

4 February, 2021

Savanas E Enseadas Lda.

Rua Agostinho Neto 29

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 participate in the second round of the consultation for the 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.

Given the importance of the IRM as one of the only avenues available to African communities to raise concerns about the impacts of AfDB-financed projects, we commend the AfDB's commitment to a robust consultation process on the review of the IRM. Several of us participated in the first round of consultation, as well as had other engagements with the review team, and are pleased to see that the revised review report and revised IRM Operating Rules and Procedures reflect several comments that we provided during the first round.

The changes to the IRM Procedures in particular serve to increase the legitimacy, accessibility, predictability, equitability, transparency, rights compatibility, and advisory capabilities of the IRM, bringing it more in line with the best practices of other independent accountability mechanisms (IAMs).<sup>1</sup> While we will provide additional recommendations below to ensure that the review results in the most effective accountability framework for the AfDB, we endorse most of the recommendations and changes in the revised report and IRM Procedures and consider them as the minimum required for meaningful change. In particular, the proposed restructuring of the mechanism away from the roster-of-experts model to a model in which the mechanism's functions are carried out by permanent staff will serve to improve its effectiveness.<sup>2</sup>

In general, the revised report and IRM Procedures should represent the floor—rather than the ceiling—of the level of reform needed at the AfDB and the IRM to truly strengthen the

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<sup>1</sup> The review report extensively cites to the “Best of IAMs Policy” document that was co-authored by several of the signatories to this letter.

<sup>2</sup> Additional positive changes include the introduction of a requirement for clients to disclose the existence of the mechanism to project-affected communities, the removal of restrictions related to the admissibility of complaints related filed in other bodies, and the creation of a stakeholder advisory board.

accountability system. Any deviations from the recommendations proposed should only be considered if they further strengthen the accountability framework.

Below are the most important remaining issues and proposed next steps.

## **Remaining Issues**

Building on the changes already made to the IRM Procedures and the revised review report, we provide the following recommendations to further strengthen the AfDB's accountability framework and the IRM. These recommendations are accompanied by attached redline edits to the revised IRM Procedures:

### *Ending Board Approval of Compliance Review*

The decision to undertake a compliance review should not require Board approval. The independence of the IRM is of utmost importance to fulfill its mandate of enhancing the environmental and social outcomes of AfDB projects and addressing complaints from people affected by AfDB projects in a manner that is fair, objective, and equitable. The Board should trust the expertise and professionalism of the IRM Director to appropriately follow IRM procedures to determine whether a compliance review is warranted. In fact, the IRM has undertaken a surprisingly small number of compliance reviews, which raises the question of whether the barriers to compliance review are too high, not too permissive.<sup>3</sup> Moreover, the Board has never once denied a request for compliance review, further showing how unnecessary and outdated this power is.

Further, inserting a Board decision into this technical process risks politicizing it. It opens up Board members to lobbying for or against a review and risks embroiling the Board in potentially public conflicts over what should be an impartial and technical process. If ever the Board decides not to approve a compliance review, it will undermine public confidence in the legitimacy of the mechanism.

Several international financial institutions do not require Board approval of compliance reviews, including the International Finance Corporation and the European Investment Bank. The AfDB should show its commitment to accountability by joining their ranks.

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<sup>3</sup> Of the 94 complaints to the IRM through 2020, only 12 were found eligible, and only six underwent compliance review (the two Sendou complaints were handled together). Six additional complaints lack sufficient documentation to determine whether they were found eligible. All data comes from the Accountability Console. *Available at [https://www.accountabilityconsole.com/complaints/?iam=8&is\\_eligible=True&year\\_filed=&year\\_closed=&min\\_duration=&max\\_duration=&compliance\\_review=in\\_progress&compliance\\_review=closed\\_with\\_outcome&compliance\\_review=closed\\_without\\_outcome](https://www.accountabilityconsole.com/complaints/?iam=8&is_eligible=True&year_filed=&year_closed=&min_duration=&max_duration=&compliance_review=in_progress&compliance_review=closed_with_outcome&compliance_review=closed_without_outcome)*.

## *Ensuring Remedy for Complainants*

The ultimate result from an IRM complaint process should be the effective remediation of complainants' grievances. The revised IRM Procedures includes several positive steps to improve the outcomes of IRM complaint processes, including by requiring the disclosure of draft compliance review reports to complainants and consultations with complainants on management action plans.<sup>4</sup> However, the AfDB should take further steps to ensure that resources for remedy are available for complainants, including establishing 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.

## *Requiring an AfDB Retaliation Policy*

The review report and revised IRM Procedures include important recommendations for protecting complainants to the IRM from retaliation.<sup>5</sup> In addition to the provisions added to the revised IRM Procedures, the IRM should follow the model of several IAMs, including the World Bank Inspection Panel, IFC Compliance Advisor Ombudsman, and Asian Development Bank Accountability Mechanism, and develop a separate protocol that includes detailed steps to address threats and actual instances of reprisals.<sup>6</sup> Additionally, retaliation can occur to people raising concerns about AfDB projects, even if those people have not submitted a complaint to the IRM. While the review report acknowledges shortcomings in the AfDB's Whistleblower Policy in terms of its coverage of external stakeholders, the report does not make a specific recommendation for the AfDB to have its own policy on reprisals.<sup>7</sup> The AfDB should follow the example of the IFC and EBRD and take steps to develop an institutional-level policy against retaliation.<sup>8</sup>

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<sup>4</sup> Revised IRM Procedures, paras. 64(c)-(d), 67(c)

<sup>5</sup> Revised review report, para. 131; Revised IRM Procedures paras. 18,89.

