether or not to accept the findings and recommendations of the IRMPanel. Any decision by the President shall be immediately copied to the Boards.
- 31-29. The findings and recommendations of the IRMPanel shall be based only on facts relevant to the Request and shall be impartial. ~~The Panel may not recommend the award of compensation or any other benefit to any person, entity or government beyond that which may be expressly contemplated in a relevant Bank Group policy.~~
30. The advisory function will be triggered either upon receipt by CRMU IRM of a request for advice or technical opinion from the President and/or the Boards, or at the discretion of the IRM Director regarding lessons learned from IRM's problem solving and compliance review roles or systemic and critical issues relating to IRM's casework.
32. upon approval by the President and/or the Boards of a proposal submitted by the Director of CRMU for such advisory service. Spot-check advisory reviews of project compliance will be undertaken using the following procedure:
33. \_\_\_\_\_
34. At the beginning of each calendar year, CRMU shall, in consultation with the Bank Management, select not more than two (2) high-risk (with potential environmental and social impacts) projects for which the IRM Experts will conduct spot-check reviews on Bank Group's compliance with its policies and procedures; and
35. \_\_\_\_\_
36. (b) Once the projects have been selected, CRMU will recommend for approval by the Boards the name of the selected projects, the Terms of Reference and the estimated budget for the advisory reviews.

#### Self-initiated Compliance Review

**Commented [CSO9]:** Language based on para. 24 of UNDP SECU's policy and paras. 2-4 of SECU's SOP on Proactive Investigations

26. Compliance reviews may also be triggered on IRM's own initiative or at the request of a Board member. When this occurs, disclosure of documents will occur in a manner similar to disclosure pursuant to complaint processes triggered by Requestors. IRM takes all reports of alleged breaches of social and environmental commitments seriously, and all allegations are assessed to determine whether an investigation is appropriate.

27. Self-initiated compliance reviews are defined as investigations intended to identify and respond to significant potential or actual harm to an individual or community resulting from an existing (but yet unidentified) failure of AfDB to meet its social and environmental commitment. The ability to investigate matters without first having to receive a request is intended to:

- Allow IRM to respond to high risk projects before harm occurs to individuals or communities, as well as damage to project success and AfDB's reputation;
- Address the situation in which, for a variety of reasons (e.g. cultural, lack of knowledge, etc.) impacts are not likely to be reported;
- Serve as an effective deterrent to avoiding compliance with these commitments;
- Build a more comprehensive and balanced portfolio of compliance cases at the corporate level across regions and development sectors; and
- Strengthen AfDB's credibility with member states.

## **Reports**

**37-31.** The **IRMDirector** shall within thirty (30) business days of the conclusion of a problem-solving exercise prepare a report on the exercise and its outcome and shall provide the report to the parties in the problem-solving exercise, to the Boards and to the President. Interim progress reports may be submitted by the Director to the Boards and the President for information.

**38-32.** The **IRMPanel** shall report its findings and recommendations of the compliance review within thirty (30) business days of the conclusion of a compliance review to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards, and to the requestors.

**39-33.** The **IRMDirector-of-CRMU** will submit reports on advice and technical opinions provided to the President and/or the Boards.

**40-34.** **IRMCRMU, –or the person(s) otherwise charged with the responsibility,** shall monitor the implementation of any solution agreed upon in a problem-solving exercise or any remedial changes to the relevant Bank Group's policies or procedures or to the implementation of the relevant Bank Group-financed project. **The IRMSuch persons** shall submit the monitoring report for consideration to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards. **The monitoring reports must include the input of the Requestors.** Any monitoring report to the President shall be immediately copied to the Boards.

**41-35.** Subject to the provisions of the Bank Group's Disclosure and Access to Information Policy, the reports of the CRMU and the Panel and the decisions of the Boards and the President on all Requests shall be communicated to the Requestors and shall be made public by the Bank Group.

**42-36.** The Director shall prepare, in consultation with the **IRMExperts**, an annual report describing the activities of the IRM during the preceding year. The annual report shall be submitted to the Boards and to the Boards of Governors for information. The annual report shall be published by the Bank Group.

## **Review**

**43-37.** The Boards of Directors shall review the experience of the IRM established in conformity with the provisions of Resolution B/BD/2004/9 – F/BD/2004/7 after three (3) years from the date of the effectiveness of the IRM, which date shall be that of the appointment of the Director. Thereafter, the Boards shall review the IRM every four (4) years, or as otherwise decided by the Boards, **through a public consultation process.**

## **Operating Rules and Procedures**

**44-38.** The Boards have approved the 2015 amendments to the Operating Rules and Procedures of the Independent Review Mechanism, which shall complement the operational provisions contained in this Resolution.

## **Entry into Force**

**45-39.** This Resolution shall become effective on the date of its adoption by the Boards of Directors of the Bank and the Fund.