<sup>6</sup> World Bank Inspection Panel, *Guidelines to Reduce Retaliation Risks and Respond to Retaliation During the Panel Process*, [https://www.inspectionpanel.org/sites/ip-  
ms8.extcc.com/files/documents/IPN%20Retaliation%20Guidelines\\_2018.pdf](https://www.inspectionpanel.org/sites/ip-<br/>ms8.extcc.com/files/documents/IPN%20Retaliation%20Guidelines_2018.pdf); IFC Compliance Advisor Ombudsman, *Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations*, <http://www.cao-ombudsman.org/documents/CAO-Reprisals-web.pdf>; ADB Accountability Mechanism, *Guidelines for the Protection of Key Stakeholders During the Accountability Mechanism Process*, [http://compliance.adb.org/dir0035p.nsf/attachments/AM%20Guidelines%20on%20Protection%20of%20Stakeholder  
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%20Final%20-%209%20May%202018.pdf](http://compliance.adb.org/dir0035p.nsf/attachments/AM%20Guidelines%20on%20Protection%20of%20Stakeholder<br/>s%20%20-%20Final%20-<br/>%209%20May%202018.pdf/$FILE/AM%20Guidelines%20on%20Protection%20of%20Stakeholders%20%20-<br/>%20Final%20-%209%20May%202018.pdf). This separate protocol should be subject to public consultation to ensure that it best reflects the needs of project-affected communities.

<sup>7</sup> Revised review report para. 131

<sup>8</sup> IFC, *IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders*, [https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-  
f73e5ad6a5c8/EN\\_IFC\\_Reprisals\\_Statement\\_201810.pdf?MOD=AJPERES&CVID=mq8TI2z](https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-<br/>f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES&CVID=mq8TI2z); EBRD, *Retaliation*

## *Guidelines for Applicable Policies for Compliance Review*

The revised report includes a discussion of the policies that should be examined by the IRM when judging compliance and recommends that the mechanism examine “all relevant operational policies.”<sup>9</sup> The report further recommends that a clear list of relevant policies be developed immediately. The AfDB and IRM should ensure that it takes an inclusive approach that focuses on the substance of the policies. Instead of listing every potential policy that could fall within the IRM’s remit, the IRM should simply have the ability to consult all policies that are relevant to environmental and social impacts.<sup>10</sup> In addition to the Access to Information and Disclosure Policy and the Integrated Safeguards System, this would include sector-specific guidelines and other relevant policies.

### **Next Steps**

If implemented properly, the review report’s recommendations will significantly strengthen the AfDB’s accountability framework, which will improve outcomes for affected communities and the sustainability of the AfDB’s projects. Recognizing the role that each stakeholder plays in ensuring accountability, the report includes recommendations for the AfDB Board and management as well as the IRM. We support the report’s emphasis on the importance of clarifying the roles and responsibilities of the Board, CODE, President, and management.

The report provides a clear path forward for implementation, proposing an “inter-departmental working group be established by the President with the objective of developing an Action Plan with clear timelines and with assigned responsibilities” for implementing the recommendations.<sup>11</sup> Although we agree with this recommendation, we recommend the following parameters in order to maintain the independence of the IRM:

- For recommendations that require AfDB management to implement changes, the Board should request that AfDB publish work plans and solicit feedback on proposed measures to implement the report’s recommendations; and
- For recommendations that require the IRM to implement changes, the Board should request that the IRM publish a work plan and solicit feedback from the public. Any

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*Against Civil Society and Project Stakeholders,*

<https://www.ebrd.com/cs/Satellite?c=Content&cid=1395280260960&pagename=EBRD%2FContent%2FDownloadDocument>.

<sup>9</sup> Revised review report para. 72

<sup>10</sup> For example, the IFC CAO’s compliance review criteria includes “IFC/MIGA policies, Performance Standards, guidelines, procedures, and requirements **whose violation might lead to adverse environmental and/or social Outcomes.**” IFC CAO Operational Guidelines, para. 4.3 (emphasis added).

<sup>11</sup> Revised review report para. 306

decisions on additional changes to the revised IRM Procedures should be solely in the IRM's purview.

Thank you again for the opportunity to participate in these consultations. We look forward to seeing the final policy and IRM Procedures before they are approved by the Board and look forward to further engagement with the IRM and AfDB to ensure that communities have a robust and effective avenue for addressing grievances.

Sincerely,

*African Organizations*

1. Abibinsroma Foundation – Ghana
2. Africa Development Interchange Network (ADIN) – Cameroon
3. African Coalition for Corporate Accountability (ACCA) – South Africa
4. Alliance for Empowering Rural Communities – Ghana
5. APAD – Chad
6. Arab Watch Coalition (AWC) – Tunisia
7. ATED (Association Talassemrane pour l'Environnement et le Développement) – Morocco
8. ATGL – Tunisia
9. Bank Information Center – Ivory Coast
10. Buliisa Initiative for Rural Development Organisation (BIRUDO) – Uganda
11. Catholic Relief Services – Nigeria
12. Centre de Développement de la Région de Tensift (Marrakech) – Morocco
13. Centre for Human Rights, University of Pretoria – South Africa
14. Coalition des OSC Africaines sur la BAD – Regional
15. Conseil Régional des Organisations Non Gouvernementales de Développement – Democratic Republic of the Congo
16. ENDA LEAD AFRIQUE FRANCOPHONE – Senegal
17. Endorois Welfare Council – Kenya
18. Espace de Solidarité et de Coopération de l'Oriental – Morocco
19. Forum Tunisien pour les Droits Économiques et Sociaux – Tunisia
20. Foundation for Environmental Management and Campaign Against Poverty – Tanzania
21. Foundation for the Conservation of the Earth, FOCONE – Nigeria
22. GARED – Togo
23. Green Advocates International – Liberia
24. International Accountability Project – Malawi
25. IRPAD/Afrique – Mali
26. Jamaa Resource Initiatives – Kenya

27. Jonction – Senegal
28. Lumière Synergie pour le Développement – Senegal
29. Mazingira Network - Tanzania (MANET) – Tanzania
30. Narasha Community Development Community – Kenya
31. Nature Tropicale ONG – Benin
32. ONG MER BLEUE – Mauritania
33. ORCADE – Burkina Faso
34. PAFED – Togo
35. Réseau Camerounais des Organisations des Droits de l'Homme / Cameroon Network of Human Rights Organisations – Cameroon
36. Sustainable Holistic Development Foundation (SUHODE) – Tanzania
37. Water Governance Institute – Uganda
38. Witness Radio-Uganda – Uganda
39. Zambian Network for Human Rights Defenders – Zambia

*International Organizations*

1. Accountability Counsel – United States
2. Alliance Sud – Switzerland
3. Association For Promotion Sustainable Development – India
4. Both ENDS – Netherlands
5. Center for International Environmental Law (CIEL) – United States
6. Centre for Research on Multinational Corporations (SOMO) – Netherlands
7. Christine Harris Therapy – Ireland
8. Eurodad – Belgium
9. Gender Action – United States
10. Inclusive Development International – United States
11. International Rivers – United States
12. Project HEARD – Netherlands
13. Urgewald – Germany

**AFRICAN DEVELOPMENT BANK GROUP**



**THE INDEPENDENT REVIEW MECHANISM**



**Operating Rules and Procedures**

**January 2015**

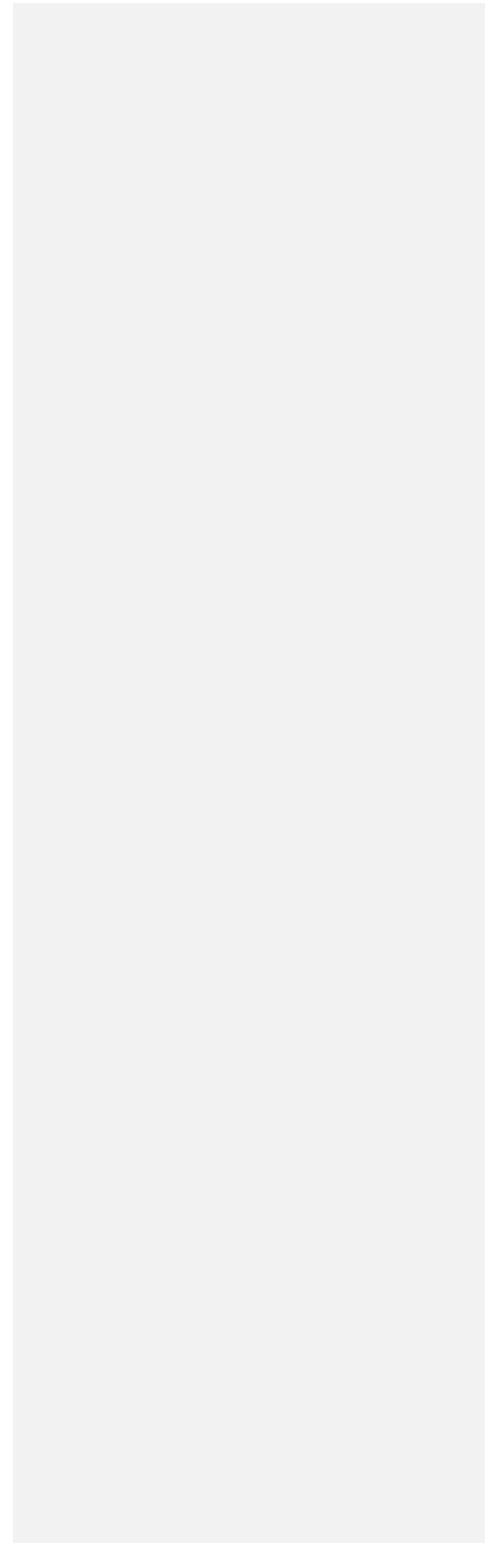
**Reviewed: 14 December 2020**

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## Terms and definitions

**Bank-financed Operation:** Any ADB/ADF funded project or program approved by the Boards of Directors or under consideration for financing by Bank Management

**Boards of Directors:** Boards of Directors of the African Development Bank and African Development Fund

**Borrower:** The borrowing or guaranteeing country, project or implementing agency

**Business Days:** Days in which the Bank is open for business at headquarters

**Client:** Private Sector Client of the Bank Group

**Compliance Review Report:** Report resulting from a Compliance Review of a Request to IRM

**Eligibility Assessment Report:** Report prepared by IRM to evaluate a request for Compliance Review

**Operational Policies and Procedures:** Operational Policies and Procedures of relevance to IRM complaints decided upon in agreement between IRM and Management, and subject to constant update

**Independent Review Mechanism:** The independent complaints mechanism of African Development Bank Group

**Management:** African Development Bank Group as an institution involved in the design, appraisal and/or implementation of Bank-financed operations

**Problem-Solving Assessment:** Assessment prepared upon registration of a request for problem solving

**Problem-Solving Report:** Report prepared on problem-solving exercise

**Requestor:** Signatories to a Request, those who have submitted a Request

**Request:** A written complaint submitted to the IRM raising issues of harm resulting from non-compliance with Bank's operational policies and procedures

## I. Introduction

1. The Independent Review Mechanism (IRM) is the African Development Bank's Complaint Mechanism. It is headed by a Director who is assisted by professional and support staff to carry out Compliance Review, Problem-Solving and Advisory functions. 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.....
2. 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*

3. The IRM was established for the purpose of providing people adversely affected by an operation 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 affected persons believe that they have been harmed or could be harmed by a Bank Group operation.
4. The IRM will disseminate information about the complaints process to Bank staff and Management, the Boards of Directors, civil society organizations, affected communities and borrowers and non-sovereign clients. The Bank Management shall mainstream information about the IRM in Bank policies and procedures and project documents. Any AfDB borrowers, clients, and sub-clients (for financial intermediary projects) shall be required to disclose the existence of the IRM to project-affected communities. The IRM will ensure that the complaints process is culturally appropriate, gender responsive, and equally available to all

### *b. Functions*

5. The role of the IRM is to perform compliance review, problem-solving and advisory functions.
6. The problem-solving and the compliance review functions of the IRM will be triggered when it receives a request for compliance review and/or problem-solving. The IRM will conduct a preliminary review of the complaint while respecting the Requestor(s) preference for either problem-solving, compliance review or both. The IRM staff will facilitate and undertake problem solving exercises while compliance reviews will be conducted by the Director and IRM staff.
7. The advisory function, described below in Section VI, will be carried out to provide independent opinions on systemic issues, technical advice on any projects, programs and policies of the Bank Group, and to support efforts of staff and Management to strengthen the positive social and environmental impact of operations funded by the Bank Group.

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

## II. Subject Matter of Requests

### *a. Scope*

9. IRM is authorized to accept requests for review ('Request(s)') from an individual or group of persons with a common interest ('Requestors') ~~in the country or countries where the Bank Group-financed operation is located or has a direct and material impact~~, who allege that an actual or threatened harm has arisen or may arise from ~~the~~ failure of the Bank Group to follow its own operational policies, ~~and procedures, and project requirements~~ during the design, appraisal and/or implementation of a Bank Group-financed operation.

### *b. Limitations*

10. IRM 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) ~~Frivolous or, malicious, or anonymous~~ complaints;
- (e) Complaints motivated by an intention to gain competitive advantage;
- (f) Matters over which the IRM, ~~the President or the Boards of Directors~~ 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; and
- (g) ~~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~~
- (h) The adequacy or unsuitability of Bank Group policies or procedures.

### *c. Statute of Limitation*

11. IRM 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 requester becomes aware of the adverse impacts whichever comes later.

Commented [CSO1]: It would be hard to ascertain this information at an initial registration stage.

## III. Preparation of a Request

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

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

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

13. The following persons or entities can file a Request:

- (a) Any individual or group with a common interest ('Requestors') ~~in the country or countries where the Bank Group-financed operation is located or has a direct and material impact,~~ who allege that actual or threatened harm has arisen or may arise from the failure of the Bank Group to follow its own operational policies, ~~and procedures, and project requirements~~ during the design, appraisal and/or implementation of a Bank Group-financed operation.
- (b) A duly appointed local or non-local representative acting on explicit instructions as the agent of adversely affected people,
- (c) The Boards of Directors of the Bank Group.

**c. Contents of a Request**

14. 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) State if there has been any previous communication between the affected parties and the Bank Group concerning the issue (s) raised in the Request;
- (c) In Requests relating to matters previously submitted to the IRM, a statement specifying what new evidence or changed circumstances justify revisiting the issue; and
- (d) Requestors should express to the extent possible their preference for either compliance review, problem-solving or both.
- (e) Requestors can also choose to provide the following information:
  - To the extent possible, ~~refer to~~ the relevant or applicable Bank Group policies especially when requesting a compliance review;

**d. Elements of Request**

**Format:**

15. No specific format is necessary, ~~and the IRM can receive a Request through email, online form, 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. In instances where requests are made verbally, IRM will assist Requestors in submitting them in writing.

Commented [CSO2]: Language adapted from para. 25 of UNDP SECU's policy.

16. 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)). A complaint form and a model complaint letter will be available online in multiple languages.

Confidentiality and Protection of Requestors at Risk of Reprisals:

17. The Requestors and any other interested persons may, at the time of submitting their complaint, request that their identities be kept confidential, and the reasons for such confidentiality.
18. If the Request contains a demand for confidentiality under paragraph 17 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, 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, a problem-solving process can not proceed with the requested confidentiality maintained, the request will be referred to compliance review. IRM will endeavor to protect the confidentiality of the Requestors by all means.
19. If despite preventive measures a risk of reprisals materializes, IRM should inform and escalate the matter to Senior Management, the Boards of Directors and the President, as necessary. Any proposed measures should prioritize the safety of persons under threat.

Commented [CSO3]: We are not sure who "other interested persons" refers to, and suggest deleting this.

Language:

20. 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, IRM will inform the Requestors of the translation time and this will be taken into account in the complaints processing timeline.
21. IRM will endeavor to respond to Requests in the language of submission, ~~where practicable, but~~ and will in any event respond in either of the official languages of the Bank Group with which the Requestors are most comfortable.

Representation:

22. Where the Requestors are entities representing affected people, they shall attach to the Request ~~evidence written signed proof~~ that they have authority to act on behalf of the affected people.
23. If a non-affected representative (local or non-local) 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.~~

Commented [CSO4]: Noting that not all Requestors will be literate and/or have addresses.

Requestors may also elect to be assisted in their complaint by one or more advisors. Advisors provide advice and support, but Requestors retain decision-making authority. These advisors will be included in the process at the direction of Requestors.

Documents:

24. The following documents should be attached to the Request:

- a. Relevant correspondence with Bank Group staff; if any;
  - b. Indicate the location of the affected parties or area affected by the project; and c.
- Any other evidence or documents supporting the Request.

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25. If some of the information listed above cannot be provided an explanation should, to the extent possible, be included in the Request.

**e. Delivery of Request**

26. Requests must be sent to the IRM at the Bank Group's Headquarters by any suitable means or to any of the Bank Group country offices. In both cases, an acknowledgement of receipt should be issued within five (05) business days. In the latter case, the Bank Group's Country Manager shall, after issuing a receipt to the Requestors, promptly and without reviewing the content of the request forward it to the Director of IRM and inform the Director of IRM by email, fax or telephone about the receipt and forwarding of the Request to IRM.

**f. Effect of Filing a Request**

27. 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 operation. If at any time during the processing of a Request, the Director is of the opinion that serious, irreparable harm shall be caused by the continued processing or implementation of the Bank Group-financed operation, the Director 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 in accordance with the Bank Group's applicable Rules and Procedures.

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

**a. Acknowledgement of Receipt**

28. When IRM receives a Request, it shall send a written acknowledgement to the Requestors within five (5) business days of receipt. The Request shall be logged in the Register of Requests.

**b. Preliminary Review**

29. IRM 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. The Director may also request information and clarification about the operation from Management. The IRM will thereafter either:

- i) register the Request, or
- ii) ask for additional information from the Requestors, or
- iii) find the Request outside the mandate of the IRM.

30. 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, IRM will explain both functions to the Requestors and advise on the best course of action in consultation with them. If both functions are selected, Requestors

can choose the order of the functions or choose to undergo both simultaneously.

***c. Request additional information***

31. If the IRM finds the contents of the Request or documentation on representation insufficient, it may ask the Requestors to supply additional information within 14 business days.

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***d. Registration***

32. If a Request falls within the mandate of the IRM and contains the information listed in Paragraph 24 above (Content of the Request), the IRM shall, while respecting the preference of Requestors for Compliance Review or Problem-Solving and or both and register the Request in the Register of Requests (the 'Register').

***e. Notification***

33. IRM will promptly notify and transmit to the Requestors, the Management, the Boards of Directors and the President, a Notice of the Registration, a copy of the Request, together with any accompanying documentation. The Notice of Registration and the original Request shall be posted in the Register.

***Contents of Notice:***

34. The Notice of Registration shall:
- (a) Record the date of registration of the Request;
  - (b) Include the name of the operation, the country or countries where the operation is located, 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 IRM.
35. The IRM may decline to register a Request until sufficient information and documentation is filed.
36. Each unregistered Request shall be posted in the Register after a decision on registration has been reached. The yearly total of unregistered Requests shall be included in the IRM annual Report.
37. Where the IRM finds that a matter is manifestly outside its mandate it shall notify the Requestors of its refusal to register the Request and the reasons supporting that refusal. This will include, without limitation, Requests that:
- (a) Are clearly outside the mandate of the IRM including those listed in Paragraph 10 of these Operating Rules and Procedures
  - (b) Are from a non-authorized representative of affected parties;
  - (c) Are manifestly frivolous, or absurd ~~or anonymous~~.

The reasons for the refusal will also be noted in the Register.

***g. Revised Request***

39. 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 IRM within one (1) month from the date of submission of the initial Request.

40. If a revised Request is submitted, the time period for Management's response, ~~the IRM~~ will begin again from the time such revised Request is registered.

***h. Management's Response***

41. Within twenty-one (21) business days after being notified of the Registration of a Request, Management shall provide IRM with a Management Response, including evidence that it has complied or intends to comply with the Bank Group's relevant policies and procedures. After IRM 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 and posted on the Register.
42. The time limit for receipt of Management Response should be strictly abided by except in circumstances clearly beyond the Management's control. In such cases, after consulting with IRM, Management should inform the Boards of Directors of and justify any proposed extension of the deadline. Revised deadlines should be promptly notified to the Requestors and recorded in the Register.

***i. Extension of Time Periods***

43. Any time period referred to in these Rules may be extended, provided there are circumstances beyond IRM and Management control and in consultation with the Management and the Boards of Directors. Any such extension shall be promptly notified to the Requestors and posted on the Register.

**V. Problem-Solving**

***a. Objectives***

44. The objective of a problem-solving exercise is to restore effective dialogue between the Requestors, Management and Client/Borrower 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 36, but regardless of whether a compliance review is or will be conducted.

***b. Problem-Solving Assessment***

45. ~~If the Requestor has indicated an interest in problem-solving, the Director will undertake the following steps to determine whether a problem-solving exercise is feasible: In considering whether a problem-solving exercise should be undertaken, the Director shall assess:~~
- ~~(i) Discussions with all the Requestor and the Borrower or client to describe the process and assess willingness of the parties to participate; and~~
  - ~~(ii) If deemed necessary by the Director, undertake a site visit to further pursue to possibility of a problem-solving exercise; the Requestors, Management and Client/Borrower are amenable to such problem-solving exercise;~~
  - ~~(ii) Whether the problem-solving exercise is appropriate and may assist in addressing actual or potential harm resulting from a Bank Group-financed operation;~~
  - ~~(iii) Whether the conduct of a problem-solving exercise may interfere with the conduct of a compliance review, if any;~~

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~~(iv) Any other relevant matters.~~

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46. If the ~~parties agree to a problem-solving exercise, the~~ Director ~~determines that a Request may be handled through a problem-solving exercise, he or she~~ shall include this in an Assessment Report which responds to the above questions within ~~1460~~ days of Registration of Requests. He or she shall invite all the relevant parties, namely the Requestors, the borrower's relevant project implementing agency/client, Management representatives and other interested persons to participate in the exercise.

Commented [CSO5]: This period of time will likely be too short for parties to agree to mediation. Ideally, the mechanism has a site visit to ensure the parties understand what the advantages/disadvantages are to a mediation.

47. In undertaking the problem-solving exercise, the Director may use a variety of problem-solving techniques, including independent fact-finding, mediation, conciliation and dialogue facilitation including use of best innovative practices. IRM should use a professional mediator ~~as appropriate or~~ as agreed to by the parties.

#### *c. Problem-Solving Report*

48. The problem-solving exercise should be particularly sensitive to the existence of ~~assymetries~~~~asymmetries~~ between the negotiating parties. Particular attention should be paid to ~~assymetries~~~~asymmetries~~ in availability of the information needed and in the capacity of the parties to participate effectively in these processes. The IRM may propose capacity building exercises to facilitate the parties' fruitful participation.

49. 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 which 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.

(e) Taking circumstances of the request into account IRM should encourage Management and Requestors to solve problems as expeditiously as possible.

50. The Director should provide a semi-annual interim report to the Boards of Directors and the President for information -on the progress of a problem-solving exercise. ~~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 [CSO6]: Language based on para. 2.4(e)(iv) of the EBRD IPAM's policy.

#### Successful Problem-solving Exercise:

51. If the problem-solving exercise is successful, the Director will include in the Problem-Solving Report the solution agreed upon by the Requestors, borrower's relevant project implementing agency/client, 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 of Directors for consideration.

#### Monitoring implementation of Problem-solving agreement(s):

52. 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 Bank Group and/or borrower/client has met its commitments. Where the operation forming the subject matter of the Request has not been presented to the Boards of Directors for approval, the Director shall submit the monitoring report to the President and, as and when the operation is submitted for Board approval, to the Boards of Directors. Any report to the President shall be immediately copied to the Boards of Directors.

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*Unsuccessful Problem-Solving Exercise:*

53. ~~The timeline for the problem-solving efforts will be flexible and shall continue as long as the parties are amenable to continued participation. The initial period for the problem-solving exercise will be set at (1) year, which can be extended subject to the agreement of the parties. If the problem-solving efforts are not successful, either within a period of one (1) year from the commencement of the problem-solving exercise or prior to that~~ by common consent of the parties, the Director will declare the problem-solving exercise unsuccessful, and include in the Problem-Solving Report a description of the efforts made, the reasons for their failure and make recommendations on steps the Bank Group could take to deal with the unresolved issue(s). The Problem-Solving Report should be submitted to the parties in the problem-solving exercise, and to the President and the Boards of Directors for consideration.

**Commented [CS07]:** Although it is positive that the timeline for problem-solving has been extended from three months to a year, a problem solving process should not be cut off just because of the time limitation. Each problem solving process is different, and it may take parties a certain amount of time just to develop trust or address preliminary issues. The timeline should be extended if the parties agree.

54. The President, in cases where the project that is the subject matter of the Request has not been submitted for Board approval, and the Boards of Directors, 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 of Directors decide to reject the recommendation, they will inform all participants in writing of their reasons for doing so.

*d. Notification*

55. A summary of the decision and the Problem-Solving Report shall, subject to any requests for confidentiality, be published on the Bank Group's website.

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

56. ~~Where a~~At the conclusion of a problem-solving exercise, ~~if whether or not successful, or there remain issues that are undressed by the problem-solving agreement, the request will be automatically transferred to the compliance function, the Director determines, 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 of Directors, as the case may be, for ratification in accordance with Paragraphs 59 and 60 below.~~

**VI. Compliance Review**

*a. Eligibility*

57. The Compliance review process will be initiated with a ~~joint~~ determination of the eligibility of a request by IRM. The determination of eligibility will be included in an Eligibility Assessment Report which shall be produced after an eligibility mission. Eligibility missions will only be undertaken after receipt of Management Response.

**Commented [CS08]:** The Board should not approve compliance review eligibility. If the Board is to have any role in the compliance review eligibility process, it should be limited to approving recommendations not to investigate like at the EBRD IPAM. See IPAM policy, para. 2.6(d)

58. Following the eligibility mission, if IRM determines that there is *prima facie* evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed operation and that the harm or threat was caused by the failure of the staff and Management of the Bank Group to comply with any of the relevant policies and procedures of the Bank Group, they shall within thirty (30) business days ~~issue submit a report recommending~~ a compliance review ~~eligibility report of the project at issue~~ to the (a) President, with a copy to the Boards of Directors, if the

Request relates to a Bank Group-financed operation that has not been approved by the Boards of Directors, or (b) Boards of Directors if the Request relates to a Bank Group-financed operation that has been approved by the Boards of Directors. The report will also be shared with the Requestors.

59. The Compliance Eligibility Report shall include draft Terms of Reference which shall set out the scope and time frame for the compliance review, and a description of external expertise required to complete the compliance review. The Director of IRM with the support of IRM staff and if necessary external expertise, will conduct compliance reviews. 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 Compliance Eligibility Report will be posted in the Register

If the IRM determines that there is not prima facie evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed operation and that the harm or threat was caused by the failure of the staff and Management of the Bank Group to comply with any of the relevant policies and procedures of the Bank Group, it will note the reasons in the Compliance Eligibility Report and will notify the Requestor.

All Compliance Eligibility Reports will be posted in the Register.

~~60. with the support of IRM staff will conduct compliance reviews.~~

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~~61. In considering the recommendation for a compliance review, the Boards of Directors or the President, as the case may be, may:~~

~~(a) Approve the recommendation(s) on a 'non-objection' basis; or~~

~~(b) If a Board Member requests a discussion, the decision by the Boards of Directors will await the outcome of the Board Meeting to be scheduled.~~

~~62. Any decision made by the President in respect of an operation that has not been approved by the Boards of Directors shall be immediately copied to them. Subject to the provisions of the Bank Group's Disclosure and Access to Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the recommendation for a compliance review and the decision made by the President or the Boards of Directors, as the case may be, shall be promptly communicated to the Requestors and any other interested person. A copy of the Eligibility Assessment Report and the recommendation for a compliance review shall be published on the IRM webpage.~~

***b. Conduct of a Compliance Review***

63. IRM shall conduct the compliance review in accordance with the relevant ~~approved~~ Terms of Reference and within the determined time frame. It shall take any appropriate steps required to conduct the compliance review, and in particular shall:

(a) Consult with the Requestors and any other interested party during the Compliance Review process;

(b) Consult with Management during the Compliance Review and ensure accuracy and completeness of information;

(c) Consult with the Executive Director(s) concerned;

(d) Undertake site visits to the project(s) at issue;

**Commented [CSO9]:** The Board should not have a role in approving compliance reviews. However, if this provision is kept in the policy, there should be a time limit placed here so that complainants don't have to wait a while for a Board discussion to be scheduled. 10 business days would be a good limit.

(e) Retain additional expertise as per the requirements of the Terms of Reference.

***c. Preparation of Compliance Review Report***

64. Within thirty (30) business days of the completion of its investigation, the **IRM** shall:

- (a) Prepare a draft compliance review report containing the **IRMPanel**'s findings and recommendations; and
- (b) Circulate it promptly to the Bank Management for review and comments on factual matters only.
- (c) Share the draft Compliance Review Report with the Requestors for review and comments, with clear indication of its draft status and thus, confidentiality attached to it;
- (d) The Bank Management and Requestors shall submit their comments to IRM within twenty-one (21) business days from the date of receipt of the draft report; and
- (e) Upon receipt of comments from the Bank Management and the Requestors, IRM shall finalize the Report within 14 days and submit it to Management, the President and or Boards of Directors, as the case may be, for consideration.

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***d. Contents of Compliance Review Report***

65. The Compliance Review Report shall:

- (i) Explain the steps taken and methodology followed to conduct the Compliance Review;
- (ii) Set out the findings of the **IRMPanel** 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 operation has involved one or more material violations of policies and procedures in accordance with Paragraph 11;
- (iii) If it concludes that any Bank Group action, or failure to act, in respect of a Bank Group financed operation has involved one or more material violations of policies and procedures in accordance with Paragraph 11, 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 operation, 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 (a) and (b) above
- (iv) Attach a copy of the original Request, the Management response and a list of supporting documents relied upon in the compliance review.

***Communication of the Compliance Review Report:***

66. 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.

Management Response and Action Plan:

67. Management shall:

- (a) Prepare a Response to the findings and an Action Plan based on the recommendations of the Compliance Review within sixty (60) business days of submission of the Compliance Review Report.
- (b) Include in the Management Action Plan clear time-bound actions for returning the Bank to compliance and achieving remedy for affected populations. The Management Action Plan shall contain an estimate of the human and financial resources required to implement the Management Action Plan.

Commented [CSO10]: adapted from EBRD IPAM policy para. 2.7.1(a)(iv)

It should also include an Implementation Monitoring Plan for proposed actions.

Commented [CSO11]: Monitoring is the responsibility of the IRM, not management. The plan should be called an implementation plan.

- (c) Consult the Requestors before finalization of the proposed Action Plan
- (d) Submit the final Management Response, and the Action Plan, and any comments from Requestors on the Action Plan to the President, the Boards of Directors and IRM.
- (e) The IRM Director will communicate to the Board of Directors whether within IRM's view the commitments made in the Management Action Plan adequately address the findings and

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recommendations in the of the Compliance Review Report. ~~The IRM Director will communicate to the Board of Directors whether within IRM view the commitments made in the Management Action Plan adequately address the findings and recommendations in the of the Compliance Review Report.~~

- (f) Consult with IRM 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 thirty (30) business days from the date of distribution of the Management Response and the Action Plan to the Boards of Directors;
- (g) ~~The IRM Director will communicate to the Board of Directors whether within IRM view the commitments made in the Management Action Plan adequately address the findings and recommendations in the of the Compliance Review Report.~~

*Decision by the Boards of Directors or the President*

68. The Boards of Directors or the President, as the case may be, shall decide whether or not to accept the recommendations in the Compliance Review Report, and the Management Action Plan.”

*Monitoring Implementation of Board Approved Management Action Plan*

69. The Director of IRM will review implementation monitoring reports and provide an annual assessment of the progress achieved based on the desk review of relevant documents, consultations with the Requestors, management, and borrower/client, and findings of a field mission. The IRM shall also consider any information received from the Requestors and the public regarding the status of implementation. IRM will share the findings with Management and the Requestors for clarification of issues before submitting its report to the Boards of Directors for consideration.

70. The monitoring reports will be submitted to the President or the Boards of Directors, as the case

may be for consideration. The IRM shall report to the Boards any cases of which it becomes aware where the management action plan, or any part thereof, cannot be or is not being implemented. Where the IRM recommends improvements to the management action plan, management shall take appropriate steps to amend such final remedial action plan. The final monitoring report will conclude the compliance review process.

Commented [CSO12]: Language adapted from para. 68 of the GCF IRM Procedures

***e. Communication of agreed Management Response and Action Plan and the IRM Monitoring Report(s)***

71. The above documents will be promptly posted on the IRM webpage. The Bank Management and the Director of IRM will issue a joint press-release summarising the decisions by the Boards of Directors on the case.

***f. Cooperation with other International Accountability Mechanisms (IAMS):*** 72. If IRM receives a request/complaint that has also been submitted to an IAM of another multilateral development bank (MDB) for a co-financed operation, all efforts will be made to cooperate with the other IAM, while remaining within the rules and mandate of each IAM, including on requirements of confidentiality and disclosure of information. These cooperation principles will be included in a Memorandum of Understanding to be signed by IRM and the IAM of the other institution. If deemed nesseary/necessary IRM may also notify other IAMs of registered requests not subject to co-financing, but located in overlapping countries or territories of operation/operation. If a similar request is submitted to the IAM of other institutions in relation to the same project and the substance of the request is reasonably related IRM may collaborate with those mechanisms in a manner that is consistent with these rules to ensure that cases are handled efficiently. If a complaint 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 [CSO13]: Language based on para. 3.1(e) of the EBRD IPAM policy

## VII. Advisory Function

***a. Objectives, Triggers and Principles of Advisory Function***

73. The specific objectives of the advisory function of the IRM will 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 learned and trends identified by the IRM during the handling of requests whether 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 and clients to safeguard development impacts; and

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

*74. Advisory function of IRM will be triggered:*

- (a) Upon receipt by IRM of a request for advice or technical opinion from the President and/or the Boards of Directors;
- (b) When the Director of IRM decides on the production of Advisory Notes for purposes of sharing lessons learned from IRM casework and best international practice.

*75. The Principles that underpin the advisory service of IRM are that:*

- (a) It will consist of independent opinions on systemic issues and technical advice on projects and programs of the Bank Group;
- (b) The sole purpose shall be for institutional learning;
- (c) The advice is given formally in writing; and
- (d) The independence of IRM will not be compromised.
- (e) The Bank Management will report on changes undertaken by the Bank in policies, procedures and/or guidance as a result of advisory work by the IRM.

***b. Spot-Checks***

76. Under specific circumstances, the Director of IRM may initiate the production of Spot-Checks. These circumstances could relate to:

- (i) Complaints raised to the IAMs of co-financiers in a Bank Group co-financed operations for which no complaint has been submitted to IRM;
- (ii) Operations in the public domain where there is a reputational risk for the Bank Group;
- (iii) If IRM receives information from a credible source that a Bank Group-funded operation has adversely impacted or may impact persons or a community; and
- (iv) Cases where IRM is informed of risk of retaliation if Requestors come forward.
- (v) At the discretion of IRM Director to initiate spot-checks in RMCs where no request has been received.

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A spot-check shall not prevent project-affected communities from filing a subsequent request.

***c. Transparency and information Disclosure:***

77. The IRM shall carry out its advisory function in a transparent manner and ensure the disclosure of finalized Advisory Notes and Spot-Checks in the Register is subject to the provisions of the Bank Group Policy on Disclosure and Access to Information.



## VIII. Administration of the IRM

### *a. Term of Director*

78. The Director shall be selected by a panel composed of Chair of CODE, two (2) representatives of Senior Management and two (2) external advisors (one of whom should be a civil society representative). He/She shall be appointed by the President with the concurrence of the Boards of Directors, for a non-renewable six (6) year term. The Director shall not have worked for the Bank Group in any capacity whatsoever for a period of at least five (5) years prior to his or her appointment and shall not be entitled to work for the Bank Group in any capacity whatsoever following the expiry of his or her appointment. The Director may only be removed from his/her position through the same process as was followed for his/her appointment.

### *b. Responsibilities of the Director*

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

- (a) Establishing such administrative procedures and guidelines necessary for the proper functioning of the IRM ;
  - (b) 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 case management of Requests, as well as the conduct and outcome of problem-solving exercises and compliance reviews;
  - (c) Maintaining a documentary record for each Request, as well as a library of all materials relevant to the functioning of the IRM;
  - (d) Undertaking preliminary Review of Requests, and deciding on Registration. 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) Dealing with any requests for information about the IRM; communicating about and being the spokesperson of the IRM;
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- (f) Ensuring that all timeframes are met and justifying and informing the Boards of Directors and Management of any proposal for extension.
  - (g) ~~Hiring staff and e~~Ensuring that IRM staff fulfill their responsibilities generally and in accordance with any applicable Terms of Reference and/or Job Description;
  - (h) Without prejudice to the powers of the Boards of Directors and the President under these Rules, taking any steps required to ensure the integrity of IRM processes;
  - (i) Arranging for any translations of Requests, reports or other documents that may be required;
  - (j) Providing administrative and technical support to IRM staff, including without limitation, making and supervising arrangements for meetings, ensuring availability of relevant documentation, site visits and IRM proceedings in the Bank Group's Headquarters or elsewhere;

- (k) Managing the budgetary allocations for the IRM;
- (l) Overseeing the establishment and maintenance of one or more databases of consultants, researchers, technical experts, mediators, conciliators, facilitators, translators, interpreters, etc., whose services may be called upon in connection with compliance reviews and problem-solving exercises and advisory functions;
- (m) Provide advice and technical opinion to the President and/or the Boards of Directors, under the advisory function of IRM.
- (n) Undertaking any other tasks that may be necessary or incidental to the administration of the IRM.

Problem Solving and Compliance Review function Principals

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.

***c. Delegation by Director***

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

***d. IRM Staff***

- 81. IRM staff are staff of the Bank Group to whom Bank Group's Human Resources policies and procedures apply. Contracts for IRM staff restrict senior staff from obtaining employment with AfDB for a period of two years after they end their engagement with AfDB.

Commented [CSO14]: Language adapted from para. 1.3 of the IFC CAO Operational Guidelines.

Conflict of Interest

Commented [CSO15]: Language adapted from EBRD IPAM policy para. 3.1(h)

IRM staff members and consultants engaged by IRM are expected to act impartially and independently. An IRM staff member or a consultant engaged by IRM who has a conflict of interest in relation to a Request will be required to inform the IRM Director immediately and withdraw from the Request. If the IRM Director has a conflict of interest in relation to a Request, they will immediately inform the Board, withdraw from the Request, and assign an IRM staff member to perform their duties in relation to that Request.

***e. Access to Bank Group staff and information, and confidentiality***

- 82. When conducting any inquiry, assessment or review for a problem-solving exercise or a compliance review, the Director shall have full access to relevant Bank Group staff and files, including electronic files, cabinets and other storage facilities and Bank Group staff shall be required to cooperate fully with them. Financing agreements between 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 access to, and use and disclosure of, any information gathered by the Director or a Compliance Review Panel during any such process shall be subject to the Bank Group's Disclosure and Access to Information Policy, any requests by an interested person for confidentiality and any other applicable requirements to keep sensitive commercial information confidential (such as a confidentiality agreement). No IRM staff, Bank Group staff member, consultant, researcher, interpreter, translator and other technical expert employed by the IRM 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.

Commented [CSO16]: Language based on para. 3.1(g) of the EBRD IPAM's policy

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*f. Legal matters*

83. 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 operations to which a Request relates, as well as such advisory opinions and interpretations on points of law as the President or the Boards 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 [CSO17]: Language based on para. 100 of the GCF IRM's procedures

## IX. General Provisions

*a. Annual report*

84. 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.

85. The Annual Report shall be prepared and shall be submitted to the Boards of Directors and the Boards of Governors for information. It shall be published on the Bank Group's website.

*b. Budget*

86. 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 by the IRM to carry out its mandate. The budget shall be approved by the CODE Committee of the Boards of Directors and shall also include contingency funds.

x. Costs of Participation

- 8X. 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,

Commented [CSO18]: Language based on para. 91 of GCF IRM's procedures

compliance review or monitoring in some manner other than as the complainant.

**c. Information from IRM requests**

87. When Bank management submits a newly proposed project to the Boards of Directors it will first establish if the proposed client or PIU has ever been a party to a case reviewed by IRM and ensure that this information and the outcome of the request must be included in the documentation submitted for consideration by the Boards of Directors.

**d. Outreach**

88. The IRM shall develop and update its outreach strategy ~~regularly~~regularly. IRM should undertake two types of outreach activities:

- Internal: The outreach should improve awareness and disseminate lessons from IRM to Bank staff. This should be included as part of regular staff training and Boards of Directors member on boarding
- External: The IRM shall hold regular dissemination activities in AfDB's RMCs, in each country office a staff member shall be designated as a focal person for handling complaints caused by AfDB financed projects.
- AfDB staff working with clients and borrowers will ~~disseminate~~disseminate information early in the project cycle about the IRM and its availability as a recourse ~~mechanism in case other mechanisms for dealing with harmful project impact are not successful~~

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**e. Retaliation**

89. The IRM does not tolerate retaliations 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.

**f. External Advisory Group**

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

**g. Register**

91. The IRM shall maintain a transparent and comprehensive online register. The information posted on the Register shall include pending, completed and closed cases and all relevant documentation to complaints processing, including 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, and conclusion reports. All material shall be provided in full and posted online as they become available and remain there indefinitely

Independent Accountability Mechanisms Network

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

Commented [CSO19]: Language based on para. 1.27 of the FMO/DEG/Proparco ICM policy

***h. Business Days***

92. 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 Headquarters.

***i. Immunities and Privileges***

93. 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.

***j. Guidance Notes***

94. Guidance Notes to these Operating Rules and Procedures will be developed with the objective of providing guidance and facilitating implementation of these Rules.

***k. Amendment and effect of the Rules***

95. The Boards of Directors 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 Boards of Directors shall review the IRM every four (4) years or as otherwise decided by them including through a public consultation process.